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Ordinance supplementing the Pittsburgh Code, Title SEVEN, Business Licensing, Article IX, Amusement Businesses, by adding Chapter 781 titled Sexually Oriented Businesses

WHEREAS, Adult Businesses are guaranteed important rights to Free Speech by the First Amendment of the U.S. Constitution, as well as other rights such as Due Process and Equal Protection under that same charter; and

WHEREAS, the City of Pittsburgh through its Zoning Code must make reasonable and real accommodations to permit the practice of various kinds of Adult Business within its boundaries in order to act in compliance with these constitutional guarantees; and has in fact introduced such amendments to its Zoning Use Regulations in Title NINE, Article V, Section 911.02 in order to allow Adult Entertainment as a use Permitted by Right in certain and sufficient districts; and

WHEREAS, it has been demonstrated empirically time and again that Sexually Oriented Businesses which provide Adult Entertainment tend in the aggregate to contribute toward serious deleterious Secondary Effects which can be visited upon its own Patrons and Employees, on the surrounding Neighborhood, and on the Region as a whole; and

WHEREAS, these predictable and deleterious Secondary Effects include increases in certain kinds of Crime, and decreases in Property Values through the effects of this Crime and the resulting Blight and Disinvestment;

and

WHEREAS, entrepreneurial interest in launching new Sexually Oriented Businesses within the City of Pittsburgh has recently increased significantly ever since economic development has increased generally, especially on or near the North Shore, and particularly in connection with the opening of a state-licensed Gaming Casino on the western edge of the City; and

WHEREAS, this government has a substantial interest in and responsibility toward protecting its citizens from the deleterious Secondary Effects of Adult Entertainment, even while it must honor its commitment to zealously protect Free Speech and other Constitutional Rights for Sexually Oriented Business owners and employees; and

WHEREAS, the proper, well-established and repeatedly judicially reaffirmed method of balancing these rights and interests is to enact reasonable and effective Time, Place and Manner restrictions upon Sexually Oriented Businesses and the practice of Adult Entertainment with the aim of mitigating these Secondary Effects, of the type which the City now also enacts as companion legislation through Title SIX, Chapter 625 of the Code; and

WHEREAS, a reasonable and practical system of Business Licensing is necessary to oversee and enforce such Conduct restrictions;

**The Council of the City of Pittsburgh hereby enacts as follows:**

**Section 1.** The Pittsburgh Code, Title Seven, Business Licensing, Article IX, Amusement Businesses, is hereby supplemented by adding Chapter 781 as follows:

**781.01 FINDINGS AND PURPOSE**

In enacting this Ordinance, the City of Pittsburgh relies on the same findings and acts with the same statements of intent as appears in Title SIX, conduct; Chapter 625, Sexually Oriented Businesses; Subsection 625.01, Findings and Purpose.

**781.02 DEFINITIONS**

The terms Adult Entertainment, Distinguished or characterized by their emphasis upon, Employee, Immediate Family, License, Licensee, Operate, Operator, Patron, Person, Premises, Sexually oriented business, Specified criminal activity, and Transfer of ownership or control shall all be defined in the same way as in Title SIX, Conduct; Chapter 625, Sexually Oriented Businesses; Subsection 625.02, Definitions.

**781.03 LICENSE REQUIRED**

(a) No person shall:

(1) Operate a sexually oriented business as defined by Section 625.02 of the Code without a valid sexually oriented business license issued by the City of Pittsburgh pursuant to this Ordinance.

(2) In connection with operating a sexually oriented business, retain the services of a person as an employee, as defined in this Ordinance, who is not licensed as a sexually oriented business employee by

the City of Pittsburgh pursuant to this Ordinance.

(b) Any person who violates sub-section (a)(1) shall be guilty of a 3rd degree misdemeanor for a first offense, and a 2nd degree misdemeanor for a second offense.

(c) A violation of sub-section (a)(2) above shall be a ground for the suspension of a sexually oriented business license as provided for in 780.07 of this Ordinance.

