

ORDINANCE NO. 2006-3

AN ORDINANCE OF WRIGHTSVILLE BOROUGH, YORK COUNTY, PENNSYLVANIA  
PROVIDING FOR THE LICENSING AND REGULATION OF SEXUALLY ORIENTED  
BUSINESSES, INCLUDING ADULT BOOKSTORES, ADULT CABARETS, AND ADULT  
THEATERS, AND THEIR EMPLOYEES

BE IT ENACTED AND ORDAINED, and it is hereby enacted and ordained by the  
Council of Wrightsville Borough as follows:

Section 1. Purpose and Findings; Interpretations.

A. Pursuant to the authority granted in the Borough Code to promote the health, safety, morals, and general welfare of the inhabitants of Wrightsville Borough (hereinafter "Borough"), to regulate and inspect the use and occupancy of buildings, to regulate places of public entertainment, amusement, and recreation, and to prevent and prohibit public nuisances due to adverse secondary effects, the Borough enacts this Ordinance to minimize and control the adverse secondary effects of sexually oriented businesses, including adult bookstores, adult cabarets, and adult theaters, and thereby to protect the health, safety, and welfare of its citizens, protect the citizens' property values and the character of surrounding neighborhoods, and deter the spread of blight.

The Borough 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 of illegal sexual activity or solicitation.

The Borough does not intend this Ordinance to suppress any speech activities protected by the First Amendment but to enact a content-neutral ordinance, which addresses the secondary effects of sexually oriented businesses. It is not the intent of the Borough in enacting this legislation to deny any person rights of speech protected by the Constitution of the United States or the Constitution of the Commonwealth of Pennsylvania, or both, nor is it the intent of the Borough to impose any additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, videotapes, books, or other materials. Further, by enacting this legislation the Borough 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 the Commonwealth of Pennsylvania, or both, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of sexually oriented materials have to sell, distribute, or exhibit these materials.

B. The Borough of Wrightsville finds as follows:

1. Law enforcement personnel have determined, and statistics and studies performed in a substantial number of communities in this Commonwealth and in the United States indicate that sexually oriented businesses have adverse secondary effects, 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, decreased property values, and neighborhood deterioration.

2. Based on evidence concerning the adverse secondary effects of adult uses on the community in findings incorporated in the cases of City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), Young v. Amer. Mini Theatres, 426 U.S. 41 (1976), and Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991) and on other information available to the Borough, the Borough finds as follows:

- a. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments.
- b. Certain employees of adult cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- c. Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. Furthermore, adult bookstores tend to attract customers who engage in unprotected, high-risk sexual activities.
- d. Offering and providing such space encourages such activities, which creates unhealthy conditions.
- e. Persons frequent certain adult theaters and other sexually oriented businesses for the purpose of engaging in sexual activities within the premises of such sexually oriented businesses.
- f. At least fifty (50) communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
- g. The Surgeon General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn child.

- h. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
  - i. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
  - j. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view sexually oriented films.
  - k. Numerous studies have indicated that sexually oriented businesses have a substantial negative impact on property values and cause neighborhood blight.
1. The findings noted in paragraphs "a" through "k" raise substantial governmental concerns.
  3. Sexually oriented businesses have adverse secondary effects, which secondary effects should be regulated to protect the public health, safety, and welfare.
  4. Sexually oriented businesses have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.
  5. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the 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 Borough. 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.
  6. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult facilities.
  7. 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.
  8. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

9. 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.

10. The fact that an applicant for a sexually oriented business license 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.

11. 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 that leads to the transmission of sexually transmitted diseases.

12. The general welfare, health and safety of the citizens of the Borough will be promoted by the enactment of this Ordinance.

13. The limitation of operating hours of sexually oriented businesses from 8:00 a.m. to 10:00 p.m., Mondays through Saturdays, and closure of such businesses on Sundays and holidays reduces the adverse secondary effects of such businesses, including particularly but not limited to, late night noise levels, crime and sexually offensive materials and activities in public areas, and promotes the public health, safety, and welfare.

14. The reasonable regulation and supervision of sexually oriented businesses tends to discourage sexual acts and prostitution and thereby promote the health, safety and welfare of patrons, clients and customers of these businesses.

15. The continued unregulated operation of such sexually oriented businesses would be detrimental to the general health, safety, and welfare of the citizens of the Borough.

