COMMONWEALTH OF KENTUCKY
CITY OF LONDON
ORDINANCE NO. 2021-14

AN ORDINANCE AMENDING ORDINANCE NO. 2021-09 ENTITLED "AN ORDINANCE REGULATING ADULT ENTERTAINMENT ESTABLISHMENTS IN THE CITY OF LONDON, KENTUCKY"

BE IT ORDAINED BY THE CITY OF LONDON AS FOLLOWS:

GENERAL PROVISIONS

FINDINGS; DECLARATION OF PUBLIC POLICY; PURPOSE

1. The City Council of the City of London finds it has been the experience of other communities that certain adult entertainment activities which are located near areas zoned for residential use, near schools and public parks, and near malls and similar open spaces that cater to use by family groups and children adversely affect the viability of such nearby properties for their described purposes.
2. The City of London and the Commonwealth of Kentucky and the United States government have spent millions of dollars on community development and neighborhood enhancement projects within the recent past to eliminate blight and to prevent the further deterioration of London neighborhoods.
3.

   3.1. The Council relies on such evidence of the adverse secondary effects of adult entertainment uses that is within the common knowledge of municipalities and is widely reported in judicial opinions, media reports, land use studies, and crime impact reports made available to the Council, several of which are set forth herein. Additionally, the Council relies on repeated judicial findings validating municipalities' reasonable reliance on this body of secondary effects evidence to support time, place, and manner regulations of sexually oriented businesses. The Council relies upon and incorporates the findings of secondary effects discussed in the following non-exhaustive list of cases: Pap's A.M. v. City of Erie, 529 U.S. 277 (2000); City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Young v. American Mini Theatres, 427 U.S. 50 (1976); Barnes v Glen Theatre, Inc., 501 U.S. 560 (1991); FW/PBS, Inc. v. City of Dallas, 493 U.S. 215 (1990); California v. LaRue, 409 U.S. 109 (1972); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997); Currence v. City of Cincinnati, 2002 U.S. App. LEXIS 1258; Broadway Books v. Roberts, 642 F. Supp. 486 (E.D. Tenn. 1986); Bright Lights, Inc. v. City of Newport, 830 F. Supp. 378 (E.D. Ky. 1993); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir 2003); Richland Bookmart v. Nichols., 137 F.3d 435 (6th Cir. 1998): Center for Fair Public Policy v. Maricopa County, 336 F.3d 1153 (9th Cir. 2003); Deja vu v. City of Pikeville, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); Bamon Corp. v. City of Dayton, 923 F2d. 470 (6th Cir. 1991); Triplett Grille, Inc. v. City of Akron, 40 F.3d 129 (6th Cir. 1994); O'Connor v. City and County of Denver, 894 F.2d 1210 (10th Cir. 1990; Deja vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County, 274 F.3d 377 (6th Cir. 2001); Z.J. Gifts D-2, LLC, v. City of Aurora, 136 F.3d 683 (10th Cir. 1998); ILQ Investments, Inc. v. City of Rochester, 25 F.3d 1413 (8th Cir. 1994); World Wide Video of Spokane, Inc. v. City of Spokane, 227 F. Supp. 2d 1143 (E.D. Wash. 2002); Threesome Entertainment v. Strittmather, 4 F. Supp. 2d 710 (N.D. Ohio 1998); Bigg Wolf Discount Video Sales, Inc. v Montgomery County, 256 F. Supp. 2d 385 (D. Md. 2003); Kentucky Restaurant Concepts, Inc. v. City of Louisville and Jefferson County, 209 F. Supp. 2d 672 (W.D. Ky. 2002); Restaurant Ventures v. Lexington-Fayette Urban County Gov't, 60 S.W.3d 572 (Ct. App. Ky. 2001); Mr. B's Bar & Lounge, Inc. v. Louisville, 630 S.W.2d 564 (Ct. App. Ky. 1981).

   3.2. The Council further relies on reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona-1979; Houston, Texas - 1997; Indianapolis, Indiana - 1984: Amarillo, Texas - 1977; Garden Grove, California - 1991; Los Angles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986: Seattle, Washington - 1989; Tucson, Arizona - 1990; Testimony,

Warner-Robins, Georgia - 2000; Newport News, Virginia - 1996; St. Cloud, Minnesota - 1994; New York Times Square study - 1994; Minnesota, State of - 1989; Phoenix, Arizona - 1995-1998; and also on findings of physical abuse from the paper entitled "Stripclubs According to Strippers - Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Codes Enforcement Officer, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota. Based on cases and reports such as these, the Council finds:

4. Sexually oriented adult entertainment businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, pornographic litter, and sexual assault and exploitation.

