

723.01 PURPOSE

The purpose of the Ordinance is to regulate sexually oriented businesses through the application of uniform zoning requirements to promote the health, safety, morals and general welfare of the citizens of Mason 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 Ordinance to limit or restrict the content of communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Ordinance 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.

723.02 DEFINITIONS

For purposes of this Chapter, certain terms and words are defined as follows:

- (a) "Sexually oriented businesses" are those businesses defined as:
- (1) "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 or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing "specified sexual activities" or "specified anatomical areas."(2) "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 to the sale or rental, for any form of consideration, of any one or more of the following:
 - i. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;"
 - ii. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse.
 - (2) "Adult cabaret" means a nightclub, bar, restaurant, "bottle club," or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

- i. Persons who appear semi-nude;
 - ii. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities," or
 - iii. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (3) "Adult motel" means a motel, hotel or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or (b) offers a sleeping room for rent for a period of time less than ten hours; or (c) allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten hours;
- (4) "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.
- (5) "Adult theatre" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities."
- (6) "Escort Agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
- (7) "Massage parlor" means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with "specified sexual activities," or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "specified anatomical areas."

The definition of sexually oriented businesses shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

- (8) "Semi-Nude Model Studio" means any place where a person, who regularly appears in a state of semi-nudity or displays "specified anatomical areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.
- (9) "Sexual encounter establishment" means a business or commercial establishment, that as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas" or activities when one or more of the persons is in a state of nudity or semi-nudity. The definition of 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.
- (b) "Controlling interest" means the power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote twenty percent or more of any class of voting securities of a business. The ownership, control, or power to vote twenty percent or more of any class of voting securities shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.
- (c) "Distinguished or characterized by an emphasis upon" means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or description 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 description of "specified anatomical areas" or "specified sexual activities."
- (d) "Employee" means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business and whether or not the person is determined an employee, independent contractor, agent or otherwise. Employee does not include a person exclusively on the premises for repair or

maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

- (e) “Escort” means a person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, and who agrees or offers to privately model lingerie, to privately perform a striptease for another person or engage in any specified sexual activities.
- (f) “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 of the sexually oriented businesses defined in this Chapter;
 - (3) The addition of any of the sexually oriented businesses defined in this Chapter to any other existing sexually oriented business; or
 - (4) The relocation of any such sexually oriented business.
- (g) “Liquor License” means a license issued by the State of Ohio to serve or sell alcohol as permitted under Chapter 4301 of the Revised Code.
- (h) “Nudity” or “State of Nudity” means:
 - (1) The appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or
 - (2) A state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.
- (i) “Operator” means and includes the owner, permit holder, custodian, manager, operator, or person in charge of any permitted or licensed premises.
- (j) “Permitted or Licensed Premises” means any premises that requires a license and/or permit and that is classified as a sexually oriented business.
- (k) “Permittee and/or Licensee” means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.
- (l) “Person” means an individual, proprietorship, partnership, corporation, association, or other legal entity.

- (m) "Protected Uses" are those uses listed below and defined as:
- (1) "Public building" means any building owned, leased, or held by the United States, the state, the county, the city, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used for governmental purposes including but not limited to public libraries.
 - (2) "Public park" or "recreation area" means public land 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, open space, wilderness areas, or similar public land within the city which is under the control, operation, or management of the city park and recreation authorities.
 - (3) "Religious institution" means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.
 - (4) "Residential District or Use" means a single family, duplex, townhouse, multiple family, or mobile park or subdivision and campground as defined in the Zoning Code.
 - (5) "School" means any public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary 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 any facilities used primarily for another purpose and only incidentally as a school.
- (n) "Semi-Nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.
- (o) "Specified Anatomical Areas" as used in this division means and includes any of the following:
- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or

