

ORDINANCE NO. 233 OF 2004

Borough of Sugarcreek
Venango County, Pennsylvania

AN ORDINANCE OF SUGARCREEK BOROUGH TO PROVIDE FOR THE LICENSING AND REGULATING OF SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES, PRESCRIBE FEES, FINES AND PENALTIES FOR VIOLATIONS.

It is hereby ENACTED and ORDAINED by the Council of the Borough of Sugarcreek, Venango County, Pennsylvania, as follows:

SECTION 1. PURPOSE AND FINDINGS:

A. Purpose

Pursuant to the authority granted in the Borough Code to prohibit nuisances; to promote the health, welfare, cleanliness, comfort, and safety of the citizens of the Borough of Sugarcreek; and to regulate the time of opening and closing, and the conduct of places of public entertainment, amusement and recreation, the Borough enacts this Ordinance to minimize and control the adverse secondary effects of sexually oriented businesses and thereby protect the health, safety and welfare of its citizens; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of blight.

The Council has determined that licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to insure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

The Council does not intend this Ordinance to suppress and speech activities protected by the First Amendment, but to enact a content neutral ordinance, which addresses the secondary effects of sexually oriented businesses.

B. Legislative Findings

Based upon a public meeting conducted by the Borough, the Council finds:

1. Sexually oriented businesses have adverse secondary effects, which should be regulated to protect the public health, safety and welfare. These secondary effects include, but are not limited to the spread of communicable diseases, performance of sexual acts in public places, presence of discarded sexually oriented material on public and private property, sexual harassment, obscenity, prostitution and other illegal sexual activities, crime and neighborhood deterioration.
2. A reasonable licensing procedure is an appropriate mechanism to place the burden of the reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore-nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the Borough. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, full in possession and control of the premises and activities occurring therein.

3. Removal of doors of viewing booths and requiring sufficient lighting on premises with viewing booth advances a substantial governmental interest in discouraging the illegal and unsanitary sexual activity occurring in adult theaters.
4. Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incident of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
5. The disclosure of certain information by those persons intimately responsible for the day-to-day operation and maintenance of the sexually oriented business will help limit and control the adverse secondary effects of such businesses.
6. It is desirable in the prevention of the spread of communicable disease to obtain a limited amount of information regarding certain employees who may engage in the conduct, which this Ordinance is designed to prevent or who are likely to be witnesses to such activity.
7. The fact that an applicant for a sexually oriented business license has been convicted of a sexually related crime leads to the rational assumption that the applicant is likely to engage in that conduct in contravention of this Ordinance.
8. The barring of such individuals from the management of sexually oriented businesses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.
9. The general welfare, health and safety of the citizens of the Borough will be promoted by the enactment of this Ordinance.
10. Limitation of operating hours of sexually oriented businesses to 1:00 p.m., Monday through Saturdays, and closure of such businesses on Sundays and holidays reduces the adverse secondary effects of such businesses, including particularly, but not limited to late night noise levels, crime and sexually offensive materials and activities in public areas, and promotes the public health, safety and welfare.
11. No alcohol permitted on premises.

SECTION 2. DEFINITIONS:

As used in this Ordinance, the following words and phrases shall have the meanings indicated unless the context clearly indicates a different meaning.

- A. **ADULT ARCADE** means any place to which the public is permitted or invited wherein coinoperated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image producing devices are maintained, not located within viewing booths, 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 the depicting of "specified sexual activities" or "specified anatomical areas."

- B. ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment, which, as one if its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions slide, CD ROM discs or other computer software, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; or
 2. Instruments, devices, or paraphernalia, which are designed for use in connection with “specified sexual activities.”
- C. ADULT CABARET means a nightclub, bar, restaurant, or other commercial establishment which regularly features:
1. Persons who appear in a state of nudity or semi-nudity; or
 2. Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
 3. Films, motion pictures, videocassettes, slides, dvd's or other photographic reproductions or visual presentations of any other kind which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”
- D. ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions or visual presentations of any kind are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”
- E. ADULT THEATER means a theater, concert hall, dance hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances, which are characterized by the exposure of “specified sexual activities” or “specified anatomical areas.”
- F. BOROUGH means Borough of Sugarcreek, Venango County, Pennsylvania
- G. EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. 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.
- H. ESCORT means a person who, for consideration, agrees of 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.

