Ordinance No.: _____

AN ORDINANCE REPEALING ORDINANCE 4013 REGULATING SEXUALLY ORIENTED BUSINESSES, AND ADOPTING ADULT-ORIENTED ESTABLISHMENT REGISTRATION ORDINANCE

WHEREAS, entertainment has long been an important part of the character and the economy of Memphis; and

WHEREAS, Memphis is particularly well-known for Beal Street, with its jazz and blues clubs and bars; and

WHEREAS, Memphis also has a long history of adult entertainment establishments, or sexually oriented businesses, operating within the City; and

WHEREAS, several groups involved in trying to improve the community generally – including the Brooks Road Task Force, the Chamber of Commerce, and other groups – have expressed concern that activities in and around many sexually oriented businesses have brought increased unlawful activity to their neighborhoods, adversely affected property values in some of those neighborhoods, and created a climate in which it is difficult for more traditional businesses to operate effectively; and

WHEREAS, in response to these expressions of concern, the City of Memphis, in cooperation with Shelby County, retained Duncan Associates, an Austin-based planning firm that has done other work for the City and County, to undertake a study of the issue; and

WHEREAS, Duncan Associates assigned the nationally known team of Eric Damian Kelly (a Duncan Vice President) and Connie B. Cooper to work on the project; and

WHEREAS, in December 2006, Kelly and Cooper delivered their report to the City and the County; and

WHEREAS, Kelly and Cooper have completed that study, during which they visited most of the sexually oriented businesses in Memphis; examined the current state laws and local ordinances affecting such businesses; met with stakeholders, including the Brooks Road Task Force and other groups seeking action to control these businesses, as well as with representatives of the adult entertainment industry; reviewed available crime data; and assembled and summarized reports from other communities about the adverse secondary effects of sexually oriented businesses; and

WHEREAS, Kelly and Cooper summarized this work and presented recommendations to the City and County in a December 2006 report entitled "Regulating Adult Oriented Businesses;" (hereinafter referred to as the "Kelly and Cooper Study"); and

WHEREAS, Kelly and Cooper included these comments in their report:

> Memphis is nationally known as a city for "wide-open" adult entertainment. Through the course of this study, full nudity, exposure of genitalia, and graphic sexual touching between entertainers as well as between customers and entertainers were observed at clubs throughout the City; all of which are violations of city ordinances and State Acts. On the side of enforcement, it appears that enforcement at some clubs is very aggressive, while other clubs with similar activities avoid charges of prostitution and the threat of permanent closure, by paying modest fines and penalties levied on performers; and
>
> Many public officials, staff, law enforcement and court officials, and stakeholders expressed concern at how "wide open" adult-oriented businesses in Memphis are, or, in some cases, the national reputation that Memphis has for allowing such "wide open" establishments; however only law enforcement personnel and perhaps club management have personally observed the behavior observed by the consultants; and

WHEREAS, the City Council has reviewed Kelly and Cooper's summaries of reports about the adverse secondary effects of sexually oriented businesses, and City staff has made available to City Council members copies of the full reports; and

WHEREAS, the United States Supreme Court in *City of Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986) held that a local government may rely upon the experiences of other cities as well as on its own studies in enacting local legislation to regulate sexually oriented businesses; and

WHEREAS, the United States Supreme Court in *Renton* and other cases has held that a local government may regulate such uses through content-neutral, time, place, and manner restrictions, so long as said regulations are designed to serve the government interest and do not unreasonably omit avenues of communication, and are aimed not at the content of protected speech within said establishments but rather at the secondary effects of said establishments on the surrounding communities; and

WHEREAS, from the following studies, the City Council also finds that such businesses may have secondary effects involving crimes related to the activities in the establishment, of which prostitution and crimes of violence are those of greatest concern. See for example:

> Citizens Advisory Planning Committee. Letter to Mayor and City Council, re "Zoning Code Amendment – Adult Activities Uses." City of Tucson, Arizona. May 14, 1990.
>
> Department of City Planning. Adult Entertainment Study. City of New York, Rudolph W. Giuliani, Mayor. Second Printing, November 1994.
>
> Division of Planning, Department of Metropolitan Development. "Adult Entertainment Businesses in Indianapolis: An Analysis." 52 plus appendices. Indianapolis, 1984.
>
> Division of Planning, Department of Planning and Economic Development, and Minnesota Crime Control Planning Board Community Crime Prevention Project. Effects on Surrounding Area of Adult Entertainment Businesses in St. Paul. City of St. Paul, Department of Planning and Economic Development; Minnesota Crime Control Planning Board. St. Paul, MN: City of St. Paul; Minnesota Crime Control Planning Board, 1978.
>
> Kelly and Cooper. Adult Use Study: Part 4, Summary, Findings and Recommendations. Prepared for Kansas City, Missouri. Final. April 1998.
>
> Kelly, Eric D., Connie B. Cooper, and American Planning Association. *Everything You Always Wanted to Know About Regulating Sex Businesses*. Chicago, IL: American Planning Association, 2000.
>
> Kelly, Eric Damian, and Connie B. Cooper, through Duncan Associates. "Survey of Appraisers, Fort Worth & Dallas – Effects of Land Uses on Surrounding Property Values," prepared for the City of Fort Worth, September 2004.
>
> Los Angeles City Planning Department. Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles. Planning Committee, Los Angeles City Council Case No. 26475, Los Angeles: Los Angeles City Planning Dept., 1977.
>
> McCleary, Richard, and James Meeker. Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard. University of California, Irvine. Garden Grove, CA, 1991.

McCleary, Richard, Ph.D., Affidavit in Doctor John's, Inc., v. City if Sioux City, C03-4121 MWB, United Stated District Court, Northern District of Iowa.

McCleary, Richard, Ph.D., Affidavit in New Albany DVD, Ltd., v. City of New Albany, Cause No. 4:04-CV-0052-SEB-WGH, United States District Court for the Southern District of Indiana.

Office of Land Development Services. Report on Adult Oriented Businesses in Austin. Austin City Council. Austin: City of Austin, 1986.

Planning Department. Adult Business Study. Planning Department. Phoenix: City of Phoenix, 1979.

Staff Report. Whittier City Planning Commission. Amendment of Zoning Regulations; Case No. 353.078; Adult Business Regulations. Whittier, California. July 11, 1994.

Zoning Administration et al. A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver. Denver City Council. Denver: City and County of Denver, 1998.