(d) No person shall act as an employee, as defined in this Ordinance, on the premises of a sexually oriented business without having secured a sexually oriented business employee license ("employee license") pursuant to this Ordinance.

(e) A violation of this section shall be a ground for the suspension of a sexually oriented business employee license as provided for in section 780.07 of this Ordinance.

#### **781.04 APPLICATION FOR LICENSE**

(a) An original or renewal application for a sexually oriented business license shall be submitted to the Department of Public Safety or its designee on a form provided by the City of Pittsburgh. The application may require and the applicant shall provide such information as reasonably necessary (including fingerprints) to enable the Department of Public Safety to determine whether the applicant meets the qualifications established in this Ordinance.

(b) A filing fee shall be paid at the time of filing the application in the amount of \$750.

(c) An application for a sexually oriented business license shall identify and be signed by the following persons:

(1) If the business entity is owned by an individual, that individual.

(2) If the business entity is owned by a corporation, each Officer or Director of the corporation, any individual owning or controlling more than fifty (50) percent of the voting shares of the corporation, and any person with an ownership interest in the corporation who will be principally responsible for the operation of the proposed sexually oriented business.

(3) If the business entity is owned by a partnership (general or limited), a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, each partner (other than limited partners); and any other person entitled to share in the profits of the organization, whether or not such person is also obligated to share in the liabilities of the organization, who will be principally responsible for the operation of the proposed sexually oriented business.

(d) An application for a sexually oriented business license must designate one or more individuals who are to be principally responsible for the operation of the proposed sexually oriented business, if a license is granted. At least one person so designated must be involved in the day-to-day operation of the proposed sexually oriented business on a regular basis. Each person so designated, as well as the business entity itself, shall be considered a license applicant, must qualify as a licensee under this Ordinance, and shall be considered a licensee if a license is granted.

(e) An application for a sexually oriented business license shall be completed according to the instructions

on the application form, which shall require the following:

- (1) If the applicant is:
  - (a) an individual, state the legal name and any aliases of such individual; or
  - (b) a partnership, state the complete name of the partnership and all of its partners and whether the partnership is general or limited, and provide a copy of the partnership agreement, if any; or
  - (c) a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, state the complete name of the organization and provide a copy of the legal document establishing the organization, if any; or
  - (d) a corporation, state the complete name of the corporation and the date of its incorporation, provide evidence that the corporation is in good standing under the laws of its state of incorporation, and state the names and capacities of all Officers and Directors, the name of the registered corporate agent, and the address of the registered office for service of process.
- (2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, state the fictitious name to be used and submit copies of documentation evidencing the registration of the business name under applicable laws.
- (3) State whether any applicant has been convicted of a specified criminal activity as defined in this Ordinance and if so, the specified criminal activity involved and the date, place, and jurisdiction of each such conviction.
- (4) State whether any applicant has had a previous license under this Ordinance or other similar regulation of another jurisdiction denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation; and state whether the applicant has been a partner in a partnership or an officer, or fifty (50) percent or greater owner of a corporation licensed under this Ordinance whose license has previously been denied, suspended or revoked, including the name and location of the business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
- (5) State whether any applicant holds any other licenses under this Ordinance or other similar regulation from this or another jurisdiction and, if so, the names and locations of such other licensed businesses.
- (6) State the location of the proposed sexually oriented business, including a legal description of the property (i.e., permanent parcel number), street address, and telephone number(s), if any.
- (7) State the mailing address and residential address of each applicant and each person signing the application.
- (8) Submit a recent photograph of each applicant who is a natural person, taken by the Department of Public Safety that clearly shows the applicant's face.
- (9) Submit the fingerprints of each applicant who is a natural person, recorded by the Department of

Public Safety.

(10) For any applicant who is a natural person, describe and identify the location of any tattoos on such person's face, arms, legs, or hands, or any other anatomical area that normally would be visible when such person is on the premises of the proposed sexually oriented business.

