

Chapter 899 - SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES ^[84]

⁽⁸⁴⁾ **Cross reference**— Zoning code of the City of Cincinnati, tit. XIV.

Sec. 899-1. - Definitions.

Sec. 899-1-A. - Adult Arcade.

Sec. 899-1-A1. - Adult Bookstore or Adult Video Store.

Sec. 899-1-A2. - Adult Cabaret.

Sec. 899-1-A3. - Adult Motel.

Sec. 899-1-A4. - Adult Motion Picture Theater.

Sec. 899-1-A5. - Adult Theater.

Sec. 899-1-A6. - Semi-Nude Model Studio.

Sec. 899-1-A7. - Sexual encounter establishment.

Sec. 899-1-A8. - Regularly.

Sec. 899-1-A9. - Feature.

Sec. 899-1-A10. - Sexual Device.

Sec. 899-1-A11. - Sexual Device Shop.

Sec. 899-1-C. - City Treasurer or Treasurer; City Manager.

Sec. 899-1-E. - Employ, Employee, and Employment.

Sec. 899-1-E1. - Established or Establishment.

Sec. 899-1-L. - Licensee

Sec. 899-1-N. - Nonporous.

Sec. 899-1-N1. - Nudity or a State of Nudity.

Sec. 899-1-O. - Operate or Cause to be Operated; Operator.

Sec. 899-1-P. - Person.

Sec. 899-1-S. - Semi-nude or Semi-nudity.

Sec. 899-1-S1. - Sexually Oriented Business.

Sec. 899-1-S2. - Specified Anatomical Areas.

Sec. 899-1-S3. - Specified Sexual Activity.

Sec. 899-1-T. - Transfer of Ownership or Control.

Sec. 899-1-V. - Viewing Room.

Sec. 899-3. - Classification.

Sec. 899-5. - License Required.

Sec. 899-7. - Issuance of License.

Sec. 899-9. - Fees.

Sec. 899-11. - Inspection.

Sec. 899-13. - Expiration of License.

Sec. 899-15. - Suspension.

Sec. 899-17. - Revocation.

Sec. 899-19. - Hearing; Revocation, License Denial, Suspension; Appeal.

Sec. 899-21. - Transfer of License.

Sec. 899-22. - Live Nudity at Sexually Oriented Business Prohibited.

Sec. 899-23. - Additional Regulations for Adult Motels.

Sec. 899-24. - Additional Regulations for Sexually Oriented Businesses.

Sec. 899-25. - Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

Sec. 899-26. - Sexual Encounter Establishments Prohibited.

Sec. 899-27. - Loitering and Exterior Lighting and Monitoring Requirements.

Sec. 899-29. - Penalties and Enforcement.

Sec. 899-31. - Applicability of Ordinance to Existing Businesses.

Sec. 899-33. - Regulations Pertaining to Sexually Oriented Businesses Featuring Performances.
Sec. 899-34. - Prohibition Against Presence of Persons Under the Age of 18.
Sec. 899-35. - Severability.

Sec. 899-1. - Definitions.

For purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Sec. 899-1-A. - Adult Arcade.

"Adult arcade" shall mean 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 regularly 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 an emphasis on exhibiting or displaying "specified sexual activities" or "specified anatomical areas."

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-1-A1. - Adult Bookstore or Adult Video Store.

"Adult Bookstore" or "Adult Video Store" means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A "principal business activity" exists where the commercial establishment meets any one or more of the following criteria:

- (a) At least 35% of the establishment's displayed merchandise consists of said items; or
- (b) At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items; or
- (c) The establishment maintains at least 35% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access and purchase said items shall be included in "floor space" maintained "for the display, sale, and/or rental of said items"); or
- (d) The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access and purchase said items shall be included in "floor space" maintained "for the display, sale, and/or rental of said items"); or
- (e) The establishment regularly offers for sale or rental at least one thousand (1,000) of said items; or
- (f) The establishment regularly offers said items and regularly advertises itself or holds itself out,

by using "adult," "adults-only," "XXX," "sex," "erotic," "novelties," or substantially similar language, as an establishment that caters to adult sexual interests.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 9-1998, eff. Jan. 12, 1998; a. Ord. No. 250-2002, eff. June 26, 2002; Emer. Ord. 083-2011, § 1, eff. March 16, 2011)

Sec. 899-1-A2. - Adult Cabaret.