WHEREAS, surveys of appraisers conducted by Duncan Associates for the City of Forth Worth in 2004, and other surveys of appraisers by the City of Indianapolis (1984) and Rochester (1999) and a survey of real estate brokers in New York City (1994) all reflect clear findings by these professionals that sexually oriented businesses have a negative effect on residential properties located within distances of 500 to 1,000 feet or less (or, in the Fort Worth study, even greater distance) of such businesses; and

WHEREAS, the City Council recognizes that some of the cited studies included bars without adult entertainment among the businesses studied. The City Council finds, nevertheless, that addressing the establishments that have live, sexually oriented entertainment is a more critical local issue than that of bars without such entertainment, because bars with full liquor licenses in Tennessee are already regulated by the state, and the state regulations directly address many of the concerns that arise with the service of alcohol; and

WHEREAS, the City of Memphis has its own regulatory regime for licensing and monitoring activities at establishments that sell fermented malt beverages (beer) but not other forms of alcoholic beverages; and

WHEREAS, City Council members have had no reports of adverse secondary effects from establishments that offer fermented malt beverages without sexually oriented entertainment; and

WHEREAS, the City Council recognizes that some of the studies cited above and presented to the Council were made in political contexts that are somewhat different from Memphis; and

WHEREAS, Kelly and Cooper's report provides clear local evidence that the types of activities reported in secondary effects studies from other communities are occurring on a regular basis in Memphis; and

WHEREAS, Kelly and Cooper summarized some of such activities as follows:

> The discussion that follows is based on observations during numerous visits to the adult-oriented clubs in Memphis. At least on the surface, each of the establishments visited is engaged in a lawful business (providing non-obscene, adult-oriented media or adult-oriented entertainment) and that such business is in principle protected by the First Amendment's right to freedom of speech. Aspects of the operations that do not appear to be lawful or contribute to the "wide open" character of the establishments and that appear to be beyond the protection of the First Amendment are:
>
> 1. Full nudity and/or close and personal display of genitalia within a number of clubs while the dancers are on stage and interacting with customers;
> 2. Sexual interaction between entertainers as well as between entertainers and customers on the stages of some establishments, including the insertion of tongues and fingers of one person into bodily orifices of another person;
> 3. Extensive physical contact while entertainers were seated in customers' laps with no pretense that this conduct was what might be characterized as a "lap dance;"
> 4. Back rooms in several establishments where the extent of the activity is hard to determine (although third-party web sites and anecdotal evidence suggests that it may involve extensive sexual activity, at least in some establishments);
> 5. In some establishments, little apparent management attention to security or to behavior of customers and entertainers in general;
> 6. On occasion, customers using their "brown bag" alcohol to the point of total inebriation;, and,
> 7. The absence of visible security inside many of the clubs; and

WHEREAS, the full nudity and sexual activity that Kelly and Cooper observed are in clear violation of existing local ordinances; and

WHEREAS, the Tennessee Court of Appeals has held that "lap dancing," as conducted at a Memphis establishment and as observed by Kelly and Cooper constitutes "prostitution" as that term is used in T.C.A. § 39-13-512. *State ex rel. Gibbons v. Jackson,* 16 S.W.3d 797, 1999 Tenn. App. LEXIS 674 (Tenn. Ct. App. 1999)*;*

WHEREAS, the back rooms cited by Kelly and Cooper appear to exist in direct violation of Tenn. Code §7-51-1403-(2); and

WHEREAS, the practice of brown bagging, or customers bringing their own liquor, is currently lawful in these establishments in Memphis but could be regulated by the City; and

WHEREAS, the lack of visible security and management at many of these establishments creates an environment in which it is possible for unlawful activity to flourish; and

WHEREAS, the City Council thus believes that the studies from other communities, when placed in the context of Kelly and Cooper's report, are directly relevant to Memphis; and

WHEREAS, the City Council is aware that a study by the Memphis Shelby Crime Commission seemed to show relatively little reported crime associated with sexually oriented businesses; and

WHEREAS, Kelly and Cooper addressed that issue both in their original report and in a supplemental memorandum to the City Attorney; and

WHEREAS, on this subject in their original report Kelly and Cooper said in part:

> The available data clearly understates law-breaking activity at these establishments. We personally witnessed dozens if not hundreds of violations of city ordinances requiring that dancers perform on stage, that there be no contact between dancers and customers, and that dancers keep some form of bottoms on. Without even going into the backrooms, we witnessed dozens of instances of lap dancing of the type that the

Tennessee Court of Appeals has held constitutes prostitution. Customer reviews on The Ultimate Strip Club List cite multiple specific instances of males receiving sexual release in exchange for tips to dancers in particular clubs (most notably Platinum Plus). Representatives of the Organized Crime Unit told us that they go into these establishments and cite individuals for violations "two or three times a week."

So where is the data? Most of the citations being issued by the Memphis Police Department are, we are told, for violations of city ordinances cited above, regarding the location of performance and the required clothing for dancers. None of those are felonies and none appear in the Uniform Crime Report data that we have seen. Few if any would appear in a review of "calls for service" because all resulted from uninvited police visits to the establishments that might informally be called "raids." We have asked multiple sources about the availability of data on these offenses and have been told consistently that it is simply not available.

Operators of the adult cabarets are apparently not being cited for violations of state law related to operating hours and the closed VIP rooms that exist in some of the clubs, citations that might result in Uniform Crime Reports. Proceedings against the establishments take two forms: citations for violations brought before the beer board, typically resulting in fines; and, occasionally, a nuisance abatement action brought by the District Attorney General. Although both are rooted in violations of the law, neither is a criminal proceeding under Tennessee law, and neither generates a Uniform Crime Report. As with the citations for municipal violations for individuals, we have been told that no one maintains a master data base on these proceedings.

The local empirical data is thus thin, but the evidence itself is substantial. Our report of activities that we have observed at these clubs; the detailed coverage by the Memphis *Commercial Appeal*, particularly in its Sunday, December 3 coverage, identifying the same types of activities that we have reported; and testimony of members of the Organized Crime Unit, which should be a central part of the record before the City Council and the County Commissioners; do and will provide robust local if somewhat anecdotal evidence that the adult entertainment business in Memphis is associated with a great deal of criminal activity, much like that found at sex businesses in other communities. Recent federal charges against one club owner, if ultimately proven, further illustrate the apparently law-flaunting nature of some of these operations; and

WHEREAS, the closure of a sexually oriented business called Platinum Plus by a joint federal-state-local team of law enforcement officials resulted from dozens of violations of state and federal law cited in the indictments and motions to close the business, although none of those criminal activities showed up in the crime data on which the Memphis Shelby County Crime

Commission relied in its study; and

WHEREAS, the City Council acknowledges that Shelby County has adopted a state licensing law that, in the absence of action by the Memphis City Council, would affect businesses in Memphis and may address most of the negative secondary effects reported by Kelly and Cooper and found in studies in other communities; and