(A) Sexual acts including masturbation, oral and anal sex, sometimes occur at unregulated adult entertainment businesses, especially those which provide private or semi-private booths, rooms, or cubicles for viewing films, videos, or live sexually explicit shows, which acts constitute a public nuisance and pose a risk to public health through the spread of sexually transmitted diseases.

(B) Adult entertainment businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other certain uses, such as other sexually oriented businesses and establishments licensed to sell alcoholic beverages to minimize the secondary effects associated with such uses and to prevent a concentration of sexually oriented businesses and such uses.

(C) Each of the foregoing negative secondary effects constitutes a harm, which the Council has a substantial government interest in abating and/or preventing in the future.

(D) Adult entertainment activity tends to attract an undesirable clientele which discourages neighboring residents from undertaking civic improvements, causes residents and businesses to move elsewhere and frustrates attempts to attract new residences and businesses to come into an area, all of which factors contribute to a diminution of property values and to a general deterioration of neighborhoods.

(E) The small closet-like rooms or "booths" at adult amusement arcades in other communities have encouraged persons to loiter for the purposes of engaging in unlawful, often anonymous, sexual conduct and have encouraged lewd conduct in public places, thereby creating public nuisances and generally unsanitary and unhealthful conditions that create dangers to the public health, welfare and safety.

(F) The concentration of sexually explicit movies and books and sexual paraphernalia in adult entertainment establishments which also house sexually explicit movies, as well as hotel rooms rented by the hour to "couples" afforded free sexually explicit movies in the hotel room, have provided prostitutes an appealing and visible meeting place to ply their trade and have created public nuisances in otherwise respectable neighborhoods.

(G) Children, the family environment and residential neighborhoods suffer injury from the deleterious effects and harmful consequences resulting from the distribution of, and exposure to, certain sexually explicit items and devices. This is particularly so when such items and devices are permitted to leave a business' premises and litter the immediate family environment, neighborhood and certain areas where children are likely to be.

(H) The noise generated by patrons coming and going from adult entertainment establishments causes a substantial disruption to nearby residents and modest curtailment of the hours during which entertainment is offered to patrons of such establishments would afford some relief to persons living in those nearby residences without significantly interfering with the availability of adult entertainment.

a. Nationally, there is extensive involvement of organized crime in the business of adult bookstores and the disclosure of persons who own, as well as the names of those persons who operate adult bookstores and other adult entertainment establishments will aid law enforcement officials in the enforcement of the federal Racketeer Influences and Corrupt Organizations Act (RICO) and the enforcement of the laws of the Commonwealth of Kentucky, among others, prohibiting the distribution of obscene matter, the use of minors to distribute obscene matter, the advertising of obscene material, the distribution of obscene material to minors, promoting the sale of obscenity, the use of a minor in a sexual performance, the distribution of material portraying a sexual performance by a minor, the promoting of material portraying a sexual performance by a minor and the advertising of

material portraying a sexual performance by a minor and the use of minors to distribute materials portraying a sexual performance by a minor.

(I) The Council declares as a matter of public policy that in order to preserve surrounding neighborhoods, to prevent blight and the deterioration of the neighborhoods of London, protect property values, promote the return of residents and businesses to the neighborhoods, protect children from the deleterious effects of exposure to sexually explicit material and decrease the incidence of crime and juvenile delinquency, the licensing and regulation of adult entertainment establishments is a public necessity and is required in the interest of public health, safety and welfare as well as the economic and aesthetic well-being of the people.

(J) Purposes.

1) It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of London, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within London. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter 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 chapter to condone or legitimize the distribution of obscene material;

2) To prevent the unsanitary conditions that exist at adult amusement arcades, and to prevent health risks, including AIDs and other sexually transmitted diseases, caused by illicit and unlawful sexual relations in such public establishments;

3) To protect children and the family environment from the deleterious and harmful effects of exposure to certain sexually explicit items and devices; and

4) To obtain the identity of persons licensed and to be licensed for the operation of establishments selling, showing, renting or offering certain sexually explicit material or entertainment to ensure proper identification of those persons responsible for the operation of such businesses so as to assist in the proper enforcement of this chapter.

(K) It is not the purpose of this chapter to establish community standards on obscenity nor to permit persons to engage in any activity which is in violation of law, including but not limited to, state laws pertaining to the advertising, promotion, distribution or sale of obscene matter or matters portraying a sexual performance by a minor, or state laws pertaining to the use of a minor in a sexual performance or promotion of sexual performance by a minor, or the use of a minor to distribute material portraying sexual performance by a minor.

