

ORDINANCE NO. 89

AN ORDINANCE OF THE TOWNSHIP OF SOUTH HUNTINGDON, COUNTY OF WESTMORELAND AND COMMONWEALTH OF PENNSYLVANIA, TO PROVIDE FOR THE LICENSING AND REGULATING OF SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES OF SUCH BUSINESSES; REGULATING PUBLIC NUDITY, AND PRESCRIBING FEES, FINES AND PENALTIES FOR VIOLATIONS.

It is hereby ENACTED and ORDAINED by the board of Supervisors of the Township of South Huntingdon, Westmoreland County, Pennsylvania, as follows:

A. PURPOSE

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

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

The Board of Supervisors does not intend this Ordinance to suppress any speech activities protected by the First Amendment of the United States Constitution, nor any protected by Article I, Section 7 of the Pennsylvania Constitution or rights protected by the United States or Pennsylvania Constitutions, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses. It is not the intent of the Board in enacting this legislation to deny any person rights of speech or expression protected by the Constitution of the United States or the Constitution of Pennsylvania, or both, nor is it the intent of the Board to impose by this Ordinance any additional limitations or restriction on the contents of any communicative materials, including sexually oriented films, videotapes, books and other materials. Further, by enacting this legislation, the Board does not intend to deny or restrict the rights of any adult to obtain or view, or both, any sexually oriented materials or conduct protected by the Constitution of the United States or the Constitution of Pennsylvania, or both, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of sexually oriented materials may have to sell, distribute or exhibit these materials.

B. LEGISLATIVE FINDINGS

The Board of Supervisors finds:

1. Statistics and studies performed in a substantial number of communities in this Commonwealth, State of Delaware; Austin, Texas; Biloxi, Mississippi and in the United States indicate that sexually oriented businesses have adverse secondary effects, including those specified and recognized at 68 Pa. C.S. 5501 (a), which secondary effects should be regulated to protect the public health, safety and welfare. These secondary effects include, but are not limited to the spread of communicable diseases, performance of sexual acts in public places, presence of discarded sexually oriented materials on public and private property, sexual harassment, obscenity, prostitution and other illegal sexual activities, crime and neighborhood deterioration.
2. Sexually oriented businesses have adverse secondary effects, which secondary effects should be regulated to protect public health, safety and welfare.

3. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented business. Further, such a licensing procedure will place a heretofore non-existent incentive on the operators to see that sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the Township. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
4. Removal of doors on viewing booths and requiring sufficient lighting on premises with viewing booths advances a substantial government interest in discouraging the illegal and unsanitary activity occurring in adult theaters.
5. Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
6. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business will help limit and control the adverse secondary effects of such business.
7. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this Ordinance is designed to prevent or who are likely to be witnesses to such activity.
8. The fact that an application for a sexually oriented business license or an employee thereof, has been convicted of a sexually related crime leads to the rational assumption that the applicant is likely to engage in that conduct in contravention of this Ordinance.
9. The barring of such individuals from the management of sexually oriented businesses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.
10. The general welfare, health and safety of the citizens of the Township will be promoted by the enactment of this Ordinance.
11. The reasonable regulation and supervision of such sexually oriented businesses tends to discourage sexual acts and prostitution and thereby promote the health, safety and welfare of the patrons, clients and customers of these businesses.
12. The continued unregulated operation of such sexually oriented businesses is and would be detrimental to the general health, safety and welfare of the citizens of South Huntingdon Township.

**SECTION 2. DEFENITIONS:** As used in this Ordinance the following words and phrases shall have the meanings indicated unless the context clearly indicates a different meaning.

- A. **ADULT ARCADE** means any place to which the public is permitted or invited wherein coin-operated, slug operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained, not located within viewing booths, to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas".
- B. **ADULT BOOKSTORES, ADULT NOVELTY STORE OR ADULT VIDEO STORE** means a commercial establishment which, as one of its substantial business activities, offers for sale or rental for any form of consideration any one or more of the following:
  1. book, magazines, periodicals or other printed matter, or photographs, films motion pictures, video cassettes or video reproductions, slides, CD-ROM discs or other computer software, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

