

Chapter 152

SEXUALLY ORIENTED BUSINESSES

[HISTORY: Adopted by the Borough Council of the Borough of Upland 11-12-2002 by Ord. No. 8-2002. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 185.

§ 152-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADULT ARCADE — Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still- or motion-picture machines, projectors, videos, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE or ADULT VIDEO STORE

- A. A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, videocassettes or video reproductions, slides, or other visual representations that depict or describe specified sexual activities or specified anatomical areas; or
 - (2) Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.
- B. A principal business purpose exists if materials offered for sale or rental depicting or describing specified sexual activities or specified anatomical areas generate 10% or more of the business's income, or account for 10% or more of inventory, or occupy 10% or more of total floor space. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe specified sexual activities or specified anatomical areas.

ADULT CABARET — A nightclub, bar, restaurant, cafe, or similar commercial establishment that regularly, commonly, habitually, or consistently features:

- A. persons who appear in a state of nudity or seminudity;
- B. Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities;
- C. Films, motion pictures, videocassettes, slides, photographic reproductions, or other image-producing devices that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or
- D. Persons who engage in exotic or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

ADULT MOTEL — A hotel, motel or similar commercial establishment that:

- A. Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way that advertises the availability of this adult type of photographic reproductions;
- B. Offers a sleeping room for rent for a period of time that is less than 24 hours; or
- C. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 24 hours.

ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT THEATER — A theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a state of nudity and/or seminudity, and/or live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

BOROUGH AUTHORITY — The Manager/Secretary of the Borough of Upland or the Mayor of the Borough of Upland and such member(s) of the Police Department as he/she (the Mayor) may designate to perform the duties of the Borough authority under this chapter.

EMPLOYEE — A person who performs any service on the premises of a sexually oriented business on a full-time, part-time, contract, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not said person is paid a salary, wage, or other compensation by the operator of said business. 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 employee include a person exclusively on the premises as a patron or customer.

ESCORT — A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

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

ESTABLISHMENT — Includes any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- C. The additions of any sexually oriented business to any other existing sexually oriented business;
- D. The relocation of any sexually oriented business; or
- E. A sexually oriented business or premises on which the sexually oriented business is located.

LICENSED DAY-CARE CENTER — A facility licensed by the Commonwealth of Pennsylvania whether situated within the Borough or not, that provides care, training, education, custody, treatment or supervision for more than 12 children under 14 years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

LICENSEE — A person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

LIVE THEATRICAL PERFORMANCE — A play, skit, opera, ballet, concert, comedy, or musical drama.

NUDE MODEL STUDIO — Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

NUDITY or STATE OF NUDITY — The appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the areola; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

PERSON — An individual, proprietorship, partnership, corporation, association, or other

legal entity.

PREMISES — The real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to § 152-3 of this chapter.

SEMINUDE OR SEMINUDITY — The appearance of the 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 breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

SEXUAL ENCOUNTER CENTER

- A. A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
 - (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - (2) Activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity or seminudity.
- B. A principal business purpose exists if the services offered are intended to generate business income.

SEXUALLY ORIENTED BUSINESS — An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion-picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS

- A. The human male genitals in a discernibly turgid state, even if fully and opaquely covered;
- B. Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

SPECIFIED CRIMINAL ACTIVITY — Any of the following offenses:

- A. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this commonwealth, other states, or other countries.
- B. For which:

- (1) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
 - (2) Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense;
 - (3) Less than five years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period.
- C. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

SPECIFIED SEXUAL ACTIVITIES — Includes any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- C. Masturbation, actual or simulated; or
- D. Excretory functions as part of or in connection with any of the activities set forth in Subsections A through C above.

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS — The increase in floor areas occupied by the business by more than 25%, as the floor areas existed as of the effective date of this chapter.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS — Includes any of the following:

- A. The sale, lease, or sublease of the business;
- B. The transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or
- C. The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

§ 152-2. Classification.