DEFINITIONS

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning

1) ADULT ENTERTAINMENT ACTIVITY or ADULT ENTERTAINMENT ACTIVITIES or ADULT ENTERTAINMENT ESTABLISHMENT. Regular commercial participation in one (1) or more of the following defined activities:

2) ADULT AMUSEMENT ARCADE. An establishment having as one (1) of its principal uses one (1) or more of the following: customer-operated motion picture devices, peep shows, viewing areas and/or similar devices either coin, token or slug operated or which, in consideration of an entrance fee, display matter distinguished or characterized by an emphasis on displays of sexual activities, as hereinafter defined, or which other male or female persons expose to the view of the customer the bare female breast below a point immediately above the top of the areola, human genitals, pubic region or buttocks, even if partially or completely covered by translucent material, or human or simulated male genitals in a discernibly turgid state, even if completely or opaquely covered.

3) ADULT BOOK STORE. An establishment having as one (1) of its principal uses the sale, rent or display of pictures, books, periodicals, magazines, appliances and similar material which are distinguished or characterized by their emphasis on displays of sexual activities.

4) ADULT MOTION PICTURE THEATER. An establishment having as one (1) of its principal uses the presentation of motion pictures, slide projections and other similar material having as a dominant theme or characterized or distinguished by an emphasis on matter displaying, describing or relating to sexual activities, as hereinafter defined, for observation by persons therein.

5) ADULT NOVELTY CENTER. A commercial establishment which regularly features for sale instruments, devices, "adult toys" or paraphernalia which are designed for or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of oneself or others. Such instruments and devices shall not include condoms, contraceptive devices, spermicidal substances and lubricants, or other such products designed to prevent pregnancy or sexually transmitted diseases.

6) ADULT STAGE SHOW THEATER. An establishment having as one (1) of its principal uses the regular presentation of live performances of humans or animals having as a dominant theme or characterized or distinguished by an emphasis on matter displaying semi-nudity or sexual activities for observation by persons therein.

7) ADULT VIDEO CASSETTE. RENTAL CENTER. A commercial establishment which has as one (1) of its principal business uses the rental or sale of videocassettes or other video recordings which display material distinguished or characterized by an emphasis on displays of sexual activities.

8) CABARET. An establishment, which regularly features as one (1) of its principal uses persons who appear semi-nude before patrons.

9) COMMERCIAL SEXUAL ENTERTAINMENT CENTER. Any commercial establishment not otherwise described herein which as one (1) of its principal uses regularly offers matter, services or entertainment appealing to adult sexual interests if the establishment or its entertainment, services or goods are advertised by or on behalf of the establishment in a manner patently designed to appeal to such adult sexual interests.

10) SELF-DESIGNATED ADULT ENTERTAINMENT CENTER. Any establishment which designates all or a portion of its premises as for adults only and has a policy of excluding minors from its premises or from a portion of its premises and which advertises so as to convey the impression that the services, entertainment, matter or goods available at the premises or at the portion of the premises designated for adults only are characterized or distinguished by displays of human genitals or sexual activities.

11) CITY GOVERNMENT. The City of London government.

12) CODE ENFORCEMENT OFFICER. The Code Enforcement Officer or his or her designee or office.

13) EMPLOYEE. Any person hired by or suffered or permitted to work in an establishment engaging in adult entertainment activities whether that person receives remuneration or compensation directly from the operator or owner of the establishment, from patrons of the establishment or from any other source whether by contract of employment or otherwise, for work or services performed for the benefit of the adult entertainment establishment. EMPLOYEE does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods, such as food, to the premises.

14) ESTABLISHMENT. A business entity or endeavor, fixed, mobile or traveling, including its owners, operators, shareholders, partners, employees and possessions.

15) HEARING OFFICER. The Hearing Officer as appointed by the Council for the City of London.

16) LICENSEE. A person in whose name a license to operate an adult entertainment establishment has been issued, as well as the individual or individuals listed as an applicant on the application for an adult entertainment establishment license. In case of an employee, it shall mean the person in whose name the adult entertainment employee license has been issued.

17) MATERIALS. Any book, magazine, newspapers, or other printed or written matter, or any picture, drawing, photograph, motion picture, video cassette film or other pictorial representation or mechanical, chemical, or electrical reproduction or any other articles, equipment, machines or materials.

18) NUDITY or 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, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

19) OPERATOR. Any individual, partnership, corporation or business entity that establishes and/or maintains a business as its owner or manager and may also mean LICENSEE as defined hereinabove.

20) PERSON. Any individual, partnership, corporation or business entity.

21) PRINCIPAL OWNER. Any person owning, directly or beneficially, twenty percent (20%) of a corporation's equity securities, twenty percent (20%) or more of the membership interests in a limited liability company, or, in the case of any other legal entity, twenty percent (20%) or more of the ownership interests in the entity.