- I. 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.
- J. 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 sexually oriented business.
 3. The addition of any sexually oriented business to any other existing sexually oriented business or to a non-sexually oriented business; or
 4. The relocation of any sexually oriented business.
- K. LICENSE means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license, and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.
- L. NUDE MODEL STUDIO means any place where a person who appears semi-nude, in a state of nudity or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Pennsylvania 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.
1. That 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
 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 or semi-nude model is on the premises at any one time.
- M. NUDITY OR A STATE OF NUDITY means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering of any part of; the nipple, or the showing of the covered male genitals in a discernible turgid state.
- N. PERSON means an individual, proprietorship, partnership, corporation, association or other legal entity.
- O. SEMI-NUDE OR IN A SEMI-NUDE CONDITION means the state of dress in which clothing partially or non-opaquely covers specified anatomical areas.

- P. SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex, or
 2. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.
- Q. SEXUALLY ORIENTED BUSINESS means and adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.
- R. SPECIFIED ANATOMICAL AREAS means human genitals, pubic region, anus, buttocks, females breast(s) below a point immediately above the top of the aureola, or human male genitals in a discernibly turgid state, even if completely covered.
- S. SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:
1. Prostitution or promotion of prostitution; dissemination of obscenity, sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;
 2. For which:
 - (a) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
 - (b) Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction; whichever is the later date, if the conviction is of a felony offense; or
 - (c) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the conviction are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period.
 3. 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.
- T. SPECIFIED SEXUAL ACTIVITIES means any of the following:
1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breast(s);
 2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulations, masturbation or sodomy; or
 3. Excretory functions as part of, or in connection with any of the activities set forth in (a) and (b) above.

- U. TRANSFER OR 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; or
 3. The establishment of a trust, gift or other similar legal device which transfer the ownership or control of the business, except for transfer by bequest of other operation of law upon the death of the person possessing the ownership control.
- V. VIEWING BOOTHS means booths, stalls, partitioned portions of a room, rooms or other enclosures which are available for viewing (1) films, movies, videos or visual reproductions of any kind depicting or describing “specified sexual activities” or “specified anatomical areas,” or (2) persons who appear in a state of nudity or semi-nudity or who offer performances or presentations characterized by the exposure of “specified sexual activities” or “specified anatomical areas.”
- W. KNOWINGLY means having general knowledge of, or reason to know, or a belief or ground for belief, which warrants further inspection or inquiry of both:
1. The character and content of any material or performance described herein which is reasonably susceptible of examination by a license or person; and
 2. The age of the minor, provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the licensee or person made a reasonable bona fide attempt to ascertain the true age of such minor.

SECTION 3. LICENSE REQUIRED:

- A. It is unlawful:
1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Borough pursuant to this Ordinance.
 2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Borough pursuant to this Ordinance;
 3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this Ordinance.
 4. Beginning on the sixtieth (60th) day after enactment of this Ordinance for any person to continue to operate any sexually oriented business in operation at the time of enactment of this Ordinance without a valid sexually oriented business license pursuant to this Ordinance.
 5. Beginning on the sixtieth (60th) day after enactment of this Ordinance for any person who operates a sexually oriented business in operation at the time of enactment of this Ordinance to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Borough pursuant to this Ordinance;

6. Beginning on the sixtieth (60th) day after enactment of this Ordinance for any person to obtain employment with a sexually oriented business in operation at the time of enactment of this Ordinance without having secured a sexually oriented business employee license pursuant to this Ordinance.
- B. An application for a license must be made on a form provided by the Borough.
- C. All applicants must be qualified according to the provisions of this Ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the Borough to determine whether the applicant meets the qualifications established in the Ordinance.
- D. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a twenty percent (20%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.
- E. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:
 1. If the applicant is:
 - (a) An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least eighteen years of age;
 - (b) A partnership, the partnership shall state its complete name, and the name of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
 - (c) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state or incorporation and qualified and authorized to conduct business in Pennsylvania, the names and capacity of all officers, directors and principal stockholders, and the names of the registered corporate agent and the address of the registered office for service of process.
 2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state (a) sexually oriented business' fictitious name and (b) submit the required registration documents.
 3. Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this Ordinance, and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.
 4. Whether the applicant, or a person residing with the applicant, has had a previous license under the Ordinance or other similar sexually oriented business ordinance from another municipality, state or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of denial, suspension or revocation, and whether the applicant or a person residing with the applicant has

been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this Ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