- (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.
- (p) "Specified Sexual Activities" as used in this division means and includes any of the following:
- (1) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; or
 - (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
 - (3) Masturbation, actual or simulated; or
 - (4) Human genitals in a state of sexual stimulation, arousal or tumescence; or
 - (5) Excretory functions as part of or in connection with any of the activities set forth in subdivisions (A) through (D) of this subsection; or
 - (6) Sexual activity as defined by Ohio Revised Code Section 2907.01(C)
- (q) "Specified Criminal Acts" are sexual crimes against children, sexual abuse, rape, gross sexual imposition, the distribution of obscenity or other material harmful to minors, pandering, prostitution or any crime or tax violations in connection with sexually oriented business for which less than two years has elapsed if the specified criminal act was a misdemeanor or for which less than five years has elapsed if the specified Criminal Act was a felony or a combination of two or more misdemeanors.
- (r) "Substantial Enlargement of a Sexually Oriented Business" means increase in the floor areas occupied by the business by more than fifteen percent, as the floor areas exist on January 10, 1996.
- (s) "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;
 - (3) The establishment of a trust, gift, or other similar legal devise which transfers 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.

723.03 ESTABLISHMENT AND CLASSIFICATION OF REGULATED BUSINESSES

- (a) Sexually oriented businesses shall be established only in select commercial and industrial zones and shall be subject to the restrictions of this Chapter. Specifically, sexually oriented businesses shall be allowed to locate in areas zoned B-2, B-3, HT-1, I-1, and I-2 provided the other requirements of this Chapter are met. No person shall establish a sexually oriented business within 750 feet of another such business or within 750 feet of any protected uses as defined in this Chapter, or within 750 feet of any property zoned or used for residential purposes or within 750 feet of an establishment holding a valid Ohio liquor license and which engages primarily in the sale and service of alcohol for consumption on the premises of the establishment whether or not food is also served. Sexually oriented businesses, as defined in Section 723.02, are classified as follows:
- (1) Adult bookstore, adult novelty store or adult video store;
 - (2) Adult cabaret;
 - (3) Adult motel;
 - (4) Adult motion picture theater;
 - (5) Adult theater;
 - (6) Massage parlor;
 - (7) Sexual encounter establishment;
 - (8) Escort agency; or
 - (9) Semi-Nude model studio
- (b) Nothing in this Section prohibits the location of sexually oriented businesses within retail shopping centers in B-2 and B-3 commercial zones where such activities will have their only frontage upon enclosed malls or malls isolated from direct view from public streets, religious institutions, schools, parks, or other public facilities and residential areas without regard to the distance requirements of subsection (a) above, except where a protected use, such as a day care facility, is located within an enclosed or isolated mall.
- (c) Nothing in this Section prohibits the location of sexually oriented businesses within 750 feet of any establishment licensed to sell but not serve alcohol on its premises such as a grocery store, mini-mart or gas station. The provisions of this Section also do not apply to establishments that engage primarily in the sale and service of food, whether or not the establishment also holds a liquor license, such as where an establishment holds a D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f,

D-5g, D-5h, D-5i, D-5j or D-7 permit as defined in Revised Code Sections 4303.18, 4303.181 and 4303.183.

723.04 MEASUREMENT OF DISTANCE

For the purposes of this Chapter, distance between any two sexually oriented businesses and any sexually oriented business and any establishment where alcohol is served shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any sexually oriented business and any protected use as defined in this Chapter shall be measured in a straight line, without regard to intervening structures from the nearest part of the sexually oriented business to the nearest property line of the protected use.

723.05 NON-CONFORMING USES

- (a) Any sexually oriented business lawfully operating at the time of the enactment of this Ordinance that is in violation of 723.03 shall be deemed a non-conforming use.
- (b) A sexually oriented business lawfully operating as a conforming use is not rendered non-conforming by the subsequent location of a protected use within 750 feet of the sexually oriented business. This subsection does not apply to a business whose permit and/or license has expired or been revoked.
- (c) Any establishment subject to the provisions of this Chapter shall apply for a permit as provided under 723.06 within thirty days of the effective date of this Ordinance.
- (d) Any non-conforming use must comply with and is governed by Chapter 1173 of the Zoning Code. Any non-conforming use under this Chapter which is discontinued or abandoned for more than six months or which is destroyed or damaged such that the damage exceeds more than 50 percent of its replacement cost may not thereafter be used except as a conforming use in accord with §§ 1173.11 and 1173.12 of the Mason Zoning Code.

