

CHAPTER 31: REGULATIONS OF SEXUALLY ORIENTED BUSINESSES

31.01 Enforcement

Zoning Inspector means the Village of Maineville Zoning Inspector.

31.02 Regulations

The regulations set forth in this chapter, or set forth elsewhere in these regulations of the Zoning Ordinance, are the zoning regulations for the regulation of Sexually Oriented Businesses.

31.03 Establishment and Classification of Businesses

- (A) No person shall cause or permit the Establishment of any Sexually Oriented Business on any parcel of land, any portion of which is within five hundred (500) feet of the right-of-way of an interstate highway. In no case shall signage for a Sexually Oriented Business be visible from an interstate highway.
- (B) Sexually Oriented Businesses shall be permitted only in areas zoned in: Chapter 10, Neighborhood Business Zone NB; provided all other requirements of the Zoning Ordinance are met.
- (C) No Sexually Oriented Business shall be located adjacent to (or closer than 100 one hundred feet) and/or across from any Protected Use.
- (D) In no case shall a Sexually Oriented Business engage in the outdoor exhibition of Specified Anatomical Areas or Specified Sexual Activities.

31.04 Measurement of Distance

- (A) For the purposes of the regulation of Sexually Oriented Businesses, distance shall be measured in a straight, horizontal line, without regard to intervening structures.
- (B) The distance between any two (2) Sexually Oriented Businesses and the distance between any Sexually Oriented Business and any establishment where alcohol is served, shall not be less than 100 feet, and shall be measured from the closest exterior structural wall of each business. The distance between any sexually oriented business and any Protected Use, as defined, shall be measured from the closest exterior structural wall of the Sexually Oriented Business and the nearest property line of the Protected Use.

31.05 Non-Conformity

A Sexually Oriented Business lawfully operating as a conforming use is not rendered non-conforming by the subsequent location of a Protected (or closer than one hundred 100 feet) of the Sexually Oriented Business.

31.06 Permit Required

- (A) No Sexually Oriented Business may operate without a valid Sexually Oriented Business permit issued by the Zoning Inspector.
- (B) The Zoning Inspector is responsible for granting, denying, revoking, renewing, suspending and/or canceling permits for existing or proposed Sexually Oriented Businesses. To be approved, applicants must comply with all applicable requirements of these regulations of the Zoning Ordinance, applicable Building Ordinance, Maineville Police Department, local Fire Department, and the Warren County Combine Health District.
- (C) The Maineville Police Department is responsible for obtaining information on whether an applicant has been convicted of a Specified Criminal Act, within the time set forth.
- (D) Applications must be made on a form provided by the Village of Maineville. Applicants must provide one (1) original and all necessary copies of a sworn application, which shall contain the following information and attached documentation.
 - (1) If the applicant is:
 - (a) An individual, the legal name, all aliases and proof that applicant is at least eighteen (18) years of age;
 - (b) A partnership, the complete name, all partners legal names and aliases, proof that each partner is at least eighteen (18) years of age and a copy of any partnership agreement;
 - (c) A corporation, its complete name, date of incorporation, legal names of all officers, directors and stockholders, proof that all officers, directors and stockholders are at least eighteen (18) years of age, legal name and address of its registered agent, a copy of articles of incorporation and evidence of good standing under Ohio Law.
 - (2) The proposed name of the Sexually Oriented Business, as well as any registration documentation.
 - (3) Whether the applicant, or any other individual listed in the application, has been convicted of a Specified Criminal Act or a Sexually Oriented Act within either two (2) years for misdemeanor offenses, or five (5) years for felony offenses immediately preceding the application date and if so, the criminal act involved, date and place of the conviction(s).
 - (4) Whether the applicant, a person with whom the applicant is residing, or any individual listed in the application, has had a Sexually Oriented Business permit revoked, suspended, canceled or denied, and, if so, the name of the business, the jurisdiction and the date of revocation, suspension, cancellation or denial.

