

## **NOTICE**

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**CHAPTER 745  
SEXUALLY ORIENTED BUSINESSES**

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**SECTION 745.103 PURPOSE**

The purpose of this chapter is to regulate sexually oriented businesses through the application of uniform licensing requirements to promote the health, safety, and general welfare of the citizens of Kettering and establish reasonable and uniform regulations for the operation of sexually oriented businesses with the goal of reducing or eliminating the adverse secondary effects associated with sexually oriented businesses. It is not the intent of this chapter to limit or restrict the content of communicative materials, including sexually oriented materials. Similarly, it is not the intent of this chapter to restrict or deny access by adults to materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

**SECTION 745.105 DEFINITIONS**

For the purposes of Chapter 745, the following terms, phrases, words, and their derivations shall have the meanings as set forth herein. When not inconsistent with the context, words in the present

tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "Sections" are, unless otherwise specified, references to Sections in this Chapter. Defined terms remain defined terms whether or not capitalized or in bold case.

- (A) **ADULT ARCADE** - Any place to which the public is permitted or invited, wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at 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** - 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 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, slides, compact discs in any format (e.g., cd-rom, cd-r, cd-rw), digital video discs in any format (e.g., dvd), or other visual representations in any tangible medium, 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.

An establishment may have other principal business purposes that do not involve the offering for sale, rental, or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas," and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities."

Adult novelty store shall not include any establishment which, as a substantial portion of its business, offers for sale or rental to persons employed in the medical, legal or educational professions anatomical models, including representations of human genital organs or female breasts, or other models, displays, and exhibits produced and marketed primarily for the use in the practice of medicine or law or for use by an educational institution.

- (C) **ADULT CABARET** - 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 exposure 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 MODEL STUDIO** - Any establishment open to the public where a person who appears "nude" or "semi-nude" or who displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed or otherwise depicted by other persons who pay money or any form of consideration. Adult model studio shall also include any establishment which offers for sale or for viewing any apparel or other items which are displayed by models who appear in person in a state of "nudity" or "semi-nudity". Adult model studio shall not include:
- (1) A proprietary school which has a valid certificate of registration issued by the State of Ohio, or a college, junior college or university supported entirely or in part by public taxation;
  - (2) 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) A structure which has no sign visible from the exterior of the structure and no other advertising that indicates a model is available for viewing; where in order to participate in a class

a student must enroll at least three days in advance of the class; and where no more than one nude or semi-nude model is on the premises at any one time.

- (E) **ADULT MOTEL** - 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 which advertises the availability of same by a sign(s) visible from the public right-of-way, or by means of any off-premises advertising including, but not limited to, ads in newspapers, magazines, leaflets or pamphlets, or ads on radio or television; or
  - (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 sub-rent the room for a period of time that is less than ten (10) hours.
- (F) **ADULT MOTION PICTURE THEATER** - A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, digital video discs, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (G) **ADULT THEATER** - 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 exposure of "specified anatomical areas" or by "specified sexual activities."
- (H) **CITY** - The City of Kettering, Ohio.
- (I) **CUSTOMER** - Any of the following:
- (1) Any person present at a sexually oriented business, other than operators or employees, regardless of whether the person has given or paid any consideration to be present at the sexually oriented business and regardless of whether the

person has paid any money for goods or services at or to the sexually oriented business.

- (2) Any person, excluding an operator or employee, who has paid, or has offered, agreed, been solicited, or had someone else offer or agree on that person's behalf to pay any consideration, fee, or tip to an operator or employee of a sexually oriented business.
- (J) **EMPLOYEE** - Any person who performs any service for or on behalf of a sexually oriented business on a full-time, 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.
- (K) **ESCORT** - A person who, for any form of consideration, and for another person, agrees or offers: (1) to privately model in a state of "nudity" or "semi-nudity; or (2) to privately perform a striptease.
- (L) **ESCORT AGENCY** - A person or business association that for any form of consideration furnishes, offers to furnish, or advertises to furnish, escorts.
- (M) **ESTABLISHMENT** – Means and includes any of the following:
- (1) The opening or commencement of any sexually oriented business as a new business; or
  - (2) The conversion of an existing business, whether or not a sexually oriented business, to any of the sexually oriented businesses defined in this chapter; or
  - (3) The addition of any sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or
  - (4) The relocation of any such sexually oriented business.
- (N) **INDIVIDUAL** – A natural person.
- (O) **LICENSEE** - A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a 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.

