

**TITLE XI: BUSINESS REGULATIONS**

Chapter

**110. SOLICITORS AND TRANSIENT MERCHANTS**

**111. SEXUALLY ORIENTED BUSINESSES**



## CHAPTER 110: SOLICITORS AND TRANSIENT MERCHANTS

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### § 110.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**PERSON.** Any individual, firm, co-partnership, corporation, company, association or joint stock association, church, religious sect, religious receiver, assignee, agent or other similar representative word.

**PRINCIPAL AGENT.** The employee or agent of the transient merchant is who is responsible for the day-to-day operations of the business within the town.

**SOLICIT or SOLICITATION.** Includes requesting, directly or indirectly, money, credit, property, financial assistance or other thing of value or selling, offering to sell, taking orders for sale of goods or services to be rendered at any place other than from a fixed place of business.

**SOLICITOR.** Includes any person, firm, limited liability company or corporation, both as principal and agent, who sells, offers to sell or takes orders for goods at any place other than a fixed place of business for future delivery or for services to be performed.

**TRANSIENT MERCHANT.** Includes all persons, firms, limited liability companies and corporations, both as principals and agents, who engage in, do or transact any temporary or transient business in this state, either in 1 locality or in traveling from place to place in this state, offering for sale or selling goods, wares or merchandise, and those who, for the purpose of carrying on a business, hire,

lease or occupy any permanent or mobile building, structure or real estate for the exhibition by means of samples, catalogues, photographs and price lists or sale of goods, wares or merchandise. The term shall not include any of the following:

- (1) Any person, individual, copartner, limited liability company or corporation which grows the goods, wares or merchandise that is sold or offered for sale;
- (2) A person who makes crafts or items by hand and sells them or offers them for sale;
- (3) An auctioneer who is licensed under I.C. 26-6.1-3;
- (4) A resident of the county in which the sale takes place who conducts a sale of tangible personal property for no more than 4 days per calendar year;
- (5) An organization that is exempt from the Indiana Gross Retail Tax under I.C. 6-2.5-5-26;
- (6) A person who sells merchandise; offers to sell merchandise; and provides proof that the sale is being conducted as part of an activity sponsored by an organization described in division (5) above;
- (7) A person who organizes; sells merchandise at; offers to sell merchandise at; or exhibits at a trade show or convention; or
- (8) A person who holds a registered retail merchant's certificate under I.C. 6-2.5-8.  
(Ord. 98-4-4, passed 4-13-1998)

#### **§ 110.02 REGISTRATION.**

(A) Any solicitor or transient merchant desiring to conduct business within the Town of Ossian shall first register at the office of the Ossian Police Department; as a part of the registration process shall:

- (1) Provide a valid driver's license, identification card or other verifiable form of picture identification which contains the applicant's name, address, social security or driver's license number and physical description of the solicitor and permit an employee of the Police Department to copy the same;
- (2) Provide a brief description of the nature of the solicitation and the dates during which the solicitor expects to be soliciting within the town;
- (3) Provide the name, address and telephone number of the company for whom the solicitor is employed or whom the solicitor represents;
- (4) Provide a recent photograph of the solicitor; if no photograph is available, the solicitor shall permit the Department to photograph the solicitor at the time of the application;

(5) Provide the license place number of any vehicle to be used in the solicitation;

(6) Sign a statement as to whether the solicitor has been convicted of any felony or been found to have violated any misdemeanor or ordinance related to solicitation or the sale of goods and to describe the nature of the conviction or violation; and

(7) Sign a statement that the permit to be issued will not be used or represented in any way as an endorsement of the solicitor by the town or Ossian Police Department.

(B) Any transient merchant desiring to transact business within the Town of Ossian shall first register at the office of the Ossian Police Department. The transient merchant shall:

(1) Provide the name, address and telephone number of the company for whom the transient merchant is employed or whom the transient merchant represents;

(2) Provide a brief description of the nature of the business and the dates during which the transient merchant expects to be conducting business within the town;

(3) Provide a valid driver's license, identification card or other verifiable form of picture identification which contains the name, address, social security or driver's license number and physical description of the principal agent of the transient merchant and permit an employee of the Police Department to copy the same;

(4) Provide the license plate number of any vehicle to be used in the business;

(5) Sign a statement as to whether the principal agent has been convicted of any felony or been found to have violated any misdemeanor or ordinance related to solicitation or the sale of goods and to describe the nature of the conviction or violation; and

(6) Sign a statement that the permit to be issued will not be used or represented in any way as an endorsement of the transient merchant by the town or Ossian Police Department.

