

ORDINANCE NO. 19-04
CITY OF CENTERVILLE, OHIO

Sponsored by Council Member Robert L. Corbin on the 24th day of January, 2007⁵.

**AN ORDINANCE AMENDING ORDINANCE NO. 11-86,
THE ZONING ORDINANCE OF THE CITY OF
CENTERVILLE, OHIO TO AMEND SECTIONS 14 AND 37
IN ACCORDANCE WITH THE PROVISIONS OF
CHAPTER 713 OF THE OHIO REVISED CODE AND
ENACTING CHAPTER 838 OF THE CENTERVILLE
MUNICIPAL CODE RELATING TO ADULT
ENTERTAINMENT.**

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety, morals, and welfare of the patrons of such businesses as well as the citizens of the City; and

WHEREAS, the City Council finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution, and for sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that 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; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby 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; and

WHEREAS, the City Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this City; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which a

addresses the secondary effects of sexually oriented businesses; and

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

NOW, THEREFORE,

THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

Section 1: That Section 14 D 3 b is hereby amended by the deletion of existing b 1, 2 and 3 and substituting therefore: *Any entertainment or uses regulated by Chapter 838 of the Centerville Municipal Code.*

Section 2: That Section 37 Definitions of the Centerville Zoning Ordinance is hereby amended by the addition of the following definition:

Commercial Entertainment – Any live or recorded entertainment being performed in connection with a non-residential use but excluding any entertainment or uses regulated by Chapter 838 of the Centerville Municipal Code.

Section 3. That new Chapter 838 of the Centerville Municipal Code is hereby enacted as follows:

Section 838.01 Purpose and Findings.

(a) *Purpose:* It is the purpose of this Chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this Chapter 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 nor effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Chapter to condone or legitimize the distribution of obscene material.

(b) *Findings:* 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 on findings incorporated in the cases of *City of Erie v. Pap's A.M.* (2000), 529 U.S. 277; *Barnes v. Glen Theatre, Inc.* (1991), 501 U.S. 560; *City 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. City of Chattanooga* (6th Cir. 1997) 107 F.3d 403; *East Brooks Books, Inc. v. City 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. City 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. City 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. City of Brunswick* (N.D. Ohio 1999), 49 F. Supp.2d

1032; *Triplett Grille, Inc. v. City of Akron* (6th Cir. 1994) 40 F.3d 129; *Nightclubs, Inc. v. City of Paducah* (6th Cir. 2000), 202 F.3d 884; *O'Connor v. City 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. City 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 City, 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 City, 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); the 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, the City Council finds:

- (1) Adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no statewide mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
- (2) Certain employees of adult entertainment establishments, as defined in section 3768.01 of the Ohio Revised Code 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 Ohio Revised Code.
- (4) Offering and providing such space 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 should be reasonably regulated in order to protect those substantial governmental concerns.

Section 838.02 Definitions.

Words, terms and phrases in this Chapter shall be defined as follows:

- (a) *Adult Arcade* means any place to which the public is permitted or invited, wherein coin-

operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matters exhibiting "specified sexual activities" or "specified anatomical areas."

(b) *Adult Bookstore, Adult Novelty Store or Adult Video Store* means a commercial establishment which has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:

(1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides or other visual representations, which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas;"

(2) instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others,

(c) *Adult Cabaret* means a nightclub, bar, restaurant, or similar commercial establishment which regularly features;

(1) persons who appear semi-nude; or

(2) live performances which are characterized by the exhibition or display of "specified anatomical areas" or by "specified sexual activities;" or

(3) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas;"

(d) *Adult Motel* means a hotel, motel, or similar commercial establishment, which:

(1) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; and either

(2) offers a sleeping room for rent for a period of time that is less than ten (10) hours,
or

(3) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

(e) *Adult Motion Picture Theater* means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(f) *Adult Theater* means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exhibition or display of "specified anatomical areas" or by "specified sexual activities."

(g) *Distinguished or Characterized by an Emphasis Upon* means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of "specified anatomical areas" or "specified sexual activities."

(h) *Employee, Employ, and Employment describe* and pertain to any person who performs any service on the premises of a sexually oriented business on a fulltime, part-time, or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. *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.

(i) *Enforcement Officer* shall mean the City Zoning Administrator or such person as may be designated by the Manager.

(j) *Escort* means a person who, for consideration, and for another person, agrees or offers: (1) to act as a companion, guide, or date, or (2) to privately model lingerie, or (3) to privately perform a striptease.

(k) *Escort Agency* means a person or business association that for a fee, tip, or other consideration, furnishes, offers to furnish, or advertises to furnish, escorts as one of its primary business purposes.

(l) *Establish or Establishment* means and includes any of the following:

(1) the opening or commencement of any sexually oriented business as a new business;

(2) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) the addition of any sexually oriented business to any other existing sexually oriented business; or

(4) the relocation of any sexually oriented business.

