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Matthews Municipal Ordinances
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II. AmusementsReferences**§ 39:51. Sexually oriented businesses[FN1]**

Section 1. DEFINITIONS. In this article, unless the context otherwise requires:

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

(2) "Adult bookstore" means a commercial establishment:

(a) Which as one of its principal business purposes offers for sale or rental, for any form of consideration, any one or more of the following:

(i) Books, magazines, periodicals, or other printed matter, which depict or describe "specified sexual activities" or "specified anatomical areas"; or

(ii) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities," excluding condoms and other birth control and disease prevention products.

(b) Which regularly excludes all minors from the premises or a section thereof because of the sexually explicit nature of the items sold, rented, or displayed therein.

(3) "Adult cabaret" means a nightclub, bar, restaurant, or similar commercial establishment or any other commercial establishment which regularly features:

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

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

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(4) "Adult motel" means a hotel, motel, or similar commercial establishment which:

(a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of

- way which advertises the availability of this adult type of photographic reproductions; or
- (b) Offers a sleeping room for **rent** for a period of time that is less than *[number of hours]* hours; or
- (c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than *[number of hours]* hours.
- (5) "Employee" means an individual working or performing services for any sexually oriented business, including any independent contractor who provides services on behalf of any sexually oriented business to the patrons of such business.
- (6) "Established" or "establishment" mean and include any of the following:
- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (c) The addition of any sexually oriented business to any other existing sexually oriented business; or
- (d) The relocation of any sexually oriented business.
- (7) "Finance Director" means the Director of the Finance Department of the City of *[name of city]* or a designee.
- (8) "Licensee" means 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.
- (9) "Nonporous" excludes any wood, plywood, composition board, or other porous material.
- (10) "Nudity" or a "state of nudity" means:
- (a) The appearance of the cleft of the buttocks, anus, male genitals, female genitals, or areola of the female breast; or
- (b) A state of dress which fails to opaquely cover the cleft of the buttocks, anus, male genitals, female genitals, or areola of the female breast.
- (11) "Operate" or "causes to be operated" means to cause to function or to put or keep in operation. Operator means any person on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business, or who causes to function or who puts or keeps in operation the business. 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.
- (12) "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (13) "Semi-nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
- (14) "Sexually oriented business" means an adult arcade, adult bookstore, adult cabaret, adult motel, or any combination of such businesses.

(15) "Specified anatomical areas" means:

- (a) Human genitals in a state of sexual arousal;
- (b) the appearance of the cleft of the buttocks, anus, male or female genitals, or areola of the female breast; or
- (c) a state of dress which fails to opaquely cover the cleft of the buttocks, anus, male or female genitals, or areola of the female breast.

(16) "Specified sexual activities" means and includes any of the following:

- (a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (c) Masturbation, actual or simulated; or
- (d) Excretory functions as part of or in connection with any activities set forth in (a) through (c) above.

(17) "Transfer of ownership or control" of a sexually oriented business means 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.

(18) "Viewing room" means the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, video cassette, or other video reproduction.

Section 2. CLASSIFICATION. Sexually oriented businesses shall be classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores;
- (3) Adult cabarets;
- (4) Adult motels; and
- (5) Any combination of classifications set forth in paragraphs (1) through (4) above.

Section 3. LICENSE REQUIRED.

(A) It shall be unlawful for any person to operate a sexually oriented business without a valid license, issued by the City for the particular type of business, or to employ a person who is not licensed as a sexually oriented business employee as provided by subsection (B) of this section or who is not authorized to work or perform services pursuant to subsection (C) of this section.

(B) Except as provided in subsection (C) of this section, it shall be unlawful for any person to be an employee of a sexually oriented business without a valid license. The provisions of this subsection shall not apply to an employee of an adult bookstore, unless such bookstore is operated in combination with one or more businesses classified in paragraphs (1), (3), and (4) of Section 2, or to such adult bookstore's operator if the operator is not required to comply with Section 13.

(C) An applicant, upon receipt by the Finance Director of his or her application for a sexually oriented business employee license, may work or perform services without an employee license until such time as the license is granted or the decision to deny the license becomes final pursuant to Section 10. Upon receipt of the applicant's completed application for a employee license, the Finance Director shall issue the applicant a temporary work permit. The applicant shall keep the temporary work permit on his or her person or on the premises where the applicant is then working or performing services, and produce such permit for inspection upon request by a law enforcement officer or other authorized city official.