"Adult cabaret" means a nightclub, bar, juice bar, restaurant bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features: (a) persons who appear semi-nude; (b) live performances which are characterized by any "specified sexual activities," or (c) films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on exhibiting or displaying "specified sexual activities" or "specified anatomical areas."

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-1-A3. - Adult Motel.

"Adult motel" means a motel, hotel, or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, which 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 which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, or (b) offers a sleeping room for rent for a period of time less than ten (10) hours; or (c) allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 31-1998, eff. Jan. 28, 1998)

Sec. 899-1-A4. - Adult Motion Picture Theater.

"Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions which are distinguished or characterized by an emphasis on exhibiting or displaying "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

(Ordained by Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-1-A5. - Adult Theater.

"Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of semi-nudity or live performances which are characterized by any "specified sexual activities."

(Ordained by Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-1-A6. - Semi-Nude Model Studio.

"Semi-Nude Model Studio" means any place where a person, who regularly appears in a state of

semi-nudity is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

It is a defense to prosecution for any violation of this ordinance that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

1. By a college, junior college, or university supported entirely or partly by taxation;
2. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or:
3. In a structure:
 - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and
 - b. Where, in order to participate in a class a student must enroll at least three days in advance of the class; and
 - c. Where no more than one semi-nude model is on the premises at any one time.

(Ordained by Ord. No. 31-1998, eff. Jan. 28, 1998)

Sec. 899-1-A7. - Sexual encounter establishment.

"Sexual encounter establishment" means a business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of engaging in or viewing live "specified sexual activities" or when one or more of the persons is semi-nude or in a state of nudity. The definition of sexual encounter establishment shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(Ordained by Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-1-A8. - Regularly.

"Regularly" means the consistent and repeated doing of an act on an ongoing basis.

(Ordained by Ord. No. 250-2002, eff. June 26, 2002; Emer. Ord. 083-2011, § 1, eff. March 16, 2011)

Sec. 899-1-A9. - Feature.

"Feature" means to give special prominence to.

(Ordained by Emer. Ord. 083-2011, § 3, eff. March 16, 2011)

Sec. 899-1-A10. - Sexual Device.

"Sexual Device" has the same meaning as in § 2907.40 of the Ohio Revised Code.

(Ordained by Emer. Ord. 083-2011, § 3, eff. March 16, 2011)

Sec. 899-1-A11. - Sexual Device Shop.

"Sexual Device Shop" has the same meaning as in § 2907.40 of the Ohio Revised Code.

(Ordained by Emer. Ord. 083-2011, § 3, eff. March 16, 2011)

Sec. 899-1-C. - City Treasurer or Treasurer; City Manager.

"City Treasurer" or "Treasurer" shall mean the city treasurer of the city of Cincinnati or such people as may be designated by the city treasurer. City Manager shall mean the city manager of the city of Cincinnati or such person as may be designated by the city manager pursuant to section 899-19.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-1-E. - Employ, Employee, and Employment.

Describing and pertaining to any person who performs any service on the premises of a sexually oriented business, on a full time, part time or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-1-E1. - Established or Establishment.

"Established" or "Establishment" shall 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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Sec. 899-1-L. - Licensee

"Licensee" shall mean 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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Sec. 899-1-N. - Nonporous.

"Nonporous" shall exclude any wood, plywood, composition board or other porous material.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Sec. 899-1-N1. - Nudity or a State of Nudity.

"Nudity" or a "State of Nudity" shall mean:

- (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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Sec. 899-1-O. - Operate or Cause to be Operated; Operator.

"Operate" or "Cause to be Operated" shall mean to cause to function or to put or keep in operation. "Operator" means any persons 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 regardless of whether that person is an owner, part owner, or licensee of the business.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-1-P. - Person.

"Person" shall mean an individual, proprietorship, partnership, corporation, association, or other legal entity.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Sec. 899-1-S. - Semi-nude or Semi-nudity.

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

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 250-2002, eff. June 26, 2002; Emer. Ord. 083-2011, § 1, eff. March 16, 2011)

Sec. 899-1-S1. - Sexually Oriented Business.

