

ORDINANCE

City of Portland, Tennessee

No. 17-75

SECOND READING

AN ORDINANCE AMENDING THE CITY OF PORTLAND MUNICIPAL CODE BY ADDING A NEW CHAPTER 9, TO TITLE 9, PROVIDING FOR THE REGULATION OF SEXUALLY ORIENTED BUSINESSES IN THE CITY OF PORTLAND

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

WHEREAS, the Board of Mayor and Aldermen find that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution, and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, the Board of Mayor and Aldermen desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the city's quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and

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

WHEREAS, it is not the intent of the Board of Mayor and Aldermen to condone or legitimize the distribution of obscene material, and the Board of Mayor and Aldermen expects and encourages state law enforcement officials to enforce state obscenity statutes against any illegal activities in the City;

BE IT ORDAINED by the Mayor and Aldermen of the City of Portland, Tennessee:

SECTION 1. PURPOSE AND FINDINGS.

Purpose. It is the purpose of this ordinance to minimize, control, and reduce the negative secondary effects associated with sexually oriented businesses by establishing reasonable and uniform regulations thereby protecting the health, safety, and welfare of the citizens of Portland. The provisions of this ordinance are intended to have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intended purpose or effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intended purpose or effect of this ordinance to condone or legitimize the distribution of obscene material.

Findings. Based on a review of the findings incorporated in the cases of *City of Renton, et al., v. Playtime Theaters, Inc., et al.*, 475 U.S. 41 (1986); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *Richland Bookmart, Inc., et al., v. Knox County, Tenn.*, 555 F.3d 512 (6th Cir. 2009); *Entertainment Productions, Inc., et al. v. Shelby County, Tenn., et al.*, 588 F.3d 372 (6th Cir. 2009); *Déjà vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson Cnty., et al.*, 274 F.3d 377 (6th Cir. 2001); and on evidence concerning the negative secondary effects of sexually oriented businesses on the community presented in a summary of key reports focusing on the communities of Garden Grove, California; New York, New York; Islip, New York; Dallas, Texas; Philadelphia, Pennsylvania; Houston, Texas; Tucson, Arizona; Los Angeles, California; Phoenix, Arizona; Whittier, California; Indianapolis, Indiana; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; and the State of Minnesota, Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 1989), the Board of Mayor and Aldermen finds:

- The United States Supreme Court found in the case of *City of Erie v. Pap's A.M.*, 529 U.S. 277, 300 (2000), that crime and other public health and safety problems are caused by the presence of nude dancing establishments;
- AIDS and HIV infection are principally transmitted by sexual acts and evidence shows that numerous other diseases are transmitted by sexual acts including, but in no means limited to, syphilis, gonorrhea, chlamydia, herpes, and genital warts;
- Crime increases significantly with the opening of adult businesses with the greatest increase coming in the form of serious offenses such as homicide, rape, robbery, assault, burglary, theft, and auto theft;

- A 1997 study in Dallas, Texas, concluded that the number of sex-crimes arrests in an area containing sexually oriented businesses was five times higher than in the control area with no sexually oriented businesses;
- Even a single sexually oriented business impacts the properties immediately surrounding it and those adverse impacts increase in proportion to the visibility of the business;
- Sexually oriented businesses provide a focus for illicit activities pertaining to prostitution, pandering, and other illegal sex acts;
- The impact of sexually oriented businesses upon small towns is more intense than that upon big towns;
- A national survey of real estate appraisers and lenders revealed that the placement of a sexually oriented business is generally an indicator of the decline of a community – in a small town, the business district as a whole is impacted;
- The same national survey indicated a likelihood that a person on foot in the vicinity of a sexually oriented businesses will be propositioned for sex acts or sexually harassed;
- A study in Tucson, Arizona, found that 81% to 96% of samples obtained from peep show booths tested positive for semen which was a major sanitation and public health concern;
- The Department of City Planning in Los Angeles, California, determined that more crime occurred where sexually oriented businesses were concentrated and areas with several such businesses experienced greater increases in pandering (340%), murder (42.3%), aggravated assault (45.2%), robbery (52.6%) and purse snatching (17%);
- On average in Phoenix, Arizona, the number of sex offenses was 506% greater in neighborhoods where sexually oriented businesses were located as compared to neighborhoods without any such businesses;
- Phoenix area neighborhoods that contained a sexually oriented business had 43% more property crimes than neighborhoods without sexually oriented businesses;
- After experiencing a rapid growth of sexually oriented businesses in the late 1960's and early 1970's, the Whittier, California, City Council commissioned a study that found criminal activity increased 102% in the area with sexually oriented businesses compared to an 8.3% increase in the City overall.