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- (5) Whether the applicant, a person of the applicant, is residing or any individual listed in the application, holds any other Sexually Oriented Business permits, as well as the names and locations of all such other businesses and whether the aforementioned are overdue on the payment of taxes, fees, fines, or penalties assessed or imposed in relation to a Sexually Oriented Business.
- (6) The proposed location of the business, including a legal description of the property, street address and telephone numbers.
- (7) The applicant's business and residential address and telephone numbers.
- (8) The applicant's drivers license number, tax identification number and recent photograph.
- (9) A sketch or diagram showing the configuration and total floor space of the premises upon which the Sexually Oriented Business will be conducted. The sketch need not be professional, but must be drawn to scale and accurate to within six (6) inches, plus or minus.
- (10) A current certificate and straight line drawing, prepared within thirty (30) calendar days prior to application by a registered land surveyor, depicting property lines, structures and the property lines of any existing Protected Use and other Sexually Oriented Businesses within five hundred (500) feet of the proposed Sexually Oriented Business. A Protected Use shall be considered established if it is in existence at the time the application is submitted.
- (11) The application must be signed:
 - (a) by the individual applicant if the applicant is an individual;
 - (b) by all partners if the applicant is a partnership;
 - (c) By an authorized officer and all shareholders if the applicant is a corporation; and:
 - (d) In addition to (a), (b) and (c) above, all persons having any ownership interest in the Sexually Oriented Business.
 - (e) Applicants are under a continuing duty to promptly update their application information. Failure to do so within thirty (30) calendar days of the date of a change in application information shall be grounds for permit suspension.
 - (f) If the Zoning Inspector determines that an applicant has provided incomplete or inaccurate information, have improperly completed the permit application, the applicant shall be notified and allowed ten (10) working days for corrections to be made. The time for application review shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.
 - (g) A non-refundable application fee, as determined by the Village Council of Maineville, is due at the time the applicant files an application. Applications will not be accepted without the required filing fee.

- (h) The applicant must be qualified according to all provisions of these regulations and the premises must be inspected and found to be in compliance with all applicable health, fire, zoning, and building codes and laws.
- (i) The possession of other types of permits, including a liquor license, does not exempt an applicant from the requirement of obtaining a Sexually Oriented Business permit.
- (j) By making application for a Sexually Oriented Business permit, an applicant shall be deemed to have consented to the provisions of the Zoning Ordinance and to the appropriate investigation of said application.
- (k) The applicant is required to provide the Zoning Inspector with the names (including aliases) of all Employees required to be licensed under the Zoning Ordinance, before they commence employment. This obligation continues even after a permit is granted or renewed. Failure to comply with this requirement shall be grounds for permit suspension. No Employee may work in a Sexually Oriented Business without a valid Sexually Oriented Business Employee license.

31.07 Application Investigation

- (A) Upon receipt of a completed application and the required non-refundable application fee, the Zoning Inspector (or designee) shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to any agencies responsible for the enforcement of health, zoning, fire, law enforcement and building codes or laws. Each agency shall be requested to promptly investigate the application in accordance with its responsibilities under law and as set forth within the Zoning Ordinance. All investigations shall be completed within such time as to allow the Zoning Inspector to approve or deny a permit within forty-five (45) calendar days of the Zoning Inspector's receipt of the completed application.
- (B) At the conclusion of its investigation, each agency shall indicate on the photocopy of the application its approval or disapproval of the application, with date and signature and in case of disapproval, state the reasons therefore. An agency shall disapprove any application which reveals that the proposed Sexually Oriented Business will be in violation of any provision of any statute, code, regulation, or other law in effect in Warren County. After its indication of approval or disapproval, each agency shall immediately return the photocopy of the application to the Zoning Inspector.

31.08 Approval or Denial of Permit

- (A) Sexually Oriented Business permit shall be approved or denied by the Zoning Inspector within forty-five (45) calendar days of the receipt of a complete application.
- (B) The permit, if granted, shall state on its face the name of the person(s) to whom it is granted, the name of the business, the address of the business and the permit expiration date. The permit shall be posted in a conspicuous interior location, at or near

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the entrance to the Sexually Oriented Business, such that it may be easily read at any time.