"Sexually Oriented Business" means an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel or adult entertainment out-call service in the form of semi-nude dancing or exhibition, adult motion picture theater, adult theater, semi-nude model studio, or sexual device shop.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 9-1998, eff. Jan. 12, 1998; a. Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002; Emer. Ord. 083-2011, § 1, eff. March 16, 2011)

Sec. 899-1-S2. - Specified Anatomical Areas.

"Specified anatomical areas" shall mean: (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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-1-S3. - Specified Sexual Activity.

"Specified Sexual Activity" shall have the same meaning as "sexual activity," as defined in Ohio Revised Code Section 2907.01(C).

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Sec. 899-1-T. - Transfer of Ownership or Control.

"Transfer of Ownership or Control" of a sexually oriented business shall mean any of the following:

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

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Sec. 899-1-V. - Viewing Room.

"Viewing Room" shall mean 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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Sec. 899-3. - Classification.

Sexually oriented business shall be classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores, adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult entertainment out-call service in the form of semi-nude dancing or exhibition;
- (6) Adult motion picture theaters;
- (7) Adult theaters;

- (8) Semi-nude model studios;
- (9) Sexual device shops.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 9-1998, eff. Jan. 12, 1998; a. Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002; Emer. Ord. 083-2011, § 1, eff. March 16, 2011)

Sec. 899-5. - License Required.

(a) It shall be unlawful for any person to operate a sexually oriented business or to conduct such services in the city of Cincinnati without a valid sexually oriented business license, issued by the city for the particular type of business, or to employ an employee as defined in Section 899-1-E 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 in the city of Cincinnati without a valid license.

(c) An applicant, upon receipt by the city treasurer 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 899-19. Upon receipt of the applicant's completed application for an employee's license, the city treasurer 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 city treasurer an application made on a form prescribed and provided by the city treasurer. The applicant shall be qualified according to the provisions of this chapter. The application shall be signed under oath by the applicant and notarized. The application shall contain the information called for in Paragraphs (d)(1) through (6) as follows. An application will be deemed completed when it contains the information required in this subsection.

- (1) The full true name and any other names used in the preceding five years.
- (2) Current business addresses and telephone numbers.
- (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 Ohio drivers' license with picture, or other picture identification document issued by a governmental agency.
- (5) Two (2) identical, passport-quality photographs of the applicant, approximately two (2) inches by two (2) inches in size, taken within the preceding month.
- (6) 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 (d)(1) through (6) of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the city treasurer within ten 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 six inches. Applicants who are required to comply with Section 899-25 of this chapter shall submit a diagram meeting the requirements of Section 899-25

(f) If a person who wishes to operate a sexually oriented business is an individual, he 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 899-7 and each applicant shall be considered a licensee if a license is granted.

(g) A person who possesses a valid video center license or theater 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 theater license shall comply with the requirements and provisions of this Chapter 899 when applicable.

(h) The information provided by an applicant in connection with the application for a license under this chapter shall be maintained by the city treasurer on a confidential basis, except that such information may be disclosed only to other governmental agencies in connection with a law enforcement or public safety function, or as may otherwise be required by law.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 366-1997, eff. Nov. 21, 1997; a. Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-7. - Issuance of License.

(a) The city treasurer 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 thirty (30) days after receipt of a completed application. The city treasurer shall approve the issuance of a license unless one or more of the following is found to be true.

(1) An applicant is less than eighteen (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.

(3) An applicant has failed to provide information as required by Section 899-5 for issuance of the license or has falsely answered a question or request for information on the application form.

(4) An applicant; an applicant's spouse; a business entity for which the applicant had, at the time of an offense leading to a criminal conviction described herein, a management responsibility or a controlling interest; or a business entity which is a "related member" of the applicant (as "related member" is defined in Ohio Revised Code Section 5733.042, without regard to division (B) of that section), has been convicted of a violation of a provision of this chapter, other than an offense of operating a sexually oriented business without a license, within two (2) 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 section has not been paid.

(6) A representative of the proposed establishment has not obtained a certificate of compliance pursuant to Section 1477-310 and Section 1477-421 of the Cincinnati Zoning Code or (2) filed a notice of appeal on an adverse zoning decision which is pending at the time of receipt of the application, which shall stay the final decision until a determination is reached on the appeal by the Court of Common Pleas of Hamilton County, Ohio.