- In Indianapolis, Indiana, homes in the areas of sexually oriented business appreciated at only half the rate than homes in control areas without any similar businesses and ultimately concluded that “[t]he best professional judgment available indicates overwhelmingly that adult entertainment businesses – even a relatively passive use such as an adult bookstore – have a serious negative effect on their immediate environs.”
- Amarillo, Texas’s Planning Department found that concentrations of sexually oriented businesses have detrimental effects on residential and commercial activities caused by: (1) noise, lighting, and traffic haze during late night hours; (2) increased opportunity for street crimes; and (3) the tendency of citizens to avoid such business areas;
- Houston, Texas, reported that criminal activity associated with sex businesses justified licensure requirements for such businesses based on a finding that sex businesses with inadequate lighting or without clear lines of sight to all parts of the premises encouraged lewd behavior and illegal sexual activity and also found that many sex businesses had locked rooms on their premises that served as venues for prostitution;
- A number of localities’ studies found sexually oriented businesses have negative secondary effects on communities in the form of increased crime rates, depreciation of property values, deterioration of community character, and a decrease in quality of urban life; and
- When the previously described activities characteristic of sexually oriented businesses are present, other activities which are illegal or unhealthy tend to accompany them, concentrate around them and be aggravated by them.

The findings noted in the foregoing paragraphs raise substantial governmental concerns. Consequently, the Board of Mayor and Aldermen finds:

- Sexually oriented businesses have operational characteristics that should be reasonably regulated in order to protect these substantial governmental concerns;
- Reasonable reporting requirements provide owners and operators an incentive to see that sexually oriented businesses run in a manner consistent with the health, safety, and welfare of patrons, employees, and entertainers, as well as the citizens of the City of Portland;
- It is appropriate to require reasonable assurances that certain minimal qualifications for operators, entertainers, and employees of sexually oriented businesses are met and that operators are fully in possession and control of the premises and activities occurring therein;

- Restrictions on physical contact between entertainers, employees, and customers of sexually oriented business and required distances between them during performances is unrelated to the suppression of free speech or expression, but serves to reduce the incidence of criminal behavior on the premises of sexually oriented businesses and acts which lead to the transmission of sexually oriented diseases;
- Prohibition of doors on booths wherein patrons view sexually oriented materials and requiring sufficient lighting on premises with booths advances a substantial governmental interest in curbing illegal and unsanitary sexual activity occurring in sexually oriented businesses;
- Regulation of hours of sexually oriented businesses tends to deter prostitution and overall crime on the surrounding streets;
- Requiring operators of sexually oriented businesses to keep information regarding current and 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 or businesses;
- It is desirable in the prevention of crime and the spread of communicable diseases to obtain a limited amount of information regarding employees who may engage in the conduct which this ordinance is designed to prevent or who are likely to be witnesses to such activity. A substantial relationship between sexually oriented businesses and sexually related crimes establishes a compelling justification for barring those persons who have committed crimes from participation in the operation of such businesses;
- The fact that a person desiring to operate or participate in the operation of a sexually oriented business has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in such conduct in contravention of this ordinance;
- The barring of such individuals from the management of sexually oriented businesses or from being employed at or providing entertainment at such businesses for a period of years serves as a deterrent to crime and prevents conduct which leads to the transmission of sexually transmitted diseases; and
- The enactment of this ordinance will promote the general welfare, health, and safety of the citizens of the City of Portland.

SECTION 2. CODE AMENDMENT. Title 9 Chapter 10 titled *Sexually Oriented Businesses* is hereby created and added in the Portland Municipal Code as follows:

9-901. Title. This chapter shall be known and may be cited as "The Sexually Oriented Business Ordinance."

