



**CITY OF HUBER HEIGHTS
STATE OF OHIO
Ordinance Review Commission**

March 17, 2021

6:30 P.M.

Hybrid In-Person/Remote Meeting

City Hall – 6131 Taylorsville Road – Council Chambers

1. **Call Meeting To Order/Roll Call**

2. **Approval of Minutes**
 - A. February 17, 2021

3. **Topics of Discussion**
 - A. Legislation Worksheets Review

 - B. City Code - Part Seven - Business Regulation Code - Review

 - C. City Code - Part Nine - Streets and Public Services Code - Part 1 - Review

 - D. Administrative/Process Issues

4. **Adjournment**

AI-7463

New Business B.

Ordinance Review Commission

Meeting Date: 03/17/2021

City Code - Part Seven - Business Regulation Code - Review

Submitted By: Anthony Rodgers

Department: City Council

Subject

City Code - Part Seven - Business Regulation Code - Review

Purpose and Background

The Ordinance Review Commission will begin review of the City Code - Part Seven - Business Regulation Code (see attached).

Fiscal Impact

Source of Funds	Cost	Recurring Cost (Yes/No)
N/A	N/A	N/A

Attachments

Part Seven - Business Regulation Code

PART SEVEN - BUSINESS REGULATION CODE

CHAPTER 735 - SEXUALLY ORIENTED BUSINESSES⁽¹⁾

Footnotes:

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Cross reference— Obscenity and sexual offenses—See Ch. 533; In Light Industrial and Mixed Use District—See §§ 1156.02, 1156.03.

735.01 - Purpose and intent.

It is the purpose and intent of this chapter to regulate sexually oriented businesses, to promote the health, safety, morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the City, and to regulate their operation, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses.

The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene, or otherwise illegal materials, goods or activities.

(Ord. 2000-O-1300, Passed 9-24-01)

735.02 - Definitions.

The definitions enumerated below may contain references to "nudity" or a "state of nudity". Such references should not be construed or interpreted to permit nudity or a state of nudity in any sexually oriented business in the City. In fact, this chapter expressly prohibits such. The definitions are provided for illustrative purpose only. The words defined here shall have these meanings regardless of whether they are capitalized, in quotation marks, or otherwise noted as defined terms.

For the purposes of this chapter, certain terms and words are defined as follows:

Sexually oriented businesses are those businesses defined as follows:

- (1) *Adult arcade* means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, or other visual representations, for viewing by five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".
- (2) *Adult Bookstore, Adult Novelty Store or Adult Video Store* means a commercial establishment which has as a significant or substantial (i.e., 50 percent or more) portion of its stock-in-trade or derives a significant or substantial (i.e., 50 percent or more) portion of revenues or devotes a significant or substantial (i.e., 50 percent or more) portion of its interior business or advertising to the sale or rental for any form of consideration, of any one or more of the following:

- A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas";
- B. Instruments, devices, or paraphernalia which is designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas", and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as the definition above is met.

- (3) *Adult cabaret* means a nightclub, bar, restaurant, private club, bottle club, juice bar or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:
 - A. Persons who appear nude or semi-nude or in a state of nudity or semi-nudity;
 - B. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or,
 - C. Films, motion pictures, video cassettes, digital video discs, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

References above to nudity should not be construed or interpreted to permit nudity or a state of nudity in an "Adult Cabaret". "Prurient" shall have that meaning given to it by the United States Supreme Court in *Brockett v. Spokane*, 472 U. S. 491 (1985). "Private Club" shall mean an establishment where patrons may bring in their own bottle or other container of alcohol (including beer, wine or liquor) and purchase a mixture for the same or use of a glass from the club or business.

- (4) *Adult motel* means a motel, hotel or similar commercial establishment which offers public accommodation, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, digital video discs, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television.
- (5) *Adult motion picture theater* means a commercial establishment where films, motion pictures, video cassettes, digital video discs, slides or similar photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.
- (6) *Adult theater* means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or semi-nudity or live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities" which is not customarily open to the general public during such features because it excludes minors by reason of age.
- (7) *Escort Agency* means 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. "Escort" means a person who, for any form of 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 or to privately appear in the state of nudity or semi-nudity for another person.

- (8) *Massage parlor* means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body which occurs as a part of or in connection with "specified sexual activities" is offered, or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "specified anatomical areas." The definition of sexually oriented businesses shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program, nor barber shops or beauty salons in which massages are administered only to the scalp, the face, the neck or the shoulder, nor by any other individual licensed by the State of Ohio to perform massages.
- (9) *Semi-Nude Model Studio* means any place where a person regularly appears in a state of nudity or semi-nudity or displays "specified anatomical areas" for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. Reference above to nudity should not be construed or interpreted to permit nudity or a state of nudity in a "Semi-Nude Model Studio".
- (10) *Sexual encounter establishment* means a business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration:
- A. A place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas"; or
 - B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the State of Ohio engages in medically approved and recognized sexual therapy. Reference above to nudity should not be construed or interpreted to permit nudity or a state of nudity in a "Sexual encounter establishment".

The above listed shall be termed as sexually oriented business classifications.

Agricultural District means any zoning district set forth in Title 5 of Part 11, Planning and Zoning Code, of the Codified Ordinances of the City of Huber Heights that contains the word "agricultural" in its title.

Applicant means any person required by Section 735.08 herein to sign an Application For Permit To Operate A Sexually Oriented Business.

Church or Church Grounds means buildings used for public worship, and the ground attached to them necessary for the proper occupancy, use and enjoyment by a fellowship of believers, congregation, society, corporation, convention or association that is formed primarily or exclusively for religious purposes and that it is not formed for the private profit of any person.

Conviction or convicted shall include a plea of guilty or nolo contendere or a finding of guilt by a court of law, but shall not include convictions overturned on appeal prior to the date of application under this chapter.

Dwelling means any building or portion thereof occupied or intended to be occupied exclusively for residential purposes, but not including a tent, cabin, trailer or trailer coach or any other temporary or transient structure or facility.

- (1) *Single Family* means a building occupied or constructed to be occupied exclusively for residential purposes by one family or housekeeping unit.

- (2) *Two Family* means a building occupied or constructed to be occupied exclusively and separately by not more than two families or housekeeping units.
- (3) *Multiple* means a building or portion thereof occupied or constructed to be occupied separately by more than two families or housekeeping units.

Employee means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business, or any form of remuneration, tips of any kind or gratuities from the operator or customers of said business.

Entertainer means any person who provides sexually oriented adult entertainment in an adult cabaret or sexual encounter establishment whether or not an employee of the operator and whether or not a fee is charged or accepted for such entertainment.

Establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any of the sexually oriented businesses defined in this chapter;
- (3) The addition of any of the sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or
- (4) The relocation of any such sexually oriented business.

Independent Contractor means a person who contracts with a sexually oriented business establishment to provide services on behalf of the sexually oriented business to the patrons of such business whether or not the individual receives any remuneration, gratuity or tips of any kind, or pays the owner or operator for the right to perform or entertain in the sexually oriented business. The intention of this paragraph is to exclude those persons who are not employees and who are not reasonably expected to have contact with customers or patrons of the sexually oriented business, including, but not limited to, persons on the Permitted Premises performing repair or maintenance services or delivering goods to the Permitted Premises.

Manager means any person who participates directly in the day-to-day management of the sexually oriented business.

Nude, Nudity or State of Nudity means a live person exhibiting:

- (1) The anus, male genitals, female genitals, or the areola or nipple of the female breast; or
- (2) A state of dress which fails to opaquely and fully cover anus, male or female genitals, pubic region or areola or nipple of the female breast.

Operate or Cause to be Operated means to cause to function or to put or keep in operation.

Operator means and includes any persons on the Permitted Premises of a sexually oriented business who are authorized to exercise overall operational control of the business or who cause to function or put or keep in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an Owner, part Owner or Permittee of the business.

Owner means and includes the person or entity so listed on the application for a permit to operate a sexually oriented business or, in the event no such application is made, means and includes the custodian, manager, operator or person in charge of the business.

Permitted Premises means any premises that is the site of a business classified as a sexually oriented business and that requires a permit under this chapter, or is the site of a prospective sexually oriented business for which a permit is being requested.

Permittee means a person or entity in whose name a permit to operate a sexually oriented business has been issued, as well as any individual listed as an applicant on the application for a permit of an entity for a sexually oriented business.

Person means the operator and any individual, proprietorship, partnership, corporation, association, or other legal entity that owns or operates the sexually oriented business.

Public park or recreation area means public land 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, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the City which is under the control, operation, or management of any governmental entity.

Regularly features or regularly shown means, with respect to an Adult Theatre or Adult Cabaret, a consistent course of conduct, such that the films or performers exhibited constitute a substantial portion of the films or performances offered as a part of the regular business of the Adult Theatre or Adult Cabaret.

Residential District or Use means any zoning district set forth in Title 5 of Part 11, Planning and Zoning Code, of the Codified Ordinances of the City of Huber Heights that contains the words "residence" or "residential" in its title.

School means any public or private educational facility licensed by the State of Ohio including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, colleges and universities. School includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.

Semi-Nude, Semi-Nudity or a State of Semi-Nudity means a state of dress in which opaque clothing covers no more than the genitals, pubic region, and areolas of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexually Oriented Adult Entertainment means a live performance at an adult cabaret.

Sexually Oriented Business means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor, sexual encounter establishment, escort agency or semi-nude model studio, as the terms are defined in this chapter.

Simulate means to assume the mere appearance of something, without the reality; to imitate or pretend.

Specified Anatomical Areas means and includes any of the following:

- (1) Less than completely and opaquely covered human genitals, pubic region, anus, or areolas or nipple of female breasts; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Transfer of Ownership or Control shall mean any of the following:

- (1) The sale, lease or sublease of the business,
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the sexually oriented business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Specified Criminal Act means sexual crimes against children, sexual abuse, rape or the following crimes connected with another sexually oriented business: distribution of material harmful to minors, prostitution, or tax violations. These crimes must include the element of knowledge to constitute a "Specified Criminal Act" on the part of the accused.

Specified Sexual Activities means and includes any of the following:

- (1) The fondling or other intentional touching of human genitals, pubic region, anus, or female breast,
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Human genitals in a state of sexual stimulation, arousal or tumescence;
- (5) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (4) above.

Viewing Room means the room, booth or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, video or other video reproduction.

(Ord. 2000-O-1300, Passed 9-24-01)

735.03 - Classification and distance restrictions.

- (a) No more than one classification of sexually oriented business can be operated in any one Permitted Premises.
- (b) No person shall cause or permit the establishment of any sexually oriented businesses, as defined under this chapter except within a zoning district where such use is permitted under the Huber Heights Codified Zoning Ordinances. Nothing in this chapter requires the issuance of a zoning certificate for the issuance of a permit to operate a sexually oriented business. Any zoning requirements imposed by the City are independent of the requirements of this chapter. Further, no Permitted Premises of a sexually oriented business may be located within 500 feet of the Permitted Premises of another such business; or, within 500 feet of the grounds of any School, public park or recreation area, Church or Church grounds, "residence or residential district," or within 500 feet of any "dwelling" located in an "agricultural district."

(Ord. 2006-O-1657, Passed 10-5-06)

735.04 - Measurement of distance.

With regard to the preceding Section 735.03(b) and this chapter, all distances shall be measured in a straight, horizontal line, without regard for intervening structures. Measurements from the Permitted Premises of a sexually oriented business shall be made from the closest exterior structural wall or section of wall enclosing the business to the closest property line or exterior structural wall of all other properties, zoning districts, or buildings in all directions.

(Ord. 2000-O-1300, Passed 9-24-01)

735.05 - Prohibitions.

Permits for sexually oriented businesses shall be required and governed by the procedures and policies specified in this chapter. In addition, any sexually oriented business shall be subject to the following restrictions:

- (a) A person commits a misdemeanor of the first degree if he knowingly operates or causes to be operated a sexually oriented business in violation of Section 735.03 of this chapter.
- (b) A person commits a misdemeanor of the first degree if he knowingly causes or permits the operation, establishment or maintenance of more than one sexually oriented business within the same building, structure, or portion thereof.

(Ord. 2000-O-1300, Passed 9-24-01)

735.06 - Injunction.

A person who operates or causes to be operated a sexually oriented business without having a valid permit is subject to a suit for injunction and shall also be guilty of a first degree misdemeanor. If any injunctive relief must be sought, reasonable attorneys' fees and related costs and expenses shall be assessed at the discretion of the Court against the sexually oriented business, its owners and operators.

(Ord. 2000-O-1300, Passed 9-24-01)

735.07 - Sexually oriented business permit: purpose and intent.

It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious effects of sexually oriented businesses within the City. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented adult entertainment to their intended market. Neither is it the intent or effect of this chapter to in any way condone or legitimize the distribution of material which is obscene or harmful to minors.

(Ord. 2000-O-1300, Passed 9-24-01)

735.08 - Permit required.