(Ord. 98-4-4, passed 4-13-1998) Penalty, see § 110.99

**§ 110.03 ISSUANCE OF PERMIT.**

As evidence of registration, the Police Department shall issue to each solicitor or transient merchant who has complied with the previous section, a permit which shall include the solicitor's or transient merchant's name and address and the name of the company represented and the kind of goods to be sold or offered.

(Ord. 98-4-4, passed 4-13-1998)

**§ 110.04 USE AND INSPECTION OF PERMIT.**

The permit issued under this chapter shall be maintained by a solicitor or transient merchant upon his or her immediate person or premises and, upon the request of any member of the Ossian Police Department or person with whom he or she is transacting or attempting to transact business, the solicitor or transient merchant shall produce the permit for inspection.

(Ord. 98-4-4, passed 4-13-1998) Penalty, see § 110.99

**§ 110.05 EXEMPTIONS.**

The following shall be exempt from the requirements:

(A) An organization that is exempt from the Indiana Gross Retail Tax under I.C. 6-2.5-5-26; and

(B) A person who provides proof that the business or activity is being conducted as part of an activity sponsored by an organization exempt under division (A) of this section.

(Ord. 98-4-4, passed 4-13-1998)

**§ 110.06 PERMIT; VALIDITY FROM DATE OF ISSUANCE.**

A permit issued under this chapter shall be valid for 6 months from the date of issue.

(Ord. 98-4-4, passed 4-13-1998)

**§ 110.07 ACTS NOT PERMITTED.**

The following acts shall not be permitted:

(A) Soliciting or engaging in business as a transient merchant without a permit as provided in this section;

(B) Soliciting prior to 9:00 a.m. or after dusk; and

(C) Soliciting at a residence or business displaying a sign which indicates that solicitors are not to call on the residence or business.

(Ord. 98-4-4, passed 4-13-1998) Penalty, see § 110.99

**§ 110.99 PENALTY.**

Any person found to have violated any provision of this chapter shall be fined a sum not less than \$10 nor more than \$500 with each day during which the violation occurs constituting a separate offense. (Ord. 98-4-4, passed 4-13-1998)





## CHAPTER 111: SEXUALLY ORIENTED BUSINESSES

### Section

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### § 111.01 PURPOSE AND FINDINGS.

#### (A) *Purpose.*

(1) The purpose of this chapter is to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the town and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the corporate boundaries of the town.

(2) The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of or reasonable access to any communicative materials, including sexually oriented materials.

(3) Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the first amendment to the United States Constitution or Article I, § 9, of the Indiana Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

(4) Adoption of this chapter will allow the town to obtain the identity of persons licensed and to be licensed for the operation of sexually oriented businesses to ensure proper identification of those persons responsible for the operation of the businesses so as to assist in the proper enforcement of this chapter.

(5) It is an important public purpose to protect children and the family environment from the deleterious and harmful secondary effects of sexually oriented businesses.

(6) It is not the purpose of this chapter to establish community standards on obscenity nor to permit persons to engage in any activity which is in violation of law, including but not limited to state laws pertaining to the advertising, promotion, distribution, or sale of obscene matter or matters portraying a sexual performance by a minor, or state laws pertaining to the use of a minor in a sexual performance or promotion of sexual performance by a minor, or the use of a minor to distribute material portraying sexual performance by a minor.

(7) Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(B) *Findings.*

(1) Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Town Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, LLC*, 124 S.Ct. 2219 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1993); *California v. LaRue*, 409 U.S. 109 (1972); and *Schultz v. City of Cumberland*, 26 F.Supp.2d 1128 (W.D. Wisc. 1998), aff'd in part, rev'd in part, 228 F.3d 831 (7th Cir. 2000); *Blue Canary Corp. v. City of Milwaukee*, 270 F.3d 1156 (7th Cir. 2001); *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *Berg v. Health & Hospital Corp.*, 865 F.2d 797 (1989); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (1999); *Graff v. City of Chicago*, 9 F.3d 1309 (1993); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (1996); *Chulchian v. City of Indianapolis*, 633 F.2d 27 (7th Cir. 1980); *Bigg Wolf Discount Video v. Montgomery County*, 256 F.Supp.2d 385 (D.Md. 2003); *County of Cook v. Renaissance Arcade and Bookstore*, 122 Ill.2d 123 (1988) (including cases cited therein); *World Wide Video of Washington*,