C. In interpreting and applying the provisions of this Ordinance, they shall be held to be the minimum requirements for the promotion of the public health, safety, comforts, convenience, and general welfare of the Borough's citizens. Where the provisions of any statute, other ordinance or regulation impose greater restrictions than this ordinance, the provisions of such statute, other ordinance, or regulation shall be controlling. Where the provisions of this ordinance impose greater restrictions than those of any statute, other ordinance or regulation, the provisions of this ordinance shall be controlling to the extent allowed by law. However, in no case shall the provisions of this Ordinance be interpreted in such a manner as to violate the United States Constitution or the Constitution of the Commonwealth of Pennsylvania.

## Section 2. Definitions.

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

**ADULT BOOKSTORE:** An establishment in which five (5%) percent or more of the occupied sales or display area offers for sale, for rent or lease, for loan or for view upon the premises, pictures, photographs, drawings, prints, images, sculpture, still film, motion picture film, video tape or similar visual representations distinguished or characterized by an emphasis on sexual conduct or sexually explicit nudity; or books, pamphlets, magazines, printed matter or sound recordings containing explicit and detailed descriptions or narrative accounts distinguished or characterized by an emphasis on sexual conduct; or offers for sale sexual devices.

**ADULT CABARET:** An establishment, club, tavern, restaurant, theater, or hall that features live entertainment distinguished or characterized by an emphasis on sexual conduct or sexually explicit nudity.

**ADULT ENTERTAINMENT:** 1. An exhibition of any adult oriented motion pictures which are distinguished and characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or specified anatomical areas; or

2. A live performance, display or dance of any type, which has a significant or substantial portion of the performance, any actual or simulated performance of specified sexual activities or exhibition or viewing of specified anatomical areas or persons in a state of nudity or semi-nudity; or

3. Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

**ADULT THEATER:** A building or a room within a building used for presenting motion picture film, video tape, or similar visual representation of materials distinguished or characterized by an emphasis on sexual conduct or sexually explicit nudity.

**EMPLOYEE:** 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, independent contractor, agent, lessee, lessee of a dance floor or space or otherwise, and whether or not said person is paid a salary, wage, or compensation by the operator of the business. Employee does not include a person exclusively on the premises for the repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

**ESCORT:** A person who, for consideration, agrees or offers to act as a companion, guide, or date for another, or who agrees or offers to privately model lingerie or to privately perform a strip tease for another person.

**ESCORT AGENCY:** A person or business association who furnishes, offers to furnish, or advertise to furnish escorts as one of its business purposes for a fee, tip, or other consideration.

**ESTABLISHMENT OR ESTABLISH:** 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 or sexually oriented use to any other existing sexually oriented use; or
4. The relocation of any sexually oriented business.

**LICENSEE:** 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.

**KNOWINGLY:** Having a general knowledge of, or reason to know, or a belief or grounds for belief which warrants further inspection or inquiry of either:

1. the character and content of any material or performance described herein which is reasonably susceptible of examination by a licensee or persons, or
2. the age of a minor; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the licensee or person made a reasonable bona fide attempt to ascertain the true age of such minor.

**NUDE MODEL STUDIO:** 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 Studios shall not include a proprietary school licensed by the Commonwealth of Pennsylvania; 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 in a structure where:

1. no sign visible from the exterior of the structure and no other advertising indicates that a nude or semi-nude person is available for viewing, and
2. in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
3. no more than one (1) nude or semi-nude model is in on the premises at one time.

**NUDITY OR A STATE OF NUDITY:** 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 discernible turgid state.

**PERSON:** An individual, proprietorship, partnership, corporation, association, or other legal entity.

**SEMI-NUDE OR IN A SEMI-NUDE CONDITION:** The state of dress in which clothing partially or opaquely covers Specified Anatomical Areas.

**SEXUAL ENCOUNTER CENTER:** A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. Physical contact in the form of wrestling or tumbling between persons 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 persons is in a state of nudity or semi-nudity.

**SEXUALLY ORIENTED BUSINESS:** An adult bookstore, adult novelty store, adult video store, adult cabaret, adult theater, escort agency, nude model studio, sexual encounter center, or other commercial or not-for-profit establishment where adult entertainment is presented for money or other forms of consideration.