- (a) No sexually oriented business shall operate without first obtaining a valid sexually oriented business permit issued by the City for the particular type of business classification sought to be operated. It shall be unlawful and a person commits a misdemeanor of the first degree if he/she knowingly operates or causes to be operated a sexually oriented business without first obtaining said permit, or employs a person as a sexually oriented business employee or independent contractor who is not authorized to work or perform services pursuant to this chapter.
- (b) The City Manager is responsible for granting, denying, revoking, renewing and suspending sexually oriented business permits for proposed or existing sexually oriented businesses.
- (c) The Division of Police is responsible for obtaining information on whether an applicant has been convicted of a "specified criminal act" during the time period set forth.
- (d) Reserved.
- (e) Application for a permit must be made on a form provided by the City. Any person desiring to operate a sexually oriented business shall file with the City an original and two copies of a sworn permit application on the standard application form of the City. If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a permit as an applicant. If an entity wishes to operate a sexually oriented business, the entity shall file an application for a permit with an authorized representative signing for the entity. In addition, each Manager of the entity shall also sign the application for a permit. Each applicant must be qualified under this chapter and each applicant shall be considered as a permittee if a permit is granted.
- (f) The completed application shall contain the following information and shall be accompanied by the documents indicated:
 - (1) If the applicant is:

- A. An individual, the individual shall state his/her legal name and any aliases; further, if the applicant intends to operate the business as a sole proprietorship, the applicant shall list the name under which he/she intends to do business;
 - B. Representing a partnership, the applicant shall state the partnership's complete name, the name and address of the statutory agent or other agent authorized to accept service of process, and the legal name and any aliases of each Manager;
 - C. Representing a corporation, the applicant shall state the corporation's complete name, provide the name of the registered corporate agent and the address of the registered office for service of process, and the legal name and any aliases of each Manager; or
 - D. Representing a limited liability company, the applicant shall state the limited liability company's name, the name and address of the registered agent and address of the registered office for service of process, and the legal name and any aliases of each Manager.
- (2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, applicant must state the sexually oriented business's fictitious name.
 - (3) Whether the applicant (including any Manager) has, within the two or five year period (as specified in Section 735.10(c)) immediately preceding the date of the application, been convicted of a specified criminal act, and, if so, the name of the pertinent applicant or Manager, the specified criminal act involved, the date of the conviction and the place of conviction.
 - (4) Whether the applicant (including any Manager) has had a previous permit under this chapter or other similar sexually oriented business titles from another city, county, township or state denied, suspended or revoked within a two year period immediately preceding the date of the application, including the name of the pertinent applicant or Manager, the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, reason for the same, and length of suspension.
 - (5) Whether the applicant (including any Manager) holds any other permits and/or licenses under this chapter or other similar sexually oriented business title from another city, county, township or state and, if so, the name of the pertinent applicant or Manager and the names and locations of such other permitted businesses.
 - (6) The single classification of sexually oriented business for which the applicant is filing a permit application.
 - (7) The location of the proposed sexually oriented business, including a legal description of the Permitted Premises, street address, and telephone number(s), if any.
 - (8) The mailing address and residential address of each applicant (including any Manager).
 - (9) Written proof of date of birth of any individual applicant (including any Manager).
 - (10) A sketch or diagram showing the configuration of the Permitted Premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it 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 one foot. Further, the diagram must comply with the provisions of Sections 735.19 and 735.20 of this chapter, if applicable.
 - (11) At the Applicant's discretion, the application may include, but is not required to include, a current straight-line drawing prepared not more than 30 days prior to the date of application and certified to the City by an Ohio registered land surveyor depicting:
 - A. The property lines and the Permitted Premises containing any established existing uses regulated by this chapter within a 500 foot radius of the Permitted Premises in which the applied for sexually oriented business is to be located;
 - B. The property lines of any established school, public park or recreation area, Church or Church grounds within 500 feet of the Permitted Premises;

- C. The property lines of any residence or residential district within 500 feet of the Permitted Premises; and
- D. The location of any dwelling in an agricultural district located within 500 feet of the Permitted Premises.

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. The City, upon request of applicant or applicant's agent, shall provide a list of sexually oriented businesses in the general area which are currently licensed by the City.

(12) The application shall be sworn to be true and correct by each applicant.

- (g) Applicants for a permit under this section shall have a continuing duty to promptly supplement application information required by this section in the event that said information changes in any material way from what is stated on the application, including all information pertaining to Managers. The failure to comply with said continuing duty within 30 days from the date of such change, by supplementing the application on file with the City, shall be grounds for suspension of a permit.
- (h) In the event that the City Manager determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, he/she shall promptly notify the applicant of such fact and allow the applicant ten days to properly complete the application. (The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application)
- (i) The applicant shall pay a non-refundable application fee of \$300.00 at the time of filing an application pursuant to this chapter to defray the administrative expenses associated with processing the application, including, but not limited to, any reasonable investigations associated therewith.
- (j) The fact that a person possesses other types of State or City permits and/or licenses does not exempt that person from the requirement of obtaining a sexually oriented business permit or qualify that person for a sexually oriented business permit.
- (k) The applicant shall be required to provide the City with the names of any and all employees and independent contractors who are required to be licensed pursuant to Section 735.18 of this chapter before they commence working. An application filed by the employee or independent contractor with the City before beginning work shall be deemed Compliance with this provision. This shall be a continuing requirement, even after a permit is granted or renewed, so long as the sexually oriented business is in operation. A person who knows or should know that they have failed to comply with this requirement shall be guilty of a first degree misdemeanor.

(Ord. 2000-O-1300, Passed 9-24-01)

735.09 - Investigation and application.

- (a) Upon receipt of an application properly filed with the City and upon payment of the non-refundable application fee, the City Manager shall immediately stamp the application as received and shall immediately thereafter evaluate the application in accordance with his/her responsibilities under law and as set forth in this chapter.
- (b) All duties under this chapter may be assigned by the responsible party to a designee but the designee may not be a person assigned to review decisions made by the responsible party.

(Ord. 2000-O-1300, Passed 9-24-01)

735.10 - Issuance of permit.

(a) The City Manager shall grant or deny the application for a permit within 30 days from the date of its proper filing. If 30 days have passed and the permit has not been granted or denied, unless the applicant requests and is granted an extension of time, the applicant shall be issued a temporary permit and be permitted to begin operating the business for which the permit is sought, until the City Manager, notifies the applicant of a grant of a permit or denial of the application and states the reason(s) for that denial. Operators who commence operations after the 30 day period (i.e. 30 days after the application is properly filed) while approval or denial is pending do so at their own risk as to the costs involved, but shall not be subject to prosecution for failure to obtain a permit, unless the application is denied and the operation is continued thereafter. If the application is denied, the appeal process set out in Section 735.30 shall apply.

(b) Grant of Application for Permit.

(1) The City Manager, shall grant the application unless one or more of the criteria set forth in subsection (c) hereof, is present.

(2) The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the type of sexually oriented business approved and the address of the sexually oriented business. The permit shall be posted in a conspicuous interior location at or near the entrance to the sexually oriented business so that it can be read easily at any time by a reasonable person.

(c) Denial of Application for Permit.

(1) The City Manager, shall deny the application for any of the following reasons:

A. Any applicant (other than an entity) is under 18 years of age;

B. Any applicant is overdue on his/her payment to the City of taxes, fees, fines, or penalties assessed against him/her or imposed upon him/her in relation to a sexually oriented business;

C. Any Application has failed to comply with Section 735.08(f).

D. Granting of the application would violate a court order;

E. Any applicant has a permit under this chapter which has been suspended more than three times or revoked during the five year period preceding the application; or

F. Any applicant has been convicted of a "specified criminal act" for which:

1. Less than two years have elapsed since the date of conviction, the date of completion of probation, or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the "specified criminal acts";

2. Less than five years have elapsed since the date of conviction, the date of completion of probation, or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense, for the "specified criminal acts";

3. Less than five years have elapsed since the date of conviction, that date of completion of probation, or the date of release from confinement, whichever is the later date, if the convictions are of two or more misdemeanor offenses arising out of different incidents for "specified criminal acts" offenses occurring within any 24-month period.

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

An applicant who has been convicted of the above described "specified criminal acts" may qualify for a sexually oriented business permit only when the time period required above has elapsed.

G. The location of the proposed Sexually Oriented Business fails to satisfy the location and distance criteria set forth in Section 735.03(b).

- (2) If the City Manager denies the application, he/she shall promptly notify the applicant of the denial in writing and state the reasons(s) for the denial.
- (3) If a person applies for a permit for a particular location within a period of 12 months from the date of denial of a previous application for a permit at the same location, and there has not been an intervening change in the circumstances which could reasonably be expected to lead to a different decision regarding the former reasons for denial, the application shall be denied.

(Ord. 2000-O-1300, Passed 9-24-01)

735.11 - Annual permit renewal fee.

The annual permit renewal fee for a sexually oriented business permit is \$100.00. A permit shall not be issued until the annual permit renewal fee is paid. The annual permit renewal fee shall be due each year for which the application for a renewal of the permit for the business is received.

(Ord. 2000-O-1300, Passed 9-24-01)

735.12 - Reserved.

735.13 - Expiration of permit.

- (a) Each permit shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 735.10 (for renewals, filing of original survey shall be sufficient). Application for renewal shall be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the permit will not be affected. An application for renewal may be filed with the original sketch and survey but all other materials must be revised as applicable.
- (b) If the City Manager denies renewal of the permit, based on one of the reasons stated in Section 735.10, the applicant shall not be issued a permit under this chapter for one year from the date of denial, unless, subsequent to denial, the City Manager determines that the basis for denial of the renewal of the permit has been corrected, in which case the applicant shall be granted a permit if at least 90 days have elapsed since the date denial became final. The existing permit shall remain in effect until the renewal permit has been granted or, if denied, until the appeal process in Section 735.30 shall have been concluded.

(Ord. 2000-O-1300, Passed 9-24-01)

735.14 - Suspension of permit.

- (a) The City Manager shall suspend a permit for such a business for a period not to exceed 30 days if he/she determines that a permittee, or an employee or independent contractor of a permittee, has:
 - (1) Violated any section of this chapter; or
 - (2) Been under the influence of alcoholic beverages or controlled substances as defined in Section 513.03, Drug Abuse, Controlled Substances, of the Codified Ordinances of Huber Heights, while working in or on the sexually oriented business premises; or
 - (3) Knowingly permitted illegal gambling by any person on the sexually oriented business premises; or
 - (4) Engaged in the transfer of a permit contrary to Section 735.17 of this chapter. In the event that the City Manager suspends a permit on the ground that a permittee engaged in the transfer of a

permit contrary to Section 735.17 of this chapter, the City Manager shall forthwith notify the permittee of the suspension; or

- (5) Operated the sexually oriented business in violation of the hours of operation in Section 735.23 of this chapter; or
 - (6) Knowingly employs a person who does not have a valid permit as required in Section 735.18 of this chapter.
- (b) The suspension shall remain in effect until the violation in question has been corrected if it is a continuing violation.
- (c) Appeal. The process set out in Section 735.30 shall apply to these suspensions. The existing permit shall remain in effect until the appeal process in Section 735.30 shall have been concluded.

(Ord. 2000-O-1300, Passed 9-24-01)

735.15 - Revocation of permit.

- (a) The City Manager shall revoke a permit of a permittee or an employee or independent contractor upon determining that:
- (1) In the event the City believes that the application has been granted based upon false information, and a court of competent jurisdiction finds that the information contained in any Application is in fact materially false, the permit may be revoked; or
 - (2) A permittee or an employee or independent contractor has knowingly allowed possession, use or sale of controlled substances in or on the premises; or
 - (3) A permittee or an employee or independent contractor has knowingly allowed prostitution on the Permitted Premises; or
 - (4) A permittee or an employee or independent contractor knowingly operated or worked in the sexually oriented business during a period of time when the permit was suspended; or
 - (5) A permittee or an employee or independent contractor has been convicted of a "specified criminal act" for which the time period required in Section 735.10 of this chapter has not elapsed; or
 - (6) On three or more occasions within a 12 month period, the City Manager has suspended an applicant's permit under this chapter; or
 - (7) On two or more occasions within a 12 month period, an individual or individuals committed an offense, occurring in or on the permitted premises, constituting a specified criminal act for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the permit; or
 - (8) A permittee is convicted of tax violations for any taxes or fees related to a sexually oriented business, or
 - (9) A permittee or an employee or independent contractor has knowingly allowed any "sexual activity," as defined in Ohio R.C. 2907.01, or any other specified sexual activities to occur in or on the permitted premises.
 - (10) A permittee has failed to comply with Section 735.08(k) of this chapter three or more occasions within a 12 month period.
- (b) When the City Manager revokes a permit, the revocation shall continue for one calendar year. No applicant shall be issued a sexually oriented business permit for any other location in the City during the one year period after the revocation became effective except in accordance with Section 735.13(b) of this chapter.

- (c) *Appeal.* The process set out in Section 735.30 shall apply to revocations. The existing permit shall remain in effect until the appeal process in Section 735.30 shall have been concluded.

(Ord. 2000-O-1300, Passed 9-24-01)

735.16 - Judicial review of permit denial, suspension or revocation.