- (C) A permit application shall be approved, unless one (1) or more of the following criteria are found to exist, in which case it shall be denied, or located at a distance in opposition to Section 31.120
- (1) An applicant, partner of a partnership applicant, or officer, director or shareholder of a corporate applicant, is under eighteen (18) years of age;
 - (2) An applicant, or, if the applicant is an individual, an applicant's spouse, is overdue on the payment of taxes, fees, fines, or penalties assessed or imposed in relation to a Sexually Oriented Business;
 - (3) An applicant, if the applicant is an individual, who is residing with a person to whom a permit to operate a Sexually Oriented Business has been denied or revoked within the preceding twelve (12) months;
 - (4) An applicant, after the notice provided in Section 31.122(F), has failed to provide required information in the application, or has supplied false information;
 - (5) The premises to be used are not in compliance with applicable health, zoning, fire, and building codes, as determined by the agencies responsible for determining such compliance; or located at a distance in opposition to Section 31.120
 - (6) The non-refundable permit application fee has not been paid;
 - (7) An applicant is in violation of, or not in compliance with, any of the provisions of the Zoning Ordinance;
 - (8) The issuance of the permit would violate a statute, resolution, or court order;
 - (9) The applicant held a Sexually Oriented Business permit under the provisions of the Zoning Ordinance which was subsequently revoked;
 - (10) The applicant has been convicted of a Specified Criminal Act within the time limits specified in Section 31.122(D)(3) of the Zoning Ordinance;
 - (11) An applicant knowingly has in his/her employee an Employee without a valid Sexual Oriented Business Employee license, as required by the Zoning Ordinance.
 - (12) Sexual Oriented Business is to close to a Protected Use.
- (D) No person may make application for a permit for a Sexually Oriented Business at a particular location if such person has had an application for a Sexually Oriented Business at the same location denied within twelve (12) months of the time application is made.

31.09 Annual Permit Fee \$250.00

The annual fee for a Sexually Oriented Business permit, as determined by the Village Council of Maineville, shall be payable upon the date of first permit issuance and upon each anniversary thereof, assuming renewal is granted by the Zoning Inspector.

31.10 Inspection

An applicant or Permittee shall permit representatives of the Warren County Building Department and Village of Maineville Zoning Department, Warren County Combined Health District, and the applicable fire department to inspect the premises of a Sexually Oriented Business for the purpose of insuring compliance with their respective regulations, at any time it is occupied or open for business.

31.11 Expiration and Renewal of Permit

(A) No Sexually Oriented Business shall operate without a valid Sexually Oriented Business permit. Each Sexually Oriented Business permit shall expire one (1) year from date of issuance and may be renewed prior to expiration, subject to the following requirements. The permit holder shall request renewal in writing to the Zoning Inspector at least sixty (60) calendar days prior to permit expiration, accompanied by a non-refundable fee, as determined by the Village Council of Maineville. Renewal shall be subject to a finding that the permit holder remains in conformance with all applicable permit requirements. Making application less than sixty (60) calendar days before permit expiration shall not affect the current expiration date. An expired permit is not eligible for renewal, however re-application may be made.

31.12 Suspension of Permit

- (A) A permit to operate a Sexually Oriented Business shall be suspended by the Zoning Inspector for thirty (30) calendar days, or until the violation has been corrected. If it is determined that a Permittee, or the Employee of a Permittee, has:
- (1) Violated, or is not in compliance with, any portion of the Zoning Ordinance; or:
 - (2) Been under the influence of alcoholic beverages or controlled substance while working on the Sexually Oriented Business premises; or:
 - (3) Refused to allow an inspection of the premises, as authorized by the Zoning Ordinance; or
 - (4) Knowingly permitted gambling by any person on the premises; or:
 - (5) Failed to correct a violation of a building, zoning, fire or health code within seven (7) calendar days of the notification of such violation; or:
 - (6) Engaged in permit transfer in violation of the applicable provisions of the Zoning Ordinance; or:
 - (7) Knowingly employed a person without a valid license, as required by the Zoning Ordinance.