WHEREAS, all of the existing sexually oriented businesses in Shelby County are located within the corporate limits of Memphis; and

WHEREAS, the City Council believes that its citizens desire it to adopt local ordinances addressing issues within the boundaries of Memphis, rather than deferring to another government to handle the issue; and

WHEREAS, one effect of the state law adopted by Shelby County would ban the sale and consumption of beer in adult cabarets; and

WHEREAS, all of the adult cabarets operating in Memphis have long sold beer; and

WHEREAS, the City Council is aware of no evidence suggesting that beer is at the root of the problems in these establishments; whereas, Kelly and Cooper specifically reported seeing inebriated customers who had brown bagged; and

WHEREAS, the City Council believes that the use of liquor by customers, where the establishment cannot control the amount or rate of consumption, can and does contribute to the types of problems occurring at these establishments; and

WHEREAS, the City Council finds that the sale of fermented malt beverages does not, in and of itself, lead to adverse secondary effects of the type and intensity that have resulted from these establishments; and

WHEREAS, the City Council thus finds that it is appropriate to allow the continued sale of

beer at these establishments but desires to impose stricter controls on the adult establishment operations, including prohibiting customers from carrying other forms of alcoholic beverages into the establishments; and

WHEREAS, the state law adopted by the County bars topless dancing and would require that dancers wear "pasties" or something similar to cover their nipples; and

WHEREAS, the City Council finds that imposing such requirements is a distinction without a difference, as illustrated for example in the U.S. Supreme Court decision in *Paps A.M. tdba Kandyland v. City of Erie*, 146 L. Ed. 2d 265, 120 S. Ct. 1382 (U.S. 2000), where the local ordinance prohibited "simulated nudity;" and

WHEREAS, the City Council finds that today's fashions --- particularly for young people – are often startlingly revealing and that the customs of the community today are such that the exposure of the female breast in a controlled, all-adult environment in which customers know what to expect, is not the type of public policy issue to which it wishes to devote police and other enforcement resources; and

WHEREAS, the City Council therefore has decided to adopt a licensing ordinance for sexually oriented businesses, based closely on the state law, but retaining the regulatory authority within the boundaries of Memphis, and modifying the substance of the regulations in two minor ways that it believes is in the best interest of Memphis today;

NOW, THEREFORE,

SECTION 1. BE IT ORDAINED, By the City Council that the City of Memphis Ordinance No. 6-721, entitled an Ordinance Regulating and Licensing Sexually Oriented Businesses, encoded at Section 6-72-1 through Section 6-72-17 is hereby repealed by establishing a

1 Formerly Chapter 20, Article IV, Div. 3 of Code prior to recodification.

new Article 6-72 *et seq.* to read as follows:

"Chapter 6-72 ADULT-ORIENTED ESTABLISHMENT REGISTRATION

§ 6-72-1. Purpose

It is the purpose of this ordinance to regulate adult-oriented establishments in order to promote the health, safety, morals, and general welfare of the citizens of the City of Memphis, and to establish reasonable and uniform regulations to prevent the deleterious location of adult-oriented businesses within the City. 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 adult-oriented materials. Similarly, it is not 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 distributors and exhibitors of adult-oriented entertainment to their intended market. Neither is the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

§ 6-72-2. Definitions

As used in this part, unless the context otherwise requires:

(1) "Adult bookstore" means a business that offers, as its principal or predominate stock or trade, sexually oriented material, devices, or paraphernalia, whether determined by the total number of sexually oriented materials, devices or paraphernalia offered for sale or by the retail value of such materials, devices or paraphernalia, specified sexual activities, or any combination or form thereof, whether printed, filmed, recorded or live, and that restricts or purports to restrict admission to adults or to any class of adults. The definition specifically includes items sexually oriented in nature, regardless of how labeled or sold, such as adult novelties, risqué gifts or marital aids;

(2) "Adult cabaret" means an establishment that features as a principal use of its business, entertainers, waiters, or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swim suits, lingerie, or latex covering. "Adult cabaret" includes a commercial establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers;

(3) "Adult entertainment" means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, that has as a principal or predominant theme, emphasis, or portion of such performance, any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomime, modeling, or any other personal service offered customers;

(4) "Adult mini-motion picture theater" means an enclosed building with a capacity of fewer than fifty (50) persons 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 as defined in this section, for observation by patrons in the building;

(5) "Adult motion picture theater" means an enclosed building with a capacity of fifty (50) or more

persons regularly used for presenting material having as a dominant theme or presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons in the building;

(6) "Adult-oriented establishment" includes, but is not limited to, an adult bookstore, adult motion picture theater, adult mini-motion picture establishment, adult cabaret, escort agency, sexual encounter center, massage parlor, rap parlor, sauna; further, "adult-oriented establishment" means any premises to which the public patrons or members are invited or admitted and that are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect. "Adult-oriented establishment" further includes, without being limited to, any adult entertainment studio or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, model studio, escort service, escort or any other term of like import;

(7) "Board" means the adult-oriented establishment board;

(8) "City" as used in this part means the City of Memphis. When city legislative body or city mayor is used in this part, it means the Memphis City Council or the Mayor of the City of Memphis respectively;

(9)(A) "Employee" means a person who performs any service on the premises of an adult-oriented establishment on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise, and whether or not such person is paid a salary, wage, or other compensation by the operator of such business;

(B) "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does it include an independent accountant, attorney, or other similar professional incidentally visiting the premises solely to perform accounting, legal or other similar professional services; provided, that the accountant, attorney or other similar professional is not a manager, owner, operator, entertainer, or escort connected with the adult-oriented establishment or the providing of adult entertainment;

(10) "Entertainer" means any person who provides entertainment within an "adult-oriented establishment" as defined in this section, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee, escort or an independent contractor;

(11) "Escort" means a person who, for monetary consideration in the form of a fee, commission, salary or tip, dates, socializes, visits, consorts with, accompanies, or offers to date, socialize, visit, consort or accompany to social affairs, entertainment or places of amusement or within any place of public resort or within any private quarters of a place of public resort;

(A) "Service-oriented escort" is an escort that:

(i) Operates from an open office;

(ii) Does not employ or use an escort runner;

(iii) Does not advertise that sexual conduct will be provided to the patron or work for an escort bureau that so advertises; and

(iv) Does not offer or provide sexual conduct;

(B) "Sexually-oriented escort" is an escort that:

(i) Employs as an employee, agent, or independent contractor an escort bureau runner;

(ii) Works for, as an agent, employee, contractor, or is referred to a patron by a sexually-oriented escort bureau;

