

Preface to Model Ordinance Regulating Sexually Oriented Business

Ohio Revised Code Section 503.52(B)(2), and 715.55(B) requires the Attorney General to provide legal guidance to townships and municipal corporations at their request concerning the regulation of adult entertainment establishments. The attached Model Ordinance has been prepared by the Attorney General pursuant to the General Assembly's directive contained in HB 23 and SB 16, and constitutes the legal guidance required to be provided by this Office. While townships and municipal corporations are free to deviate from this Model Ordinance, the degree of any deviation will impact the Attorney General's duty to assist in the defense of the Model Ordinance in federal court. As stated in R.C. 503.52(E)(2):

If a township adopts a resolution without the legal guidance of the attorney general, the attorney general is not being required to provide assistance as described in this division to a prosecuting attorney.

If you have questions concerning this Model Ordinance, please contact the Attorney General's Office at 614-466-4320.

[] TOWNSHIP
[] COUNTY, OHIO

REGULATIONS GOVERNING
SEXUALLY ORIENTED BUSINESSES
AND EMPLOYEES

Adopted by the Board of Trustees, [] Township, [] County, Ohio,
pursuant to Sections 503.51 and 503.52 of the Ohio Revised Code, or [] Municipal
Corporation pursuant to Section 715.55 of the Ohio Revised Code.

Adopted this _____ day of _____, 20_____

**MODEL ORDINANCE REGULATING
SEXUALLY ORIENTED BUSINESSES**

(I) PURPOSE AND INTENT¹

(A) In enacting this Ordinance, pursuant to Sections 503.51 and 503.52 of the Ohio Revised Code, the **[Township Board of Trustees]**² makes the following statement of intent and findings:

(1) Adult entertainment establishments require special supervision from the public safety agencies of **[this Township]** in order to protect and preserve the health, safety, morals, and welfare of the patrons and employees of the businesses as well as the citizens of **[this Township]**.

(2) The **[Township Board of Trustees]** finds that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature.

(3) The concern over sexually transmitted diseases is a legitimate health concern of **[this Township]** that demands reasonable regulation of adult entertainment establishments by **[this Township]** in the specified manner, and expanded authority for reasonable regulation of adult entertainment establishments by local governments, in order to protect the health and well-being of the citizens.

(4) Minimal regulations enacted by **[this Township]** are a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

(5) There is convincing documented evidence that adult entertainment establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, cause increased crime, particularly in the overnight hours, and downgrade property values.

¹ This section is modified from the purpose and intent version included in House Bill No. 23 (2006) and Senate Bill No. 16 (2007). It is placed here to maintain consistency with the enacting legislation.

² “[Township Board of Trustees]” and “[this Township]” are used as place holders. The Ordinance must be modified to include the correct titles of the Township or Municipal Corporation. For example, Bloom Township Board of Trustees, and Bloom Township; etc.

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

(7) The **[Township Board of Trustees]** has determined that current local zoning and other locational criteria do not adequately protect the health, safety, and general welfare of the people of **[this Township]** and that expanded regulation of adult entertainment establishments is necessary.