31.13 Revocation of Permit

- (A) A permit to operate a Sexually Oriented Business shall be revoked by the Zoning Inspector upon a determination that either a permit is to be suspended for a second time within a twelve (12) month period, or that a Permittee or Employee of a Permittee has:
 - (1) Given false or misleading information in material submitted during the application or renewal process that tended to enhance the opportunity for obtaining such permit or renewal; or
 - (2) Knowingly allowed the possession, use or sale of controlled substances on the permit premises; or
 - (3) Knowingly allowed prostitution on the premises; or
 - (4) Knowingly operated the Sexually Oriented Business while under permit suspension; or
 - (5) Been convicted of a Specified Criminal Act for which the time period specified in Section 31.122(D)(3) of the Zoning Ordinance has not elapsed; or
 - (6) Been convicted of tax violations for taxes or fees related to a Sexually Oriented Business; or
 - (7) Knowingly allowed any Specified Sexual Activities, as defined, between patrons or between patrons and Employees to occur in or on the Permitted Premises or surrounding properties; or
 - (8) Operate more than one (1) Sexually Oriented Business under a single roof.
- (B) Permit revocation is effective for one (1) year. The Permittee shall not be granted any other permits for any other Sexually Oriented Business during the effective revocation period.

31.14 Transfer of Permit

- (A) A Permittee shall not operate a Sexually Oriented Business at any location other than the address designated in the application for permit.
- (B) A Permittee shall not transfer a Sexually Oriented Business permit unless and until such other person satisfies the following requirements:
 - (1) Obtains an amendment to the permit from the Zoning Inspector, upon satisfactory completion of all permit application requirements;
 - (2) Pays a transfer fee of fifty (50) percent of the annual permit fee.
- (C) A permit shall not be transferred in the event that the Permittee has been notified that suspension or revocation proceedings have been or are being brought against the Permittee.
- (D) A permit shall not be transferred to another location.

- (E) Any attempt to transfer a permit in violation of these provisions is void and the Zoning Inspector shall revoke the subject permit.

31.15 Sexually Oriented Business Employee License

- (A) All prospective Employees of a Sexually Oriented Business shall obtain a Sexually Oriented Business Employee license. Each applicant shall pay a license fee, as determined by the Village Council of Maineville, to cover reasonable administrative cost. No application shall be accepted without the required fee.
- (B) On a form provided by the Village of Maineville, the applicant must provide one (1) original and two (2) copies of a sworn application, which shall contain the following information and attached documentation:
 - (1) Name, inclusive of stage names or aliases;
 - (2) Age, birth date and birthplace;
 - (3) Height, weight, hair and eye color;
 - (4) Current residence and business address and phone numbers;
 - (5) State driver's license or state identification and social security number;
 - (6) Acceptable written proof that the individual is at least eighteen (18) years of age;
 - (7) A color photograph of the applicant, clearly showing the applicant's face. The applicant's fingerprints on a form provided by the Maineville Police Department. Any fees for photos and fingerprints are the responsibility of the applicant;
 - (8) A statement detailing the Sexually Oriented Business license or permit history of the applicant for the previous five (5) years, including information whether a permit or license had been denied, revoked or suspended, the applicable reasons and dates for such actions, as well as the jurisdiction in which such actions occurred, as applicable;
 - (9) Information as to whether the applicant has been convicted of a Specified Criminal Act, as defined, as well as the date, place, jurisdiction and nature of each conviction.
- (C) By making application for a Sexually Oriented Business Employee license, an applicant shall be deemed to have consented to the provisions of the Zoning Ordinance and to the appropriate investigation of said application.
- (D) The Zoning Inspector shall refer a photocopy of the Sexually Oriented Business Employee license application to the Maineville Police Department for investigation. The Chief of Police or his designee shall report findings of the investigation on the photocopy, with date and signature and immediately return the photocopy of the application to the Zoning Inspector.

- (E) The initial application review shall be completed within fourteen (14) calendar days from the date a completed application is filed. A conditional license shall be issued upon the completion of the initial application review unless the investigation of the applicant finds one or more of the following:
- (1) That the applicant knowingly made any false, misleading, or fraudulent statement of a material fact; or:
 - (2) That the applicant is under eighteen (18) years of age; or:
 - (3) That the license is to be used for employment in a business prohibited by these regulations, or other local, State, or Federal laws or:
 - (4) The applicant has had such license revoked within two (2) years of the date of the current application.

