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Title: Ordinance supplementing the Pittsburgh Code, Title Six, Conduct, Article I, Regulated Rights and Actions, by adding Chapter 625 titled Sexually Oriented Businesses

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Date	Ver.	Action By	Action	Result
12/7/2011	2	Standing Committee	TABLED	Pass
11/21/2011	2	Standing Committee	Held in Committee	Pass
11/10/2011	1	Standing Committee		
6/15/2011	1	Standing Committee	Held for Cablecast Public Hearing	Pass
6/15/2011	1	Standing Committee	AMENDED	Pass
6/15/2011	1	Standing Committee	Held for Cablecast Post Agenda	Pass
6/7/2011	1	City Council	Read and referred	

Ordinance supplementing the Pittsburgh Code, Title Six, Conduct, Article I, Regulated Rights and Actions, by adding Chapter 625 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, and to enforce these Time, Place and Manner restrictions through a system of Business Licensing which the City now also enacts as companion legislation through Title SEVEN, Chapter 781 of the Code;

SEE ATTACHMENT

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

Section 1. The Pittsburgh Code Title Six, Conduct, Article I, Regulated Rights and Actions, is hereby supplemented by adding Chapter 625, Sexually Oriented Businesses, as follows:

CHAPTER 625: SEXUALLY ORIENTED BUSINESSES

625.01 FINDINGS AND PURPOSE

- (a) In enacting this Ordinance, the City of Pittsburgh makes the following statement of intent and findings:
- (1) Adult entertainment establishments require special supervision from the public safety agencies of this City in order to protect and preserve the health, safety and welfare of the patrons and employees of the businesses as well as the citizens of the City.
 - (2) The City Council finds that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature.
 - (3) The concern over sexually transmitted diseases is a legitimate health concern of the City of Pittsburgh that demands reasonable regulation of adult entertainment establishments by City government in the specified manner and expanded authority for reasonable regulation of adult entertainment establishments by local governments, in order to protect the health and well-being of the citizens.
 - (4) Minimal regulations enacted by the City of Pittsburgh are a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.
 - (5) There is convincing documented evidence that adult entertainment establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, cause increased crime, particularly in the overnight hours, and

downgrade property values.

(6) The City Council desires to minimize and control these adverse effects by regulating adult entertainment establishments in the specified manner. And by minimizing and controlling these adverse effects, the City Council seeks to protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight.

(7) The City Council has determined that current local zoning and other location criteria do not adequately protect the health, safety, and general welfare of the people of the City of Pittsburgh and that expanded regulation of adult entertainment establishments is necessary.

(8) It is not the intent of City Council in enacting this act to suppress or authorize the suppression of any speech activities protected by the First Amendment, but to enact content-neutral statutes that address the secondary effects of adult entertainment establishments.

(9) It is not the intent of City Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in this state.

(b) It is the intent of City Council in enacting this Ordinance to regulate in the specified manner adult entertainment establishments in order to promote the health, safety and general welfare of the citizens of the City of Pittsburgh and establish reasonable regulations to prevent the deleterious secondary effects of adult entertainment establishments within the City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent of the Council in enacting this Ordinance to restrict or deny, or authorize the restriction or denial of, access by adults to sexually oriented materials protected by the First Amendment, or to deny, or authorize the denial of, access by the distributors and exhibitors of adult entertainment and adult materials to their intended market. Neither is it the intent nor effect of the Council in enacting this Ordinance to condone or legitimize the distribution or exhibition of obscene material.