(iii) Advertises that sexual conduct will be provided, or works for, as an employee, agent or independent contractor or is referred to a patron by an escort bureau that so advertises;

(iv) Solicits, offers to provide or does provide acts of sexual conduct to an escort patron, or accepts an offer or solicitation to provide acts of sexual conduct for a fee in addition to the fee charged by the escort bureau;

(v) Works as an escort without having a current valid permit issued under this part in such person's possession at all times while working as an escort; or

(vi) Accepts a fee from a patron who has not first been delivered a contract;

(12) "Escort service" means a "person" as defined in this section, who, for a fee, commission, profit, payment or other monetary consideration, furnishes or offers to furnish escorts or provides or offers to introduce patrons to escorts;

(A) "Service-oriented escort bureau" is an escort bureau that:

(i) Maintains an open office at an established place of business;

(ii) Employs or provides only escorts who possess valid permits issued under this part;

(iii) Does not use an escort bureau runner; and

(iv) Does not advertise that sexual conduct will be provided to a patron;

(B) "Sexually-oriented escort bureau" is an escort bureau that:

(i) Does not maintain an open office;

(ii) Employs as an employee, agent, or independent contractor, uses an escort bureau runner;

(iii) Advertises that sexual conduct will be provided, or that escorts that provide such sexual conduct will be provided, referred, or introduced to a patron;

(iv) Solicits, offers to provide or does provide acts of sexual conduct to an escort patron;

(v) Employs, contracts with or provides or refers escorts who do not possess valid permits issued under this part;

(vi) Does not deliver contracts to every patron or customer; or

(vii) Employs or contracts with a sexually-oriented escort, or refers or provides to a patron, a sexually-oriented escort;

(13) "Massage parlor" means an establishment or place primarily in the business of providing massage or tanning services where one (1) or more of the employees exposes to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material;

(14) "Notice" means, when required by this part, placing the document in the United States mail with sufficient first-class postage to carry it to its destination to the address of the person being notified as contained in their application, unless such person has notified the board in writing of such person's new address. "Receipt of notification" is presumed three (3) days after the mailing of a notice as provided in this subdivision (14).

(15) "Open office" means an office at the escort service from which the escort business is transacted and that is open to patrons or prospective patrons during all hours during which escorts are working, which is managed or operated by an employee, officer, director or owner of the escort service having authority to bind the service to escort and patron contracts and adjust patron and consumer complaints;

(16) "Operator" means any person, partnership, or corporation operating, conducting or maintaining an adult-oriented establishment;

(17) "Person" means an individual, partnership, limited partnership, firm, corporation or association;

(18) "Rap parlor" means an establishment or place primarily in the business of providing nonprofessional conversation or similar service for adults;

(19) "Sauna" means an establishment or place primarily in the business of providing:

(A) A steam bath; or

(B) Massage services;

(20) "Sexual conduct" means the engaging in or the commission of an act of sexual intercourse, oral-genital contact, or the touching of the sexual organs, pubic region, buttocks or female breast of a person for the purpose of arousing or gratifying the sexual desire of another person;

(21) "Sexual encounter center" means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(A) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(B) Physical contact between male and female persons or persons of the same sex when one (1) or more of the persons exposes to view of the persons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genitals, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material;

(22) "Sexual gratification" means sexual conduct as defined in this section;

(23) "Sexual stimulation" means to excite or arouse the prurient interest or to offer or solicit acts of sexual conduct as defined in this section;

(24) Significant financial interest” means ownership or control of ten percent or more of the stock, partnership or other interests controlling the establishment.

(25) "Specified anatomical areas" means:

(A) Less than completely and opaquely covered:

(i) Human genitals;

(ii) Pubic region;

(iii) Buttocks; and

(iv) Female breasts below a point immediately above the top of the areola; and

(B) Human male genitals in a discernibly turgid state, even if completely opaquely covered;

(26) "Specified criminal acts" means the following criminal offenses as defined by the Tennessee Code Annotated:

(A) Aggravated rape;

(B) Rape;

(C) Rape of a child;

(D) Aggravated sexual battery;

(E) Sexual battery by an authority figure;

(F) Sexual battery;

(G) Statutory rape;

(H) Public indecency;

(I) Prostitution;

(J) Promoting prostitution;

(K) Distribution of obscene materials;

(L) Sale, loan or exhibition to a minor of material harmful to minors;

(M) The display for sale or rental of material harmful to minors;

(N) Sexual exploitation of a minor;

(O) Aggravated sexual exploitation of a minor;

(P) Especially aggravated sexual exploitation of a minor; and

(Q) Any felony drug violation;

(27) "Specified services" means massage services, private dances, private modeling, acting as an escort as defined in this part, and any other live adult entertainment as defined in this section; and

(28) "Specified sexual activities" means:

(A) Human genitals in a state of sexual stimulation or arousal;

(B) Acts of human masturbation, sexual intercourse or sodomy; or

(C) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

§ 6-72-3. Creation of boards; terms

(a) There is created in the City of Memphis an adult-oriented establishment board.

(b) The board shall consist of five (5) members appointed by the city mayor.

(c) Of the five (5) members first appointed, two shall be appointed for a term of two (2) years, and two (2) shall be appointed for a term of three (3) years, and one (1) shall be appointed for a term of four (4) years. Thereafter, each board member shall be appointed for a term of four (4) years.

(d) A majority of the members to which the board is entitled shall constitute a quorum.

(e) The board shall serve without compensation, but the members shall receive their actual expenses for attending adult-oriented establishment board meetings.

(f) The board shall select a chair from among its members and the chair shall notify interested persons and members of board meetings.

(g) The board shall meet as often as required to carry out the provisions of this part.

(h) To further the purposes of this part, the board shall have authority to promulgate procedural rules and any substantive rules consistent with this part that are constitutionally valid and are promulgated in such a way that the board's discretion about whether to grant, deny, revoke, or suspend a license or permit is not unbridled.

§ 6-72-4. Operating licenses; issuance; nontransferability; work in unlicensed establishments

(a) Except as provided in subsection (e), from and after January 1, 2008, no adult-oriented establishment shall be operated or maintained in the City of Memphis without first obtaining a license to operate issued by the city adult-oriented establishment board.

(b) A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain place. Any person, partnership or corporation that desires to operate more than one (1) adult-oriented establishment must have a license for each. No building, premises, structure or other facility that contains an adult-oriented establishment shall contain any other adult-oriented establishment of the same type.

(c) No license or interest in a license may be transferred to any person, partnership or corporation.