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

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

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

(C) Based on evidence concerning the adverse secondary effects of adult uses on communities presented in hearings and in reports made available to the legislature and subsequently adopted by the Ohio General Assembly as findings under Section 3 of House Bill 23 (and on findings incorporated in the cases of *Township of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.* (2004), 541 U.S. 774; *Township of Erie v. Pap's A.M.* (2000), 529 U.S. 277; *Barnes v. Glen Theatre, Inc.* (1991), 501 U.S. 560; *Township of Renton v. Playtime Theatres, Inc.* (1986), 475 U.S. 41; *Young v. American Mini Theatres* (1976), 426 U.S. 50; *California v. LaRue* (1972), 409 U.S. 109; *DLS, Inc. v. Township of Chattanooga* (6th Cir. 1997), 107 F.3d 403; *East Brooks Books, Inc. v. Township of Memphis* (6th Cir. 1995), 48 F.3d 220; *Harris v. Fitchville Township Trustees* (N.D. Ohio 2000), 99 F. Supp.2d 837; *Bamon Corp. v. Township of Dayton* (S.D. Ohio 1990), 730 F. Supp. 90, *aff'd* (6th Cir. 1991), 923 F.2d 470; *Broadway Books v. Roberts* (E.D. Tenn. 1986), 642 F. Supp. 486; *Bright Lights, Inc. v. Township of Newport* (E.D. Ky. 1993), 830 F. Supp. 378; *Richland Bookmart v. Nichols* (6th Cir. 1998), 137 F.3d 435; *Deja Vu v. Metro Government* (6th Cir. 1999), 1999 U.S. App. LEXIS 535; *Threesome Entertainment v. Strittmather* (N.D. Ohio 1998), 4 F.Supp.2d 710; *J.L. Spoons, Inc. v. Township of Brunswick* (N.D. Ohio 1999), 49 F. Supp.2d 1032; *Triplett Grille, Inc. v. Township of Akron* (6th Cir. 1994), 40 F.3d 129; *Nightclubs, Inc. v. Township of Paducah* (6th Cir. 2000), 202 F.3d 884; *O'Connor v. Township and County of Denver* (10th Cir. 1990), 894 F.2d 1210; *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County* (6th Cir. 2001), 2001 U.S. App. LEXIS 26007; *State of Ohio ex rel. Rothal v. Smith* (Ohio C.P. 2002), Summit C.P. No. CV 01094594; *Z.J. Gifts D-2, L.L.C. v. Township of Aurora* (10th Cir. 1998), 136 F.3d 683; *Connection Distrib. Co. v. Reno* (6th Cir. 1998), 154 F.3d 281; *Sundance Assocs. v. Reno* (10th Cir. 1998), 139 F.3d 804; *American Library Association v. Reno* (D.C. Cir. 1994), 33 F.3d 78; *American Target Advertising, Inc. v. Giani* (10th Cir. 2000), 199 F.3d 1241; and other cases and on reports of secondary effects occurring in and around adult entertainment establishments in Phoenix, Arizona (1984); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma Township, Oklahoma (1986); Cleveland, Ohio (1977); Dallas, Texas (1997); St. Croix County, Wisconsin (1993); Bellevue, Washington (1998); Newport News, Virginia (1996); Tucson, Arizona (1990); St. Paul, Minnesota (1988); Oklahoma Township, Oklahoma (1986 and 1992); Beaumont, Texas (1982); New York, New York (1994); Ellicottville, New York (1998); Des Moines, Iowa (1984); Islip, New York (1980); Adams County, Colorado (1987); Manatee County, Florida (1987); New Hanover County, North Carolina (1989); Las Vegas, Nevada (1978); Cattaraugus County, New York (1998); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); New York Times Square study (1994); Report to ACLJ on the Secondary Impacts of Sex Oriented Businesses (1996); findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and on testimony to Congress in 136 Cong. Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636, 134 Cong. Rec. E. 3750; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis,

Minnesota; and from “Sexually Oriented Businesses: An Insider's View,” by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and from various other police reports, testimony, newspaper reports, and other documentary evidence), and subsequent findings in *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291; *729, Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485; and *Andy's Rest. & Lounge, Inc. v. City of Gary* (7th Cir. 2006), 466 F.3d 550, and the [Township Board of Trustees'] independent review of the same) the [Township Board of Trustees] finds:

- (1) Adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments.
- (2) Certain employees of adult entertainment establishments, as defined in this Ordinance as adult theaters and cabarets, engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts, including masturbation and oral and anal sex, occur at adult entertainment establishments, especially those that provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows. The “couch dances” or “lap dances” that frequently occur in adult entertainment establishments featuring live nude or seminude dancers constitute or may constitute the offense of “engaging in prostitution” under Section 2907.25 of the Revised Code.
- (4) Offering and providing private or semi-private booths or cubicles encourages such activities, which creates unhealthy conditions.
- (5) Persons frequent certain adult theaters, adult arcades, and other adult entertainment establishments for the purpose of engaging in sexual activity within the premises of those adult entertainment establishments.
- (6) Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and shigella infections, chlamydial, myoplasmal and ureoplasmal infections, trichomoniasis, and chancroid.
- (7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 through December 31, 1992.
- (8) A total of 10,255 AIDS cases had been reported in Ohio as of January 1999. Ohio has required HIV case reporting since 1990, and the reported information shows 7,969 people living with (HIV) (4,213) and (AIDS) (3,756) in the state.