5. Whether the applicant or a person residing with the applicant holds any other licenses under this Ordinance or other similar sexually oriented business ordinance from another municipality, state or county and, if so, the names and locations of such other licensed businesses.
6. The specific classification of sexually oriented use for which the applicant is filing along with a detailed description of each and every activity encompassed by the proposed sexually oriented business, which description shall thoroughly demonstrate compliance and/or intended compliance with all provisions of this Ordinance.
7. The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone number(s), if any.
8. The applicant's mailing address and residential address.
9. A recent photograph of the applicant(s).
10. The applicant's driver's permit number, social security number, and his/her state or federally issued tax identification number.
11. A sketch or diagram showing; the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
12. A current certificate and straight-line drawing prepared within the thirty (30) days prior to application by a registered land surveyor depicting the property lines, the property to be certified; and
13. If an applicant wishes to operate a sexually oriented business, which includes viewing booths, then the applicant shall also comply with the application requirements set forth in Section 11 and shall separately apply for and obtain a building and occupancy permit for the installation of the viewing booths.
14. The application form shall inform the applicant that (1) separate applications are required for any necessary zoning permits, subdivision and land development approvals and buildings and occupancy permits and that the applicant may apply for such permits by contacting the Borough Code Officer and the Venango County Planning Commission and (2) the Department of Labor and Industry approval is required.

- F. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the Borough the following information:
1. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
 2. Age, date and place of birth;
 3. Height, weight, hair and eye color;
 4. Present residence address and telephone number;
 5. Present business address and telephone number;
 6. Date, issuing state and number or driver's license or other identification card information;
 7. Social security number; and
 8. Proof that the individual is at least eighteen (18) years of age.

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

1. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by any police department. Any fees for photographs and fingerprints shall be paid by the applicant.
2. A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other country, municipality, store or country any business or has ever had a license, permit or authorization to do business denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the name, the name of this issuing or denying jurisdiction and describe in full the reason for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application.
3. A statement whether the applicant has been convicted of a specified criminal activity as defined in the Ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

SECTION 4. ISSUANCE OF LICENSE:

- A. Upon the filing of said application in a fully completed form for a sexually oriented business license or for a sexually oriented business employee license, the application shall then be referred to the Borough Code Officer for review and investigation. The Borough Code Officer shall utilize any available resources through the Pennsylvania State Police, the Venango County Sheriff, the Commonwealth of Pennsylvania and/or other law enforcement agencies as may be necessary to complete the review and investigation

required by this Ordinance. Within thirty (30) days from the date the completed application is filed, the Borough Code Officer shall issue a license, unless it is determined by the Borough Code Officer that one or more of the following findings is true:

1. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 2. The applicant is under the age of eighteen (18) years;
 3. The applicant has been convicted of a “specified criminal activity” as defined in this Ordinance;
 4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this Ordinance; or
 5. The applicant has had a sexually oriented business employee license revoked by the Borough within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section 9.
 6. The required application, investigation and license fees have not been paid.
 7. An applicant's license to operate a sexually oriented business, issued by any jurisdiction, has been revoked within the preceding twelve (12) months.
 8. The proposed sexually oriented business is in violation of, or is not in compliance with, any of the provisions of this Ordinance.
- B. A license granted pursuant to this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the Borough that the applicant has not been convicted of any specified criminal activity as defined in this Ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 5.
- C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the specific classification of sexually oriented use for which the license is issued. Licenses for sexually oriented businesses shall state that the sexually oriented business shall not commence until all necessary zoning, subdivision and land development, and/or building code approvals and Department of Labor and Industry approvals are obtained. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.
- D. Applications for buildings and occupancy permits shall be processed and either denied or approved within thirty (30) days of a complete application by the Borough.

- E. A sexually oriented business license shall issue for the specific classification of sexually oriented use as permitted by ordinance and applied for.
- F. A license denial shall conform to the provisions of Section 9.D.
- G. Any person aggrieved by the grant of a license may appeal, in writing, within ten (10) days from the date of issuance of the license, to the Council. The Council shall then hold a local agency law hearing within twenty (20) days from the date of filing of the appeal and render a decision within ten (10) days from the end of the hearing. Appeals from a decision of the Council may be taken to court subject to Section 9.E. of this Ordinance.