The conditional permit shall be valid for a period commencing on its issuance and ending on the date a final license is issued or the date license application is denied, whichever first occurs. A final license shall be issued to the applicant within sixty (60) calendar days of the application being filed unless it is found that the applicant has been convicted of a specified criminal act for which the time period set forth in Section 31.122(D)(3) has not elapsed.

- (F) Each Sexually Oriented Business Employee license shall expire one (1) year from date of issuance and may be renewed prior to expiration, subject to the following requirements. The licensee shall request renewal in writing to the Zoning Inspector at least sixty (60) calendar days prior to license expiration, accompanied by a non-refundable license renewal fee, as determined by the Village Council of Maineville. Renewal shall be subject to a finding that the licensee remains in conformance with all applicable requirements. Failure to make application less than sixty (60) calendar days before license expiration shall not effect expiration and no Employee shall work in a Sexually Oriented Business without a valid license. An expired license is not eligible for renewal; however re-application may be made, subject to all applicable requirements.

31.16 Hearing; Revocation, License Denial, Suspension; Appeal

- (A) If the Zoning Inspector determines that probable grounds exist for denial, non-renewal, suspension, or revocation of a sexually oriented business permit or sexually oriented business employee license (hereinafter permit and license respectively) under this chapter, the Zoning Inspector shall notify the applicant or licensee (respondent) in writing of the intent to deny, non-renew, suspend or revoke the permit or license, including the grounds therefore, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the Zoning Inspector. Within ten (10) working days of receipt of such notice, the respondent may provide to the Village Council in writing a response which shall include a statement of reasons why the license or permit should not be denied, non-renewed, suspended, or revoked. Within ten (10) working days of the receipt of such written response, the Village Council shall conduct a hearing at which respondent shall have the opportunity to present evidence and witnesses on his or her behalf. The Village Council shall notify the respondent in writing of the hearing date within three (3) working days

of the receipt of such written response. The Village Council based upon the standards for permit/license denial, non-renewal, suspension or revocation contained herein shall determine whether to deny, non-renew, suspend or revoke the permit/license. If a response is not received by the Village Council in the time stated, or, if after the hearing the Village Council finds that grounds exist for denial, non-renewal, suspension, or revocation, then such action shall become final and notice of such final action sent to the applicant or licensee. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction. If the Village Council finds that no grounds exist for denial, non-renewal, suspension, or revocation of a permit or license, then the Zoning Inspector shall withdraw the intent to deny, non-renew, suspend or revoke the permit or license and shall so notify the respondent in writing by personal delivery, or by certified mail of such action.

- (B) When a decision to deny, non-renew, suspend or revoke a permit or license becomes final, the applicant or licensee whose permit or license has been denied, non-renewed, suspended, or revoked shall have the right to appeal such action to a court of competent jurisdiction pursuant to Ohio Revised Code Section 2506. Any suspension, non-renewal or revocation of a permit or license for a sexually oriented business does not take effect until a final decision is rendered in an appeal taken following this section.

Upon the filing of an appeal pursuant to this section by an applicant for a permit or license, said applicant shall be granted a temporary permit or license to operate said sexually oriented business or be an employee of such sexually oriented business pending a final decision on said appeal. Such temporary permit or license shall be subject to all provisions of this Chapter 31.

31.17 Regulation of Sexually Explicit films or Videos

A person that operates or causes to be operated a Sexually Oriented Business, other than a Sexually Oriented Hotel/Motel and regardless of whether or not a Sexually Oriented Business permit has been issued to said business, which exhibits on the premises in a viewing room, computer software, compact discs, a film, video cassette or other video reproduction, which depicts Specified Sexual Activities or Specified Anatomical Areas shall comply with the following requirements:

- (A) Upon application for a Sexually Oriented Business permit, the application shall be accompanied by a sketch or diagram of the entire premises with a plan thereof, specifying the location of manager's stations, if any, the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted access. A professionally prepared drawing is not necessary; however each diagram shall be oriented to north and the closest street(s) and be drawn to scale, with marked dimensions sufficient to show the internal features of all areas of the premises to an accuracy of plus or minus, six (6) inches. The Zoning Inspector may waive the foregoing diagram during permit renewal if the applicant certifies that the configuration of the premises has not been altered since the previous diagram was prepared.
- (B) No alteration in the configuration of the premises as set forth in the sketch or diagram of the premises may be made prior to the approval of the Zoning Inspector.
- (C) It is the duty of the owners and operator of the premises to insure that such number of Employees are on duty and so situated that all patrons present inside the premises are subject to observation by an Employee or Employees.