9-902. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) "Adult arcade" means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained 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."
- (2) "Adult bookstore," "adult novelty store," or "adult video store" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:
 - (A) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, computer software or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" or
 - (B) Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of the principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

- (3) "Adult cabaret" means an establishment that features as a principal use of its business, entertainers, waiters, or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point

immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swim suits, lingerie, or latex covering. "Adult cabaret" includes a commercial establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers;

- (4) "Adult entertainment" means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, that has as a principal or predominant theme, emphasis, or portion of such performance, any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers.
- (5) "Adult motion picture theater" means a commercial establishment where, as one of its principal purposes, and for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (6) "Adult theater" means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure or "specified anatomical areas" or by "specified sexual activities."
- (7) "Codes department" means the department or division of the city which is authorized to enforce building codes and other provisions of this Municipal Code of Ordinances.
- (8) "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 as an employee, independent contractor, agent, or otherwise and whether or not the 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.
- (9) "Entertainer" means any person who provides entertainment within a sexually oriented business as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or an independent contractor.
- (10) "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.

- (11) "Family recreation center" means any facility, which is oriented principally toward meeting the athletic or recreational needs of families and whose targeted customer is a minor child, including, but not limited to, the provision of one (1) or more of the following:
- (A) Ice skating;
 - (B) Roller skating;
 - (C) Skateboarding;
 - (D) Paintball;
 - (E) Mini-golf;
 - (F) Bowling;
 - (G) Go-carts;
 - (H) Climbing facilities;
 - (I) Athletic fields or courts; or
 - (J) Other similar athletic or recreation activities.
- (12) "Massage parlor" means an establishment or place primarily in the business of providing massage or tanning services where one or more of the employees exposes to public view of the patrons within said establishment, at any time, "specified anatomical areas."
- (13) "Nude model studio" means a commercial establishment where a person appears semi-nude or in a state of nudity, or 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 as defined herein shall not include a proprietary school licensed by the State of Tennessee or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or a structure:
- (K) That has 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;
 - (L) Where in order to participate in a class, a student must enroll at least three days in advance of the class; and

- (M) Where no more than one nude or semi-nude model is on the premises at any one time.
- (14) "Nudity" or "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 the showing of the covered male genitals in a discernibly turgid state.
- (15) "Operator" means a person operating, conducting, or maintaining a sexually oriented business or a person who is identified in any report filed with the city as the operator of a sexually oriented business.
- (16) "Sauna" means an establishment or place primarily in the business of providing, for purposes of sexual stimulation:
- (A) A steam bath or dry heat sauna; or
- (B) Massage services.
- (17) "Semi-nude" means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit or other wearing apparel, provided the areola is not exposed in whole or in part.
- (18) "Sexual conduct" means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, buttocks, or female breast of a person for the purpose of arousing or gratifying the sexual desire of that person or another person.
- (19) "Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
- (A) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (B) Physical contact between male and female persons or persons of the same sex when one (1) or more of the persons is in a state of nudity or semi-nude or exposes to view of the persons within such establishment, at any time, "specified anatomical areas";
- (20) "Sexually oriented business" includes, but is not limited to, an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture

theater, adult theater, nude model studio, sexual encounter center, massage parlor, or sauna, and further means any premises to which patrons or members of the public are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or other adult entertainment, or wherein an entertainer provides adult entertainment to a member of the public, a patron, or a member, when such is held, conducted, operated or maintained for a profit, direct or indirect.

- (21) "Sexual stimulation" means to excite or arouse the prurient interest or to offer or solicit acts of "sexual conduct" as defined in this chapter.
- (22) "Specified anatomical areas" means:
 - (A) Less than completely and opaquely covered:
 - (i) Human genitals;
 - (ii) Pubic region;
 - (iii) Buttocks; or
 - (iv) Female breasts below a point immediately above the top of the areola;
or
 - (B) Human male genitals in a discernibly turgid state, even if completely opaquely covered.
- (23) "Specified criminal acts" means the following criminal offenses as defined by the Tennessee Code Annotated or the corresponding violation of another state or country:
 - (A) Aggravated rape;
 - (B) Rape;
 - (C) Rape of a child;
 - (D) Aggravated sexual battery;
 - (E) Sexual battery by an authority figure;
 - (F) Sexual battery;
 - (G) Statutory rape;
 - (H) Public indecency;
 - (I) Prostitution;

- (J) Promoting prostitution;
- (K) Distribution of obscene materials;
- (L) Sale, loan or exhibition to a minor of material harmful to minors;
- (M) The display for sale or rental of material harmful to minors;
- (N) Sexual exploitation of a minor;
- (O) Aggravated sexual exploitation of a minor; and
- (P) Especially aggravated sexual exploitation of a minor;

The fact that a conviction is being appealed shall have no effect whatsoever on the provisions of this Chapter.