(9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Ohio.

(10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen. 33,613 cases were reported in 1982, and 45,200 cases were reported through November 1990.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

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

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

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

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

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

(17) The enactment of this Ordinance will promote the general welfare, health, morals, and safety of the citizens of this Township.

(II) DEFINITIONS³

(A) As used in this Ordinance:

(1) “adult bookstore,” “adult cabaret,” “adult motion picture theater,” “adult video store,” “characterized by,” “nude,” “nudity,” “state of nudity,” “seminude,” “state of seminudity,” “sexual device,” “sexual device shop,” “sexual encounter center,” “specified anatomical areas,” and “specified sexual activity” have the same meanings as in Section 2907.40 of the Revised Code; and

(2) “adult arcade,” “adult entertainment,” “adult entertainment establishment,” “adult novelty store,” “adult theater,” “distinguished or characterized by their emphasis upon,” “nude or seminude model studio,” “regularly features,” “regularly shown,” and “sexual encounter establishment” have the same meanings as in Section 2907.39 of the Revised Code.

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

(C) “IMMEDIATE FAMILY” means a person's spouse residing in the person's household, parents, siblings of the whole or of the half blood, and children, including adopted children.

(D) “LICENSE” means a license to act or operate a sexually oriented business, issued pursuant to this Ordinance.

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

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

³ The definitions used in Section (II) must be included. Additional definitions may be included that are not listed here if additional zoning requirements are imposed. These definitions and applicable zoning requirements should be included based on the Township, Village, etc. past practices and history of zoning. Additional zoning requirements and definitions are too location specific to be included here. Please refer to Appendix I for areas subject to zoning restrictions.

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

(H) “PATRON” means any individual on the premises of a sexually oriented business, except for any of the following:

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

(I) “PERSON” means an individual, proprietorship, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

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

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

(L) “SPECIFIED CRIMINAL ACTIVITY” means any of the following offenses:

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

- (2) for which:
 - (a) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or
 - (b) 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.
- (3) The fact that a conviction is being appealed shall not prevent such conviction from constituting a specified criminal activity as defined in this section.

(M) “TRANSFER OF OWNERSHIP OR CONTROL” of a sexually oriented business shall mean 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 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.

(III) LICENSE REQUIRED

(A) No person shall:⁴

- (1) Operate a sexually oriented business as defined by Section (II), sub-section (K) without a valid sexually oriented business license issued by the [Township] pursuant to this Ordinance.
- (2) In connection with operating a sexually oriented business, retain the services of a person as an employee, as defined in this Ordinance, who is not licensed as a sexually oriented business employee by the [Township] pursuant to this Ordinance.

(B) Any person who violates sub-section (A)(1) above shall be guilty of a **[insert misdemeanor level of offense]** for a first offense, and a **[insert increased misdemeanor level of offense]** for a second offense.

⁴ You may also choose to license the employee. A sample employee license application is included in this model, but it is not required.

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

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

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

(IV) APPLICATION FOR LICENSE⁵

(A) An original or renewal application for a sexually oriented business license shall be submitted to the **[Township Board of Trustees]** or its designee on a form provided by the **[Township Board of Trustees]**. The **[Township]**’s application may require and the applicant shall provide such information as reasonably necessary (including fingerprints) to enable the **[Township]** to determine whether the applicant meets the qualifications established in this Ordinance.

