

## Part 2

### Sexually Oriented Businesses

#### A. Preamble

WHEREAS, sexually oriented businesses in the Township of Clay require special supervision in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as citizens of the Township; and

WHEREAS, the Board of Supervisors and staff have reviewed studies concerning the secondary effects of sexually oriented businesses in other cities including, but not limited to, Garden Grove, California (1991); Phoenix, Arizona (1986); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); City of Los Angeles, California (1977); Cleveland, Ohio (1977); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma City, Oklahoma (1986); Beaumont, Texas (1982); and Whittier, California (1978); and they have received substantial input from residential owners both at public meetings and by personal communication; and

WHEREAS, based upon their review of other cities' studies and testimony from its citizens, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both existing businesses around them and the surrounding residential areas adjacent to them, causing among other adverse secondary effects, increased crime and downgrading of property values; and

WHEREAS, the Board of Supervisors find that sexually oriented businesses are frequently used for unlawful sexual activities including prostitution, and sexual liaison of casual and medically risky nature; and

WHEREAS, increased crime and unhealthful conduct tend to accompany, concentrate around and be aggravated by sexually oriented businesses including but not limited to prostitution, pandering, exposing minors to harmful materials, possession and distribution of obscene materials and child pornography, possession and sale of controlled substances and violent crimes against persons and property; and

WHEREAS, concern over sexually transmitted diseases, including AIDS, is a legitimate health concern of the Township which demands reasonable regulations of sexually oriented businesses in order to protect the health and well being of the citizens; and

WHEREAS, it is important to protect the children of the Township from exposure to the type materials and activities offered in sexually oriented businesses by imposing procedures to insure that minors are not permitted within same; and

WHEREAS, licensing and other police power regulations are legitimate reasonable means of accountability to insure the operator(s) of sexually oriented businesses comply with reasonable regulations which minimize the adverse secondary effects which naturally accompany the operation; and

WHEREAS, the Board of Supervisors desire to minimize and control those adverse secondary effects and thereby protect the health, safety and welfare of the citizens; protect the citizens from increased crime; preserve the quality of life; deter the spread of urban blight and protect against the threat to health from the spread of communicable and social diseases; and

WHEREAS, the Board of Supervisors has considered the decisions of the United States Supreme Court regarding local regulation of sexually oriented businesses, including but not limited to, *Young v. American Mini-Theaters, Inc.*, 427 U.S. 50 (1976) *reh. denied* 429 U.S. 873; *Renton v. Playtime Theaters*, 475 U.S. 41 (1986) *reh. denied* 475 U.S. 1132; *FW/PBS, Inc. v. Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theater*, 501 U.S. 560 (1991); *City of National City v. Wiener, et al.*, 3 Cal.4th 832 (1993); and *Topanga Press, Inc. et al. v. City of Los Angeles*, 939 F.2d 1524 (1993); and

WHEREAS, the Board of Supervisors has determined that zoning and locational criteria alone will not adequately protect health, safety and general welfare of the people of Clay Township and thus certain requirements with respect to the ownership and operation of sexually oriented businesses are in the public interest; and

WHEREAS, the Board of Supervisors find that restricted hours of operation will further prevent the adverse secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of this Part to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the adverse secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the Board of Supervisors to condone or legitimize the distribution of obscene material, and the Board recognizes that state law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state obscenity statutes against such illegal activities in Clay Township; and

WHEREAS, the Board of Supervisors and staff find that the live entertainment presented by some sexually oriented business establishments involves a considerable amount of bodily contact between patrons and performers, including physical contact while giving and receiving gratuities, including hugging, kissing, and sexual fondling of performers and patrons. Many sexually oriented businesses offer “sofa/couch” or “straddle” dancing wherein the performer and the patron have physical contact with each other in a manner that could spread social diseases; and

WHEREAS, the Board of Supervisors find that a number of courts have upheld distance limitations between performers and patrons, prohibitions against physical contact between performers and patrons, and direct payment and receipt of gratuities between performers and patrons at sexually oriented business establishments that provide live entertainment; and

WHEREAS, the Board of Supervisors and staff recognize that preventing prostitution and the spread of sexually transmitted diseases are clearly within its police powers. Further, the Board of Supervisors believe that prohibiting physical contact between performers and patrons at a sexually oriented business establishment, prohibiting performers from soliciting payment of gratuities from patrons, and the direct payment of gratuities to performers by patrons are

reasonable and effective means of addressing legitimate governmental interests. It is not the intent of the Township to place any impermissible burden on any constitutionally protected expression or expressive conduct by the enactment or enforcement of such regulations.

*[Ord. 3-18-02, 03/18/2002]*

## B. Purpose and Intent

It is the purpose and intent of this Part to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Township. The provisions of this Part have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Part to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of the Ordinance to condone or legitimize the distribution of obscene material.