- (a) *Appeal.* The process set out in Section 735.30 shall apply.
- (b) *Prompt Judicial Review.* The City is aware of the Constitutional requirement to provide prompt judicial review to persons affected by this chapter. Since the City cannot legally mandate the timing of judicial review in these matters, the City has created a right to a temporary permit or the continuation of a permit to maintain the status quo for these persons while they seek quasi-judicial and judicial review to prevent the suppression of speech or expression protected by the First Amendment to the Constitution.

(Ord. 2000-O-1300, Passed 9-24-01)

735.17 - Transfer of permit.

- (a) A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.
- (b) A permittee shall not transfer his/her permit to another person unless and until such other person satisfies the following requirements:
 - (1) Obtains an amendment to the permit from the City Manager which approves the new permittee, which amendment may be obtained only after proper completion and filing of an application with the City Manager, setting forth the information called for under Section 735.08 of this chapter, and
 - (2) Pays a transfer fee equal to the annual permit renewal fee set by this chapter.
- (c) No permit may be transferred when the City Manager has notified the permittee that suspension or revocation proceedings have been brought against the permittee, and such proceedings are pending.
- (d) A permittee shall not transfer the permit to another location except as otherwise provided herein.
- (e) Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void and the permit shall be deemed revoked.

(Ord. 2000-O-1300, Passed 9-24-01)

735.18 - Sexually oriented business employee and independent contractor permit.

- (a) Each individual to be employed or to work as an independent contractor in a sexually oriented business, as defined in Section 735.02 of this chapter, shall be required to obtain a Sexually Oriented Business Employee and Independent Contractor's Permit. Each applicant for such a permit shall pay a permit fee of \$25.00. Said fee is to cover part of the reasonable administrative costs of the licensing application process.
- (b) Before any individual may be issued a Sexually Oriented Business Employee or Independent Contractor's Permit, the applicant shall submit on a form to be provided by the City Manager the following information:
 - (1) The individual's name and a personal or business address where mail may be delivered.
 - (2) Written proof of date of birth showing that the individual is at least 18 years of age.

- (3) A statement detailing whether he/she has ever had a similar license, permit, or authorization to do business denied, revoked, or suspended in the two years immediately preceding the application. In the event of any such denial, revocation or suspension, the individual shall state the date, the name of the issuing or denying jurisdiction, and describe in full the reasons for the denial, revocation, or suspension and the length of the suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application if applicable.
- (4) Whether the individual has been convicted of a "specified criminal act" as defined in Section 735.10 of this chapter during the period set forth in Section 735.10. This information shall include the date, place, nature of each conviction and identify the convicting jurisdiction.
- (5) Two identical passport-quality photographs of the individual, approximately two inches in size, taken within the preceding year, for use on the permit and application.
- (6) The City Manager shall grant or deny the application for a permit within ten days from the date of its proper filing.
- (7) The City Manager shall refer the Sexually Oriented Business Employee and Independent Contractor's Permit Application to the Division of Police for an investigation to be made of such information as is contained on the application. The application process shall be completed within ten days from the date the completed application is filed. After the investigation, the City Manager shall issue a permit unless the report from the Division of Police finds that one or more of the following findings is true:
 - A. That the individual is under 18 years of age;
 - B. That the individual has been convicted of a "specified criminal act" as defined in Section 735.10 of this chapter;
 - C. That the Sexually Oriented Business Employee and Independent Contractor's Permit is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by particular provisions of this chapter; or
 - D. That the individual has had a Sexually Oriented Business Employee and Independent Contractor's Permit revoked by the City within two years of the date of the current application or suspended three or more times within two years of the date of the current application.
- (8) An individual, upon receipt by the City Manager of a properly completed application for a sexually oriented business employee or independent contractor permit, may work or perform services pursuant to a temporary permit which shall be issued by the City Manager within three business days of the time the application is made. This temporary permit shall be in force until such time as the permit is issued or the decision to deny the permit becomes final pursuant to Section 735.30. The applicant shall keep the temporary work permit on his or her person or on the Permitted Premises where the applicant is then working or performing services and produce such permit for inspection upon request by a law enforcement officer or other authorized City official. Employees and/or independent contractors who commence working while approval or denial is pending do so at their own risk as to the costs involved, but shall not be subject to prosecution for failure to obtain a permit, unless the application is denied and the employment is continued thereafter.
- (9) Renewal of license.
 - A. A license granted pursuant to this section shall be subject to annual renewal by the City Manager upon the written application of the individual and a finding by the City Manager and the Division of Police that the individual has not been convicted of any "specified criminal act" as defined in Section 735.10 of this chapter or committed any act during the existence of the previous permit period which would be grounds to deny the initial permit application.
 - B. The renewal of the license shall be subject to payment of an annual fee of \$25.00.
- (10) Appeal. The process set out in Section 735.30 shall apply to these permits.

(Ord. 2000-O-1300, Passed 9-24-01)

735.19 - Regulations pertaining to exhibition of sexually explicit films or videos in video booths.

- (a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel/hotel and regardless of whether or not a permit has been issued to said business under this chapter, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, sexually explicit films, i.e. a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
- (1) Upon application for a sexually oriented business permit, 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, 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 with no dimension greater than eight feet. The diagram shall also designate the place at which this permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimension of all areas of the interior of the premises to an accuracy of plus or minus one foot. The City Manager 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 it was prepared.
 - (2) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City Manager.
 - (3) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated at each manager's station at all times that any patron is present inside the premises.
 - (4) The interior of the Permitted Premises shall be configured in such a manner so that, at a normal adult height of at least five feet, there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, including the interior of individual viewing booths, excluding restrooms. Restrooms may not contain film or video display equipment. If the premises have two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
 - (5) It shall be the duty of the owners and operator, and it shall also be the duty of any independent contractors, agents and employees present on the premises to ensure that, at a normal adult height of at least five feet, the view area specified in subsection (a)(4) hereof remains unobstructed by any doors, walls, merchandise, display racks or other materials or people at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
 - (6) No viewing room may be occupied by more than one person at any one time. No holes, commonly known as "glory holes," shall be allowed in the walls or partitions which separate each viewing booth from an adjoining viewing booth or restroom. Viewing booths may not be enclosed by doors, curtains or "maze" walls. No signs, lights or other communicative devices may be used to create an expectation of privacy on the part of any patron at any location on the premises.
 - (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 level of not less than two foot candles as measured at the floor.

- (8) It shall be the duty of the owners and operator and it shall also be the duty of any independent contractors, agents and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.
- (b) Any person having a duty under Section 735.19(a)(1)—(8) commits a misdemeanor of the first degree if he/she knowingly fails to fulfill that duty.

(Ord. 2000-O-1300, Passed 9-24-01)

735.20 - Standards of conduct and operation applicable to adult cabarets.

- (a) A person who operates or causes to be operated an adult cabaret regardless of whether or not a permit has been issued to said business under this chapter, which features sexually oriented adult entertainment, shall comply with the following requirements:
 - (1) No entertainer shall be permitted to have any physical contact with any other entertainer, employee or customer on the premises during any performance and the portion of the adult cabaret in which sexually oriented adult entertainment is performed shall be on a stage or platform at least 18 inches above the immediate floor level and that is separated from all patron seating areas by at least six feet. No customer at an adult cabaret shall be permitted to have any physical contact with any entertainer or employee appearing in a state of semi-nudity during a performance. Physical contact includes touching the clothing as well as the touching of the person.
 - (2) A sign in lettering at least three-fourths inches high shall be conspicuously displayed in the public area of the business stating the following:

THIS ADULT CABARET IS REGULATED BY THE CITY OF HUBER HEIGHTS. CUSTOMERS ARE NOT PERMITTED TO ENGAGE IN PHYSICAL CONTACT WITH ENTERTAINERS DURING THE COURSE OF A PERFORMANCE. ENTERTAINERS ARE NOT PERMITTED TO ENGAGE IN PHYSICAL CONTACT WITH ANY OTHER ENTERTAINER, EMPLOYEE, OR CUSTOMER DURING A PERFORMANCE. AT ALL TIMES DURING THE PERFORMANCE, THE ENTERTAINER MUST MAINTAIN AT LEAST A SIX (6) FOOT BUFFER ZONE FROM ALL CUSTOMERS.
- (b) Any person who knowingly violates Section 735.20(a)(1) commits a misdemeanor of the first degree. It is a defense to prosecution for any violation of this Section 735.20(a)(1) that the physical contact was inadvertent or accidental in nature.

(Ord. 2000-O-1300, Passed 9-24-01)

735.21 - Prohibitions regarding minors and sexually oriented businesses.

A person commits a misdemeanor of the first degree if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business, who authorizes, suffers, or allows:

- (a) Admittance of a person under 18 years of age to the business premises.
- (b) A person under 18 years of age to remain at the business premises.
- (c) A person under 18 years of age to purchase goods or services at the business premises.
- (d) A person who is under 18 years of age to work at the business premises as an employee, contractor, subcontractor or employee of a contractor or subcontractor.

It shall be the duty of the permittee to obtain such documentation as is necessary to assure that this section is not violated. Failure of the permittee to assure compliance with this section shall constitute a first degree misdemeanor.

(Ord. 2000-O-1300, Passed 9-24-01)

735.22 - Advertising and lighting regulations.

- (a) It shall be unlawful and a person commits a first degree misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and knowingly advertises the presentation of any activity prohibited by any applicable State statute or this chapter.
- (b) It shall be unlawful and a person commits a first degree misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and knowingly displays or otherwise exhibits the materials and/or performances at such sexually oriented business in any advertising which is visible outside the premises. This prohibition shall not extend to lawful advertising of the name, nature or location of such sexually oriented business.
- (c) The permittee shall not knowingly allow any portion of the interior premises to be visible from outside the premises and shall not knowingly allow any activity conducted on the premises to be visible from any location of the premises.
- (d) All off-street parking areas and premises entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the sketch or diagram of the premises required as part of the permit application process.

(Ord. 2000-O-1300, Passed 9-24-01)

735.23 - Hours of operation.

- (a) A person commits a misdemeanor of the first degree if he/she operates or causes to be operated a sexually oriented business, except adult motels, regardless of whether or not a permit has been issued for said business under this chapter, and knowingly allows such business to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, before 8:00 a.m. or after midnight Monday through Saturday or at all on Sundays or legal holidays recognized by the State of Ohio.
- (b) A person commits a misdemeanor of the first degree if, working as an employee of a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, said employee knowingly engages in a performance, solicits a performance, makes a sale, solicits a sale, provides a service, or solicits a service before 8:00 a.m. or after midnight Monday through Saturday or at all on Sundays and legal holidays recognized by the State of Ohio.
- (c) It is a defense to prosecution for violation of this Section 735.23, Hours of Operation, of this chapter that the business has a valid liquor license from the State permitting it to operate beyond the hours authorized pursuant to this chapter but only to the extent permitted by the liquor permit.

(Ord. 2000-O-1300, Passed 9-24-01)

735.24 - Nudity at sexually oriented businesses prohibited.

- (a) The United States Supreme Court decision in *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), and in *Paps A.M. v City of Erie*, 529 U.S. 277 (2000), which upheld the rights of cities to prohibit live public exposure of a person's private parts, specifically applies to sexually oriented businesses (regardless

of whether or not a permit has been issued to said businesses under this chapter), including said businesses where no alcoholic beverages are sold, served, or consumed at the premises.

- (b) Nudity is prohibited within any sexually oriented business establishment in the City. Any sexually oriented business which is found in violation of this section shall have its permit suspended pursuant to the provisions of Section 735.14.
- (c) It is a defense to prosecution for any violation of Section 735.24 of this chapter that a person appearing live in a state of nudity did so in a modeling class operated:
 - (1) By a proprietary school licensed by the State of Ohio; college, junior college, or university supported entirely or partly by taxation; or
 - (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or:
 - (3) In a structure:
 - A. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - B. Where, in order to participate in a class a student must enroll at least three days in advance of the class; and
 - C. Where no more than one nude model is on the premises at any one time.
 - D. It is a defense to prosecution for a violation of Section 735.24 of this chapter that an employee or independent contractor of a sexually oriented business, regardless of whether or not it is permitted under this chapter, exposed any specified anatomical area during the employee's bona fide use of a restroom, shower room or during the employee's or independent contractor's bona fide use of a dressing room which is accessible only to employees, and/or independent contractors or a private room in an adult motel.
 - E. It is a defense to prosecution for any violation of Section 735.24 of this chapter that a person appearing live in a state of nudity was dancing not for hire and:
 - 1. Did not receive any remuneration, monetary or otherwise,
 - 2. Was not promised any such compensation from any person for such activities, and
 - 3. Was not participating in a contest for which there is a prize of any type.

(Ord. 2000-O-1300, Passed 9-24-01)

735.25 - Additional criminal prohibitions for the operation of a sexually oriented business without a valid permit.

In addition to the criminal provisions found at other sections of this chapter, a person commits a misdemeanor of the first degree if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this chapter, and said person knows or should know that:

- (a) The business does not have a sexually oriented business permit under this chapter for any applicable classification;
- (b) The business has a permit which is under suspension;
- (c) The business has a permit which has been revoked; or
- (d) The business has a permit which has expired.

(Ord. 2000-O-1300, Passed 9-24-01)

735.26 - Criminal penalties and additional legal, equitable, and injunctive relief.