(c) Based on evidence concerning the adverse secondary effects of adult uses on communities presented in hearings and in reports made available to the Council in the cases of *Township of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.* (2004), 541 U.S. 774; *Township of Erie v. Pap's A.M.* (2000), 529 U.S. 277; *Barnes v. Glen Theatre, Inc.* (1991), 501 U.S. 560; *Township of Renton v. Playtime Theatres, Inc.* (1986), 475 U.S. 41; *Young v. American Mini Theatres* (1976), 426 U.S. 50; *California v. LaRue* (1972), 409 U.S. 109; *DLS, Inc. v. Township of Chattanooga* (6th Cir. 1997), 107 F.3d 403; *East Brooks Books, Inc. v. Township of Memphis* (6th Cir. 1995), 48 F.3d 220; *Harris v. Fitchville Township Trustees* (N.D. Ohio 2000), 99 F. Supp.2d 837; *Bamon Corp. v. Township of Dayton* (S.D. Ohio 1990), 730 F. Supp. 90, *aff'd* (6th Cir. 1991), 923 F.2d 470; *Broadway Books v. Roberts* (E.D. Tenn. 1986), 642 F. Supp. 486; *Bright Lights, Inc. v. Township of Newport* (E.D. Ky. 1993), 830 F. Supp. 378; *Richland Bookmart v. Nichols* (6th Cir. 1998), 137 F.3d 435; *Deja Vu v. Metro Government* (6th Cir. 1999), 1999 U.S. App. LEXIS 535; *Threesome Entertainment v. Strittmather* (N.D. Ohio 1998), 4 F.Supp.2d 710; *J.L. Spoons, Inc. v. Township of Brunswick* (N.D. Ohio 1999), 49 F. Supp.2d 1032; *Triplett Grille, Inc. v. Township of Akron* (6th Cir. 1994), 40 F.3d 129; *Nightclubs, Inc. v. Township of Paducah* (6th Cir. 2000), 202 F.3d 884; *O'Connor v. Township and County of Denver* (10th Cir. 1990), 894 F.2d 1210; *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County* (6th Cir. 2001), 2001 U.S. App. LEXIS 26007; *State of Ohio ex rel. Rothal v. Smith* (Ohio C.P. 2002), Summit C.P. No. CV 01094594; *Z.J. Gifts D-2, L.L.C. v. Township of Aurora* (10th Cir. 1998), 136 F.3d 683; *Connection Distrib. Co. v. Reno* (6th Cir. 1998), 154 F.3d 281; *Sundance Assocs. v. Reno* (10th Cir. 1998), 139 F.3d 804; *American Library Association v. Reno* (D.C. Cir. 1994), 33 F.3d 78; *American Target Advertising, Inc. v. Giani*

(10th Cir. 2000), 199 F.3d 1241; and other cases and on reports of secondary effects occurring in and around adult entertainment establishments in Phoenix, Arizona (1984); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma Township, Oklahoma (1986); Cleveland, Ohio (1977); Dallas, Texas (1997); St. Croix County, Wisconsin (1993); Bellevue, Washington (1998); Newport News, Virginia (1996); Tucson, Arizona (1990); St. Paul, Minnesota (1988); Oklahoma Township, Oklahoma (1986 and 1992); Beaumont, Texas (1982); New York, New York (1994); Ellicottville, New York (1998); Des Moines, Iowa (1984); Islip, New York (1980); Adams County, Colorado (1987); Manatee County, Florida (1987); New Hanover County, North Carolina (1989); Las Vegas, Nevada (1978); Cattaraugus County, New York (1998); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); New York Times Square study (1994); Report to ACLJ on the Secondary Impacts of Sex Oriented Businesses (1996); findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and on testimony to Congress in 136 Cong. Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636, 134 Cong. Rec. E. 3750; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and from various other police reports, testimony, newspaper reports, and other documentary evidence), and subsequent findings in *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291; *729, Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485; and *Andy's Rest. & Lounge, Inc. v. City of Gary* (7th Cir. 2006), 466 F.3d 550, and Pittsburgh City Council's independent review of the same) the Council finds:

- (1) Adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments.
- (2) Certain employees of adult entertainment establishments, as defined in this Ordinance as adult theaters and cabarets, engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts, including masturbation and oral and anal sex occur at adult entertainment establishments, especially those that provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows. The "couch dances" or "lap dances" that frequently occur in adult entertainment establishments featuring live nude or seminude dancers constitute or may constitute the offense of "engaging in prostitution" under 18 Pa. Cons. Stat. § 5902
- (4) Offering and providing private or semi-private booths or cubicles encourages such activities, which creates unhealthy conditions.
- (5) Persons frequent certain adult theaters, adult arcades, and other adult entertainment establishments for the purpose of engaging in sexual activity within the premises of those adult entertainment establishments.
- (6) Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and shigella infections, chlamydial, myoplasmal and ureoplasmal infections, trichomoniasis, and chancroid.
- (7) Since 1981 and to the present, there have been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982, 2,200 in

1983, 4,600 in 1984, 8,555 in 1985, and 253,448 through December 31, 1992.