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores or adult video stores;

- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion-picture theaters;
- F. Adult theaters;
- G. Escort agencies;
- H. Nude model studios; and
- I. Sexual encounter centers.

§ 152-3. License required.

- A. Unlawful acts; constitution of misdemeanor.
 - (1) It shall be unlawful:
 - (a) For any person to operate a sexually oriented business without a valid sexually oriented business operator's license (operator's license) issued by the Borough authority pursuant to this chapter;
 - (b) For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license (employee license) issued to such employee by the Borough authority pursuant to this chapter; or
 - (c) For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the Borough authority pursuant to this chapter.
 - (d) It shall be a defense to Subsections A(1)(b) and (c) of this section if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.
 - (2) Violation of any provision within this subsection shall constitute a misdemeanor.
- B. An application for a sexually oriented business operator's license must be made on a form provided by the Borough. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Prior to issuance of an operator's license, the premises must be inspected by the Borough Health Inspector and the Borough Building Inspector. Prior inspection by the Borough Health Inspector and the Borough Building Inspector shall be required only when the provisions set forth in § 152-18 and/or § 152-17 are

applicable.

- C. An application for a sexually oriented business employee license must be made on a form provided by the Borough authority.
- D. All applicants for a license must be qualified according to the provisions of this chapter. The application may request, and the applicant shall provide, such information reasonably necessary (including fingerprints) to enable the Borough authority to determine whether the applicant meets the qualifications established under this chapter. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.
- E. If a person who wishes to own or operate a sexually oriented business is an individual, he must sign the application for an operator's license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 10% or greater interest in the business must sign the application for an operator's license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, all corporate officers and Borough authorities must sign the application for an operator's license as applicant.
- F. Applications for an operator's license, whether original or renewal, must be made to the Borough authority by the intended operator of the enterprise. Applications must be submitted to the office of the Borough authority or the Borough authorities' designee during regular working hours. Application forms shall be supplied by the Borough authority. The following information shall be provided on the application form:
 - (1) The name, street address (and mailing address if different) of the applicant(s);
 - (2) A recent two-inch-by-two-inch color photograph clearly showing the applicant's face(s);
 - (3) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;
 - (4) The name under which the establishment is to be operated and a general description of the services to be provided; and if the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state the sexually oriented business's fictitious name and submit the required registration documents;
 - (5) Whether the applicant has been convicted, or is awaiting trial on pending charges, of a specified criminal activity as defined in § 152-1, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each;
 - (6) Whether the applicant has had a previous license under this chapter or other similar sexually oriented business ordinance from another municipality or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied,

suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant is or has been a partner in a partnership or an officer, Borough authority or principal stockholder of a corporation that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;

- (7) Whether the applicant holds any other licenses under this chapter or other similar sexually oriented business ordinance from another municipality or county and, if so, the names and locations of such other licensed businesses;
- (8) The single classification of license, as found in § 152-2, for which the applicant is filing;
- (9) The telephone number of the establishment;
- (10) The address, zoning district and legal description of the tract of land on which the establishment is to be located;
- (11) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;
- (12) If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the expected startup date is to be more than 10 days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same;
- (13) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than 150 square feet of floor space, films, videocassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in § 152-18 hereunder.

G. Each application for an operator's license shall be accompanied by the following:

- (1) Payment of the application fee in full;
- (2) If the establishment is a Commonwealth of Pennsylvania corporation, a certified copy of the articles of incorporation, together with all amendments thereto;
- (3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments

thereto;

- (4) If the establishment is a limited partnership formed under the laws of the Commonwealth of Pennsylvania, a certified copy of the certificate of limited partnership, together with all amendments thereto;
- (5) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;
- (6) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;
- (7) If the persons identified as the fee owner(s) of the tract of land in Subsection G(6) is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase-option contract, lease-option contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually oriented business to have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business;
- (8) A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 500 feet of the property to be certified; and the property lines of any established religious institution/synagogue, school, public park or recreation area within 500 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted;
- (9) Any of Subsection G(2) through (8) above shall not be required for a renewal application if the applicant states that the documents previously furnished to the Borough authority with the original application or previous renewals thereof remain correct and current.

