

**ORDINANCE 2017 - 66**

**AMENDING CHAPTER 711, COMMERCIAL AMUSEMENTS, OF THE  
BUSINESS REGULATION CODE OF THE CITY OF MASON, OHIO, TO ADD A  
NEW SECTION 711.04 TO PROHIBIT THE OPERATION OF LIVE SEX ACT  
BUSINESSES**

WHEREAS, the City Council finds that the operation of a business for purposes of providing the opportunity to engage in, or the opportunity to view, live sex acts is declared to be a public nuisance per se which should be prohibited; and

WHEREAS, the City Council finds that the operation of a live sex act business may contribute to the spread of sexually transmitted diseases; and

WHEREAS, the City Council relies on the findings discussed in *Mutschler v. City of Phoenix*, 129 P.3d 71 (Ariz. Ct. App. 2006); *Fleck & Assocs. v. City of Phoenix*, 356 F. Supp. 2d 1034 (D. Ariz. 2005); and in *Recreational Developments of Phoenix, Inc. v. City of Phoenix*, 220 F. Supp. 2d 1054 (D. Ariz. 2002); and

WHEREAS, the City Council has considered and relies on the factual record and supplement documenting public sex and unsanitary conditions in sex clubs in the Phoenix, Arizona metropolitan area; and

WHEREAS, the operation of a live sex act business is inimical to the health, safety, general welfare, and morals of the inhabitants of the City of Mason.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, Ohio, six members elected thereto concurring:

Section 1. That Chapter 711, Commercial Amusements, of the Business Regulation Code of the City of Mason, Ohio, is hereby amended by adding a new section 711.04, to read as follows:

**§ 711.04 LIVE SEX ACT BUSINESSES PROHIBITED.**

(a) *Definitions.* In this section, unless the context otherwise requires:

- (1) *Consideration* means the payment of money or the exchange of any item of value for:
  - A. The right to enter the business premises or any portion thereof; or

- B. The right to remain on the business premises or any portion thereof; or
  - C. The right to purchase any item permitting the right to enter, or remain on, the business premises or any portion thereof; or
  - D. The right to a membership permitting the right to enter, or remain on, the business premises or any portion thereof.
- (2) *Live sex act* means any act whereby one or more persons engage in a live performance or live conduct which contains oral sexual contact or sexual intercourse.
  - (3) *Live sex act business* means any business in which one or more persons may view, or may participate in, a live sex act for a consideration.
  - (4) *Operate and maintain* means to organize, design, perpetuate, or control. Operate and maintain includes providing financial support by paying utilities, rent, maintenance costs or advertising costs, supervising activities or work schedules, and directing or furthering the aims of the enterprise.
  - (5) *Oral sexual contact* means oral contact with the penis, vulva, or anus.
  - (6) *Sexual intercourse* means penetration into the penis, vulva, or anus by any part of the body or by any object or manual masturbatory contact with the penis or vulva.
- (b) It shall be unlawful for any person to operate and maintain a live sex act business.
  - (c) Operation of a live sex act business is a public nuisance per se.
  - (d) The City Attorney, in the name of the City of Mason, may apply to the Warren County Court of Common Pleas for an order permitting the City to abate violations of this section.

Section 2. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed this 15<sup>th</sup> day of May, 2017.

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Mayor

Attest:

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Clerk of Council