*Inc., v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc., v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *People ex rel Deters v. Effingham Retail 27, Inc.*, No. 04-CH-26 (4th Judicial Circuit, Effingham County, Ill., June 13, 2005); *Annex Books, Inc., v. City of Indianapolis*, No. 1:03-CV-918, Summary Judgment Order, Aug. 27, 2004, and Order Denying Motion to Alter or Amend, Mar. 31, 2005 (S.D. Ind.); *Andy's Lounge et al v. City of Gary*, No. 2:01-CV-327, Order Granting Summary Judgment, Mar. 31, 2005 (N.D. Ind.); *LLEH, Inc., v. Wichita County*, 289 F3d 358 (5th Cir. 2002); and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including but not limited to Austin, Texas, 1986; Indianapolis, Indiana, 1984; Garden Grove, California, 1991; Houston, Texas, 1983,1997; Phoenix, Arizona, 1979, 1995-98; Chattanooga, Tennessee, 1999-2003; Los Angeles, California, 1977; Whittier, California, 1978; Spokane, Washington,2001; St. Cloud, Minnesota, 1994; Littleton, Colorado, 2004; Oklahoma City, Oklahoma, 1986; Dallas, Texas, 1997; Greensboro, North Carolina, 2003; Amarillo, Texas, 1977; New York, New York Times Square, 1994; Kennedale, Texas, 2005; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the Common Council finds:

(a) Sexually oriented businesses should be regulated and should be segregated from one another and from religious institutions, schools, boys' clubs, girls' clubs, parks, residences, and residential neighborhoods to protect the public health, welfare, and safety because sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects, including but not limited to personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation; and

(b) Each of the foregoing negative secondary effects constitutes a harm which the town has a substantial governmental interest in abating and/or preventing in the future, and this substantial government interest exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses.

(Ord. 12-5-1, passed 5-14-2012)

## § 111.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADULT ARCADE.** A commercial establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines or other image producing machines, for viewing by five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, digital video disks (e.g. DVDs), slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT BOOK STORE or ADULT VIDEO STORE.** A commercial establishment which has a significant or substantial portion (25% or more) of its stock-in-trade or interior business space allocated to, or derives 25% or more of its revenues from, the sale or rental for any form of consideration of any one or more of the following: books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, digital video disks (e.g. DVDs), slides, or other visual representations which are characterized by the depiction or display of specified sexual activities or specified anatomical areas.

**ADULT CABARET.** A nightclub, bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

(1) Persons who appear semi-nude or in a state of semi-nudity; or

(2) Live performances which are characterized by the exposure of specified anatomical areas or by pictures, video cassettes, digital video disks (e.g. DVDs), slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT MOTEL.** A motel, hotel, or similar commercial establishment which:

(1) Offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, digital video disks (e.g. DVDs), slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to newspapers, magazines, pamphlets or leaflets, radio, or television; and

(2) Offers a sleeping room for rent for a period of time less than ten hours; or

(3) Allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten hours.

**ADULT MOTION PICTURE THEATER.** A commercial establishment where films, motion pictures, video cassettes, digital video disks (e.g. DVDs), slides, or similar photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.

**ADULT THEATER.** A theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of semi-nudity or live performances which are characterized by exposure of specified anatomical areas or by specified sexual activities.

**CHARACTERIZED BY.** Refers to the essential character or quality of an item. As applied in this chapter, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

**COMMERCIAL SEXUAL ENTERTAINMENT CENTER.** Any commercial establishment not otherwise described herein which as one of its principal uses regularly offers matter, services, or entertainment appealing to adult sexual interests if the establishment or its entertainment, services, or goods are advertised by or on behalf of the establishment in a manner patently designed to appeal to the adult sexual interests.

**EMPLOYEE.** Any person hired by or suffered or permitted to work in a sexually oriented business establishment whether that person receives remuneration or compensation directly from the operator or owner of the establishment, from patrons of the establishment, or from any other source whether by contract of employment or otherwise, for work or services performed for the benefit of the sexually oriented business establishment. It shall not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods, such as foods, to the premises.

**ESCORT.** A person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**ESCORT AGENCY.** A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

**ESTABLISH or ESTABLISHMENT.** Includes any of the following:

- (1) The opening or commencement of any type of sexually oriented business as a new business after the adoption of this chapter;
- (2) The conversion of an existing business, if not a sexually oriented business, to any of the sexually oriented businesses defined in this chapter;
- (3) The addition of any of the sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

**KNOWINGLY.** A person engages in conduct **KNOWINGLY** if, when he or she engages in the conduct, he or she is aware of a high probability that he or she is doing so.