H. Employee licenses.

- (1) Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the Borough authority by the person to whom the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the Borough authority. Applications must be submitted to the office of the Borough authority or the Borough authorities' designee during regular working hours. Each applicant shall be required to give the following information on the application form:
 - (a) The applicant's given name, and any other names by which the applicant is or has been known, including stage names and/or aliases;
 - (b) Age, and date and place of birth;

- (c) Height, weight, hair color, and eye color;
 - (d) Present residence address and telephone number;
 - (e) Present business address and telephone number;
 - (f) Date, issuing state, and number of photo driver's license, or other state-issued identification card information;
 - (g) Social Security number; and
 - (h) Proof that the individual is at least 18 years old.
- (2) The personal information provided in this subsection shall be confidential, and shall not be disclosed to the public except to the extent required by commonwealth or federal law.
- I. Attached to the application form for any license under this chapter shall be the following:
- (1) A two-inch-by-two-inch color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Upland Borough Police Department. Any fees for the photographs and fingerprints shall be paid by the applicant.
 - (2) A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other municipality, county, state, or country, has ever had any license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
 - (3) A statement whether the applicant has, within the past five years, been convicted, or is awaiting trial on pending charges, of a specified criminal activity as defined in § 152-1, and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.
- J. Every application for a license under this chapter shall contain a statement under oath that:
- (1) The applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is true and correct; and,
 - (2) The applicant has read the provisions of this chapter.
- K. A separate application and operator's license shall be required for each sexually

oriented business classification as set forth in § 152-2.

- L. The fact that a person possesses other types of commonwealth or Borough permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business operator or employee license.

§ 152-4. Issuance of license.

A. Employee license.

- (1) Upon the filing of an application for a sexually oriented business employee license, the Borough authority shall issue a temporary license to said applicant. The application shall then be referred to the appropriate Borough departments for investigation to be made on the information contained in the application. The application process shall be completed within 30 days from the date of the completed application. After the investigation, the Borough authority shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
 - (a) The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 - (b) The applicant is under the age of 18 years;
 - (c) The applicant has been convicted of a specified criminal activity as defined in § 152-1 of this chapter;
 - (d) The sexually oriented business employee license is to be used for employment in a business prohibited by local or commonwealth law, statute, rule, or regulation, or prohibited by a particular provision of this chapter; or
 - (e) The applicant has had a sexually oriented business employee license revoked by the Borough within two years of the date of the current application.
- (2) If the sexually oriented business employee license is denied, the temporary license previously issued is immediately rendered null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Subsection I of this section.

- B. A license issued pursuant to Subsection A of this section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. While engaged in employment or performing services on the sexually oriented business premises, an employee shall, at all times, possess the license in such manner as to be available for immediate inspection upon lawful request.

- C. A license issued pursuant to Subsection A of this section shall be subject to annual

renewal upon the written application of the applicant and a finding by the Borough authority that the applicant has not been convicted of any specified criminal activity as defined in this chapter, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within 30 days of the completed application. The renewal of a license shall be subject to the fee as set forth in § 152-5. Nonrenewal of a license shall be subject to appeal as set forth in Subsection I of this section.

