

**RESOLUTION NO. 15 - 2011**

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**RESOLUTION GOVERNING SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES  
PURSUANT TO SECTIONS 503.51 AND 503.52 OF THE OHIO REVISED CODE AND AS  
AUTHORIZED BY THE TOWNSHIP LIMITED HOME RULE PROVISIONS OF  
OHIO REVISED CODE CHAPTER 504**

**WHEREAS**, the West Chester Township Board of Trustees finds that Adult entertainment establishments require special supervision from the public safety agencies of West Chester Township in order to protect and preserve the health, safety, morals, and welfare of the patrons and employees of the businesses as well as the citizens of West Chester Township; and,

**WHEREAS**, the West Chester Township Board of Trustees finds that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and,

**WHEREAS**, the concern over sexually transmitted diseases is a legitimate health concern of West Chester Township that demands reasonable regulation of adult entertainment establishments by West Chester Township in the specified manner, and expanded authority for reasonable regulation of adult entertainment establishments by local governments, in order to protect the health and well-being of the citizens; and,

**WHEREAS**, minimal regulations enacted by West Chester Township are a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and,

**WHEREAS**, there is convincing documented evidence that adult entertainment establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, cause increased crime, particularly in the overnight hours, and downgrade property values; and,

**WHEREAS**, the West Chester Township Board of Trustees desires to minimize and control these adverse effects by regulating adult entertainment establishments in the specified manner. And by minimizing and controlling these adverse effects, the West Chester Township Board of Trustees seeks to protect the health, safety, and welfare of the citizenry; 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 urban blight; and,

**WHEREAS**, the West Chester Township Board of Trustees has determined that current local zoning and other locational criteria do not adequately protect the health, safety, and general welfare of the people of West Chester Township and that updating and expanding the Township's regulation of adult entertainment establishments is necessary; and,

**WHEREAS**, it is not the intent of the West Chester Township Board of Trustees in enacting this Resolution to suppress or authorize the suppression of any speech activities protected by the First

Amendment, but to enact content-neutral statutes that address the secondary effects of adult entertainment establishments; and,

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

**NOW THEREFORE, BE IT RESOLVED** that the West Chester Township Board of Trustees does hereby agree to the following guidelines:

### **SECTION 1. PURPOSE, INTENT AND FINDINGS**

- (a) It is the intent of the West Chester Township Board of Trustees in enacting this Resolution to regulate in the specified manner adult entertainment establishments in order to promote the health, safety, morals, and general welfare of the citizens of West Chester Township and establish reasonable regulations to prevent the deleterious secondary effects of adult entertainment establishments within West Chester Township. The provisions of this Resolution 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 of the West Chester Township Board of Trustees in enacting this Resolution to restrict or deny, or authorize the restriction or denial of, access by adults to sexually oriented materials protected by the First Amendment, or to deny, or authorize the denial of, access by the distributors and exhibitors of adult entertainment and adult materials to their intended market. Neither is it the intent nor effect of the West Chester Township Board of Trustees in enacting this Resolution to condone or legitimize the distribution or exhibition of obscene material.
- (b) Based on evidence concerning the adverse secondary effects of adult uses on communities presented in hearings and in reports made available to the legislature and subsequently adopted by the Ohio General Assembly as findings under Section 3 of House Bill 23 [and on findings incorporated in the cases of *City of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.* (2004), 541 U.S. 774; *City of Erie v. Pap's A.M.* (2000), 529 U.S. 277; *Barnes v. Glen Theatre, Inc.* (1991), 501 U.S. 560; *City of Renton v. Playtime Theatres, Inc.* (1986), 475 U.S. 41; *Young v. American Mini Theatres* (1976), 426 U.S. 50; *California v. LaRue* (1972), 409 U.S. 109; *DLS, Inc. v. City of Chattanooga* (6th Cir. 1997), 107 F.3d 403; *East Brooks Books, Inc. v. City of Memphis* (6th Cir. 1995), 48 F.3d 220; *Harris v. Fitchville Township Trustees* (N.D. Ohio 2000), 99 F. Supp.2d 837; *Bamon Corp. v. City of Dayton* (S.D. Ohio 1990), 730 F. Supp. 90, *aff'd* (6th Cir. 1991), 923 F.2d 470; *Broadway Books v. Roberts* (E.D. Tenn. 1986), 642 F. Supp. 486; *Bright Lights, Inc. v. City of Newport* (E.D. Ky. 1993), 830 F. Supp. 378; *Richland Bookmart v. Nichols* (6th Cir. 1998), 137 F.3d 435; *Deja Vu v. Metro Government* (6th Cir. 1999), 1999 U.S. App. LEXIS 535; *Threesome Entertainment v. Strittmather* (N.D. Ohio 1998), 4 F.Supp.2d 710; *J.L. Spoons, Inc. v. City of Brunswick* (N.D. Ohio 1999), 49 F. Supp.2d 1032; *Triplett Grille, Inc. v. City of Akron* (6th Cir. 1994), 40 F.3d 129; *Nightclubs, Inc. v. City of Paducah* (6th Cir. 2000), 202 F.3d 884; *O'Connor v. City and County of Denver* (10th Cir. 1990), 894 F.2d 1210; *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County* (6th Cir. 2001), 2001 U.S. App. LEXIS 26007; *State of Ohio ex rel. Rothal v. Smith* (Ohio C.P. 2002), Summit C.P. No. CV 01094594; *Z.J. Gifts D-2, L.L.C. v. City of Aurora* (10th Cir. 1998), 136 F.3d 683; *Connection Distrib. Co. v. Reno* (6th Cir. 1998), 154 F.3d 281; *Sundance Assocs. v. Reno* (10th Cir. 1998), 139 F.3d 804; *American Library Association v. Reno* (D.C. Cir.

1994), 33 F.3d 78; *American Target Advertising, Inc. v. Giani* (10th Cir. 2000), 199 F.3d 1241; and other cases, and on reports of secondary effects occurring in and around adult entertainment establishments in Phoenix, Arizona (1984); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma Township, Oklahoma (1986); Cleveland, Ohio (1977); Dallas, Texas (1997); St. Croix County, Wisconsin (1993); Bellevue, Washington (1998); Newport News, Virginia (1996); Tucson, Arizona (1990); St. Paul, Minnesota (1988); Oklahoma Township, Oklahoma (1986 and 1992); Beaumont, Texas (1982); New York, New York (1994); Ellicottville, New York (1998); Des Moines, Iowa (1984); Islip, New York (1980); Adams County, Colorado (1987); Manatee County, Florida (1987); New Hanover County, North Carolina (1989); Las Vegas, Nevada (1978); Cattaraugus County, New York (1998); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); New York Times Square study (1994); Report to ACLJ on the Secondary Impacts of Sex Oriented Businesses (1996); findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and on testimony to Congress in 136 Cong. Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636, 134 Cong. Rec. E. 3750; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and from various other police reports, testimony, newspaper reports, and other documentary evidence), and subsequent findings in *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291; *729, Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485; and *Andy's Rest. & Lounge, Inc. v. City of Gary* (7th Cir. 2006), 466 F.3d 550, and the West Chester Township Trustees independent review of the same) the West Chester Township Trustees find:

- (1) Adult entertainment establishments lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments.
- (2) Certain employees of adult entertainment establishments, as defined in this Resolution as adult theaters and cabarets, engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts, including masturbation and oral and anal sex, occur at adult entertainment establishments, especially those that provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows. The "couch dances" or "lap dances" that frequently occur in adult entertainment establishments featuring live nude or seminude dancers constitute or may constitute the offense of "prostitution" under Section 2907.25 of the Revised Code.
- (4) Offering and providing private or semi-private booths or cubicles encourages such activities, which creates unhealthy conditions, and requiring the removal of doors on such booths or cubicles will advance the substantial governmental interest in preventing these unhealthy conditions.
- (5) Persons frequent certain adult theaters, adult arcades, and other adult entertainment establishments for the purpose of engaging in sexual activity within the premises of those adult entertainment establishments.