**LICENSEE.** A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license.

**MASSAGE PARLOR.** Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body occurs as a part of or in connection with specified sexual activities, or where any person providing this treatment, manipulation, or service related thereto, exposes his or her specified anatomical areas. The definition of sexually oriented businesses shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor, osteopath, or certified massage therapist, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor, osteopath, or certified massage therapist, nor by trainers of any amateur, semi-professional, or professional athlete or athletic team or school athletic program.

**NUDITY or STATE OF NUDITY.** Any of the following:

- (1) The showing of the human male or female genitals, pubic area, anus, or anal cleft with less than a fully opaque covering;
- (2) The showing of the female breast with less than a fully opaque covering of any part of the nipple; or
- (3) The showing of the covered male genitals in a discernibly turgid state.

**OPERATE or CAUSE TO OPERATE.** To cause to function or to put or keep in a state of doing business.

**OPERATOR.** Any person on the premises of a sexually oriented business who operates or manages the business or exercises overall control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

**PERMITTED or LICENSED PREMISES.** Any premises that requires a license or permit and that is classified as a sexually oriented business.

**PERMITTEE.** Is synonymous with **LICENSEE**.

**PLAN DIRECTOR.** The Area Plan Commission Director of the county.

**PERSON.** An individual, proprietorship, partnership, corporation, association, or other legal entity.

**PRINCIPAL USE.** A substantial or significant use, but not necessarily a majority of the business activity or stock in trade. The fact that a business may have one or more other principal uses unrelated to sexually oriented business shall not relieve the business from the provisions of this chapter applicable to sexually oriented business establishments. **PRINCIPAL USE** shall exist in the following circumstances:

(1) Where a business establishment dedicates or permits the use of at least 25% of the utilized square footage of its premises for sexually oriented business activity or activities; or

(2) Where at least 25% of the gross receipts of a business establishment, excluding food and beverage receipts, result from sexually oriented business activity or activities.

***PUBLIC BUILDING.*** Any building owned, leased, or held by the United States, the state, the county, a city, town, township, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used for government purposes.

***PUBLIC PARK or RECREATION AREA.*** Public land which has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian or bicycle paths, open space, wilderness areas, or similar public land within the town which is under the control, operation, or management of the United States, the state, the county, a city, town, township, any special district, school district, or any other agency or political subdivision of the state or the United States.

***RECKLESSLY.*** A person engages in conduct ***RECKLESSLY*** if he or she engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result, and the disregard involves a substantial deviation from acceptable standards of conduct.

***REGULARLY.*** A consistent and repeated course of conduct engaged in or permitted by the operator of the business.

***RELIGIOUS INSTITUTION.*** Any church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities.

***RESIDENCE.*** Any structure, manufactured home, or mobile home used by one or more persons as a dwelling.

***RESIDENTIAL DISTRICT USE.*** A single-family, duplex, townhouse, multiple-family, or mobile home park or subdivision and campground as defined in the county zoning ordinance.

***SCHOOL.*** Any public or private educational facility, including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities. It shall include the school grounds but does not include the facilities used primarily for another purpose and only incidentally as a school.

***SELF-DESIGNATED SEXUALLY ORIENTED BUSINESS CENTER.*** Any establishment which designates all or a portion of its premises as for adults only and has a policy of excluding minors from its premises or from a portion of its premises and which advertises so as to convey the impression that

the services, entertainment, matter, or goods available at the premises or at the portion of the premises designated for adults only are characterized or distinguished by displays of human genitals or specified sexual activities.

***SEMI-NUDE.*** A state of dress which shows 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 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 dress, blouse, shirt, leotard, or similar wearing apparel, provided the areola is not exposed in whole or in part.

***SEMI-NUDE MODEL STUDIO.*** Any place where a person who regularly appears in a state of semi-nudity is provided money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

***SEX CLUB* or *SWINGERS CLUB.*** An establishment which provides patrons the opportunity to voluntarily engage in and/or view live consensual sexual activity and which collects remuneration of any kind, including entrance fees, facility use fees, gratuities, fees for goods provided far in excess of their value, and/or donations. Such clubs are not permitted under this chapter.

***SEXUAL DEVICE.*** Any three-dimensional object designed and marketed for stimulation of the male or female human genital organ or anus, or for sadomasochistic use, or abuse of oneself or others, and shall include devices such as dildos, vibrators, and penis pumps and shall also include other devices with non-sex related utility, such as leather whips, straps, and ligatures, when the devices are marketed in a context suggesting sexual or sadomasochistic purposes. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy. Nothing in this definition shall be construed to restrict sales by any pharmacy, drug store, medical provider, or any establishment primarily dedicated to providing medical or healthcare products or services.