(D) An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the Finance Director an application made on a form prescribed and provided by the Finance Director. The applicant shall be qualified according to the provisions of this article. The application shall be signed under oath by the applicant and notarized. The application shall include but not be limited to the information called for in paragraphs 1 through 9:

1. The full true name and any other names used in the preceding five years.
2. Current residential mailing address, and telephone number.
3. If the application is for a sexually oriented business license, the name, business location, business mailing address and phone number of the proposed sexually oriented business.
4. Written proof of age, in the form of a birth certificate, current driver's license with picture, or other picture identification document issued by a governmental agency.
5. A photograph of the applicant and two sets of the applicant's complete fingerprints. The photograph and fingerprints, if not taken at the office of the Finance Director or at any other city location, shall be taken within the preceding one month by a law enforcement agency and accompanied by a notarized verification by that agency.
6. The issuing jurisdiction and the effective dates of any license or permit relating to a sexually oriented business, whether any such license or permit has been denied, revoked or suspended and, if so, the reason or reasons therefore.
7. All criminal charges, complaints, informations, or indictments in the preceding five years which resulted in a conviction or a plea of guilty or no contest for any offense described in Section 4(A)(7) of this article and committed in this state, or any offense committed outside this state which if committed in this state would constitute an offense described in Section 4(A)(7).
8. If the application is for a sexually oriented business license, the name and address of the statutory agent or other agent authorized to receive service of process. The information provided pursuant to paragraphs 1 through 8 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Finance Director within *[number of working days]* working days of a change of circumstances which would render the information originally submitted false or incomplete.

(E) The application for a sexually oriented business license shall be accompanied by 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 *[number of inches]* inches. Applicants who are required to comply with Section 13 of this article shall submit a diagram meeting the requirements of Section 13.

(F) If a person who wishes to operate a sexually oriented business is an individual, that individual shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each officer, director, general partner, or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 4 and each applicant shall be considered a licensee if a license is granted.

(G) A person who possesses a valid video center license or theatre license is not exempt from the requirement of obtaining a sexually oriented business license. A person who operates a sexually oriented business and possesses a video center license or theatre license shall comply with the requirements and provisions of this article, as well as the requirements and provisions of Chapter *[number of chapter]* of this Code when applicable.

(H) The information provided by an applicant in connection with the application for a license under this article shall be maintained by the Finance Director on a confidential basis, except that such information may be disclosed to other governmental agencies in connection with a law enforcement or public safety function.

Section 4. ISSUANCE OF LICENSE.

(A) The Finance Director shall approve or deny the issuance of a license to an applicant for a sexually oriented business license or a sexually oriented business employee license within *[number of days]* days after receipt of an application. The Finance Director shall approve the issuance of a license unless one or more of the following is found to be true:

1. An applicant is under 18 years of age.
2. An applicant or an applicant's spouse is delinquent in the payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business or arising out of any other business activity owned or operated by the applicant or the applicant's spouse and licensed by the City.
3. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
4. An applicant or an applicant's spouse has been convicted of a violation of a provision of this article, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
5. The license application fee required by this article has not been paid.
6. An applicant or the proposed establishment is in violation of or is not in compliance with Sections 6, 11, 12, 13, 14, 15, 18, or applicable provisions of the *[name]* Zoning Ordinance.
7. An applicant or an applicant's spouse:
 - (a) Has been convicted of any of the following offenses if committed in this state or any offense committed outside this state which if committed in this state would constitute one of the following offenses:
 - (i) As described in Chapter *[number of chapter]* of the *[name]* Criminal Code:
 - Indecent exposure;

- Public sexual indecency;
- Sexual abuse;
- Sexual conduct with a minor;
- Sexual assault;
- Sexual assault of a spouse;
- Molestation of a child.

(ii) As described in Chapter *[number of chapter]* of the *[name]* Criminal Code:

- Enticement of persons for purpose of prostitution;
- Procurement by false pretenses of person for purpose of prostitution;
- Procuring or placing persons in house of prostitution;
- Receiving earnings of prostitute;
- Causing spouse to become prostitute;
- Taking child for purpose of prostitution;
- Detention of persons in house of prostitution for debt;
- Keeping or residing in house of prostitution;
- Pandering;
- Transporting persons for purpose of prostitution or other immoral purpose;
- Child prostitution;
- Prostitution.