- (6) Numerous communicable diseases may be spread by activities occurring in Sexually Oriented Businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and shigella infections, chlamydial, myoplasmal and ureoplasmal infections, trichomoniasis, and chancroid.
- (7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 through December 31, 1992.
- (8) A total of 10,255 AIDS cases had been reported in Ohio as of January 1999. Ohio has required HIV case reporting since 1990, and the reported information shows 7,969 people living with (HIV) (4,213) and (AIDS) (3,756) in the state.
- (9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Ohio.
- (10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen. 33,613 cases were reported in 1982, and 45,200 cases were reported through November 1990.
- (11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.
- (12) The Surgeon General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, and exposure to infected blood and blood components, and from an infected mother to her newborn.
- (13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- (14) Sanitary conditions in some adult entertainment establishments are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
- (15) The findings noted in divisions (b)(1) to (14) of this section raise substantial governmental concerns.
- (16) Adult entertainment establishments have operational characteristics that require or mandate subject them to reasonable government regulation in order to protect those substantial governmental concerns.
- (17) The regulation of nudity in adult entertainment establishments will further the substantial governmental interests in preventing prostitution and other sex-related crimes, including illegal sex acts, and protecting the public health, safety, morals and general welfare.

- (18) Requiring sufficient lighting in all Sexually Oriented Businesses or other adult entertainment establishments featuring live performers will advance the substantial governmental interest in curbing illegal sexual activity on the premises of these adult entertainment establishments, and will facilitate enforcement of the provisions of this Resolution and other federal, state and local laws, thereby furthering the substantial governmental interest in protecting the public health, safety, morals, and general welfare.
- (19) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of adult entertainment establishments, and by employees of such businesses, will facilitate the enforcement of the provisions of this Resolution and other federal, state and local laws, and will thereby further the substantial government interest in protecting the public health, safety, morals, and general welfare.
- (20) A person who recently has been convicted of a sexually related crime is not an appropriate individual to operate or be employed in an adult entertainment establishment.
- (21) Barring such individuals from the management of and employment in adult entertainment establishments for a period of years serves as a deterrent to and prevents the commission of sexually related criminal acts, including conduct which leads to the transmission of sexually transmitted diseases.
- (22) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of adult entertainment establishments. Further, such a licensing procedure will place a heretofore-nonexistent incentive on operators to see that adult entertainment establishments are run in a manner consistent with the health, safety, morals and general welfare of patrons and employees, as well as the citizens of the Township. It is appropriate to require reasonable assurances that the licensee is the actual operator of the adult entertainment establishment, and fully in possession and control of the premises and activities occurring therein.
- (23) The enactment of this Resolution will promote the general welfare, health, morals, and safety of the citizens of West Chester Township.

## **SECTION 2. DEFINITIONS**

(a) As used in this Resolution:

- (1) "ADULT BOOKSTORE," "ADULT CABARET," "ADULT MOTION PICTURE THEATER," "ADULT VIDEO STORE," "CHARACTERIZED BY," "NUDE," "NUDITY," "STATE OF NUDITY," "SEMINUDE," "STATE OF SEMINUDITY," "SEXUAL DEVICE," "SEXUAL DEVICE SHOP," "SEXUAL ENCOUNTER CENTER," "SPECIFIED ANATOMICAL AREAS," AND "SPECIFIED SEXUAL ACTIVITY" have the same meanings as in Section 2907.40 of the Revised Code; and,
- (2) "ADULT ARCADE," "ADULT ENTERTAINMENT," "ADULT ENTERTAINMENT ESTABLISHMENT," "ADULT NOVELTY STORE," "ADULT THEATER," "DISTINGUISHED OR CHARACTERIZED BY THEIR EMPHASIS UPON," "NUDE OR SEMINUDE MODEL STUDIO," "REGULARLY FEATURES," "REGULARLY SHOWN,"

AND "SEXUAL ENCOUNTER ESTABLISHMENT" have the same meanings as in Section 2907.39 of the Revised Code.

- (b) "COVERING" means any clothing or wearing apparel, including pasties, but does not include any substance that can be washed off the skin, such as paint or make-up, or any substance designed to simulate the appearance of the anatomical area beneath it.
- (c) "EMPLOYEE" means any individual who performs any services on the premises of a Sexually Oriented Business on a full-time, part-time, or contract basis, regardless of whether the individual is denominated an employee, independent contractor, agent, or otherwise, but does not include an individual exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.
- (d) "EMPLOYEE STATION" means an area on the premises of an adult entertainment establishment designated for occupancy exclusively by one or more employees whose duties include assuring compliance with the provisions of this Resolution.
- (e) "IMMEDIATE FAMILY" means a person's spouse residing in the person's household, parents, siblings of the whole or of the half blood, and children, including adopted children.
- (f) "LICENSE" means a license to act or operate a Sexually Oriented Business, issued pursuant to this Resolution.
- (g) "LICENSEE" means a person in whose name a license to operate has been issued, as well as the individual(s) designated on the license application as principally responsible for the operation of the Sexually Oriented Business. With respect to an Employee license issued under this Resolution, licensee means an employee as defined by Section 2, sub-section (c) above in whose name a license has been issued authorizing employment at Sexually Oriented Business.
- (h) "LIVE VIEWING BOOTH" means any private or semi-private booth, or any viewing room of less than one hundred fifty (150) square feet of floor space, to which the public may gain admittance, wherein a live performance is presented to five (5) or fewer persons at any one time.
- (i) "OPERATE" means to control or hold primary responsibility for the operation of a Sexually Oriented Business, either as a business entity, as an individual, or as part of a group of individuals with shared responsibility. "Operate" or "Cause to be Operated" shall mean to cause to function or to put or keep in operation.
- (j) "OPERATOR" means any individual on the premises of a Sexually Oriented Business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a Sexually Oriented Business whether or not that person is an owner, part owner, or licensee of the business.
- (k) "PATRON" means any individual on the premises of a Sexually Oriented Business, except for any of the following:
  - (1) An operator or an employee of the Sexually Oriented Business;

