

## CARROLL COUNTY ADULT BUSINESS AND COMMUNITY STANDARDS ORDINANCE

WHEREAS, sexually-oriented businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of the County; and

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

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the County which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that 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, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Board 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 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 any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

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

(A) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the County. The provisions of this ordinance 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 neither the intent nor 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 intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

(B) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Board, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters*, 426 U.S. 50 (1976), *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, TDA "Kandyland", 529 U.S. 277 (2000), and *City of Los Angeles v. Alameda Books, Inc.* 121 S. Ct. 1223 (2001) and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Board finds:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of sexually oriented businesses defined in this ordinance as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts occur at sexually oriented businesses.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(5) Persons frequent certain adult theaters, adult businesses, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(6) At least 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.

(7) Since 1989 when the human immunodeficiency virus (HIV) became reportable, the number of reported cases of AIDS caused by HIV in the Commonwealth of Virginia has increased from approximately 100 to approximately 800 in 2004.

(8) Although the number of cases of syphilis and gonorrhea peaked in the Commonwealth of Virginia in 1990 the number of cases still remains high.

(9) The number of cases of chlamydia in the Commonwealth of Virginia have increased from approximately 6,000 in 1989 to over 19,000 in 2003.

(10) 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.

(11) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(12) 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.

(13) The findings noted in paragraphs number 1 through 12 raise substantial governmental concerns.

(14) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(15) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented 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 County. 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.

(16) Requiring sufficient lighting on premises of adult businesses advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in and around such adult businesses.

(17) 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.

(18) 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.

(19) 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.

(20) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.

(21) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(22) The general welfare, health, morals and safety of the citizens of the County will be promoted by the enactment of this ordinance.

BE IT ORDAINED by the Board of Supervisors of Carroll County, Virginia, as follows:

1. That a new Article xx. "Carroll County Adult Business and Community Standards Ordinance" be, and hereby is, added to Chapter xx to read and provide as follows:

Sec. 100. Definitions.

**Adult business** means any adult bookstore, adult video store, adult model studio, adult motel, adult motel theater, adult nightclub, adult store, business providing adult entertainment, or any other establishment that regularly exploits an interest in matter relating to specified sexual activities or specified anatomical areas or regularly features live entertainment intended for the sexual stimulation or titillation of patrons.

**Adult entertainment** means dancing, modeling or other live entertainment if the entertainment is characterized by an emphasis on specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons; or the showing of films, motion pictures, videotapes, slides, photographs, CD-ROMs, DVD-ROMs, or other media that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

**Adult merchandise** means magazines, books, other periodicals, videotapes, films, motion pictures, photographs, slides, CD-ROMs, DVD-ROMs, virtual reality devices, or other similar media that are characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; instruments, devices or paraphernalia either designed as representatives of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs; or, lingerie or leather goods marketed or presented in a context to suggest their use for sadomasochistic practices.

**Adult model studio** means a commercial establishment, including a lingerie store or novelty store, in which a person performs or simulates specified sexual activities, exposes specified anatomical areas, or engages in other performances intended for the sexual stimulation or titillation of patrons.

**Adult motel** means a motel, hotel, or similar commercial establishment that: (i) provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas and

advertises the availability of this sexually-oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or (ii) offers a sleeping room for rent for a time period of less than ten hours; or (iii) allows a tenant or occupant to sub rent the sleeping room for a time period of less than ten hours.

**Adult motion picture theater** means an enclosed building regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons, excluding motion pictures that have been rated “G,” “PG,” “PG-13,” or “R” by the Motion Picture Association of America.

**Adult nightclub** means a restaurant, bar, club, or similar establishment that regularly features adult entertainment.

**Adult store** means an establishment having adult merchandise as a substantial or significant portion of its stock-in-trade.

**Employee** means an individual working or performing services for any adult business, including any independent contractor who provides services on behalf of any adult business to the patrons of such business, whether or not the individual receives any remuneration, gratuity, or tips of any kind, or pays the permittee or manager for the right to perform or entertain in the adult business.

**Live entertainment** means entertainment provided in person including, but not limited to, musical performances, music played by disc jockeys, public speaking, dramatic performances, dancing, modeling, or comedy performances.

**Specified anatomical areas** means less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the

top of the areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Specified sexual activities** means human genitals in a state of sexual stimulation or arousal; sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock or female breast, including masturbation.