(B) A filing fee shall be paid at the time of filing the application, as follows:

[Reasonable fees as determined by the Township]⁶

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

- (1) If the business entity is owned by an individual, that individual.
- (2) If the business entity is owned by a corporation, each Officer or Director of the corporation, any individual owning or controlling more than fifty (50) percent of the voting shares of the corporation, and any person with an ownership interest in the corporation who will be principally responsible for the operation of the proposed sexually oriented business.
- (3) If the business entity is owned by a partnership (general or limited), a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, each partner (other than limited partners); and any other person entitled to share in the profits of the organization, whether or not such person is also obligated to share in the liabilities of the

⁵ You may provide for the following licensing criteria, but it is not required. These regulations are included as a listing of constitutionally viable possibilities.

⁶ The fee charged is at the discretion of the political subdivision. HOWEVER, the fee must be reasonable and only used to offset the costs of administering and ensuring compliance with this Ordinance. Fees associated with the processing of the license application may be non-refundable. However, the remaining fees for administering the license must be refunded if the license application is denied.

organization, who will be principally responsible for the operation of the proposed sexually oriented business.

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

(E) An application for a sexually oriented business license shall be completed according to the instructions on the application form, which shall require the following:

(1) If the applicant is:

(a) an individual, state the legal name and any aliases of such individual; or

(b) a partnership, state the complete name of the partnership and all of its partners and whether the partnership is general or limited, and provide a copy of the partnership agreement, if any; or

(c) a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, state the complete name of the organization and provide a copy of the legal document establishing the organization, if any; or

(d) a corporation, state the complete name of the corporation and the date of its incorporation, provide evidence that the corporation is in good standing under the laws of its state of incorporation, and state the names and capacities of all Officers and Directors, the name of the registered corporate agent, and the address of the registered office for service of process.

(2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, state the fictitious name to be used and submit copies of documentation evidencing the registration of the business name under applicable laws.

(3) State whether any applicant has been convicted of a specified criminal activity as defined in this Ordinance, and if so, the specified criminal activity involved and the date, place, and jurisdiction of each such conviction.

(4) State whether any applicant has had a previous license under this Ordinance or other similar regulation of another jurisdiction denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the

denial, suspension or revocation; and state whether the applicant has been a partner in a partnership or an officer, or fifty (50) percent or greater owner of a corporation licensed under this Ordinance whose license has previously been denied, suspended or revoked, including the name and location of the business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(5) State whether any applicant holds any other licenses under this Ordinance or other similar regulation from this or another jurisdiction and, if so, the names and locations of such other licensed businesses.

(6) State the location of the proposed sexually oriented business, including a legal description of the property (i.e., permanent parcel number), street address, and telephone number(s), if any.

(7) State the mailing address and residential address of each applicant and each person signing the application.

(8) Submit a recent photograph of each applicant who is a natural person, taken by the **[designate appropriate agency]** that clearly shows the applicant's face.

(9) Submit the fingerprints of each applicant who is a natural person, recorded by the **[designate appropriate agency]**.

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

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

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

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

(14) The above-required disclosures facilitate the police investigation into the applicant's criminal background regarding crimes of a sexual nature so that the **[Township]** can determine whether the Ordinance's civil disabilities provisions

apply. Such provisions exist to combat the sex crimes connected with sexually oriented establishments by temporarily prohibiting those recently convicted of such crimes from employment with those establishments. In addition, the required disclosures ensure continuing compliance with the Ordinance's licensing and permitting requirements.

(15) The information gathered pursuant to the above provisions constitute protected private information and are exempt from Ohio's Public Records Act in accordance with the decision of the Sixth Circuit Court of Appeals in *DejaVu of Cincinnati v. Union Township* (6th Cir. 2005), 411 F.3d 777.

(V) ISSUANCE OF A LICENSE⁷

(A) Upon receipt of an application for a sexually oriented business license, the **[applicable agency]**⁸ or its designee shall promptly request that the **[applicable agency]** review the information provided in the application concerning the criminal background of the applicant(s) and that the **[applicable agency]** shall transmit the results of its investigation in writing to the **[applicable agency]** or its designee within five (5) days of the completion of its investigation.