- (2) An individual who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises;
  - (3) A public employee or a volunteer firefighter emergency medical services worker acting within the scope of the public employee's or volunteer's duties as a public employee or volunteer's duties as a public employee or volunteer.
- (l) "PERSON" means an individual, proprietorship, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.
  - (m) "PREMISES" means the real property on which the Sexually Oriented Business is located and all appurtenances to the real property, including, but not limited, to the Sexually Oriented Business, the grounds, private walkways, and parking lots or parking garages adjacent to the real property under the ownership, control, or supervision of the owner or operator of the Sexually Oriented Business.
  - (n) "SEXUALLY ORIENTED BUSINESS" means an adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motion picture theater, adult novelty store, adult theater, adult video store, sexual device shop, sexual encounter center, and sexual encounter establishment as defined by Section 2, sub-section (a) of this Resolution, but does not include a business solely by reason of its showing, selling, or renting materials that may depict sex.
  - (o) "SPECIFIED CRIMINAL ACTIVITY" means any of the following offenses:
    - (1) Prostitution or promoting prostitution; soliciting; loitering to engage in solicitation; sexual performance by a child; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar offenses to those described above under the criminal or penal code of any local jurisdiction, state, or country;
    - (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; or
      - (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.
    - (3) The fact that a conviction is being appealed shall not prevent such conviction from constituting a specified criminal activity as defined in this section.
  - (p) "SUBSTANTIALLY ENLARGED" means an increase in the floor area occupied by a Sexually Oriented Business by twenty-five percent (25%) or more. For a Sexually Oriented Business that is lawfully operating on the date this Resolution takes effect, the increase shall be measured from the floor area that is occupied by the Sexually Oriented Business on the date this Resolution takes effect. For a Sexually Oriented Business that begins operating as a lawful Sexually Oriented Business after the date this Resolution takes effect, the increase shall be measured from the floor area that is occupied by the Sexually Oriented Business on the date the Sexually Oriented Business receives its initial license under this Resolution.

- (q) "TRANSFER OF OWNERSHIP OR CONTROL" of a Sexually Oriented Business shall mean 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 transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
- (r) "VIDEO BOOTH" means any private or semi-private booth or any viewing room of less than one hundred fifty (150) square feet of floor space or area to which the public may gain admittance, wherein a still or motion picture machine, projector, video monitor, or similar equipment is available for the purpose of showing still or motion pictures, videos, or similar images or photographic reproductions to five (5) or fewer persons at any one time.
- (s) "VIEWING BOOTH" means live viewing booth or video booth, and "VIEWING BOOTHS" means live viewing booths, video booths, or any combination thereof.

### **SECTION 3. LICENSE REQUIRED**

- (a) No person shall:
- (1) Operate a Sexually Oriented Business as defined by Section 2, sub-section (n) without a valid Sexually Oriented Business license issued by the Township pursuant to this Resolution.
  - (2) In connection with operating a Sexually Oriented Business, retain the services of a person as an employee, as defined in this Resolution, who is not licensed as a Sexually Oriented Business employee by the Township pursuant to this Resolution.
- (b) Any person who violates sub-section (a)(1) above shall be guilty of a misdemeanor of the fourth degree for a first offense, and a misdemeanor of the first degree for a second offense.
- (c) A violation of sub-section (a)(2) above shall be a ground for the suspension of a Sexually Oriented Business license as provided for in Section 12 of this Resolution.

### **SECTION 4. EMPLOYEE LICENSE REQUIRED**

- (a) No person shall act as an employee, as defined in this Resolution, on the premises of a Sexually Oriented Business without having secured a Sexually Oriented Business employee license pursuant to this Resolution.
- (b) A violation of this section shall be a ground for the suspension of a Sexually Oriented Business employee license as provided for in Section 12 of this Resolution.



## **SECTION 5. APPLICATION FOR LICENSE**

- (a) An original or renewal application for a Sexually Oriented Business license shall be submitted to the West Chester Township Community Development Director or his/her designee on a form provided by the West Chester Township Community Development Director. The Township's application may require and the applicant shall provide such information as reasonably necessary (including fingerprints) to enable the Township to determine whether the applicant meets the qualifications established in this Resolution.
- (b) An application for a Sexually Oriented Business license shall identify and be signed by the following persons:
- (1) If the business entity is owned by an individual, that individual.
  - (2) If the business entity is owned by a corporation, each Officer or Director of the corporation, any individual owning or controlling more than fifty (50) percent of the voting shares of the corporation, and any person with an ownership interest in the corporation who will be principally responsible for the operation of the proposed Sexually Oriented Business.
  - (3) If the business entity is owned by a partnership (general or limited), a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, each partner (other than limited partners); and any other person entitled to share in the profits of the organization, whether or not such person is also obligated to share in the liabilities of the organization, who will be principally responsible for the operation of the proposed Sexually Oriented Business.
- (c) An application for a Sexually Oriented Business license must designate one or more individuals who are to be principally responsible for the operation of the proposed Sexually Oriented Business, if a license is granted. At least one person so designated must be involved in the day-to-day operation of the proposed Sexually Oriented Business on a regular basis. Each person so designated, as well as the business entity itself, shall be considered a license applicant, must qualify as a licensee under this Resolution, and shall be considered a licensee if a license is granted.
- (d) An application for a Sexually Oriented Business license shall be completed according to the instructions on the application form, which shall require the following:
- (1) If the applicant is:
    - (a) an individual, state the legal name and any aliases of such individual; or
    - (b) a partnership, state the complete name of the partnership and all of its partners and whether the partnership is general or limited, and provide a copy of the partnership agreement, if any; or
    - (c) a joint venture, or any other type of organization where two or more persons share in the profits and liabilities of the organization, state the complete name of the organization and provide a copy of the legal document establishing the organization, if any; or

- (d) a corporation, state the complete name of the corporation and the date of its incorporation, provide evidence that the corporation is in good standing under the laws of its state of incorporation, and state the names and capacities of all Officers and Directors, 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, state the fictitious name to be used and submit copies of documentation evidencing the registration of the business name under applicable laws.
  - (3) State whether any applicant has been convicted of a specified criminal activity as defined in this Resolution, and if so, the specified criminal activity involved and the date, place, and jurisdiction of each such conviction.
  - (4) State whether any applicant has had a previous license under this Resolution or other similar regulation of another jurisdiction 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 state whether the applicant has been a partner in a partnership or an officer, or fifty (50) percent or greater owner of a corporation licensed under this Resolution whose license has previously been denied, suspended or revoked, including the name and location of the business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
  - (5) State whether any applicant holds any other licenses under this Resolution or other similar regulation from this or another jurisdiction and, if so, the names and locations of such other licensed businesses.
  - (6) State the location of the proposed Sexually Oriented Business, including a legal description of the property (i.e., permanent parcel number), street address, and telephone number(s), if any.
  - (7) State the mailing address and residential address of each applicant and each person signing the application.
  - (8) Submit a recent photograph of each applicant who is a natural person, taken by the West Chester Township Police Department that clearly shows the applicant's face.
  - (9) Submit the fingerprints of each applicant who is a natural person, recorded by the West Chester Township Police Department.
  - (10) For any applicant who is a natural person, describe and identify the location of any tattoos on such person's face, arms, legs, or hands, or any other anatomical area that normally would be visible when such person is on the premises of the proposed Sexually Oriented Business.
  - (11) State the driver's license number and Social Security number of each applicant who is a natural person and each person signing the application, or, for an applicant that is not a natural person, the applicant's federally issued tax identification number.
  - (12) Submit proof that each applicant who is a natural person is at least eighteen (18) years old.