- (D) The interior of the premises shall be configured in such a manner that every area of the premises to which any patron is permitted access for any purpose, including the interior of individual viewing booths, excluding Restrooms, is subject to an unobstructed view by the employer or Employees on duty. Restrooms shall not be equipped with video display equipment.
- (E) It is the duty of the owners, operator and Employees present on the premises to insure that the aforementioned unobstructed view shall remain unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and to insure that no patron is permitted access to any area designated for no access by patrons in the application of record.
- (F) No viewing room may be occupied by more than one (1) person at any given time. No peep holes, viewing holes or other holes which are or may be used by occupants of a viewing room for sexual gratification shall be permitted in the walls, floors, ceilings or partitions separating each viewing room from an adjoining viewing room or restroom. Doors, curtains or a maze of wall structures shall not enclose viewing rooms. No signs, lights, or other communicative devices shall be employed to create an expectation of privacy on the part of any patron at any location of the premises.
- (G) 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 level of not less than two (2) foot candles, as measured at floor level. Said level of illumination shall be maintained at all times any patron is present on the premises.

31.18 Regulation of Adult Cabarets

Performers in Adult Cabarets must be located on stage, no less than eighteen (18) inches in height and at least six (6) feet from all patrons. There shall be absolutely no physical contact, tipping, or exchange of gratuities between patrons and performers.

31.19 Advertising and Lighting Regulations

No Sexually Oriented Business may be operated and:

- (A) Advertise the presentation of any activity prohibited by the Zoning Ordinance, or other local or State regulation; or:
- (B) Display or exhibit the materials and performances in advertising which is visible outside the premises, except advertising the existence or location of a Sexually Oriented Business; or:
- (C) Allow any portion of the interior premises to be visible from outside the Establishment; or:
- (D) Fail to illuminate the entries and off-street parking areas of the premises, from dusk until closing, with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle on the parking surface and walkways. Said level of illumination is established in order to provide sufficient lighting for the personal safety of patrons and Employees, to reduce potential vandalism and criminal conduct and shall be shown on required permit application documentation.

31.20 Minors Prohibited

- (A) No person under eighteen (18) years of age may be admitted, remain, or purchase goods at a Sexually Oriented Business.
- (B) No person under eighteen (18) years of age may be employed at a Sexually Oriented Business.

31.21 Reserved

31.22 Violation

- (A) It shall be unlawful, punishable per Chapter 24 of the Zoning Ordinance if:
 - (1) A Sexually Oriented Business is operated without a currently valid Sexually Oriented Business permit, or the business operates in violation of the terms of its permit or this chapter or has a permit which is under suspension, has been revoked, or has expired; or
 - (2) There is a failure to allow the inspection of a Sexually Oriented Business by the Warren County Building Department and the Zoning Inspector, Warren County Combined Health District, Maineville Police Department or the applicable fire department: or:
 - (3) Any person having a duty under Sec. 31.131 Regulation of Sexually Explicit Films or Videos, knowingly fails to fulfill said duty, or:
 - (4) A person operates, or causes to be operated, a Sexually Oriented Business in violation of the Section 31.135., Advertising and Lighting; or:
 - (5) A person operates, causes to be operated, a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business and knowingly, or with reasonable cause to know, permits, suffers, or allows the violation of Section 10.5.36, Minors Prohibited; or:
 - (6) Any person willfully falsifies any material fact on any required application, or documentation attached thereto.
- (B) Nothing contain herein shall prevent or restrict the Village Council of Maineville from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.
- (C) All remedies and penalties provided for in this Chapter shall be cumulative and independently available to the Village Council of Maineville, which shall be authorized to pursue any and all remedies set forth to the full extent allowed by law.

