

CHAPTER 115: SEXUALLY ORIENTED BUSINESSES

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GENERAL PROVISIONS

§ 115.01 FINDINGS.

Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the City Council and on findings incorporated in the cases of the City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), Young v. American Mini Theatres, 426 U.S. 50 (1976), and Barnes v. Glen Theatre Inc., 501 U.S. 560 (1991), and on studies in other communities, including but not limited to Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on finding from the Report of the Attorney General's Working Group On The Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Roxboro City Council finds:

(A) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(B) Certain employees of sexually oriented businesses defined in this chapter as adult theatres and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(C) Sexual acts, including masturbation and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(D) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(E) Persons frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(F) At least 50 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 B; Non A, Non B amebiasis; salmonella infections and shigella infections.

(G) Since 1981 and to the present, there have 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.

(H) As of May, 2000, there have been 777 reported cases of AIDS in the state of North Carolina.

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

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

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

(L) 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, exposure to infected blood and blood components, and from an infected mother to her newborn.

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

(N) Sanitary conditions in some sexually oriented businesses 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 operators of the facilities to self-regulate those activities and maintain those facilities.

(O) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view adult oriented films.

(P) The findings noted in divisions (A) through (O) of this section raise substantial governmental concerns.

(Q) Sexually oriented businesses have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.

(R) A reasonable licensing procedure is an appropriate mechanism to place the burden of reasonable regulation on the owners and operators of sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators of such businesses to ensure that they are run in a manner consistent with the health, safety and welfare of patrons and employees, as well as the citizens of the city. It is appropriate to require reasonable assurances that the licensees of sexually oriented businesses are the actual

operators of such businesses, and are fully in possession and control of the premises and activities occurring therein.

(S) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial government interest in curbing the illegal and unsanitary sexual activity occurring in adult theatres.

(T) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects, and by preventing minors from working in such environments.

(U) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of sexually oriented businesses, where such information is substantially related to the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(V) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this chapter is designed to prevent, or who are likely to be witnesses to such activity.

(W) The fact that an applicant for an adult use license has been convicted of a sexually-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this chapter.

(X) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted disease.

(Y) The general welfare, health, morals and safety of the citizens of the city will be promoted by the enactment of this chapter.

(Ord. passed 2-13-01)

§ 115.02 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, concentration and operation 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.

(Ord. passed 2-13-01)

§ 115.03 DEFINITIONS AND CLASSIFICATIONS.

A comprehensive list of definitions concerning sexually oriented businesses and list of classifications of sexually oriented businesses are found in §§ 22-2 and 22-3 of the Zoning Ordinance, which sections are incorporated herein by reference.

(Ord. passed 2-13-01)

LICENSING AND REGULATION

§ 115.15 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 chapter.

(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 chapter.

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

(B) An application for a license must be made on a form provided by the city.

(C) All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the city to determine whether the applicant meets the qualifications established in this chapter.

(D) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20% or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under § 115.16, and each applicant shall be considered a licensee if a license is granted.

(E) The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is:

(a) An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age;

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

(c) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

(2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state: 1) the sexually oriented business' fictitious name, and 2) submit the required registration documents.

(3) Whether the applicant has been convicted of a specific criminal activity as defined in this chapter, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

(4) Whether the applicant has had a previous license under this chapter or other similar sexually oriented business ordinances from another city, town, or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of denial, suspension or revocation.

(5) Whether the applicant or a person residing with the applicant holds any other licenses under this chapter or other similar sexually oriented business ordinance from another city, town or county, and, if so, the names and locations of such other licensed businesses.

(6) The single classification of license for which the applicant is filing.

(7) The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

(8) The applicant's mailing address and residential address.

(9) A recent photograph of the applicant(s).

(10) The applicant's driver's license number, Social Security number, and/or his or her state or federally-issued tax identification number.

(11) 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 it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(12) A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor, depicting the property lines and the structures containing any existing sexually oriented businesses within 2,000 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, public park or recreation area within 2,000 feet of the property to be certified; the property lines of any established residence within 500 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(13) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than 150 square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in § 22-8 of the Zoning Ordinance.

(F) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit, on a form to be provided by the city, the following information:

- (1) The applicant's name or any other name (including "stage" names) or aliases used by the individual;
- (2) Age, date, and place of birth;
- (3) Height, weight, hair and eye color;
- (4) Present residence address and telephone number;
- (5) Present business address and telephone number;
- (6) Date, issuing state and number of driver's permit or other identification card information;
- (7) Social Security number; and
- (8) Proof that the individual is at least 18 years of age.