- (P) **NUDE, NUDITY, or a STATE OF NUDITY** - The showing, representation, or depiction of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or of the female breast with less than a fully opaque covering of any part of the nipple, or of the covered male genitals in a discernibly turgid state.
- (Q) **OPERATE or CAUSE TO BE OPERATED**- 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.
- (R) **PERSON** - Every natural person, partnership, fiduciary, association, corporation or other entity, including but not limited to, any pass through entity as defined in Chapter 191 of these codified ordinances.
- (S) **SEMI-NUDE or SEMI-NUDITY** - The showing of the female breast below a horizontal line across the top of the areola, or the showing of the male or female buttocks or pubic area. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the 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.
- (T) **SEXUAL ENCOUNTER ESTABLISHMENT** - 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 establishment 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 any of the following:
- (1) Adult arcade;
  - (2) Adult bookstore;
  - (3) Adult novelty store;
  - (4) Adult video store;

- (5) Adult cabaret;
  - (6) Adult model studio;
  - (7) Adult motel;
  - (8) Adult motion picture theater;
  - (9) Adult theater;
  - (10) Escort agency; or
  - (11) Sexual encounter establishment.
- (V) **SPECIFIED ANATOMICAL AREAS** – Means any the following:
- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, or female breast(s) below a point immediately above the top of the areola; or
  - (2) Human male genitals in a discernibly turgid state even if completely and opaquely covered.
- (W) **SPECIFIED CRIMINAL ACTIVITIES** – Means any 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; or



- (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.

The fact that a conviction is being appealed shall have no effect.

(X) **SPECIFIED SEXUAL ACTIVITIES** – Means any the following:

- (1) Human genitals in a state of sexual stimulation or arousal; or
- (2) Acts, real or simulated, of human masturbation, sexual intercourse, sodomy, cunnilingus, or fellatio; or
- (3) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts; or
- (4) Excretory functions as part of or in connection with any activity set forth in (1), (2), or (3) above.

(Y) **TRANSFER OF OWNERSHIP OR CONTROL** - Means any the following:

- (1) the sale, lease, or sublease of the business; or
- (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 a person possessing the ownership or control.

**SECTION 745.107 CLASSIFICATION**

Sexually oriented businesses are classified as follows:

- (A) Adult arcade; or
- (B) Adult bookstore; or
- (C) Adult novelty store; or
- (D) Adult video store; or
- (E) Adult cabaret; or
- (F) Adult model studio; or
- (G) Adult motel; or
- (H) Adult motion picture theater; or
- (I) Adult theater; or
- (J) Escort agency; or
- (K) Sexual encounter establishment.

**SECTION 745.109 HOURS OF OPERATION**

(A) No sexually oriented business shall open for business before 8 a.m. or shall remain open for business after 12 midnight Monday through Saturday.

(B) No sexually oriented business shall be open for business on Sundays or legal Holidays observed by the City of Kettering.

(C) A sexually oriented business that has obtained a license to sell alcoholic beverages from the State of Ohio may remain open pursuant to the terms of that license but shall not conduct sexually oriented business activity before 8 a.m. or after 12 midnight.

(D) Subsections (A) and (B) shall not apply to adult motels.

**SECTION 745.111 PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS**

(A) No person operating or causing to be operated a sexually oriented business shall knowingly, or with reasonable cause to know, permit, suffer, or allow:

- (1) An individual under eighteen (18) years of age to be admitted, remain or purchase goods or services at the business premises without the specific consent of a parent or guardian; or
- (2) An individual under eighteen (18) years of age to be employed by the sexually oriented business.

(B) The operator of a sexually oriented business shall ensure that an attendant is stationed at each public entrance to the business during business hours. It shall be presumed that an attendant knew an individual was under the age of 18 unless such an attendant asked for and was furnished a valid operator's license or valid personal identification card issued by the State of Ohio.

**SECTION 745.113 LOITERING AND EXTERIOR LIGHTING AND MONITORING REQUIREMENTS**

The operator of a sexually oriented business shall:

- (A) Initiate and enforce a no loitering policy within the external boundaries of the real property upon which the sexually oriented business is located; and
- (B) Post conspicuous signs stating that no loitering is permitted on such property;
- (C) Designate one or more employees to monitor the activities of individuals on such property by visually inspecting such property at least once every thirty (30) minutes or inspecting such property by use of video cameras and monitors; and
- (D) Provide adequate lighting of the exterior premises, including off-street parking, 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.