*[Ord. 3-18-02, 03/18/2002]*

## C. Sexually Oriented Business Regulations

§201. Definitions. For the purposes of this division, certain terms and words are defined as follows:

A. “Sexually oriented businesses” are those businesses defined as follows:

1. “Adult arcade” means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on matter depicting or describing “specified sexual activities” or “specified anatomical areas”.
2. “Adult Bookstore”, “Adult Novelty Store” or “Adult Video Store” means a commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental for any form of consideration, of any one or more of the following:
  - a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are distinguished or characterized by an emphasis on matter depicting or describing

“specified sexual activities” or “specified anatomical areas”;

- b. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic sexual stimulation or abuse of themselves or others.
  - c. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing “specified sexual activities” or “specified anatomical areas”, and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which are characterized by an emphasis on matters that depict or describe “specified anatomical areas” or “specified sexual activities”.
3. “Adult cabaret” means a nightclub, bar, restaurant, “bottle club”, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features: (a) persons who appear nude or in a state of nudity or semi-nude; (b) live performances which are distinguished or characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”, or (c) films, motion pictures, video cassettes, slides, or other photographic reproductions which are distinguished or characterized by an emphasis on the depiction or description of “specified sexual activities” or “specified anatomical areas”.
  4. “Adult motel” means a motel, hotel or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis on matter depicting or describing “specified sexual activities” or “specified anatomical areas” and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, or (b) offers a sleeping room for rent for a period of time less than ten (10) hours; or (c) allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.
  5. “Adult motion picture theater” means a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are distinguished or characterized by an emphasis on matter depicting or describing “specified sexual activities” or “specified

anatomical areas” are regularly shown for any form of consideration.

6. “Adult theater” means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are distinguished or characterized by an emphasis on the exposure of “specified anatomical areas” or “specified sexual activities”.
7. As used herein, the term “Clay Township Police Department” includes the duly designated law enforcement officers of the Township of Clay, including but not limited to those serving from other municipalities pursuant to an agreement with such other municipality.
8. “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.
9. “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.
10. “Massage Parlor” means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with “specified sexual activities”, or where any person providing such treatment, manipulation, or service related thereto, exposes his or her “specified anatomical areas”. The definition of sexually oriented businesses shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.
11. “Nude Model Studio” means any place where a person, who regularly appears in a state of nudity or displays “specified anatomical areas” is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.
12. “Sexual encounter establishment” means a business or commercial establishment, that as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purposes of “specified sexual activities” or the exposure of “specified anatomical areas” or activities when one or more of the persons is in a state of nudity or semi-nude. 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. “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.
- C. “Establishment” means and includes any of the following:
  - 1. The opening or commencement of any such 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.
- D. “Nudity or State of Nudity” means: (a) the appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or (b) a state of dress which fails to opaquely or fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.
- E. “Operator” means and includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.
- F. “Permitted or Licensed Premises” means any premises that requires a license and/or permit and that is classified as a sexually oriented business.
- G. “Permittee and/or Licensee” means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.
- H. “Person” means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- I. “Semi-Nude” means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
- J. “Sexually Oriented Business” means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor, sexual encounter establishment, escort agency or nude model studio.

- K. “Specified Anatomical Areas”, as used in this division, means and includes any of the following:
1. Less than completely and opaquely covered: (a) human genitals, pubic region, (b) buttocks, anus; and (c) female breasts below a point immediately above the top of the areola; and
  2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- L. “Specified Sexual Activities”, as used in this division, means and includes any of the following:
1. Human genitals in a state of sexual stimulation or arousal;
  2. Acts of human masturbation, sexual intercourse, or sodomy;
  3. Fondling or other erotic touching of human genitals, pubic region, buttock, anus, or female breast; and
  4. Ultimate sexual acts, normal or perverted, actual or simulated (excluding theatrical representations of sexual acts in serious works which are not predominantly sexual in content, or are not primarily intended for sexual stimulation) including intercourse, masturbation, excretory functions, or lewd exhibition of the genitals, whether between humans, a human and an animal, or for the purpose of sadomasochistic sexual abuse or stimulation.
- M. “Substantial Enlargement of a Sexually Oriented Business” means increase in floor areas occupied by the business by more than 15% at the time of original application or as approved at the time of the last renewal of license.
- N. “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 device 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.

§202. Permits. Permits for sexually oriented businesses shall be required and governed by the procedures and policies contained in this Part.

*[Ord. 3-18-02, 03/18/2002, §3]*

§203. Regulations Governing Existing Sexually Oriented Businesses. Any establishment subject to the provision of this Section shall apply for the permit provided for in this Part within thirty (30) days of the effective date of this Part. Any establishment, existing prior to the effective date of this Part, shall comply with the regulations set forth in this Part within sixty (60) days of the effective date of this Part.

*[Ord. 3-18-02, 03/18/2002, §4]*

§204. Sexually Oriented Business Permit. Purpose and Intent. It is the purpose of this Part to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the Township, and to establish reasonable and uniform regulations to prevent deleterious effects of sexually oriented businesses within the Township. The provisions of this Part have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Part to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this Part to in any way condone or legitimize the distribution of obscene or harmful material to minors.

*[Ord. 3-18-02, 03/18/2002, §5]*

§205. Permit Required.