(7) The proposed establishment is located in a zoning district other than an M-2 Intermediate Manufacturing District or an M-3 Heavy Manufacturing District established under the Cincinnati Zoning Code; or is not in compliance with the location restrictions established for sexually oriented businesses in those zoning districts.

(8) An applicant; an applicant's spouse; a business entity for which the applicant had, at the time of an offense leading to a criminal conviction described herein, a management responsibility or a controlling interest; or a business entity which is a "related member" of the applicant (as "related member" is defined in Ohio Revised Code Section 5733.042, without regard to division (B) of that section), has been convicted of any offense in violation of Chapter 2907 of the Ohio Revised Code and committed in this state or any offense committed outside this state which if committed in this state would constitute an offense in violation of Chapter 2907 for which:

(i) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the specified criminal acts which are sexual crimes against children, sexual abuse, rape, or crimes connected with another sexually oriented business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations; or

(ii) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; for the specified criminal acts which are sexual crimes against children, sexual abuse, rape, or crimes connected with another sexually oriented business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations; or

(iii) Less than (5) years have elapsed since the latest date of conviction, or the date of release from confinement, whichever is the later date, if the convictions are of two or more misdemeanor offenses for specified criminal acts which are sexual crimes against children, sexual abuse, rape, or crimes connected with another sexually oriented business, including but not limited to, distribution of obscenity or materials harmful to minors, prostitution, pandering, or tax violations; for two or more offenses occurring within any twenty-four month period.

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

(c) An applicant ineligible for a license due to Paragraph (a)(4) or (a)(8) of this section may qualify for a sexually oriented business license only when the time period required by the applicable paragraph 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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 366-1997, eff. Nov. 21, 1997; a. Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 275-1999, eff. June 30, 1999; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-9. - Fees.

The nonrefundable application fees for a sexually oriented business license shall be set by the City Treasurer at an amount determined by the Treasurer as sufficient to pay the cost of administering this program. Upon approval, an initial license fee of \$300.00 shall be assessed. A renewal application fee for a sexually oriented business license shall be \$300.00. The application fee for a sexually oriented business employee license shall be \$200.00.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; Emer. Ord. 463-2010, § 57, eff. Dec. 30, 2010)

Sec. 899-11. - Inspection.

(a) Sexually oriented business operators and sexually oriented business employees shall permit officers or agents of the city of Cincinnati's police department or treasurer's office to inspect from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the sexually oriented business is occupied by patrons or is open for business. A licensee's knowing or intentional refusal to permit such an inspection shall not constitute a misdemeanor, but shall constitute a violation of this section for purposes of license denial, suspension, and/or revocation. This section shall be narrowly construed by the city to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

(b) 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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 250-2002, eff. June 26, 2002)

Cross reference— Penalty, § 899-29.

Sec. 899-13. - Expiration of License.

Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in Sections 899-5 and 899-9. Application for renewal should be made at least 75 days before the expiration date, and when made less than 75 days before the expiration date, the expiration of the license will not be affected.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-15. - Suspension.

The city shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if it is determined that the sexually oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this chapter.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-17. - Revocation.

(a) The city treasurer shall revoke a sexually oriented business license or a sexually oriented business employee license if a cause of suspension in Section 899-15 occurs and the license has been suspended within the preceding twelve (12) months.

(b) The city treasurer shall revoke a sexually oriented business license if the treasurer determines that:

(1) A licensee gave false information in the application for a sexually oriented business license or in any document related to the operation of the sexually oriented business.

(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 899-7(a) for which the time period required in Section 899-7(a) has not elapsed;

(6) On two (2) or more occasions within a 12-month period, a person or persons while in or on the licensed premises committed an offense listed in Section 899-7(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 sexual activity to occur in or on the licensed premises. The term "sexual activity" shall have the same meaning as it is defined in Ohio Revised Code § 2907.01; or

(8) A licensee is delinquent in payment to the city of taxes or fees related to the sexually oriented business.

(c) The fact that any relevant conviction, as described in Section 899-7, is being appealed shall have no effect on the revocation of the license.