(B) Within five (5) days of receipt of an application for a sexually oriented business, the **[applicable agency]** or its designee shall notify the **[Township]** Fire Chief and the Health Commissioner of such application. In making such notification, the **[applicable agency]** or its designee shall request that the Fire Chief and Health Commissioner promptly inspect the premises for which the sexually oriented business license is sought to assess compliance with the regulations under their respective jurisdictions.

(C) The Fire Chief shall provide to the **[applicable agency]** or its designee a written certification of whether the premises are in compliance with the **[Township]** Fire Regulations within ten (10) days of receipt of notice of the application.

(D) The **[applicable agency]** or its designee shall commence the inspection of the premises for which a sexually oriented business license is sought promptly upon receipt of the application, and shall complete, within ten (10) days after receipt of the application, a written certification of whether the premises are in compliance with the **[Township]** Zoning Ordinance, the **[Township]** Property Maintenance Code, and the provisions of this Ordinance related to physical characteristics of the premises, and whether the **[Township]** has received notice from any state or county agency of the premises being in violation of any applicable state building or property codes.

⁷ Each step of the process is not necessarily required (i.e. inspection process) and is left to your discretion. HOWEVER, the timeframes included in this section ARE required if the applicable sections are used. Also, as noted earlier, "zoning restrictions" may be included.

⁸ The political subdivision must determine who will review the applications, complete the background investigations, etc.. "Applicable agency" is a term of art. The applicable agency may be an agency, department, unit, official, employee, or officer and more than one entity or person.

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

- (1) An applicant who is a natural person is under eighteen (18) years of age.
- (2) An applicant has failed to provide all information and documents required for issuance of the license as requested on the application form, or has provided information or documents as requested on the application that are insufficient on their face; provided, however, that no license shall be denied solely on the ground that an applicant has refused to disclose its social security number in accordance with the provisions of the Privacy Act of 1974, Pub. L. No. 93-579, § 7(a)(1).
- (3) An applicant has, within the preceding twelve (12) months, been denied a sexually oriented business license by any jurisdiction or has had a license to operate a sexually oriented business revoked by any jurisdiction.
- (4) An applicant has been convicted of a specified criminal activity as defined in this Ordinance.
- (5) The proposed sexually oriented business would violate or fail to be in compliance with any provisions of this Ordinance, the **[Township]** Zoning Ordinance, the **[Township]** Property Maintenance Code, or state statute or regulation.
- (6) The application and investigation fee required by this Ordinance has not been paid.
- (7) An applicant is in violation of or not in compliance with any provision of this Ordinance, except as provided in Section (V), sub-section (F) of this section.

(F) If the **[applicable agency]** or its designee determines that one or both of the following findings is true, the license issued pursuant to this section shall contain a requirement that the licensee correct all deficiencies specified within 120 days of the date the license is issued:⁹

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

⁹ Section (F) is purely discretionary and is included only as an option to the Township.

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

(H) The **[applicable agency]** or its designee shall advise the applicant in writing within three (3) days of the **[applicable agency's]** decision of the reasons for any license denial. If the **[Township]** finds, subsequent to denial, that the basis for the denial of the license has been corrected or abated, the applicant may reapply.

(VI) EMPLOYEE LICENSE APPLICATION¹⁰

(A) An application for an Employee license shall be submitted to the **[applicable agency]** or its designee on a form provided by the **[applicable agency]**. The application may request, and the applicant shall provide, such information as reasonably necessary (including fingerprints) to enable the **[Township]** to determine whether the applicant meets the qualifications established in this Ordinance.