**SECTION 745.115 ADVERTISING REGULATIONS**

No operator of a sexually oriented business shall:

- (A) Advertise the presentation of any activity prohibited by this chapter or any other local or state regulation; or
- (B) Display or exhibit material(s) or performance(s) in advertising which is visible outside the premises except for advertising showing the existence or location of a sexually oriented business; or
- (C) Allow any portion of the interior premises to be visible outside the premises.

**SECTION 745.117 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS, OR LIVE ENTERTAINMENT IN VIEWING ROOMS/BOOTHS**

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

- (A) Upon application for a sexually oriented business 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 shall 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 shall 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 requirement for renewal applications if the applicant by affidavit adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since the diagram was prepared.
- (B) The application shall be sworn to be true and correct by the applicant under oath and before a notary public.
- (C) No alteration in the configuration or location of a manager's station may be made without the prior written approval of the City.

- (D) At least one (1) employee with a valid sexually oriented business employee license shall be on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (E) The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station(s) of every area 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 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 subsection must be by direct line of sight from the manager's station.
- (F) The view area specified by subsection (E) shall remain unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other materials and, at all times. No patron shall be 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 (A) of this section.
- (G) No viewing room/booth shall be occupied by more than one (1) person at any time.
- (H) 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) foot-candles as measured at the floor level.
- (I) The level of illumination described above shall be maintained at all times that a patron is present in the premises.
- (J) No licensee shall allow openings of any kind to exist between any viewing rooms/booths.
- (K) No person shall make or attempt to make an opening of any kind between any viewing booths/rooms.
- (L) During each business day, the walls between the viewing booths/rooms shall be inspected to determine if any openings or holes exist.
- (M) All floor coverings in viewing booths/rooms shall be nonporous, easily cleanable surfaces, with no rugs or carpeting.

- (N) All wall surfaces and ceiling surfaces in viewing rooms/booths shall be constructed 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.

#### SECTION 745.119 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES

No escort, escort agency or employee of an escort agency shall commit any of the following acts; no operator of an escort agency shall knowingly permit, suffer, aid, assist or allow any escort or escort agency employee to commit any of the following acts:

- (A) Act as an escort, or agree to act as an escort, for any person under the age of eighteen (18) years.
- (B) Appear in a state of nudity.
- (C) Engage in specified sexual activities, actual or simulated.
- (D) Receive pay or gratuity from a patron while appearing in a state of nudity or semi-nudity.
- (E) Remain in the presence of a customer who is exposing specified anatomical areas in the presence of an employee or another customer.
- (F) Place his or her hand upon, touch with any part of his or her body, fondle in any manner, or massage the genitals, pubic area, or buttocks of any other person or the breast of any female or, if the employee is a female, of any other female, for the purpose of sexual stimulation.
- (G) Perform, offer or agree to perform any act that would require the touching of the genitals, pubic area or buttocks of any other person or the breasts of any female or, if the employee is a female, of any other female, for the purpose of sexual stimulation.
- (H) Uncover the genitals, pubic area or buttocks of any other person or the breast of any female or, if the employee is female, any other female.

#### SECTION 745.121 ADDITIONAL REGULATIONS FOR ADULT MOTELS

- (A) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented or vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(B) No 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 shall rent or sub-rent a sleeping room to a person and, within ten (10) hours from the time the room is rented, rent or sub-rent the same sleeping room again.

(C) For the purposes of subsection 745.107.2 of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

### **SECTION 745.123 NUDITY AT SEXUALLY ORIENTED BUSINESSES PROHIBITED**

Nudity is prohibited in any sexually oriented business, including but not limited to sexually oriented 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. This section does not apply to the private rooms in an adult motel. Any sexually oriented business that is found in violation of this section shall have its sexually oriented business permit suspended pursuant to this Chapter 745.