(11) State the driver's license number and Social Security number of each applicant who is a natural person and each person signing the application, or, for an applicant that is not a natural person, the applicant's federally issued tax identification number.

(12) Submit proof that each applicant who is a natural person is at least eighteen (18) years old.

(13) Submit a sketch or diagram showing the configuration of the premises of the sexually oriented business. The diagram shall also designate the place at which the adult business license will be conspicuously posted, if granted. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(14) The above-required disclosures facilitate the police investigation into the applicant's criminal background regarding crimes of a sexual nature so that the City of Pittsburgh can determine whether the Ordinance's civil disabilities provisions apply. Such provisions exist to combat the sex crimes connected with sexually oriented establishments by temporarily prohibiting those recently convicted of such crimes from employment with those establishments. In addition, the required disclosures ensure continuing compliance with the Ordinance's licensing and permitting requirements.

(15) The information gathered pursuant to the above provisions constitutes protected private information and are exempt from Pennsylvania's Right to Know law.

## **781.05 ISSUANCE OF A LICENSE**

(a) Upon receipt of an application for a sexually oriented business license, the Department of Public Safety or its designee shall promptly request a review the information provided in the application concerning the criminal background of the applicant(s) and that the investigators shall transmit the results of its investigation in writing to the Department or its designee within five (5) days of the completion of its investigation.

(b) Within five (5) days of receipt of an application for a sexually oriented business, the Department of Public Safety or its designee shall notify the Bureau of Building Inspection [BBI] of such application. In making such notification, the Department or its designee shall request that the BBI promptly inspect the premises for which the sexually oriented business license is sought to assess compliance with the regulations under their respective jurisdictions.

(c) BBI shall provide to the Department of Public Safety or its designee a written certification of whether the premises are in compliance with the City of Pittsburgh Fire Regulations within ten (10) days of receipt of notice of the application.

(d) The Department of Public Safety or its designee shall commence the inspection of the premises for which a sexually oriented business license is sought promptly upon receipt of the application, and shall complete, within ten (10) days after receipt of the

application, a written certification of whether the premises are in compliance with the City of Pittsburgh Zoning Code, the City of Pittsburgh Property Maintenance Code, and the provisions of this Ordinance related to physical characteristics of the premises, and whether the City of Pittsburgh has received notice from any state or county agency of the premises being in violation of any applicable state building or property codes.

(e) Within twenty-one (21) days after receipt of a completed sexually oriented business license application, the Department of Public Safety or its designee shall approve or deny the issuance of a license. The Department or its designee shall approve the issuance of a license to an applicant unless he/she determines that one or more of the following findings is true:

- (1) An applicant who is a natural person is under eighteen (18) years of age.
- (2) An applicant has failed to provide all information and documents required for issuance of the license as requested on the application form, or has provided information or documents as requested on the application that are insufficient on their face.
- (3) An applicant has, within the preceding twelve (12) months, been denied a sexually oriented business license by any jurisdiction or has had a license to operate a sexually oriented business revoked by any jurisdiction.
- (4) An applicant has been convicted of a specified criminal activity as define Section 625.02 of the Code.
- (5) The proposed sexually oriented business would violate or fail to be in compliance with any provisions of this Ordinance, the City of Pittsburgh Zoning Code or other local property maintenance code, or state statute or regulation.
- (6) The application and investigation fee required by this Ordinance has not been paid.
- (7) An applicant is in violation of or not in compliance with any provision of this Ordinance, except as provided in sub-section (F) of this section.

(f) If the Department of Public Safety or its designee determines that one or both of the following findings is true, the license issued pursuant to this section shall contain a requirement that the licensee correct all deficiencies specified within 120 days of the date the license is issued:

- (1) The results of inspections of the premises byt heDepartment or its designee indicate that the premises are not in compliance with applicable laws and regulations under their respective jurisdictions.
- (2) An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business, which are not the subject of a pending appeal or other legal challenge.

(g) A sexually oriented business license shall state on its face the name of the applicant, the expiration date, and the address of the licensed sexually oriented business. All sexually oriented business licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.

