

CHAPTER 116: ADULT ENTERTAINMENT ESTABLISHMENTS

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§ 116.01 FINDINGS.

The city, based upon previous adult entertainment events held by business establishments located in the city and upon documented experiences of other governmental units in the State of Kentucky, finds it necessary to regulate such activities in order to protect the health, safety, and welfare of the citizens of the city.
(Ord. 01:98, passed 1-13-98)

§ 116.02 DEFINITIONS.

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

"ADULT DANCING." Includes, but is not limited to any dancing which exposes to view by patrons or spectators on the premises at any time the specified anatomical areas and/or consist of specified sexual activities, both as set forth below.

"ADULT ENTERTAINMENT EMPLOYEE." Any individual working or performing services in any adult entertainment establishment, including any independent contractor who provides services on behalf of any adult entertainment establishment to or for the patrons of such business, but this does not include janitors, cooks, accountants, or other employees who do not have direct contact with patrons. Adult entertainment employees include, but are not limited to dancers, bouncers, doormen, bartenders, and waiters working on the premises of adult entertainment establishments.

"ADULT ENTERTAINMENT ESTABLISHMENT." An adult motion picture theater, massage parlor, or establishment, an adult book store, an adult escort service, or any other business establishment whose principal business use or regular business use, is to offer adult oriented entertainment or matter as characterized by an emphasis on specified sexual activities and/or exposure of specified anatomical areas. Adult oriented entertainment shall mean any exhibition, live performance, display or dance of any type which has as a significant or substantial portion of such performance any specified sexual activities as defined herein, or the exhibition of any specified anatomical area.

"ENTERTAINMENT AREA." An area in an adult entertainment establishment consisting of a platform or other structure raised not less than eighteen (18) inches above the immediately surrounding main floor area and encompassing an area of at least one hundred (100) square feet.

"PERSON." An individual, firm, partnership, joint venture, association, independent contractor, corporation (domestic or foreign), trust, estate, assignee, receiver or any other group or combination acting as a unit.

"SPECIFIED ANATOMICAL AREAS." Includes, but are not limited to the following:

(1) Less than completely and opaquely covered human genitals or pubic region; the cleavage of the human buttock; any portion of the human female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breasts, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(2) The human male genitals in a discernible turgid state, even if completely and opaquely covered.

"SPECIFIED SEXUAL ACTIVITIES." Includes, but are not limited to, bestiality, erotic or sexual stimulation with objects or mechanical devices, human genitalia in a state of sexual stimulation, arousal or tumescence, fondling or touching of human genitalia, pubic region, buttock, anus, or female breast, acts of human anilingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, or sodomy, any excretory functions as part of or in connection with any of the activities set forth above with any person on the premises.

(Ord. 01:98, passed 1-13-98)

§ 116.03 REQUIREMENTS; PROHIBITIONS.

In addition to the licensing and other general requirements contained in this chapter relating to adult entertainment establishments, each adult entertainment establishment shall comply with the following requirements.

(A) Prohibited activities. No person shall display or expose specified anatomical areas and are prohibited from simulating specified sexual activity individually or with any patron, spectator, employee, or other person on the premises of an adult entertainment establishment.

(B) Entertainment area. No person in an adult entertainment establishment shall engage in any form of entertainment or dancing except while said person is positioned in or occupying an entertainment area, as defined above, and while the person so dancing, performing,

displaying or exhibiting is positioned not less than six (6) feet from any patron or spectator.

(C) Entertainment area exclusion. No spectator, patron, or persons other than a licensed adult entertainment employee shall be present in an entertainment area, as defined above, during the course of any adult entertainment, dancing, or performance.

(D) Physical contact prohibition. While on the premises of an adult entertainment establishment, no adult entertainment employee shall be permitted to have any physical contact with any other adult entertainment employee, other employee, patron or spectator while that adult entertainment employee is entertaining, dancing or performing and all such performance shall occur only in an entertainment area. An adult entertainment employee shall not touch the breast, buttocks, or genitals of any patron, spectator, or other adult entertainment employee and no patron or spectator shall touch the breast, buttocks, or genitals of any adult entertainment employee or another patron or spectator while on the premises of the adult entertainment establishment. Further, no person on the premises of an adult entertainment center shall be permitted to use or be present in areas partitioned or screened from public view that are designed to be occupied, together or alone, by any person or persons on the premises of such establishment for the display of or exhibition of specified anatomical areas.