(iii) As described in Chapter *[number of chapter]* of the *[name]* Criminal Code:

- Commercial sexual exploitation of a minor;
- Sexual exploitation of a minor;
- Portraying adult as minor;
- Admitting minors to public displays of sexual conduct.

(iv) Incest, as described in Chapter *[number of chapter]* of the *[name]* Criminal Code;

(v) Prostitution and related offenses and solicitation as described in this Code;

(vi) Disorderly houses as described in this Code;

(vii) As described in this Code:

- Public sexual activity;

- Solicitation of public exposure;
- Indecent exposure;
- Public display of explicit sexual material offensive to others;
- Permitting minors to enter premises wherein there is displayed explicit sexual material which is offensive to others.

(viii) Attempt, solicitation, conspiracy, or facilitation to commit any of the foregoing offenses.

(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;

(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; or

(iii) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any *[number of months]*-month period.

(B) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

(C) An applicant who has been convicted or whose spouse has been convicted of an offense listed in paragraph 7(A) of this section may qualify for a sexually oriented business license only when the time period required by paragraph 7(B) of this section has elapsed.

(D) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to that applicant, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. A sexually oriented business employee license shall contain a photograph of the licensee. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing, and shall produce such license for inspection upon request by a law enforcement officer or other authorized city official.

Section 5. FEES.

(A) The annual nonrefundable application fee for a sexually oriented business license is *[\$[dollar amount]]*. The annual application fee for a sexually oriented business employee license is *[\$[dollar amount]]*.

(B) If an applicant is required by this Code to also obtain a video center license or theatre license for the business at a single location, payment of the fee for the sexually oriented business license exempts the applicant from payment of the fees for the video center or theatre licenses.

Section 6. INSPECTION.

(A) An applicant, operator or licensee shall permit law enforcement officers, and any other federal, state, county or city agency in the performance of any function connected with the enforcement of this article, normally and regularly conducted by such agency, to inspect the

premises of a sexually oriented business for the purpose of ensuring compliance with this article, at any time it is occupied or open for business.

(B) It shall be unlawful for a licensee, operator or employee of a sexually oriented business to refuse to permit a law enforcement officer or any agency enumerated in subsection A of this section to inspect the premises at any time the premises is occupied or open for business.

(C) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

Section 7. EXPIRATION OF LICENSE. Each license shall expire on September 30 and may be renewed only by making application as provided in Section 3. Application for renewal should be made at least *[number of days]* days before the expiration date, and when made less than *[number of days]* days before the expiration date, the expiration of the license will not be affected.

Section 8. SUSPENSION. The Finance Director shall suspend a sexually oriented business license for a period not to exceed *[number of days]* days if the Finance Director determines that the licensee or an employee of the licensee has:

(1) Violated or is not in compliance with Section 6, 11, 12, 13, 14, 15, 18, or applicable provisions of the *[name]* Zoning Ordinance.

(2) Has been on the sexually oriented business premises while in an intoxicated or disorderly condition;

(3) Refused to allow an inspection of the sexually oriented business premises.

(4) Knowingly permitted gambling by any person on the sexually oriented business premises.

Section 9. REVOCATION.

(A) The Finance Director shall revoke a sexually oriented business license if a cause of suspension in Section 8 occurs and the license has been suspended within the preceding *[number of months]* months.

(B) The Finance Director shall revoke a sexually oriented business license if the Finance Director determines that:

(1) A licensee gave false or misleading information in the application.

(2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) A licensee or an employee has knowingly allowed prostitution on the premises;

(4) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) A licensee has been convicted of an offense listed in Section 4(A)(7)(a) for which the time period required in Section 4(A)(7)(b) has not elapsed;

(6) On two or more occasions within a *[number of months]*-month period, a person or persons while in or on the licensed premises committed an offense listed in Section 4(A)(7)(a), for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;

(7) A licensee or an employee has knowingly allowed any act of sexual intercourse, oral sexual

contact, or sexual contact, including masturbation, to occur in or on the licensed premises. The terms "sexual intercourse," "oral sexual contact" and "sexual contact" shall have the same meanings as defined in state statute; or

(8) A licensee is delinquent in payment to the City of taxes or fees related to the sexually oriented business or arising out of any other business activity owned or operated by the licensee and licensed by the City.

(C) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(D) Subsection (B)(7) of this section does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, oral sexual contact, or sexual contact to occur in a public place or within public view.