723.06 PERMIT REQUIRED

- (a) No sexually oriented business shall be permitted to operate without a valid sexually oriented business permit issued by the City. Operation of such a business without a permit is a misdemeanor.
- (b) The City Manager, or his/her designee, is responsible for granting, denying, revoking, renewing, suspending and canceling permits for proposed or existing sexually oriented businesses. To be approved, applications must comply with all locational and zoning requirements of this Chapter and the Zoning and Building Codes of the City of Mason.

(c) Applications must be made on a form provided by the City. Applicants must provide an original and two copies of a sworn application which must contain the following information and documents. Application shall be deemed complete when it contains the information contained in this Section 723.06.

(1) If the applicant is:

- i. an individual: the individual's legal name, aliases and proof of age over 18.
- ii. a partnership: the complete name, all partners' names, and a copy of any partnership agreement.
- iii. a corporation: its complete name, date of incorporation; names of all officers, directors, and principal stockholders, name and address of its registered agent and evidence of good standing under Ohio law. A principal stockholder is any person who owns more than twenty percent (20%) of the outstanding shares of stock of the corporation.

(2) The name of the sexually oriented business if different from the applicant's.

(3) Whether the applicant or any individual listed in Division 1 of this Section has been convicted of a specified criminal act as defined under Section 2-14 within either two (2) years for misdemeanor offenses, or five (5) years for felony offenses or two or more misdemeanor offenses, immediately preceding the application date, and, if so, the act involved and the date and place of the conviction.

(4) Whether the applicant or other listed individuals has had a sexually oriented business permit revoked, suspended, or denied and the name of the business, the city or county of occurrence and the date on which the permit was suspended, revoked, or denied within the last five years.

(5) Whether the applicant or other listed individuals hold any other sexually oriented business permits and the names and locations of all other such businesses.

(6) The proposed location of the business including a legal description of the property, street address and telephone number.

(7) The applicant's business and residential addresses and telephone numbers.

- (8) The applicant's tax identification number and written proof of age in the form of picture identification issued by a governmental agency.
 - (9) A sketch or diagram showing the configuration and total floor space of the premises. The sketch need not be professional, but must be drawn to scale and accurate to plus or minus six inches.
 - (10) A current certificate and straight line drawing prepared within thirty (30) days prior to application by a registered surveyor depicting property lines and structures and the property lines of any existing protected use within 750 feet of the proposed business. A protected use is established if it is in existence at the time the application is submitted.
 - (11) The application must be signed by the individual applicant, and each person who has at least a 20% interest in the business. If a corporation is the applicant, then each person owning at least 20% of the corporation must sign the application.
- (d) Applicants are under a continuing duty to promptly update their application information. Failure to do so within thirty (30) days of the date of a change in application information shall be grounds for permit suspension.
 - (e) If the City Manager learns that an applicant improperly completed the permit application, the City Manager shall promptly notify the applicant and allow ten (10) days for correction.
 - (f) A \$500.00 non-refundable application fee is due at the time the applicant files an application under this Section.
 - (g) Prior to obtaining a permit to operate a sexually oriented business, the applicant shall certify that the proposed location complies with the locational requirements of the Chapter.
 - (h) The possession of other types of state or city permits and/or licenses, including a liquor license, does not exempt an applicant from the requirement of obtaining a sexually oriented business permit.
 - (i) By filing an application under this Section, the applicant shall be deemed to have consented to the provisions of this Ordinance and to the investigation of the application by the City Manager and his designees.
 - (j) The applicant is required to provide the City with the names of all employees required to be licensed under 723.15 of this Ordinance. This obligation continues even after a permit is granted or renewed and all new employees required to obtain a license under this Chapter must be reported to the City no later than 10 business days after the employee is hired.

- (k) A sexually oriented business permit may be renewed annually upon written application, subject to the payment of a \$300.00 annual permit fee, and a finding that the permit holder is still in conformance with the permit requirements.

723.07 APPLICATION INVESTIGATION PROCESS

Upon receipt of a completed application the City shall send photocopies of the application to all city agencies responsible for the enforcement of health, fire, building and zoning codes and laws. Each agency shall investigate the application for compliance with its respective code and approve or disapprove the application within twenty (20) days of the receipt of the application by the City. An agency shall disapprove an application if it finds that the business would be in violation of a specific provision of a statute, code, ordinance, regulation or other law in effect in the City and the reason(s) for disapproval must be stated.