**SPECIFIED ANATOMICAL AREAS:** Human genitals, pubic region, anus, buttocks, female breast(s) below a point above the top of the areola, or human male genitals in a discernible turgid state, even if completely covered.

**SPECIFIED CRIMINAL ACTIVITY:** 1. Prostitution or promotion of prostitution; dissemination of obscenity; sales, 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 an similar offenses to those described above under the criminal or penal code of the Commonwealth of Pennsylvania or other states or countries,

2. For which
  - a. Less than two (2) 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 a misdemeanor offense, or
  - b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for conviction, whichever is the later date, if the conviction is a felony offense, or
  - c. Less than five (5) 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 (24) month period.

3. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

**SPECIFIED SEXUAL ACTIVITIES:** 1. The fondling or other erotic 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, masturbation, or sodomy, or

3. Excretory functions as part of or in connection with any of the activities set forth in "1" and "2" above, or

4. Human genitals in a state of sexual stimulation or arousal.

**SUBSTANTIAL ENLARGEMENT:** The increase in floor areas occupied by a sexually oriented business by more than thirty-five (35%) percent, as the floor areas exist on the date of licensing.

**TRANSFER OF OWNERSHIP OR CONTROL:** 1. The sale, lease, or sublease of a sexually oriented business, or

2. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of a sexually oriented business, or

3. Any change in the identity of the officers or directors of a corporation operating a sexually oriented business.

**VIEWING BOOTHS:** Booths, stalls, partitioned portions of a room, rooms, or other enclosures that are available for viewing:

1. Films, movies, videos, or visual reproductions of any kind depicting or describing "specified anatomical areas", or

2. A person or persons who appear in a state of nudity or semi-nudity or who offer performances or presentations characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

**Section 3. Licensed required.**

A. It shall be unlawful:

1. For any person to establish and operate a sexually oriented business after the effective date of this Ordinance without a valid sexually oriented business license issued by the Borough pursuant to this Ordinance;

2. For any person who establishes and operates a sexually oriented business after the effective date 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 Borough pursuant to this Ordinance;

3. For any person to obtain employment with a sexually oriented business after the effective date of this Ordinance without having secured a sexually oriented business employee license pursuant to this Ordinance;

4. Beginning on the one hundred eightieth (180<sup>th</sup>) day after enactment of this Ordinance for any person to continue to operate a sexually oriented business already in operation on the effective date of this Ordinance without a valid sexually oriented business license pursuant to this Ordinance.

5. Beginning on the one hundred eightieth (180<sup>th</sup>) day after the effective date of this Ordinance for any person operating a sexually oriented business in operation at the time of the 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 Borough pursuant to this Ordinance.

6. Beginning on the one hundred eightieth (180<sup>th</sup>) day after the effective date of this Ordinance for any person working as an employee of a sexually oriented business on the effective date of this Ordinance to continue such employment without having secured a sexually oriented business employee license pursuant to this Ordinance.

B. Application for a business or employee license must be made on a form provided by the Borough. For purposes of this Ordinance, the responsibility for conducting any investigation, receiving and processing any application, and issuing or denying any license required under this Ordinance shall be the Borough's Code Official or other Borough official so designated by resolution of the Borough Council of Wrightsville.

C. All applicants must be qualified according to the provisions of this Ordinance. The application may request and the applicant shall provide such information as to enable the Borough 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 (20%) 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 (18) years of age;
  - b. a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
  - c. a corporation, the corporation shall state its complete name, the date of its incorporation, the type of classification of the corporation, evidence that the 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 the name of the registered corporate agent and address of the registered office for service of process;
  - d. Any entity other than a partnership or corporation, the entity shall submit the information required in Section "3.E" subsections "3-10" 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 must state the sexually oriented business's fictitious name and submit the required registration documents.
3. Whether 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 has had a previous license under this Ordinance or other similar sexually oriented business ordinance from another municipality, county, or jurisdiction denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership, or an officer, director or principal stockholder of 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 holds any other licenses under this Ordinance or other similar sexually oriented business ordinance from another municipality, county, or jurisdiction, 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/or his/her state or federally issued tax identification number.
  11. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
  12. If an applicant wishes to operate a sexually oriented business, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall also comply with the application requirements set forth in Section "12" of this Ordinance.
  13. A statement of intended operating hours in compliance with Section "18" of this Ordinance.
  14. An infectious plan to protect employees and the public from bodily fluids of infectious contamination. A copy of the plan shall be attached to the application and shall be OSHA (Occupational Safety and Health Act) compliant.
- F. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the Borough the following information:
1. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
  2. Age, date and place of birth;
  3. Height, weight, hair and eye color;
  4. Present residence address and telephone number;