- (24) "Specified services" means massage services, private dances, private modeling, or acting as an "escort" as defined in this chapter, and any other live adult entertainment as defined in this section.
- (25) "Specified sexual activities" means:
 - (A) Human genitals in a state of sexual arousal;
 - (B) Acts of human masturbation, oral copulation, sexual intercourse, or sodomy; or
 - (C) Fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts.

9-903. Prevention of Sexual Activity. No person who owns, operates or manages a sexually oriented business shall permit "specified sexual activities," as defined in this chapter, to occur on the premises. No commercial building, structure, premises or portion thereof shall be designed for or used to promote high-risk sexual conduct. No person who owns, operates, causes to be operated or manages a sexually oriented business, which exhibits on the premises in any one or more viewing rooms or booths of less than 150 square feet of floor space, a film, video cassette, other reproduction or live entertainment which depicts "specified sexual activities" or "specified anatomical areas," shall cause or allow any deviation from the following requirements:

- (1) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. No manager's station may exceed 32 square feet of floor area. If the premises has two or more manager's stations, 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, excluding restrooms, from at least one of the manager's stations. Each such area shall remain unobstructed by doors, curtains, partitions, walls, merchandise, display racks or other materials. All viewing rooms and booths shall have at least one side open so that the area inside is visible from a manager's station. The view required in this subsection must be by direct line of sight from the manager's station;

- (2) No alteration in the configuration or location of a manager's station may be made without the prior approval of the codes department;
- (3) At least one employee shall be on duty and situated in each manager's station at all times that any patron is present inside the premises;
- (4) No viewing room or booth may be occupied by more than one person at any time;
- (5) Each viewing room or booth shall be lighted in such a manner that persons within are visible from a manager's station. The illumination level of each viewing room or booth, when not in use, shall be a minimum of ten footcandles at all times, as measured from the floor. The illumination level of all other portions of the premises open to the public shall be a minimum of ten footcandles at all times;
- (6) No patron shall be permitted access to any area which has been designated as an area in which patrons will not be allowed;
- (7) Each viewing room or booth shall be totally separated from adjacent viewing rooms and booths and any nonpublic areas by walls. All such walls shall be solid and extended from the floor to a height of not less than six feet and shall be of light colored, nonporous, nonabsorbent, smooth textured and easily cleanable material. No such wall may be constructed of plywood or composition board. No opening or aperture of any kind shall be allowed to exist between viewing rooms or booths. No person shall make or attempt to make an opening or aperture of any kind between viewing rooms or booths;
- (8) All floor coverings in viewing rooms or booths shall be light colored, nonporous, nonabsorbent, smooth textured, easily cleanable surfaces, with no rugs or carpeting;
- (9) The premises shall be maintained in a clean and sanitary manner at all times; and
- (10) No occupant of a viewing room or booth shall be allowed to damage or deface any portion therein, engage in any type of sexual activity, cause any bodily discharge, or litter while inside.

9-904. Involvement of Minors. An operator of a sexually oriented business is in violation of this chapter if:

- (1) The operator is less than 18 years of age, if an individual;
- (2) Any officer, director, partner, stockholder or other individual having a direct or beneficial financial interest in the operator is less than 18 years of age, if the operator is a corporation, partnership or other form of business organization;
- (3) Any employee of the sexually oriented business is less than 18 years of age;
- (4) Any entertainer at the sexually oriented business is less than 18 years of age; or
- (5) Any patron, customer, visitor, vendor, or other person inside the premises is less than 18 years of age.

9-905. Specified Criminal Activity by Operators, Employees, Entertainers and Others.