(8) According to the U.S. Centers for Disease Control, there were a total of 31,220 persons living with a diagnosis of HIV infection in Pennsylvania in 2008, and a total of 18,734 persons in Pennsylvania living with an AIDS diagnosis in 2009.

(9) Syphilis - a disease once on the verge of elimination - began re-emerging as a public health threat in 2001. In 2009, there were 13,997 reported cases of primary and secondary (P&S) syphilis in the U.S. - the most infectious stages of the disease - the highest number of cases since 1995 and an increase over 2007 (11,466 cases). The total number of annual cases of syphilis (P&S, early latent, late, late latent and congenital) has reached 44,828 in 2009.

(10) The number of cases of gonorrhea in the United States reported annually remains at a high level, with 301,174 cases being reported in 2009.

(11) The Surgeon General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, and exposure to infected blood and blood components, and from an infected mother to her newborn.

(12) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(13) Sanitary conditions in some adult entertainment establishments are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(14) The findings noted in divisions (C)(1) to (13) of this section raise substantial governmental concerns.

(15) Adult entertainment establishments have operational characteristics that require or mandate subject them to reasonable government regulation in order to protect those substantial governmental concerns.

(16) The enactment of this Ordinance will promote the general welfare, health, and safety of the citizens of this City.

625.02 DEFINITIONS

As used in this Ordinance:

(1) "Adult arcade" means any place to which the public is permitted or invited in which coin-operated, slug-operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and in which the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing specified sexual activities or specified anatomical areas.

(2) "Adult bookstore," "adult novelty store," or "adult video store" means a commercial establishment that, for any form of consideration, has as a significant or substantial portion of its stock-in-trade in, derives a significant or substantial portion of its revenues from, devotes a significant or substantial portion of its interior business or advertising to, or maintains a substantial section of its sales or display space for the sale or rental of

any of the following:

(a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations, that are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas;

(b) Instruments, devices, or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of self or others.

"Adult bookstore," "adult novelty store," or "adult video store" includes establishments which may have other principal business purposes that do not involve the offering for sale, rental, or viewing of materials exhibiting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore, adult novelty store, or adult video store. The existence of other principal business purposes does not exempt an establishment from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, such materials that exhibit or describe specified sexual activities or specified anatomical areas.

(3) "Adult cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, that regularly features any of the following:

(a) Persons who appear in a state of nudity or seminudity;

(b) Live performances that are characterized by the exposure of specified anatomical areas or specified sexual activities;

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.

(4) "Adult entertainment" means the sale, rental, or exhibition, for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances that are characterized by an emphasis on the exposure or display of specified anatomical areas or specified sexual activity.

(5) "Adult entertainment establishment" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude or seminude model studio, or sexual encounter establishment. An establishment in which a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including, but not limited to, massage therapy, is not an "adult entertainment establishment."

(6) "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

(7) "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or seminudity or live performances that are characterized by their emphasis upon the exposure of specified anatomical areas or specified sexual activities.

(8) "Distinguished or characterized by their emphasis upon" means the dominant or principal character and theme of the object described by this phrase. For instance, when the phrase refers to films "that are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities

or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or description of specified sexual activities or specified anatomical areas.

(9) "Employee" means any individual on a full-time, part-time, or contract basis, regardless of whether the individual is denominated an employee, independent contractor, agent, or otherwise, but does not include an individual exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

(10) "Immediate Family" means a person's spouse residing in the person's household, parents, siblings of the whole or of the half blood, and children, including adopted children.

(11) "License" means a license to act or operate a sexually oriented business, issued pursuant to this Ordinance.