- (13) Submit a sketch or diagram showing the configuration of the premises of the Sexually Oriented Business. The diagram shall also designate the place at which the adult business license will be conspicuously posted, if granted. 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.
- (14) The above-required disclosures facilitate the police investigation into the applicant's criminal background regarding crimes of a sexual nature so that the Township can determine whether the Resolution's civil disabilities provisions apply. Such provisions exist to combat the sex crimes connected with sexually oriented establishments by temporarily prohibiting those recently convicted of such crimes from employment with those establishments. In addition, the required disclosures ensure continuing compliance with the Resolution's licensing and permitting requirements.
- (15) The information gathered pursuant to the above provisions constitute protected private information and are exempt from Ohio's Public Records Act in accordance with the decision of the Sixth Circuit Court of Appeals in *DejaVu of Cincinnati v. Union Township* (6th Cir. 2005), 411 F.3d 777.

#### **SECTION 6. ISSUANCE OF A LICENSE**

- (a) Upon receipt of an application for a Sexually Oriented Business license, the West Chester Township Community Development Director or his/her designee shall promptly request that the West Chester Township Police Chief review the information provided in the application concerning the criminal background of the applicant(s) and that the West Chester Township Police Chief shall transmit the results of its investigation in writing to the West Chester Township Community Development Director or his/her designee within five (5) days of the completion of its investigation.
- (b) Within five (5) days of receipt of an application for a Sexually Oriented Business license, the West Chester Township Community Development Director or his/her designee shall notify the West Chester Township Fire Chief and the Director of the Butler County Health Department, or his/her designee, of such application. In making such notification, the West Chester Township Community Development Director or his/her designee shall request that the West Chester Township Fire Chief and the Director of the Butler County Health Department, or his/her designee, promptly inspect the premises for which the Sexually Oriented Business license is sought to assess compliance with the regulations under their respective jurisdictions.
- (c) The West Chester Township Fire Chief shall provide to the West Chester Township Community Development Director or his/her designee a written certification of whether the premises are in compliance with the Township Fire Regulations within ten (10) days of receipt of notice of the application.
- (d) The West Chester Township Community Development Director or his/her designee shall commence the inspection of the premises for which a Sexually Oriented Business license is sought promptly upon receipt of the application, and shall complete, within ten (10) days after receipt of the application, a written certification of whether the premises are in compliance with the Township Zoning Resolution, the Township Property Maintenance Code, and the provisions of this Resolution related to physical characteristics of the premises, and whether the Township has received notice

from any state or county agency of the premises being in violation of any applicable state building or property codes.

- (e) Within twenty-one (21) days after receipt of a completed Sexually Oriented Business license application, the West Chester Township Community Development Director or his/her designee shall approve or deny the issuance of a license. The West Chester Township Community Development Director or his/her designee shall approve the issuance of a license to an applicant unless he/she determines that one or more of the following findings is true:
  - (1) An applicant who is a natural person is under eighteen (18) years of age.
  - (2) An applicant has failed to provide all information and documents required for issuance of the license as requested on the application form, or has provided information or documents as requested on the application that are insufficient on their face; provided, however, that no license shall be denied solely on the ground that an applicant has refused to disclose its social security number in accordance with the provisions of the Privacy Act of 1974, Pub. L. No. 93-579, § 7(a)(1).
  - (3) An applicant has, within the preceding twelve (12) months, been denied a Sexually Oriented Business license by any jurisdiction or has had a license to operate a Sexually Oriented Business revoked by any jurisdiction.
  - (4) An applicant has been convicted of a specified criminal activity as defined in this Resolution.
  - (5) The proposed Sexually Oriented Business would violate or fail to be in compliance with any provisions of this Resolution, the Township Zoning Resolution, the Township Property Maintenance Code, or state statute or regulation.
  - (6) The application and investigation fee required by this Resolution has not been paid.
  - (7) An applicant is in violation of or not in compliance with any provision of this Resolution, except as provided in sub-section (f)(1) of this section.
- (f) If the West Chester Township Community Development Director or his/her designee determines that one or both of the following findings is true, the license issued pursuant to this section shall contain a requirement that the licensee correct all deficiencies specified within 120 days of the date the license is issued:
  - (1) The results of inspections of the premises by the West Chester Township Fire Chief or its designee or the Director of the Butler County Health Department or his/her designee indicate that the premises are not in compliance with applicable laws and regulations under their respective jurisdictions.
  - (2) An applicant is overdue in payment to the Township of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business, which are not the subject of a pending appeal or other legal challenge.
- (g) If the West Chester Township Community Development Director or his/her designee determines that no other grounds for denial of a license exist under Subparagraph (e) of this section, the West Chester

Township Community Development Director or his/her designee shall not delay approval of the application past the end of the 21-day period provided in this section solely because the West Chester Township Fire Chief or the Director of the Butler County Health Department or his/her designee has not provided the West Chester Township Community Development Director or his/her designee with the results of his/her inspection of the premises; the results of the West Chester Township Community Development Director's or his/her designee's inspection of the premises are not available; and/or the West Chester Township Police Chief has not completed his/her investigation of the criminal background of the applicant(s). If, after approving the issuance of a license, the West Chester Township Community Development Director or his/her designee receives information from his/her investigation, or the West Chester Township Police Chief's investigation, which he/she determines constitutes grounds for denial of a license under Subparagraph (e) of this section, then the Sexually Oriented Business license issued pursuant to this Subparagraph (g) shall be immediately revoked. If after approving the issuance of a license, the West Chester Township Community Development Director or his/her designee receives information concerning the West Chester Township Fire Chief's or the Director of the Butler County Health Department or his/her designee's inspections, which the West Chester Township Community Development Director or his/her designee determines constitutes grounds for the issuance of a license subject to a requirement to correct deficiencies under Subparagraph (f) of this section, then a requirement shall be added to the terms of the Sexually Oriented Business license issued pursuant to this Subparagraph (g) to correct all deficiencies noted within 120 days of the date such requirement is added.

- (h) A Sexually Oriented Business license shall state on its face the name of the applicant, the expiration date, and the address of the licensed Sexually Oriented Business. All Sexually Oriented Business licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.
- (i) The West Chester Township Community Development Director or his/her designee shall advise the applicant in writing within three (3) days of the Township's decision of the reasons for any license denial. If the Township finds, subsequent to denial, that the basis for the denial of the license has been corrected or abated, the applicant may reapply.

#### **SECTION 7. EMPLOYEE LICENSE APPLICATION**

- (a) An application for an Employee license shall be submitted to the West Chester Township Community Development Director or his/her designee on a form provided by the West Chester Township Community Development Director. The application may request, and the applicant shall provide, such information as reasonably necessary (including fingerprints) to enable the Township to determine whether the applicant meets the qualifications established in this Resolution.
- (b) An application for an employee license shall be completed according to the instructions of the application form, which shall require the following:
  - (1) State the applicant's name and any other names (including "stage" names) or aliases used by the applicant.
  - (2) State the applicant's date and place of birth.
  - (3) State the applicant's height, weight, and hair and eye color.