2. instruments, devices, or paraphernalia which are designed for use in connection with "unspecified sexual activities".
- C. ADULT ENTERTAINMENT means:
1. an exhibit of any adult oriented motion pictures, meaning those distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas"; or
  2. a live performance, display or dance of any type, which has as a significant or substantial portion of the performance any actual or simulated performance of specified sexual activities or exhibition and viewing of "specified anatomical areas" or persons in a state of nudity or semi-nudity; or
  3. films, motion pictures, video cassettes, slides or other photographic reproductions or visual presentation of any other kind which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".
- D. ADULT THEATER means a theater, tavern, concert hall, banquet hall, party room, conference center, restaurant, nightclub, club, bar, recreation center, indoor amusement center, dance hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities".
- E. EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full time, part-time or contract basis, whether or not the person is denominated an employee, lessee, lessee of a dance floor, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
- F. ESCORT means a person who, for 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.
- G. 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.
- H. ESTABLISHMENT means and includes any of the following;
1. the opening or commencement of any sexually oriented business as a new business;
  2. the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
  3. the addition of any sexually oriented business to any other existing sexually oriented business or to a non-sexually oriented business; or
  4. the relocation of any sexually oriented business.
- I. LICENSEE means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.
- J. NUDE MODEL STUDIO means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Pennsylvania or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operated educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

1. that no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
  2. where in order to participate in a class a student must enroll at least three days in advance of the class; and
  3. where no more than one nude or semi-nude model is on the premises at any one time.
- K. **NUDITY OR A STATE OF NUDITY** means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or areola, or the showing of the covered male genitals in a discernible turgid state; the exposure of any device, costume, or covering which gives the appearance of or stimulates genitals, pubic hair, natal cleft, perineum anal region or pubic hair region; or the exposure of any device worn as a cover over the nipples and/or areola of the female breast, which device simulates and gives the realistic appearance of nipples and/or areola.
- L. **PERSON** means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- M. **SEMI-NUDE OR IN A SEMI-NUDE CONDITON** means the state of dress in which clothing non-opaquely covers "specified anatomical areas".
- N. **SEXUAL ENCOUNTERS CENTERS** means a business or commercial enterprise that, as on of its principal business purposes, offers for any form of consideration:
1. physical contact in the form of wrestling or tumbling between person of the opposite sex, or
  2. activities between male and female persons and/or persons of the same sex when one or more of the person is in a state of nudity or semi-nudity.
- O. **SEXUALLY ORIENTED BUSINESS** means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, place of adult entertainment, adult theater, escort agency, nude model studio, or sexual encounter center.
- P. **SPECIFIED ANATOMICAL AREAS** means every part of the human male and female genitals, pubic region, anus, buttocks, the areola and nipple of the female breast(s), or human male genitals in a discernibly turgid state, even if completely covered.
- Q. **SPECIFIED CRIMINAL ACTIVITY** means any of the following offenses:
1. prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;
  2. for which:
    - (a) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is, the later date, if the conviction is of a misdemeanor offense;
    - (b) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
    - (c) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period.
  3. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.
- R. **SPECIFIED SEXUAL ACTIVITIES** means any of the following:

1. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;
  2. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
  3. excretory functions as part of or in connection with any the activities set forth in (1) and (2) above.
  4. human genitals in a state of sexual stimulation or arousal.
- S. 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; or
  3. the establishment of a trust, gift, or other similar legal device which transfer the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

### SECTION 3. LICENSE REQUIRED:

#### A. It Is unlawful:

1. for any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Township pursuant to this Ordinance;
  2. for any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Township pursuant to this Ordinance.
  3. for any person to obtain employment with a sexually oriented business without having secured a sexually oriented business license pursuant to this Ordinance;
  4. beginning on the sixtieth (60<sup>th</sup>) day after enactment of this Ordinance for any person to continue to operate any sexually oriented business in operation at the time of enactment of this Ordinance without a valid sexually oriented business license pursuant to this Ordinance;
  5. beginning on the sixtieth (60<sup>th</sup>) day after enactment of this Ordinance for any person who operates a sexually oriented business in operation at the time of enactment of this Ordinance to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Township pursuant to this Ordinance.
  6. beginning on the sixtieth (60<sup>th</sup>) day, after enactment of this Ordinance for any person to obtain employment with a sexually oriented business in operation at the time of enactment of this Ordinance without having secured a sexually oriented business employee license pursuant to this Ordinance.
- B. An application for a license must be made on a form provided by the Township. For purposes of this Ordinance, the responsibility for conducting any investigation, receiving and processing any application or serving as Township Code Enforcement Officer as required under this Ordinance is hereby delegated to the Township Board of Supervisors, Township Secretary and their designees or delegates.
- C. All applicants must be qualified according to the provisions of this Ordinance. The applicant may request and the applicant shall provide such information (including fingerprints) as to enable the Township to determine whether the applicant meets the qualifications established in this Ordinance.
- D. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a twenty percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under

the following section and each applicant shall be considered a licensee if a license is granted.

E. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

1. If the applicant is:
  - (a) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least eighteen years of age;
  - (b) a partnership, the partnership shall state its complete name, and the name of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any, and for each partner provide the information required below at Section 3(E), 3, 4, 5, 8, 9 and 10.
  - (c) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that corporation is in good standing under the laws of its state of incorporation and qualified and authorized to conduct business in Pennsylvania, the names and capacity of all officers, directors and all owners of more than 20% of the corporation stock, and the name of the registered corporate agent and the address of the registered office for service of process and provide each officer, director and owner of twenty (20%) percent or more of the corporate stock the information required at Section 3(E), 3, 4, 5, 8, 9 and 10.
  - (d) Any entity other than a partnership or corporation, the entity shall submit the information required at Section 3(E), 3, 4, 5, 8, 9 and 10 for each person exercising control over the entity.
2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she shall state a) the sexually oriented business' fictitious name and b) submit the required registration documents.
3. Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this Ordinance, and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.
4. Whether the applicant, or a person residing with the applicant, has had a previous license under this Ordinance or other similar sexually oriented business ordinance from another municipality, state or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder or a corporation that is licensed under this Ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
5. Whether the applicant or a person residing with the applicant holds any other licenses under this Ordinance or other similar sexually oriented business ordinance from another municipality, state, or county and, if so, the names and locations of such other licensed businesses.
6. The specific classification of sexually oriented use for which the applicant is filing along with a detailed description of each and every activity encompassed by the proposed sexually oriented use, which description shall thoroughly demonstrate compliance and/or intended compliance with all provisions of this Ordinance.
7. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.
8. The applicant's mailing address and residential address.
9. A recent photograph of the applicant(s).

10. The applicant's driver's permit number, social security number, and his/her state or federally issued tax identification number.
  11. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
  12. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines, the property to be certified.
  13. If an applicant wishes to operate a sexually oriented business which includes viewing booths, then the applicant shall also comply with the application requirements set forth in Section 11 and shall separately apply for and obtain a building and occupancy permit for the installation of the viewing booths.
  14. The application form shall inform the applicant that (1) separate applications are required, for any necessary zoning permits, subdivision and land development approvals or building and occupancy permits and that the applicant may apply for such permits by contacting the Township Code Enforcement Officer and (2) that Department of Labor and Industry approval is required.
  15. An infectious control plan to protect employees and the public from bodily fluids or infectious contamination. A copy of the plan shall be attached to the application and shall be OSHA (Occupational Safety and Health Act) compliant.
  16. Satisfactory proof through a dye test or other diagnostic test that any public sewer service, on-lot sewage or septic system is free of any malfunction and operating in compliance with the requirements of the Township Sewage Enforcement Officer ("SEO"). The Township SEO shall be present during any such testing.
- F. Before any applicant may be issued a sexually oriented business employee license, the employee shall complete and execute under oath the application form attached hereto as Exhibit "A", such application and license to be completed and issued prior to the employee performing any services at the licensed establishment. The completed application and license shall be maintained in a file associated with same by the Township Secretary and shall not be subject to public disclosure.
- G. For each employee licensee performing or employed within the sexually oriented business, the employer licensee shall maintain on file within the licensed premises a copy of the executed application of each employee licensee, together with the following information:
1. The employee licensees' name or any other name (including "stage" names) or aliases used by the employee licensee.
  2. A photo identification card for each employee licensee to ensure that minors are not employed in the licensed establishment;
  3. The age, date and place of birth of each employee licensee.
  4. The height, weight, hair and eye color of each employee licensee;
  5. The present residence address and the telephone number of each employee licensee;
  6. The present business address of each employee licensee;
  7. The date, issuing state, and number of any driver's license or any identification card information of each employee licensee;
  8. The Social Security Number of each employee licensee;
  9. Proof that the employee licensee is at least 18 years of age;
  10. A current color photograph of the employee licensee clearly showing the employee licensee's face and fingerprints on a form provided by any police department. Any fees for the photograph and fingerprints shall be paid by the applicant for licensing.