- D. If application is made for a sexually oriented business operator's license, the Borough authority shall approve or deny issuance of the license within 30 days of receipt of the completed application. The Borough authority shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
- (1) An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 - (2) An applicant is under the age of 18 years;
 - (3) An applicant has been denied a license by the Borough to operate a sexually oriented business within the preceding 12 months, or whose license to operate a sexually oriented business has been revoked within the preceding 12 months;
 - (4) An applicant is overdue in payment to the Borough for taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to the sexually oriented business for which license is sought, or the property on which the sexually oriented business is located or will be located;
 - (5) An applicant has been convicted of a specified criminal activity as defined in § 152-1;
 - (6) The premises to be used for the sexually oriented business have not been approved by the Health Officer, Building Inspector, and Zoning Board representative as being in compliance with applicable laws and ordinances, if such approval is required under other sections of this chapter;
 - (7) The license fee required under this chapter has not been paid;
 - (8) An applicant of the proposed establishment is in violation of or is not in compliance with one or more of the provisions of this chapter.
- E. A license issued pursuant to Subsection D of this section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the § 152-2 classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

- F. If so required under other sections of this chapter, the Borough Health Inspector and the Borough Building Inspector shall complete their certification that the premises are in compliance or not in compliance within 20 days of receipt of the completed application by the Borough authority. The certification shall be promptly presented to the Borough authority. Failure of an appropriate department to timely certify its inspection shall not be grounds for refusing to issue a license within the mandatory time period prescribed in Subsection D.
- G. A sexually oriented business license shall be issued for only one classification, as set forth in § 152-2.
- H. In the event that the Borough authority determines that an applicant is not eligible for a sexually oriented operator's license, the applicant shall be given notice in writing of the reasons for the denial within 30 days of the receipt of the completed application by the Borough authority, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than 10 days in order to make modifications necessary to comply with this chapter.
- I. An applicant may appeal the decision of the Borough authority regarding a denial to the Upland Borough Council by filing a written notice of appeal with the Borough Manager/Secretary within 10 days after service of notice upon the applicant of the Borough authorities' decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Borough authority may, within 15 days of service upon him/her/them of the applicant's memorandum, submit a responsive memorandum to the Upland Borough Council. After reviewing such memoranda, as well as the Borough authorities' written decision, if any, and exhibits submitted to the Borough authority, the Upland Borough Council shall vote either to uphold or overrule the Borough authorities' decision. Such vote shall be taken within 21 calendar days after the date on which the Borough Manager/Secretary receives the notice of appeal. The status quo immediately prior to denial of the license shall be maintained during the pendency of the appeal. Judicial review of a denial by the Borough authority and Upland Borough Council may be made pursuant to § 152-10 of this chapter. The status quo shall continue to be maintained during the pendency of judicial review.
- J. A license issued pursuant to Subsection D of this section shall be subject to annual renewal upon the written application of the applicant and a finding by the Borough authority that the applicant has not been convicted of any specified criminal activity as defined in this chapter, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within 30 days of the completed application. The renewal of a license shall be subject to the fee as set forth in § 152-5.

§ 152-5. Fees.

The annual fee for a sexually oriented business operator's license, whether new or renewal, is \$500. The annual fee for a sexually oriented business employee license, whether new or renewal, is \$50. These fees are to be used to pay for the cost of the administration and enforcement of this chapter.

§ 152-6. Inspection.

- A. The Borough shall regularly inspect the premises of the sexually oriented business in order to ensure compliance with the provisions of this chapter. An applicant or licensee shall permit representatives of the Borough authority, Upland Police Department and/or the Borough Health Inspector to inspect the premises at any time the establishment is open for business. Such inspection shall be limited to visual assessment of the activities conducted in areas to which patrons have access or are allowed access; to requests for inspection of the licenses required under this chapter; and to requests for identification of those individuals who reasonably appear to be under the age of 18.
- B. A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he/she refuses to promptly permit such lawful inspection of the premises.

§ 152-7. Expiration of license; denial of renewal.

- A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 152-3. Application for renewal should be made at least 30 days before the expiration date. When application is made less than 30 days before the expiration date, the expiration of the license will not be affected.
- B. When the Borough authority denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. Notwithstanding the provisions of this section, in the event a licensee appeals the nonrenewal of a license, the status quo immediately prior to nonrenewal shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits as set forth in § 152-10.