(m) *Licensee* means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

(n) *Nude, Nudity or a State of Nudity* means exposing to view the genitals, pubic area, vulva, perineum, anus, anal cleft or cleavage, or pubic hair with less than a fully opaque covering; exposing to view any portion of the nipple of the female breast with less than a fully opaque covering; or exposing to view male genitals in a discernibly turgid state, even if entirely covered by an opaque covering.

(o) *Operate* or *Cause to Be Operated* means to cause to function or to put or keep in a state of doing business. *Operator* means any person on the premises of a sexually oriented business who is authorized to exercise 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.

(p) *Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(q) *Regularly Features* or *Regularly Shown* means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business,

(r) *Semi-nude* or *in a Semi-nude Condition* means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.

(s) *Semi-nude Model Studio* means a commercial establishment which regularly features a person (or persons) who appears semi-nude and is provided to be observed, sketched, drawn, painted, sculptured, or photographed by other persons who pay money or any form of consideration, but shall not include a proprietary school licensed by the State of Ohio or a college, junior college or university supported entirely or in part by public taxation; 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.

(t) *Sexual Encounter Center* means a business or commercial establishment that as one of its principal business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of "specified sexual activities." The definition of sexual encounter center or any sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(u) *Sexually Oriented Business* means an adult arcade, adult bookstore, adult novelty store, adult video score, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, semi-nude model studio, or sexual encounter center.

(v) *Specified Anatomical Areas* means:

(1) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(2) less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

(w) *Specified Criminal Activity* means any of the following offenses:

(1) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child;

engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

2) for which:

(A) less than two (2) 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;

(B) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(C) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or a combination of misdemeanor offenses occurring within any twenty-four (24) month period.

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(x) *Specified Sexual Activities* means any of the following:

(1) the fondling of another person's genitals, pubic region, anus, or female breasts;

(2) sex acts, nominal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(3) excretory functions as part of, or in connection with, any of the activities set forth in (1) through (2) above.

(y) *Substantial Enlargement* of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25) percent, as the floor areas exist on the date this Ordinance takes effect.

(z) *Transfer of Ownership or Control* of a sexually oriented business means and includes 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.

Section 838.03 Classification.

Sexually oriented businesses are classified as follows:

- (a) adult arcades;
- (b) adult bookstores, adult novelty stores, or adult video stores;
- (c) adult cabarets;
- (d) adult motels;
- (e) adult motion picture theaters;
- (f) adult theaters;
- (g) escort agencies;
- (h) semi-nude model studios; and
- (i) sexual encounter centers,

Section 838.04 License Required.

- (a) It is unlawful:

(1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this Ordinance,

(2) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the City pursuant to this Ordinance.

(3) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this Ordinance.

- (b) An application for a license must be made on a form provided by the City. All applicants must be qualified according to the provisions of this Ordinance.
- (c) An applicant for a sexually oriented business license or a sexually oriented business employee license shall file with the Enforcement Officer a completed application made on a form prescribed and provided by the City Director of Finance. An application shall be considered complete if it includes the information required in this Section. The applicant shall be qualified according to the provisions of this Ordinance. The application shall be notarized. The application shall include the information called for in Subsections (1) through (6), and where applicable, Subsection (7), as follows:

- (1) The full true name and any other names used in the preceding five (5) years.
- (2) The current business address.
- (3) Either a set of fingerprints suitable for conducting necessary background checks pursuant to this Ordinance, or the applicant's Social Security Number, to be used for the same purpose.

- (4) If the application is for a sexually oriented business license, the name, business location, legal description, business mailing address and phone number of the proposed sexually oriented business.
- (5) Written proof of age, in the form of either (i) a copy of a birth certificate and current photo, (ii) a current drivers license with picture, or (iii) other picture identification document issued by a governmental agency.
- (6) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked, or suspended, and if so, the reason or reasons therefore.
- (7) 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 Subsections (1) through (7) shall be supplemented in writing by certified mail, return receipt requested, to the Enforcement Officer within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- (d) 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 (6) inches.
- (e) If the person who wishes to operate a sexually oriented business is an individual, he or she shall sign the application for a license as applicant. If the person that wishes to operate a sexually oriented business is other than an individual (such as a corporation), 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 the applicant. Each applicant must be qualified under Section 838.05, and each applicant shall be considered as a licensee if a license is granted.
- (f) A person who possesses a valid business license is not exempt from the requirement of obtaining any required sexually oriented business license. A person who operates a sexually oriented business and possesses a business license shall comply with the requirements and provisions of this Ordinance, where applicable.
- (g) The information provided by an applicant in connection with the application for a license under this Ordinance shall be maintained by the Enforcement Officer on a confidential basis, and may be disclosed only: (1) to other governmental agencies in connection with a law enforcement or public safety function, or (2) as may otherwise be required by law or a court order.