(E) Age restriction. No person under eighteen (18) years of age shall be permitted in an adult entertainment establishment.

(F) Business hours. No adult entertainment establishment shall be open for business between the hours of 12:00 a.m. and 6:00 p.m. each day.

(G) Licensed adult entertainment employees. No owner or operator of an adult entertainment establishment shall permit an unlicensed adult entertainment employee to work or perform services in its adult entertainment establishment.

(Ord. 01:98, passed 1-13-98)

§ 116.04 ESTABLISHMENT LICENSES.

(A) General requirements. No person shall own an adult entertainment establishment as defined in § 116.02 of this chapter without an adult entertainment establishment license. No person shall operate an unlicensed adult entertainment establishment.

(B) Application process. The owner of an adult entertainment establishment shall apply for a license with the Code Enforcement Officer. The applicant shall complete an application on the form prescribed by the city and shall submit the following information:

(1) The name and business address of the establishment, including any assumed or fictitious names under which the establishment

is or will be operated.

(2) The name, including any assumed or fictitious name or alias, business address, social security or tax identification number of the owner and every officer, partner, director, or person performing a similar function to an officer, partner or director and the names and addresses of any individual who owns ten percent (10%) or more of the partnership, corporation, limited liability corporation, or company, or limited liability partnership that is the owner of the establishment.

(3) In the event the owner of the adult entertainment establishment is not the owner of record of the real property on which the establishment is located or to be located, the application shall include a notarized statement from the owner of record of the real property acknowledging that an adult entertainment establishment is located or to be located on the real property upon the issuance of the license. The applicant shall also furnish the name and address of the owner of record of the real property and a copy of the lease or rental agreement or memorandum thereof.

(4) The name, including any assumed or fictitious name or alias, business address, date of birth, social security number, and photograph of all persons engaged in the day-to-day management of the licensed premises. All persons who at any time shall be responsible for attending the entrance of the establishment for the purpose of compliance with this chapter and shall be included in this subsection.

(5) The name, including any assumed or fictitious name or alias, business address, date of birth, social security number, and photograph of the individual designated by the applicant to undertake to keep the applicant, if licensed, at all times in compliance with the restrictions, requirements, and conditions set forth in this chapter together with the written statement of the individual stating that he has received a copy of this chapter and that he willfully undertakes on behalf of the applicant to comply therewith.

(6) The name, including any assumed or fictitious name or alias, business address, date of birth, social security number, and photograph of the individual designated by the applicant to be responsible for keeping current the information required hereunder at all times together with a written statement stating that he has received a copy of this chapter and that he willfully undertakes on behalf of the applicant to comply with the requirements therein pertaining to the disclosure of information.

(7) The name and address of any rental agent of the property on which the establishment is located.

(8) The nature of the activity or activities to be engaged in at such location.

(9) A criminal record report for the applicants, owners, officers, directors, partners, employees, or other persons whose names

are required pursuant to this section together with a list of all criminal convictions of such persons within the last five (5) years for the offenses listed below in this chapter. Any person who is on parole shall submit with the application the terms of said parole.

(10) The name and mailing address of the owner to whom notice will be given in case of violations or other matters affecting the license hereunder.

(11) Applicant must submit to fingerprinting by the city Police Department.

(12) Applicant cannot owe any fees or taxes of any kind or nature to the city.

(13) Applicant's premises must meet all established, zoning, fire, building, and/or plumbing codes and cannot provide direct interior access to residential living quarters.

(14) Applicant shall file a floor plan exhibiting all entrances, exits, stairways, and all rooms in the building and their intended uses for purposes of providing emergency services.

(C) Supplemental information. The information required by subsection (B) of this section shall be at all times current even after the granting of the adult entertainment license. It shall be the responsibility of the owner or other person designated in the license application to notify the Code Enforcement Officer, in writing, no later than forty-eight (48) hours after the effective date of any change, alteration, or modification in any information contained in the application.

(D) Review process. The Code Enforcement Officer or his designee shall inspect the premises within fifteen (15) days after the application has been submitted. The Code Enforcement Officer shall issue a license if all restrictions, requirements, conditions, and all applicable requirements of this chapter and other applicable laws have been met. The Code Enforcement Officer shall grant or deny a license application within twenty (20) days of the filing of such application.