- (a) Any person who willfully falsifies any material fact on any application required by this chapter is guilty of a first degree misdemeanor.
- (b) In addition to any penalties specifically stated herein, if any person knowingly fails or refuses to obey or comply with or violates any provision of this chapter, such person shall be guilty of a misdemeanor of the first degree. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered a separate offense.
- (c) Nothing herein contained shall prevent or restrict the City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.
- (d) All remedies and penalties provided for in this section shall be cumulative and independently available to the City and the City shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.

(Ord. 2000-O-1300, Passed 9-24-01)

735.27 - Immunity from prosecution.

The City, the City Manager and his/her designee, the members of the Board of Zoning Appeals, the Huber Heights Division of Police, the City Attorney and all other departments and agencies, and all other City officers, agents and employees, charged with enforcement of State and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon a sexually oriented business while acting within the scope of authority conferred by this chapter.

(Ord. 2000-O-1300, Passed 9-24-01)

735.28 - Severability.

This chapter and each section and provision of this chapter, are hereby declared to be independent sections and subsections and, notwithstanding any other evidence of legislative intent, the Council of the City of Huber Heights, by adoption of the legislation containing this section, hereby states that it is the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance, is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently if such section or provision were so known to be invalid. The adoption of this chapter in a single legislative act is merely for convenience. This Council intends that each and every separate part hereof be severable so as to leave in effect as much of this chapter as is not found invalid so as to provide as much benefit to its citizens as possible while still protecting the rights guaranteed under the First Amendment of the Constitution. The City further states that the dispersal requirement, the location requirement, the permitting process, for each type of sexually oriented business, permitting process for employees, permitting process for independent contractors, regulation of permit transfers, regulation of exhibition of sexually explicit films or videos in video booths, standards of conduct and operation applicable to adult cabarets, regulations regarding minors, advertising and lighting regulations, regulation of hours of operation and prohibition of nudity at sexually oriented businesses are each intended as separate and severable regulations of the City which would, and could, have been adopted as separate legislative acts.

(Ord. 2000-O-1300, Passed 9-24-01)

735.29 - Notice.

Any notices required pursuant to this chapter not otherwise specified herein shall be sufficient if served by certified mail, return receipt requested or by personal delivery to the applicants and permit holders affected at the business or residential address listed on the application and addressed to the business or applicant. If the permit is issued to an entity, service of notice as provided above to the service agent listed on the application shall be sufficient.

(Ord. 2000-O-1300, Passed 9-24-01)

735.30 - Appeal.

- (a) If the City Manager issues a denial, suspension, or revocation of a permit or application for a permit under this chapter, the City Manager shall notify the applicant or permittee (respondent) in writing of the denial, suspension or revocation of the permit or application, including the grounds therefor, within three business days of such decision. The notification shall be directed as provided in Section 735.29. The notification shall include information regarding the right to file an appeal as described below.

Within ten days of service of such notice, the respondent may provide to the Board of Zoning Appeals in writing a response which shall include an address at which notice may be sent by overnight mail or a telefax phone number for notice of a hearing date, and a statement of reasons why the permit or application should not be denied, suspended or revoked. A response shall be deemed to have been received when delivered to City Hall at 6131 Taylorsville Road during regular business hours. If no response is received by the Board of Zoning Appeals within said ten days, the action shall become final. If a written notice is received by the Board of Zoning Appeals within said ten days, the Board of Zoning Appeals shall notify the respondent by overnight mail at the address provided or by telefax to the phone number provided of the hearing date within three business days of the receipt of such written response.

Within ten days of the receipt of such written response, the Board of Zoning Appeals shall conduct a hearing at which respondent shall have the opportunity to present evidence and witnesses on his or her behalf. The respondent may appear and be heard in person, or by his/her attorney, in opposition to the decision and do any of the following:

- (1) Present his/her positions, arguments and contentions;
- (2) Offer and examine witnesses and present evidence in support;
- (3) Cross-examine witnesses purporting to refute respondent's position, arguments and contentions;
- (4) Offer evidence to refute evidence and testimony offered in opposition to his/her position, arguments and contentions; and
- (5) Proffer any such evidence into the record, if the admission is denied by the Board of Zoning Appeals.

Testimony shall be given under oath. The Board of Zoning Appeals shall have the power to subpoena witnesses or evidence and shall make such power available to the respondent. The Board of Zoning Appeals shall have a complete record of the adjudication kept, including any evidence admitted or proffered. If after the hearing the Board of Zoning Appeals finds, by majority vote, that grounds as specified in this chapter exist for denial, suspension or revocation, then such action shall become final and notice of such final action shall be sent to the applicant or permittee, by written decision. If the Board of Zoning Appeals finds, by a simple majority vote of the members present at the hearing, that no grounds exist for denial, suspension or revocation of a permit then the Board of Zoning Appeals shall overturn the denial, suspension or revocation of the permit or application. The Board of Zoning Appeals shall notify the respondent in writing by delivery, overnight mail, telefax or by certified mail of such action. The Board of Zoning Appeals shall send his decision within five business days after the hearing.

- (b) The notice of final decision shall contain:
- (1) The case number or other identifier, the applicant and a brief description of the matter before the Board of Zoning Appeals;
 - (2) A designation as a final decision;
 - (3) A clear pronouncement of the Board of Zoning Appeals' decision including conclusions of fact supporting the final order;
 - (4) The signatures of the members of the Board of Zoning Appeals; and
 - (5) The date the decision was mailed, faxed or delivered.

The Board of Zoning Appeals shall conduct any hearing pursuant to this section relating to an application for a sexually oriented business permit or sexually oriented business employee or independent contractor permit, and approve or deny the appeal within 30 days after notice is received by the Board of Zoning Appeals from the respondent of an appeal. The respondent may, however, request a rescheduling or continuance of the hearing date set by the Board of Zoning Appeals, in which case the hearing date shall be extended for a reasonable period, and the 30 day time period for the Board of Zoning Appeals to decide the appeal shall be extended by the number of days the hearing is postponed due to the respondent's request.

- (c) A suspension or revocation shall not be final and in effect if an appeal is filed until the later of:
- (1) The Board of Zoning Appeals' decision on the appeal becoming final and expiration of any time period for initial appeal to court from a denial of the appeal by the Board of Zoning Appeals, or
 - (2) If an appeal is taken to court, the entering of a judgment on the appeal by a court of competent jurisdiction. The existing permit shall remain in effect during such period.
- (d) If the Board of Zoning Appeals has received a written appeal objecting to a denial of a permit/application, then the City Manager shall immediately grant or continue a temporary permit to operate or work at the sexually oriented business. The temporary permit shall continue in effect until the later of:
- (1) Board of Zoning Appeals' decision on the appeal being final and expiration of any time period for initial appeal to court from a denial by the Board of Zoning Appeals of the appeal, or
 - (2) If an appeal is taken to court, the entering of a judgment on the appeal by a court of competent jurisdiction. Operations under such temporary permit shall be subject to all provisions of this chapter.
- (e) When a decision to deny, suspend or revoke a permit has been appealed and that decision becomes final, the applicant or permittee whose application for a permit has been denied or whose permit has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction pursuant to Ohio R.C. Chapter 2506.

(Ord. 2000-O-1300, Passed 9-24-01)

735.31 - Privacy.

All information obtained pursuant to this chapter shall be maintained as confidential to the extent permitted by law.

(Ord. 2000-O-1300, Passed 9-24-01)

735.99 - Penalty.

Penalties shall be in accord with Section 303.99 of the Codified Ordinances of the City of Huber Heights, Ohio.

(Ord. 2000-O-1300, Passed 9-24-01)

CHAPTER 736 - SWEEPSTAKES CAFES^[2]

Footnotes:

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Cross reference— Gambling—See Ch. 517.

736.01 - Findings and purpose.

- (a) *Findings.* Based on investigation and reports of staff, news reports, discussions with members of other communities, and on findings incorporated in cases decided by Ohio courts, City Council finds: that in other communities where Sweepstakes Cafés and similar types of businesses currently exist in the State of Ohio, there has been numerous incidents of illegal gambling; an increase in reports of criminal activities in the areas near the businesses; an increase in the number of constituent complaints related to the businesses; and an increase in the need for police oversight to ensure illegal gambling is not occurring. Further, City Council finds that the enactment of this chapter to regulate Sweepstakes Café is a substantial government interest for the City in preserving the quality of urban life and that it is in the interest of the health, safety, morals, and general welfare of the citizens of Huber Heights.
- (b) *Purpose.* It is the intent of the Council in enacting this chapter to improve the quality of life and economic vitality of the City of Huber Heights; enforce income tax regulations, prevent safety and fire hazards; disturbances, disorderly assemblies, and illegal gambling within the City; to establish standards for licensing, regulation and control of Sweepstakes Cafés and premises upon which they are located and operated.

(Ord. 2012-O-1943, Passed 2-27-12)

736.02 - Definitions.

As used in this chapter:

Computerized Sweepstakes Device means any computer, machine, or apparatus which, is capable of connection to the internet, regardless of whether such connection is utilized, through a wireless router telephone line, digital subscriber line, satellite, cellular telephone, cable connection or any other method, which is engaged or accessed upon the insertion of a coin, token, or similar object, or the sliding of a magnetic card or entry of a code, or similar process, or upon payment of anything of value, either directly or indirectly, and which may be operated by the public generally for use as entertainment, amusement or a contest of skill, whether or not generally for use as a contest of skill, entertainment of amusement, whether or not registering a score, and which when so utilized produces, announces, reveals or discloses the eligibility, award or payment of a cash prize redeemable on or at the Sweepstakes Café, whether or not said prize was in fact announced, revealed or disclosed through the usage of the Computerized Sweepstakes Device. Computerized Sweepstakes Device does not include machines designated for use by the State Lottery Commission.

Sweepstakes Café means any premises upon which there are situated five or more Computerized Sweepstakes Devices that are available for the use or entertainment of the public within such premises whether or not such premises has any other business purpose.

Chief of Police means the Police Chief of the City of Huber Heights or his designee.

City Manager means the City Manager of the City of Huber Heights or his designee.

Operator means the person or persons having authority to control the premises of an Sweepstakes Café.

Licensee means the person or persons who sign an application for a license hereunder and to whom such license is issued.

Owner means any person who possesses any interest, either directly or indirectly, in a Sweepstakes Café.

Applicant means the person or persons who sign an application for a license hereunder.

Person means any natural person, firm partnership, association, corporation or any other form of business organization.

Premises means the building or site or any portion thereof used for conducting the operation of a Sweepstakes Café.

(Ord. 2012-O-1943, Passed 2-27-12)

736.03 - Sweepstakes café license required.

No person shall conduct or operate a Sweepstakes Café in the City without having first obtained a Sweepstakes Terminal Cafe license as provided in this chapter.

(Ord. 2012-O-1943, Passed 2-27-12)

736.04 - Computerized sweepstakes device license required.

One Computerized Sweepstakes Device license shall be required for each individual Computerized Sweepstake Device and shall specify the name and address of the licensee and the manufacturer, model number and serial number of the Computer Sweepstakes Device for which it was issued.

(Ord. 2012-O-1943, Passed 2-27-12)

736.05 - Authority of chief of police.

Authority is hereby established and vested in the Chief of Police to consider any application for a Sweepstakes Café license under this chapter, conduct investigations therefore and thereon and issue or deny issuance of any such license based upon the criteria set forth in this chapter.

(Ord. 2012-O-1943, Passed 2-27-12)

736.06 - Nature of licenses.

- (a) Each Sweepstakes Café license shall be required to be displayed permanently in a conspicuous place upon the premises for which it is issued. Each Sweepstakes Café license shall be issued for only one business at only one premises.
- (b) A Computerized Sweepstakes Device license shall become invalid if the Computerized Sweepstakes Device is replaced or moved to another location not specifically stated on the license.
- (c) Any license issued under this chapter shall be valid for a period of one year from and after the date of issuance unless suspended or revoked as provided in this chapter. Each license shall vest a

personal privilege but not any property rights in the license. No license shall be assignable or transferable, either as to person or location.

(Ord. 2012-O-1943, Passed 2-27-12)

736.07 - Procedure for obtaining licenses.