Section 838.05 Issuance of License.

- (a) Upon the filing of a completed application for a sexually oriented business license or a sexually oriented business employee license, the Enforcement Officer shall issue a Temporary License to the applicant, which Temporary License shall expire upon the final

decision of the Enforcement Officer to deny or grant the license. Within twenty (20) days after the receipt of a completed application, the Enforcement Officer shall either issue a license, or issue a written notice of intent to deny a license, to the applicant. The Enforcement Officer 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 is delinquent in the payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business,

(3) 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 his/her social security number in accordance with the provisions of the Privacy Act of 1974, Pub. L. No. 93-579, § 7(a)(1).

(4) An applicant has been convicted of a specified criminal activity. The fact that a conviction is being appealed shall have no effect under this Subsection. For the purpose of this Subsection, "conviction:"

(a) means a conviction or a guilty plea; and

(b) includes a conviction of any business entity for which the applicant had, at the time of the offense leading to the conviction for a specified criminal activity, a management responsibility or a controlling interest.

(5) The license application fee required by this Ordinance has not been paid.

(6) The proposed sexually oriented business is located in a zoning district other than a district in which sexually oriented businesses are allowed to operate under the Centerville Zoning Ordinance, or is not in compliance with the location restrictions established for sexually oriented businesses in the appropriate zoning district(s).

(b) An applicant that is ineligible for a license due to Subsection (a)(4) of this Section may qualify for a sexually oriented business license only when the time period required by the applicable Subsection in Section 838.02(w) has elapsed.

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

Section 838.06 Fees.

(a) The non-refundable initial license fee and annual renewal fee for a sexually oriented business license or a sexually oriented business employee license shall be set by the City Council

at an amount determined to be sufficient to pay the cost of administering this program, subject to Subsection (b) herein.

(b) In no event shall the fees exceed two hundred fifty dollars (\$250.00) for the initial license and one hundred twenty five dollars (\$125.00) for the renewal fee for a sexually oriented business license. In no event shall the fees exceed one hundred dollars (\$100.00) for the initial license, and fifty dollars (\$50.00) for the renewal fee, for a sexually oriented business employee license.

Section 838.07 Inspection.

(a) For the purpose of ensuring compliance with this Ordinance, an applicant, operator or licensee shall, from time to time, but no more than four times a year in total, permit city law enforcement officers and official personnel of any other city department or agency with responsibility for enforcement of this Ordinance, to inspect, during a licensee's regular business hours, that portion of the premises of a sexually oriented business that is open to the public.

(b) No inspections other than those described in sub-section (a) above are permitted to enforce this Ordinance unless consented to by the applicant, operator or licensee or authorized through issuance of a valid search warrant.

Section 838.08 Expiration of License.

(a) Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 838.04. An application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

(b) When the City denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to the denial, the City finds that the basis for denial of the renewal license has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date that the denial became final.

Section 838.09 Suspension.

The City shall issue a written intent to suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:

(a) violated or is not in compliance with any section of this Ordinance; or

(b) refused to allow an inspection of the sexually oriented business premises as authorized by this Ordinance.

Section 838.10 Revocation.

(a) The Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if a cause of suspension in Section 838.09 occurs and the license has been suspended within the preceding twelve (12) months.

(b) The Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if the Officer determines that:

- (1) a licensee gave false or misleading information in the material submitted during the application process;
- (2) a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (3) a licensee has knowingly allowed prostitution on the premises;
- (4) a licensee has knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
- (5) a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises. This Subsection will not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either (i) in exchange for money, or (ii) in a public place or within public view.

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

(c) When, after the police and hearing procedure described in Section 838.11, the Enforcement Officer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation becomes effective, provided that, if the conditions of Section 838.11(b) are met, a Provisional License will be granted pursuant to that Section. If, subsequent to revocation, the Enforcement Officer finds that the basis for the revocation found in Subsections (b)(1) and (b)(4) of this Section 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.

Section 838.11 Hearing; License Denial, Suspension, Revocation; Appeal.

(a) If the Enforcement Officer determines that facts exist for denial, suspension, or revocation of a license under this Ordinance, the Enforcement Officer shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend, or revoke the license, including the grounds therefore, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the Enforcement Officer. Within five (5) working days of receipt of such notice, the respondent may provide to the Manager, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three (3) days of the receipt of respondent's written response, the Manager shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding.

Within ten (10) working days of the receipt of respondent's written response, the Manager shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the Manager in the time stated or, if after the hearing, the Manager finds that grounds as specified in this Ordinance exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five (5) days after the Manager sends, by certified mail, written notice that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

If the Manager finds that no grounds exist for denial, suspension, or revocation of a license,

then within five (5) days after the hearing, the Manager shall withdraw the intent to deny, suspend, or revoke the license, and shall so notify the respondent in writing by certified mail of such action and shall contemporaneously issue the license.