Sec. 101. Permit required from County Administrator—Application; issuance; duration; renewal.

(a) Every person either operating or desiring to operate an adult business, in addition to obtaining any required business license, shall apply to the County Administrator, or his designee, for a permit to conduct such activity. Each such application shall be accompanied by a fee in the amount of \$500.00.

(b) Information required on and with the permit application shall include, but not be limited to, the following:

(1) The applicant's full name, age, sex, race, weight, height, hair and eye color, address, telephone number, date and place of birth and social security number.

(2) Names and addresses of references.

(3) Whether the applicant has been convicted of any felony or misdemeanor, other than a minor traffic violation, and, if so, the nature of the offense, when and where convicted and the penalty or punishment assessed.

(4) Whether the applicant holds or has been held, in the name of this business or any other, any other permits under this ordinance or a similar adult use ordinance from another locality within the past five years, and, if so, the names and locations of such other permitted businesses.

(5) Whether the applicant has been denied a permit or has had a permit revoked under any statute or ordinance requiring a permit to operate an adult business and, if so, when and where the denial or revocation occurred.

- (6) Photograph and fingerprints of applicant.
  - (7) Name, including any fictitious names, and address of the business for which a permit is sought.
  - (8) A criminal records check of the applicant shall be provided by the applicant with the application, along with the applicant's written authorization to investigate whether the information provided by the applicant is true.
  - (9) A description of the intended business activity and, if adult entertainment is to be performed, a detailed description of such entertainment.
  - (11) Written declaration, dated and sworn by the applicant, certifying that the information contained in the application is true and correct.
- (c) For a corporation, partnership or other legal entity, "applicant" includes each officer, director, partner or principal of the entity and the managers of the business.
- (d) The County Administrator or his designee shall act on the application within 30 days of the filing of an application containing all of the information required by this section, unless information requested from other law enforcement agencies is not received within that 30-day period, in which case the County Administrator or his designee shall have an additional 30 days to act on the application. Upon the expiration of the application time period, unless the applicant requests and is granted a reasonable extension of time, the applicant may, at its option, begin operating the business for which the permit is sought, unless and until the County Administrator or his designee notifies the applicant of a denial of the application and states the reasons for denial.
- (e) The applicant shall be issued a permit unless the county's investigation or the information furnished by the applicant shows any of the following:
- (1) The applicant has failed to provide information required by this article or has falsely answered a question.
  - (2) The applicant has been convicted of a felony within the past five years.

(3) The applicant has been convicted of a crime of moral turpitude or a crime involving the obscenity laws within the past three years.

(4) The applicant has been denied a permit or has had a permit revoked within the past 12 months under any statute or ordinance requiring a permit to operate an adult business.

(5) Failure of the applicant's business to comply with the county's business license, zoning, building, plumbing, utility, health, electric or fire prevention codes, or with any other applicable county or state laws or regulations.

(6) The application fee has not been paid.

(f) If the application is denied, the County Administrator or his designee shall notify the applicant of the denial and state the reasons for the denial.

(g) The permit shall be valid for 12 months from the date thereof and may be renewed in the same manner as it was initially obtained. The application fee for a renewal permit shall be \$100.00. No permit shall be transferable.

(h) Any changes in the ownership or principals of the business entity to which the permit is issued or in the managers of the business will automatically make the permit void. Such changes shall be reported to the County Administrator or his designee, and a new application may be submitted for review.

Sec. 102. Same--Grounds for revocation.

The County Administrator or his designee may revoke any permit issued pursuant to this article for the following:

(a) Fraud, misrepresentation or any false or misleading statement contained in the application.

(b) Conviction of the permittee for any felony, crime involving moral turpitude, or crime involving the obscenity laws after the permit is issued.

(c) The permittee or an employee of the permittee has knowingly allowed possession, use or sale of illegal controlled substances in or on the premises.

(d) The permittee or an employee of the permittee has knowingly allowed prostitution on the premises.

(e) The permittee has refused to allow an inspection of the adult business premises as authorized by this article.

(f) On two or more occasions within a 12-month period, employees of the adult business at the time of the offenses committed an offense in or on the permitted premises for which a conviction has been obtained constituting:

1. Aiding, abetting or harboring a runaway child;
2. Prostitution or promotion of prostitution;
3. Exposing minors to harmful materials;
4. Dissemination of obscenity;
5. Sexual assault; or
6. Violation of this ordinance.