(d) For the purposes of license denial, suspension, or revocation, an act by any employee that constitutes grounds for revocation of that employee's license shall be imputed to the sexually oriented business licensee only if the Hearing Officer determines by a preponderance of evidence that an

officer, director, or general partner, or an employee who managed, supervised, or controlled, the operation of the business, knowingly allowed such act to occur on the premises. 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 sexual activity to occur in exchange for money or within public view.

(e) When the city treasurer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for (1) one year from the date revocation becomes effective. If, subsequent to revocation, the city treasurer finds that the basis for the revocation has been corrected or abated, the applicant shall [be] granted a license if at least (ninety) 90 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 899-7(a) has elapsed.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-19. - Hearing; Revocation, License Denial, Suspension; Appeal.

(a) If the City Treasurer determines that probable grounds exist for denial, suspension, or revocation of a license under this chapter, the Treasurer shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the City Treasurer.

Within ten working days of receipt of such notice, the respondent may provide to the City Manager or his or her designee in writing a response which shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. For purposes of this Section, any designee of the City Manager shall not be the City Treasurer or an employee in the Office of the City Treasurer. The City Manager or his or her designee shall notify the respondent in writing of the hearing date within three days of the receipt of such written response. Within ten working days of the receipt of such written response, the City Manager or his or her designee shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel, to present evidence and witnesses on his or her behalf, and to cross-examine adverse witnesses.

The City Manager or his or her designee shall give due consideration to the issues raised and shall exercise independent discretion in reaching a decision on such issues. The hearing shall last no more than two days, unless extended by request of the respondent or necessary for the administration of justice and due process. If a response is not received by the City Manager or his or her designee in the time stated or, if after the hearing the City Manager or his or her designee finds that grounds exist for denial, suspension, or revocation, then such action shall become final and notice of such final action sent to the applicant or licensee in writing by the City Manager or his or her designee within five working days after the conclusion of the hearing. Such notice shall include a statement advising the applicant or licensee of the right to challenge or appeal such decision in any court of competent jurisdiction to decide the factual or legal issues therein. If the City Manager or his or her designee finds that no grounds exist for denial, suspension, or revocation of a license then the City Manager or his or her designee shall withdraw the intent to deny, suspend, or revoke the license and shall so notify the respondent in writing by delivery, or by certified mail of such action.

(b) When a 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 challenge such action in a court of competent jurisdiction pursuant to Ohio

Revised Code Section 2506 or pursuant to any other procedure available at law. Any suspension or revocation of a sexually oriented business license or a sexually oriented business employee license does not take effect until the trial court adjudicating the challenge to the suspension or revocation issues a final decision on said challenge.

Immediately upon the filing of a court challenge to a license denial, the City Treasurer shall issue a temporary license to the applicant if the applicant is: (1) a preexisting sexually oriented business that was lawfully operating on the day that it filed its renewal application for an annual sexually oriented business license, or (2) a preexisting sexually oriented business employee who was lawfully working as a sexually oriented business employee license on the day that employee filed his or her renewal application for a sexually oriented business employee license. The temporary license shall expire upon the trial court's issuance of a final decision on the applicant's challenge to the license denial.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 425-1999, eff. Oct. 27, 1999; a. Ord. No. 356-2001, eff. Dec. 14, 2001; Emer. Ord. 083-2011, § 1, eff. March 16, 2011)

Sec. 899-21. - Transfer of License.

A licensee shall not transfer his 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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Cross reference— Penalty, § 899-29.

Sec. 899-22. - Live Nudity at Sexually Oriented Business Prohibited.

Live nudity is prohibited in any sexually oriented business including said businesses where no alcoholic beverages are sold, served or consumed on the premises and regardless of whether a permit has been issued pursuant to this Chapter 899. Any sexually oriented business which is found in violation of this section shall have its permit suspended pursuant to the provisions of Section 899-15.

(Ordained by Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-23. - 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 ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in Chapter 899

(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 ten 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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Cross reference— Penalty, § 899-29.

Sec. 899-24. - Additional Regulations for Sexually Oriented Businesses.