§ 152-8. Suspension.

- A. The Borough authority shall suspend a license for a period not to exceed 30 days if he/she/they determines that licensee or an employee of licensee has:
 - (1) Violated or is not in compliance with any section of this chapter;
 - (2) Operated or performed services in a sexually oriented business while intoxicated by the use of alcoholic beverages or controlled substances;
 - (3) Refused to allow prompt inspection of the sexually oriented business premises as authorized by this chapter;
 - (4) With knowledge, permitted gambling by any person on the sexually oriented

business premises.

- B. Notwithstanding the provisions of this section, in the event a licensee appeals the suspension of a license, the status quo immediately prior to suspension shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits as set forth in § 152-10.

§ 152-9. Revocation.

- A. The Borough authority shall revoke a license if a cause of suspension in § 152-8 occurs and the license has been suspended within the proceeding 12 months.
- B. The Borough authority shall revoke a license if he determines that:
 - (1) A licensee gave materially false or misleading information in the material submitted during the application process;
 - (2) A licensee was convicted of a specified criminal activity on a charge that was pending prior to the issuance of the license;
 - (3) A licensee has, with knowledge, permitted the possession, use, or sale of controlled substances on the premises;
 - (4) A licensee has, with knowledge, permitted the sale, use, or consumption of alcoholic beverages on the premises;
 - (5) A licensee has, with knowledge, permitted prostitution on the premises;
 - (6) A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (7) A licensee has, with knowledge, permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises;
 - (8) A licensee is delinquent in payment to the Borough or state for any taxes, fees, fines, or penalties relating to the sexually oriented business or the premises thereon;
 - (9) A licensee has, with knowledge, permitted a person under 18 years of age to enter or remain in the establishment;
 - (10) A licensee has attempted to sell his business license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a nonlicensee of the establishment; or
 - (11) A licensee has, with knowledge, permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business.
- C. When the Borough authority revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a license for one year from the date revocation became effective. Notwithstanding the provisions of this section, in the event the licensee appeals the revocation of a license, the status quo immediately

prior to revocation shall be maintained throughout the pendency of the appeal, up to and including judicial review on the merits as set forth in § 152-10.

§ 152-10. Judicial review.

Within 14 days of a denial of an initial or renewal application by the Borough authority and Upland Borough Council, or suspension or revocation of a license by the Borough authority, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. Upon notification by summons of the filing of a complaint seeking judicial review of the Borough's administrative action, the Borough shall transmit the record of the administrative action to the court no later than five business days after receipt of said summons, and shall answer the complaint no later than 10 days after receipt of the summons. In addition, the Borough shall submit its response brief within 14 days of receipt of the petitioner's brief. The administrative action shall then be promptly reviewed by the court.

§ 152-11. Transfer of license prohibited.

- A. A licensee shall not transfer his/her/their license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application and set forth in the operator's license.
- B. An operator's license shall not be transferable from one location to another.

§ 152-12. Location restrictions.

Sexually oriented businesses shall be permitted in the Business Zoning District of the Borough of Upland, when authorized by the Upland Zoning Hearing Board as a special exception, provided that:

- A. The sexually oriented business may not be operated within:
 - (1) Five hundred feet of a church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
 - (2) Five hundred feet of a public or private educational facility including but not limited to child day-care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education school, junior colleges, and universities; school includes the school ground, but does not include the facilities used primarily for another purpose and only incidentally as a school;
 - (3) Five hundred feet of a public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, skating rink, pedestrian/bicycle paths, wilderness areas, or other similar public land within the Borough which is under the control, operation, or management of the Borough park and recreation

authorities;

- (4) Five hundred feet of the property line of a lot zoned for residential use and devoted to a residential use as defined in the Zoning Code;¹ or
 - (5) Five hundred feet of another sexually oriented business.
- B. A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business that is classified in accordance with § 152-2.
 - C. For the purpose of this chapter, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot, or licensed day-care center.
 - D. For purposes of Subsection C of this section, the distance between any two sexually oriented business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

§ 152-13. Nonconforming uses; amortization.