- (a) No person may own or operate a sexually oriented business within the city if:
 - (1) He has a record of "specified criminal activity," as defined in this chapter, if the owner or operator is an individual; or
 - (2) Any officer, director, partner or other individual having at least a ten percent direct or beneficial financial interest in the operator has a record of "specified criminal activity," as defined in this chapter, if the owner or operator is a corporation, partnership or other form of business organization.
- (b) No operator of a sexually oriented business may allow any employee who has a record of "specified criminal activity," as defined in this chapter, to work on the premises of the business.
- (c) No operator of a sexually oriented business may allow any entertainer who has a record of "specified criminal activity," as defined in this chapter, to perform on the premises of the business.
- (d) No operator, employee, or entertainer of a sexually oriented business may knowingly allow any "specified criminal activity" to occur on the premises of the business.
- (e) No operator or employee of a sexually oriented business may allow any patron or customer who has carried out any "specified criminal activity" on the premises of the business to re-enter the premises.

- (f) The police department may at any time investigate the criminal record of any person identified pursuant to Section 9-909(4) of this Chapter or of any employee of a sexually oriented business or of any entertainer performing at a sexually oriented business.

9-906. Prohibited Hours of Operation. No sexually oriented business shall open to do business before eight o'clock a.m. (8:00 a.m.), Monday through Saturday; and no such establishment shall remain open after twelve o'clock (12:00) midnight, Monday through Saturday. No sexually oriented business shall be open for business on any Sunday or a legal holiday as designated in Tenn. Code Ann. § 15-1-101.

9-907. Duties and Responsibilities of Operators, Employees, and Entertainers.

- (a) The operator of each sexually oriented business shall maintain a register of all employees, showing the name, all aliases, home address, age, birth date, sex, weight, color of hair and eyes, telephone number, social security number, driver license or other state identification number and state of issuance, date of employment and termination, and duties of each employee. The above information for each employee shall be maintained on the premises during his or her employment and for a period of three years following termination.
- (b) The operator shall make such information available for inspection immediately upon request by the mayor, the mayor's authorized representative, the police department, or the codes department. Alternatively, if the mayor, the mayor's authorized representative, the police department, or the codes department requests that copies of any such information be delivered to them, the operator shall have such copies delivered within three days of the request.
- (c) An operator shall be responsible for the conduct of all employees and entertainers on the premises of the sexually oriented business and any act or omission of any employee or entertainer constituting a violation of a provision of this Chapter shall be deemed to be the act or omission of the operator.
- (d) There shall be posted and conspicuously displayed in the common areas of each sexually oriented business a list of any and all entertainment and services provided on the premises. Viewing adult-oriented motion pictures shall be considered as entertainment. The operator shall make the list available immediately upon demand of the mayor, the mayor's authorized representative, the police department, or the codes department.
- (e) No operator, employee, or entertainer of a sexually oriented business shall allow any person under the age of 18 years on the premises of a sexually oriented business.
- (f) A sign shall be conspicuously displayed in the common area of the premises of each sexually oriented business, and shall read as follows:

This sexually oriented business is regulated by the City of Portland, Tennessee. Employees, entertainers, or customers are not permitted to engage in any type of sexual conduct.

- (g) Operators of sexually oriented businesses that provide "specified services," as defined in this chapter, for customers or patrons shall comply with the following requirements:
- (1) For each "specified service," such customers or patrons shall be provided with written receipts. Operators shall keep copies of such receipts for at least three years, showing:
 - (A) "Specified service" provided;
 - (B) Cost of "specified service";
 - (C) Date and time of service provided;
 - (D) Name of person providing the "specified service"; and
 - (E) Method of payment for service;
 - (2) Copies of all published advertisements for the business shall be kept for at least three years; and
 - (3) Copies of the receipts and advertisements required under this section shall be made available immediately upon request by the mayor, the mayor's authorized representative, the police department, or the codes department.
- (h) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that the line of sight between the manager's station(s) and each viewing room or booth remains unobstructed by doors, curtains, partitions, walls, merchandise, display racks or other materials.
- (i) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that the illumination required by this chapter is maintained at all times during business hours.
- (j) It shall be the duty of the operator and all employees on the premises of a sexually oriented business to ensure that no openings of any kind exist between viewing rooms or booths.
- (k) The operator or his/her agent shall, during each business day, regularly inspect the walls of all viewing rooms and booths to determine if any openings or holes exist. If such openings exist, it is the duty of the operator to immediately repair the damage. No patron shall be permitted access to a viewing room or booth where such an opening exists. It shall be the duty of the operator and all employees on the premises to ensure that such rooms or booths are unoccupied by patrons until the opening is repaired and covered.