- (4) Submit a recent photograph of the applicant, taken by the West Chester Township Police Department, which clearly shows the applicant's face.
- (5) Submit the applicant's fingerprints, recorded by the West Chester Township Police Department.
- (6) Describe and identify the location of any tattoos on the applicant's face, arms, legs, or hands, or any other anatomical area that normally would be visible when the applicant is on the premises of the proposed Sexually Oriented Business.
- (7) State the applicant's present residence address and telephone number.
- (8) State the applicant's present or intended business address and telephone number.
- (9) State the applicant's driver's license number and Social Security number.
- (10) Submit proof that the applicant is at least eighteen (18) years old.
- (11) Provide a statement detailing the Sexually Oriented Business-related 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 a Sexually Oriented Business, in this or any other jurisdiction, and whether the applicant has ever had a Sexually Oriented Business-related license, permit, or authorization to do business denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction and describe in full the reason for the denial, revocation, or suspension. Attach a copy of any order of denial, revocation, or suspension.
- (12) State whether the applicant has been convicted of a specified criminal activity as defined in this Resolution and, if so, the specified criminal activity involved and the date, place and jurisdiction of each such conviction.
- (13) The above-required disclosures facilitate the police investigation into the applicant's criminal background regarding crimes of a sexual nature so that the Township can determine whether the Resolution's civil disabilities provisions apply. Such provisions exist to combat the sex crimes connected with sexually oriented establishments by temporarily prohibiting those recently convicted of such crimes from employment with those establishments. In addition, the required disclosures ensure continuing compliance with the Resolution's licensing and permitting requirements.
- (14) The information gathered pursuant to the above provisions constitutes protected private information and is exempt from Ohio's Public Records Act in accordance with the decision of the Sixth Circuit Court of Appeals in *DejaVu of Cincinnati v. Union Township* (6th Cir. 2005), 411 F.3d 777.

**SECTION 8. ISSUANCE OF SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE**

- (a) Upon the filing of a completed application for a Sexually Oriented Business employee license, the West Chester Township Community Development Director or his/her designee shall issue a license to said applicant immediately.
- (b) Within five (5) days of receipt of a completed application for a Sexually Oriented Business employee license, the West Chester Township Community Development Director or his/her designee shall request that the West Chester Township Police Chief initiate an investigation of the information provided in the application concerning the criminal background of the applicant. The West Chester Township Police Chief shall document the results of his/her investigation in writing within five (5) days of the completion of his/her investigation and transmit this writing to the West Chester Township Community Development Director or his/her designee.
- (c) Within ten (10) days after completion of the West Chester Township Police Chief's investigation of the criminal background of the applicant, the West Chester Township Community Development Director or his/her designee shall either affirm the prior issuance of the license or revoke the license. The West Chester Township Community Development Director or his/her designee shall affirm the prior issuance of a license to an applicant unless he/she determines that one or more of the following findings are true:
  - (1) The applicant has failed to provide all information and documents required for issuance of the license as requested on the application form, or has provided information or documents as requested on the application that are insufficient on their face; provided, however, that no license shall be denied solely on the ground that an applicant has refused to disclose his/her social security number in accordance with the provisions of the Privacy Act of 1974, Pub. L. No. 93-579, § 7(a)(1).
  - (2) The applicant is under eighteen (18) years of age.
  - (3) The applicant has been convicted of a specified criminal activity as defined in this Resolution.
  - (4) The Sexually Oriented Business employee license is to be used for employment in a business prohibited by local, state, or federal law, statute, rule or regulation.
  - (5) The applicant has, within the preceding twelve (12) months, been denied a Sexually Oriented Business employee license by any jurisdiction or has had a Sexually Oriented Business employee license revoked by any jurisdiction.
- (d) If the Sexually Oriented Business employee license is revoked, the West Chester Township Community Development Director or his/her designee shall advise the applicant in writing within three (3) days of the reason(s) for any such revocation.

**SECTION 9. FEES.**

- (a) Every application for a new Sexually Oriented Business license shall be accompanied by a \$ 500.00 non-refundable application and investigation fee.

- (b) Every application for renewal of a Sexually Oriented Business license shall be accompanied by a \$380.00 non-refundable application and investigation fee.
- (c) Every application for a new Sexually Oriented Business employee license shall be accompanied by an annual, nonrefundable application, investigation, and license fee of \$95.00.
- (d) Every application for renewal of a Sexually Oriented Business employee license shall be accompanied by an annual, nonrefundable application, investigation, and license fee of \$50.00.

**SECTION 10. INSPECTION.**

- (a) The West Chester Township Community Development Director or his/her designee and/or representatives of the West Chester Township Fire Department, or other Township departments or agencies, or the Director of the Butler County Health Department or his/her designee shall, from time to time, but no more than four times a year in total, inspect, during a licensee's regular business hours, that portion of each Sexually Oriented Business licensed under the provisions of this Resolution that is open to the public in order to assess compliance with the provisions of this Resolution.
- (b) No inspections other than those described in sub-section (a) above are permitted under this Resolution unless consented to by the licensee or authorized through issuance of a search warrant.
- (c) Any refusal on the part of a licensee to permit a lawful inspection of the premises under sub-section (a) above or prohibition or interference with a lawful inspection of the premises under sub-section (a) above shall be grounds for suspension of the Sexually Oriented Business license pursuant to this Resolution and shall also subject the licensee to being charged with a misdemeanor of the fourth degree.

**SECTION 11. EXPIRATION AND RENEWAL OF LICENSE**

- (a) Each license issued pursuant to this Resolution shall expire one year from the date of issuance and may be renewed by making application as provided in this section. Application for renewal shall be made no more than ninety (90) days and no less than twenty-one (21) days before the expiration date. If application is made less than twenty-one (21) days before the expiration date, the license will not be extended pending a decision on the application, but will expire on its normal expiration date.
- (b) An application for renewal of a Sexually Oriented Business license shall be submitted to the West Chester Township Community Development Director or his/her designee on a form provided by the West Chester Township Community Development Director. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to this Resolution. Copies of any document or material submitted in connection with the initial license application shall accompany the completed renewal application that has been revised or such application shall be revised to reflect any change in circumstances or conditions. Sketches or diagrams submitted with an initial Sexually Oriented Business license application may be resubmitted with subsequent renewal applications, provided that the applicant certifies in writing that the sketch or diagram still depicts the premises accurately.



- (c) The West Chester Township Community Development Director or his/her designee shall make determinations concerning the approval of license renewals based on the same criteria and time mandates used to evaluate applications for new licenses under this Resolution.
- (d) The West Chester Township Community Development Director or his/her designee shall advise the applicant in writing within three (3) days of the reason(s) for any denial of a license renewal.
- (e) An application for renewal of an employee license shall be submitted to the West Chester Township Community Development Director or his/her designee on a form provided by the West Chester Township Community Development Director. The completed renewal application shall describe any changes or additions to, or deletions from, the information provided in the applicant's initial license application pursuant to this Resolution. Copies of any document or material submitted in connection with the initial license application shall accompany the completed renewal application that has been revised or requires revision to reflect any change in circumstances or conditions.
- (f) When the West Chester Township Community Development Director or his/her designee denies an application for renewal of a license, the applicant shall not be issued another license for one year from the date of denial. However, if the West Chester Township Community Development Director or his/her designee finds, subsequent to denial, that the basis for the denial of the renewal license has been corrected or abated, the applicant may reapply prior to the expiration of the one year period.