(E) When the Finance Director revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation becomes effective. If, subsequent to revocation, the Finance Director finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least *[number of days]* days have elapsed since the date the revocation became effective. If the license was revoked under subsection (B)(5) of this section, an applicant may not be granted another license until the appropriate number of years required under Section 4(A)(7)(b) has elapsed.

Section 10. HEARING; JUDICIAL REVIEW.

A. If the Finance Director determines that grounds exist for denial, suspension, or revocation of a license under this article, the Finance Director shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend, or revoke, including a summary of the grounds therefor. The notification shall be by certified mail to the address on file with the Finance Director. Within *[number of working days]* working days of receipt of such notice, the respondent may provide to the Finance Director in writing a response which shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked and may include a request for a hearing. If a response is not received by the Finance Director in the time stated, the denial, suspension or revocation shall be final and notice of such will be sent to the applicant or licensee. Within *[number of working days]* working days after receipt of a response, the Finance Director shall either withdraw the intent to deny, suspend, or revoke, and so notify the respondent in writing by certified mail or shall schedule a hearing before the License Appeal Board and shall notify the respondent in writing by certified mail of the date, time and place of the hearing. The hearing shall be scheduled not less than *[number of working days]* nor more than *[number of working days]* working days after receipt by the Finance Director of the request for a hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence shall not apply. The License Appeal Board shall render a written decision within *[number of working days]* working days after completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent on file with the Finance Director. In no event shall more than *[number of days]* days elapse between receipt by the Finance Director of a request for a hearing and mailing by License Appeal Board of a final decision to the respondent. An applicant or licensee may continue to work or perform services under his or her temporary work permit or license pending receipt of the final decision of the License Appeal Board. The decision shall be final at the end of *[number of working days]* working days after it is mailed and shall constitute final administrative action.

B. When the decision to deny, suspend or revoke a license becomes final, the applicant or licensee whose application for a license has been denied or whose license has been suspended or revoked shall have the right to seek judicial review of the decision by way of special action or other available procedure in the superior court.

Section 11. TRANSFER OF LICENSE. A licensee shall not transfer his or her license to another, nor

shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

Section 12. ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(A) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than *[number of hours]* hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.

(B) It shall be unlawful for a person who is in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license to **rent** or subrent a sleeping **room** to a person and, within *[number of hours]* **hours** from the time the **room** is rented, **rent** or subrent the same sleeping room again.

(C) For purposes of subsection (B) of this section, the terms "**rent**" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

Section 13. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than *[number of square feet]* square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all manager's stations, viewing rooms, overhead lighting fixtures, video cameras, and monitors installed for monitoring purposes, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus *[number of inches]* inches. The Finance Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station or viewing room may be made without the prior approval of the Finance Director.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to paragraph 1 of this subsection.

(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 one footcandle 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 or open for business.

(6) It shall be the duty of the operator, and of any employees present on the premises, to ensure

that no act of sexual intercourse, oral sexual contact, or sexual contact, including masturbation, as defined in state statute, occurs in or on the licensed premises.

(7) It shall be the duty of the operator, and of any employees present on the premises, to ensure that not more than one person is present in a viewing room at any time. No person shall enter a viewing room that is occupied by another person.

(8) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no openings of any kind exist between viewing rooms. No person shall make or attempt to make an opening of any kind between viewing rooms.

(9) It shall be the duty of the operator, or of any employee, who discovers two or more patrons in a viewing room or discovers any person making or attempting to make an opening of any kind between viewing rooms, to immediately escort such persons from the premises.

(10) It shall be the duty of the operator, or of any employee, who discovers an opening of any kind between viewing rooms to immediately secure such rooms, and prevent entry into them by any patron until such time as the wall between the rooms has been repaired to remove the opening. Removal and repair of openings between viewing rooms shall be in a manner that is as structurally substantial as the original wall construction.

(11) It shall be the duty of the operator, during each business day, to regularly inspect the walls between viewing rooms for openings of any kind.

(12) It shall be the duty of the operator, and of any employee on the premises, to initiate and enforce a no loitering policy in viewing rooms.

(13) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

(a) That no loitering is permitted in viewing rooms.

(b) That the occupancy of viewing rooms is limited to one person.

(c) That sexual intercourse, oral sexual contact, and sexual contact, including masturbation, on the premises is prohibited.

(d) That the making of openings between viewing rooms is prohibited.

(e) That violators will be required to leave the premises.

(f) That violations of subparagraphs (b), (c), and (d) of this paragraph are unlawful.