5. Present business address and telephone number;
  6. Date, issuing state and number of driver's license or other identification card information;
  7. Social security number; and
  8. Proof that the individual is at least (18) years of age.
- G. Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:
1. A color photograph clearly showing the applicant's face, to be taken at the time the application is filed, which photograph shall be used to complete the criminal background check required by this Ordinance.
  2. A statement detailing the license history of the applicant for five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, municipality, state, or country any sexually oriented business or has ever had a license, permit, or authorization to operate a sexually oriented business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation, or suspension, state the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
  3. A statement whether the applicant has been convicted of a specified criminal activity as denied in this Ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

4. A statement acknowledging that the employee has reviewed the infectious control plan adopted by the sexually oriented business.

H. Any and all sexually oriented businesses in operation within the Borough, as of the effective date of this Ordinance, must apply for the required licenses, and pay any applicable license fees under this Ordinance within five (5) months after the effective date of this Ordinance and furthermore must come into full compliance with this Ordinance within six (6) months after the effective date of this Ordinance.

I. To the extent permitted by law, all applications for licenses required by this Ordinance, and materials submitted therewith, shall be maintained by the Borough in a confidential file.

Section 4. Issuance of Licenses.

A. Upon the filing of a fully completed application form for a sexually oriented business license or employee license, the Borough shall issue a temporary license to said applicant which shall entitle the applicant to operate the sexually oriented business or work as an employee. The application shall then be referred to the Borough Code Official, or other Borough official so designated by resolution of the Borough Council, as the Licensing Administrator for purposes of this Ordinance for an investigation to be made on such information as is contained on the application. The processing and investigation of the application shall be completed within thirty (30) days of the date that the fully completed application is filed with the Borough. Any incomplete application shall be returned to the applicant and the thirty (30) day period for processing and investigation shall not commence until a fully completed application has been filed. After the processing and investigation, the Borough shall issue a permanent license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. The applicant 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 license is to be used for operation of a business or employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this Ordinance.
5. The applicant has had a sexually oriented business license or sexually oriented business employee license revoked by the Borough or any other jurisdiction within one (1) year of the date of the current application.
6. The required application, investigation, and license fees have not been paid.

7. The application demonstrates that the proposed sexually oriented business is in violation of or is not in compliance with any provisions of this Ordinance.

8. If the sexually oriented business license or sexually oriented business employee license is denied, the temporary license previously issued shall remain in effect during all appeals. Denial, non-renewal, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section "9".

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 Borough 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 licensee that 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 or employee and the specific classification of sexually oriented use for which the license is issued. All licenses shall be posted in a conspicuous place at or near the entrance of the sexually oriented business so that they may be easily read at any time.

D. Applications for license required by the Borough under this ordinance shall be processed and either denied or approved within thirty (30) days after a complete application is filed with the Borough. A letter notifying the applicant of such denial or approval shall be mailed to the applicant within thirty (30) days of the submittal of a complete application. If the Borough fails to render a decision granting, denying or renewing a license required by this Ordinance within thirty (30) days after a complete application is filed with the Borough, the permanent license required by this Ordinance shall be deemed to have been approved. This "deemed approval" rule shall apply to both applications for sexually oriented business licenses and sexually oriented business employee licenses.

E. A sexually oriented business license shall be issued for the specific classification of a sexually oriented use permitted by this Ordinance and for which application has been made.

F. Any person aggrieved by the denial, suspension, non-renewal or revocation of a license may appeal, in writing, within ten (10) days from the date of such denial, suspension, non-renewal or revocation to the Borough Council in accordance with the procedures set forth in Section "9".

#### Section 5. Fees.

A. Every application for a new sexually oriented business license shall be accompanied by a non-refundable application and investigation fee in amount to be set by resolution of the Borough Council.

B. Every application for renewal of an existing sexually oriented business license shall be accompanied by an annual non-refundable renewal license fee within thirty (30) days of license renewal. Said fee shall be set by resolution of the Borough Council.

C. Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual non-refundable application, investigation and license fee. Said fee shall be set by resolution of the Borough Council.

D. All license applications and fees shall be submitted to the office of the Borough Secretary/Treasurer, and thereafter, the application shall be forwarded to the Borough Code Official designated as Licensing Administrator for review, investigation, and approval or denial.

#### Section 6. Inspections.

Subject to the consent of an applicant or licensee, the Borough Code Official or other Borough official so designated by resolution of the Borough Council may inspect the premises of sexually oriented businesses for purposes of ensuring compliance with this Ordinance during any time it is open for business. In the event that the Borough Code Official or other Borough official so designated by resolution of the Borough Council has probable cause to believe that a sexually oriented business is operating in violation of this ordinance, he may inspect the premises of the sexually oriented business of purposes of ensuring compliance with this Ordinance during any time it is open for business.

#### Section 7. Expiration of License.

A. Each license issued under this Ordinance shall expire one (1) 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 Borough Code Official or other Borough official so designated by resolution of the Borough Council denies renewal of a license, the applicant shall not be issued a new license for one (1) year from the date of denial. If, subsequent to denial, the Borough Code Official or other Borough official so designated by resolution of the Borough Council finds that the basis for denial of the renewal license has been corrected and 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 and Revocation.

A. The Borough Code Official or other Borough official so designated by resolution of the Borough Council 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 violated or is not in compliance with any provision of this Ordinance.

B. The Borough Code Official or other Borough official so designated by resolution of the Borough Council shall revoke a license if a cause of suspension in Section "8.A.1" occurs and the license has been suspended within the preceding twelve (12) months.

C. The Borough Code Official 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 substances 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 licensed premises;
6. A licensee is delinquent in payment to the Borough, county, or state for any taxes or fees past due; or
7. A licensee has failed to develop and follow an infectious control plan to protect employees and the public.

C. When the Borough Code Official or other Borough official so designated by resolution of the Borough Council revokes the license, the revocation shall continue for one (1) year, and a licensee shall not be issued a new sexually oriented business license for one (1) year from the date the revocation becomes effective.

#### Section 9. Appeals.

A. All license application denial, renewal, suspension, or revocation decisions shall be sent in writing to the applicant or licensee. All such decisions which deny, refuse to renew, suspend, or revoke a license shall state specifically the ordinance requirement not met and any other basis for the 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 procedures of the Local Agency Law (2 Pa.C.S. §101, et seq.) to the Borough Council, except as modified herein. Any such appeal must be filed, in writing, with the Borough Secretary, within ten (10) days from the date of the mailing of the decision appealed from and shall specify, in detail, the basis for the appeal. Failure or refusal to file said appeal or to specify the basis of said appeal shall be deemed a conclusive determination as to the issues or matters addressed by the written decision. If an appeal is timely filed, the Borough Council will then hold Local Agency Law hearing pursuant to 2 Pa.C.S. §101, et seq. 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 or 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 an appeal or (2) the date of a final decision dismissing any appeal.

B. Any person aggrieved by a decision of the Borough Council may appeal to a court of competent jurisdiction pursuant to the Local Agency Law (2 Pa.C S. §101, et seq.) and 42 Pa. C.S. §933(a)(2). The Borough shall, upon filing of such appeal, consent to any request by a licensee applicant or licensee to the court to give expedited review of such appeal. The Borough shall certify any record to the court within twenty (20) days after the appeal is filed. In the case of a denial of a license or license renewal, or in the case of a license suspension or revocation, the license 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 thirty (30) day appeal period without filing an appeal or (2) the date of a decision dismissing an appeal by a court of competent jurisdiction.

**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. Additional Regulations Regarding Enlargement of Sexually Oriented Businesses.**

A licensed sexually oriented business may not be substantially enlarged without a new license.

**Section 12. Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos, or Live Entertainment in Viewing Rooms.**

A. A person who operates or causes to be operated a sexually oriented business, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. Upon application for a sexually oriented business 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 pen-nit 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 the

interior of the premises to an accuracy of plus or minus six (6) inches. The Borough may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certified that the configuration of the premises has not been altered since it was prepared.

