

ORDINANCE NO. 2006 - 101

**AMENDING CHAPTER 723 OF THE CITY OF MASON CODE OF ORDINANCES;
PROVIDING FOR THE REGULATION OF SEXUALLY ORIENTED BUSINESSES
AND EMPLOYEES; AND DECLARING AN EMERGENCY.**

WHEREAS, the City seeks to control the negative secondary effects of sexually oriented businesses; and

WHEREAS, the City hereby incorporates the legislative record and findings for Chapter 723, including all reports concerning the negative secondary effects of sexually oriented businesses, and also relies upon the summaries of key secondary effects reports; and

WHEREAS, the City has consistently recognized its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, the health, safety, and welfare of the residents of the City of Mason and others therein are served by the passage of this ordinance.

NOW, THEREFORE, be it ordained by the Council of the City of Mason, Ohio, 5 members elected thereto concurring:

Section 1: That Chapter 723 of the City of Mason Code of Ordinances is hereby amended to read as follows:

723.01 PURPOSE.

The purpose of this chapter is to regulate sexually oriented businesses through the application of uniform zoning requirements to promote the health, safety, 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 chapter to limit or restrict the content of 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 materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Council, and on findings incorporated in the cases of *City of Littleton v. Z.J. Gijfs D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2000); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); and *California v. LaRue*, 409 U.S. 109 (1972); *Deja Vu of Cincinnati, Inc. v. Union Township, Ohio*, 411 F.3d 777 (6th Cir. 2005); *Deja Vu of Nashville, Inc. v. Metro Gov't*, 274 F.3d 377 (6th Cir. 2001); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Brandywine, Inc. v. City of Richmond*, 359 F.3d 830 (6th Cir. 2004); *Currence v. City of Cincinnati*, Nos. 00-3985/00-4041, 2002 U.S. App. LEXIS 1258 (6th Cir. Jan. 24, 2002); *Broadway Books v. Roberts*, 642 F. Supp. 486 (E.D. Tenn. 1986); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *In re: State of Tennessee Public Indecency Statute. Dèjà vu v. Metro Government*, Nos. 96-6512, 96-6573, 97-5924, 97-5938, 1999 U.S. App. LEXIS 535 (6th Cir. Jan. 13, 1999); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); and on studies and

reports in other communities including, but not limited to, Phoenix, Arizona – 1979, 1995-98; Minneapolis, Minnesota – 1980; Houston, Texas – 1983, 1997; Indianapolis, Indiana - 1984; Amarillo, Texas - 1977; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas – 1986; Seattle, Washington - 1978; Oklahoma City, Oklahoma - 1986; and Beaumont, Texas - 1982; New York, Times Square – 1994; Dallas, Texas – 1997; Spokane, Washington – 2001; McCleary Report, Greensboro, North Carolina – 2003; and also on findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council finds[BD1]:

- (a) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (b) Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the City's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

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" [BD2]or "Adult Video Store" means a commercial establishment which, as one of its principal business activities, offers for sale or rental [BD3]for any form of consideration of any one or more of the following: 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." [BD4]A "principal business activity" exists where the commercial establishment:
 - A. has at least 30% of its displayed merchandise consisting of the foregoing enumerated items, or
 - B. has at least 30% of the wholesale value of its displayed merchandise which consists of the foregoing enumerated items, or
 - C. has at least 30% of the retail value of its displayed merchandise which consists of the foregoing enumerated items, or
 - D. derives at least 30% of its revenues from the sale or rental, for any form of consideration of the foregoing enumerated items, or
 - E. maintains at least 30% of its interior business space for the sale or rental or the foregoing enumerated items; or

F. the business regularly features the foregoing enumerated items, *and* advertises itself as offering such items on signage visible from a public right of way, *and* prohibits access by minors, because of age, to the premises.

(3) "Adult cabaret" means a nightclub, bar, restaurant, lounge, "bottle club", or other commercial establishment, regardless of whether alcoholic beverages are served, which regularly features:

- A. Persons who appear semi-nude, or
- B. Live performances which are characterized by the exposure of any "specified anatomical areas," or
- C. 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". [BD6]

(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) "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. [BD8]

(6) "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 or 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.