22) PRINCIPAL USE. A substantial or significant use, but not necessarily a majority of the business activity or stock in trade. The fact that a business may have one (1) or more other principal uses unrelated to adult entertainment shall not relieve the business from the provisions of this chapter applicable to adult entertainment establishments. PRINCIPAL USE shall exist in the following circumstances:

    1) Where a business establishment dedicates, or permits the use of, at least twenty-five percent (25%) of the utilized square footage of its premises for adult entertainment activity or activities; or
    2) Where at least twenty-five percent (25%) of the gross receipts of a business establishment, excluding food and beverage receipts, result from adult entertainment activity or activities.

22) REAL ESTATE OWNER. Any individual, partnership, corporation or business entity who has legal title to real estate, with or without accompanying actual possession thereof or has the beneficial ownership of any real estate and a right to present use of enjoyment thereof, including a mortgagee in possession.

23) REGULARLY. As used in the phrases herein such as "regularly features" and "regularly offers,"

24) REGULARLY means a consistent or repeated course of conduct engaged in or permitted by the operator of the business.

25) SEMI-NUDE or STATE OF SEMI-NUDITY. A state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices. This definition 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 that the areola and nipple are not exposed in whole or in part.

26) SEXUAL ACTIVITIES. Partial or complete male and/or female nudity in conjunction with:

1) Displays of human genitals in a state of sexual stimulation;
2) Acts of human masturbation, sexual intercourse or sodomy; or
3) Holding or other erotic touching of human genitals, pubic region, buttocks or breasts.

27) SPECIFIED CRIMINAL, ACTIVITIES. Any of the following offenses:

1) KRS 510.040, 510.050, or 510.060 (rape in the first, second, or third degree); KRS 510.070, 510.080, or 510.090 (sodomy in the first, second, or third degree); KRS 510.110, 510.120, or 510.130 (sexual abuse in the first, second, or third degree); KRS 510.140 (sexual misconduct); 510.150 (indecent exposure); KRS 517.050 (falsifying business records); KRS 529.020 or 529.040 (prostitution, promoting prostitution in the first, second, or third degree); KRS 529.070 (permitting prostitution); KRS 531.020, 531.030, 531.040 (distributing obscene matter, distributing obscene matter to minors, using minors to distribute obscene matter); KRS 218A.140 et seq. (offenses relating to controlled substances); any offense listed in KRS 531.300 through 531.370 (sexual exploitation of minors offenses); engaging in organized crime (KRS 506.120) relating to a sexually oriented business; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions and the acts would have constituted any of the foregoing offenses if the acts had been committed in Kentucky, 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 of a misdemeanor offense;
b) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
c) Less than five (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 (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

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

ADMINISTRATION

The Code Enforcement Officer is empowered to enact from time to time such rules and regulations deemed necessary for the orderly and complete administration of this chapter. All regulations shall be submitted to the City Council for adoption. All licensees and persons with license applications pending shall be mailed copies of all such regulations and they shall be published one (1) time in the newspaper as soon as practical after they become effective.

EFFECT; LIMITATION

It is not the purpose of this chapter to establish community standards on obscenity nor to permit persons to engage in any activity which is in violation of law, including but not limited to state laws pertaining to the advertising, promotion, distribution, or sale of obscene matter or matters portraying a sexual performance by a minor, or state laws pertaining to use of a minor in a sexual performance or promotion of a sexual performance by a minor, or the use of a minor to distribute material portraying sexual performance by a minor.

RESTRICTIONS; OPERATING REGULATIONS

SIGNAGE

An adult entertainment establishment, except as otherwise provided by laws which may be more restrictive, may not have more than one (1) sign outside, flush to the wall, facial style, not to exceed in size ten (10) feet in length (horizontal to the ground) and three (3) feet in width (vertical to the ground) with no flashing lights and with no pictorial matter which is distinguished or characterized by an emphasis on displays of sexual activities.

MATERIAL NOT TO BE SUBJECT TO PUBLIC VIEW

An adult entertainment establishment may not display pictorial representations of sexual activities in such manner as to be subject to public view from outside the business premises, including but not limited to view from public sidewalks, streets, arcades, hallways or passageways.

EMPLOYEE AGE REQUIREMENT

A. An operator or employee of an adult entertainment establishment shall not permit a person less than twenty-one (21) years of age to be employed by or to enter the establishment.
B. An adult entertainment establishment shall, at all times, cause the entrance of the establishment to be so attended as to ensure compliance with the requirements contained in division (A) above.

RESTRICTED HOURS

No adult entertainment establishment shall be or remain open for business between the hours of 12:00 a.m. and 9:00 a.m. on any day.