- A. Any business lawfully operating on the effective date of this chapter that is in violation of the locational or structural configuration requirements of this chapter shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 500 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operated at a particular location is the conforming use and the later-established business(es) is nonconforming.
- B. A sexually oriented business lawfully operating as a conforming use at the time of the passage of this chapter is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park, or residential district within 500 feet of the sexually oriented business. This provision applies only to the renewal of a valid business license, and does not apply when an application for a business license is submitted after an operator's license has expired or has been revoked.

1. Editor's Note: See Ch. 185, Zoning.

§ 152-14. Additional regulations for adult motels.

- A. Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this chapter.
- B. It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, he rents or subrents the same sleeping room again.
- C. For purposes of Subsection B of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.
- D. Violation of Subsection B of this section shall constitute a misdemeanor.

§ 152-15. Additional regulations for escort agencies.

- A. An escort agency shall not employ any person under the age of 18 years.
- B. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.
- C. Violation of this section shall constitute a misdemeanor.

§ 152-16. Additional regulations for nude model studios.

- A. A nude model studio shall not employ any person under the age of 18 years.
- B. A person under the age of 18 years commits a misdemeanor if the person appears seminude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to the public view or visible by any other person.
- C. A person commits a misdemeanor if the person appears in a state of nudity, or with knowledge, allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
- D. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

§ 152-17. Additional regulations concerning public nudity.

- A. It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a nude or seminude condition in a sexually oriented business, unless the person is an employee who, while nude or seminude, is at least 10 feet from any patron or customer, and on a stage raised at least two feet from the floor.
- B. It shall be a misdemeanor for an employee, while nude or seminude, to solicit any pay or gratuity from any patron or customer on the sexually oriented business

premises, or for any patron or customer to pay or give any gratuity to any employee, while said employee is nude or seminude on the sexually oriented business premises.

- C. It shall be a misdemeanor for an employee, while nude or seminude, to touch a patron or the clothing of a patron, or for a patron to touch a nude or seminude employee or the clothing of a nude or seminude employee, while the employee is on the sexually oriented business premises.

§ 152-18. Regulations pertaining to exhibition of sexually explicit films and videos.

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

- (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Borough authority may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since said diagram was prepared.
- (2) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Borough authority or his/her/their designee.
- (4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of

the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

- (6) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in Subsection A(5) of this section remains unobstructed at all times. No doors, walls, partitions, curtains, merchandise, display racks, or other object(s) shall obstruct from view of the manager's station any portion of the premises to which patrons have access. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to Subsection A(1) of this section.
- (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 5.0 footcandles as measured at the floor level.
- (8) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (9) No viewing room or booth may be occupied by more than one person at any time.
- (10) No opening of any kind shall exist between viewing rooms or booths.
- (11) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no more than one person at a time occupies a viewing booth or room, and to ensure that no person attempts to make an opening of any kind between the viewing booths or rooms.
- (12) The operator of the sexually oriented business shall, each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.
- (13) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (14) The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor.

- B. A person having a duty under Subsections A(1) through (14) of this section commits a misdemeanor if he/she, with knowledge, fails to fulfill that duty.

§ 152-19. Exterior portions of sexually oriented businesses.

- A. It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.
- B. It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this chapter.
- C. It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:
 - (1) The establishment is a part of a commercial multiunit center; and
 - (2) The exterior portions of each individual unit in the commercial multiunit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multiunit center.
- D. Nothing in this chapter shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.
- E. A violation of any provision of this section shall constitute a misdemeanor.

§ 152-20. Signage.