### **SECTION 745.125 EMPLOYEE CONDUCT**

No employee of a sexually oriented business, in the performance of his or her duties, shall knowingly do any of the following:

- (A) Place his or her hand upon, touch with any part of his or her body, fondle in any manner, or massage the genitals, pubic area, or buttocks of any other person or the breast of any female or, if the employee is a female, of any other female, for the purpose of sexual stimulation.
- (B) Perform, offer or agree to perform any act that would require the touching of the genitals, pubic area or buttocks of any other person or the breasts of any female or, if the employee is a female, of any other female, for the purpose of sexual stimulation.
- (C) Uncover the genitals, pubic area or buttocks of any other person or the breast of any female or, if the employee is female, any other female.
- (D) Engage in specified sexual activities, actual or simulated.
- (E) Appear in a state of nudity.
- (F) Appear in a state of semi-nudity unless the employee is on a stage at least two (2) feet above the floor and at least three (3) feet from any customer.

- (G) Receive any form of consideration from a customer while appearing in a state of semi-nudity.
- (H) Any live entertainment that is provided at a sexually oriented business in a private or semi-private room to five (5) or fewer persons at any one time shall take place in the presence of at least one employee who is not an entertainer and with all interior entrances to and exits from such room completely open and uncovered.
- (I) Show any specified anatomical areas of the employee.

#### SECTION 745.201 LICENSE REQUIREMENTS

- (A) No person shall do any of the following:
  - (1) Operate or conduct a sexually oriented business in the City of Kettering without a valid sexually oriented business license issued by the City; or
  - (2) Employ in a sexually oriented business an employee 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, no person shall be an employee of a sexually oriented business or provide sexually oriented business services in the City of Kettering without a valid license.
- (C) A person applying for a sexually oriented business employee license may, upon receipt of the application by the Chief of Police or the Chief's designee, work or perform services for a sexually oriented business without a sexually oriented business employee license until such time as the license is granted or the decision to deny the license becomes final pursuant to Section 745.215. Upon receipt of an applicant's completed application for a sexually oriented business employee's license, the Chief of Police or the Chief's designee 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 Chief of Police an application made on a form prescribed and provided by the Chief of Police. 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 include but not be limited to the following information:



- (1) The full true name of the applicant and any other names used by the applicant in the preceding five years.
- (2) The applicant's current residential address, business address 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. If the business will be owned and/or operated by or through an entity required to register with the Ohio Secretary of State, proof of good standing from the Ohio Secretary of State.
- (4) Written proof of age, in the form of a birth certificate, valid Ohio drivers' license with picture, or other picture identification document issued by a governmental agency.
- (5) Either a set of finger prints suitable for conducting background checks pursuant to this Ordinance, or the applicant's Social Security Number, to be used for the same purpose.
- (6) The issuing jurisdiction and the effective date(s) of any license or permit issued to applicant relating to a sexually oriented business and whether any such license or permit has been denied, revoked, or suspended and the reason(s) for the denial, revocation, or suspension.
- (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 this subsection shall be supplemented in writing within ten working days of a change in circumstances which would render the information originally submitted false or incomplete. The written supplement shall be sent by certified mail, return receipt requested, to the Chief of Police or the Chief's designee

(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 (6) inches. Applicants who are required to comply with Section 745.117 of this chapter shall submit a diagram meeting the requirements of Section 745.117(A).

(F) If a 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 a person who wishes to operate a sexually oriented business is other than an individual, (such as a corporation) each officer,

director, general partner, member 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 745.203 and each applicant shall be considered a licensee if a license is granted.

(G) A person who possesses any other type of license is not exempt from the requirement of obtaining a sexually oriented business license and/or sexually oriented business employee license.

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

#### SECTION 745.203 ISSUANCE OF LICENSE

(A) The Chief of Police or the Chief's designee shall approve or deny an application for a sexually oriented business license or a sexually oriented business employee license within thirty (30) days after receipt of an application. The Chief of Police or the Chief's designee shall not exercise any discretion when considering an application, but instead 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 745.201 (D) for issuance of the license or provided false information.
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. The proposed sexually oriented business location does not comply with the City of Kettering Zoning Code.
7. 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:
  - (a) 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
  - (b) 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
  - (c) 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 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)(7) of this section may qualify for a sexually oriented business license only when the applicable time period has elapsed.