(E) Prohibitions. No adult entertainment establishment license shall be issued if the applicant or any operator, officer, director, partner, or shareholder:

(1) Is less than eighteen (18) years of age;

(2) Has been convicted of any of the following offenses within the last five (5) years:

(a) Gambling, conspiracy to promote gambling, or possession of gambling records, or gambling devices;

(b) Prostitution, promoting prostitution, permitting

prostitution, solicitation for the purpose of prostitution, or loitering for the purpose of prostitution;

(c) The sale, transfer, possession, or use of any controlled substance;

(d) Sexual offenses including rape, sodomy, sexual abuse, sexual misconduct, and indecent exposure;

(e) Distribution of obscene material to a minor, use of a minor to produce, promote, or distribute obscene material, advertising obscene materials, promoting the sale of obscenity;

(f) Unlawful transactions with a minor (as defined in KRS Chapter 530 or other similar laws) use of a minor in a sexual performance, promoting a sexual performance by a minor, or possession of or advertising matter portraying a sexual performance by a minor; or

(g) Murder, manslaughter, or felony assault (as defined in KRS Chapters 507 or 508 or similar laws)

(3) Has failed in the operation of an adult entertainment establishment to comply with any health, zoning, fire, or building code enacted or adopted by the city and has failed to correct such violation as provided in this chapter.

(F) Notice. If the Code Enforcement Officer's inspection reveals a failure to comply with any provisions of this Code, the Code Enforcement Officer shall notify the applicant, in writing, of that fact, stating what failures have been discovered, allowing a reasonable time to correct such defects and informing the applicant of the appeal procedure if the applicant does not agree with the Code Enforcement Officer's decision or finding.

(G) No transfer of license. The adult entertainment license issued under this section does not authorize the operation of an adult entertainment establishment at any place other than the address designated in the application and such license is not transferable. A transfer is deemed to occur when the business is sold, leased or subleased; when securities which constitute a controlling interest in the business are sold or otherwise exchanged; or a trust, gift, or other similar legal device is established which transfers the ownership or control of the business, except for a transfer by bequest or other operation of law upon the death of the natural person possessing the ownership or control of the business.

(H) Access to licensed premises. The application for or the granting of an adult entertainment establishment license is deemed to permit periodic inspections by law enforcement officers, or other persons designated or authorized by the Code Enforcement Officer, of all areas of any establishment requiring a license under this chapter for the purpose of verifying compliance with the terms and conditions of this chapter. It shall be unlawful for an applicant, licensee, owner or

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operator of an adult entertainment establishment to refuse to permit a law enforcement officer or authorized person to inspect the premises at any time during normal business hours of the establishment.

(I) Application and license fee. Concurrent with the submission of a license application, the applicant shall pay to the city a nonrefundable fee of \$100.00. Every adult entertainment establishment shall pay to the city an annual license fee of \$5,000.00, which fee is due and payable upon the issuance of a license and on or before July 1 of each year thereafter. When the license is first issued, the annual fee may be prorated at the rate of \$416.66 per month for the remaining months of the current fiscal year, which prorated fee is due and payable upon the issuance of a license.

(J) Expiration. Each license shall expire on June 30 of each calendar year, unless earlier suspended or revoked. Application for a new license should be made at least thirty (30) days prior to the expiration date.

(K) Suspension. The Code Enforcement Officer may suspend an adult entertainment establishment license for a period not to exceed thirty (30) days if the Code Enforcement Officer determines that the applicant, owner, operator or an employee thereof has violated any provisions of this chapter, has been on the adult entertainment establishment premises while intoxicated or in a disorderly condition (consistent with the definition of disorderly conduct contained in KRS Chapter 525), has refused to allow an inspection of the premises, or has knowingly permitted any violation of state law to occur on the premises.