#### **SECTION 12. SUSPENSION**

- (a) The West Chester Township Community Development Director shall suspend a Sexually Oriented Business license for a period not to exceed thirty (30) days if he/she determines that a licensee:
  - (1) has violated or is not in compliance with any section of this Resolution; or
  - (2) has knowingly allowed an employee to violate or fail to comply with any section of this Resolution.
- (b) The West Chester Township Community Development Director shall suspend a Sexually Oriented Business license for a period not to exceed thirty (30) days if he/she determines that a licensee or its employee or agent has refused to allow, or has prohibited or has interfered with, an inspection of the licensed Sexually Oriented Business premises as authorized by Section 10 (a) of this Resolution or any other reasonable inspection.
- (c) The West Chester Township Community Development Director shall suspend an employee license for a period not to exceed thirty (30) days if he/she determines that a licensee has violated or is not in compliance with any section of this Resolution.
- (d) The West Chester Township Community Development Director or his/her designee shall advise the licensee in writing within three (3) days of the reason(s) for any suspension.

#### **SECTION 13. REVOCATION**

- (a) The West Chester Township Community Development Director shall revoke a Sexually Oriented Business license or employee license if a cause of suspension under this Resolution occurs and the license has been suspended two times within the preceding twelve (12) months.

- (b) The West Chester Township Community Development Director shall revoke a Sexually Oriented Business license if he/she determines that:
- (1) a licensee failed to provide all information and documents required for issuance of the license as requested on the application form, or provided information or documents as requested on the application that are false;
  - (2) the licensee(s) failed to comply with any requirement stated in the license, pursuant to this Resolution, to correct specified deficiencies within 120 days;
  - (3) a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
  - (4) a licensee has knowingly allowed prostitution, solicitation, or the commission of a felony on the premises;
  - (5) a licensee knowingly operated the Sexually Oriented Business during a period of time when the licensee's license was suspended;
  - (6) a licensee has knowingly allowed any act of specified sexual activity, as defined in this Resolution, to occur in or on the licensed premises;
  - (7) a licensee has been convicted of a specified criminal activity, as defined in this Resolution, during the term of the license; or
  - (8) a licensee is delinquent in payment to the Township, County, or State for any taxes or fees that were assessed or imposed in relation to any business.
- (c) The West Chester Township Community Development Director shall revoke an employee license if he/she determined that:
- (1) the licensee failed to provide all information and documents required for issuance of the license as requested on the application form, or provided information or documents as requested on the application that are false;
  - (2) the licensee has knowingly acted as an employee on the premises of a Sexually Oriented Business during a period of time when the licensee's license was suspended; or
  - (3) the licensee has been convicted of a specified criminal activity, as defined in this Resolution during the term of the license.
- (d) The West Chester Township Community Development Director or his/her designee shall advise the licensee in writing within three (3) days of the reason(s) for any revocation.
- (e) When the West Chester Township Community Development Director revokes a license pursuant to sub-sections (a), (b)(3) – (7), (c)(2) or (3) above, the licensee shall not be issued another license for one (1) year from the date the revocation became effective.

- (f) When the West Chester Township Community Development Director revokes a license pursuant to sub-sections (b)(1), (b)(8) or (c)(1) above, the applicant may be granted a license if the basis for the revocation has been corrected or abated and at least thirty (30) days have elapsed since the date the revocation became effective.

#### **SECTION 14. APPEAL RIGHTS**

- (a) In the event that the West Chester Township Community Development Director denies, suspends, or revokes a new or renewal license under this Resolution, the applicant may pursue an appeal to the Butler County Court of Common Pleas pursuant to Revised Code Chapter 2506. The failure of the West Chester Township Community Development Director or his/her designee to render a decision on the application for either a new or renewal license within the times prescribed in Sections 6, 8 and 11 above shall be considered a denial of the license and the applicant may pursue an appeal to the Butler County Court of Common Pleas pursuant to Revised Code Chapter 2506. This appeal provision is intended to comply with the requirement for prompt judicial review stated by the United States Supreme Court in *City of Littleton, Colorado v. Z. J. Gifts D-4* (2004), 541 U.S. 774.
- (b) Any licensee lawfully operating a Sexually Oriented Business prior to the denial of a license renewal application, or the suspension or revocation of a license, shall retain said license and all privileges attendant thereto, subject to all other terms of this Resolution, so that the status quo of the licensee is maintained during the pendency of an appeal to the Butler County Court of Common Pleas pursuant to Revised Code Chapter 2506 of a decision rendered under this Resolution and during the entire time required for the Butler County Court of Common Pleas to rule on the appeal pursuant to sub-section (a) above.
- (c) Any licensee lawfully acting as an employee in a Sexually Oriented Business prior to the denial of a license renewal application, or the suspension or revocation of a license, shall retain said license and all privileges attendant thereto, subject to all other terms of this Resolution, so that the status quo of the licensee is maintained during the pendency of an appeal to the Butler County Court of Common Pleas pursuant to Revised Code Chapter 2506 of a decision rendered under this Resolution and during the entire time required for the Butler County Court of Common Pleas to rule on the appeal pursuant to sub-section (a) above.
- (d) In the event that any judicial review of the denial of a new or renewal license application or the revocation or suspension of a license is still pending thirty (30) days before the expiration date of any license, the licensee may file a renewal license application with the West Chester Township Community Development Director or his/her designee pursuant to this Resolution. In the event that an application for renewal of a license is denied and the applicant seeks judicial review of that denial, the Township has the right to consolidate such review with any pending judicial actions in regards to the previous denial, suspension or revocation of a license.
- (e) If, during the pendency of any appeal pursued under sub-section (a) above, there are additional denials of a renewal license application or suspensions or revocations of that license, the Township has the right to consolidate the appeal pursued under this Section for the additional denials, suspensions or revocations with any pending appeal for that same licensee.

**SECTION 15. TRANSFER OF LICENSE**

- (a) A Sexually Oriented Business license is not transferable from one licensee to another or from one location to another. Any purported transfer of a Sexually Oriented Business license shall automatically and immediately revoke that license.
- (b) An employee license is not transferable from one licensee to another, but the use of the license by the individual to whom it was issued may be transferred from one licensed Sexually Oriented Business to another such licensed establishment during the term of the license, provided that the licensee gives written notice of such transfer to the West Chester Township Community Development Director or his/her designee within fifteen (15) days of such transfer.

**SECTION 16. ADDITIONAL REGULATIONS CONCERNING THE OPERATION OF A SEXUALLY ORIENTED BUSINESS**

- (a) Sexual Activity, Live Entertainment and Performances
  - (1) No person shall, in a Sexually Oriented Business, appear before a patron or patrons in a state of nudity, regardless of whether such public nudity is expressive in nature.
  - (2) Any employee appearing on the premises of a Sexually Oriented Business in a state semi-nudity, as defined by this Resolution, must be on a stage that is at least twenty-four (24) inches from the floor, and at a distance at least thirty-six (36) inches from all parts of a clearly designated area in which patrons will be present.
  - (3) All live entertainment and performances in a Sexually Oriented Business must take place on a stage that is at least twenty-four (24) inches from the floor and a distance of at least thirty-six (36) inches from all parts of a clearly designated area in which patrons will be present.
  - (4) The interior of the premises shall be configured in such a manner that there is a an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. If the premises has two (2) or more operator'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 operator's stations. It is the duty of the operator to ensure that at least one employee is on duty and situated in an operator's station at all times that any patron is on the portion of the premises monitored by the operator station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
  - (5) No employee shall knowingly or intentionally, in a Sexually Oriented Business, appear within view of any patron in a nude or semi-nude condition unless the employee, while nude or semi-nude, shall be and remain at least six (6) feet from all patrons.