(b) When a decision to deny, suspend, or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied, or whose license has been suspended or revoked, shall have the right to appeal such action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of the denial, suspension, or revocation, the City shall immediately issue the aggrieved party a Provisional License. The Provisional License shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee, as the case may be, and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement.

Section 838.12 Transfer of License

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

Section 838.13 Location of Sexually Oriented Businesses.

(a) A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district other than B-PD, Business Planned Development, as defined and described in the Centerville Zoning Ordinance.

(b) A person commits an offense if the person operates or causes to be operated a sexually oriented business within 500 feet of the property line of:

- (1) A church, synagogue, mosque, temple, or building which is used primarily for religious worship or related religious activities;
- (2) A public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities. "School" includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
- (3) A boundary of a residential district as defined in the Centerville Zoning Code;
- (4) A public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian bicycle paths, wilderness areas, or other similar public land within the City which is under the control, operation, or management of the City park and recreation authorities;
- (5) The property line of a lot devoted to a residential use as defined in the Centerville Zoning Code;
- (6) An entertainment business which is oriented primarily towards children or family

entertainment; or

(7) Any premises licensed pursuant to the alcoholic beverage control regulations of the State.

(c) A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1000 feet of another sexually oriented business.

(d) A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(e) For the purpose of Subsection (b) of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Subsection (b). The presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

(f) For purposes of Subsection (c) of this Section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

Section 838.14 Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos, or Live Entertainment in Viewing Rooms.

(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 fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other electronic reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit, if granted, will be conspicuously posted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should 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 (6) inches. The City 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 may be made without the prior approval of the City.

(4) It is the duty of the licensee of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) 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 to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more managers 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 Subsection must be by direct line of sight from the manager's station

(6) It shall be the duty of the licensee to ensure that the view area specified in Subsection (5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other materials and, at all times, 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 Subsection (11) of this Section.

(7) No viewing room may be occupied by more than one (1) person at any time.

(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.

(9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be consisted of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty-eight (48) inches of the floor.

(b) A person having a duty under Subsection (1) through (14) of Subsection (a) herein commits a misdemeanor if he or she knowingly fails to fulfill that duty.

Section 838.15 Additional Regulations for Escort Agencies.

(a) An escort agency shall not employ any person under the age of eighteen (18) years.

(b) A person commits an offense if the person acts as an escort, or agrees to act as an escort, for any person under the age of eighteen (18) years.

Section 838.16 Additional Regulations Concerning Public Nudity.

(a) It shall be a misdemeanor for a person to knowingly and intentionally in a sexually oriented business, appear in a state of nudity or engage in specified sexual activities,

(b) It shall be a misdemeanor for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition, unless the person is an employee who, while semi-nude, is at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor

(c) It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to receive directly any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to any employee, while that employee is semi-nude in a sexually oriented business.

(d) It shall be a misdemeanor for an employee, while semi-nude, to knowingly and intentionally touch a customer or the clothing of a customer.

Section 838.17 Prohibition Against Children in a Sexually Oriented Business.

A person commits a misdemeanor if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

Section 838.18 Hours of Operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and noon (12:00) P.M. on Sundays.

Section 838.19 Exemptions.

It is a defense to prosecution under Section 838.16 that a person appearing in a state of nudity did so in a modeling class operated:

(a) by a proprietary school, licensed by the State of Ohio, a college, junior college, or university supported entirely or partly by taxation;

(b) 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

(c) in a structure:

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

(2) where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and

(3) where no more than one (1) nude model is on the premises at any one time.

Section 838.20 Injunction and Penalty

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 838.12 of this Chapter is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable by a fine of up to \$200.00 or thirty (30) days imprisonment. Each day a sexually oriented business so operates is a separate offense or violation.

Section 838.21 Severability

Each section and provision of this Chapter 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.

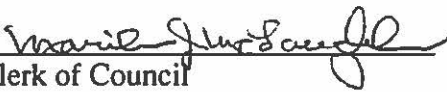
Section 3: This Ordinance shall become effective at the earliest date allowed by law.

PASSED THIS 24th day of January, 200⁷.



Mayor, City of Centerville, Ohio

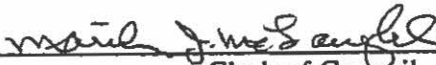
ATTEST:



Clerk of Council
City of Centerville

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 19-04, passed by the Council of the City of Centerville, Ohio on the 24th day of January, 2004.⁵


Clerk of Council

Approved as to form, consistency
with existing ordinances, the charter
and constitutional provisions.

Department of Law
Scott A. Liberman
Interim Municipal Attorney