9-908. Prohibited Activities.

- (a) No operator, employee, or entertainer of a sexually oriented business shall perform or offer to perform any specified sexual activities on the premises of the business, or allow or encourage any person on the premises to perform or participate in any specified sexual activities.
- (b) No operator, employee, entertainer, or customer shall be permitted to have any physical contact with any other person on the premises during any performance and all performances shall only occur upon a stage at least eighteen inches above the immediate floor level and removed at least six feet from the nearest entertainer, employee, and/or customer.
- (c) No business shall advertise that it offers or provides any entertainment or services which would fall under the definitions of "sexual conduct," "sexual stimulation" or "specified sexual activities" as defined in this chapter.
- (d) No operator, employee, or entertainer shall serve or allow to be served or consumed any intoxicating liquor, wine, beer, or other malt beverage on the premises of a sexually oriented business.
- (e) No operator, employee, or entertainer shall knowingly allow possession, use, or sale of controlled substances on the premises of a sexually oriented business.
- (f) The possession of weapons by any patron or customer on the premises of a sexually oriented business shall be prohibited. Notice of such prohibition shall be posted on the premises. No operator, employee, or entertainer shall knowingly allow a patron or customer on the premises of a sexually oriented business to have a weapon in his possession.

9-909. Reports. Any person operating or desiring to operate a sexually oriented business shall file a report with the codes department at least thirty days prior to the opening of the business and no later than November 1 of each year thereafter. The report shall be filed in triplicate with and dated by the codes department upon receipt. One copy of the dated report shall be returned to the operator and one copy shall be promptly provided to the police department. The report shall be upon a form provided by the codes department and shall include the following information, which shall be sworn by the operator to be true and correct under oath:

- (1) The name under which the sexually oriented business is or will be operated;
- (2) The location and all telephone numbers for the sexually oriented business;
- (3) The type of sexually oriented business which is being or will be operated, using the terms included in the definition of "sexually oriented business" provided in this chapter, if applicable, and a complete description of all types of entertainment and services provided or to be provided by the business;

- (4) If the operator is an individual, or for any individual who owns or will own at least a ten percent direct or beneficial interest in the business:
- (A) Legal name and any other names or aliases used by the individual;
 - (B) Mailing address and residential address and telephone number;
 - (C) Business address and telephone number;
 - (D) A recent photograph of the individual;
 - (E) Age, date and place of birth;
 - (F) Height, weight, and hair and eye color;
 - (G) Date, issuing state and number of the individual's driver's license or other state identification card information;
 - (H) Social Security number;
 - (I) Proof that the individual is at least 18 years of age; and
 - (J) The business, occupation or employment of the individual for five years immediately preceding the date of the report.
- (5) If the operator is a partnership:
- (A) The partnership's complete name;
 - (B) The names of all partners and the information required above for all individuals who own or will own at least a ten percent direct or beneficial interest in the business;
 - (C) Whether the partnership is general or limited; and
 - (D) A copy of any printed partnership agreement.
- (6) If the operator is a corporation:
- (A) The corporation's complete name, address, and telephone number;
 - (B) The date and state of incorporation;
 - (C) The corporation's federal tax identification number;
 - (D) Evidence that the corporation is in good standing under the laws of the state of incorporation;