(h) The Department of Public Safety or its designee shall advise the applicant in writing within three (3) days of the Department's decision of the reasons for any license denial. If the City finds, subsequent to denial, that the basis for the denial of the license has been corrected or abated, the applicant may reapply.

#### **781.06 EMPLOYEE LICENSE APPLICATION**

(a) An application for an Employee license shall be submitted to the Department of Public Safety or its designee on a form provided by the Department. The application may request, and the applicant shall provide, such information as reasonably necessary (including fingerprints) to enable the City to determine whether the applicant meets the qualifications established in this Ordinance.

(b) An application for an employee license shall be completed according to the instructions of the application form, which shall require the following:

- (1) State the applicant's name and any other names (including “stage” names) or aliases used by the applicant.
- (2) State the applicant's date and place of birth.
- (3) State the applicant's height, weight, and hair and eye color.
- (4) Submit a recent photograph of the applicant, taken by the Department, which clearly shows the applicant's face.
- (5) Submit the applicant's fingerprints, recorded by the Department.
- (6) Describe and identify the location of any tattoos on the applicant's face, arms, legs, or hands, or any other anatomical area that normally would be visible when the applicant is on the premises of the proposed sexually oriented business.
- (7) State the applicant's present residence address and telephone number.
- (8) State the applicant's present or intended business address and telephone number.
- (9) State the applicant's driver's license number and Social Security number.
- (10) Submit proof that the applicant is at least eighteen (18) years old.
- (11) Provide a statement detailing the sexually oriented business related license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate a sexually oriented business, in this or any other jurisdiction, and whether the applicant has ever had a sexually oriented business related license, permit, or authorization to do business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation, or suspension. Attach a copy of any order of denial, revocation, or suspension.
- (12) State whether the applicant has been convicted of a specified criminal activity as defined in 625.02 of the Code and, if so, the specified criminal activity involved and the date, place and jurisdiction of each such conviction.
- (13) The above-required disclosures facilitate the police investigation into the applicant's criminal background regarding crimes of a sexual nature so that the City can determine whether the Ordinance's civil disabilities provisions apply. Such provisions exist to combat the sex crimes connected with sexually oriented establishments by temporarily prohibiting those recently convicted of such crimes from employment with those establishments. In addition, the required disclosures ensure continuing compliance with the Ordinance's licensing and permitting requirements.
- (14) The information gathered pursuant to the above provisions constitutes protected private information and is exempt from Pennsylvania's Right to Know law.

#### **781.07 ISSUANCE OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE**

- (a) Upon the filing of a completed application for an employee license, the Department of Public Safety or its designee shall issue a license to said applicant immediately.
- (b) Within five (5) days of receipt of a completed application for an employee license, the Department or its designee shall initiate an investigation of the information provided in the application concerning the criminal background of the applicant. The investigative lead shall document the results of its investigation in writing within five (5) days of the completion of its investigation and transmit this writing to the Department or its designee.
- (c) Within ten (10) days after completion of the criminal background investigation of the applicant, the Department or its designee shall either affirm the prior issuance of the license or revoke the license. The Department or its designee shall affirm the prior issuance of a license to an applicant unless he/she determines that one or more of the following findings are true:
  - (1) The applicant has failed to provide all information and documents required for issuance of the license as requested on the application form, or has provided information or documents as requested on the application that are insufficient on

their face.

(2) The applicant is under eighteen (18) years of age.

(3) The applicant has been convicted of a specified criminal activity as defined in this Section 625.02 of the Code.

(4) The employee license is to be used for employment in a business prohibited by local, state, or federal law, statute, rule or regulation.

(5) The applicant has, within the preceding twelve (12) months, been denied an employee license by any jurisdiction or has had an employee license revoked by any jurisdiction.

(d) If the employee license is revoked, the Department of Public Safety or its designee shall advise the applicant in writing within three (3) days of the reason(s) for any such revocation.