- A. No sexually oriented business shall be permitted to operate without a valid sexually oriented business permit issued by the zoning officer for Clay Township for the particular type of business. It shall be unlawful and a person commits a summary offense if he/she operates or causes to be operated a sexually oriented business without said permit.
- B. The Zoning Officer or his/her designee is responsible for granting, denying, revoking, renewing, suspending, and canceling sexually oriented business permits for proposed or existing sexually oriented business. The Zoning Officer or his/her designee is also responsible for ascertaining whether a proposed sexually oriented business for which a permit is being applied for complies with all other requirements of this Part, all applicable zoning laws and/or regulations now in effect or as amended or enacted subsequent to the effective date of this Part in the Township.
- C. The Clay Township Police Department or any police department providing police services within Clay Township pursuant to an agreement with Clay Township is responsible for providing information on whether an applicant has been convicted

of a specified criminal act during the time period set forth.

- D. The Township Zoning Officer is responsible for inspecting a proposed, permitted or non-permitted sexually oriented business in order to ascertain whether it is in compliance with this Part or other applicable statutes and ordinances.
- E. An application for a permit must be made on a form provided by the Township. Any person desiring to operate a sexually oriented business shall file with the Township Zoning Officer an original and two copies of a sworn permit application on the standard application form supplied by the Township or designee.
- F. The completed application 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 satisfactory proof that he/she is eighteen years of age or older;
    - b. a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
    - c. a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of the state of its incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
  - 2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he must state (1) the intended fictitious name; and (2) submit proof that the required fictitious name registration has been completed.
  - 3. Whether the applicant or any of the other individuals listed pursuant to this Part has, within the two (2) or five (5) year period as specified in this Part immediately preceding the date of the application, been convicted of a specified criminal act, and, if so, the specified criminal act involved, the date of conviction and the place of conviction.
  - 4. Whether the applicant or any of the other individuals required to be identified by this Part has had a previous permit under a similar sexually oriented business ordinance from another city, township or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the

applicant or any other individuals as aforesaid has been a partner in a partnership or any officer, director or principal stockholder of a corporation whose permit has previously been denied, suspended or revoked by a municipal entity, 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 any other individual required to be identified by this Part holds any other permits and/or licenses under this Part or other similar sexually oriented business ordinance from another city, township or county and, if so, the names and locations of such other permitted businesses.
6. The single classification of permit for which the applicant is filing.
7. The location of the proposed sexually oriented business including a legal description of the property, street address, and telephone number(s), if any.
8. The applicant's mailing addresses and residential address.
9. A recent photograph of the applicant(s).
10. The applicant's driver's license number, Social Security number, and/or his/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 thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any established existing uses regulated by this Part within one thousand (1,000) feet of the property to be certified; the property lines of any established religious institution/ synagogue, school, or public park or recreation area within two thousand five hundred (2,500) feet of the property to be certified; and the property lines of any residentially zoned area or residential property within one thousand (1,000) feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
13. If a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent (10%) or greater

interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity which wishes to operate such a business, each individual having a ten percent (10%) or greater interest in the corporation must sign the application for a permit as applicant.

14. If a person wishes to operate a sexually oriented business which shall exhibit on the premises films, video cassettes, or other video reproductions which depict "specified sexual activities" or "specified anatomical areas", then said person shall comply with the application requirements contained in this Part.
- G. Applicants for a permit under this Section shall have a continuing duty to promptly supplement application information required by this Section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) days from the date of such change, by supplementing the application on file with the Zoning Officer or his/her designee, shall be grounds for suspension of a permit.
- H. In the event that the Zoning Officer or his/her designee determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, he/she shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. (The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.)
- I. The applicant must be qualified according to the provisions of this Part and the premises must be inspected and found to be in compliance with health, fire and building codes and laws.
- J. The applicant shall be required to pay a non-refundable application fee of One Thousand Dollars (\$1,000.00) at the time of filing an application under this Section of this Part, which amount shall be applied to review of the application (including a review of the plans by the Township engineer) and inspections necessary to verify the accuracy of the application and compliance with this Part.
- K. Prior to obtaining any permit or license to operate any sexually oriented business defined in this Part, and as part of any application for a permit under this Section, the applicant shall obtain from the Township or its designee a certification that the proposed location of such business complies with the locational requirements (if any) of the Zoning Ordinance of Clay Township.
- L. The fact that a person possesses other types of State or Township permits and/or licenses does not exempt his/her from the requirement of obtaining a sexually oriented business permit, unless this license procedure is specifically preempted by such other license.

- M. By applying for a permit under this Part, the applicant shall be deemed to have consented to the provisions of this Part and to the exercise by the Zoning Officer or his/her designee, the Clay Township Police Department or any police department providing police services within Clay Township pursuant to an agreement with Clay Township and all other Township agencies charged with enforcing the laws, ordinances and codes applicable in the Township of their respective responsibilities under this Part.
- N. The applicant shall be required to provide the Township with the names of any and all employees who are required to be licensed pursuant to this Part. This shall be a continuing requirement even after a permit is granted or renewed.

*[Ord. 3-18-02, 03/18/2002, §6]*

§206. Investigation and Application

- A. Upon receipt of an application properly filed with the Township and upon payment of the non-refundable application fee, the Township or its designee, shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to the Clay Township Police Department and any other Township agencies responsible for enforcement of health, fire and building codes and laws. Each department or agency shall promptly conduct an investigation of the applicant, application and the proposed sexually oriented business in accordance with its responsibilities under law and as set forth in this Part. Said investigation shall be completed within twenty (20) days of receipt of the application by the Township or its designee. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it, and, in the event it disapproves, state the reasons therefor. The Clay Township Police Department shall only be required to certify the NCIC records request check. The Clay Township Police Department shall not be required to approve or disapprove applications.
- B. A department or agency shall disapprove an application if it finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, Part, regulation or other law in effect in the Township. After its indication of approval or disapproval, each department or agency shall immediately return the photocopy of the application to the Township or its designee.