CONSTRUCTION REQUIREMENTS

(A) An adult amusement arcade, except as otherwise provided by laws which may be more restrictive, shall meet the requirements set forth in this section.
(B) Any wall or partition which is situated so as to create a viewing area in which any amusement device or viewing screen is located shall be constructed of not less than one (1) hour fire-restrictive material and shall contain no holes, openings or other perforations. No operator or employee shall allow openings of any kind to exist between viewing rooms or booths nor shall any person make or attempt to make an opening of any kind between viewing booths or rooms.
(C) A person who operates or causes to be operated an adult amusement arcade 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 display specified sexual activities as defined in this Ordinance shall comply with 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 or cashier'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 in this chapter must be by direct line of sight from the manager or cashier's station.
    2) It shall be the duly of the operator and any employees present in the premises to ensure that the view area specified in division (C)(1) above remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times. It shall be the duty of the operator to ensure that there is at least one (1) employee on duty and situated in a public area adjacent to the adult arcades, where the view area specified in division (C)(1) above is visible, at all times that any patron is present in the adult arcades.
    3) No viewing room may be occupied by more than one (1) person at a time.
    4) All floor coverings in viewing booths shall be nonporous, easily cleanable surfaces, with no rugs or carpentry. All wall surfaces and ceiling surfaces shall 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.
(D) 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) foot-candles measured at the floor level at all times any patron is present in the premises.

(E) All persons regulated pursuant to this section must comply with the terms and conditions hereof within sixty (60) days after the effective date of this chapter.

LOCATION RESTRICTIONS

(A) The public entrance to an establishment engaging in adult entertainment activities shall not be located within ~~five hundred (500)~~ one thousand (1,000) feet of any building containing a public or private elementary, middle or secondary school, institution of higher education or business college, or any park-mall or park-like area of open space under the control of a governmental agency, or any building used for a place of religious worship, or any building used for a governmental function or public library. Such distance shall be measured along a straight line from the nearest property line of the property on which the building or park-like area is located to the entrance to such establishment engaging in an adult entertainment activity.

(B) The public entrance to an establishment engaging in adult entertainment activities may not be located within ~~five hundred (500)~~ one thousand (1,000) feet of an area zoned R-1, R-2, C-1, or C-3, or from an area used for residential purposes. Such distance shall be measured along a straight line from the boundary line of the nearest area zoned or used for residential purposes to the entrance to such establishment engaging in an adult entertainment activity. All adult entertainment establishments shall comply with all other pertinent zoning regulations of the City of London.

(C) The public entrance to an establishment engaging in adult entertainment activities shall not be located within ~~five hundred (500)~~ one thousand (1,000) feet of the public entrance of another adult entertainment activity establishment.

(D) The public entrance to an establishment engaging in adult entertainment shall not be located within ~~five hundred (500)~~ one thousand (1,000) feet of the public entrance of an establishment licensed to serve alcoholic beverages.

SALE OF ALCOHOLIC BEVERAGES PROHIBITED

An adult entertainment establishment shall not make application for and shall not be granted any license to sell alcoholic beverages. The sale, use, or consumption of alcoholic beverages on the premises of an adult entertainment establishment is prohibited.

UNLAWFUL ACTIVITIES

Nothing contained in this chapter is intended, or shall be construed, to permit or authorize activities, which are unlawful under state law or local ordinance. It is unlawful for an operator to knowingly violate the following regulations or to allow, either knowingly or recklessly, an employee or a patron to violate the following regulations:

(A) It shall be a violation of this chapter for a patron, employee, or any other person to knowingly or intentionally, in an adult entertainment establishment, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(B) It shall be a violation of this chapter for an employee to knowingly or intentionally, in an adult entertainment establishment, appear in a semi-nude condition unless the employee, while semi-nude, remains at least six (6) feet from any patron or customer and on a fixed stage at least eighteen (18) inches from the floor. The six (6) foot requirement is measured from the edge of the stage where the semi-nude employee is located to the patron seating or standing area, or, if patrons are allowed to sit at the stage, from the edge of the stage to a line or other barrier six (6) feet from the edge beyond which employees are allowed to appear semi-nude.

(C) It shall be a violation of this chapter for any employee, while semi-nude in an adult business, to knowingly or intentionally receive any pay or gratuity directly from any patron or customer or for any patron or customer to knowingly or intentionally pay or give any gratuity directly to any employee, while the employee is semi-nude in an adult entertainment establishment.

(D) It shall be a violation of this chapter for any employee, who regularly appears semi- nude in an adult entertainment establishment, to knowingly or intentionally touch a customer or the clothing of a customer.

LICENSING PROVISIONS

LICENSE APPLICATION; CONTENTS

(A) The principal owner(s) or the operator(s) of an establishment intending to engage, or engaging under a previously issued license in an adult entertainment activity, shall make application for a license with the Codes Enforcement Officer in accordance with this chapter.