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

- (1) State the applicant's name and any other names (including "stage" names) or aliases used by the applicant.
- (2) State the applicant's date and place of birth.
- (3) State the applicant's height, weight, and hair and eye color.
- (4) Submit a recent photograph of the applicant, taken by the **[applicable agency]**, which clearly shows the applicant's face.
- (5) Submit the applicant's fingerprints, recorded by the **[applicable agency]**.
- (6) Describe and identify the location of any tattoos on the applicant's face, arms, legs, or hands, or any other anatomical area that normally would be visible when the applicant is on the premises of the proposed sexually oriented business.
- (7) State the applicant's present residence address and telephone number.
- (8) State the applicant's present or intended business address and telephone number.
- (9) State the applicant's driver's license number and Social Security number.
- (10) Submit proof that the applicant is at least eighteen (18) years old.

¹⁰ As noted previously, the Township has the discretion to include an employee license regulation; HOWEVER, if used, the timelines outlined in Sections (V) and (VII) are REQUIRED.

(11) Provide a statement detailing the sexually oriented business-related license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate a sexually oriented business, in this or any other jurisdiction, and whether the applicant has ever had a sexually oriented business-related license, permit, or authorization to do business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation, or suspension. Attach a copy of any order of denial, revocation, or suspension.

(12) State whether the applicant has been convicted of a specified criminal activity as defined in this Ordinance and, if so, the specified criminal activity involved and the date, place and jurisdiction of each such conviction.

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

(14) The information gathered pursuant to the above provisions constitutes protected private information and is exempt from Ohio's Public Records Act in accordance with the decision of the Sixth Circuit Court of Appeals in *DejaVu of Cincinnati v. Union Township* (6th Cir. 2005), 411 F.3d 777.

(VII) ISSUANCE OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE

(A) Upon the filing of a completed application for an employee license, the [applicable agency] or its designee shall issue a license to said applicant immediately.

(B) Within five (5) days of receipt of a completed application for an employee license, the [applicable agency] or its designee shall request that the [applicable agency] initiate an investigation of the information provided in the application concerning the criminal background of the applicant. The [applicable agency] shall document the results of its investigation in writing within five (5) days of the completion of its investigation and transmit this writing to the [applicable agency] or its designee.

(C) Within ten (10) days after completion of the criminal background investigation of the applicant, the [applicable agency] or its designee shall either affirm the prior issuance of the license or revoke the license. The [applicable agency] or its designee shall affirm the prior issuance of a license to an applicant unless he/she determines that one or more of the following findings are true:

(1) The applicant has failed to provide all information and documents required for issuance of the license as requested on the application form, or has provided information or documents as requested on the application that are insufficient on their face; provided, however, that no license shall be denied solely on the ground that an applicant has refused to disclose its social security number in accordance with the provisions of the Privacy Act of 1974, Pub. L. No. 93-579, § 7(a)(1).

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

(3) The applicant has been convicted of a specified criminal activity as defined in this Ordinance.

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

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

(D) If the employee license is revoked, the **[applicable agency]** or its designee shall advise the applicant in writing within three (3) days of the reason(s) for any such revocation.

(VIII) EXPIRATION AND RENEWAL OF LICENSE¹¹

(A) Each license issued pursuant to this Ordinance shall expire one year from the date of issuance and may be renewed by making application as provided in this section. Application for renewal shall be made no more than ninety (90) days and no less than twenty-one (21) **[this should conform with the time frame set out in Section (V), subsection (E) above]** days before the expiration date. If application is made less than twenty-one (21) days before the expiration date, the license will not be extended pending a decision on the application, but will expire on its normal expiration date.

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

¹¹ The renewal period may be longer than one year; however, all other dates regarding the processing of a renewal must be followed as indicated.

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

(D) The **[applicable agency]** or its designee shall advise the applicant in writing within three (3) days of the reason(s) for any denial of a license renewal.

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

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

(IX) SUSPENSION

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

- (1) has violated or is not in compliance with any section of this Ordinance; or
- (2) has knowingly allowed an employee to violate or fail to comply with any section of this Ordinance.

(B) The **[Township]** shall suspend a sexually oriented business license for a period not to exceed thirty (30) days if it determines that a licensee or its employee or agent has refused to allow, or has prohibited or has interfered with, an inspection of the licensed sexually oriented business premises as authorized by Section (V), sub-sections (B) – (C) of this Ordinance or any other reasonable inspection.