- (a) *Applications for Sweepstakes Café Licenses.* All applications for Sweepstakes Café licenses under this chapter shall be in writing on a form approved by and filed with the Chief of Police. The application shall be signed by the owner or owners and shall contain information required by this section supplied in detail as to each such person, including general and limited partners of partnerships, shareholders of corporations and principals or members of any other type of business entity or organization. All applications shall contain a statement that the information contained therein is complete, accurate and truthful. Every owner and operator of the Sweepstakes Café, shall at their sole cost and expense, be fingerprinted by an agency approved by the Chief of Police.
- (b) *Contents of Applications.* The application for a Sweepstakes Café License shall contain the following information as to all Owners:
- (1) True name and all names used by owner(s) in the past five years;
 - (2) Date of birth;
 - (3) Permanent home address and all home addresses used in the past five years;
 - (4) Business and home telephone numbers;
 - (5) Employment history for the past five years;
 - (6) A statement as to whether or not the owner has been convicted of any felony or for any misdemeanor involving the operation of a business or involving gambling activity, minors or any crime involving moral turpitude and, if so, the date and place of conviction, the nature of the offense and the penalty imposed;
 - (7) A statement as to whether or not the owner has ever conducted a Sweepstakes Café or similar business and, if so, when, where and for how long.
 - (8) A description of the nature and operation of the main type of business activity to be conducted upon the premises;
 - (9) The address and telephone number of the premises and of the business, if different from that of the premises;
 - (10) The name under which the business and premises will be operated;
 - (11) A statement as to whether or not the owner will directly operate the Sweepstakes Café, or whether or not an operator who is not an owner will operate it, and if the latter, the application shall contain information required by this section supplied in detail as to each such operator;
 - (12) A floor plan of the premises and the immediate vicinity drawn to scale, showing the square footage and placement of the computerized sweepstakes devices, exits, windows, storage spaces, and off-street parking;
 - (13) The name, and address and telephone number of the agent of the business upon whom service of process can effectively and validly be made;
 - (14) Specification of the days of the week and the hours of the day during which the licensed activity will be conducted; and
- (c) *Reports of City Officials.* Upon receipt of an application for a Sweepstakes Café license under this chapter, the Chief of Police shall request the following reports, which shall be rendered to him within 30 days of the date of filing of the application:

- (1) A written report from the Fire Chief as to whether the premises and Computerized Sweepstakes Devices thereon will create a fire hazard.
 - (2) A written report from the police department specifying, with regard to all owners and operators, any convictions for any felony or for any misdemeanor involving the operation of a business or involving gambling activity, controlled substances, alcoholic beverages, minors or any crime involving moral turpitude.
 - (3) A written report from the Chief Building Official as to whether all applicable building code regulations have been satisfied.
 - (4) A written report from the Chief Zoning Official as to whether all applicable zoning laws have been satisfied.
- (d) *Applications for Computerized Sweepstakes Device Licenses.* All applications for Computerized Sweepstakes Device licenses under this chapter shall be in writing on a form approved by and filed with the Chief of Police. The application shall be signed by the owner or owners and shall contain information required by this section supplied in detail. All applications shall contain a statement that the information contained therein is complete, accurate and truthful. The application shall contain the following information:
- (1) A list of all Computerized Sweepstakes Devices to be used at the Sweepstakes Café, specifying the manufacturer, model number and serial number of the Computer Sweepstakes Device for which it was issued.
 - (2) Supporting documentation from a Certified Independent Regulatory Compliance Test Laboratory that the software that will be used by the Computerized Sweepstakes Device performs in similar fashion as other permitted sweepstakes commercially offered to the public and that the entries are drawn from a pre-created finite static pool of entries with assigned values. To be certified the Independent Regulatory Compliance Testing Laboratory must be authorized to test regulated gaming equipment by at least one state government gaming regulatory agency.
- (e) *Determination Process.*
- (1) All applications for licenses under this chapter shall be considered by the Chief of Police, who shall, within ten days after receiving the written reports, either issue such licenses or deny issuance of such licenses. Unless a longer time is agreed upon by the Applicant and Chief of Police, all decisions shall be issued within 40 days of submittal of an Application.
 - (2) In the event of the denial of issuance of such a license, the Applicant shall be notified of such denial and the specific reasons therefore in writing. Such notice shall be mailed or delivered to the Applicant at the address specified in the application by certified U.S. mail, return receipt requested. The Applicant shall have ten days after receipt of such notice within which to appeal such denial, by filing a written notice of appeal with the City Manager. Thereupon, the City Manager shall set a date and time for a hearing upon the appeal which date shall be no later than 30 days from the date of receipt by the City Manager of the written notice of appeal. Notice of hearing shall be sent to the Applicant not later than ten days prior to the date of hearing, by certified U.S. mail, return receipt requested. The appeal shall be heard by the City Manager, who shall have the power after such hearing to confirm the denial, order the license to be issued or, at its discretion, to issue a conditional or probationary license. The Applicant may present evidence, provide witnesses and testimony, cross exam witnesses and may be represented by legal counsel.
- (f) *License Renewal.* Each Sweepstakes Café license and each Computerized Sweepstake Device license must be renewed annually. At the time of renewal, a statement shall be filed with the Chief of Police that the information listed on the original application for the license is still complete, accurate and truthful to the best knowledge of all applicants. Such statement shall be signed by the same persons who signed the original application. In the event of a change since the original application, a statement shall be filed with the Chief of Police listing each and every item of information which has changed since the original application. The Chief of Police may determine to accept such statement

and issue the renewal license requested, or, in the event of a material change, may require updated information in which case the provisions associate with obtaining an original license shall be followed.

- (g) *Expiration.* Any Sweepstakes Terminal Cafe license issued under this chapter shall expire upon the transfer or sale of a majority interest in the business, sale of substantially all the Assets of the business, or the discontinuation of the business for a continuous period of 30 days.

(Ord. 2012-O-1943, Passed 2-27-12)

736.08 - Denial of license.

- (a) A Sweepstakes Café license shall not be issued or renewed for any business:
- (1) Where any of the owners or the operators have been convicted within the last five years of any felony or for any misdemeanor involving the operation of a business or involving gambling activity, minors or any crime involving moral turpitude;
 - (2) Where the premises do not provide a minimum of one off-street parking space for every two computerized sweepstake devices;
 - (3) Where it is determined that the premises or operation therein would be in violation of any provision of the Building Code, the Zoning Code or the Fire Code of the City or any other pertinent provisions of local, state or federal law;
 - (4) Where the applicant made a false statement as to a material matter upon the application or in a hearing concerning the license;
 - (5) Where the application failed to provide all of the required information; or
 - (6) Where there is not compliance with all terms and conditions under this chapter and all other applicable ordinances and statutes.
- (b) A Computerized Sweepstakes Device license shall not be issued or renewed:
- (1) Where the applicant made a false statement as to a material matter upon the application or in a hearing concerning the license;
 - (2) Where the application failed to provide all of the required information; or
 - (3) Where there is not compliance with all terms and conditions under this chapter and all other applicable ordinances and statutes.

(Ord. 2012-O-1943, Passed 2-27-12)

736.09 - Conditions and regulations.

- (a) In addition to any other condition or regulation contained in this chapter or in state statutes, the following conditions and regulations shall be applicable to and shall govern and control all licenses of Sweepstakes Cafes:
- (1) Each licensee shall at all times open each and every portion of the premises for inspection by the Police department and other City personnel as necessary for the purposes of enforcing assuring compliance with, and/or enforcement of, any provisions of this chapter.
 - (2) Each licensee shall have present on the premises at all times when the premises are open to the public at least one adult operator who has not been convicted of any felony or of any misdemeanor involving the operation of a business or involving gambling activities, minors or any crime involving moral turpitude.
 - (3) No licensee shall allow living quarters to exist with direct entry to the premises.

- (4) No person under the age of 18 years shall be permitted to operate a Sweepstakes Café.
 - (5) Any and all sweepstakes rules and odds of winning shall be posted in a conspicuous place at the premises and displayed on the Computerized Sweepstakes Device at the start of each game and/or activity. If results of a sweepstakes can be ascertained immediately upon receipt of the sweepstakes card, token code, or the like, such fact shall be conspicuously placed at the premises and displayed on the computerized sweepstakes device.
 - (6) A list of each separate prize that may be given out and each separate dollar amount that may be given and the odds of winning any offered prize or dollar amount awarded for the participation in any game, activity, program, scheme, sweepstake or play, shall be conspicuously placed at the premises and displayed on the Computerized Sweepstakes Device.
 - (7) Each licensee shall operate the Sweepstakes Café in compliance with any and all pertinent Federal, State and local laws rules and regulations.
 - (8) No person under the age of 18 years shall be permitted within the Sweepstakes Café.
- (b) All computerized sweepstakes devices upon the premises of a Sweepstakes Café shall be located thereon in conformity with the floor plan filed with the application for the license and in such a manner:
- (1) So as not to impair ingress or egress to the premises;
 - (2) So as not to interfere with free and unfettered passage through the premises;
 - (3) So as to permit a clear and complete view of the interior of the premises immediately upon entry;
- (c) The operator shall require a photo identification of every person to whom anything of value is given in connection with the sweepstakes/internet café and shall record the person's name, date of birth, and home address and a description of the thing given, a stated dollar value of the thing given, the date and time of the giving and, if a Computerized Sweepstakes Device is involved in the circumstances of the giving, the serial number or other identifying description of the device. If the dollar value given for any single event is \$600.00 or more, and the person receiving such sum is a resident of the City of Huber Heights, the operator shall also include in the record a copy of the person's social security number. By the second Tuesday of each month the operator shall cause to be delivered to the City of Huber Heights finance department, a copy of the record containing the information set forth above for the preceding month. The operator and the City shall not disclose the social security number of any person to anyone except as required by the laws of the State of Ohio and the United States.

(Ord. 2012-O-1943, Passed 2-27-12)

736.10 - Prohibited conduct.

No Licensee of a Sweepstakes Café by himself, directly or indirectly, or by any representative, agent or employee shall permit or fail to take active steps to eliminate the activities specified in this section from occurring upon the premises. All such Licensees shall have a duty to diligently pursue enforcement of this section. The actions of the Operator and the failure to take action by the Operator shall be imputed to the Licensees. No such Licensee shall:

- (1) Permit the premises to become a gathering place for disorderly persons of any type;
- (2) Permit gambling in any form or the possession of gambling paraphernalia upon the premises;
- (3) Permit intoxication or permit the possession, sale, use or consumption of alcoholic beverages upon the Premises unless properly licensed through the State of Ohio;
- (4) Permit the possession, use or consumption of any unlawful drug, narcotic or controlled substance upon the premises;
- (5) Permit the premises or the activity conducted thereon to become a public nuisance to the surrounding environs;

- (6) Permit the driveways or streets to become obstructed in any manner so that traffic is hindered;
- (7) Permit any Computerized Sweepstakes Device thereon to be operated at any time the premises are not open for business, or permit the entrance to be locked at any time that the premises are open for business;
- (8) Permit any computerized sweepstakes device to be offered to be used for gambling of any sort.
- (9) Permit the premises to be open for business without displaying the licenses therefore in a conspicuous place thereon;
- (10) Permit any violation of any ordinance of the City or statute of the State of Ohio to take place upon the premises.

(Ord. 2012-O-1943, Passed 2-27-12)

736.11 - Revocation.

- (a) *Revocation.* All Sweepstakes Café licenses issued under this chapter shall be revoked by the Chief of Police upon his finding of the occurrence of any of the following events;
 - (1) A false statement by any licensee as to a material matter made in an application for license or in a hearing concerning the license;
 - (2) Conviction of any licensee or operator of any felony or of any misdemeanor involving gambling activities, controlled substances, alcoholic beverages, minors or any crime involving moral turpitude;
 - (3) Conviction twice within a one-year period of any licensee or operator for a violation of this chapter.
 - (4) Where it is determined that the premises or operation thereof are in violation of any provision of the Building Code, the Zoning Code or the Fire Code of the City or any other pertinent provisions of local, state or federal law;
- (b) *Hearing.* A license shall not be revoked without a hearing before the City Manager. The licensee shall be given at least ten days prior written notice of intent to revoke, which shall set forth the time and place of the hearing and the specific reasons for such suspension or revocation. The licensee shall have the right at the hearing to present testimony and other relevant evidence and to orally examine any person offering evidence as to the reasons for revocation and may be represented by legal counsel.

(Ord. 2012-O-1943, Passed 2-27-12)

736.12 - License fees.

- (a) *Fee.* In order to offset the costs to be incurred by the City, including but not limited to costs associated with the enforcement this chapter, costs to investigate the Sweepstakes Café and its owners and operators and other related costs, the fee for an Sweepstakes Café license shall be \$3,500.00 per year. The fee for each Computerized Sweepstakes Device license shall be \$50.00.
- (b) *Filed with Application.* License fees under this chapter shall be filed with the application for license and at the time for renewal.
- (c) *Return of Fee.* In the event an application is denied under this chapter, one-half of the license fees therefore shall be returned to the applicant. In the event any license is revoked under this chapter, no portion of the license fee shall be returned to the owner.

(Ord. 2012-O-1943, Passed 2-27-12)

736.13 - Severability.

This chapter and each section and provision of this chapter, are hereby declared to be independent sections and subsections and, notwithstanding any other evidence of legislative intent, the Council of the City of Huber Heights, by adoption of the legislation containing this section, hereby states that it is the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance, is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently if such section or provision were so known to be invalid. The adoption of this chapter in a single legislative act is merely for convenience. It is the intent that each and every separate part hereof be severable so as to leave in effect as much of this chapter as is not found invalid so as to provide as much benefit to its citizens as possible while still protecting the rights guaranteed under the US and State Constitution. Nothing contained herein shall be deemed to permit the use of a Computerized Sweepstakes Device or operation of Sweepstakes Café if such use or operation is determined by a court of competent jurisdiction to be illegal within the State of Ohio.

(Ord. 2012-O-1943, Passed 2-27-12)

736.99 - Penalty.

Whoever violates any of the provisions of this chapter is guilty of a misdemeanor of the first degree. A separate offense shall be deemed committed each day during or on which a violation occurs or continues.

(Ord. 2012-O-1943, Passed 2-27-12)

CHAPTER 737 - SOLICITATION³

Footnotes:

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Cross reference— Trespass—See § 541.05.