***SEXUAL DEVICE SHOP.*** A commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or health care products or services.

***SEXUAL ENCOUNTER ESTABLISHMENT.*** A business or commercial establishment that, as one of its primary business purposes, offers for any form of consideration a place where two or more persons may congregate, associate, or consort for the purposes of specified sexual activities. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy. A sexual encounter establishment shall not be permitted under this chapter.



**SEXUALLY ORIENTED BUSINESS.** Any of the following businesses, as defined herein: *ADULT ARCADE, ADULT BOOKSTORE, ADULT NOVELTY STORE, ADULT VIDEO STORE, ADULT CABARET, ADULT MOTEL, ADULT MOTION PICTURE THEATER, ADULT THEATER, ESCORT, ESCORT AGENCY, MASSAGE PARLOR, SELF-DESIGNATED SEXUALLY ORIENTED BUSINESS CENTER, SEMI-NUDE MODEL STUDIO, SEX CLUB, SEXUAL DEVICE SHOP, or SEXUAL ENCOUNTER ESTABLISHMENT.*

**SPECIFIED ANATOMICAL AREAS.** Any of the following:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES.** Masturbation, intercourse, oral copulation, or sodomy, or excretory functions as a part of or in connection with any of these activities.

**SUBSTANTIAL ENLARGEMENT OF SEXUALLY ORIENTED BUSINESS.** An increase in the floor areas occupied by the business by more than 15%, as the floor areas exist on February 21, 2012.

**TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS.** Any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.  
(Ord. 12-5-1, passed 5-14-2012)

### **§ 111.03 LOCATION RESTRICTIONS.**

No person shall cause or permit the establishment of any sexually oriented business, as defined above, within the corporate boundaries of the town, within 2,640 feet of another sexually oriented business or within 2,640 feet of any religious institution, school, boys' club, girls' club, or public park, or within 1,000 feet of any residence or property zoned for residential use.  
(Ord. 12-5-1, passed 5-14-2012) Penalty, see § 10.99

**§ 111.04 MEASUREMENT OF DISTANCE.**

As regarding § 111.03 above, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any sexually oriented business and any religious institution, school, boys' club, girls' club, public park, or any residence or property zoned for residential use shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where the sexually oriented business is conducted, to the nearest property line of the premises of a religious institution, school, boys' club, girls' club, public park, or any residence or property zoned for residential use.

(Ord. 12-5-1, passed 5-14-2012)

**§ 111.05 EXEMPTIONS AND DEFENSES.**

The following shall be defenses to an action for any violation under this chapter:

(A) That the person appearing in a state of nudity did so for a modeling class operated:

(1) By a proprietary school licensed by the state, a college, junior college, or university supported entirely or partly by taxation;

(2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(3) In a structure:

(a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing;

(b) Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and

(c) Where no more than one nude model is on the premises at any one time.

(B) That an employee of a sexually oriented business, regardless of whether or not it is permitted under this chapter, exposed any specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

(Ord. 12-5-1, passed 5-14-2012)

**§ 111.06 EXISTING BUSINESSES.**

(A) A sexually oriented business, existing and operating lawfully in all respects prior to the date of the adoption of this chapter that is in a location that does not comply with § 111.03 above may continue to operate for one year following the date of the adoption of this chapter in order to make a reasonable recoupment of its investment in its current location. At the conclusion of the one year, the sexually oriented business will no longer be allowed to operate at any location that does not comply with § 111.03. The sexually oriented business may seek one or more six-month extension(s) of the original one-year period upon a showing of financial hardship. An application for an initial extension based upon financial hardship shall be made at least 60 days before the conclusion of the aforementioned one-year period. If a hardship extension is granted, subsequent applications for hardship extensions shall be made at least 60 days before the conclusion of the sexually oriented business's then-current extension period.

(B) An application for a hardship extension shall be filed in writing with the Clerk-Treasurer of the town and shall include evidence of purchase and improvement costs, income earned and lost, depreciation, and costs of relocation and evidence of compliance with the county zoning and town ordinances applicable to the business. The Clerk-Treasurer shall schedule the matter for a public hearing at the next regularly scheduled meeting of the Town Council. The Council shall issue a written decision within ten days after the public hearing on the application for a hardship extension.