(d) It is unlawful for any entertainer, employee, escort or operator to knowingly work in or about or to knowingly perform any service directly related to or at the request of the operation of any unlicensed adult-oriented establishment or escort service.

(e) All existing adult-oriented establishments, entertainers, employees, escorts, or operators, at the time this part is given effect must submit an application for an appropriate license or permit within one hundred twenty (120) days of this part becoming effective in the city. All existing adult-oriented establishments, entertainers, employees, escorts, or operators, at the time this part is given effect, who timely submit an application for an appropriate license or permit, as set forth in this subsection (e), shall be granted a conditional license or permit maintaining the status quo, pending final judicial review by the trial court. If no timely application is filed within the one-hundred-twenty-day period, or no license or permit is issued by the board or granted through judicial review by the trial court,

then the adult-oriented establishment, entertainer, employee, escort, or operator shall cease to operate or to perform such services or entertainment.

(f) No license shall be issued by the board unless the applicant certifies that the applicant has satisfied the rules, regulations and provisions of the applicable zoning requirements in the city and has submitted a zoning letter issued by the Memphis and Shelby County Office of Construction Code Enforcement. Any zoning requirement shall be in addition to and not an alternative to any requirement of this part.

§ 6-72-5. Operating licenses; application procedure; required information

(a) Any person, partnership, or corporation desiring to secure a license shall make application to the adult-oriented establishment board. A copy of the application shall be distributed promptly to the police department.

(b) The application for a license shall be upon a form provided by the board. An applicant for a license shall furnish the following information under oath:

(1) Name and address of the individual, partnership, or corporation, including all aliases;

(2) All residential addresses of the applicant for the past three (3) years;

(3) Written proof that the individual is at least eighteen (18) years of age;

(4) The business, occupation or employment of the applicant in an adult-oriented establishment for five (5) years immediately preceding the date of the application;

(5) The adult-oriented establishment or similar business license history of the applicant; whether such applicant, in previously operating in this or any other county, city or state under license, has had such license revoked or suspended, the reason therefor, and the business activity or occupation subject to such action of suspension or revocation during the previous five (5) years;

(6) Any conviction for or plea of nolo contendere to a specified criminal act as defined in § 6-72-2(26);

(7) The address of the adult-oriented establishment to be operated by the applicant;

(8)(A) If the applicant is a corporation, the application shall specify the name, address, and telephone number of the corporation, the date and the state of incorporation, the name and address of the registered agent for service of process of the corporation, and the names and addresses of the officers and directors of the corporation, and the names and addresses of any persons holding fifty percent (50%) or more of the stock of the corporation.

(B) If the applicant is a partnership, the application shall specify the name and address of the partnership, and the name and address of all general partners of the partnership.

(C) If the partnership is a limited partnership, the application shall specify the name and

address of all general partners who have a controlling interest in the partnership; and

(9) A statement by the applicant that the applicant is familiar with the provisions of this part and is in compliance with this part.

(c) Within ten (10) days of receiving the results of the investigation conducted by the board or the police department, pursuant to § 6-72-6(4), the board shall notify the applicant that the application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the board shall advise the applicant in writing whether the application is granted or denied.

(d) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application or the applicant's refusal to submit to or cooperate with any investigation required by this part constitutes an admission by the applicant that the applicant is ineligible for such license and shall be grounds for denial of the license by the board.

§ 6-72-6. Operating licenses; age requirement; other qualifications

To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:

(1)(A) If the applicant is an individual:

(i) The applicant shall be at least eighteen (18) years of age;

(ii) The applicant shall not have had a license revoked within two (2) years immediately preceding the date of the application;

(iii) The applicant shall not have had a license revoked by the City of Memphis adult-oriented establishment board more than once;

(iv) The applicant shall not have been convicted of or pleaded nolo contendere to any violation of this part within five (5) years immediately preceding the date of the application; and

(v) The applicant shall not have been convicted of a "specified criminal act," as defined in § 6-72-2(26), for which:

(a) Less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(b) Less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense;

(c) Less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve-month period;

(B) The fact that a conviction is being appealed shall have no effect on disqualification of the applicant;

(2)(A) If the applicant is a corporation:

(i) All officers, directors and stockholders required to be named under § 6-72-5(b) shall be at least eighteen (18) years of age;

(ii) No officer, director and stockholder required to be named under § 6-72-5(b) shall have had an adult-oriented establishment license revoked within two (2) years immediately preceding the date of the application;

(iii) No officer, director and stockholder required to be named under § 6-72-5(b) shall have had an adult-oriented establishment license revoked by the City of Memphis adult-oriented establishment board more than once;

(iv) No officer, director or stockholder required to be named under § 6-72-5(b) shall have been convicted of or pleaded nolo contendere to any violation of this part within five (5) years immediately preceding the date of the application; and

(v) The applicant or officer, director or stockholder required to be named under § 6-72-5(b) shall not have been convicted of a "specified criminal act," as defined in § 6-72-2(26), for which:

(a) Less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(b) Less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; and

(c) Less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve-month period;

(B) The fact that a conviction is being appealed shall have no effect on disqualification of the applicant;

(3)(A) If the applicant is a partnership, joint venture or any other type of organization where two (2) or more persons have a financial interest:

(i) All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age;

(ii) All persons having a significant financial interest in the partnership, joint venture or other type of organization shall not have had a license revoked within two (2) years immediately preceding the date of the application;

(iii) All persons having a significant financial interest in the partnership, joint venture or other

type of organization shall not have had a license revoked by the City of Memphis adult-oriented establishment board more than once;

(iv) No applicant or person having a significant financial interest in the partnership, joint venture or other type of organization shall have been convicted of or pleaded nolo contendere to any violation of this part within five (5) years immediately preceding the date of the application; and

(v) The applicant or any person having a significant financial interest required to be disclosed shall not have been convicted of a "specified criminal act," as defined in § 6-72-2(26), for which:

(a) Less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(b) Less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense;

(c) Less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve-month period;

(B) The fact that a conviction is being appealed shall have no effect on disqualification of the applicant;

(4) No license shall be issued unless the board or police department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the board no later than twenty (20) days after the date of the application. The board shall only deny an application for a license for reasons set forth in this part;

(5) An applicant who has been convicted of any "specified criminal activities" may not be denied a permit based on those convictions once the time period required in this section has elapsed.

§ 6-72-7. Investigations and inspections; penalty for refusal to permit; notice of decision

(a) In order to effectuate the provisions of this part, the board, its authorized representative or police chief is empowered to conduct investigations of persons engaged in the operation of any adult-oriented establishment and inspect the license of the operators and establishment for compliance. Refusal of an operation or establishment to permit inspections shall be grounds for revocation, suspension or refusal to issue licenses provided by this part.