737.01 - Definitions.

As used in this chapter:

Canvassing, *canvassers* and *canvass* means the house-to-house distribution of ideas, pamphlets, literature, and the like, or the collection of signatures or support for any purpose or cause. This definition does not include the commercial activities of solicitation, peddling, or vending, as those terms are defined in this section. This definition includes requesting contributions when such requests are made in conjunction with the house-to-house distribution of ideas, pamphlets, literature, or the collection of signatures or support for any purpose or cause. This definition includes both "contact canvassers" and "non-contact canvassers" as defined in paragraphs (1) and (2) hereof.

- (1) *Contact canvassers* and *contact canvassing* mean those persons who canvass, as defined above through in person, fact-to-face contact, verbal or otherwise, with individual residents.
- (2) *Non-contact canvassers* and *non-contact canvassing* mean those persons who canvass, as defined above, without attempting in person, face-to-face contact with individual residents, such as the distribution of leaflets and/or pamphlets by leaving them at a place of residence.

Charitable means and includes the words patriotic, philanthropic, social service, welfare, benevolent, educational, fraternal or any agency created for the purpose of supporting health research or health measures, either actual or purported.

City Manager means the Huber Heights City Manager or his or her designee.

Chief of Police means the Huber Heights Police Chief or his or her designee.

Contribution means the gift, sale for less than market value or purchase for more than market value of alms, food, clothing, money or property, including donations under the guise of a loan of money or property or the rental thereof for any charitable, religious or political use or purpose.

Peddler means an itinerant solicitant/trader who sells wares which he or she may carry with him or her traveling about from place to place.

Person means any individual, firm, co-partnership, corporation, limited liability company, limited partnership, company, association, joint stock association, church, religious sect, religious denomination, society, organization or league, and includes any trustee, receiver, assignee, agent or other similar representative thereof.

Political and *political organization* shall not mean or include the term "charitable." Such terms shall be given their commonly accepted definitions. It is not necessary that a person be a candidate for an office or in support of another person as a candidate to be included within the definition of "political" or "political organization."

Religious and *religion* shall not mean and include the term "charitable." Such terms shall be given their commonly accepted definitions.

Solicit and *solicitation* mean the method by which a peddler or vendor conveys his/her wares; or the request, either directly or indirectly, for money, credit, property, financial assistance, or other thing of value on the plea or representation that which is being solicited will be used for a charitable, political, or religious purpose.

Specified Criminal Act means a felony or misdemeanor involving force, violence, fraud, theft, or sexual oriented offense crimes, sexual abuse, rape, gross sexual imposition. These crimes must include the element of knowledge to constitute a "Specified Criminal Act" on the part of the accused, for which: (a) less than two years have elapsed since the date of conviction, the date of completion of probation, or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the Specified Criminal Acts; (b) less than five years have elapsed since the date of conviction, the date of completion of probation, parole or community control, or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense, for the Specified Criminal Acts; (c) less than five years have elapsed since the date of conviction, that date of completion of probation, parole or community control, or the date of release from confinement, whichever is the later date, if the convictions are of two or more misdemeanor offenses arising out of different incidents for Specified Criminal Acts offenses occurring within any 24-month period. The fact that a conviction is being appealed shall have no effect on disqualification of the Applicant. An Applicant who has been convicted of the above described Specified Criminal Acts may qualify for a solicitation License only when the time period required above has elapsed.

Vendor means a person who transfers property by door-to-door sale.

(Ord. 2017-O-2257, Passed 1-31-17)

737.02 - Authority to issue license.

The Chief of Police is hereby authorized to grant, issue, and revoke a License to any person who desires to vend, solicit, peddle or request contributions under this chapter.

(Ord. 2017-O-2257, Passed 1-31-17)

737.03 - License or registration required.

No person shall peddle, vend, solicit or request contributions for any purpose, charitable or otherwise, unless such person has obtained a License from the City or unless the person meets the exception contained in Section 737.08. Such person shall carry the License required by this section, and a photographic identification card and the Do-Not-Solicit List required by Section 737.12 at all times while exercising such calling and shall, upon demand, exhibit those items to any official of the City or occupant of any residence or business establishment being contacted.

(Ord. 2017-O-2257, Passed 1-31-17)

737.04 - License application.

(a) Except as provided in Section 737.04(b) below, Applicants for a License under this chapter must file with the Chief of Police a sworn application in writing, in duplicate, on a form to be furnished by the Chief of Police, which shall give the information below. If more than one person shall be vending, soliciting or peddling for a particular business, each individual person shall be deemed a separate Applicant:

- (1) Name of the Applicant;
- (2) Permanent address of the Applicant;
- (3) A brief description of the nature of the business and the goods and/or services to be sold;
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (5) The length of time for which the right to do business is desired;
- (6) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time such application is filed and the proposed method of delivery;
- (7) A valid state or federal photographic identification card such as a Driver's License.
- (8) Description, vehicle License number and state of registration of each vehicle, if any, that will be operated under the License being applied for;
- (9) A statement as to whether or not the Applicant has been convicted of a Specified Criminal Act.

(b) When the Applicant is a minor vending, soliciting or peddling he or she shall be accompanied by an adult at all times during the time of solicitation. The adult shall be considered the Applicant for a License under this subsection (b) and must file with the Chief of Police a sworn application in writing, in duplicate, on a form to be furnished by the Chief of Police, which shall give the information below. If more than one minor shall be vending, soliciting or peddling there shall be at least one adult for every six minors:

- (1) Name of the Applicant;
- (2) Permanent address of the Applicant;
- (3) A brief description of the nature of the business and the goods and/or services to be sold;
- (4) If employed, the name and address of the employer, together with credentials establishing the exact relationship;
- (5) The length of time for which the right to do business is desired;
- (6) The place where the goods or property proposed to be sold, or orders taken for the sale thereof, are manufactured or produced, where such goods or products are located at the time such application is filed and the proposed method of delivery;

- (7) A valid state or federal photographic identification card such as a driver's License.
- (8) Description, vehicle License number and state of registration of each vehicle, if any, that will be operated under the License being applied for;
- (9) A statement as to whether or not the Applicant has been convicted of a Specified Criminal Act.

(Ord. 2017-O-2257, Passed 1-13-17; Ord. 2017-O-2287, Passed 8-28-17)

737.05 - License waiting period; investigation.

Upon receipt of a License application, the Chief of Police, or his designee, shall investigate the Applicant. The Chief of Police or his designee, shall approve the License to be issued by the Chief of Police if: (1) All of the statements made in the application are true; (2) The Applicant has provided a valid photographic identification card; (3) The Applicant has not been convicted of a Specified Criminal Act; and (4) The Applicant has not had a License revoked by the City in the past pursuant to Section 737.07. The Chief of Police shall approve or deny a License application within two business days from receipt of a completed application. For purposes of this chapter "business day" shall mean weekdays (Monday thru Friday) excluding legal holidays.

(Ord. 2017-O-2257, Passed 1-31-17)

737.06 - License fees.

There shall be no license fee required for a License under this chapter.

(Ord. 2017-O-2257, Passed 1-31-17)

737.07 - License expiration; revocation.

Any License issued pursuant to this chapter shall expire not later than 30 days following the date of issuance. Such a License may be revoked at any time by the Chief of Police if the holder:

- (a) Is found to have misrepresented any statement on the application for a License to peddle, vend, solicit or request contributions;
- (b) Violates any of the provisions of this chapter;
- (c) Is the subject of a complaint for criminal trespass as defined by the Huber Heights Codified Ordinances; or
- (d) Is convicted of a Specified Criminal Act.

(Ord. 2017-O-2287, Passed 8-28-17)

737.08 - Exceptions from license.

Except as otherwise provided in Sections 737.11 and 737.12, the restrictions of this chapter do not apply to any canvassing activity as defined in Section 737.01(a).

(Ord. 2017-O-2257, Passed 1-31-17)

737.09 - Compliance with state law.

A representative of a charitable organization, as defined in Ohio R.C. Chapter 1716, may be required, if requested by the Chief of Police or his or her designee, to provide certification that such organization is duly registered with the Ohio Attorney General's office.

(Ord. 2017-O-2257, Passed 1-31-17)

737.10 - Falsification; misrepresentation.

No person required to obtain a License to solicit, peddle, vend or request contributions under this chapter shall register a false or fictitious name or address or represent by words or action that he or she is the employee, agent, partner or representative of any person or organization, when in fact, he or she is not the employee, agent, partner or representative of such person or organization.

(Ord. 2017-O-2257, Passed 1-31-17)

737.11 - Hours of solicitation.

- (a) All peddling, vending, soliciting, and requests for contributions other than in conjunction with canvassing activity, permitted under this chapter may be made only between the hours of 9:00 a.m. and 9:00 p.m.
- (b) All canvassing permitted under this chapter may be made only between the hours of 9:00 a.m. and 9:00 p.m.

(Ord. 2017-O-2257, Passed 1-31-17)

737.12 - Prohibited soliciting; notice.

- (a) No person shall knock at the door or ring the doorbell of any residence, apartment, or other dwelling unit in the City upon which is clearly displayed at the entrance a notice that reads "NO SOLICITORS" or that otherwise clearly purports to prohibit peddlers, contact canvassers, vendors, solicitors, or persons requesting contributions, unless such person is or has been invited upon the premises by the occupant thereof.
- (b) "Do Not Solicit" List. The Chief of Police or his or her designee shall maintain the "Do Not Solicit" List. Any property owner, or tenant(s) if the property is leased, may elect to add or remove his or her residence to or from the "Do Not Solicit" List, at any time, by:
 - (1) Calling or visiting the Police Division offices or the City's offices;
 - (2) Directing an email request to the City through a link to be maintained on the City's website for that purpose; or
 - (3) Returning a "Do Not Solicit" request form, if such request forms are provided by mail.
- (c) The "Do Not Solicit" List shall be updated as follows:
 - (1) Every person who elects to add his or her residence to the "Do Not Solicit" List shall be required to re-register such residence every five years. Any residence that is not re-registered in accordance with this section shall be removed from the "Do Not Solicit" List;
 - (2) On a periodic basis, the Chief of Police shall compare the "Do Not Solicit" List to the utility database to identify which residences on the "Do Not Solicit" List have been transferred or sold since being registered. The "Do Not Solicit" List shall remove any such residence; and
- (d) The Chief of Police shall provide a copy of the "Do Not Solicit" List to each person issued a License pursuant to this chapter. In addition, any person may obtain a copy of the "Do Not Solicit" List by:

- (1) Visiting the City's offices during normal business hours;
 - (2) Visiting the City's Police Department any time during normal business hours; or
 - (3) Accessing a copy from the City's website.
- (e) No person shall enter onto the property of any residence listed on the "Do Not Solicit" List maintained in accordance with subsection (a) hereof for the purpose of contact canvassing, peddling, vending, soliciting, or requesting contributions.

(Ord. 2017-O-2257, Passed 1-31-17)

737.13 - Appeals.

The Chief of Police shall give written notice of a refusal to issue a License required by this chapter, or revocation of such License previously granted, to the Applicant. Within ten days of service of such notice, the Applicant may provide to the Chief of Police in writing a response requesting an appeal hearing which shall include an address at which notice may be sent by overnight mail, an email address for electronic notice, or a fax phone number for notice of a hearing date, and a statement of reasons why the License or Application should not be denied or revoked. A response requesting an appeal hearing shall be deemed to have been received when delivered to Huber Heights Police Department during regular business hours Monday through Friday 9:00 a.m. to 5:00 p.m. If no response requesting an appeal hearing is received by the City within said ten days, the action shall become final. If a written response requesting an appeal hearing is received by the Chief of Police within said ten days, the Chief of Police shall notify the City Manager, or his or her designee of the receipt of such written response requesting an appeal hearing and the City Manager shall set a date of the hearing, which shall be within five days. The City Manager shall conduct a hearing, and at which respondent shall have the opportunity to present evidence and witnesses on his or her behalf. The respondent may appear and be heard in person, or by his/her attorney, in opposition to the decision and do any of the following: (i) present his/her positions, arguments and contentions; (ii) offer and examine witnesses and present evidence in support; (iii) cross-examine witnesses purporting to refute respondent's position, arguments and contentions; (iv) offer evidence to refute evidence and testimony offered in opposition to his/her position, arguments and contentions; and (v) proffer any such evidence into the record, if the admission is denied by the City Manager. If after the hearing the City Manager finds that grounds as specified in this chapter exist for denial or revocation, then such action shall become final and notice of such final action shall be sent to the Applicant. If the City Manager finds that no grounds exist for denial or revocation he or she shall overturn the denial or revocation. The City Manager shall issue his or her decision no later than two business days after the hearing.

(Ord. 2017-O-2257, Passed 1-31-17)

737.99 - Penalty.

Whoever violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the fourth degree and shall be fined not more than \$250.00 or imprisoned not more than 30 days, or both, for each offense. A separate offense shall be deemed committed each day during or on which a violation or non-compliance occurs or continues

(Ord. 2017-O-2257, Passed 1-31-17)

CHAPTER 738 - MASSAGE THERAPY ESTABLISHMENTS

738.01 - Definitions.