- (6) Employees in a Sexually Oriented Business shall maintain a minimum distance of five (5) feet from areas on the business premises occupied by patrons for a minimum of sixty (60) minutes after the employee appears in a nude or semi-nude condition within view of any patron. This regulation is not intended to prohibit ingress or egress from the premises. It is intended to control illicit sexual contact and reduce the incidents of prostitution occurring in the establishments.
  - (7) No patron who is not a member of the employee's immediate family shall knowingly touch an employee while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or semi-nude.
  - (8) No employee who regularly appears nude or seminude on the premises of a Sexually Oriented Business and while nude or seminude, shall:
    - (a) knowingly touch a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family, or
    - (b) knowingly touch the clothing of a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family, or
    - (c) knowingly allow the patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family to touch the employee or the clothing of the employee.
  - (9) The provisions of sub-sections (a)(1) – (8) shall not apply to an employee's use of any restroom or any single-sex dressing room that is accessible only to employees.
  - (10) In addition, sub-sections (a)(1) – (8) shall not apply to live performances in which the patron and employee are separated by an impenetrable barrier such as, but not limited to, glass or acrylic.
  - (11) Any live entertainment that is provided on the premises of an Adult Cabaret, in a private or semi-private room, to five (5) or fewer persons at any one time, must take place in the direct, unobstructed line of sight of an employee's station at which at least one employee is on duty and stationed at all times during which such entertainment takes place, with all doors to such room.
- (b) **Minors Prohibited.** No person under the age of 18 years shall be permitted on the premises of a Sexually Oriented Business.
- (c) **Hours of Operation.** No Sexually Oriented Business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, except that a Sexually Oriented Business that holds a liquor permit pursuant to Chapter 4303 of the Revised Code may remain open until the hour specified in that permit if it does not conduct, offer, or allow Sexually Oriented Business activity in which the performers appear nude.

- (d) Dressing Rooms. All Sexually Oriented Businesses that offer live entertainment must provide separate dressing room facilities for female and male entertainers that shall not be occupied or used in any way by anyone other than entertainers.
- (e) Restrooms. All restrooms in Sexually Oriented Businesses that offer live entertainment shall be equipped with standard toilets, sinks and other traditional lavatory facilities. No live performances shall be provided or allowed at any time in the restrooms of a Sexually Oriented Business that offers live entertainment. Separate male and female restrooms shall be provided for use by Sexually Oriented Business employees and patrons.
- (f) Minimum Lighting Level.
  - (1) The premises of every Sexually Oriented Business that offers live entertainment shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, including restrooms, at an illumination level of not less than five (5.0) foot-candles as measured at floor level.
  - (2) The illumination described in subsection (1) above shall be maintained at all times that any patron is present in the premises. In the event of a power failure, the business shall stop operating immediately and all patrons shall be cleared from the premises. The premises shall not be reopened until the minimum illumination level can be assured.
- (g) Exterior Display. No Sexually Oriented Business shall be operated in any manner that permits the observation from outside the premises of any material or entertainment depicting or describing specified sexual activities or specified anatomical areas, as defined in this Resolution, or any person in a state of nudity or semi-nudity, whether by means of display, decoration, sign, animation, window or any other means.
- (h) Display of Sexually Oriented Business License. All Sexually Oriented Business licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.
- (i) Availability of Sexually Oriented Employee License. Each employee of a Sexually Oriented Business shall have his/her valid and current Sexually Oriented Business Employee License available on the premises of the Sexually Oriented Business at all times that he/she or she is on the premises and shall produce his/her license for inspection at the request of the West Chester Township Community Development Director or his/her designee or any law enforcement personnel.
- (j) Viewing Booths. No person may operate or cause to be operated a Sexually Oriented Business which exhibits on the premises in a viewing booth, as defined in this Resolution, films, video cassettes, video discs, DVDs, CDs, other video or image reproduction, or live entertainment which depict or depicts "specified sexual activities" or "specified anatomical areas," without complying with the following requirements:
  - (1) The Sexually Oriented Business license application required under this Resolution shall be accompanied by a diagram of the premises showing a plan thereof which specifies the location of one or more employee's stations and the location of all overhead lighting fixtures, and which designates any portion of the premises in which patrons will not be permitted. The

diagram shall also designate the place at which the Sexually Oriented Business license 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 drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches.

- (2) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an employee's station of every area of the premises to which any patron is permitted access for any purpose, including the interior of all viewing booths and excluding restrooms. Restrooms may not contain video reproduction equipment, and no entertainment of any kind may be offered in restrooms. If the premises has two or more employee 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 employee's stations. The view required in this subsection must be by direct line of sight from the employee's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in an operator's station at all times that any patron is on the portion of the premises monitored by the operator station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
- (3) No alteration in the configuration or location of an employee's station shall be made without the prior approval of the West Chester Township Community Development Director or his/her designee.
- (4) At least one employee shall be on duty and situated in each employee's station at all times that any patron is present inside the premises.
- (5) An employee's station shall not exceed thirty-two (32) square feet of floor area, and no single dimension of an employee's station shall exceed eight (8) feet.
- (6) The view from the employee's station(s) shall remain unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials.
- (7) No patron may at any time be permitted access to any area of the premises which has been designated in the license application filed pursuant to this Resolution as an area in which patrons will not be permitted.
- (8) No viewing booth may be occupied by more than one person at any time.
- (9) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, including both the interior of viewing booths and restrooms, at an illumination level of not less than five (5.0) foot-candles as measured at floor level.

- (10) The illumination described above shall be maintained at all times that any patron is present in the premises. In the event of a power failure, the business shall stop operating immediately and all patrons shall be cleared from the premises. The premises shall not be reopened until the minimum illumination level can be assured.
  - (11) No openings of any kind shall be permitted to exist between viewing booths or in any wall of a viewing booth.
  - (12) No person shall make or attempt to make an opening of any kind between viewing booths or in any wall of a viewing booth.
  - (13) The walls of each viewing booth shall be inspected regularly during each business day to determine if any openings or holes exist.
  - (14) All floor coverings in viewing booths shall be nonporous; easily cleanable surfaces, with no rugs or carpeting.
  - (15) All wall surfaces, ceiling surfaces and seating surfaces in viewing booths shall be constructed of, or permanently covered by, nonporous, easily cleanable material.
- (k) Violations of the above provisions shall be the basis for the Suspension or Revocation of a license in accordance with the provisions of this Resolution. Violations of the above provisions shall also subject the license holder to being charged with a misdemeanor of the fourth degree, with the exception of violations of sub-sections (b), (c), and (j), which shall subject the license holder to being charged with a misdemeanor of the first degree, and violations of sub-sections (a)(7) and (a)(8), which shall subject the license holder to being charged with a misdemeanor of the first degree or a misdemeanor of the fourth degree, depending upon the nature of the "touching" involved as provided for in Ohio Revised Code § 2907.40(E) .