#### **781.08 EXPIRATION AND RENEWAL OF LICENSE**

(a) Each license issued pursuant to this Ordinance shall expire one year from the date of issuance and may be renewed by making application as provided in this section. Application for renewal shall be made no more than ninety (90) days and no less than twenty-one (21) days before the expiration date. If application is made less than twenty-one (21) days before the expiration date, the license will not be extended pending a decision on the application, but will expire on its normal expiration date.

(b) An application for renewal of a sexually oriented business license shall be submitted to the Department of Public Safety or its designee on a form provided by the Department. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to this Ordinance. Copies of any document or material submitted in connection with the initial license application shall accompany the completed renewal application that has been revised or such application shall be revised to reflect any change in circumstances or conditions. Sketches or diagrams submitted with an initial sexually oriented business license application may be resubmitted with subsequent renewal applications, provided that the applicant certifies in writing that the sketch or diagram still depicts the premises accurately.

(c) The Department or its designee shall make determinations concerning the approval of license renewals based on the same criteria and time mandates used to evaluate applications for new licenses under this Ordinance.

(d) The Department or its designee shall advise the applicant in writing within three (3) days of the reason(s) for any denial of a license renewal.

(e) An application for renewal of an employee license shall be submitted to the Department or its designee on a form provided by the Department. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to this Ordinance. Copies of any document or material submitted in connection with the initial license application shall accompany the completed renewal application that has been revised or requires revision to reflect any change in circumstances or conditions.

(f) When the City denies an application for renewal of a license, the applicant shall not be issued another license for one year from the date of denial. However, if the City finds, subsequent to denial, that the basis for the denial of the renewal license has been corrected or abated, the applicant may reapply prior to the expiration of the one year period.

#### **781.09 SUSPENSION**

(a) The City shall suspend a sexually oriented business license for a period not to exceed thirty (30) days if it determines that a licensee:

(1) has violated or is not in compliance with any section of this Ordinance or of Chapter 625: Sexually Oriented Businesses; or

(2) has knowingly allowed an employee to violate or fail to comply with any section of this Ordinance or of Chapter



625: Sexually Oriented Businesses.

(b) The City of Pittsburgh shall suspend a sexually oriented business license for a period not to exceed thirty (30) days if it determines that a licensee or its employee or agent has refused to allow, or has prohibited or has interfered with, an inspection of the licensed sexually oriented business premises as authorized by this Ordinance or any other reasonable inspection.

(c) The City shall suspend an employee license for a period not to exceed thirty (30) days if it determines that a licensee has violated or is not in compliance with any section of this Ordinance.

(d) The Department of Public Safety or its designee shall advise the licensee in writing within three days of the reason(s) for any suspension.

#### **781.10 REVOCATION**

(a) The City shall revoke a sexually oriented business license or employee license if a cause of suspension under this Ordinance occurs and the license has been suspended two times within the preceding twelve (12) months.

(b) The City shall revoke a sexually oriented business license if it determines that:

(1) a licensee failed to provide all information and documents required for issuance of the license as requested on the application form, or provided information or documents as requested on the application that are false;

(2) the licensee(s) failed to comply with any requirement stated in the license, pursuant to this Ordinance, to correct specified deficiencies within 120 days;

(3) a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(4) a licensee has knowingly allowed prostitution, solicitation, or the commission of a felony on the premises;

(5) a licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(6) a licensee has knowingly allowed any act of specified sexual activity, as defined in this Ordinance, to occur in or on the licensed premises;

(7) a licensee has been convicted of a specified criminal activity, as defined in this Ordinance, during the term of the license; or

(8) a licensee is delinquent in payment to the City, County, or State for any taxes or fees that were assessed or imposed in relation to any business.

(c) The City shall revoke an employee license if it determines that:

(1) the licensee failed to provide all information and documents required for issuance of the license as requested on the application form, or provided information or documents as requested on the application that are false;

(2) the licensee has knowingly acted as an employee on the premises of a sexually oriented business during a period of time when the licensee's license was suspended; or

(3) the licensee has been convicted of a specified criminal activity, as defined in this Ordinance during the term of the license.