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

(D) The **[applicable agency]** or its designee shall advise the licensee in writing within three (3) days of the reason(s) for any suspension.

(X) REVOCATION

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

(B) The [Township] shall revoke a sexually oriented business license if it determines that:

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

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

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

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

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

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

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

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

(C) The [Township] shall revoke an employee license if it determines that:

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

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

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

(D) The [applicable agency] or its designee shall advise the licensee in writing within three (3) days of the reason(s) for any revocation.

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

(F) When the [Township] revokes a license pursuant to sub-sections (B)(1), (B)(8) or (C)(1) above, the applicant may be granted a license if the basis for the revocation has been corrected or abated and at least thirty (30) days have elapsed since the date the revocation became effective.¹²

(XI) APPEAL RIGHTS

(A) Any denial, suspension, or revocation of a license under this Ordinance may be appealed to the [Township Board of Trustees]¹³ by written notice within ten (10) days of such denial, suspension, or revocation. Unless the applicant requests a longer period, the [Township Board of Trustees] must hold a hearing on the appeal within twenty-one (21) days and must issue a decision affirming or reversing the denial, suspension, or revocation within five (5) days after the hearing. During the time between the date of the denial, suspension, or revocation of a license and the date of the [Township Board of Trustees] decision affirming or reversing the denial, suspension, or revocation, the status quo of the license holder or applicant shall be maintained.¹⁴

(B) In the event that the [Township Board of Trustees] denies, suspends, or revokes a new or renewal license under this Ordinance, or any action taken on an appeal that is provided by this ordinance, the applicant may pursue an appeal to [_____] County Court of Common Pleas pursuant to Revised Code Chapter 2506. The failure of the [Township Board of Trustees] to render a decision on the application within the time prescribed in Section (IX), sub-section (A) above shall be considered an affirmance of the denial, suspension, or revocation of the license and the applicant may pursue an appeal to [_____] County Court of Common Pleas pursuant to Revised Code Chapter 2506. This appeal provision is intended to comply with the requirement for prompt judicial review stated by the United States Supreme Court in *Township of Littleton, Colorado v. Z. J. Gifts D-4* (2004), 541 U.S. 774.

(C) Any licensee lawfully operating a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, shall retain said license and all privileges attendant thereto, subject to all other terms of this

¹² This subparagraph and the previous subparagraph are used to indicate that the political subdivision may decide to allow some of these offenses to be remedied.

¹³ Or designated body – Board of Trustees, etc. **Please note: it is recommended that the Township begin with subparagraph (B) and avoid administrative appeals. In other words, an original decision should be made by the Township and any appeal made directly to the court of common pleas.**

¹⁴ This subparagraph may be deleted if the subdivision directs that the appeal be filed directly with the common pleas court.

Ordinance, so that the status quo of the licensee is maintained during the pendency of an appeal to the **[Township Board of Trustees]** of a decision rendered under this Ordinance and during the entire time required for the court to rule on the appeal pursuant to sub-section (B) above.

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

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

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

(XII) TRANSFER OF LICENSE

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

(B) An employee license is not transferable from one licensee to another, but the use of the license by the individual to whom it was issued may be transferred from one licensed sexually oriented business to another such licensed establishment during the term of the license, provided that the licensee gives written notice of such transfer to the **[applicable agency]** or its designee within fifteen (15) days of such transfer.

(XIII) ADDITIONAL REGULATIONS CONCERNING THE OPERATION OF A SEXUALLY ORIENTED BUSINESS

(A) Sexual Activity, Live Entertainment and Performances¹⁵

(1) No person shall, in a sexually oriented business, appear before a patron or patrons in a state of nudity, regardless of whether such public nudity is expressive in nature.¹⁶

(2) Any employee appearing on the premises of a sexually oriented business in a state semi-nudity, as defined by this Ordinance, must be on a stage that is at least **[zero (0) up to twenty-four (24)]** inches from the floor, and at a distance at least **[zero (0) up to thirty-six (36)]** inches from all parts of a clearly designated area in which patrons will be present.