(C) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of a sexually oriented business permit or license, of a religious institution, school, boy's club, girl's club, or public park within 2,640 feet or residential district or residence within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit or license and does not apply when an application for a permit or license is submitted after a permit or license has expired or has been revoked.

(D) A sexually oriented business existing and operating lawfully in all respects prior to the date of the adoption of this chapter shall apply for the permit provided for by § 111.07 below within 30 days of the effective date of this chapter.

(Ord. 12-5-1, passed 5-14-2012)

**§ 111.07 APPLICATION PROCEDURE.**

(A) (1) No person shall maintain, operate, conduct, or cause to be conducted any sexually oriented business within the corporate limits of the town without first obtaining a permit under this section.

(2) An applicant for a sexually oriented business permit shall file with the Area Plan Commission a completed application made on a form prescribed and provided by the Area Plan Commission.

(3) The application shall include the following:

(a) The full true name of the applicant, and any other names or aliases used in the preceding five years;

(b) The applicant's current business or mailing address;

(c) Proof that the applicant is at least 18 years of age, consisting of either:

1. A copy of the applicant's birth certificate and current photo;
2. A copy of the applicant's driver's license with picture; or
3. Another picture identification document issued by a government agency.

(d) The name of the business, the business location and legal description of the property, and a description of the type of sexually oriented business;

(e) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but shall 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 inches;

(f) A signed statement stating the following:

1. That the business is authorized by the state to conduct business within the state;
2. That the site being applied for meets the requirements of 111.03 above; and
3. The name and address of the statutory agent or other agent authorized to receive service of process.

(g) If a person wishing to operate a sexually oriented business is an individual, he or she shall sign the application for a permit as applicant. If an entity (partnership, corporation, limited liability company, and the like) or group of individuals seeks to obtain a permit, each individual with 30% or greater ownership interest must sign as an applicant under oath and provide the information required in this division.

(h) The tender of a non-refundable application fee as set forth in below.

(B) The information provided by an applicant in connection with the application for a permit under this chapter shall be maintained by the Area Plan Commission on a confidential basis and may be disclosed only:

(1) To other governmental agencies in connection with a bona fide law enforcement or public safety function; or

(2) As may otherwise be required by law or a court order.

(C) Applicants for a permit under this section shall have a continuing duty to promptly supplement application information required by this section in the event that the information changes in any way from what is stated on the application. The failure to comply with this continuing duty within 30 days from the date of the change by supplementing the application on file with the Area Plan Commission shall be grounds for suspension of a permit.

(D) In the event that the Area Plan Commission Director or its designee determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, the Area Plan Commission Director shall promptly notify the applicant of that fact and allow the applicant ten days to properly complete the application. The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.

(Ord. 12-5-1, passed 5-14-2012) Penalty, see § 10.99

#### **§ 111.08 INVESTIGATION.**

(A) Upon receipt of an application properly filed with the Plan Commission and upon payment of the non-refundable application fee, the Area Plan Commission Director or its designee shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to the county and/or town agencies responsible for enforcement of this chapter. Each department or agency shall promptly conduct an investigation of the applicant, application, and the proposed sexually oriented business in accordance with its responsibilities under law and as set forth in this chapter. The investigation shall be completed within 20 days of receipt of the application by the Area Plan Commission Director or its designee. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it and, in the event it disapproves, state the reasons therefor.

(B) After its indication of approval or disapproval, each department or agency shall immediately return the photocopy of the application to the Area Plan Commission Director or its designee.

(Ord. 12-5-1, passed 5-14-2012)

#### **§ 111.09 ISSUANCE OR DENIAL.**

(A) Within 30 days after the receipt of a completed application, the Area Plan Commission Director shall either issue a permit or issue a written denial of a permit to the applicant.

(B) The Area Plan Commission Director shall approve the application and grant a sexually oriented business unless one or more of the following is true:

(1) An applicant is less than 18 years of age;

(2) An applicant has failed to provide information required by 111.08 above or has provided false information on the application;

(3) The premises to be used for the sexually oriented business are not in compliance with the location requirements of § 111.03 above;

(4) The applicant failed to pay the non-refundable permit application fee; and/or

(5) The applicant has a permit under this chapter that has been revoked within the previous year.

(C) The granting of a permit to a permittee for a sexually oriented business shall be for one year and is nontransferable to any other person other than the applicant(s) listed on the application and is valid only for the location listed on the application.

(Ord. 12-5-1, passed 5-14-2012)

#### **§ 111.10 FEES.**

The application fee for a sexually oriented business permit shall be \$100.