31.23 Exemptions

It is a defense to prosecution for alleged violation or Sexually Oriented Business provisions of the Zoning Ordinance, that:

- (A) A person appearing in a state of nudity did so in a modeling class operated:
 - (1) By a college, junior college or university supported in whole or part by taxation; or
 - (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or:
- (B) In a structure:
 - (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing: and
 - (2) Where in order to participate in a class, a student must enroll at least three (3) days in advance of the class: and :
 - (3) Where no more than one (1) nude model is on the premises at any one time.
- (C) A person appearing in a state of nudity did so in a bona fide theatrical production.
- (D) An Employee of a Sexually Oriented Business exposed any specified anatomical area during the bona fide use of a restroom or dressing room accessible only to Employees.

31.24 Immunity from Prosecution

All Village of Maineville officers, agents and Employees charged with enforcement with State and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon a Sexually Oriented Business while acting within the scope of authority conferred by this Chapter.

31.25 Definitions

Sexually Oriented Businesses are those businesses defined as:

- (1) Adult Arcade means a commercial Establishment where, for any form of consideration, one (1) or more still or motion pictures projectors, slide projectors, or similar machines, or other image-producing machine, for viewing by five (5) or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides, or photographic reproductions characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas."
- (2) Adult Bookstore, Adult Novelty or Adult Video Store means a commercial Establishment which has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of revenues, or devotes a significant or substantial portion of its interior business or advertising to the

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sale or rental for any form of consideration, of any one (1) or more of the following:

- (a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, computer software, compact discs, or other visual representations, characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas".
 - (b) Instruments, devices, or paraphernalia designed for use or marketed primarily for stimulation of human genital organs, or for sadomasochistic use or abuse.
- (3) Adult Cabaret means a nightclub, bar, restaurant, bottle club, car wash, or similar commercial Establishment, whether or not alcoholic beverages are served, which regularly features:
- (a) Persons who appear nude, or in the state of nudity, or semi-nudity;
 - (b) Live performances characterized by the exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities";
 - (c) Films, motion pictures, videocassettes, slides, or other photographic reproductions characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas".
- (4) Adult Motel is a motel, hotel or similar commercial Establishment which:
- (a) Offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, characterized by the depiction of "Specified Sexual Activities" or "Specified Anatomical Areas" and which advertises the availability of this sexually-oriented type of material by means of a sign. Visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to newspapers, magazines, pamphlets or leaflets, radio or Television; or:
 - (b) Offers a sleeping room for rent for a period of time less than ten (10) hours; or:
 - (c) Allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.
- (5) Adult Motion Picture Theater means a commercial Establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" are regularly shown for any form of consideration.
- (6) Adult Theater means a theater, concert hall, auditorium, or similar commercial Establishment which, for any form of consideration, regularly features persons

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who appear in a state of nudity, or performances characterized by exposure of “Specified Anatomical Areas” or by “Specified Sexual Activities”.

- (7) Escort means a person who, for any form of consideration, agrees or offers to act as a companion, guide or date for another person, or agrees or offers to privately model lingerie or privately performs a striptease for another person.
 - (8) Escort Agency means a person or business association that, for any form of consideration, furnishes, or offers to furnish an Escort (s), for another person.
 - (9) Massage Parlor means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentation’s, electric or magnetic treatments, or any other treatment or manipulation of the human body occurs as a part of, or in connection with “Specified Sexual Activities”, or where any person providing such treatment, manipulation, or service related thereto, expose his or her “Specified Anatomical Areas”. This definition shall not include the practice of massage in a licensed hospital, under the auspices of a licensed hospital, by a licensed physician, surgeon, chiropractor or osteopath, by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, or by trainers for any amateur, semi-professional or professional athlete, or athletic team, or school athletic program.
 - (10) Nude Model Studio means any place where a person, who regularly appears in a state of nudity, or displays “Specified Anatomical Areas”, is provided, for any form of consideration, to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons.
 - (11) Sexual Encounter Establishment means a business or commercial Establishment, that as one (1) of its primary business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort, for the purpose of “Specified Sexual Activities”, or the exposure of “Specified Anatomical Areas”, or activities when one (1) or more of the persons is in a state of nudity or semi-nude. This definition shall not include an Establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed in the State of Ohio, engages in medically approved and recognized sexual therapy.
- 3.45.2 Employee means a person who works or performs as a part of a business association or as a private contractor, regardless of whether or not said person is paid a salary, wage, or other compensation by the operator of said business, excluding a person exclusively on the premises for repair or maintenance of the premises or equipment thereon, or for the delivery of goods to the premises.
- 3.45.3 Establishment means the opening or commencement of any business as a new business, or the conversion of an existing business.
- 3.45.4 Nudity or State of Nudity means:
- (1) The appearance of human bare buttocks, anus, male or female pubic region or genitals, or the areola or nipple of the female breast; or:

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- (2) A state of dress which fails to opaquely and fully cover human buttocks, anus, male or female pubic region or genitals, or the areola or nipple of the female breast.
- 3.45.5 Operator means and includes the owner, permit or license holder, custodian, manager, operator or person in charge of any business premises.
- 3.45.6 Permitted or licensed premises mean any premises that require a license and/or permit under Chapter 31 of the Zoning Ordinance.
- 3.45.7 Permittee and/or Licensee means a person or persons in whose name a permit and/or license to operate a business under these regulations has been issued, as well as the individual or other legal entity listed as an applicant on the application for a permit and/or license.
- 3.45.8 Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- 3.45.9 Protected uses are those uses listed below and defined as:
- (1) Public building means any building owned, leased, or held by the United States, the State of Ohio, Warren County, any City, Village or Township, any special district or school district, or any other agency or political subdivision, which building is used for government purposes.
- (2) Land which has been designated for park or recreational activities, including but not limited to, a park; playground; nature trails; swimming pool; reservoir; athletic field; basketball or tennis courts; pedestrian or bicycle paths; open space; wilderness areas; Recreation Area: Private (Sec. 3.41), Charitable (Sec. 3.42), Public (Sec. 3.44) or Commercial (Sec. 3.43): or similar land.
- (3) Quasi-public facility means any building or improved property customarily open to the public for non-commercial purposes, but which is not under government ownership or control.
- (4) Religious institution means any church, synagogue; mosque, temple or building used primarily for religious worship and related religious activities.
- (5) Residential district or use means Zones R-1, R-2, R-3, as set forth in this Zoning Ordinance.
- (6) School means any public or private educational facility, including but not limited to child day care facilities, nursery schools, pre-schools, kindergartens, elementary, primary, intermediate, junior, middle, and secondary or high schools, vocational schools, continuation schools, special education schools, junior colleges, colleges and universities. School includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.
- 3.45.10 Semi-nude means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices, as applicable.

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- 3.45.11 Specified Anatomical Areas, as used in the Zoning Ordinance for the regulation of sexually oriented businesses, means and includes any of the following:
- (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breast below a point immediately above the top of the areola, or :
 - (2) Human male genitals in a discernibly turgid state even if completely and opaquely covered.
- 3.45.12 Specified Sexual Activities, as used in the Zoning Ordinance for the regulation of sexually oriented businesses, means and includes any of the following:
- (1) The fondling, intentional touching of human genitals, pubic region, buttocks, anus, or female breast; or
 - (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or
 - (3) Masturbation, actual or simulation; or:
 - (4) Human genitals in a state of sexually stimulation, arousal, or tumescence; or:
 - (5) Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (4) of this subsection.
- 3.45.13 Specified Criminal Acts are those offenses defined in Ohio Revised Code, Chapter 2907, and as the same, may, from time to time be amended and similar offenses pursuant to municipal ordinances, village/county resolutions of this or any other state, the statues and regulations of any other state or of the United States or tax violations in connection with Sexually Oriented Business.
- 3.45.14 Substantial enlargement of a Sexually Oriented Business means an increase in the original floor area occupied by the business by more than fifteen (15) percent.
- 3.45.15 Transfer of control of a business means and includes any of the following:
- (1) The sale, lease, or sublease of the business; or:
 - (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means, voluntary or otherwise; or:
 - (3) The establishment of a trust, gift, or similar legal device, which transfers ownership or control of the business, except for transfer by bequest, or other operation of law upon the death of a person possessing the ownership or control.
- 3.45.16 Zoning Code means the Village of Maineville Zoning Ordinance and as the same, may, from time to time, be amended.