723.08 ISSUANCE OF A PERMIT

- (a) An application shall be granted or denied within thirty (30) days from the date of the City's receipt of a completed application except as provided under subsection (d) herein.
- (b) Grant of Application for Permit:
 - (1) An application shall be granted unless one of the criteria of subsection (c) of this Section is met.
 - (2) The permit shall state on its face the name of the person or persons to whom it is granted and the address of the sexually oriented business and the permit expiration date. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so it can be read at any time.
- (c) Denial of Application for Permit:
 - (1) An application may be denied for any of the following reasons:
 - i. An applicant is under eighteen (18) years of age;
 - ii. An applicant is overdue on the payment of taxes, fees, fines, or penalties assessed by the city in relation to a sexually oriented business.
 - iii. An applicant's permit to operate a sexually oriented business has been denied or revoked within the preceding twelve months.

- iv. An applicant has failed to provide information as requested in the application or has supplied false information.
- v. The \$500.00 application fee has not been paid.
- vi. The proposed business does not comply with the 750 feet location requirements of Sections 723.03(a) and (c).
- vii. To grant the application would violate a statute, ordinance or court order.
- viii. The applicant has a permit under this Ordinance which has been suspended or revoked.
- ix. The applicant has been convicted of a specified criminal act within the time limitation of Section 723.06(c)(3).
- x. An applicant knowingly has in his/her employ an employee who does not have a valid license as required in Section 723.15.

(2) Applicants shall be promptly notified of an application denial and the reasons for denial.

(d) Cooperation with city agencies: As set forth in Section 723.07, all city agencies responsible for the enforcement of health, fire, building and zoning codes and laws shall determine if the proposed business is in compliance with its area of regulation within 20 days of receipt of a completed application. If the applicant requests additional time to comply with a statute, code, ordinance, regulation or other law in effect in the City, upon agreement of the applicant, a one time extension of an additional 30 days may be given for the City to grant or deny the application.

723.081 ANNUAL PERMIT FEE

The annual fee for a sexually oriented business permit is \$300.00.

723.09 INSPECTION

Representatives of the city enforcement agencies, County Health Department and the Fire Department shall be permitted to inspect those portions of the premises of a sexually oriented business where patrons are permitted, to determine compliance with their respective departments, at any time it is open for business.

723.10 EXPIRATION OF PERMIT

Each permit shall expire one year from the date of issuance and may be renewed by making an application under Section 723.06 at least seventy-five (75) days before the expiration date. If a renewal is denied, a new permit shall not be issued for one (1) year from the date of denial. If the basis for denial is delinquency in fees or taxes or an incomplete or false application, and the original defect has been corrected and at least ninety (90) days have elapsed from the date the denial became final, a new permit shall be granted.

723.11 SUSPENSION OF PERMIT

A permit to operate a sexually oriented business may be suspended until the violation causing the suspension has been corrected, provided that the period is not to exceed thirty days, if a permittee knowingly or an employee of a permittee intentionally and with knowledge of the permittee:

- (a) Violates or is not in compliance with this Ordinance; or
- (b) Works at the sexually oriented business while under the influence of alcohol; or
- (c) Refuses to allow an inspection of the sexually oriented business in accord with this Ordinance; or
- (d) Knowingly permits gambling on the premises of the sexually oriented business; or
- (e) Fails to correct a violation of a building, fire, health or zoning code within seven (7) days of notification of such violation; or
- (f) Transfers the sexually oriented business permit to another in violation of this Ordinance; or
- (g) Knowingly employs a person without a valid license as required in Section 15 of this Ordinance.