The fact that a conviction is being appealed shall have no effect on the revocation of the permit.

(g) The permittee is convicted of violations regarding any taxes or fees related to the adult business.

(h) The permittee has failed to operate or manage an adult business in a peaceful and law-abiding manner.

- (i) The permittee or an employee of the permittee, except a permittee or employee of a permittee of an adult motel, has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual activity to occur in or on the permitted premises.
- (j) The permittee has been operating an adult business not approved under the applicable permit.
- (k) The permittee has failed to comply with the provisions of this article.
- (l) The permittee's business fails to comply with other applicable county or state laws or regulations.

Sec. 103. Procedure upon denial of an application or revocation of a permit.

(a) If the County Administrator or his designee denies an application or revokes a permit, he shall notify the applicant or permittee in writing of such action, the reasons therefor, and the right to request a hearing. To receive a hearing, the applicant or permittee must make a written hearing request which must be received by the County Administrator or his designee within ten days of the date of the notice of denial or revocation. If a timely hearing request is not received by the County Administrator or his designee, the decision of the County Administrator or his designee shall be final. If a hearing is properly requested, it shall be held within ten days from receipt of the hearing request. The hearing shall be presided over by the County Administrator or his designee. The applicant or permittee shall have the right to present evidence and argument or to have counsel do so. Within five days of the hearing, the County Administrator or his designee shall render his decision which shall be final. A permittee must discontinue operation of its business when the decision to revoke the permit becomes final.

(b) When an imminent threat of substantial harm to public health or safety requires such action, the County Administrator or his designee may immediately revoke a permit issued under this article by so stating in a written notice to the permittee. When action is taken pursuant to this subsection, the permittee shall immediately discontinue operation of its business, but shall have the right to a hearing as stated in subsection (a).

Sec. 104. Availability of prompt judicial review.

After denial of an initial or renewal application or after revocation of a permit by the County Administrator or his designee, the applicant or permittee may seek prompt judicial review of such administrative action in the circuit court of the county. Any such request for judicial review shall be filed within 30 days of when the administrative action becomes final. The county will facilitate the applicant's obtaining prompt review.

Sec. 105. Inspection.

(a) In addition to any existing legal authority, representatives of county departments shall have the authority to inspect an adult business for the purpose of determining compliance with the provisions of this article.

(b) The provisions of subsection (a) of this section shall not apply to sleeping rooms of an adult motel which are currently being rented by a customer.

Sec. 106. Regulations pertaining to adult businesses providing adult entertainment.

(a) For purposes of this section, adult entertainment is defined as dancing, modeling or other live entertainment if the entertainment is characterized by an emphasis on specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons.

(b) No person shall provide adult entertainment for patrons of an adult business except upon a stage located in an area open to all patrons of the business. The stage shall be at least 18 inches above the level of the floor and separated by a distance of at least three feet from the nearest area occupied by patrons. No patron shall be permitted within three feet of the stage while the stage is occupied by an entertainer.

(c) The adult business shall provide separate dressing room facilities for female and male entertainers which shall not be occupied or used in any way by anyone other than them.

(d) The adult business shall provide entertainers access between the stage and the dressing rooms which is completely separated from the patrons. If separate access is not physically feasible, the establishment shall provide a walk aisle at least four feet wide for entertainers between the dressing room area and the stage with a railing, fence or other barrier separating the patrons and the entertainers which prevents any physical contact between patrons and entertainers.

(e) No entertainer shall have physical contact with any patron and no patron shall have physical contact with any entertainer while in or on the premises of the adult business.

(f) No patron shall directly pay or give any gratuity to any entertainer. A patron who wishes to pay or give a gratuity to an entertainer shall place the gratuity in a container that is at all times located separately from the entertainers for the purpose of preventing any physical contact between a patron and an entertainer. No entertainer shall solicit any gratuity from any patron.

(g) Persons under the age of 18 years are not allowed on the premises of a sexually oriented business.

(h) No operator or manager of an adult business shall cause or allow an entertainer to contract to or engage in any entertainment such as a "couch," a "straddle," or "lap" dance with a patron while in or on the premises of an adult business. No entertainer shall contract to or engage in a "couch," "straddle," or "lap" dance with a patron while in or on the establishment premises. For purposes of this subsection, "couch," "straddle," or "lap" dance is defined as an employee of the establishment intentionally touching any patron while engaged in any specified sexual activity or other activity intended for the sexual stimulation or titillation of patrons, or the exposure of any specified anatomical area.