(7) "Semi-Nude model studio" means any place where a person or persons regularly appear semi-nude, in a state of nudity, or display "specified anatomical areas" and are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. "Semi-Nude model studio" [BD9] shall not include a proprietary school licensed by the State of Ohio or a college, junior college, or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

A. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and,

B. Where in order to participate in a class a student must enroll at least three days in advance of the class; and,

C. Where no more than one nude or semi-nude model is on the premises at any one time.

(8) "Sexual device shop" [BD10] means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

- (9) "Sexual encounter establishment" means a business or commercial establishment, that as one of its primary business purposes, advertises and 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." 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 to direct the operation, management or policies of a business or entity, or to vote thirty-three percent (33%) or more of any class of voting securities of a business. The ownership, control, or power to vote thirty-three percent (33%) 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." As applied in this ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.
- (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, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person or engage in any specified sexual activities.[BD11]
- (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 Ohio R.C. Chapter 4301.
- (h) "Nudity" or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.
- (i) "Operator" means and includes the owner, permit holder, custodian, manager, operator, or person in charge of any permitted or licensed premises.
- (j) "Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the 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 an individual listed as an applicant on the application for a permit and/or 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.

(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) "Regularly" [BD12] means the consistent and repeated doing of the act so described.

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

(p) "Sexual device" [BD13] means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

(q) "Specified anatomical areas" as used in this chapter means and includes any of the following:

(1) 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.

(r) "Specified sexual activities" as used in this chapter means and includes any of the following:

- (1) The fondling or other intentional touching [BD14]of human genitals, pubic region, buttocks, anus, or female breasts; or
- (2) Sex acts, normal or perverted, [BD15]including intercourse, oral copulation, masturbation, or sodomy; or
- (3) Human genitals in a state of sexual stimulation, arousal or tumescence; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (p)(1) through (3) hereof.

(s) "Specified criminal acts" means any of the following offenses:

- (1) Rape, aggravated rape, aggravated sexual assault, public indecency, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure; prostitution, patronizing prostitution, or promotion of prostitution[BD16]; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; distribution of a controlled substance; or racketeering; any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; any crime committed in a jurisdiction other than Ohio which, if committed in this state, would have constituted one of the crimes listed above[BD17].
- (2) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant, provided that any conviction overturned, reversed, expunged, or vacated on appeal shall not be considered as grounds for denying a license.

(t) "Substantial enlargement of a sexually oriented business" means increase in the floor areas occupied by the business by more than fifteen percent (15%), as the floor areas existed on January 10, 1996.

(u) "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.

(Ord. 95-83. Passed 12-11-95; Ord. 96-9. Passed 1-8-96; Ord. 00-134. Passed 9-25-00; Ord. 2001-149. Passed 8-13-01.)

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 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 arcade;
- (2) Adult bookstore or adult video store;
- (3) Adult cabaret;
- (4) Adult motion picture theater;
- (5) Escort agency;

- (6) Massage parlor;
- (7) Semi-Nude model studio;
- (8) Sexual device shop; or
- (9) Sexual encounter establishment.

(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) hereof, 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 Ohio R.C. 4303.18, 4303.181 and 4303.183.

(Ord. 00-134. Passed 9-25-00; Ord. 2001-149. Passed 8-13-01.)

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 structure containing the sexually oriented business to the nearest property line of the protected use.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

723.05 NON-CONFORMING USES.

(a) Any sexually oriented business lawfully operating on December 11, 1995 (at the time of the enactment of this chapter) that is in violation of Section 723.03 shall be deemed a nonconforming use.

(b) A sexually oriented business lawfully operating as a conforming use is not rendered nonconforming 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 Section 723.06 within thirty days of the effective date of this chapter.