(12) "Licensee" means a person in whose name a license to operate has been issued, as well as the individual (s) designated on the license application as principally responsible for the operation of the sexually oriented business. With respect to an Employee license issued under this Ordinance, licensee means an employee as defined by Section (II), sub-section (B) above in whose name a license has been issued authorizing employment at sexually oriented business.

(13) "Nude or seminude model studio" means any place where a person, who regularly appears in a state of nudity or seminudity, is provided for money or any other form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. A modeling class or studio is not a nude or seminude model studio and is not subject to this chapter if it is operated in any of the following ways:

(a) By a college or university supported entirely or partly by taxation;

(b) By a private college or university that maintains and operates educational programs, the credits for which are transferable to a college or university supported entirely or partly by taxation;

(c) In a structure that has no sign visible from the exterior of the structure and no other advertising indicating that a person appearing in a state of nudity or seminudity is available for viewing, if in order to participate in a class in the structure, a student must enroll at least three days in advance of the class and if not more than one nude or seminude model is on the premises at any one time.

(14) "Nudity," "nude," or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering; or the showing of the female breasts with less than a fully opaque covering of any part of the nipple.

(15) "Operate" means to control or hold primary responsibility for the operation of a sexually oriented business, either as a business entity, as an individual, or as part of a group of individuals with shared responsibility. "Operate" or "Cause to be Operated" shall mean to cause to function or to put or keep in operation.

(16) "Operator" means any individual on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

(17) "Patron" means any individual on the premises of a sexually oriented business, except for any of the

following:

- (a) An operator or an employee of the sexually oriented business;
- (b) An individual who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises;
- (c) A public employee or a volunteer firefighter emergency medical services worker acting within the scope of the public employee's or volunteer's duties as a public employee or volunteer's duties as a public employee or volunteer.

(18) "Person " means an individual, proprietorship, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

(19) "Premises" means the real property on which the sexually oriented business is located and all appurtenances to the real property, including, but not limited, to the sexually oriented business, the grounds, private walkways, and parking lots or parking garages adjacent to the real property under the ownership, control, or supervision of the owner or operator of the sexually oriented business.

(20) "Regularly features" or "regularly shown" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the adult entertainment establishment.

(21) **"Semi-Nude" or "Semi-Nudity" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part."**

"Seminude" or "state of seminudity" means a state of dress in which opaque clothing covers not more than the genitals, pubic region, and nipple of the female breast, as well as portions of the body covered by supporting straps or devices.

(22) "Sexual encounter establishment" means a business or commercial establishment that, as one of its principal business purposes, offers for any form of consideration a place where either of the following occur:

- (a) Two or more persons may congregate, associate, or consort for the purpose of engaging in specified sexual activities.
- (b) Two or more persons appear nude or seminude for the purpose of displaying their nude or seminude bodies for their receipt of consideration or compensation in any type or form.

An establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including, but not limited to, massage therapy, is not a "sexual encounter establishment."

(23) "SEXUALLY ORIENTED BUSINESS" means an adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motion picture theater, adult novelty store, adult theater, adult video store, sexual device shop, sexual encounter center, and sexual encounter establishment as defined by this Ordinance, but does not include a business solely by reason of its showing, selling, or renting materials that may depict sex.

(24) "Specified anatomical areas" means the cleft of the buttocks, anus, male or female genitals, or the female

breast.

(25) "SPECIFIED CRIMINAL ACTIVITY" means any of the following offenses:

(a) Prostitution or promoting prostitution; soliciting; loitering to engage in solicitation; sexual performance by a child; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar offenses to those described above under the criminal or penal code of any local jurisdiction, state, or country;

(b) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.

(iii) The fact that a conviction is being appealed shall not prevent such conviction from constituting a specified criminal activity as defined in this section.

(26) "Specified sexual activity" means any of the following:

(a) Sex acts, normal or perverted, or actual or simulated, including intercourse, oral copulation, masturbation, or sodomy;

(b) Excretory functions as a part of or in connection with any of the activities described in division (A)(15)(a) of this section.