(d) The Department of Public Safety or its designee shall advise the licensee in writing within three days of the reason(s) for any revocation.

(e) When the City revokes a license pursuant to sub-sections (A), (B)(3) - (7), (C)(2) or (3) above, the licensee shall not be issued another license for one (1) year from the date the revocation became effective.

(f) When the City revokes a license pursuant to sub-sections (B)(1), (B)(8) or (C)(1) above, the applicant may be granted a license if the basis for the revocation has been corrected or abated and at least thirty (30) days have elapsed since the date the revocation became effective.

#### **781.11 APPEAL RIGHTS**

(a) Any denial, suspension, or revocation of a license under this Ordinance may be appealed to the Disruptive Properties Appeals Board by written notice within ten (10) days of such denial, suspension, or revocation. Unless the applicant requests a longer period, the Disruptive Properties Appeals Board must hold a hearing on the appeal within sixty (60) days and must issue a decision affirming or reversing the denial, suspension, or revocation within five (5) days after the hearing. During the time between the dates of the denial, suspension, or revocation of a license and the date of the Disruptive Properties Appeals Board decision affirming or reversing the denial, suspension, or revocation, the status quo of the license holder or applicant shall be maintained.

(b) In the event that the Appeals Board denies, suspends, or revokes a new or renewal license under this Ordinance, or any action taken on an appeal that is provided by this ordinance, the applicant may pursue an appeal to the Allegheny County Court of Common Pleas. The failure of the City to render a decision on the application within the time prescribed in sub-section (A) above shall be considered an affirmation of the denial, suspension, or revocation of the license and the applicant may pursue an appeal to the Allegheny County Court of Common Pleas. This appeal provision is intended to comply with the requirement for prompt judicial review stated by the United States Supreme Court in *Township of Littleton, Colorado v. Z. J. Gifts D4* (2004), 541 U.S. 774.

(c) Any licensee lawfully operating a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, shall retain said license and all privileges attendant thereto, subject to all other terms of this Ordinance, so that the status quo of the licensee is maintained during the pendency of an appeal to the Disruptive Properties Appeals Board of a decision rendered under this Ordinance and during the entire time required for the court to rule on the appeal pursuant to sub-section (B) above.

(d) Any licensee lawfully acting as an employee in a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, shall retain said license and all privileges attendant thereto, subject to all other terms of this Ordinance, so that the status quo of the licensee is maintained during the pendency of an appeal to the Disruptive Properties Appeals Board of a decision rendered under this Ordinance and during the entire time required for the court to rule on the appeal pursuant to sub-section (B) above.

(e) In the event that any judicial review of the denial of a new or renewal license application or the revocation or suspension of a license is still pending thirty (30) days before the expiration date of any license, the licensee may file a renewal license application with Department of Public Safety or its designee pursuant to this Ordinance. In the event that an application for renewal of a license is denied and the applicant seeks judicial review of that denial, the City has the right to consolidate such review with any pending judicial actions in regards to the previous denial, suspension or revocation of a license.

(f) If, during the pendency of any appeal pursued under sub-section (B) above, there are additional denials of a renewal license application or suspensions or revocations of that license, the City has the right to consolidate the appeal pursued under Section (XI), sub-section (B) above for the additional denials, suspensions or revocations with any pending appeal for that same licensee.

#### **781.12 TRANSFER OF LICENSE**

(a) A sexually oriented business license is not transferable from one licensee to another or from one location to another. Any purported transfer of a sexually oriented business license shall automatically and immediately revoke that license.

(b) An employee license is not transferable from one licensee to another, but the use of the license by the individual to whom it was issued may be transferred from one licensed sexually oriented business to another such licensed establishment during the term of the license, provided that the licensee gives written notice of such transfer to the Department of Public Safety or its designee within

fifteen (15) days of such transfer.

**781.13 SEVERABILITY CLAUSE**

If any section, sub-section, paragraph or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, sub-sections, paragraphs, and clauses shall not be affected.