(B) Such application shall be in writing, notarized, and shall be in the form prescribed by the Codes Enforcement Officer. The application will be deemed complete when it contains the following information:

1) The name, business location address, business mailing address and phone number of the establishment and the name and business address of the prospective licensee.
2) The applicant's full true name, mailing address, date of birth, and a copy of a government-issued photo identification card or set of fingerprints.

(C) If the applicant is one (1) or more natural person(s), then all principal owners shall comply.

(D) If the applicant is other than an individual, such as a corporation or partnership, each officer, director, general partner, principal owner and each other person who will participate directly in decisions relating to management of the business shall sign the application for a license as the applicant and comply with the requirements of this section.

3) The name and address of the prospective licensee's designated agent for service of process.
4) If the applicant is not the owner of record of the real property on which the licensed establishment is located or to be located, the application shall include the name and address of the owner of record of the real property.
5) A designation of the adult entertainment activities as defined in this Ordinance, in which the applicant seeks to engage at the specified location.
6) All convictions for specified criminal activities, as defined in this chapter, of the applicant or applicants whose names are required pursuant to this section.
7) The name and mailing address of any person to whom the applicant wants mail notice to be given in case of violation or other matters affecting any license hereunder.
8) A drawing or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The drawing or diagram need not be professionally prepared but shall 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.

INFORMATION TO BE CURRENT; CODE ENFORCEMENT OFFICER TO BE NOTIFIED OF CHANGES

The information required by this Ordinance shall be kept current by the licensee at all times even after the granting of a license by the Code Enforcement Officer. It shall be the responsibility of the operator or other person designated in the license application to notify the Codes Enforcement Officer no later than the close of the fifth business day after the effective date of any changes, alterations or modifications in any information contained in the application, including but not limited to: name of the establishment; any change in the corporate or partnership information submitted as part of the application; names and mailing addresses of employees; name and address of designated agent for service of process; designation of the activity or activities to be engaged in at the establishment, as defined in this Ordinance; and the name and mailing address of any person the applicant wants mail notice to be given in case of violation or other matters affecting the license.

ISSUANCE OF LICENSE

A. Upon the filing of a completed application for an adult entertainment establishment license or employee license under this Ordinance, the Code Enforcement Officer shall issue a temporary license to the applicant, which temporary license shall expire fifteen (15) days after the final decision of the Codes Enforcement Officer to deny or grant the license. Within twenty (20) business days after the receipt of a completed application, the Codes Enforcement Officer shall cause the premises to be inspected for compliance with City of London zoning, building, safety, and health and fire codes. If inspections are not made within the specified twenty (20) days, unless such failure is due to the applicant's or the real estate owner's disallowance of the inspections, the property shall be deemed to comply with the codes specified in the previous sentence. Within twenty (20) business days after the receipt of a completed application, the Codes Enforcement Officer shall either issue a license, or issue a written notice of intent to deny a license, to the applicant. The Codes Enforcement Officer shall approve the issuance of a license unless one (1) or more of the following is found to be true:

1) An applicant is less than eighteen (18) years of age.
2) An applicant is delinquent in the payment to the City of London of taxes, fees, fines or penalties assessed against or imposed upon the applicant in relation to an adult entertainment establishment.
3) An applicant has failed to provide information or true and correct information required of the applicant for issuance of the license.
4) An applicant, including any principal owner of the adult entertainment establishment, has been convicted of a specified criminal activity, as defined in this chapter.
5) The license fee required by this Ordinance has not been paid.
6) The proposed adult entertainment establishment is located in a zoning district other than a district in which adult entertainment businesses are allowed to operate under the applicable zoning regulations of the City of London or is not in compliance with the location restrictions established for adult entertainment establishments under this chapter.
7) The applicant's premises have been found by the Codes Enforcement Officer or his or her designees to not be in compliance with City of London zoning, building, safety, and health or fire codes.

B. An applicant that is ineligible for a license due to division (A)(4) above may qualify for an adult entertainment establishment license only when the time period required by the applicable division in this Ordinance has elapsed.

C. The license, if granted, shall state on its face the name of the persons or persons to whom it is granted, the number of the license issued to that applicant, the expiration date, and the address of the adult entertainment establishment. An adult entertainment establishment employee license shall contain a photograph of the licensee. The adult entertainment establishment license shall be posted in a conspicuous place at or near the entrance to such business so that it may be easily read at any time. An adult entertainment establishment employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing, and shall produce such license for inspection upon request by a law enforcement officer or other authorized City of London enforcement official. Such officer or official, pursuant to this chapter, shall request verification of an employee's license only when reasonable and necessary to advance the purposes of this chapter.