*[Ord. 3-18-02, 03/18/2002, §7]*

§207. Permit

- A. Issuance of Permit
  - 1. The Zoning Officer or his/her designee, shall grant or deny an application for a permit within thirty (30) days from the date of its proper filing.

Upon the expiration of the thirtieth (30<sup>th</sup>) day, unless the applicant requests and is granted a reasonable extension of time, the applicant shall be permitted to begin operating the business for which the permit is sought, unless and until the Township or its designee, notifies the applicant of a denial of the application and states the reason(s) for that denial.

B. Grant of Application for Permit

1. The Zoning Officer or his/her designee, shall grant the application unless one or more of the criteria set forth in Section C below is present.
2. The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit shall also indicate that the Sexually Oriented Business whether permitted or not may be subject to prohibitions against Public Nudity and Indecency pursuant to the United States Supreme Court decision in *Barnes vs. Glen Theatre, Inc.*, 501 U.S. 560 (1991). The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be read easily at any time.

C. Denial of Application for Permit

1. The Zoning Officer or his/her designee, shall deny the application for any of the following reasons:
  - a. An applicant is under eighteen years of age.
  - b. An applicant or an applicant's spouse is overdue on his/her payment to the Township of taxes, fees, fines, or penalties assessed against him/her or imposed upon him/her in relation to a sexually oriented business.
  - c. An applicant has, or is residing with a person who has, been denied a permit by the Township to operate a sexually oriented business within the preceding twelve (12) months, or an applicant has, or is residing with a person, whose permit to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
  - d. An applicant has failed to provide information required by this Section or permit application for the issuance of the permit or has falsely answered a question or request for information on the application form.
  - e. The premises to be used for the sexually oriented business have not been approved as being in compliance with zoning, subdivision,

land development, health, fire and building codes or parts by the department or agency responsible under law for investigating said compliance.

- f. The applicant or permit fees required by this Part have not been paid.
- g. An applicant of the proposed business is in violation of, or is not in compliance with, any of the provisions of this Part including but not limited to zoning locational requirements for a sexually oriented business.
- h. The granting of the application would violate a statute, Part, or court order.
- i. The applicant has a permit under this Part which has been suspended or revoked.
- j. An applicant has been convicted of a “specified criminal” act for which:
  - (1) less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a summary offense for the “specified criminal” acts which are sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations;
  - (2) less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; for the “specified criminal” acts which are sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business including but not limited to distribution of obscenity or materials harmful to minors, prostitution, pandering, or tax violations;
  - (3) less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two or more summary offenses for “specified criminal” acts which are sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business including but not limited to distribution of obscenity or materials harmful to minors, prostitution, pandering or tax

violations; offenses occurring within any twenty-four (24) month period;

- (4) the fact that a conviction is being appealed shall have no effect on disqualification of the applicant;
- (5) an applicant who has been convicted of the above described “specified criminal acts” may qualify for a sexually oriented business permit only when the time period required above in Section 11(j) has elapsed.

k. An applicant knowingly has in his or her employ, an employee who does not have a valid license as required by this Part.

- 2. If the Zoning Officer or his/her designee, denies the application, he/she shall notify the applicant of the denial and state the reason(s) for the denial.
- 3. If a person applies for a permit for a particular location within a period of twelve (12) months from the date of denial of a previous application for a permit at the location, and there has not been an intervening change in the circumstances which could reasonably be expected to lead to a different decision regarding the former reasons for denial, the application shall be denied.

*[Ord. 3-18-02, 03/18/2002, §8]*

§208. Annual Permit Fee

The annual renewal fee for a sexually oriented business permit is Five Hundred Dollars (\$500.00).

*[Ord. 3-18-02, 03/18/2002, §9]*

§209. Inspection

- A. An applicant or permittee shall permit representatives of the Clay Township Police Department, Zoning Officer, Code Enforcement Office, the County Health Department, and the Fire Department 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. It shall be unlawful and a person who operates a sexually oriented business, regardless of whether or not a permit has been issued for said business under this Part, or his/her agent or employee commits a summary offense if he/she refuses to permit such lawful inspection of the premises at any time that it is occupied or open for business.

*[Ord. 3-18-02, 03/18/2002, §10]*

§210. Expiration of Permit

- A. Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in this Part (for renewals, filing of original survey shall be sufficient). Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the permit will not be affected.
  
- B. When the Zoning Officer or his/her designee, denies renewal of the permit, the applicant shall not be issued a permit under this Part for one (1) year from the date of denial. If, subsequent to denial, the Township or its designee, finds that the basis for denial of the renewal of the permit has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date denial became final.