2. The application shall be sworn to be true and correct by the applicant.
3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Borough.
4. It is the duty of the licensee of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at any time that any patron is present inside the premises.
5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. The view required by this subsection must be by direct line of sight from the managers station.
6. It shall be the duty of the licensee to ensure that the view area specified in subsection "5" remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials 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.
7. No viewing room may be occupied by more than one person at any time.
8. The premises shall be quipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) foot candle as measured at the floor level.
9. It shall be the duty of the licensees to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
10. No licensee shall allow openings of any kind to exist between viewing rooms or booths.
11. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
12. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

13. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

14. 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.

15. A licensee shall brief all employees as to the approved infectious control plan and OSHA regulations before and during employment at intervals of no more than six (6) months.

B. A person having a duty under subsections "1" through "15" of subsection "A" above commits a violation of this Ordinance if he/she knowingly fails to fulfill that duty.

**Section 13. Additional Regulations to Prevent Physical Contact with Patrons.**

It shall be a violation of this Ordinance for a person to knowingly or intentionally in a sexually oriented business appear in a semi-nude or nude condition unless the person is an employee, licensed under this Ordinance, who while nude or semi-nude, shall be at least two (2) feet from any patron or customer and on a stage at least two (2) feet from the floor.

**Section 14. 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 15. 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 and/or on the premises of a nude model studio.

C. A person commits a violation of this Ordinance if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity on a nude model studio's premises, where said person 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 16. Additional Regulations.**

A. It shall be a violation of this Ordinance for a person to knowingly or intentionally, in a public place

1. engage in sexual intercourse or deviate sexual intercourse as defined by the Pennsylvania Crimes Code, or
2. fondle the genitals of himself, herself, or another person.

B. For purposes of this Ordinance, a "public place" includes all outdoor areas 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 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

1. any child ten (10) years of age or younger, or
2. any individual exposing a breast in the process of breast feeding an infant under two (2) years of age.

C. It is the intention of the Borough that this Section be construed, enforced and interpreted in such a manner as will cause the least possible infringement on the constitutional rights of free speech, free expression, due process, equal protection or other fundamental rights.

**Section 17. Prohibition Against Children in a Sexually Oriented Business.**

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 a sexually oriented business.

**Section 18. Hours of Operation.**

No sexually oriented business shall be open for business before eight o'clock (8:00) a.m., Monday-Saturday or after ten o'clock (10:00) p.m., Monday-Saturday. Asexually oriented business shall be closed at all times on Sundays and federal- and state-recognized holidays.

**Section 19. Violations and Penalties.**

A. For a violation of any provision of this Ordinance, enforcement shall be brought before a district justice in the same manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure. Upon conviction thereof, a violator shall be subject to a criminal fine not to exceed One Thousand Dollars (\$1,000.00) per violation plus costs, or a term of imprisonment to the extent allowed by law for the punishment of summary offenses, or to a term of imprisonment for the failure to pay a fine pursuant to the Pennsylvania Rules of Criminal Procedure. A separate offense shall arise for each day or portion thereof in

which a violation is found to exist for each section of this Ordinance which is found to have been violated.

B. The Borough may enforce any violation of this Ordinance through an equity action brought in the Court of Common Pleas of York County.

Section 20. 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 and 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. It is hereby declared to be the intent of the Borough Council that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional section, subsection, clause, sentence, or part hereof had not been included herein.

Section 21. Repealer. All ordinances or parts of ordinances inconsistent with the terms of this Ordinance are hereby repealed to the extent of such inconsistency.

Section 22. Effective Date. This Ordinance shall be effective five (5) days after enactment.

ENACTED AND ORDAINED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2006.

ATTEST:

WRIGHTSVILLE BOROUGH COUNCIL

\_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
President

APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

By: \_\_\_\_\_  
Mayor

which a violation is found to exist for each section of this Ordinance which is found to have been violated.

B. The Borough may enforce any violation of this Ordinance through an equity action brought in the Court of Common Pleas of York County.

Section 20. Severability.

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Section 22. Effective Date. This Ordinance shall be effective five (5) days after enactment.

ENACTED AND ORDAINED THIS 6th day of March, 2006.

ATTEST:

WRIGHTSVILLE BOROUGH COUNCIL

  
Secretary

By:   
Vice President

APPROVED this 6th day of MARCH, 2006.

By:   
Mayor