(L) Revocation. The Code Enforcement Officer shall revoke an adult entertainment license if he determines that:

(1) Cause for suspension under subsection (K) above occurs and the license has been suspended within the preceding twelve (12) months;

(2) An applicant knowingly gave false or misleading information in the initial license or any subsequent license application;

(3) An applicant, owner, operator or employee has knowingly allowed possession, use or sale of controlled substances on the premises;

(4) An applicant, owner, operator, or employee has knowingly allowed prostitution or solicitation for prostitution on the premises;

(5) An applicant, owner, operator, or employee has knowingly operated an adult entertainment establishment during a period of time when the establishment's license was suspended; or

(6) An applicant, owner, operator, or employee has knowingly allowed a violation specified in subsection (E) above to occur on the

premises.

(M) Hearing for denial, suspension, or revocation; appeal. If the Code Enforcement Officer determines that grounds exist to deny, suspend, or revoke an adult entertainment license, he shall notify the applicant or licensee in writing of his intent to deny, suspend, or revoke, including the grounds therefore. The notice shall be sent to the applicant or licensee by certified mail at the address specified in the application. Within five (5) business days of receipt of such notice, the applicant or licensee may provide to the Code Enforcement Officer, in writing, a response which shall include a statement of reasons why the license should not be denied, suspended, or revoked, and may include a request for a hearing. If a response is not timely received by the Code Enforcement Officer, the notice shall be a final administrative act of denial, suspension, or revocation. If a timely response is received by the Code Enforcement Officer, he shall within three (3) business days of his receipt of the response either withdraw the written notice of intent to deny, suspend, or revoke by giving notice of such withdrawal to the applicant or licensee or schedule a hearing before the Code Enforcement Board and shall give notice of such hearing to the applicant or licensee. The hearing shall be informal in nature and shall be conducted within seven (7) business days of the Code Enforcement Officer's receipt of the applicant's or licensee's response. The Code Enforcement Board shall issue an oral decision at conclusion of the hearing and shall render a written decision within three (3) business days after the completion of the hearing and shall serve the applicant or licensee with a copy of the decision by certified mail. The applicant or licensee may appeal a decision of the Code Enforcement Board to the Rowan Circuit Court after receipt of the written notice of the decision. If an applicant or licensee pursues a judicial appeal of a final decision of the Code Enforcement Board, then that licensee or applicant may continue to operate or work pending the completion of judicial review.

(Ord. 01:98, passed 1-13-98)

§ 116.05 EMPLOYEE LICENSE.

(A) General requirements. Any person who is or intends to be employed or working in any capacity, whether as an employee, working proprietor or independent contractor, in an adult entertainment establishment as an adult entertainment employee, as defined in § 116.02 of this chapter, shall obtain an adult entertainment employee license. The person seeking an adult entertainment employee license shall apply for a license with the Code Enforcement Officer. Such application shall be in writing, shall be on the form prescribed by the city and the following information shall be provided:

(1) The name, including any other name or alias used by the applicant (e.g., "stage name"); present residence and business address; present residence and business telephone number; date and place of birth; social security number; date, issuing state and number of driver's license; height, weight, hair and eye color; a description of any distinguishing marks or tatoos; and a recent photograph of the

applicant.

(2) The name and address of the adult entertainment establishment where the applicant intends to work together with a written statement that he/she has received a copy of this chapter and that he/she will fully undertake to comply therewith.

(3) A statement detailing the applicant's work history for the five (5) year period immediately preceding the date of the filing of the application, including whether the applicant previously operated or was employed in an adult entertainment establishment; whether the applicant has ever had an adult entertainment or other similar license denied, revoked or suspended. In the event of any such denial, revocation, or suspension, the applicant shall list the name of the issuing or denying jurisdiction, and state in full the reason for the denial, revocation, or suspension.

(4) A criminal record report for the applicant together with a statement whether within the last five (5) years the applicant has been convicted of any criminal activity described in this chapter and if so, the specific criminal activity involved and the date, place and jurisdiction.

(B) Issuance process. The Code Enforcement Officer shall issue an adult entertainment employee license to an applicant if all provisions of this chapter and other applicable laws have been met. The Code Enforcement Officer shall conduct an investigation to determine whether the applicant has met all requirements for issuance of a license. The Code Enforcement Officer shall grant or deny a license application within ten (10) days of the filing of such application. The review, denial, suspension, revocation and appeal procedure to the issuance of an adult entertainment establishment license in § 116.04 shall be the process for review, denial, suspension, revocation and appeal for an adult entertainment employee license.