The above information shall be made available for inspection by the Code Enforcement Officer prior to the issuance of the applicant employee's license and shall remain at the site of the licensed premises for review and inspection by the Township upon request.

The applicant/licensee of the sexually oriented business shall conduct any investigation as may be necessary to ensure that persons operating, working, performing or entertaining at the licensed establishment are otherwise in full compliance with the requirements of this Ordinance at all times.

#### SECTION 4. ISSUANCE OF LICENSE:

A. Upon filing of said application in a fully completed form for a sexually oriented business license or for a sexually oriented business employee license, the application shall then be referred to the Township Code Enforcement Officer for review and investigation. The Township Code Enforcement Officer shall utilize any available resources through the Pennsylvania State Police, The Commonwealth of Pennsylvania and/or other law enforcement agencies as may be necessary to complete the review and investigation required by this Ordinance. Within thirty (30) days from the date the completed application is filed, the Township Code Enforcement Officer shall issue a license, unless it is determined by the Township Code Enforcement Officer that one or more of the following findings is true".

1. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
2. The applicant is under the age of eighteen (18) years;
3. The applicant has been convicted of a "specified criminal activity" as defined in this Ordinance;
4. The sexually oriented business employee licensee is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this Ordinance; or
5. The applicant has had a sexually oriented business employee license revoked by the Township within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section 9.
6. The required application, investigation and license fee have not been paid.
7. An applicant's license to operate a sexually oriented business, issued by any jurisdiction, has been revoked within the preceding twelve (12) months.
8. The proposed sexually oriented business is in violation of or is not in compliance with any of the provisions of this Ordinance.

B. A license granted pursuant to this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the Township that the applicant has not been convicted of any specified criminal activity as defined in this Ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 5.

C. The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the specific classification of sexually oriented use for which the license is issued. Licenses for sexually oriented businesses shall state that the sexually oriented business shall not commence until all necessary zoning, subdivision and land development, and/or building code approvals and Department of Labor and Industry approvals are obtained. All licenses shall be



posted in a conspicuous place at nor near the entrance to the sexually oriented business so that they may be easily read at any time.

- D. Applications for building and occupancy permits shall be processed and either denied or approved within thirty (30) days of a completed application by the Township. A letter notifying the applicant of such denial or approval shall be mailed to the applicant within thirty (3) days of the submittal of a completed application.
- E. A sexually oriented business license shall be issued for the specific classification of sexually oriented use as permitted by ordinance and applied for.
- F. A license denial shall conform to the provisions of Section 9(D).
- G. Any person aggrieved by the denial of a license may appeal, in writing, within ten (10) days from the date of issuance of the license, to the Township Board of Supervisors in accordance with procedures set forth in Section 9.D.

#### SECTION 5. FEES:

- A. Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a non-refundable application and investigation fee in an amount set by resolution of the Board of Supervisors.
- B. In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the Township an annual non-refundable license fee in an amount set by resolution of the Board of Supervisors within thirty(30) days of license issuance or renewal.
- C. Every application for a sexually oriented business employee license (whether for a new license or for a renewal of an existing license) shall, be accompanied by an annual nonrefundable application, investigation, and license fee in an amount set by resolution or the Board of Supervisors.
- D. All license applications and fees shall be submitted to the office the Township Secretary-Treasurer, and, thereafter, the applications shall be forwarded to the Township Code Enforcement Officer for review and investigation and approval or denial.

#### SECTION 6. INSPECTIONS:

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

#### SECTION 7. EXPIRATION OF LICENSE:

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

#### SECTION 8. SUSPENSION:

The Township Code Enforcement Officer shall suspend a license for a period not to exceed thirty (30) days if he determines that a licensee or an employee of a licensee has:

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

**SECTION 9. REVOCATIONS AND APPEALS OF DENIALS, SUSPENSION OR REVOCATIONS:**

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

## SECTION 10. TRANSFER OF LICENSE:

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

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

- A. A person who operates viewing booths or cause them to be operated shall comply with the following requirements:
1. Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of interior of the premises to an accuracy of plus or minus six (6) inches. The Township 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. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
  4. The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be direct line of sight from the manager's station. In addition, all viewing booths shall have at least one side fully open so that all of the area inside the booth is open to the view of persons in the public area of the establishment.
  5. It shall be the duty of the licensee to ensure that the view area specified in subsection (4) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other material and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this Section.
  6. No viewing room or booth may be occupied by more than one person at any time.
  7. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candle as measured at the floor level.
  8. It shall be the duty of the licensee to ensure that the illumination described above as maintained at all times that any patron is present in the premises.
  9. No licensee shall allow openings of any kind to exist between viewing rooms or booths.