*[Ord. 3-18-02, 03/18/2002, §11]*

§211. Suspension of Permit

- A. The Zoning Officer or his/her designee, shall suspend a permit for a period not to exceed thirty (30) days if he/she determines that a permittee, or an employee of a permittee, has:
  - 1. Violated or is not in compliance with any section of this Part; or
  - 2. Been under the influence of alcoholic beverages while working in the sexually oriented business premises; or
  - 3. Refused to allow an inspection of sexually oriented business premises as authorized by this Part; or
  - 4. Knowingly permitted gambling by any person on the sexually oriented business premises; or
  - 5. Operated the sexually oriented business in violation of a building, fire, health, or zoning statute, code, Part or regulations, whether federal, state or local, said determination being based on investigation by the division, department or agency charged with enforcing said rules or laws. In the event of such statute, code, Part, or regulations violation, the Township or its designee, shall promptly notify the permittee of the violation and shall allow the permittee a seven (7) day period in which to correct the violation. If the permittee fails to correct the violation before the expiration of the seven (7) days period, the Township or its designee, shall

forthwith suspend the permit and shall notify the permittee of the suspension.

6. Engaged in permit transfer contrary to the requirements of this Part. In the event that the Township or its designee, suspends a permit on the ground that a permittee engaged in an permit transfer contrary to this Part, the Zoning Officer or his/her designee shall forthwith notify the permittee of the suspension. The suspension shall remain in effect until the applicable section of this Part has been satisfied.
  7. Operated the sexually oriented business in violation of the hours of operation provided in this Part.
  8. Knowingly employs a person who does not have a valid license as required by this Part.
- B. The suspension shall remain in effect until the violation of the statute, code, Part or regulation in question has been corrected.

*[Ord. 3-18-02, 03/18/2002, §12]*

§212. Revocation of Permit

- A. The Zoning Officer or his/her designee shall revoke a permit if a cause of suspension in Section 15 of this Part occurs and the permit has been suspended within the preceding twelve (12) months.
- B. The Zoning Officer or his/her designee, shall revoke a permit upon determining that:
  1. A permittee gave materially false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a permit; or
  2. A permittee or an employee has knowingly allowed possession, use (by a person who does not possess a valid medical prescription for same) or sale of controlled substances in or on the premises; or
  3. A permittee or an employee has knowingly allowed prostitution on the premises; or
  4. A permittee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended; or
  5. A permittee has been convicted of a "specified criminal act" for which the time period required in Section 11 of this Part has not elapsed; or

6. On two or more occasions within a twelve (12) month period, a person or persons committed an offense, occurring in or on the permitted premises, constituting a specified criminal act for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the permit; or
7. A permittee is convicted of tax violations for any taxes or fees related to a sexually oriented business; or
8. A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or any other specified sexual activities to occur in or on the permitted premises; or
9. A permittee has been operating more than one sexually oriented business under a single roof except as provided in this Part; or
10. A permittee has permitted a minor to either knowingly enter the premises or has failed to verify the age of any minor as required hereinafter before permitting such minor to enter the premises.
  - a. In order to ensure that minors are excluded from the premises in which a sexually oriented business is being conducted, at its public entrance the permittee or an employee shall request governmentally issued photographic identification that includes a date of birth from each and every person wishing to gain admission. Each such photographic identification presented shall be photocopied, and such photocopies shall be retained for a period of three (3) years. During such storage, all such photocopies shall be subject to inspection by the Township or its designees at any time during regular business hours. Any person who refuses to permit photocopying of the identification, fails to produce such governmentally issued photographic identification, whose offered identification is suspicious or appears to have been altered or modified, or who is revealed to be under the age of eighteen (18), shall be denied entrance into the premises.

- C. When the Zoning Officer or his/her designee, revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date revocation became effective.

*[Ord. 3-18-02, 03/18/2002, §13]*

§213. Judicial Review of Permit Denial, Suspension or Revocation

After denial of an application, or denial of a renewal of an application, or suspension or revocation of a permit, the applicant or permittee may seek prompt review of such administrative action by appeal to the Board of Supervisors of Clay Township. If the denial, suspension or revocation is affirmed upon review, the administrative action may be reviewed by a court of competent jurisdiction.

*[Ord. 3-18-02, 03/18/2002, §14]*

§214. Transfer of Permit

- A. A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.
- B. A permittee shall not transfer his/her permit to another person unless and until such other person satisfies the following requirements:
  - 1. Obtains an amendment to the permit from the Zoning Officer or his/her designee, which provides that he/she is now the permittee, which amendment may be obtained only if he/she has completed and properly filed an application with the Zoning Officer or his/her designee, setting forth the information required by this Part in the application; and
  - 2. Pays a transfer fee of twenty percent (20%) of the annual permit fee set by this Part.
- C. No permit may be transferred when the Zoning Officer or his/her designee has notified the permittee that suspension or revocation proceedings have been or will be brought against the permittee.
- D. A permittee shall not transfer his permit to another location.
- E. Any attempt to transfer a permit either directly or indirectly in violation of this Section is hereby declared void and the permit shall be deemed revoked.