(D) The license, if granted, shall state on its face the name and address of the person or persons to whom it is granted, a license number, and the expiration date. If the license is for a sexually oriented business, the license shall also contain the physical street address where the sexually oriented business is located. If the license is a sexually oriented business employee license, the license shall also 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 745.205 LICENSE FEES

There shall be a non-refundable license application fee of two hundred dollars (\$200.00) for a sexually oriented business license. There shall be a non-refundable license application fee of one hundred dollars (\$100.00) for a sexually oriented business employee license. These amounts are deemed to be sufficient to pay the cost of administering the licensing program set forth in Chapter 745.

#### SECTION 745.207 INSPECTIONS

(A) All persons shall permit law enforcement officers, authorized employees, and authorized agents of the City of to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with this chapter, at any time it is occupied or open for business. This section shall be reasonably construed by the City to authorize reasonable inspections of the premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

(B) No person shall refuse to permit a law enforcement officer or any agency enumerated in Subsection (A) of this section to inspect the premises at any time the premises are occupied or open for business.

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

**SECTION 745.209 LICENSE EXPIRATION**

(A) Each license issued pursuant to this Chapter shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may only be renewed by making application and payment of a fee as provided in this Chapter 745. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected.

(B) When the City denies renewal of a license upon showing of good cause, 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 745.211 LICENSE SUSPENSION**

The Chief of Police or the Chief's designee shall suspend a sexually oriented business license for a period not to exceed 30 days if the Chief of Police or the Chief's designee determines that the licensee or an employee of the licensee has:

- (A) violated or is not in compliance with any provision of this Chapter 745; or
- (B) has been on the sexually oriented business premises while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse; or
- (C) refused to allow an inspection of the sexually oriented business premises; or
- (D) knowingly permitted gambling by any person on the sexually oriented business premises.

**SECTION 745.213 – LICENSE REVOCATION**

(A) The Chief of Police or the Chief's designee shall revoke a sexually oriented business license if a cause of suspension in Section 745.211 occurs and the license has been suspended within the preceding twelve (12) months.

(B) The Chief of Police or the Chief's designee shall revoke a sexually oriented business license if the Chief of Police or the Chief's designee determines that:

- (1) a licensee gave false or misleading information in the application; or
- (2) a licensee or an employee has knowingly allowed possession, use, or sale of a controlled substance on the premises; or

- (3) a licensee or an employee has knowingly allowed prostitution on the premises; or
  - (4) a licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended; or
  - (5) a licensee has been convicted of an offense defined in Section 745.203(A)(7) for which the time period required in Section 745.203(A)(7) has not elapsed; or
  - (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 defined in Section 745.203(A)(7), 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; or
  - (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 Section 2907.01; or
  - (8) a licensee is delinquent in payment to the city of taxes or fees related to the sexually oriented business or arising out of any other business activity owned or operated by the licensee.
- (C) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (D) Subsection (B)(7) of this Section does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed sexual activity to occur in a public place or within public view.
- (E) When the Chief of Police or the Chief's designee 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 Chief of Police or the Chief's designee finds that the basis for the revocation has been corrected or abated, the applicant may 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 745.203(A)(7) has elapsed.

**SECTION 745.215 HEARING; REVOCATION, LICENSE DENIAL, SUSPENSION;  
APPEAL**

(A) If the Chief of Police or the Chief's designee determines that probable grounds exist for denial, suspension, or revocation of an application or license under this Chapter, then the Chief of Police or the Chief's designee shall serve written notice on the applicant or licensee ("respondent") of the intent to deny, suspend or revoke the license and the grounds for the denial, suspension, or revocation.

(B) Any notice shall be deemed to be properly served if a copy thereof is:

1. Delivered personally to the respondent; or
2. Transmitted via facsimile transmission to the last known fax number provided by the respondent when the transmission verification report indicates that the transmission was successful. A copy of the transmission verification report may be used as proof of service; or
3. Left at the usual place of business of the respondent and with someone who is 18 years of age or older; or
4. Sent by certified, preposted U.S. mail, return receipt requested, to the last known address of the respondent; or
5. If service is sent by certified, preposted U.S. mail and then returned showing that service was refused or unclaimed, or the return receipt is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular U.S. mail to the last known address of the respondent; or
6. Posted in a conspicuous place in or about the sexually oriented business or the last known address of the respondent.