(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.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

723.06 PERMIT REQUIRED FOR SEXUALLY ORIENTED BUSINESS^[BD18].

(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 or her designee, is responsible for granting, denying, suspending, and revoking permits for proposed or existing sexually oriented businesses. To be approved, applications must comply with all locational requirements of this chapter and the Zoning Code. [BD19]

(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 completed when it contains the information contained in this Section 723.06:

(1) If the applicant is:

- A. An individual: the individual's legal name, aliases, and proof [BD20] of age over eighteen, which may be established by providing a current driver's license or a government-issued photo identification document that states the birth date of the applicant.
- B. A partnership: the complete name and all general [BD21]partners' names.
- C. 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 at least thirty-three percent (33%) 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 subsection (c)(1) hereof has been convicted of a specified criminal act as defined under Section 723.02(s) within either two years for misdemeanor offenses, or five 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.

(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 address and business telephone number.

(8) The applicant's tax identification number and written proof of age in the form of a picture identification document 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 (6) inches.

(10) A current certificate and straight line drawing prepared within thirty days prior to application by a registered land 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 completed application is submitted. The application shall include a statement by the applicant that the location of the sexually oriented business complies with the locational requirements of this Chapter and the Mason Zoning Code.

(11) The application must be signed by the individual applicant, and each person who has at least a 33% interest in the business. If a corporation is the applicant, then each person owning at least 33% 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. The relevant time frames under this chapter shall restart when the application is re-submitted.

(f) One hundred fifty dollars (\$150.00) nonrefundable application fee^[BD25] is due at the time the applicant files an application under this section.

(g) 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.

(h) The applicant is required to provide the City with the names of all employees required to be licensed under Section 723.15. 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 ten (10) business days after the employee is hired.

(i) A sexually oriented business permit may be renewed annually upon written application pursuant to this Section 723.06, subject to the payment of a three-hundred dollar (\$300.00) annual permit fee. If there are grounds to deny the renewal application, the City shall issue the applicant a written notice of intent to deny the application, and the applicant is entitled to the hearing procedure set forth in Section 723.13.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

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 only if it finds that the business would be in violation of a specific provision of this Chapter. ^[BD26]

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

723.08 ISSUANCE OF 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.

(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 only for one or more of the following reasons:

A. An applicant is under eighteen years of age.

B. An applicant is overdue on the payment of taxes, fees, fines, or penalties assessed by the City in relation to a sexually oriented business.

C. An applicant's permit to operate a sexually oriented business has been denied or revoked within the preceding twelve months.

D. An applicant has failed to provide information as requested in the application or has supplied false information.

E. The one hundred fifty dollar (\$150.00) application fee ^[BD27]has not been paid.

F. The proposed business does not comply with the 750-foot location requirement of Section 723.03(a) and (c).

G. To grant the application would violate a statute, ordinance or court order. ^[BD28]

H. The applicant has a permit under this chapter which has been suspended within the previous thirty (30) days or revoked within the previous year.

I. The applicant has been convicted of a specified criminal act within the time limitation of Section 723.06(c)(3).

J. An applicant knowingly has in his or 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 within thirty (30) days after the filing of a completed application.

(Ord. 00-134. Passed 9-25-00; Ord. 2001-149. Passed 8-13-01.)

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

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 the specific lighting, interior configuration, hours of operation, and conduct requirements of this Chapter^[BD30], at any time it is open for business.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

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 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 days have elapsed from the date the denial became final, a new permit shall be granted.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

723.11 SUSPENSION OF PERMIT^[BD31].

(a) The City may issue a written notice of intent to suspend a permit to operate a sexually oriented business, for a period not to exceed thirty (30) days, if a permittee knowingly, or an employee of a permittee intentionally and within the knowledge of the permittee:

- (1) Violates or is not in compliance with this chapter; or
- (2) Works at the sexually oriented business while under the influence of alcohol; or
- (3) Refuses to allow an inspection of the sexually oriented business in accord with this chapter; or
- (4) Knowingly permits gambling on the premises of the sexually oriented business; or
- (5) Transfers the sexually oriented business permit to another in violation of this chapter; or
- (6) Knowingly employs a person without a valid license as required in Section 723.15.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

723.12 REVOCATION OF PERMIT.

(a) The City shall issue a written notice of intent to revoke a permit to operate a sexually oriented business if a cause of suspension occurs and the permit has been suspended within the

previous twelve-month period or if a permittee knowingly, or an employee of a permittee intentionally and within the knowledge of the permittee:

- (1) Gave false 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 sexual conduct (as defined in O.R.C. § 2907.01) 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.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

723.13 ADMINISTRATIVE AND JUDICIAL REVIEW OF PERMIT DENIAL, SUSPENSION OR REVOCATION.

(a) Right to administrative review. An applicant, permittee, or licensee may seek review of a denial of an initial application, a written intent to deny a renewal application, or a written intent to suspend or revoke a permit or license through the City Council or Special Review Board if one is established.