723.12 REVOCATION OF PERMIT

- (a) A permit to operate a sexually oriented business shall be revoked upon a determination that either a permit is to be suspended for a second time within a twelve month period or that a permittee knowingly or employee of a permittee intentionally and with knowledge of the permittee:
 - (1) Gave false or misleading information on the permit application which enhanced the permittee's opportunity to obtain a permit; or
 - (2) Knowingly allowed the possession, sale or use of a controlled substance on the premises; or

- (3) Knowingly allowed prostitution on the premises; or
 - (4) Knowingly operated the business while under permit suspension; or
 - (5) Has been convicted of a "specified criminal act" for which the time period required in Section 723.06(c)(3) has not elapsed and the employer continues to employ said person; or
 - (6) Committed a specified criminal act on the permitted premises while employed by the permit holder; or
 - (7) Has been convicted of tax violations for taxes or fees related to a sexually oriented business; or
 - (8) Allowed any act of sexual intercourse, sexual conduct or any other specified sexual activities to occur in or on the permitted premises.
- (b) A permit shall be revoked for one year and a permittee shall not receive any other permits for any other sexually oriented businesses during the one year revocation period.

723.13 JUDICIAL REVIEW OF PERMIT DENIAL, SUSPENSION OR REVOCATION

An applicant or permittee may seek review of a denial of an application, denial of a renewal of an application, suspension or revocation of a permit through the City Council or special review board if one is established. Review of the denial, suspension or revocation shall take place within 30 days of the application for review. The City Council or Special Review Board shall issue a written decision within 15 days of the commencement of the review hearing unless a longer period is necessary to accommodate the needs of the agreed application. If the denial, suspension or revocation is affirmed on review, the applicant or permittee may seek review of the administration decision in the Warren County Court of Common Pleas. The suspension or revocation of a permit will be stayed upon application for review by Council. If the applicant fails to perfect its appeal within 60 days of a final council decision, the stay will dissolve and the suspension or revocation will take immediate effect. If an applicant properly appeals to a court of competent appellate jurisdiction the stay will continue during the pendency of the appeal unless dissolved by the Court. Upon notice of appeal to the Common Pleas Court, the City will prepare an administrative transcript within 20 days.

723.14 TRANSFER OF PERMIT

- (a) A permittee shall not operate a sexually oriented business at any place other than the address designated in the application for permit.
- (b) A permittee shall not transfer a permit to another person unless that person:

- (1) Obtains an amendment to the permit upon the satisfactory completion of an application;
 - (2) Pays a transfer fee of twenty percent (20%) of the annual permit fee.
- (c) A permit may not be transferred after the permittee has been notified that suspension or revocation proceedings have been or will be brought against the permittee.
- (d) A permit shall not be transferred to another location.
- (e) Any transfer attempted in violation of this section is void and will revoke the permit.

723.15 SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE

- (a) All employees of a sexually oriented business are required to obtain a Sexually Oriented Business Employee License. Each applicant shall pay a permit fee of \$25.00 to cover reasonable administration costs.
- (b) On a form provided by the City the applicant shall provide his or her:
- (1) Name, including any "stage" names or aliases;
 - (2) Current resident and business addresses and phone numbers;
 - (3) State driver's license or other form of picture identification issued by a governmental agency;
 - (4) Proof of minimum age of 18;
 - (5) A color photograph and fingerprints on a form provided by the Police Department;
 - (6) A statement detailing the license or permit history of the applicant for employment or association with any sexually oriented business for the previous five years including information as to whether a permit had ever been denied, revoked, or suspended, the reason for such action, the date of such action, and the jurisdiction in which such action occurred; and
 - (7) Information as to whether the applicant has been convicted of a "specified criminal act" as defined in Section 723.02(q) and the date, place, jurisdiction and nature of such conviction.

- (c) The application review shall be completed within ten (10) days of filing. If requested, a temporary license will be issued pending review of the application. The employee license shall be issued unless the City finds that:
- (1) The applicant knowingly made a false, misleading or fraudulent statement of material fact;
 - (2) The applicant is under eighteen (18) years of age;
 - (3) The applicant has been convicted of a "specified criminal act" as defined in Section 723.02(o).
 - (4) The license is to be used in a business prohibited by this Ordinance or other local or state law; or
 - (5) The applicant has had an Employee License revoked within two (2) years of the date of the current application.
- (d) An Employee License may be renewed annually upon written application subject to the payment of a \$10.00 renewal fee and a finding that the applicant is still in conformance with the application requirements.