(14) It shall be the duty of the operator to ensure that floor coverings in viewing rooms are nonporous, easily cleanable surfaces, with no rugs or carpeting.

(15) It shall be the duty of the operator to ensure that all wall surfaces and seating surfaces in viewing rooms, or any room or area providing patron privacy are constructed of, or permanently covered by, nonporous, easily cleanable material.

(16) It shall be the duty of the operator to ensure that premises are clean and sanitary at all times. Cleaning procedures shall include all of the following:

(a) The operator shall maintain a regular cleaning schedule, documented by appropriate logs, and shall employ sufficient personnel to assure the establishment is clean.

(b) The operator shall provide an employee to check all areas for garbage, trash, body fluids, and excrement and to remove and clean all areas with a disinfectant. All solid waste generated by the

business shall be collected from the premises for disposal at a lawful solid waste disposal facility at least twice each week. Prior to collection solid waste shall be stored in a manner that prevents access by animals or members of the public and which will not facilitate the creation of a health nuisance.

(c) Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video cameras, and windows and other surfaces.

(17) It shall be the duty of the operator to ensure any seating within a viewing room is designed so as to accommodate one person only.

(18) It shall be the duty of the operator to provide in a conspicuous place on the premises free information relating to the prevention of sexually transmitted diseases, including AIDS.

(19) The interior of the premises shall be configured in such a manner that there is no unobstructed view from a manager'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. A manager's station shall not exceed *[number of square feet]* square feet of floor area. If the premises has two or more manager'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 manager's stations. The view required in this paragraph must be by direct line of sight from the manager's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. 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.

(B) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Section 14. LOITERING AND EXTERIOR LIGHTING AND MONITORING REQUIREMENTS.

(A) It shall be the duty of the operator of a sexually oriented business to:

(1) Initiate and enforce a no loitering policy within the external boundaries of the real property upon which the sexually oriented businesses is located;

(2) post conspicuous signs stating that no loitering is permitted on such property;

(3) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every 30 minutes or inspecting such property by use of video cameras and monitors; and

(4) provide adequate lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. The video cameras and monitors shall operate continuously at all times that the premises is open for business. The monitors shall be installed within a manager's station.

(B) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Section 15. PENALTIES AND ENFORCEMENT. A person who violates any provision of this article is guilty of a Class 1 misdemeanor.

Section 16. INJUNCTION. The operation of a sexually oriented business without a valid license in

violation of this article shall constitute a nuisance and a person who operates or causes to be operated such business shall be subject to a suit for injunctive relief as well as prosecution for criminal violations.

Section 17. APPLICABILITY OF ORDINANCE TO EXISTING BUSINESSES. The provisions of this article shall apply to the activities of all persons and sexually oriented businesses described herein, whether such businesses or activities were established or commenced before, on, or after the effective date of this ordinance.

Section 18. REGULATIONS PERTAINING TO SEXUALLY ORIENTED BUSINESSES FEATURING NUDITY OR LIVE PERFORMANCES.

(A) A sexually oriented business which features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities shall be operated in accordance with the following regulations. It is unlawful for a licensee or operator to knowingly fail to ensure compliance with the regulations:

(1) A person shall not appear in a state of nudity or engage in a live performance which is characterized by the exposure of specified anatomical areas or by specified sexual activities except upon a stage elevated at least *[number of inches]* inches above floor level. All parts of the stage, or a clearly designated area thereof within which the person appears in a state of nudity or performs, shall be a distance of at least *[number of feet]* feet from all parts of a clearly designated area in which patrons may be present. The stage or designated area thereof shall be separated from the area in which patrons may be located by a barrier or railing the top of which is at least *[number of feet]* feet above floor level. No person appearing in a state of nudity or engaging in such live performances or patron may extend any part of his or her body over or beyond the barrier or railing.

(3) An employee may not touch the breast, buttocks, or genitals of a patron, nor may a patron touch the breast, buttocks, or genitals of an employee.

(4) A patron may not place any money on the person or in or on the costume of an employee.

(5) A person below the age of 18 years may not observe or appear in a state of nudity or in such live performances on the premises of a sexually oriented business.

(6) A sign, in a form to be prescribed by the Finance Director and summarizing the provisions of paragraphs (1), (3), and (4) of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

[FN1] Based, with some changes, on an ordinance furnished courtesy of Roderick G. McDougall, City Attorney, Phoenix, Arizona.

MUNIORD § 39:51

END OF DOCUMENT

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