SECTION 5. FEES:

- A. Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a non-refundable application and investigation fee in an amount set by resolution of the Council.
- B. In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the Borough an annual non-refundable license fee in an amount set by resolution of the Council within thirty (30) days of license issuance or renewal.
- C. Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual non-refundable application, investigation and license fee in an amount set by resolution of the Council.

SECTION 6. INSPECTION:

- A. An applicant or licensee shall permit authorized Borough officials and their agents or consultants to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.
- B. A person who operates a sexually oriented business or his/her agent or employee commits a violation of this Ordinance if he/she refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

SECTION 7. EXPIRATION OF LICENSE:

- A. Each license shall expire on year from the date of issuance and may be renewed only by making application as provided in Section 3. Application for renewal shall be made at least thirty (30) days before the expiration date; the date of expiration of the license will not be extended.
- B. When the Borough denies renewal of a license the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Borough finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

SECTION 8. SUSPENSION:

The Borough Code Officer shall suspend a license for a period not to exceed thirty (30) days and a fine, maximum allowed by law, if he determines that a license or an employee of a license has:

1. Violated or is not in compliance with any provision of this Ordinance.
2. Refused to allow an inspection of the sexually oriented business premises as authorized by this Ordinance; or
3. Knowingly permitted gambling by any person on the sexually oriented business premises.

SECTION 9. REVOCATIONS AND APPEALS OF DENIALS, SUSPENSIONS OR REVOCATIONS:

- A. The Borough Code Officer shall revoke a license if a cause of suspension in Section 8 occurs and the license has been suspended within the preceding twelve (12) months.
- B. The Borough Code Officer shall revoke a license if he determines that:
 1. A licensee gave false or misleading information in the material submitted during the application process;
 2. A licensee has knowingly allowed possession, use or sale of controlled substances on the premises.
 3. A licensee has knowingly allowed prostitution on the premises;
 4. A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 5. A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the license premises; or
 6. A licensee is delinquent in payment to the Borough for any licensing fees past due.
- C. When the Borough revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Borough finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.
- D. All license application, renewal, suspension or revocation decisions shall be sent in writing to the applicant or licensee. All such decisions, which deny, suspend or revoke a permit, shall state specifically the ordinance requirement not met and any other basis for decision. After denial of an application, or denial of a renewal of an application, or after suspension or revocation of any license, the applicant or licensee may appeal pursuant to the local agency law to the Council. The Council will then hold a local agency law hearing within twenty (20) days from the date the appeal is filed and will render a written decision within ten (10) days from the date such hearing concludes. Any such appeal must be filed, in writing, with the Borough Secretary within ten (10) days from the date of mailing of the decision appealed from. Failure to file said appeal with the Borough Secretary within ten (10) days from the date of the mailing of the decision appealed from shall be deemed a conclusive determination as to the issues or matters addressed by the written decision. In the case of a denial of a license renewal, or in the case of a license suspension or revocation, the licensee may continue to operate to the same extent as immediately prior to the suspension or revocation until the earlier of; (1) the expiration of the ten day appeal period without filing of an appeal; or (2) the date of a decision dismissing any appeal.

- E. Any person aggrieved by a decision of the Council may appeal to court of competent jurisdiction. The Borough shall, upon filing of such appeal, consent to any request by a license applicant or licensee to the court to give expedited review to such appeal. The Borough shall certify any record to the court to do so.

SECTION 10. TRANSFER OR LICENSE:

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

SECTION 11. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS:

- A. A person who operates viewing booths or causes them to be operated shall comply with the following requirements:
1. Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of interior of the premises to an accuracy of plus or minus six (6) inches. The Borough may waive the foregoing diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
 2. The application shall be sworn to be true and correct by the applicant.
 3. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
 4. The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted to access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be direct line of sight from the manager's station. In addition, all viewing booths shall have at least one side fully open so that all of the area inside the booth is open to the view of persons in the public area of the establishment.
 5. It shall be the duty of the licensees to ensure that the view area specified in subsection (5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been

designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this Section.