(i) This section shall not apply to an employee of an establishment who, while acting as a waiter, waitress, host, hostess, or bartender, comes within three feet of a patron. No employee shall engage in any specified sexual activity or other activity intended for the sexual stimulation or titillation of patrons, or expose any specified anatomical area while acting as a waiter, waitress, host, hostess, or bartender.

(j) A person who operates or causes to be operated an adult 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 or other video reproduction which depicts specified sexual activities or specified anatomical area, shall comply with the following requirements.

(1) The application shall include a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented 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

dimension of tall areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The County may waive the foregoing diagram for renewal application 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) No alteration in the approved configuration or location of a manger's station, as provided by the application diagram, may be made without the prior approval of the County.

(3) It is the duty of the permittee of the premises to ensure that at least one permitted employee is on duty and situated in each manager's station at all time that any patron or customer is present inside the premises.

(4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from 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. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manger's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(5) It shall be the duty of the permittee to ensure that the view of area specified in subsection (4) 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.

- (6) No viewing room may be occupied by more than one person at a time.
- (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
- (8) It shall be the duty of the permittee to ensure that the illumination described above is maintained at all times that any patron or customer is present in the premises.
- (9) No permittee shall allow an opening of any kind to exist between viewing rooms and booths.
- (10) There shall be no opening of any kind between viewing rooms or booths.
- (11) The permittee shall, during each business day, regularly inspect the walls between the viewing rooms or booths to determine if any openings or holes exist.
- (12) The permittee shall cause all floor coverings in viewing rooms or booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (13) The permittee shall cause all wall surfaces and ceiling surfaces in viewing rooms or 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.

Sec. 107. Regulations pertaining to adult motels.

- (a) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in less than ten hours

creates a rebuttable presumption that the establishment is an adult motel as that term is defined in section 100 of this Code.

(b) No person who is in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have an adult business permit shall rent or subrent a sleeping room to a person, and within ten hours from the time the room is rented, rent or subrent the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms rent or subrent mean the act of permitting a room to be occupied for any form of consideration.

Sec. 108. Transfer of permit prohibited.

(a) A permittee shall not operate an adult business at any place other than at the address designated in the approved permit.

(b) A permittee shall not transfer its permit to another person.

Sec. 109. Public indecency.

Nothing in this article shall be construed to permit any conduct which violates section 111 of this Code.

Sec. 110. Violations.

Except as permitted in section 101(d), operation of an adult business without a permit is prohibited. Violations of this article shall be unlawful and subject to the provisions of section xx of this Code.

Sec. 111. Public indecency prohibited.

(a) For purposes of this section nudity shall mean:

(1) Having the pubic region or genitals covered less than completely and opaquely;

(2) Having less than the majority of each buttock completely and opaquely covered; or

(3) Having any portion of the nipple or areola of the female breast or that portion of the female breast distal to and below any part of the areola covered less than completely and opaquely.

(b) Every person who knowingly, voluntarily and intentionally appears in a state of nudity in public or in a public place or in a place open to the public or to public view, or in an establishment which offers memberships to the public, or who employs, encourages or procures another so to appear, shall be guilty of a class 1 misdemeanor.

(c) Every person who knowingly, voluntarily and intentionally engages in specified sexual activities in public or in a public place or in a place open to the public or to public view, or in an establishment which offers memberships to the public, or who employs, encourages or procures another so to engage, shall be guilty of a class 1 misdemeanor.

(d) For purposes of this section specified sexual activities shall mean: showing human genitals in a state of sexual stimulation or arousal; real or simulated acts of human masturbation, sexual intercourse, sodomy or flagellation; fondling, caressing or other erotic touching of one's own or another's genitals, pubic region, buttocks or female breast; or showing the covered male genitals in a discernibly turgid state.

(e) No person shall be in violation of this section for breast feeding a child in any public place or any places where others are present.

2. Nothing contained in this ordinance shall be construed to apply to the presentation of any play, ballet, drama, tableau, production or motion picture in any theater; concert hall; school; college; museum of fine arts or other similar establishment, that is primarily presented as a form of expression of opinion, communication, speech, ideas, information, art or drama.

3. That this ordinance shall be in full force and effect from and after its passage.