723.16 LOCATION OF SEXUALLY ORIENTED BUSINESS

A person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business:

- (a) In any manner except as provided under this Ordinance;
- (b) Within 750 feet of any religious institution, school, boundary of a residential district, public park or other similar public property;
- (c) Within 750 feet of any other sexually oriented business or establishment that primarily operates for the service of alcohol;
- (d) In the same building as an existing sexually oriented business, or causes the substantial enlargement of any sexually oriented business;
- (e) Without a valid permit as required under Section 723.06 of this Ordinance.

723.17 MINORS PROHIBITED

A person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business and knowingly or intentionally permits, or allows:

- (a) A person under eighteen years of age to be admitted, remain or purchase goods or services at the business premises; or
- (b) A person under eighteen years of age to be employed at the premises.

723.18 ADVERTISING AND LIGHTING REGULATIONS

A person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business; and

- (a) Advertises the presentation of any activity prohibited by this Ordinance or other local or state regulation; or
- (b) Allows any portion of the interior premises to be visible from outside the establishment.

Nothing in this Section relieves the permittee from compliance with any other provision of the Codified Ordinances of Mason, Ohio.

723.19 HOURS OF OPERATION

A person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business and permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of 1:00 a.m. and 9:00 a.m. of any particular day. Any employee who engages in the above activity also commits a misdemeanor. This does not preclude sale of liquor within the above stated time if allowed under a valid permit issued by the State of Ohio.

723.20 NUDITY PROHIBITED

It shall be unlawful for a person to knowingly and intentionally appear in a state of nudity or exhibit specified sexual activities in a sexually oriented business 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.

723.21 CRIMINAL PENALTIES FOR THE OPERATION OF A SEXUALLY ORIENTED BUSINESS WITHOUT A VALID PERMIT

In addition to the criminal penalties found in other sections of this Ordinance, it shall be unlawful and a person commits a misdemeanor if he or she operates or causes to be operated a sexually oriented business that does not have a valid sexually oriented business permit, has a permit which has expired or which has been suspended or revoked.

723.22 EXEMPTIONS

- (a) It is a defense to prosecution for violation of this Chapter that a person appearing in a state of nudity did so in a modeling class operated:
 - (1) By a college, junior college, or university supported in whole or in part by taxation;
 - (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (b) 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 nude model is permitted at a time.
- (c) It is a defense to prosecution for violation of this Chapter that an employee of a sexually oriented business exposed his or her buttocks, anus, genitals, or the areola nipple during the bona fide use of a restroom or while in a dressing room accessible only to employees.

723.23 CRIMINAL PENALTIES AND LEGAL, EQUITABLE AND INJUNCTIVE RELIEF

- (a) In addition to any applicable penalties under state or county law, any person convicted of a criminal offense under this Ordinance shall be guilty of a misdemeanor and be punished by a fine not to exceed Five Hundred Dollars (\$500) or by imprisonment not to exceed sixty (60) days, or both. Each violation or non-compliance shall be considered as a separate offense as will each day of continued violation or non-compliance.
- (b) The City may take any such lawful action to prevent or remedy any violation or non-compliance including but not limited to an equitable action for injunctive relief or an action at law for damages.

723.24 IMMUNITY FROM PROSECUTION

The City, the Police Department 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 Ordinance.

723.25 SEVERABILITY

Mason Municipal Code Chapter 723 and each section and provision of said chapter thereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.

APPLICATION FOR PERMIT TO OPERATE
A SEXUALLY ORIENTED BUSINESS

1. Applicant's Full Name: _____

State whether you are:

an individual (complete Section A)

a partnership (complete Section B)

a corporation (complete Section C)

A. 1) State your legal name: _____

2) State all former names and/or aliases you have ever been known by:

3) Current address: _____

4) Length of residence: _____

5) If length of residence is less than five years, state all residence addresses
for the five-year period prior to application and the dates of residence for each.

6) Are you over 18 years of age?

Yes No

Attach proof of age (Birth certificate with photo I.D., current driver's license
with photo or other photo identification document issued by a governmental
agency.)

B. 1) State full name of partnership: _____

2) Identify all partners: _____

3) Address of partnership and all partners: _____

C. 1) State full name of corporation: _____

2) Current address: _____

3) Name and current address of all persons who own 20% or more of corporate stock or interest in the partnerships: _____

4) Name and addresses of all officers: _____

2. Has any person identified in response to question 1, subsection A, B, or C:

1) Ever been convicted of sexual crimes against children, sexual abuse, rape, gross sexual imposition or any crimes connected with a sexually oriented business in the five-year period prior to the date of this application.