INSPECTIONS

The application for or the grant of a license to operate an adult entertainment establishment is deemed to permit periodic inspections of the public areas of any such establishment during such establishment's business hours for the purpose of verifying compliance with the terms and conditions of this chapter. This section shall be reasonably construed and applied by enforcement personnel.

PROHIBITED ACTIVITIES

A. No owner shall permit adult entertainment activities to operate on his or her property without such adult entertainment activities being properly licensed except as permitted under this chapter.
B. No person shall permit himself or herself to be an operator or an employee at an adult entertainment activity, which has not been validly licensed hereunder.
C. No person shall own, operate or be employed at an establishment engaged in adult entertainment activities unless all employees of the establishment have obtained the license required by this Ordinance.

LICENSE YEAR; LICENSE FEES

All adult entertainment establishment licenses shall be for the fiscal year, July 1 to June 30, or the remaining portion of such fiscal year. The annual license fee shall be one thousand dollars ($1,000.00) and payable to the City of London at the time of application. For new applications, annual fees shall be prorated at the rate of one hundred dollars ($100.00) per month for the remaining full months of a fiscal year but shall not exceed one thousand dollars ($1,000.00). Application for renewal of a license shall be made at least ninety (90) days, but not more than one hundred twenty (120) days, before the expiration of the current license and shall be accompanied by the annual fee of one thousand dollars ($1,000.00). The renewal application shall also contain any changes in the information required by this Ordinance which have occurred since the previous application. If the renewal application and/or the annual fee are not tendered in a timely fashion, the Codes Enforcement Officer shall serve notice to the licensee that the failure to submit the renewal application and/or the annual fee within ten (10) business days will be deemed an abandonment of the license as of the above-referenced renewal deadline. Service of the notice required by this section shall be deemed complete upon certified mailing, return receipt requested, or personal delivery.

EMPLOYEE LICENSE REQUIRED

A. Any person intending to be an employee at an adult entertainment establishment shall make application for an employee license with the Codes Enforcement Officer in accordance with this section. The application shall be in writing, notarized, and shall be in the form prescribed by the Codes Enforcement Officer and shall be deemed complete when it contains the following items:
   1) The legal name of the applicant;
   2) Any and all aliases or names used or to be used by the applicant in the course of prior, current or prospective appearances or performances as a dancer, performer or entertainer;
   3) The applicant's mailing address where the Codes Enforcement Officer may contact the applicant;
   4) The applicant's date of birth;
   5) A set of the applicant's fingerprints suitable or a copy of a government-issued photo identification card;
   6) A recent photograph of the applicant; and
   7) Any information required under this section deemed to be private and/or confidential within the meaning of KRS 61.878, or within the constitutional right to privacy, shall not be disclosed to any person other than law enforcement agencies or other governmental agency.
B. The applicant shall submit an annual license fee of twenty-five dollars ($25.00) with the application for an employee license and the Codes Enforcement Officer shall immediately issue a temporary employee license pending a final decision by the Codes Enforcement Officer to grant or deny the employee license. Within twenty (20) working days of the application, the Codes Enforcement Officer shall determine whether the applicant has been convicted of a specified criminal activity, as defined in this chapter. If no record of such conviction is found, the Codes Enforcement Officer shall issue an annual employee license. The license so granted shall expire on June 30 of each year and shall be annually reissued by the Codes Enforcement Officer upon application therefor by the employee unless the Codes Enforcement Officer confirms that the applicant has been convicted of any of the above-described offenses. In the event the Codes Enforcement Officer confirms a conviction of a proscribed offense, he or she shall issue

the applicant a notice of intent to deny the employee license. Application for a renewal license shall be made at least ninety (90) days, and not more than one hundred twenty (120) days, prior to expiration of the employee's current license.

LICENSE DENIAL, SUSPENSION, REVOCATION; HEARING AND APPEAL

A. The Codes Enforcement Officer shall issue a written letter of intent to suspend an adult entertainment license or an employee license, as applicable, for a period not to exceed thirty (30) days if it determines that the licensee knowingly or recklessly violated or is not in compliance with any section of this chapter, or, knowingly refused to allow an inspection of the licensed premises as authorized by this chapter.

B. The Codes Enforcement Officer shall issue a written statement of intent to revoke an adult entertainment establishment license or an employee license, as applicable, if the licensee knowingly or recklessly commits two (2) or more violations specified in this chapter within a twelve (12) month period.