No sexually oriented business shall open to do business before 10:00 a.m. or remain open after 10:00 p.m., provided that, a sexually oriented business which has obtained a license to sell alcoholic beverages from the State of Ohio may remain open pursuant to the terms of that license, but may not conduct sexually oriented business activity after 10:00 p.m. No adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult entertainment out-call service in the form of semi-nude dancing or exhibition, adult motion picture theater, adult theater, or semi-nude model studio shall be open for business on any Sunday or a legal holiday as designated in Section 308-9(a) of the Cincinnati Municipal Code. This subsection shall not apply to any business, regulated under both this chapter and section, which is not an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult entertainment out-call service in the form of semi-nude dancing or exhibition, adult motion picture theater, adult theater, or semi-nude model studio as the same is defined in this chapter.

(Ordained by Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-25. - 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 one-hundred and fifty (150) 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 six inches. The City Treasurer 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 City Treasurer.

(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 (a)(1) of this section.

(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 foot candle as measured at the floor level. It shall be 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 sexual activity 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 an 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 repairing 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:

- (i) That no loitering is permitted in viewing rooms.
- (ii) That the occupancy of viewing rooms is limited to one person.
- (iii) That sexual activity on the premises is prohibited.
- (iv) That the making of openings between viewing rooms is prohibited.
- (v) That violators will be required to leave the premises.
- (vi) 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:

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

(ii) 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.

(iii) 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 an 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 32 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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Cross reference— Penalty, § 899-29.

Sec. 899-26. - Sexual Encounter Establishments Prohibited.

No person shall operate a sexual encounter establishment as defined in this Chapter. Operation of such an establishment shall constitute a public nuisance per se, and will additionally result in imposition of penalties for violation of Chapter 899.

(Ordained by Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-27. - Loitering and Exterior Lighting and Monitoring Requirements.

(a) It shall be the duty of the operator of a sexually oriented business to: (a) post conspicuous signs stating that no loitering is permitted on such property; (b) designate one of [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 (c) provide lighting of not less than one (1.0) foot candle as measured at the floor level to 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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 250-2002, eff. June 26, 2002)

Cross reference— Penalty, § 899-29.

Sec. 899-29. - Penalties and Enforcement.

A person who violates any provision of this Chapter 899 is guilty of a Misdemeanor of the First Degree.

The City Solicitor is hereby authorized to institute civil proceedings necessary for the enforcement of this Chapter 899 to restrain or correct violations hereof. Such civil proceedings, including injunction, shall be brought in the name of the city, provided, however, that nothing in this section and no action taken thereunder, shall be held to exclude such criminal proceedings as may be authorized by this code, or any of the laws or ordinances in force in the city or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 31-1998, eff. Jan. 28, 1998)

Sec. 899-31. - Applicability of Ordinance to Existing Businesses.

The provisions of this chapter 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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996)

Sec. 899-33. - Regulations Pertaining to Sexually Oriented Businesses Featuring Performances.

A sexually oriented business which regularly features persons who appear in a state of semi-nudity or live performances which are characterized by specified sexual activities shall be operated in accordance with the following regulations. It is unlawful for a sexually oriented business licensee to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

(a) A person shall not knowingly appear in a state of semi-nudity except upon a stage elevated at least (eighteen) 18 inches above floor level. All parts of the stage, or a clearly designated area thereof within which the person appears in a state of semi-nudity or performs, shall be a distance of at least three (3) 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 three (3) feet above floor level. No person appearing in a state of semi-nudity or engaging in such live performances or patron may knowingly extend any part of his or her body over or beyond the barrier or railing.

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

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

(d) A sign in a form to be prescribed by the city treasurer and summarizing the provisions of Paragraphs (a), (b), (c), 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.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 31-1998, eff. Jan. 28, 1998; a. Ord. No. 250-2002, eff. June 26, 2002)

Cross reference— Penalty, § 899-29.

Sec. 899-34. - Prohibition Against Presence of Persons Under the Age of 18.

(a) A person commits a violation of this ordinance if the person knowingly allows a person under the age of eighteen years on the premises of a sexually oriented business.

(b) It shall be the duty of the operator, and of any employees on the premises to verify the ages of all patrons as being eighteen years or older. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(Ordained by Ord. No. 250-2002, eff. June 26, 2002)

Sec. 899-35. - Severability.

Cincinnati Municipal Code Chapter 899 and each section and provision of said chapter thereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.

(Ordained by Ord. No. 230-1996, eff. Sept. 6, 1996; a. Ord. No. 250-2002, eff. June 26, 2002)