- (E) The names and capacity of all officers, directors and principal stockholders and the information required above for all individuals who own or will own at least a ten percent direct or beneficial interest in the business; and
 - (F) The name and address of the registered corporate agent for service of process.
- (7) The sexually oriented business or similar business history of the operator and of each individual listed under Section 9-909(4) above, including:
- (A) The name and location of each sexually oriented business or similar business currently or previously owned or operated by such operator or individual;
 - (B) If the operator or individual is or was a partner, officer, or director or holds or held at least a ten percent direct or beneficial interest in a partnership, corporation or other business entity which operates or operated or is or was majority owner of any sexually oriented business or similar business, the name and location of each such business and the owning or operating business entity;
 - (C) Whether such operator or individual, has had any license or permit issued to a sexually oriented business or similar business denied, suspended or revoked; and
 - (D) The name and location of each sexually oriented business or similar business for which the license or permit was denied, suspended or revoked, and the dates and reasons for each such suspension or revocation.
- (8) Whether the operator or any of the operator's officers or directors or any individual listed under Section 9-909(4) above has a record of any "specified criminal activity" as defined in this chapter, and, if so, the "specified criminal activity" or activities involved and the date, place and jurisdiction of each;
- (9) If the premises are leased or being purchased under contract, a copy of such lease or contract;
- (10) A sketch or diagram showing the configuration of the premises, including the total amount of 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 inches. The codes department may waive this requirement if the report adopts a sketch or diagram that was previously submitted and the operator certifies that the configuration of the premises has not been altered since it was prepared. This requirement does not excuse the operator from compliance with all other applicable requirements for approval of building plans;

- (11) For the initial report, a current certificate and straight-line drawing prepared within 30 days prior to the filing of the report by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the property of the business filing the report; the boundary lines of any residential zoning district within 1,000 feet of said property; and the property lines of any parcel which includes an established religious facility, child care or educational facility, public park or recreation area, family recreation center, liquor store or residence within 1,000 feet of said property. For purposes of this section, a use shall be considered existing or established if it is in existence at the time a report is submitted;
- (12) A signed statement by the operator that the operator is familiar with the provisions of this chapter and is and will continue to be in compliance therewith, provided that if the operator is not an individual, such statement shall be signed by each individual who owns or will own at least a ten percent direct or beneficial interest in the operator; and
- (13) Any other reasonably available information necessary in determining whether the operator and the sexually oriented business meet the requirements of this chapter as determined by the mayor, the mayor's authorized representative, the police department, or the codes department.

9-910. Inspections. In order to effectuate the provisions of this chapter, the mayor, the mayor's authorized representative, the police department, and the codes department are empowered to:

- (1) Conduct investigations of the premises of any sexually oriented business or any business believed by any of them to be a sexually oriented business at any time such business is occupied or open for business;
- (2) Inspect all licenses and records of any sexually oriented business and its operators and employees for compliance with this chapter at any time such business is occupied or open for business; and
- (3) Conduct investigations of persons engaged or believed to be engaged in the operation of any sexually oriented business.

9-911. Applicability. The provisions of this chapter are not intended to supersede any obligations or requirements of statutes, laws, rules, regulations, or ordinances, including licensing requirements and zoning restrictions, imposed by the State of Tennessee or the City of Portland and shall be in addition thereto.

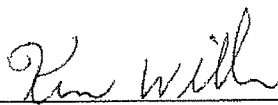
9-912. Violations.

(a) Each of the following acts and omissions shall be considered a civil offense against the city:

- (1) Failure to file any report required under this chapter at the time required or submittal of false or misleading information or omission of any material facts in any report required under this Chapter;
- (2) Any operator, employee, or entertainer violates any provision of this Chapter;
- (3) Any operator, employee, or entertainer denies access to the mayor, the mayor's authorized representative, the police department, or the codes department to any portion of the premises of the sexually oriented business at any time it is open for business; or
- (4) Any operator fails to maintain the premises of a sexually oriented business in a clean, sanitary, and safe condition.

(b) Upon a second or subsequent violation by an operator, entertainer, or employee of a sexually oriented business, of any part of this Chapter, or of any state statute regarding nudity, sexually oriented businesses, or adult entertainment, such business shall be deemed a nuisance and shall be subject to an order of closure and/or to cease and desist by chancery court action seeking injunctive relief to enforce the provisions of this Chapter, provided that such second or subsequent violation occurs after a conviction or plea of nolo contendere has been obtained for the previous such violation.

SECTION 3. This ordinance shall take effect immediately upon final passage, the public welfare requiring it.



Kenneth Wilber, Mayor



Doug Yoeckel, City Recorder

Passed First Reading: November 6, 2017

Passed Second Reading: November 20, 2017