**SECTION 17. REGULATIONS PERTAINING TO THE LOCATION OF SEXUALLY ORIENTED BUSINESSES**

- (a) A Sexually Oriented Business may be located only in accordance with the restrictions contained in (b) through (k) below.
- (b) A Sexually Oriented Business may be located only in a Sexually Oriented Business Overlay District as described in the Township Zoning Resolution.
- (c) No Sexually Oriented Business may be established within 500 feet of:
  - (1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
  - (2) A public or private educational facility including but not limited to kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, public vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities which have students regularly attending classes and which either teach an elementary education or secondary education curriculum that is the same as or comparable to that commonly taught in the public schools of the state of Ohio, or



regularly confer Associate, Baccalaureate, Master, or Doctorate degrees to graduates; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

- (3) Child day care facilities, nursery schools and preschools, where children from the age of one (1) year old or less to twelve (12) years old are regularly in attendance;
  - (4) A boundary of a residential district as shown on the Zoning Map;
  - (5) A public park or recreational area which has been designated for park or recreational activities including a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the Township which is under the control, operation, or management of either the Township or which is operated or managed by another public entity.
- (d) No Sexually Oriented Business may be established within 500 feet of the property line of a lot regulated as a lawful non-conforming residential use as defined in the Zoning Resolution.
  - (e) No Sexually Oriented Business may be established on a parcel any portion of which is within one hundred fifty (150) feet of the right-of-way line of Princeton-Glendale Road (SR 747).
  - (f) No Sexually Oriented Business may be established on a parcel any portion of which is within one hundred fifty (150) feet of the right-of-way line of Port Union Road.
  - (g) No Sexually Oriented Business may be established, operated or substantially enlarged within 500 feet of another Sexually Oriented Business as defined in the Zoning Resolution;
  - (h) Not more than one Sexually Oriented Business shall be established or operated in the same building, structure, or portion thereof, and the floor area of any Sexually Oriented Business in any building, structure, or portion thereof containing another Sexually Oriented Business may not be increased.
  - (i) For the purpose of subsections (c) and (d) of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the principal building or structure, or tenant space if located in a multi-tenant building, being used as a Sexually Oriented Business, to the nearest property line of a use listed in subsection (c) and (d).
  - (j) For the purpose of subsection (e) of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the right-of-way line of Princeton-Glendale Road (SR 747) to the nearest property line of the parcel.
  - (k) For purposes of subsection (f) of this Section, the distance between any two Sexually Oriented Businesses shall be measured in a straight line, without regard to the intervening structures or objects, from the closest exterior wall of the structure or tenant space if located in a multi-tenant building in which each business is located.
  - (l) No Sexually Oriented Business that was in compliance with the above locational restrictions at the time that it received a license will be subsequently found not to be in compliance if, subsequent to the receipt of the license, a use listed in subsection (c) is newly established or expands so as to be within 500 feet of the Sexually Oriented Business.

**SECTION 18. ADDITIONAL REGULATIONS CONCERNING LOT, YARD, HEIGHT, PARKING, BUILDING AND SITE DESIGN STANDARDS, AND SITE DEVELOPMENT PLAN REQUIREMENTS**

- (a) Lot area and width, setbacks, buffering, yard area, height provisions and other site development requirements for a Sexually Oriented Business are those specified in the "M-1" and "B-2" districts of the Zoning Resolution.
- (b) Parking requirements for an Adult Cabaret or any other Sexually Oriented Business that features live entertainment shall be those provided for under Zoning Resolution Article 20 "Restaurant."
- (c) Parking requirements for all other Sexually Oriented Businesses shall be those provided for under Zoning Resolution Article 20 "Convenience and Personal Services Uses."

**SECTION 19. SIGN REGULATIONS**

- (a) All signs shall be "building signs" as defined and regulated in the Zoning Resolution, but in no event shall the maximum allowable sign area exceed 40 square feet. Any address sign area shall be included in the maximum sign area calculation.
- (b) Review and approval procedures for a sign permit for a Sexually Oriented Business shall be in accordance with the Zoning Resolution.
- (c) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or street in front of the building.
- (d) Window areas shall not be covered or made opaque in any way. No signs shall be placed in any window. A one-square-foot sign may be placed on the door to state hours of operation and admittance to adults only.

**SECTION 20. LOITERING AND EXTERIOR LIGHTING AND MONITORING REQUIREMENTS**

- (a) It shall be the duty of the operator of a Sexually Oriented Business to:
  - (1) initiate and enforce a no loitering policy within the external boundaries of the real property upon which the Sexually Oriented Business is located;
  - (2) post conspicuous signs stating that no loitering is permitted on such property;
  - (3) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every thirty (30) minutes or inspecting such property by use of video cameras and monitors; and,
  - (4) provide adequate lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. The video cameras and monitors shall operate continuously at all times that the premises is open for business. The monitors shall be installed within an employee's station.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

#### **SECTION 21. PENALTY**

Violations of this Resolution shall be determined in accordance with the provisions of the Resolution as authorized by Ohio Revised Code §503.52 and Ohio Revised Code Chapter 504, and as provided for under any applicable provision of the Ohio Revised Code.

#### **SECTION 22. SEVERABILITY CLAUSE**

If any section, sub-section, paragraph or clause of this Resolution shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, sub-sections, paragraphs, and clauses shall not be affected.

#### **SECTION 23. EXISTING SEXUALLY ORIENTED BUSINESSES**

Any establishment in operation on the effective date of this Resolution that is considered a Sexually Oriented Business under the terms of this Resolution will be subject to the terms of this Resolution as of the effective date of this Resolution. Any such establishment must submit an application for a Sexually Oriented Business license pursuant to this Resolution within sixty (60) days of its effective date. Any establishment for which a Sexually Oriented Business license application is submitted within the required sixty (60) day period will be permitted to operate pending review of the license application and any appeal of a license denial.

#### **SECTION 24. EMPLOYEES OF EXISTING SEXUALLY ORIENTED BUSINESSES**

Any person acting, on the effective date of this Resolution, as an employee in an establishment that is considered a Sexually Oriented Business under the terms of this Resolution, will be subject to the terms of this Resolution as of the effective date of this Resolution. Any such person must submit an application for a Sexually Oriented Business employee license pursuant to this Resolution within sixty (60) days of its effective date. Any person who has submitted an application for a Sexually Oriented Business employee license within the required sixty (60) day period will be permitted to continue acting as an employee in an establishment that is considered a Sexually Oriented Business pending review of the license application and any appeal of a license denial.

#### **SECTION 25. EFFECTIVE DATE**

This Resolution shall take effect as provided in Ohio Revised Code §§504.11 and 504.14.

#### **SECTION 26. REPEAL**

All prior Township Resolutions regulating and requiring the registration of adult cabarets are hereby repealed.

#### **SECTION 27. COMPLIANCE WITH OPEN MEETINGS LAW**

It is found and determined that all formal actions of this Board concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Board, and that all deliberations of this Board that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including §121.22 of the Ohio Revised Code.

Adopted this 23rd day of August, 2011.

Catherine Stoker

Catherine Stoker, President

YES

Yes / No

Lee Wong

Lee Wong, Vice President

Yes

Yes / No

George Lang

George Lang, Trustee

YES

Yes / No

**ATTEST:**

Patricia Williams

Patricia Williams, Township Fiscal Officer

**APPROVED AS TO FORM:**

Donald L. Crain

Donald L. Crain, Law Director