For purposes of this chapter the following definitions shall apply:

Applicant means a person who has applied for a permit to operate a Massage Therapy Establishment in the City of Huber Heights.

Licensed massage therapist means a person who is licensed under Ohio R.C. Chapter 4731 to practice Massage Therapy in the State of Ohio.

Massage service means any method of exerting pressure on, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating the external soft tissue of the body with the hands, or with the aid of any mechanical or electrical apparatus or appliance in exchange for anything of value. Massage Services shall also include the treatment of disorders of the human body by the manipulation of soft tissue through the systematic external application of massage techniques including touch, stroking, friction, vibration, percussion, kneading, stretching, compression, and joint movements within the normal physiologic range of motion; and adjunctive thereto, the external application of water, heat, cold, topical preparations, and mechanical devices in exchange for anything of value.

Massage therapy establishment means a fixed place of business where Massage Services are provided in exchange for anything of value.

(Ord. No. 2018-O-2350, § 1, 10-22-18)

738.02 - Permit required; prohibited conduct; exemptions.

- (a) After the effective date of this chapter all Licensed Massage Therapists and Massage Therapy Establishments operating in the City of Huber Heights shall obtain a permit pursuant to this chapter to operate.
- (b) It shall be unlawful for any person to offer or perform Massage Services in the City of Huber Heights unless that person is a Licensed Massage Therapist with the State of Ohio. This provision applies to all Massage Services including but not limited to those performed at a Day Spa as defined under Section 1123.31 of the Huber Heights Zoning Code.
- (c) It shall be unlawful for any person to operate a Massage Therapy Establishment in the City of Huber Heights unless both of the following applies:
 - (1) The owner or manager is a Licensed Massage Therapist in the State of Ohio.
 - (2) Massage Services provided in the Massage Therapy Establishment are performed exclusively by a Licensed Massage Therapist in the State of Ohio.
- (d) It shall be unlawful to employ a person to perform Massage Services in a Massage Therapy Establishment in the City of Huber Heights unless that person is a Licensed Massage Therapist in the State of Ohio.
- (e) It shall be unlawful for a person to operate a Massage Therapy Establishment in the City of Huber Heights without obtaining a Certificate of Zoning Compliance to operate a Massage Therapy Establishment from the City of Huber Heights.
- (f) Prohibited Conduct. No person that is if providing Massage Services in the City of Huber Heights shall knowingly do any of the following at, upon or within a Massage Therapy Establishment or elsewhere:
 - (1) Place his or her hand upon, touch with any part of his or her body, fondle in any manner, or massage the sexual or genital area of any other person;
 - (2) Perform, offer, or agree to perform any act which would require the touching of the sexual or genital area of any other person;
 - (3) Touch, offer or agree to touch the sexual or genital area of any other person with any mechanical or electrical apparatus or appliance;
 - (4) Wear unclean clothing, no clothing, transparent clothing, or clothing that otherwise reveals the sexual or genital areas of the masseur or masseuse;

- (5) Uncover or allow the sexual or genital area of any other person to be uncovered while providing a massage;
 - (6) Perform, offer or agree to perform a massage with or without compensation to any individual less than 18 years of age without the full consent and permission of a parent or guardian.
- (g) Exceptions. The provisions of this chapter shall not apply to the following:
- (1) Hospitals, medical facilities and public health centers (all as defined in Ohio R.C. 3701.01);
 - (2) A person licensed or registered by the State of Ohio Medical Board (other than a Massage Therapist) while performing his/her licensed or registered profession;
 - (3) A licensed cosmetologist, registered barber, registered barber apprentice, in which massages are administered only to the scalp, the face, the neck or the shoulder;
 - (4) A licensed chiropractor, licensed podiatrist, licensed nurse, or any other licensed health professional while performing his/her licensed or registered profession;
 - (5) A trainer for any amateur, semiprofessional or professional athlete or athletic team or school athletic program;
 - (6) A person working under the direct supervision of individuals or establishments mentioned in this subsection (g) while performing his/her licensed or registered profession;
 - (7) A person undertaking the required course work to become a licensed massage therapist while working under the direct supervision of a licensed massage therapist;
 - (8) As used in this subsection (g) "licensed" means licensed, certified, or registered to practice in the State of Ohio.

(Ord. No. 2018-O-2350, § 1, 10-22-18)

738.03 - Permit application process.

- (a) *Permit for Massage Therapy Establishments.* The Chief of Police, or his or her designee is responsible for granting, denying, revoking, and renewing Massage Therapy Establishment permits. A person who wishes to provide Massage Services in the City of Huber Heights must submit a current valid Certificate of Zoning Compliance to the City of Huber Heights Chief of Police or his/her designee and an Application for the Massage Therapy Establishment. The Application for Massage Therapy Establishment shall be accompanied by the following information:
- (1) Full legal name and current residential address of the applicant(s);
 - (2) The address of the proposed Massage Therapy Establishment;
 - (3) The names of any persons who will perform Massage Therapy at the Massage Therapy Establishment and copies of all licenses of those persons;
 - (4) A list of other services to be offered at the Massage Therapy Establishment;
 - (5) The website of the Massage Therapy Establishment, if applicable;
 - (6) All felony and misdemeanor convictions, of the applicant excluding those for traffic offenses;
 - (7) A copy of the license provided by the State Medical Board of Ohio for the owner and/or manager and each person who will practice Massage Therapy at the Massage Therapy Establishment;
 - (8) A printed form, signed the owner of the parcel of real property which is the proposed location of the Massage Therapy Establishment, whereby each such owner certifies that he/she/it understands and acknowledges that a Massage Therapy Establishment will be located on said parcel of real property; and
 - (9) Any other information requested at the time of application.

- (b) Each individual that performs Massage Services in the City shall be required to obtain a permit from the Chief of Police or his/her designee. Such permits are nontransferable. Before any individual may be issued a permit, he or she shall submit on a form to be provided by the City the following information:
 - (1) The individual's name and a personal or business address where mail may be delivered.
 - (2) The address where Massage Services will be performed.
 - (3) A copy of the license provided by the State Medical Board of Ohio.
 - (4) For renewals, a statement that the applicant has not violated and provision of this chapter.
- (c) A permit granted pursuant to this section shall be subject to annual renewal by the Chief of Police upon the written permit application of the individual and a finding by the Chief of Police that the individual has not committed any act during the existence of the previous permit period which would be grounds to deny the initial permit application.
- (d) Applications shall be submitted and approved before a Massage Therapy Establishment can be operated and Massage Services offered.
- (e) Establishments and individuals performing Massage Services that were in operation prior to the effective date of this section must submit an application not later than 90 days after the effective date of this section.
- (f) Once an application is submitted, the applicant shall receive a response in writing no later than 30 days after the date of submission.
- (g) In the event that an application is denied, the applicant may submit a new application.

(Ord. No. 2018-O-2350, § 1, 10-22-18)

738.04 - Issuance of permit; expiration and renewal.

- (a) Upon approval of an application, an applicant shall be provided with a Massage Therapy Establishment permit to operate the Massage Therapy Establishment or a Massage services provider permit (as the case may be).
- (b) Each permit shall contain the following information:
 - (1) The name of the applicant and address of the Massage Therapy Establishment where services will be performed;
 - (2) A unique identification number;
 - (3) A signature from the Chief of Police or his designee; and
 - (4) The effective dates of the permit.
- (c) Each permit shall be valid for a maximum of one year. Regardless of the date issued all permits shall expire on December 31 of the year they were issued.
- (d) No later than 30 days before the expiration date of a permit to operate a Massage Therapy Establishment or provide Massage Services, the permit holder shall submit a new application pursuant to Section 738.03 of this section.
- (e) Upon approval of the application for a Massage Therapy Establishment, the applicant shall be provided with a new Permit to operate the Massage Therapy Establishment.
- (f) Upon approval of the application for a Massage Therapist Permit the applicant shall be provided with a new Permit to provide Massage Services.

(Ord. No. 2018-O-2350, § 1, 10-22-18)

738.05 - Facility requirements.

- (a) All permits issued under Section 738.04 of this section must be displayed in a conspicuous location within the Massage Therapy Establishment.
- (b) All tables and surfaces in the Massage Therapy Establishment shall be clean and disinfected.
- (c) Clean linen, towels, and other materials used in connection with provided Massage Therapy services shall be stored in a closed cabinet.
- (d) The permit holder shall comply with any other requirement for operation as a business that is set forth in the Codified Ordinances of the City of Huber Heights.

(Ord. No. 2018-O-2350, § 1, 10-22-18)

738.06 - Prohibitions.

No person who has been issued a permit to operate a Massage Therapy Establishment shall employ any individual under the age of 18.

(Ord. No. 2018-O-2350, § 1, 10-22-18)

738.07 - Transfer of permit; change of information.

- (a) An individual may transfer a permit to operate a Massage Therapy Establishment to another individual by submitting a request in writing to the City of Huber Heights; a fee may be assessed for a transfer of permit as listed in the City of Huber Heights Fee Schedule, [which can be found on file with the city clerk].
- (b) The City of Huber Heights shall respond within ten days of receipt of the transfer request; if the transfer of permit is approved then a new permit will be issued.
- (c) In the event that information submitted as part of the application process changes, the permit holder shall notify the City of Huber Heights with ten days of such change.
- (d) Failure to update information in a timely manner may result in a suspension or revocation of a permit and a first-degree misdemeanor. A separate offense shall be deemed committed each day during on which or which a violation on noncompliance occurs or continues.

(Ord. No. 2018-O-2350, § 1, 10-22-18)

738.08 - Inspections.

- (a) Any of the following individuals may conduct inspections to determine compliance with this section and other applicable state and local laws:
 - (1) A police officer;
 - (2) A zoning or Code Enforcement officer or administrator;
 - (3) The Montgomery County Health Commissioner or their designee;
 - (4) A building inspector appointed by the City of Huber Heights;
 - (5) Any other person authorized by the City of Huber Heights to conduct inspections of a Massage Therapy Establishment; or
 - (6) A representative of the State Medical Board of Ohio.

- (b) Inspections may be conducted at any time with or without notice.
- (c) Inspections may be conducted at least once per year to determine compliance with this section.
- (d) Permit holders shall be given ten days from the date of inspection to correct any violations of this section. Permit holders shall immediately correct any issues found to be noncompliant with Section 738.05, Facility Requirements.

(Ord. No. 2018-O-2350, § 1, 10-22-18)

738.09 - Penalties; revocation of permit.

- (a) Any individual who offers or performs Massage Therapy or Massage Services in violation of this chapter is guilty of a misdemeanor of the first degree. A separate offense shall be deemed committed each day during on which or which a violation on noncompliance occurs or continues.
- (b) Any individual who holds a permit issued under Section 738.04 of this chapter who violates any provision of this chapter is guilty of a misdemeanor of the first degree. A separate offense shall be deemed committed each day during on which or which a violation on noncompliance occurs or continues.
- (c) In addition to a fine, the following actions may be taken against an individual who holds a permit under Section 738.04 of this section and violates any provision of this section:
 - (1) An additional fine may be assessed;
 - (2) A permit to operate a Massage Therapy Establishment may be suspended for up to 90 days; and
 - (3) After a third offense, a permit to operate a Massage Therapy Establishment may be revoked.

(Ord. No. 2018-O-2350, § 1, 10-22-18)

738.10 - Appeals; hearings.

- (a) *Appeals.*
 - (1) Any individual may appeal the denial or revocation of a permit to operate a Massage Therapy Establishment or provide Massage Services.
 - (2) Any individual who holds a permit to operate a Massage Therapy Establishment may appeal the findings of an inspection conducted under Section 738.08 of this chapter.
 - (3) Any individual may appeal a penalty assessed under Section 738.9 of this chapter.
 - (4) If an applicant has been denied a permit to operate a Massage Therapy Establishment, or provide Massage Services, failed an inspection, or received a penalty under Section 738.09, the applicant or permittee, shall, within three business days, have the right to appeal to the City Manager from such denial, revocation, penalty or suspension. The appeal shall be presented in writing for review by the City Manager. The City Manager shall, within three business days, notify the appellant of the findings of the appeal review. The City Manager, based upon the findings of the appeal review, may reinstate, modify, amend, or uphold the penalty assessed under Section 738.09 of this chapter. If the appellant does not accept the findings of the City Manager, the applicant or permittee can appeal to City Council through a hearing process defined in Section 738.10(b) of this section.
- (b) *Hearings.* If an applicant has been denied a permit to operate a Massage Therapy Establishment, or provide Massage Services, failed an inspection, or received a penalty under Section 738.09, the applicant or permittee, and does not accept the findings of the City Manager during the appeal review shall, within three business days, have the right to appeal to the City Council from such denial,

revocation or suspension. Notice of appeal shall be filed in writing with the City Manager who shall fix the time and place for hearing at the next meeting of City Council but not later than 15 days thereafter. The City Manager shall notify the Clerk of Council of the time and place of such hearing. A qualified quorum of Council is required for the hearing. The appellant may appear and be heard in person or by counsel. If, after hearing, a majority of the members of Council present at such meeting declare in favor of the applicant, such permit shall be forthwith issued or fully reinstated, as the case may be; otherwise, the order appealed from shall become final.