*[Ord. 3-18-02, 03/18/2002, §15]*

§215. Sexually Oriented Business Employee License

- A. Each individual to be employed in a sexually oriented business, as defined in this Part, including persons who engage in the services rendered by a nude model studio, escort or escort agency, sexual encounter establishment, massage parlor, or a live performer or entertainer shall be required to obtain a Sexually Oriented Business Employee License. Each applicant shall pay a permit fee of Twenty-five Dollars (\$25.00). Said fee is to cover reasonable administrative costs of the licensing application process.
- B. Before an applicant may be issued a Sexually Oriented Business Employee

License, the applicant shall submit on a form to be provided by the Zoning Officer or his or her designee the following information:

1. The applicant's name or any other names (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. State driver's license or identification number;
7. Social Security number; and
8. Acceptable written proof that the individual is at least eighteen (18) years of age.
9. Attached to the application form as provided above, a color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Clay Township Police Department. Any fees for the photographs and fingerprints shall be paid by the applicant.
10. A statement detailing the license or permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate, in this or any other county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation or suspension, state the date, the name of the issuing or denying jurisdiction, and describe in full the reasons for the denial, revocation or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
11. Whether the applicant has been convicted of a "specified criminal" act as defined in this Part. This information shall include the date, place, nature of each conviction or plea of nolo contendere and identifying the convicting jurisdiction.
12. The Zoning Officer or his or her designee shall refer the Sexually Oriented Business Employee License Application to the Clay Township Police Department for an investigation to be made of such information as is contained on the application. The application process shall be completed

within ten (10) days from the date the complete application is filed. After the investigation, the Zoning Officer or his or her designee shall issue a license unless the report from the Police Department finds that one or more of the following findings is true:

- a. That the applicant has knowingly made any false, misleading, or fraudulent statement of a material fact in the application for a license, or in any report or record required to be filed with the Police Department or other department of the Township;
- b. That the applicant is under eighteen (18) years of age;
- c. That the applicant has been convicted of a “specified criminal act” as defined in this Part;
- d. That 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 particular provisions of this Part;
- e. That the applicant has had a Sexually Oriented Business Employee License revoked by the Township within two (2) years of the date of the current application.

C. Renewal of license:

1. A license granted pursuant to this Section shall be subject to annual renewal by the Zoning Officer or his or her designee upon the written application of the applicant and a finding by the Zoning Officer or his or her designee and the Clay Township Police Department that the applicant has not been convicted of any “specified criminal act” as defined in this Part or committed any act during the existence of the previous license period which would be grounds to deny the initial permit application.
2. The renewal of the license shall be subject to payment of a fee as set by a resolution of the Board of Supervisors.

*[Ord. 3-18-02, 03/18/2002, §16]*

§216. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos in Video Booths

- A. A person who operates or causes to be operated a sexually oriented business, other than a sexually oriented motel/hotel and regardless of whether or not a permit has been issued to said business under this Part, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of

floor space, a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. Upon application for a sexually oriented business permit, 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, the location of all overhead lighting fixtures and designation 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 with no dimension greater than eight (8) feet. The diagram shall also designate the place at which this 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 designate street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimension of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Zoning Officer or his/her designee, may waive the foregoing diagram for renewal applications if the applicant adopts a 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. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Township or its designee.
4. It is the duty of the owners and operator of the premises to insure that at least one employee is on duty and situated at each manager's station at all times that any patron is present inside the premises. In addition to the aforesaid employee, the permittee shall have installed, and shall continuously operate surveillance video cameras that provide a full view of the entire interior of the premises, including all portions of each viewing booth. The film from each such camera shall be retained for a period of one full month after filming, and shall be available for review by the Township Zoning Officer or Police Department at any time during regular business hours.
5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have 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 by direct line of sight from the manager's station.

6. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present on the premises to insure that the view area specified in subsection 5 remains unobstructed by any doors, walls, merchandise, display racks or other materials or person at all times and to insure 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 a. of this Section.
7. No viewing room may be occupied by more than one person at any one time. No holes, commonly known as “glory holes”, shall be allowed in the walls or partitions which separate each viewing room from an adjoining viewing room or restroom.
8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access and an illumination of not less than two (2.0) foot candle as measured at the floor level.
9. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present on the premises to insure that the illumination described above is maintained at all times that any patron is present on the premises.

*[Ord. 3-18-02, 03/18/2002, §17]*

§217. On-site Security. In addition to any clerical or management staff who shall be present on the premises at any given time, the permittee shall provide one separate, professionally trained security guard who shall be on or in the premises at all times that the sexually oriented business is open to the public. During that time the security guard shall, at least once per hour, make a patrol of the exterior of the premises on which the business is operated, including an exterior visual inspection of each vehicle parked on the premises, and shall record in a log maintained for such purpose, the date and time of each such patrol. The purpose of the security guard, and the patrols, is to ensure that no patron or other person is being subjected to, or committing, any illegal activity. In the event that such illegal activity is discovered, the security guard shall, if a person’s life or limb is in danger, make reasonable efforts to provide assistance or relief, but otherwise shall immediately contact the Township Police Department. Under no circumstances shall such security guard be deemed to be an agent or employee of Clay Township, and permittee shall provide liability insurance against wrongful or negligent acts by same in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence. Proof of such insurance coverage shall be continuously maintained on the premises of the sexually oriented business.