(b) Within ten (10) days of receiving the results of the investigation conducted pursuant to § 6-72-6(4), the board shall notify the applicant that the application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days, unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the board shall advise the applicant in writing whether the application is granted or denied.

(c) If an additional investigation is held and is not a result of actions by the applicant, upon the expiration of the thirtieth day from the filing of the application, the applicant shall be permitted to operate the business for which the license is sought, unless or until the board or its authorized

representative notifies the applicant of a denial of the application and states the reasons for that denial.

§ 6-72-8. Injunctions; contempt violations

(a) The board has the power and authority to enter into Circuit or Chancery Court in Shelby County, Tennessee to seek an injunction against any person or adult-oriented establishment not in compliance with the provisions of this part, and is further empowered to enter into any such court to enforce the provisions of this part in order to ensure compliance with such provisions.

(b) Any violation of an injunction obtained under this section is contempt with a fine of fifty dollars ($50.00).

(c) Each day in contempt of such injunction is considered a separate offense.

(d) The circuit, chancery, or criminal courts of this state and the chancellors and judges of the courts shall have full power, authority, and jurisdiction, upon application by sworn detailed petition filed by the board within their respective jurisdictions, to issue any and all proper restraining orders, temporary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce this part.

§ 6-72-9. Licenses; permits; grounds for revocation, suspension or annulment; consequences

(a) The board shall revoke, suspend or annul a license or permit for any of the following reasons:

(1) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application to this board;

(2) The operator, entertainer, employee, or any escort violates any provision of this part; provided, that an operator has a duty to supervise conduct on the premises of the adult-oriented establishment and shall be deemed responsible for the conduct of an entertainer, employee, or escort, if the operator knew, or should have known, of the violation and authorized, approved, or, in the exercise of due diligence, failed to take reasonable efforts to prevent the violation;

(3) The operator, entertainer, employee, or escort becomes ineligible to obtain the appropriate license or permit;

(4) Any cost or fee required to be paid by this part is not paid;

(5) Any intoxicating liquor, or malt beverage containing an alcohol content of five percent by weight or more, is served or consumed on the premises of the adult-oriented establishment, when an operator, employee, entertainer, or escort knew, or should have known, of the violation and authorized, approved, or, in the exercise of due diligence, failed to take reasonable efforts to prevent the violation;

(6) An operator who, with actual or constructive knowledge, employs an employee who does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without a permit;

(7) Any operator, employee or entertainer sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed to any minor any adult-oriented entertainment or adult-oriented material;

(8) Any operator, employee or entertainer denies access of law enforcement personnel to any portion of the licensed premises wherein adult-oriented entertainment is permitted or to any portion of the licensed premises wherein adult-oriented material is displayed or sold;

(9) An operator, who with actual or constructive knowledge, fails to maintain the licensed premises in a sanitary condition by allowing continuing violations of the published health code, rules, or regulations specifically applicable in that jurisdiction, based upon an inspection by the appropriate health authority for that jurisdiction; and

(10) Any operator, employee or entertainer is convicted of a specified criminal act, as defined in § 6-72-2(26), provided that such violation occurred on the licensed premises.

(b)(1) Notwithstanding anything in this part to the contrary, before revoking or suspending any license or permit, the chair shall give the license holder or permit holder not less than ten (10) nor more than twenty (20) days' written notice of the charges against such license holder or permit holder and of the revocation of such license or permit, or of the period of time such license or permit is to be suspended; such notice shall also advise the license holder or permit holder of the license holder's or permit holder's right to request a hearing before the board. In the event the license holder or permit holder does not request in writing a hearing before the board within the time set forth in such notice, the suspension or revocation shall be effective beginning the date set forth in such notice.

(2) If the license holder or permit holder desires to request a hearing before the board to contest the suspension or revocation, such request shall be made in writing to the board or the board’s designee within ten (10) days of the license holder's or permit holder's receipt of the notification from the board. If the license holder or permit holder timely requests such a hearing, the effective date of a suspension or hearing shall be stayed pending the final outcome of judicial proceedings to determine whether such license or permit has been properly revoked or suspended under the law.

(3) If the license holder or permit holder timely requests such a hearing, a public hearing shall be held within fifteen (15) days of the board or the board’s designee’s receipt of such request, at which time the license holder or permit holder may present evidence contrary to the provisions of this part. The board shall hear evidence concerning the basis for such suspension or revocation and shall affirm or reverse the suspension or revocation at the conclusion of such hearing; any such hearing shall be concluded no later than twenty-two (22) days after the license holder's or permit holder's receipt of the notification of the suspension or revocation, unless an extension beyond such time period is requested by the license holder or permit holder and granted by the board.

(c) If the board affirms the suspension or revocation, the applicant may institute suit for declaratory judgment in circuit court. Should the applicant choose to appeal the decision of the board this appeal shall be made within thirty (30) days of the date of any such affirmation seeking an immediate

judicial determination of whether such license or permit has been properly revoked or suspended under the law.

(d) Any operator whose license is revoked shall not be eligible to receive a license for two (2) years from the date of revocation. Any operator whose license is revoked for a second time shall not be eligible to hold a license.

(e) The applicant shall be entitled to an expeditious and prompt judicial decision.

(f) The applicant shall have the burden of showing that a revocation or suspension of a license under this section is arbitrary or capricious. If a board decision is found by the court to be clearly erroneous, the court may overturn the decision as being arbitrary or capricious.

§ 6-72-10. Hearings on board actions; judicial review; effect of board decisions

(a) As used in this section, "application" means:

(1) An application for a license;

(2) An application for a permit;

(3) An application for a license renewal; and

(4) An application for a permit renewal.

(b) Whenever an application is denied, the chair shall notify the applicant in writing of the reasons for such action; such notice shall also advise the applicant of the applicant's right to request a hearing before the board. All adult-oriented establishments, entertainers, employees, escorts, or operators who timely submit an application for renewal of an appropriate license or permit shall be granted a conditional license or permit maintaining the status quo pending review by the board and final judicial review by the trial court. If the applicant desires to request a hearing before the board to contest the denial of an application, such request shall be made in writing to the board or the board’s designee within ten (10) days of the applicant's receipt of the notification of the denial of the application. If the applicant timely requests such a hearing, a public hearing shall be held within fifteen (15) days of the board or the board’s designee’s receipt of such request before the board, at which time the applicant may present evidence as to why the application should not be denied. The board shall hear evidence concerning the basis for denial of the application and shall affirm or reverse the denial of an application at the conclusion of such hearing; any such hearing shall be concluded no later than twenty-two (22) days after the applicant's receipt of notification of denial of an application, unless an extension beyond such time period is requested by the applicant and granted by the board.