Yes No

If yes, state:

a) The charge convicted: _____

b) The date of conviction: _____

c) The place of conviction: _____

Respond on a separate sheet if additional space is needed.

2) Ever had a sexually oriented business permit revoked, suspended or denied?

Yes No

If yes, state:

a) Name of business

b) City or county and state where permit was issued:

c) Date of denial, suspension or revocation: _____

3) Hold any other sexually oriented business permits?

Yes No

If yes, state:

a) The names of all other businesses:

b) The location of all other businesses:

c) The city or county and state that issued the permit:

d) The date the permit was issued:

3. Proposed location of business

Street address: _____

Phone number: _____

Legal description of property: _____

You must attach a sketch or diagram showing the configuration and total floor space of the premises. The sketch need not be professional but must be drawn to scale and accurate to +/- 6 inches.

4. State the applicant's:

A. Driver's license number: _____

B. Tax I.D. number: _____

You must attach a recent photograph.

5. Certification of Minimum Distance from Protected and Other Uses.

To be complete, this application must include a current certificate and straight line drawing prepared within 30 days prior to the date of this application which clearly depicts the property lines and structures of the proposed sexually oriented business, all existing protected uses within 750 feet of the proposed business, all existing establishments holding a valid liquor license within 750 feet of the proposed business and all other sexually oriented business within 750 feet of the proposed business. Protected uses are: public buildings, public parks and recreation areas, religious institutions, residential districts and uses and schools.

6. Certification

By signing the following I/we agree:

A. The City of Mason is authorized to conduct a complete criminal records check for the applicant and each individual identified in response to question 1, subsections A, B and C.

B. To be bound by and comply with the provisions of Chapter 723 of the Code of Ordinances for the City of Mason.

C. To pay the \$500.00 fee at the time of application. I/we understand that this fee is non-refundable regardless of whether a permit is issued.

D. To supplement the information contained in this application within 30 days of any change in application information. I/we understand that failure to do so may result in suspension of any permit issued.

E. To identify all employees required to obtain a sexually oriented business employee license and to supplement this information as employees are hired.

F. That the information contained herein is true, complete and accurate.

I/We understand that the failure to fully, completely and timely provide the information and documentation required by this application may result in the delay and/or denial of this application.

This application must be signed by each individual identified in response to question 1, subsections A, B and C. This includes each partner in a partnership and all individuals that own a 10% interest in the sexually oriented business or the corporation applying for a sexually oriented business permit.

Signed: _____

Date: _____

APPLICATION FOR SEXUALLY ORIENTED
BUSINESS EMPLOYEE LICENSE

1. Applicant's name: _____
2. Any and all former names, stage names and aliases: _____

3. Current Residence Address: _____

How long at this address: _____

Have you lived at this address less than 5 years?

Yes No

If yes, provide your former residence addresses and state the dates of residence for the 5-year period prior to this application.

4. Current Business Address: _____

5. Applicant's driver's license or other state identification number: _____

6. Within the past five years have you applied for a sexually oriented business permit or license?

Yes No

If yes, provide:

a) Date of previous application(s): _____

b) Place of previous application(s): _____

c) Date permit or license was issued: _____

d) Whether a permit or license has ever been denied, revoked or suspended?

e) Date permit or license was denied, revoked or suspended:

7. In the past five years have you ever been convicted of a sexual crime against a child, for sexual abuse, rape, gross sexual imposition or any crime or tax violation in connection with a sexually oriented business?

Yes No

If yes, state:

Crime convicted of: _____

Date of conviction: _____

Court that issued conviction: _____

8. To be complete, the following must be submitted with this application:

- a) Proof of age (driver's license or state identification card with photo or birth certificate with photo identification);
- b) Recent color photograph;
- c) Fingerprints on a form provided by the Mason Police Department; and
- d) A non-refundable \$25.00 permit fee.

By signing this application you represent that the information contained herein is true, correct and complete to the best of your knowledge. The provision of false or fraudulent information on this application may result in the denial of your permit application.

Signature: _____

Date: _____