*[Ord. 3-18-02, 03/18/2002, §18]*

§218. Prohibitions Regarding Minors and Sexually Oriented Businesses. A person commits a summary offense, in addition to being subject to a license revocation, if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a

permit has been issued for said business under this Part, and knowingly or with reasonable cause to know, permit, suffer, or allow:

- A. Admittance of a person under eighteen (18) years of age to the business premises;
- B. A person under eighteen (18) years of age to remain at the business premises;
- C. A person under eighteen (18) years of age to purchase goods or services at the business premises; and
- D. A person who is under eighteen (18) years of age to work at the business premises as an employee.

*[Ord. 3-18-02, 03/18/2002, §19]*

§219. Advertising and Lighting Regulations

- A. It shall be unlawful and a person commits a summary offense if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this Part, and displays or otherwise exhibits the materials and/or performances at such sexually oriented business in any advertising which is visible outside the premises. This prohibition shall not extend to advertising of the existence or location of such sexually oriented business.
- B. The permittee shall not allow any portion of the interior premises to be visible from outside the premises.
- C. All off-street parking areas and premise entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1.0) foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premise.
- D. Nothing contained in this Section shall relieve the operator(s) of a sexually oriented business from complying with the other Ordinances of the Township of Clay, as it or they may be amended from time to time, or any subsequently enacted Township Ordinances or regulations.
- E. Nothing in this Part shall be deemed to prohibit otherwise lawful off premises advertising such as in newspapers, radio, television, the internet, or on approved bill-boards.

*[Ord. 3-18-02, 03/18/2002, §20]*

§220. Hours of Operation

- A. It shall be unlawful and a person commits a summary offense if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this Part, and allows such business to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of midnight and 9:00 a.m. of any particular day.
- B. It shall be unlawful and a person commits a summary offense if, working as an employee of a sexually oriented business, regardless of whether or not a permit has been issued for said business under this Part, said employee engages in a performance, solicits a performance, makes a sale, solicits a sale, provides a service, or solicits a service, between the hours of midnight and 9:00 a.m. of any particular day.

[Ord. 3-18-02, 03/18/2002, §21]

§221. Nudity at Sexually Oriented Business Prohibited

- A. The United States Supreme Court decision in *Barnes v. Glen Theatre*, 501 U.S. 560 (1991) which upheld the rights of cities to prohibit live public exposure of a person's private parts, specifically applies to sexually oriented businesses (regardless of whether or not a permit has been issued to said businesses under this Part), including said businesses where no alcoholic beverages are sold, served, or consumed at the premises.
- B. Live public exhibitions of nudity for financial gain or other consideration is prohibited within the Township of Clay, including within any sexually oriented business. Any sexually oriented business which is found in violation of this Section shall have its permit suspended pursuant to the provisions provided herein.

[Ord. 3-18-02, 03/18/2002, §22]

§222. Regulations Pertaining to Live Entertainment

- A. For purposes of this Section, "live entertainment" is defined as a person who appears nude, semi-nude, or a performance which is characterized by the exposure of "specified anatomical areas" or by "specified sexual activities".
- B. No person shall perform live entertainment for patron(s) of a sexually oriented business establishment except upon a stage at least eighteen (18) inches above the

level of the floor which is separated by a distance of at least ten (10) feet from the nearest area occupied by patron(s). No patron shall be permitted within ten (10) feet of the stage while the stage is occupied by a performer.

- C. The sexually oriented business establishment shall provide separate dressing room facilities for female and male performers which shall not be occupied or used in any way by any one other than performers.
- D. The sexually oriented business establishment shall provide access for performers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the establishment shall provide a minimum four (4) foot wide walk aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers which prevents any physical contact between patrons and performers.
- E. No entertainer, either before, during, or after a performance, shall have physical contact with any patron to which the performer is not married, and no patron, other than the spouse of a performer, shall have physical contact with any entertainer either before, during or after a performance. This subsection shall only apply to physical contact while in or on the premises of the establishment.
- F. Fixed rail(s) at least thirty (30) inches in height shall be maintained establishing the separations between performers and patrons required by this Section.
- G. No patron shall directly pay or give any gratuity to any entertainer. A patron who wishes to pay or give a gratuity shall place the gratuity in a container that is at all times located separately from the performers for the purpose of preventing any physical contact between a patron and a performer. No performer shall solicit any gratuity from any patron.
- H. No operator of a sexually oriented business establishment shall cause or allow a performer to contract or engage in any entertainment such as a “couch” or a “straddle” dance with a patron while in or on the establishment premises. No performer shall contract or engage in a “couch” or “straddle” dance with a patron while in or on the establishment premises. For purposes of this subsection, “couch” or “straddle” dance is defined as an employee of the establishment intentionally touching or coming within ten (10) feet of any patron while engaged in the display or exposure of any “specified anatomical area”, or any “specified sexual activity”.
- I. This Section shall not apply to an employee of an establishment who, while acting as a waiter, waitress, host, hostess, or bar tender, comes within ten (10) feet of a patron. No employee shall engage in any “specified sexual activity” or display or expose any “specified anatomical area” while acting as a waiter, waitress, host, hostess, or bar tender.
- J. Compliance with this Section:

1. No establishment as defined in this Part shall be in compliance with this Section until the Township's designated agent(s) have inspected and approved of the establishment's compliance. The Township shall have ten (10) days from the date it receives written notice from the operator that the establishment is ready for inspection to approve or disapprove of compliance required by this Section. Failure to approve or disapprove of compliance within ten (10) days shall constitute a finding of compliance under this Section.
2. The operator of an establishment, that has been providing live entertainment under a valid sexually oriented business permit, shall have the time periods listed below in which to bring the establishment into compliance with this Section. Failure to do so while continuing to provide live entertainment shall cause the establishment's permit to be suspended as provided in this Part. The permit shall remain suspended until the establishment is approved by the Township's designated agent(s) as being in full compliance with this Section.
3. The operator of an establishment that has been operating under a valid permit for another classification of sexually oriented business and who wishes to provide live entertainment at that establishment, shall apply for and receive a sexually oriented business permit for the operation of any establishment providing live entertainment before any live entertainment is provided at that establishment. No live entertainment permit shall be issued unless there is full compliance with this Section and all other applicable requirements of this Part.
4. The applicant for a permit to operate a new establishment, who wishes to provide live entertainment, shall apply for and receive a sexually oriented business permit for the operation of an establishment providing live entertainment before any live entertainment is provided. No live entertainment permit shall be issued until the establishment is approved as being in full compliance with this Section and all other applicable requirements of this Part.
5. Subsection B: Sixty (60) days from the date this Section becomes effective.
6. Subsection C: Ninety (90) days from the date this Section becomes effective.
7. Subsection D: Ninety (90) days from the date this Section becomes effective.
8. Subsection E: Upon the date this Section becomes effective.
9. Subsection F: Sixty (60) days from the date this Section becomes effective.

10. Subsection G: Upon the date this Section becomes effective.

11. Subsection H: Upon the date this Section becomes effective.

*[Ord. 3-18-02, 03/18/2002, §23]*

§223. Prohibition of Distribution of Sexual Devices

- A. It shall constitute a summary offense for any person or sexually oriented business to distribute, for commercial purposes, sell or offer for sale any device, instrument or paraphernalia designed or marketed primarily for stimulation of human genital organs (except as permitted by a valid medical prescription) or for sado-masochistic use or abuse of themselves or others.
- B. Such devices, instruments, or paraphernalia include but are not limited to: phallic shaped vibrators, dildos, muzzles, whips, chains, bather restraints, racks, non-medical enema kits, body piercing implements (excluding earrings or other decorative jewelry) or other tools of sado-masochistic abuse.
- C. It shall be a violation of the licenses granted herein (but not a summary offense) to sell or distribute items that are commonly known to be, or commonly recognized as drug paraphernalia. This prohibition shall specifically include, but not be limited to pipes or other devices which may be used for drug consumption but which are not commonly marketed in tobacconist shops.

*[Ord. 3-18-02, 03/18/2002, §24]*

§224. Additional Criminal Prohibitions for the Operation of a Sexually Oriented Business Without a Valid Permit

- A. In addition to the criminal provisions found at other sections of this Part, the following additional criminal provisions shall also apply to sexually oriented business.
- B. It shall be unlawful and a person commits a summary offense if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this Part, and said person knows or should know that:
  - 1. The business does not have a sexually oriented business permit under this Part for any applicable classification;
  - 2. The business has a permit which is under suspension;
  - 3. The business has a permit which has been revoked; or

4. The business has a permit which has expired.

*[Ord. 3-18-02, 03/18/2002, §25]*

§225. Exemptions

- A. It is a defense to prosecution for any violation of this Part 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 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.
- B. It is a defense to prosecution for a violation of this Part that an employee of a sexually oriented business, regardless of whether or not it is permitted under this Part, exposed any specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

*[Ord. 3-18-02, 03/18/2002, §26]*

§226. Criminal Penalties and Additional Legal, Equitable, and Injunctive Relief

- A. In addition to whatever penalties are applicable under the Pennsylvania Penal Code, if any person fails or refuses to obey or comply with or violates any provisions of this Part which is designated as constituting a summary offense, such person upon conviction of such offense, shall be guilty of a summary offense and shall be punished by a fine not to exceed Three Hundred Dollars (\$300.00) or by imprisonment not to exceed ninety (90) days in the jail, or both, in the discretion of the Court. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.
- B. Nothing herein contained shall prevent or restrict the Township from taking, and

the Township is specifically authorized to take, such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

- C. Further, nothing in this Section shall be construed to prohibit the Township from prosecuting any violation of this Part by means of a Code Enforcement Board established pursuant to the authority as provided by the laws of Pennsylvania.
- D. All remedies and penalties provided for in this Section shall be cumulative and independently available to the Township and the Township shall be authorized to pursue any and all remedies set forth in this Section to the full extent allowed by law.

*[Ord. 3-18-02, 03/18/2002, §27]*

§227. Immunity From Prosecution. The Township and its designee, the Clay Township Police Department and all other departments and agencies, and all other Township 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 Part.

*[Ord. 3-18-02, 03/18/2002, §28]*

§228. Severability. If any section, subsection or clause of this Part shall be deemed to be unconstitutional or otherwise invalid, the validity with the remaining section, subsection and clauses shall not be affected thereby.

*[Ord. 3-18-02, 03/18/2002, §29]*

§229. Conflicting Ordinance Repealed. All Ordinances or parts of Ordinances in conflict with the provisions of this Part are hereby repealed.

*[Ord. 3-18-02, 03/18/2002, §30]*