(C) License prohibitions. No adult entertainment employee license shall be issued if the applicant is less than eighteen (18) years of age or has been convicted of any of the offenses listed above within the last five (5) years preceding the date of the application.

(D) Application and license fees. Concurrent with the submission of the license application, the applicant shall pay to the city a nonrefundable fee of \$25.00. Every adult entertainment employee shall pay to the city an annual license fee of \$100.00, which fee is due and payable upon the issuance of a license and on or before July 1 of each year thereafter. When the license is first issued, the annual fee may be prorated at the rate of \$8.33 per month for the remaining months of the current fiscal year, which prorated fee is due and payable upon the issuance of a license. Application for a new license should be made at least thirty (30) days prior to the expiration.
(Ord. 01:98, passed 1-13-98)

§ 116.06 REGISTRATION; PHOTOGRAPHING; FINGERPRINTING.

(A) General requirements. All persons holding an adult entertainment establishment license and all adult entertainment employees in any adult entertainment establishment or place of business, except as hereinafter provided, shall register in a book of registration to be kept by the city Police Department, and is hereby required to be registered, fingerprinted, and photographed by the city Police Department or its designated agency prior to the date of commencing his or her business operations or employment with such establishment. No person shall fail to register or be fingerprinted and photographed prior to commencing such employment.

(B) Employer responsibility. No employer shall allow any person to be employed unless the employee shall have registered and shall have been fingerprinted and photographed as prescribed in subsection (A) of this section.

(C) Identification cards. The registrants under this section are required to have the identification cards issued by the city Police Department or its designated agency in their immediate possession during their hours of employment. The identification card shall contain the registrant's picture, name, age, hair color, eye color, weight and place of employment.

(D) Fees. The city shall require a payment of \$25.00 of each person registered, which charge shall be applied to cover the cost involved in the registration, including the cost of the identification card furnished to the registrants.
(Ord. 01:98, passed 1-13-98)

§ 116.07 PREMISES TO FURNISH A CLEAR VIEW.

(A) General requirements. Any establishment licensed for adult entertainment shall be maintained in such a manner and shall provide a clear view of the entire area open to the public from the front entrance to said entertainment area, whether at street level or otherwise. No partition, box, stall, screen, curtain, or other device shall be installed or placed so as to obstruct the view or the general observation of persons in any entertainment area; however, partitions, subdivisions, or panels that are not higher than forty-eight (48) inches from the floor shall not be construed as obstructing a view or the general observation of persons from the front entrance of the licensed premises.

(B) Prohibitions. The darkening of any portion of the licensed premises open to the public in any manner as to prevent any person standing at the front entrance from observing the conduct of patrons therein should be prohibited.
(Ord. 01:98, passed 1-13-98)

§ 116.08 RESTRICTIONS ON ADVERTISEMENT.

(A) Any adult entertainment establishment license holder shall be required to identify such business as "adult" in any advertisement. No lettering, words, or representation of matter relating to sexual activities as defined in this chapter shall be placed upon any advertisement.

(B) Adult entertainment activities or photographs of the same shall not be displayed within any licensed premises in such a manner as to be open to the general public view from outside the licensed premises.

(C) Each application for an adult entertainment establishment license shall be accompanied by a photograph or drawing of any signs to be displayed on the exterior of the establishment with an indication as to the dimensions of the same.

(E) Signage shall be posted in conspicuous locations indicating that persons must be of appropriate age or older to enter.
(Ord. 01:98, passed 1-13-98)

§ 116.99 PENALTY.

(A) Any person who shall violate any of the provisions of §§ 116.03, 116.04, 116.05 of this chapter shall, upon conviction thereof, be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned for a period of not more than twelve (12) months, or both so fined and imprisoned.

(B) Any person convicted of violating § 116.06 shall be fined not less than twenty-five dollars (\$25.00), nor more than five hundred dollars (\$500.00) in the discretion of the district court.

(C) Any person who shall violate any of the provisions of § 116.07 of this chapter shall, upon conviction thereof, be guilty of a misdemeanor and shall be fined not more than five hundred dollars (\$500.00) or imprisoned for a period of ninety (90) days or both so fined and imprisoned.
(Ord. 01:98, passed 1-13-98)

Editor's Note:

See § 10.02 for definition of
Code Enforcement Officer.