(G) Attached to the application form for a sexually oriented business employee license, as provided above, shall be the following:

(1) A color photograph of the applicant, clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Police Department. Any fees for the photographs and fingerprints shall be paid by the applicant.

(2) A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country, has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for denial, revocation, or suspension. A copy of any order or denial, revocation or suspension shall be attached to the application.

(3) A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

(Ord. passed 2-13-01) Penalty, see § 10.99
§ 115.16 ISSUANCE OF LICENSE.

(A) The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within 30 days from the date the completed application is filed. After the investigation, the city shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) The applicant has failed to provide information reasonably necessary for issuance of the license, or has falsely answered a question or request for information on the application form;

(2) The applicant is under the age of 18 years;

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

(4) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this chapter; or

(5) The applicant has had a sexually oriented business employee license revoked by the city within two years of the date of the current application. Denial, suspension, or revocation of a license issued pursuant to this division shall be subject to appeal as set forth in § 115.21.

(B) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the city that the applicant has not been convicted of any specified criminal activity as defined in this chapter, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in § 115.17.

(C) Within 30 days after receipt of a completed sexually oriented business application, the city shall approve or deny the issuance of a license to an applicant. The city shall approve the issuance of a license to an applicant, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) An applicant is under 18 years of age.

(2) An applicant or a person with whom the applicant is residing is overdue in payment of the city's taxes, fees, fines or penalties assessed against or imposed upon him/her in relation to any business.

(3) An applicant has failed to provide information reasonably necessary for issuance of the license, or has falsely answered a question or request for information on the application form.

(4) An applicant has been denied a license by the city to operate a sexually oriented business within the preceding 12 months, or whose license to operate a sexually oriented business has been revoked within the preceding 12 months.

(5) An applicant has been convicted of a specified criminal activity as defined in this chapter.

(6) The premises to be used for the sexually oriented business have not been approved by the Health Department, Fire Department, and Building Officials as being in compliance with applicable laws and ordinances.

(7) The license fee required by this chapter has not been paid.

(8) An applicant of the proposed establishment is in violation of or is not in compliance with any one or more of the provisions of this chapter.

(D) The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the classification for which the license is issued, as set forth in the Zoning Ordinance. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business, so that they may be easily read at any time.

(E) The Health Department, Fire Department, and Building Officials shall complete their certification that the premises is in compliance or not in compliance within 20 days of receipt of the application by the city.

(F) A sexually oriented business license shall be issued for only one sexually oriented business classification.

(Ord. passed 2-13-01) Penalty, see § 10.99
§ 115.17 FEES.

(A) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$250 non-refundable application and investigation fee.

(B) In addition to the application and investigation fee required in division (A), above, every sexually oriented business that is granted a license (new or renewal) shall pay to the city an annual non-refundable license fee of \$100 within 30 days of license issuance or renewal.

(C) Every application for a sexually oriented business employee license (whether for new license or for renewal of an existing license) shall be accompanied by an annual \$25 non-refundable application, investigation, and license fee.

(D) All license applications and fees shall be submitted to the City Tax Collector's office.

(Ord. passed 2-13-01)

§ 115.18 EXPIRATION OF LICENSE.

(A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 115.15. Application for renewal shall 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, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license, if at least 90 days have elapsed since the date denial became final.

(Ord. passed 2-13-01)

§ 115.19 SUSPENSION.

The city shall suspend a license for a period not to exceed 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 chapter;

(B) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

(Ord. passed 2-13-01)

§ 115.20 REVOCATION.

(A) The city shall revoke a license if a cause of suspension as set forth in § 115.19 occurs and the license has been suspended within the preceding 12 months.

(B) The city shall revoke a license if it 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 knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) Except in the case of an adult motel, 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; or

(6) A licensee is delinquent in payment to the city, county, or state for any taxes or fees past due.

(C) When the city revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented business license for one year from the date the revocation became effective. If, subsequent to revocation, the city finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license, if at least 90 days have elapsed since the date the revocation became effective.

(Ord. passed 2-13-01)

§ 115.21 APPEAL.

After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review in the nature of a mandamus action of such administrative action in any court of competent jurisdiction. The city shall answer a complaint within 15 days of service (as opposed to the typical 30-day answer period) and will not seek more than a five-day extension of time to answer, if any. The city will consent to and join in a request by the applicant for an expedited hearing, trial or other proceeding.

(Ord. passed 2-13-01)

§ 115.22 TRANSFER.

A licensee shall not transfer his/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.

(Ord. passed 2-13-01) Penalty, see § 10.99