6. No viewing room may be occupied by more than one person at any time.
 7. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candle, as measured at floor level.
 8. It shall be the duty of the licensees to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
 9. No licensee shall allow openings of any kind to exist between viewing rooms or booths.
 10. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
 11. The licensee shall, during each business day, regularly inspect the walls between the booths to determine if any openings or hole exist.
 12. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
 13. The licensee shall cause all wall surfaces and ceiling surfaces in the viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.
- B. A person having a duty under subsection 1 through 13 of subsection A above commits a violation of this Ordinance if he/she knowingly fails to fulfill that duty.

SECTION 12. ADDITIONAL REGULATIONS FOR AGENCIES OR NUDE MODEL STUDIOS:

- A. A nude model studio shall not employ any person under the age of eighteen (18) years.
- B. A person under the age of eighteen (18) years commits a violation of this Ordinance if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open the public viewing or visible to any other person.
- C. A person commits a violation of this Ordinance if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises, which can be viewed, from the public right-of-way.
- D. A nude model studio shall not place or permit a bed, sofa or mattress in any room on the premises, except that of a sofa may be placed in a recreation room open to the public.

SECTION 13. ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY:

- A. It shall be a violation of this Ordinance for a person to knowingly and intentionally, in a public place:
1. Engage in sexual intercourse or to engage in deviate sexual intercourse as defined by the Pennsylvania Crimes Code; or
 2. Appear in a state of nudity; or
 3. Fondle the genital of himself, herself or another person.
- B. For the purpose of this Ordinance, "Public Place" includes all outdoor areas owned by or open to the general public, and all buildings and enclosed placed owned by or open to the general public, including, but not limited to, places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, party rooms or halls limited to specific members, and party rooms or halls restricted to adults or to patrons invited to attend, whether or not an admission charge is levied. This Section shall not apply to:
- (a) Any child under ten (10) years of age; or
 - (b) Any individual exposing a breast in the process of breastfeeding an infant under two (2) years of age; or
 - (c) The exercise of free speech or free expression in the form or artistic and theatrical performances. It is the intention of the Borough that his Section be construed, enforced and interpreted in such a manner as will cause the least possible infringement of the constitutional rights of free speech, free expression, due process, equal protection or other fundamental rights.

It shall be a violation of this Ordinance for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two (2) feet from the floor.

It shall be a violation of this Ordinance for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.

SECTION 14. PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS:

A person commits a violation of this Ordinance if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

SECTION 15. HOURS OF OPERATION:

No sexually oriented business shall be open for business before 1 o'clock (1:00) P.M., Monday through Saturday, or after ten o'clock (10:00) P.M., Monday through Saturday. Sexually oriented businesses shall be closed at all times on Sundays and legal holidays.

SECTION 16. EXEMPTIONS:

- A. It is a defense to prosecution under Section 14 that a person appearing in a state of nudity did so in a modeling class operated:
1. By a proprietary school, licensed by the Commonwealth of Pennsylvania a college, junior college or university supported entirely or partly 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
 3. In a structure:
 - (a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - (b) Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
 - (c) Where no more than one (1) nude model is on the premises at any one time.

SECTION 17. VIOLATIONS AND PENALTIES:

Any person, firm or corporation who violates or permits the violation of any provisions of this Ordinance or the rules and regulations approved and hereinafter adopted shall pay a fine not exceeding one thousand (\$1,000.00) dollars for each violation. Whenever such person shall have been officially notified by the Borough that he/she is committing a violation of this Ordinance or the rules and regulations approved and hereinafter adopted, each day that he/she shall continue such violation after such notification shall constitute a separate violation punishable by a like fine. Any person who violates or permits the violation of this Ordinance shall pay, in addition to the fine set forth above, all court costs and reasonable attorney's fees incurred by the Borough in connection with any civil enforcement proceedings brought to enforce this Ordinance.

SECTION 18. SEVERABILITY:

The provisions of this Ordinance are severable and if any section, subsection, clause, sentence or part thereof shall be held or declared illegal, invalid or unconstitutional by any court of competent jurisdiction, the decision shall not affect or impair any of the remaining sections, subsection, clauses, sentences or parts thereof, of this Ordinance. It is hereby declared to be the intent of the Council that this Ordinance would have been adopted if such illegal, invalid or unconstitutional section, subsection, clause, sentence or part thereof had not been included herein.

SECTION 19. EFFECTIVE DATE:

This Ordinance shall become effective five (5) days after the date of enactment.

ORDAINED AND ENACTED INTO LAW THIS 5th DAY OF JANUARY 2004.