10. No person shall make or attempt to make openings of any kind between viewing booths or rooms.
  11. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any opening or holes exist.
  12. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
  13. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.
  14. Each viewing area and/or dance area shall be inspected regularly for violations of this Ordinance. Each violation shall be corrected immediately. Any infectious/bodily fluids found shall be properly handled as per OSHA and the infectious control plan.
  15. Licensee shall brief all employees as to the approved infectious control plan and OSHA regulations before and during employment at intervals of at least six (6) months.
- B. A person having a duty under subsection 1 through 15 of subsection A above omits a violation of this Ordinance if he knowingly fails to fulfill that duty.

#### SECTION 12 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES:

- A. An escort agency shall not employ any person under the age of eighteen (18) years.
- B. A person commits a violation of this Ordinance if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years.

#### SECTION 13. ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS:

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

#### SECTION 14. ADDITIONAL REGULATIONS CONCERNING PUBLIC SEXUAL ACTIVITY AND PUBLIC NUDITY.

- A. It shall be a violation of this Ordinance for a person to knowingly and intentionally, in a public place:
  1. engage in sexual intercourse or to engage in deviate sexual intercourse as defined by the Pennsylvania Crimes code; or
  2. appear in a state of nudity; or
  3. fondle the genitals of himself, herself or another person.

For the purpose of this Ordinance, "Public Place" includes all outdoor areas owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public, including but not limited to places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, party rooms or halls limited to specific members, and party rooms or halls restricted to adults or to patrons invited to attend, whether or not an admission charge is levied. This Section shall not apply to:

- (a) any child under ten years of age; or

- (b) any woman exposing a breast in the process of breast feeding her child; or
  - (c) the exercise of free speech or free expression in the form of artistic and theatrical performances. It is the intention of the Township that this Section be construed, enforced and interpreted in such a manner as will cause the least possible infringement of the constitutional rights of free speech, free expression, due process, equal protection or other fundamental rights.
- B. It shall be a violation of this Ordinance for an employee who knowingly or intentionally appears or performs in a nude or semi-nude condition in a sexually oriented business unless such person is, while nude or semi-nude, at least ten (10) feet from any viewer, patron or customer and situate on a stage at least two feet from the floor.
  - C. It shall be a violation of this Ordinance for an employee of sexually oriented business, while nude or semi-nude, to touch, have contact with or permit the touching or contact with the genitalia, and, in the case of females, the breasts, of such employee and any other person.

**SECTION 15. PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS:**

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

**SECTION 16. EXEMPTIONS:**

- A. It is a defense to prosecution under Section 14 that a person appearing in a state of nudity did so in a modeling class operated:
  - 1. by a proprietary school, licensed by the Commonwealth of Pennsylvania, a college, junior college, or university supported entirely or partly by taxation.
  - 2. by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; and
  - 3. in a structure:
    - (a) which has no signs 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 nude model is on the premises at any one time.

**SECTION 17. VIOLATIONS AND PENALTIES:**

Any individual, firm, corporation or entity who violates, causes or permits the violation of any provision of this Ordinance shall be subject to a criminal fine not exceed \$1,000.00 per violation and imprisonment to the extent permitted by law for the punishment of summary offenses.

A separate offense shall arise for each act or omission or for each day or portion thereof in which a violation is found to exist or for each Section of the Ordinance found to have been violated.

Enforcement of this Ordinance shall be by action brought before the District Justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure.

In addition to any other remedy available under law, the Township may enforce this Ordinance by an action in equity.

All fines and penalties collected for violation of this Ordinance shall be paid to the Township Treasurer.

The initial determination of Ordinance violation and the service of notice of violation are hereby delegated to the Township Board of Supervisors, Township Secretary and their designees or delegates.

**SECTION 18 SEVERABILITY:**

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

**SECTION 19. EFFECTIVE DATE:**

**THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY.**

**ORDAINED AND ENACTED INTO LAW THIS 23rd DAY OF OCTOBER  
, 2003.**

**TOWNSHIP OF SOUTH HUNTINGDON**

**BY: Scott Painter  
Chairman**

**ATTEST:  
Cindy Thorne  
SECRETARY-TREASURER**