(3) All live entertainment and performances in a sexually oriented business must take place on a stage that is at least **[zero (0) up to twenty-four (24)]** inches from the floor and a distance of at least **[zero (0) up to thirty-six (36)]** inches from all parts of a clearly designated area in which patrons will be present.

(4) The interior of the premises shall be configured in such a manner that there is a an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. It is the duty of the operator to ensure that at least one employee is on duty and situated in an operator's station at all times that any patron is on the portion of the premises monitored by the operator station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.¹⁷

(5) No employee shall knowingly or intentionally, in a sexually oriented business, appear within view of any patron in a nude or semi-nude condition

¹⁵ Section (XIII), sub-sections (A)(9) and (A)(10) may not be removed from this Ordinance unless no option of sub-sections A(1)-(8) are included. Sub-sections (A)(1) – (8) are optional and may be removed from this ordinance.

¹⁶ If Section (III), sub-section (A)(1) is not included in this Ordinance, then Section (III), sub-section (A)(2) must include “state of nudity” in addition to “semi-nudity.”

¹⁷ *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291.

unless the employee, while nude or semi-nude, shall be and remain at least [**zero (0) up to six (6)**] feet from all patrons.¹⁸

(6) Employees in a sexually oriented business shall maintain a minimum distance of [**zero (0) up to five (5)**] feet from areas on the business premises occupied by patrons for a minimum of [**zero (0) up to sixty (60)**] minutes after the employee appears in a nude or semi-nude condition within view of any patron. This regulation is not intended to prohibit ingress or egress from the premises. It is intended to control illicit sexual contact and reduce the incidents of prostitution occurring in the establishments.¹⁹

(7) No patron who is not a member of the employee's immediate family shall knowingly touch an employee while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or semi-nude.²⁰

(8) No employee who regularly appears nude or seminude on the premises of a sexually oriented business and while nude or seminude, shall knowingly touch a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or the clothing of a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or allow the patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family to touch the employee or the clothing of the employee.²¹

(9) The provisions of sub-sections (A)(1) – (8) shall not apply to an employee's use of any restroom or any single-sex dressing room that is accessible only to employees.

(10) In addition, sub-sections (A)(1) – (8) shall not apply to live performances in which the patron and employee are separated by an impenetrable barrier such as, but not limited too, glass or Plexiglas.

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

(C) **Hours of Operation.** No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, except that a sexually oriented business that holds a liquor permit pursuant to Chapter 4303 of the Revised

¹⁸ *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291.

¹⁹ *729, Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485.

²⁰ Pursuant to R.C. 2907.40(C)(1).

²¹ Pursuant to R.C. 2907.40(C)(2).

Code may remain open until the hour specified in that permit if it does not conduct, offer, or allow sexually oriented business activity in which the performers appear nude.²²

(XIV) SEVERABILITY CLAUSE

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

²² Pursuant to R.C. 2907.40(B).

APPENDIX I

In addition to the licensing regulations detailed in “MODEL ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESSES,” each Township should consider the following aspects that may be incorporated based on their individual circumstances:²³

1. Minimum lighting levels
2. Exterior display / exterior lighting / monitoring requirements
3. Loitering
4. Signage
5. Requirements regarding employee dressing rooms and public and employee restrooms
6. Additional regulations regarding the exhibition of sexually explicit films, videos or live entertainment booths
7. Zoning Restrictions including:
 - a. Sexually oriented business districts
 - b. Distance from certain establishments such as churches, schools, parks, etc.
 - c. Proximity to residential areas
 - d. Set back
 - e. Only one adult oriented business per building
 - f. Parking lot requirements
8. The Township should also consider regulations outlining the inspection of the adult entertainment business.

²³ The Attorney General offers **NO** opinion on the adoption of zoning regulations in these items. These items are suggestions only and **NO** representation regarding the constitutionality of said suggestions is made or should be implied.