(b) Review of denial of initial application. To seek review of denial of an initial application, the applicant shall file a request for administrative review with the City Manager within fifteen (15) days after the denial for which review is sought. The reviewing body shall provide ten (10) day's notice to the aggrieved applicant of when it will review the decision, and a review hearing on the denial shall take place within thirty (30) days after the filing of the request for review.

(c) Review of written intent to deny a renewal application or to suspend or revoke a permit or license. In the case of a written intent to deny a renewal application, or to suspend or revoke a permit or license, the reviewing body shall set a hearing to occur within thirty (30) days after issuance of the City Manager's written notice of intent to deny the renewal application or to suspend or revoke the permit or license. At least ten (10) days notice of the time and place of the hearing shall be provided to the applicant, permittee, or licensee, as applicable.

(d) Decision. The City Council or Special Review Board shall issue a written decision within ten (10) days of the commencement of the review hearing unless a longer period is necessary to accommodate the needs of the aggrieved applicant, permittee, or licensee. Said written decision shall constitute a final administrative decision. In the case of an application for an initial license is denied on administrative review, the final administrative decision shall become effective immediately upon its issuance.

(e) Maintenance of the status quo. In cases involving a written intent to deny a renewal application or to suspend or revoke a permit or license, the enforcement of the final administrative decision shall be stayed for 30 days to allow the applicant, permittee, or licensee to seek judicial review.

(f) Judicial review of adverse administrative decision. An applicant, permittee, or licensee may seek review of an adverse administration decision in the Warren County Court of Common Pleas. Any final denial of a renewal application, and any suspension or revocation of a permit or

license will be stayed upon the filing of the appeal in the Court of Common Pleas and 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 and file an administrative transcript within twenty (20) days.

(Ord. 00-134. Passed 9-25-00; Ord. 2001-149. Passed 8-13-01.)

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 or location.
- (c) Any transfer attempted in violation of this section is void and will revoke the permit.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

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. The application shall be deemed complete when it contains the information required by Section 723.15(b). Each applicant shall pay a permit fee of twenty-five dollars (\$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 [BD33]business address and business phone numbers;
- (3) State driver's license or other form of picture identification issued by a governmental agency;
- (4) A color photograph and fingerprints on a form provided by the Police Department (the Police Department shall provide photographing and fingerprinting services upon request during regular business hours)[BD35];
- (5) 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
- (6) A statement as to whether the applicant has been convicted of a "specified criminal act" as defined in Section 723.02(s) and the date, place, jurisdiction and nature of such conviction, if any.

(c) The application review shall be completed within ten (10) days of the filing of a completed application. A provisional license shall be issued to the applicant pending review of the application. Within ten (10) days of the filing of a completed application, an employee license shall be issued for a period of one year, beginning the date the license application was filed, unless the City finds that:

- (1) The applicant knowingly made a false or fraudulent statement of material fact;
- (2) The applicant is under eighteen years of age;
- (3) The applicant has been convicted of a "specified criminal act" as defined in Section 723.02(q);
- (4) The applicant has had an Employee License revoked within two years of the date of the current application.

(d) Applications for renewal employee licenses shall be sought and processed in the same manner as applications for initial employee licenses, except that the status quo of licensing shall be maintained for previously-licensed employees according to the procedures in Section 723.13 applicable to renewal applications.

(Ord. 95-83. Passed 12-11-95; Ord. 96-9. Passed 1-8-96; Ord. 2001-149. Passed 8-13-01.)