(Ord. 12-5-1, passed 5-14-2012)

#### **§ 111.11 INSPECTION OF PREMISES.**

Sexually oriented business permittees and their employees shall permit officers or agents of the town or the Area Plan Commission to inspect, from time to time, the portions of the sexually oriented businesses premises where patrons are permitted for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the sexually oriented business is occupied by patrons or is open for business. This section shall be narrowly construed by the town and Area Plan Commission to authorize reasonable inspections of the permitted premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

(Ord. 12-5-1, passed 5-14-2012) Penalty, see § 10.99

#### **§ 111.12 PERMIT EXPIRATION.**

(A) Each permit shall expire one year from the date of issuance and may be renewed only by making application as provided herein; for renewals, filing of the original survey, if applicable, shall be sufficient.

(B) Application for renewal shall be made not more than 120 days and not fewer than 90 days before the expiration date, and when made fewer than 90 days before the expiration date, the expiration of the permit will not be affected.  
(Ord. 12-5-1, passed 5-14-2012)

**§ 111.13 SUSPENSION OF PERMIT.**

(A) If the Area Plan Commission Director has reason to believe that a permittee has knowingly violated any section of this chapter or has knowingly allowed an employee of the sexually oriented business to violate any section of this chapter, it shall issue a written notice of intent to suspend a permit for a period not to exceed 30 days.

(B) The issuance of a written notice of intent to suspend shall not be a prerequisite to the issuance of a written notice of intent to revoke a permit as set forth herein.  
(Ord. 12-5-1, passed 5-14-2012)

**§ 111.14 REVOCATION OF PERMIT.**

(A) The Area Plan Commission Director shall issue written notice of intent to revoke a permit if a cause of suspension occurs and the permit has been suspended for any reason within the preceding 12 months.

(B) The Director shall issue written notice to revoke a permit for any of the following violations:

- (1) A permittee gave false information in the material submitted during the application process;
- (2) A permittee has knowingly or recklessly allowed possession, use, or sale of controlled substances in or on the premises;
- (3) A permittee has knowingly or recklessly allowed prostitution on the premises;
- (4) A permittee has knowingly or recklessly operated the sexually oriented business during a period of time when the permittee's permit was suspended; or
- (5) A permittee has knowingly or recklessly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or any other specified sexual activities to occur in or on the permitted premises.

(C) The revocation of a permit shall continue for one year and the permittee shall not be issued a sexually oriented business permit for one year from the date revocation became effective.  
(Ord. 12-5-1, passed 5-14-2012)

**§ 111.15 ADMINISTRATIVE AND JUDICIAL REVIEW.**

(A) If facts exist for denial, suspension, or revocation of a permit under this chapter, the Area Plan Commission Director shall notify the applicant or permittee (respondent) in writing of the intent to deny, suspend, or revoke the permit, including the grounds therefor, by personal delivery or by certified mail. The notification shall be directed to the most current business address on file with the Area Plan Commission. Within five working days of receipt of the notice, the respondent may provide to the Area Plan Commission, in writing, a response that shall include a statement of reasons why the permit should not be denied, suspended, or revoked and request for administrative review. Within three business days of the receipt of respondent's written response, the Area Plan Commission Director shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding.

(B) Within ten working days of the receipt of respondent's written response by the Area Plan Commission, the Town Council shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. The Town Council shall issue a written opinion and decision within five days of the hearing. If a response is not received by the Area Plan Commission Director in the time provided or, if after a hearing, the Town Council finds that grounds as specified in this chapter exist for denial, suspension, or revocation, then the denial, suspension, or revocation shall become final five days after the Town Council sends, by certified mail to respondent, written notice that the permit has been denied, suspended, or revoked. The notice shall include a statement advising the applicant or permittee of the right to appeal the decision to a court of competent jurisdiction.

(C) If the Town Council finds that no grounds exist for denial, suspension, or revocation of a permit, then within five days after the hearing, the Town Council shall withdraw the intent to deny, suspend, or revoke the permit and shall so notify the respondent in writing by certified mail of the action and, in the case of an application for a permit, shall contemporaneously issue the permit.

(D) When a decision to deny, suspend, or revoke a permit becomes final, the applicant or permittee (aggrieved party) whose application for a permit has been denied, or whose permit has been suspended or revoked, shall have the right to appeal the action to a court of competent jurisdiction.