C. The Codes Enforcement Officer shall issue a written statement of intent to revoke an adult entertainment establishment license or an employee license, as applicable, if:

1) The licensee knowingly gave false information in the material submitted during the application process;
2) The licensee has knowingly engaged in or allowed possession, use, or sale of controlled substances on the premises;
3) The licensee has knowingly engaged in or allowed prostitution on the premises;
4) The licensee has knowingly operated the adult entertainment establishment during a period of time when the licensee's license was suspended;
5) The licensee has knowingly engaged in or allowed any act of sexual intercourse, sodomy, oral copulation, or masturbation to occur in or on the licensed premises. This division (C)(5) will not apply to an adult motel, unless the licensee knowingly allowed the foregoing sexual activities to occur either in exchange for money or in a place within public view.

D. The fact that a conviction is being appealed shall have no effect on the revocation of the license; provided however, that any reversal of a conviction shall automatically eliminate that conviction from consideration in this chapter.

E. When, after the notice and hearing procedure described in division (F) of this section, the Codes Enforcement Officer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult entertainment establishment license or an employee license for one (1) year from the date revocation becomes effective; provided that, if the conditions of division (G) of this section are met, a provisional license will be granted pursuant to that division (G).

F. If facts exist for denial, suspension, or revocation of an adult entertainment establishment license or an employee license issued under this chapter, the Codes Enforcement Officer shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the Codes Enforcement Officer, and will provide the address of the Hearing Officer to which the respondent should direct his or her response. Within five (5) working days of receipt of such notice, the respondent may provide to the Hearing Officer, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three (3) working days of the receipt of respondent's written response, the Hearing Officer shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding.

1) Within ten (10) working days of the receipt of respondent's written response, the Hearing Officer shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine adverse witnesses. Such proceeding shall be transcribed or recorded. Within ten (10) working days after any hearing, the Hearing Officer shall issue a written decision on the matter and mail such decision to the respondent by certified mail no later than three (3) working days after the date of such decision.
2) If a response is not received by the Hearing Officer in the time stated or, if after hearing, the Hearing Officer finds that grounds as specified in this chapter exist for

denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five (5) working days after the Hearing Officer sends, by certified mail, the written decision and notice that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

G. When a decision to deny, suspend or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied, or whose license has been suspended or revoked, shall have the right to appeal such action to a court of competent jurisdiction within fifteen (15) working days of the date the adverse decision becomes final. Until the time for an appeal has passed, any temporary license issued to the aggrieved party under this chapter shall remain in effect throughout the administrative proceedings described in this section. Upon the filing of any court action to appeal, challenge, restrain or otherwise enjoin the enforcement of the denial, suspension or revocation, the Codes Enforcement Officer shall immediately issue the aggrieved party a provisional license and shall file the record of the administrative proceeding with the reviewing court within ten (10) business days after he or she receives notice of the action. The provisional license shall allow the aggrieved party to continue operation of the adult entertainment establishment or to continue employment as an adult entertainment employee, as the case may be, and will expire upon the court's entry of a judgment on the merits of the aggrieved party's action to appeal, challenge, restrain or otherwise enjoin the enforcement of the Codes Enforcement Officer's decision.

FAILURE OF OFFICIAL TO MEET TIME FRAME NOT TO RISK APPLICANT/ LICENSEE RIGHTS

In the event that a government official is required to take an act or do a thing pursuant to this chapter within a prescribed time, and fails to take such act or do such thing within the time prescribed, this failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the official under this chapter, but not completed in the time prescribed, includes approval of condition(s) necessary for approval by the City of London of an applicant or licensee's application for an adult entertainment establishment license or an adult entertainment establishment employee license (including a renewal), the applicant or licensee shall be deemed to have satisfied the condition(s) for which approval was sought.

PENALTY

A. Any person who violates any provision of this chapter shall be subject to a civil penalty of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) as imposed by the Codes Enforcement Officer. Each day that a violation continues after notice has been served shall be deemed a separate offense. Any person cited pursuant to this division (A) and assessed a civil penalty shall have the right to appeal such penalty to the Code Enforcement Board.

B. In addition to the penalties provided herein for violations of this chapter, the Codes Enforcement Officer is authorized to pursue remedial civil actions for violations of this chapter by civil complaint or petition for injunctive relief declaration of rights or other appropriate proceedings filed in the Laurel County, Kentucky Circuit Court.

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall not affect the validity of the Ordinance as a whole, or any portion thereof, other than the section so declared to be unconstitutional or invalid.

This Ordinance shall be effective immediately upon publication in accordance with the applicable provisions of Kentucky law. Any Ordinances or part of Ordinances in conflict herewith are hereby repealed.

Troy Rudder

Troy Rudder, Mayor

Attested:

Mary G. Berry

Marcy Berry, City Clerk

First Reading: December 6, 2021
Second Reading: January 3, 2022
Publication Date: January 19, 2022