(c) If the board affirms the denial of an application, the applicant may institute suit for declaratory judgment in circuit court. Should the applicant choose to appeal the decision of the board this appeal shall be made within thirty (30) days of the date of any such denial seeking an immediate judicial determination of whether such application has been properly denied under the law.

(d) The applicant shall be entitled to an expeditious and prompt judicial determination of the issues, and an expeditious and prompt decision shall be rendered by the court.

(e) The applicant shall have the burden of showing that the denial of an application under this section is arbitrary or capricious. If a denial of the application by the board is found by the court to be clearly erroneous, the court may overturn the action as being arbitrary or capricious.

(f) The provisions of this part mandating judicial review shall control over general provisions for declaratory judgment actions in the event of any conflict.

§ 6-72-11. Licenses; termination; renewal applications and fees

(a) Every license issued under this part will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the board. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the board. A copy of the application for renewal shall be distributed promptly by the chair of the board to the police department. The application for renewal shall contain such information and data relevant to the renewal request, including information related to the applicant's qualifications or whether there are grounds for denial of renewal, and shall be given under oath or affirmation, as may be required by the board, but not less than the information contained in the original application.

(b) A license renewal fee of one hundred dollars ($100) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of fifty dollars ($50.00) shall be assessed against the applicant who files for a renewal less than thirty (30) days before the license expires. If the application is denied, one half (1/2) of the fee shall be returned.

(c) If the police department is aware of any information bearing on the operator's qualifications, the information shall be filed in writing with the board not later than ten (10) days after the date of the application for renewal.

(d) Every permit issued under this part will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before an entertainer is allowed to provide entertainment in an adult-oriented establishment in the following calendar year. Any entertainer desiring to renew a permit shall make application to the board. The application for renewal must be filed not later than thirty (30) days before the permit expires. The application for renewal shall be filed in triplicate with and dated by the board. A copy of the application for renewal shall be distributed promptly by the board to the chief of police. The application for renewal shall be upon a form provided by the board and shall contain such information and data relative to the renewal request, such as the applicant's qualifications, or whether there are grounds for denying the renewal, given under oath or affirmation, as may be required by the board.

(e) A permit renewal fee of fifteen dollars ($15.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of five dollars ($5.00) shall be assessed against the applicant who files for renewal less than thirty (30) days before the license expires. If the application is denied, one half (1/2) of the fee shall be returned.

(f) If the police department is aware of any information bearing on the entertainer's qualifications, that information shall be filed in writing with the board not later than ten (10) days after the date of the application for renewal.

(g) Notwithstanding anything in this part to the contrary, any application for renewal of a license or for renewal for a permit shall be handled, investigated, and approved or denied within the same time periods as those established in this part for original license applications and permit applications. In the event a license renewal application or permit renewal application is denied, the applicant shall have all rights of appeal to the board as set forth in § 6-72-10.

§ 6-72-12. Hours of operation; times for inspection

(a) All adult-oriented establishments shall be closed between the hours of three (3) a.m. and eight (8) a.m. Monday through Saturday and between the hours of three (3) a.m. and twelve (12) noon on Sundays. In case of conflict between this and any state law or other local ordinance regulating operating hours, the law or ordinance providing the more limited operating hours shall prevail.

(b) The public portion of all adult-oriented establishments shall be open to inspection at all reasonable times by the police department or such other persons as the board may designate.

§ 6-72-13. Employee register; entertainment list; minors prohibited; physical arrangement; display of license

(a) The operator shall maintain a register of all employees, entertainers, or escorts, showing for each person the name, permit number issued under this part, any aliases used, home address, age, birth date, sex, height, weight, color of hair and eyes, telephone number, social security number, driver license number, date of employment and termination, and duties associated with the adult-oriented establishment. This information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination.

(b) The operator shall make the register of employees available immediately for inspection by the board or police department upon demand of a member of the board or police department at all reasonable times.

(c) Every act or omission by an employee constituting a violation of the provisions of this part shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(d) An operator shall be responsible for supervising the conduct of all entertainers and employees while on the licensed premises, and shall exercise due diligence in taking reasonable efforts to prevent acts or omissions of any entertainers or employees constituting a violation of the provisions of this part, with the operator's failure to reasonably fulfill this duty constituting a ground for determining whether the operator's license shall be revoked, suspended or renewed.

(e) No employee of an adult-oriented establishment shall allow any minor to loiter around or to

frequent an adult-oriented establishment or to allow any minor to view adult entertainment as defined in this part.

(f) Every adult-oriented establishment shall be physically arranged in such a manner that the entire interior portion of the booths, cubicles, rooms or stalls, wherein adult entertainment is provided, shall be visible from the common area of the premises. Visibility shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever.

(g) The operator shall be responsible for and shall provide that any room or area used for the purpose of viewing adult-oriented motion pictures or other types of live adult entertainment shall be readily accessible at all times and shall be continuously opened to view in its entirety.

(h) The license shall be conspicuously displayed in the common area of the premises at all times.

(i) The permit shall be kept by an employee, entertainer, or escort so that it is readily available for display immediately upon request by any member of the police department or other appropriate law enforcement official, any board member, or any person designated by the board to assist it in enforcing this part. Each employee, entertainer, or escort shall immediately display or disclose the employee, entertainer, or escort's valid permit number to any customer upon request.

§ 6-72-14. Prohibited conduct

(a) No operator, entertainer or employee of an adult-oriented establishment, either on the premises or in relation to the person's role as an operator, entertainer, or employee of an adult-oriented establishment, shall permit to be performed, offer to perform, perform, or allow patrons to perform sexual intercourse or oral or anal copulation or other contact stimulation of the genitalia.

(b) No operator, entertainer or employee of an adult-oriented establishment shall encourage or permit any person upon the premises to touch, caress or fondle the breasts, buttocks, anus or genitals of any operator, entertainer or employee.

(c) No operator, entertainer or employee of an adult-oriented establishment shall knowingly permit, engage in, or encourage the use, sale, or distribution of any illegal substance on the premise of an adult-oriented establishments.

(d) No entertainer, employee, or customer shall be permitted to have any physical contact with any other on the premises during any performance and all performances shall only occur upon a stage at least eighteen inches (18") above the immediate floor level and removed at least six feet (6') from the nearest entertainer, employee, or customer.

(e)(1) No employee or entertainer, while on the premises of an adult-oriented establishment, may:

(A) Engage in sexual intercourse;

(B) Engage in deviant sexual conduct;

(C) Appear in a state of nudity; or

(D) Fondle such person's own genitals or those of another.