(E) If a business with an existing permit has had its permit revoked or denied, upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the enforcement of the denial, suspension, or revocation, the town shall immediately issue the aggrieved party a provisional permit. The provisional permit shall allow the aggrieved party to continue operation of the sexually oriented business and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain, or otherwise enjoin the town's enforcement.

(Ord. 12-5-1, passed 5-14-2012)



**§ 111.16 PERMIT TRANSFER RESTRICTED.**

A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.

(Ord. 12-5-1, passed 5-14-2012) Penalty, see § 10.99

**§ 111.17 MINORS ON PREMISES PROHIBITED.**

A person is in violation of this chapter if he or she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for that business under this chapter, and knowingly or with reasonable cause to know, permits, suffers, or allows:

(A) Admittance of a person under 18 years of age to the business premises;

(B) A person under 18 years of age to remain at the business premises;

(C) A person under 18 years of age to purchase goods or services at the business premises; or

(D) A person who is under 18 years of age to work at the business premises as an employee.

(Ord. 12-5-1, passed 5-14-2012) Penalty, see § 10.99

**§ 111.18 ADVERTISING AND DISPLAY; LIGHTING.**

(A) All off-street parking areas and premises and entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot-candle of light on the parking surface and walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premises.

(B) Nothing contained in this section shall relieve the operator(s) of a sexually oriented business from complying with the requirements of the town in this chapter, commonly known as the sexually oriented business ordinance, as it may be amended from time to time, or any subsequently enacted town ordinance or regulations.

(C) All signage and displays visible from the outside of sexually oriented businesses shall not include any photographs, silhouettes, drawings, or pictorial representations of nudity, semi-nudity, or sexual activity.

(Ord. 12-5-1, passed 5-14-2012) Penalty, see § 10.99

**§ 111.19 HOURS OF OPERATION.**

(A) It shall be unlawful and a person is in violation of this chapter if he or she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for that business under this chapter, between the hours of 11:00 p.m. and 7:00 a.m. of any particular day.

(B) This section shall not apply to prohibit the operation of businesses licensed by the State Alcoholic Beverage Commissioner during the lawful hours of operation as provided by the State Alcoholic Beverage Commission.

(Ord. 12-5-1, passed 5-14-2012) Penalty, see § 10.99

**§ 111.20 PUBLIC NUDITY PROHIBITED.**

Public nudity is prohibited within the town, including any sexually oriented business. Any sexually oriented business which is found in violation of this section shall have its permit suspended pursuant to the provisions of this chapter.

(Ord. 12-5-1, passed 5-14-2012) Penalty, see § 10.99

**§ 111.21 CONDUCT REGULATIONS FOR A STRIP CLUB.**

(A) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or engage in a specified sexual activity.

(B) No person shall knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six feet from all patrons and on a stage at least 18 inches from the floor in a room of at least 600 square feet.

(C) No employee who regularly appears semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(D) No person shall possess, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(E) No person shall knowingly or recklessly allow a person under the age of 18 years to be or remain on the premises of a sexually oriented business.

(F) No operator or licensee of a sexually oriented business shall knowingly violate the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.

(Ord. 12-5-1, passed 5-14-2012) Penalty, see § 10.99

**§ 111.22 OPERATING WITHOUT VALID PERMIT PROHIBITED.**

A person is in violation of this chapter if he or she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for that business under this chapter, and that person knows or should know that:

(A) The business does not have a sexually oriented business permit under this chapter for any applicable classification;

(B) The business has a permit which is under suspension;

(C) The business has a permit which has been revoked; or

(D) The business has a permit which has expired.

(Ord. 12-5-1, passed 5-14-2012) Penalty, see § 10.99

**§ 111.23 CULPABLE MENTAL STATE REQUIRED TO ESTABLISH LIABILITY.**

Where any provision or offense herein fails to state a necessary level of culpability to establish a violation or liability, the offense shall be established upon a showing that the person acted knowingly or recklessly with regard to the predicate act. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee shall be imputed to the sexually oriented business permittee for the purpose of establishing a violation of this chapter, or for purposes of license denial, suspension, or revocation only if a permittee allowed, either knowingly or recklessly, a violation of this chapter to occur. It shall be a defense to liability that the sexually oriented business permittee was powerless to prevent the violation.

(Ord. 12-5-1, passed 5-14-2012)

**§ 111.24 INJUNCTION.**

A person who operates or causes to be operated a sexually oriented business in violation of this chapter is subject to a suit for injunction. If any injunction must be sought, attorney's fees and costs will be assessed at the discretion of the court against the violator.

(Ord. 12-5-1, passed 5-14-2012)