723.16 LOCATION OF SEXUALLY ORIENTED BUSINESS.

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

- (a) In any manner except as provided under this chapter;
- (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.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

723.17 MINORS PROHIBITED.

A person commits a misdemeanor if he or 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.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

723.18 ADVERTISING AND LIGHTING REGULATIONS.

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

- (a) Advertises the presentation of any activity prohibited by this chapter; or
- (b) Knowing permits the illumination inside any portion of the establishment to which patrons are permitted to be less than five (5) foot candles while any patron is on the premises of the sexually oriented business.

Nothing in this section relieves the permittee from compliance with any other provision of the Codified Ordinances of the City.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

723.19 HOURS OF OPERATION.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, except that a sexually oriented business which has obtained a permit or license to sell alcoholic beverages from the State of Ohio may remain open until the hour specified in that permit or license.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

723.20 CONDUCT REGULATIONS.

- (a) It shall be unlawful for a person to knowingly and intentionally appear in a state of nudity in a sexually oriented business regardless of whether a permit has been issued pursuant to this Chapter.

(b) It shall be unlawful for a person to knowingly or intentionally, in a sexually oriented business, appear semi-nude unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least two (2) feet above the floor.

(c) It shall be unlawful for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a patron or the clothing of a patron while on the premises of the sexually oriented business.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

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 chapter, 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.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

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 transferrable 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 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 and nipple of the female breast during the bona fide use of a restroom or while in a dressing room accessible only to employees.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

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 chapter shall be guilty of a misdemeanor and be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment not to exceed sixty days, or both. Each violation or noncompliance shall be considered as a separate offense as will each day of continued violation or noncompliance.

(b) The City may take any such lawful action to prevent or remedy any violation or noncompliance including but not limited to an equitable action for injunctive relief or an action at law for damages.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

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 chapter.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

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, not withstanding 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.

(Ord. 95-83. Passed 12-11-95; Ord. 2001-149. Passed 8-13-01.)

Appendix A
APPENDIX A

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 or LLC (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 business address: _____
4) Length of time at that address: _____
5) If length of time is less than five years, state all business addresses for the five-year period prior to application and the dates 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 partners: _____
2) Identify all general partners: _____
3) Business address of partnership and all general partners: _____

- C. 1) State full name of corporation or LLC: _____
2) Current address: _____
3) Name and address of all persons who own 33% or more of corporate stock or interest in the entity: _____

- 4) Name and addresses of all officers: _____

2. Has any person identified in response to question 1, subsection A, B, or C:
Code? 1) Been convicted of a specified criminal activity as defined in Chapter 723 of the Mason

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 sexually oriented businesses: _____

- b) The location of all other sexually oriented businesses: _____

c) The city or county and state that issued the permit(s) or license(s): _____

d) The date the permit(s) or license(s) was/were 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 \$300.00 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 thirty (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 general partner in a partnership and all individuals who own a 33% interest in the sexually oriented business or the corporation applying for a sexually oriented business permit.

Signed: _____

Date: _____

APPENDIX B

APPLICATION FOR SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE

1. Applicant's name: _____
2. Any and all former names, stage names and aliases: _____
3. Current Business Address: _____
How long at this address: _____
Have you had this business address less than 5 years? _____
Yes _____ No _____

If yes, provide your former addresses for the 5-year period prior to this application.

4. Applicant's driver's license or other state identification number: _____
5. 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: _____
6. In the past five years have you ever been convicted of a specified criminal activity as defined in Chapter 723 of the Mason Code?
Yes _____ No _____

If yes, state: _____
Crime convicted of: _____
Date of conviction: _____
Court that issued conviction: _____

7. 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 in this application may result in the denial of your permit application.

Signature: _____
Date: _____

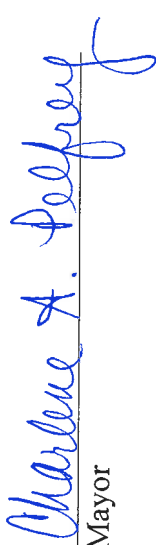
Section 2: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare and shall be effective immediately upon its passage. The reason for said declaration of emergency is to control the negative secondary effects of sexually oriented businesses in a timely manner to protect the public.

Passed this 11th day of September, 2006.

Attest:



Clerk of Council


Mayor

5/31/2006
277275.1