(27) "TRANSFER OF OWNERSHIP OR CONTROL" of a sexually oriented business shall mean any of the following:

(a) the sale, lease, or sublease of the business;

(b) the transfer of securities which constitute a controlling interest in the business whether by sale, exchange, or similar means; or

(c) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

625.03 OPERATION OF A SEXUALLY ORIENTED BUSINESS

(a) Sexual Activity, Live Entertainment and Performances

(1) No person shall, in a sexually oriented business, appear before a patron or patrons in a state of nudity, regardless of whether such public nudity is expressive in nature.

(2) Any employee appearing on the premises of a sexually oriented business in a state semi-nudity, as defined by this Ordinance, must be on a stage that is at least 18 inches from the floor, and at a distance at least thirty-six (36) inches from all parts of a clearly designated area in which patrons will be present.

(3) All live entertainment and performances in a sexually oriented business must take place on a stage that is at least 18 inches from the floor and a distance of at least thirty-six (36) inches from all parts of a clearly designated area in which patrons will be present.

(4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. It is the duty of the operator to ensure that at least one employee is on duty and situated in an operator's station at all times that any patron is on the portion of the premises monitored by the operator station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(5) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) footcandles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(6) No employee shall knowingly or intentionally, in a sexually oriented business, appear within view of any patron in a **nude or** semi-nude condition unless the employee, while nude or semi-nude, shall be and remain at least six (6) feet from all patrons.

(7) Employees in a sexually oriented business shall maintain a minimum distance of five (5) feet from areas on the business premises occupied by patrons for a minimum of sixty (60) minutes after the employee appears in a nude or semi-nude condition within view of any patron. This regulation is not intended to prohibit ingress or egress from the premises. It is intended to control illicit sexual contact and reduce the incidents of prostitution occurring in the establishments.

(7 8) No patron who is not a member of the employee's immediate family shall knowingly touch an employee while that employee is **nude or** seminude or touches the clothing of any employee while that employee is nude or semi-nude.

(8 9) No employee who regularly appears nude or seminude on the premises of a sexually oriented business and while **nude or** seminude, shall knowingly touch a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or the clothing of a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or allow the patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family to touch the employee or the clothing of the employee.

(9 10) No employee while **nude or** seminude and appearing within view of patrons, shall knowingly accept a direct tip, gratuity, cash payment or other item of value from any patron.

~~(10~~ ~~11~~) The provisions of sub-sections (A)(1) - (10) shall not apply to an employee's use of any restroom or any singlesex dressing room that is accessible only to employees.

~~(11~~ ~~12~~) In addition, sub-sections (A)(1) - (10) shall not apply to live performances in which the patron and employee are separated by an impenetrable barrier such as, but not limited too, glass or Plexiglas.

(b) Minors Prohibited. No person under the age of 18 years shall be permitted on the premises of a sexually oriented business.

(c) Hours of Operation. No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, except that a sexually oriented business that holds a liquor permit may remain open until the hour specified in that permit if it does not conduct, offer, or allow sexually oriented business activity in which the performers appear nude.

625.04 POSTED NOTICES OF RIGHTS & RESPONSIBILITIES

(a) The City shall design and produce two versions of wall hangings or "posters" advising of the rights and responsibilities of both Patrons and Employees / Managers germane to the peaceable conduct of Adult Entertainment in the city. An edition of the poster dealing with Patron rights and responsibilities specifically shall be posted by the business so that it is clearly visible upon entering at each entryway, but not in such a way that it is visible from outside the building; and at each Operator's Station. Another edition of the poster dealing with Employee and Manager rights and responsibilities shall be posted by the business at each Operator's Station, and another clearly visible in an employee break room, changing area or other area frequented by all employees.

(b) Upon passage of this Ordinance, a Committee shall be formed by the City to research and design the Adult Entertainment Patron and Employee Rights and Responsibilities notices. The Committee shall consist of two (2) members of Council, one being appointed by the Mayor and the other by the Council President, and five (5) citizens of the city, three of which will be nominated by the Mayor, two of which nominated by the Council, and all confirmed by the Council.

(c) Should the city thereafter wish to amend or revise its posted Rights and Responsibilities notices, it shall first enact an Ordinance authorizing it to do so which once again initiates a new Committee according to Sec. B.

625.05 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.