(2) For the purpose of this section, "nudity" means the showing of the human male or female genitals or pubic area with less than a fully opaque covering, or the showing of the covered male genitals in a discernibly turgid state.

(f) If the license holder operates an escort bureau, such bureau shall not be operated as a sexually-oriented escort bureau as defined in this part.

(g) No permit holder of an escort bureau shall conduct oneself as a sexually-oriented escort as defined in this part.

(h) No license holder shall advertise that such license holder offers sexual stimulation or sexual gratification as defined in this part.

§ 6-72-15. Entertainers and escorts; permits

No person shall be an entertainer, employee, or escort in an adult-oriented establishment without a valid permit issued by the board.

§ 6-72-16. Entertainers and escorts; permits; required application information

(a) Any person desiring to secure a permit as an entertainer, employee, or escort shall make application to the board. The application shall be filed in triplicate with and dated by the board. A copy of the application shall be distributed promptly by the board to the police department.

(b) The application for a permit shall be upon a form provided by the board. An applicant for a permit shall furnish the following information under oath:

(1) Name and address of the individual, including all aliases;

(2) All residential addresses of the applicant for the past three (3) years;

(2) Written proof that the individual is at least eighteen (18) years of age;

(3) The applicant's height, weight, color of eyes and hair;

(4) The adult-oriented establishment or similar business permit history of the applicant; whether such person, in previously operating in this or any other city or state under permit, has had such permit revoked or suspended, the reason for the revocation or suspension, and the business activity or occupation subject to such action of suspension or revocation;

(5) Any conviction for or plea of nolo contendere to "a specified criminal act" as defined in § 6-72-2(26);

(6) Two (2) portrait photographs at least two inches by two inches (2" x 2") of the applicant; and

(7) A statement by the applicant that the applicant is familiar with the provisions of this part and is in compliance with the provisions of this part.

(c) Within ten (10) days of receiving the results of the investigation conducted by the board or police department, the board shall notify the applicant that the applicant's application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigations, the board shall advise the applicant in writing whether the application is granted or denied.

(d) If an additional investigation is held that is not caused by actions of the applicant, upon the expiration of the thirtieth day from the filing of the application, the applicant shall be permitted conditionally to work as an entertainer, employee, or escort pending final judicial review by the trial court of a decision by the board to deny the application.

(e) Failure or refusal of the applicant to give any information relevant to the investigation of the application, or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding the application, or the applicant's refusal to submit to or cooperate with any investigation required by this part, constitutes an admission by the applicant that the applicant is ineligible for such permit, and is grounds for denial thereof by the board.

§ 6-72-17. Entertainers, employees, and escorts; permits; age and morality standards; investigations

(a) To receive a permit as an entertainer, employee or escort, an applicant must meet the following standards:

(1)(A) The applicant shall be at least eighteen (18) years of age;

(B) The applicant shall not have had a permit revoked within two (2) years immediately preceding the date of the application;

(C) The applicant shall not have been convicted of a "specified criminal act," as defined in § 6-72-2(26), for which:

(i) Less than two (2) years have elapsed since the date of conviction if the conviction is for a misdemeanor offense;

(ii) Less than five (5) years have elapsed since the date of conviction if the conviction is for a felony offense; and

(iii) Less than five (5) years have elapsed since the date of conviction for two (2) or more misdemeanor offenses occurring within any twelve-month period;

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

(3) An applicant who has been convicted of any specified criminal activities may not be denied a permit based on those convictions once the time period required in subdivision (a)(1)(C) has elapsed.

(b) No permit shall be issued until the board or police department has investigated the applicant's qualifications to receive a permit. The results of that investigation shall be filed in writing with the board no later than thirty (30) days after the date of the application. The board shall only deny a permit application for reasons set forth in this part.

§ 6-72-18. Entertainers and escorts; licenses and permits; fees

(a) A license fee of five hundred dollars ($500) shall be submitted with the application for a license.

(b) A permit fee of one hundred dollars ($100) shall be submitted with the application for a permit.

§ 6-72-19. Fines and penalties

(a)(1) A violation of this part shall, for a first offense, be punishable by a fine of fifty dollars ($50), and shall result in the suspension of not less than ninety (90) days or revocation of any license.

(2) A second or subsequent violation of this part shall be punishable by a fine of fifty dollars ($50), and shall result in the revocation of any license.

(b) Each violation of this part shall be considered a separate offense, and any violation continuing more than one (1) hour of time shall be considered a separate offense for each hour of violation.

(c) The powers and remedies provided in this part shall be cumulative and supplementary to all other powers and remedies otherwise provided by law. The invocation of one power or remedy shall not be construed as excluding or prohibiting the use of any other available remedy.

§ 6-72-20. Criminal conviction record check

(a)(1) Upon receipt of an application, the body or entity that licenses or permits operators, employees or entertainers shall:

(A) Conduct a criminal conviction record check through such computer terminals available to it or other means of access to criminal convictions that are maintained by the county, city or other political subdivision, the Tennessee bureau of investigation and the federal bureau of investigation; and

(B) Forward the applicant's fingerprints to the Tennessee bureau of investigation, which shall verify the identity of the applicant and shall conduct its own criminal conviction record check itself and forward the results of that investigation to the requesting county, city or other political subdivision.

(2) If no disqualifying criminal conviction is identified by the city or by the Tennessee bureau of investigation, the Tennessee bureau of investigation shall forward a set of the applicant's fingerprints to the federal bureau of investigation for verification of the applicant's identity and request the federal bureau of investigation to conduct a criminal conviction record check investigation using the

fingerprints.

(3) The results of criminal conviction record investigations shall be used for the limited purpose of determining the applicant's qualifications for a license to operate an adult-oriented establishment or for a permit to perform as an entertainer at an adult-oriented establishment.

(b) Fingerprints shall be submitted on authorized fingerprint cards or by electronic, machine-readable data, or other means approved by the Tennessee bureau of investigation and the federal bureau of investigation.

(c) Any cost incurred in conducting such criminal conviction records investigations shall be paid by the city. The city may include such cost as part of any fee it charges for processing the applicant's license or permit.

SECTION 2. BE IT FURTHER ORDAINED, That the Adult-Oriented Establishment Registration Ordinance encoded at City of Memphis Ordinance Section 6-72-1 through 6-72-19, is effective in the City of Memphis according to the terms of this ordinance.

SECTION 3. BE IT FURTHER ORDAINED, That the various sections of this Ordinance are severable, and that any portion declared unlawful shall not affect the remaining portions.

SECTION 4. BE IT FURTHER ORDAINED, That this Ordinance shall become effective January 1, 2008.