- A. Notwithstanding any other Borough ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one primary sign and one secondary sign, as provided herein.
- B. Primary signs shall have no more than two display surfaces. Each such display surface shall:
 - (1) Not contain any flashing lights;
 - (2) Be a flat plane, rectangular in shape;
 - (3) Not exceed 18 square feet in area; and
 - (4) Not exceed three feet in height or six feet in length.
- C. Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

- D. Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
- E. Secondary signs shall have only one display surface. Such display surface shall:
 - (1) Be a flat plane, rectangular in shape;
 - (2) Not exceed six square feet in area;
 - (3) Not exceed two feet in height and three feet in width; and
 - (4) Be affixed or attached to any wall or door of the enterprise.
- F. The provisions of Subsection B(1) and Subsection C and D shall also apply to secondary signs.
- G. Violation of any provision of this section shall constitute a misdemeanor.

§ 152-21. Sale, use, or consumption of alcoholic beverages prohibited.

- A. The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.
- B. Any violation of this section shall constitute a misdemeanor.

§ 152-22. Persons younger than 18 prohibited from entry; attendant required.

- A. It shall be unlawful to allow a person who is younger than 18 years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.
- B. It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business's regular business hours. It shall be the duty of the attendant to prohibit any person under the age of 18 years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of 18 unless such attendant asked for and was furnished:
 - (1) A valid operator's, commercial operator's, or chauffeur's driver's license; or
 - (2) A valid personal identification certificate issued by the Commonwealth of Pennsylvania reflecting that such person is 18 years of age or older.
- C. Violation of this section shall constitute a misdemeanor.

§ 152-23. Massages or baths administered by person of opposite sex.

It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar-type business where any physical contact with the recipient of such services is provided by a person of the opposite sex. Violation of this section shall constitute a misdemeanor.

§ 152-24. Hours of operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 11:00 p.m. and 11:00 a.m. on weekdays and Saturdays. No sexually oriented business shall open for business or remain open for business on Sunday or any legal holiday recognized by the Commonwealth of Pennsylvania.

§ 152-25. Exemptions.

- A. It is a defense to prosecution under this chapter that a person appearing in a state of nudity did so in a modeling class operated:
 - (1) By a proprietary school, licensed by the Commonwealth of Pennsylvania, a college, junior college, or university supported entirely or partly by taxation; or
 - (2) By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.
- B. Notwithstanding any other provision in this chapter, movies rated G, PG, PG-13, or R, by the Motion Picture Association of America (MPAA), or live theatrical performances with serious artistic, social, or political value, that depict or describe specified anatomical areas or specified sexual activities, are expressly exempted from regulation under this chapter.

§ 152-26. Notices.

- A. Any notice required or permitted to be given by the Borough authority or any other Borough office, division, department or other agency under this chapter to any applicant, operator or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the Borough authority. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the Borough authority or his/her/their designee shall cause it to be posted at the principal entrance to the establishment.
- B. Any notice required or permitted to be given to the Borough authority by any person under this chapter shall not be deemed given until and unless it is received in the office of the Manager/Secretary of the Borough of Upland.
- C. It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Borough authority in writing of any change of residence or mailing address.

§ 152-27. Injunction.

A person who operates or causes to be operated a sexually oriented business without a

valid operator's license, or in violation of § 152-7 of this chapter, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation.

§ 152-28. Violations and penalties.

Any person, partnership, business, corporation or other legal entity who fails, neglects or refuses to comply with any and all of the requirements of the provisions of this chapter, or who fails or refuses to comply with any notice, order or direction of the Borough authority, Borough Building Inspector or the Borough Health Inspector, upon conviction thereof in a summary proceeding before a District Justice, such person, partnership, business, corporation or other legal entity or the officers of any such corporation or entity or the agent or any of them responsible for such violation, shall be sentenced to pay a fine to the Borough of Upland of not more than \$1,000, plus the cost of prosecution.

- A. In default of such payment, such person, officer or agent shall be imprisoned in Delaware County Prison for a period not in excess of 30 days.
- B. Each day that such violation is permitted to exist shall constitute a separate offense.