(C) Any respondent served with a notice or order issued under this Chapter shall have the right to appeal the notice or order to the License Appeals Board, provided that a written application for appeal is filed within ten (10) working days after the date such notice or order was served. An application for appeal shall include the written basis for the appeal. The original written appeal, plus five (5) copies of same shall be filed with the office of the City Manager. An appeal shall stay the enforcement of the notice or order until the appeal is heard by the License Appeals Board.

(D) The License Appeals Board shall be comprised of three (3) members: the City Manager or the City Manager's designee, the Director of Finance or the Director's designee, and the Director of Planning and Development or the Director's designee. The Board shall select one of its members to serve as Chairperson. The City Manager shall designate a City of Kettering

employee to serve as secretary to the Board. The secretary shall file a record of all proceedings in the office of the City Manager.

(E) The procedure and conduct of License Appeals Board proceedings shall adhere to the then current version of Robert's Rules of Order, unless otherwise provided for by written and Board adopted rules of procedure. Any decision of the License Appeals Board shall require a majority of those members present at the meeting during which the appeal was heard.

(F) The Board shall have jurisdiction to hear appeals that are timely filed and are appeals from an order or notice issued pursuant to this Chapter. For each timely filed application, the Board shall conduct a hearing within ten (10) working days after the date of application filing, unless the respondent consents in writing to an extension of the hearing date. At the hearing, the Respondent may be represented by counsel, present evidence and witnesses on respondent's behalf, and cross-examine adverse witnesses.

(G) The License Appeals Board shall issue a written decision within three (3) working days of the conclusion of the hearing. The License Appeals Board Secretary shall serve a copy of the decision on the appellant. Any decision of the License Appeals Board is final and may be appealed to a court of competent jurisdiction pursuant to Ohio Revised Code Chapter 2506. Any suspension or revocation of a does not take effect until the License Appeals Board issues a final decision.

(H) Immediately upon the filing of an appeal pursuant to this section, an appellant shall be issued a temporary license pending a final decision on said appeal. Such temporary license shall be subject to all provisions of this Section 745.215 and shall not expire until either (i) a court of competent jurisdiction has entered a judgment on the merits of the applicant or licensee's appeal or (ii) no appeal was filed and the time for filing an appeal has expired.

#### **SECTION 745.217 LICENSE TRANSFER**

No license issued pursuant to this Chapter 745 shall be transferred to another person. No licensee shall operate a sexually oriented business at a location other than the location specified in the licensee's application. A separate license shall be obtained for each and every address or premises at which a sexually oriented business is located.

**SECTION 745.301 SECTION HEADINGS** Section headings are for convenience only and shall not be used to interpret any portion of this Chapter 745.

#### **SECTION 745.305 ENFORCEMENT AND PENALTY**

(A) Enforcement of any of the provisions of this Chapter 745 may be by civil action, including, but not limited to, any equitable action for injunctive relief or any action at law for damages, and/or criminal prosecution.



(B) No person shall fail or refuse to comply with any provision of this Chapter 745, or any order issued pursuant to this Chapter 745.

(C) In addition to any applicable penalties under state law, whoever violates any provision of this Chapter 745 is guilty of a misdemeanor of the Fourth degree. Each violation or non-compliance shall be considered as a separate offense, as will each day of continued violation or non-compliance. If a person has been previously convicted for a violation of this Chapter 745, any subsequent offense(s) committed within 12 months of the prior conviction shall be a misdemeanor of the Second degree.

### SECTION 745.307 IMMUNITY FROM PROSECUTION

The City and its designee, the Kettering Police Department and all other departments and agencies, and all other city officers, agents, and employees, charged with enforcement of State and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon a sexually oriented business while acting within the scope of authority conferred by this chapter.

### SECTION 745.309 EXEMPTIONS

(A) It is a defense to prosecution under section 745.125(E) that a person appearing in a state of nudity did so in a modeling class operated:

- (1) by a proprietary school which has a valid certificate of registration issued by the State of Ohio; a college, junior college, or university supported entirely or partly by taxation; or
- (2) by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) in a structure:
  - (a) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
  - (b) where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and

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

(B) It is a defense to prosecution for violation under section 745.125(I) that an employee of a sexually oriented business exposed any specified anatomical area during the bona fide use of a restroom or dressing room accessible only to employees.

#### **SECTION 745.311 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 this Chapter 745, 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.

Legislative history: Ord. 3965-04; passed 2/24/04.