(Ord. No. 2018-O-2350, § 1, 10-22-18)

AI-7464

New Business C.

Ordinance Review Commission

Meeting Date: 03/17/2021

City Code - Part Nine - Streets and Public Services Code - - Part 1 - Review

Submitted By: Anthony Rodgers

Department: City Council

Subject

City Code - Part Nine - Streets and Public Services Code - Part 1 - Review

Purpose and Background

The Ordinance Review Commission will begin review of the City Code - Part Nine - Streets and Public Services Code - Part 1 (see attached).

Fiscal Impact

Source of Funds	Cost	Recurring Cost (Yes/No)
N/A	N/A	N/A

Attachments

Part Nine - Streets and Public Services Code - Part 1

TITLE ONE - STREET AND SIDEWALK AREAS

CHAPTER 903 - CONSTRUCTION AND IMPROVEMENTS IN PUBLIC RIGHT-OF-WAY¹¹

Footnotes:

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Cross reference— Placement of structures and objects within right-of-way—See Ch. 907; Driveway access policy—See Ch. 915; Subdivision construction procedure and materials—See § 1115.02; Subdivision street improvements—See § 1115.04.

State Law reference— Digging, excavating, piling earth on streets—See ORC 5589.10

903.01 - Public services restricted to public streets.

No department, officer or employee of this City shall accept, lay out, open, improve, grade, pave, curb or light any street or way, unless such street or way is a public street.

(Ord. 82-O-74, Passed 7-19-82)

903.02 - Permit required for excavation or construction.

- (a) No person, firm, corporation or political subdivision, whether an abutting owner or tenant or otherwise, shall do or permit to be done by its agents, contractors or employees, without first having obtained a permit from the City Engineer or his duly authorized representative to do any of the following acts:
- (1) Make any excavations in any public right-of-way, street, sidewalk space, alley, lane or other public way or place;
 - (2) Remove, break or make holes in any pavement of the streets, alleys, driveway aprons, sidewalk spaces or other public ways or places, or cut any curb;
 - (3) Construct, build, erect or place any article or structure in or upon, over or under a street, driveway apron, sidewalk, alley, lane, sidewalk space, public right-of-way or place;
 - (4) Make any improvement or change in the surface of any street, alley, lane, sidewalk or sidewalk space, or any other public right-of-way or place by grading, placing base stone paving or laying sidewalks or curbing, or place or paint any sign or advertising matter on the surface of any such place;
 - (5) Construct, build or maintain any driveway apron over or through any gutter, curb, tree lawn or sidewalk.
- (b) Except in the case of an emergency as provided in Section 903.07 of this chapter, any person, firm, corporation or political subdivision that does or permits to be done any of the items (a)(1)—(5) listed above, without a valid permit from the City Engineer or his duly authorized representative shall:
- (1) Pay for and obtain a permit for such work and otherwise comply with the provisions of this Chapter 903; and
 - (2) Be assessed by the City Engineer a civil penalty of not more than \$1,000.00 for the first such violation.

The appropriateness and amount of the civil penalty shall be based upon the perpetrator's defiance or indifference to the law; any environmental harm that resulted; the costs incurred in enforcement of this section. For the second offense occurring not sooner than 20 days and not

later than two years after the first offense, in addition to obtaining a permit as stated in subsection (b)(1), a civil penalty of \$1,500.00, shall be assessed no portion of which may be suspended. For a third offense and each subsequent offense occurring not sooner than 20 days after the second offense and not later than two years after the first offense, in addition to obtaining a permit as stated in subsection (b)(1), a civil penalty of \$2,500.00, shall be assessed for each such violation, no portion of which may be suspended.

- (c) Except in the case of an emergency as provided in Section 903.07 of this chapter, any person, firm, corporation or political subdivision that does or permits to be done any of the items (a)(1)—(5) listed above, without a valid permit from the City Engineer or his duly authorized representative may require the removal of any work that normally would have required inspection prior to installation.
- (d) In addition to the civil penalty, if excavation or construction in the City right-of-way is undertaken without a permit as provided in this section, the City Engineer may issue a stop work order until such time as a permit is obtained and any prior work has been inspected as for conformance with the standard plans and specifications established by the City Engineer. Prior to vacating the work site under this provision, the contractor(s) subject to such stop work order shall be responsible for securing the work site in manner which protects the public's health, safety, and well-being as determined by the City Engineer.
- (e) Nothing herein shall limit the City's ability to proceed with criminal prosecution and seek the penalties under Section 903.99 or prevent or otherwise limit any other remedies available to the City under this chapter or otherwise.
- (f) Any party aggrieved by the penalty imposed herein may file a written appeal to the City Manager within ten days of the date of the imposition of the Civil Penalty under the same process as set forth in Section 920.07 of this Code.

(Ord. 90-O-424, Passed 6-18-90; Ord. No. [2019-O-2394](#), § 1, 9-9-19)

903.03 - Permit exceptions.

The provisions of Section 903.02 shall not apply so as to require a permit for the following purposes:

- (a) For work being performed by a contractor under direct contract to the City for improvement within the public right-of-way;
- (b) For the repairing of sidewalks, driveway aprons, handicapped ramps, curb and gutters and for the improvement of streets or other public places under or by virtue of a contract with the City;
- (c) For the exercise of rights by a public utility or its duly authorized agents pursuant to a franchise granted by the City whereby the express terms of such franchise grant a privilege contrary to the terms of this chapter; provided however, that where any such franchise is granted to a public utility to occupy the streets, alleys and other public places for any purpose, such public utility or its duly authorized agents shall conform to and be subject to the terms of this chapter unless expressly exempted by the franchise. The above applies to repair of existing facilities. When new construction is put in place a permit shall be obtained by the utility;
- (d) Departments of the City performing work within the right-of-way.

(Ord. 90-O-424, Passed 6-18-90)

903.04 - Permit application; driveway limitations; permit refusal; specific applicant.

- (a) The person, firm, corporation, or political subdivision or any other legal entity recognized under the laws of the state of Ohio, desiring to exercise any license or privilege for which a permit is required by this chapter, shall make application in writing to the City Engineer or his duly authorized representative on the standard City permit form, setting forth the privilege desired. Such application shall be

accompanied by a plat or drawing when required, showing the details of the improvement, together with the location in the street or other public place where the privilege is desired, with reference to street and lot lines and the dimensions of the portion of the public way to be used; provided however, that no privilege shall be granted for the construction or maintenance of a driveway apron over or through any gutter, curb or sidewalk which is more than 25 feet in width at the back edge of the sidewalk, nor shall any driveway opening be made within 40 feet of the radial portion of any curb at a street intersection, nor shall a permit be granted for any driveway to be constructed over or through a sidewalk in such manner that the surface of the sidewalk shall be slanted or inclined at the point of the driveway other than the slope and alignment shown on the City's standard drawings, except when a variance is authorized by the City Engineer or his duly authorized representative in writing and notation of same on the permit.

- (b) No permit shall be granted for the exercise of any privilege which will constitute an unreasonable interference with the public use of any street, sidewalk, alley, lane or other public place, or a menace to safety in accordance with the City's driveway access policy as set forth in Chapter 915.
- (c) Any application for a permit shall be in the name of and be signed by the person, firm, corporation or political subdivision for which the privilege is desired; provided however, permits for gas and other utility services shall be issued only to the persons, firms or corporations duly authorized by license or franchise to make such installations and the owner of the abutting property shall not be required to join in the application for the same.

(Ord. 90-O-424, Passed 6-18-90; Ord. 2011-O-1895, Passed 6-27-11)

903.05 - Obligations of permittee.

Any person, firm, corporation or political subdivision or any other legal entity recognized under the laws of the State of Ohio, granted a permit as required in Section 903.02 shall be subject to the following obligations to the City in the exercise of the privilege hereby granted:

- (a) Shall do all work in accordance with the standard plans and specifications established by the City Engineer.
- (b) Shall deposit with the City a cash bond to secure the faithful performance of the obligations contained in this chapter. In lieu of the cash bond, the applicant may post a surety bond signed by a commercial surety company (letter of credit) which is approved by the City, or cash. Such letter of credit or surety bond shall be in accordance with the bond schedule established by the City Engineer. Upon the failure of any permittee to comply with the provisions of this chapter within the time stated in the permit such cash bond shall be deemed forfeited to the City.
- (c) In the case of a surety bond, when there is such a failure by the permittee, the surety shall become liable. In no event shall the cash bond be returned or the parties released from the surety bond until a minimum of one year after the street, sidewalk or other public way has been restored as provided for in this chapter. This one year minimum period is to serve as a test period to determine whether or not the permittee's restoration is going to withstand day-to-day usage. The period of the bond may be increased beyond the one year minimum by the City Engineer in the event performance of the obligations contained in this chapter are not resolved within such one year period. Any person, firm, corporation or political subdivision or any other legal entity recognized under the laws of the State of Ohio, granted a permit may, in lieu of depositing a separate cash or surety bond for each permit as provided in this subsection, deposit an annual cash or surety bond with the City in an amount agreed upon between the permittee and the City Engineer or his duly authorized representative, to secure the faithful performance of the obligations contained in this chapter for all excavation work to be done by the person, firm, corporation or political subdivision or any other legal entity recognized under the laws of the State of Ohio, during the year for which such cash or surety bond is deposited.
- (d) Guard, provide warning signals and barriers and otherwise do any and all things necessary to prevent injury to persons and property by reason of any excavation or other activity undertaken

pursuant to such permit, and furnish a telephone number or numbers where they can be reached at all times.

- (e) Indemnify and hold the City and the property owner with whom he may contract harmless from and against any claims, demand, lawsuit or judgment made by any person whatsoever, arising out of any exercise of privilege granted by such permit and based on either property damage or personal injury, or both, and reimburse the City and the property owner with whom he may contract for any expense incurred by it by reason of any such claim, demand, lawsuit or judgment, and assume responsibility for and defend and indemnify and hold harmless from any lawsuit which may arise including but not limited to all claims for labor materials, machinery or equipment furnished.
- (f) Procure and furnish satisfactory evidence that he or it has procured and is keeping in full force and effect a policy of liability insurance, providing himself or itself and the City with indemnification against any such claims, demands, lawsuit or judgment arising out of the exercise of the privilege granted. Such policy of liability insurance shall be in accordance with the requirements of the City Engineer. Such requirements of this subsection may be dispensed with when in the opinion of the City Engineer or his duly authorized representative, the nature of the undertaking does not require the same.

(Ord. 2011-O-1898, Passed 6-27-11)

903.06 - Permit revocation or termination.

Any permit granted by the City Engineer or his duly authorized representative pursuant to this chapter may be revoked and terminated by him at any time when, in his opinion, the terms of this chapter are being violated, or when the continued exercise of the privilege constitutes a menace to the public safety or is an unreasonable use of the public streets or ways.

Such termination shall in no way relieve the contractor of previous corrective obligations he has incurred with the City.

(Ord. 90-O-424, Passed 6-18-90)

903.07 - Emergency requiring proceeding without permit.

In cases of emergency requiring immediate action to make repairs to gas, water, or other lines or pipes, where time does not permit the making of application and securing of a permit from the City Engineer or his duly authorized representative as herein otherwise required, the person, firm, corporation or political subdivision required to perform such repairs may proceed without such fact. In such case, the person, firm, corporation or political subdivision shall make application and secure a permit for such undertakings at the earliest possible time and shall in all other respects comply with the provisions of this chapter.

(Ord. 90-O-424, Passed 6-18-90)

903.08 - Rules and regulations by city engineer.

The City Engineer or his duly authorized representative may make and adopt such rules and regulations governing the exercise of privileges pursuant to permits issued hereunder as he may deem necessary and proper for the administration of this chapter.

(Ord. 90-O-424, Passed 6-18-90)

903.99 - Penalty.

Whoever violates any of the provisions of this chapter is guilty of a minor misdemeanor. A separate offense shall be deemed committed each day during or on which a violation occurs or continues. Any person convicted of a second offense under this chapter is guilty of a misdemeanor of the fourth degree.

(Ord. 2011-O-1895, Passed 6-27-11)

CHAPTER 907 - PLACEMENT OF STRUCTURES AND OBJECTS WITHIN PUBLIC RIGHT-OF-WAY²¹

Footnotes:

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Cross reference— Placing obstructions in streets—See § 311.01; Sidewalk obstructions—See 521.04.

907.01 - Prohibitions.

- (a) No person shall place, maintain or erect any structure or object within the public right-of-way in those areas of the City that do not have sidewalks and curbs.
- (b) No person shall place, maintain or erect any structure or object on the sidewalk or within that part of the public right-of-way between the curb and the sidewalk.

(Ord. 2011-O-1895, Passed 6-27-11)

907.02 - Exemptions.

- (a) Mailboxes, flag poles, trees and other vegetation and decorative objects of five feet or less in height in compliance with Chapter 915 are exempt from Section 907.01.
- (b) Structures or objects authorized by City, State or Federal law are exempt from Section 907.01.

(Ord. 82-O-77, Passed 8-2-82)

907.03 - Violation; removal.

- (a) When any structure or object is found in violation of Section 907.01 the Director of Public Safety and Service, or his designee shall notify the owner or occupant who resides directly adjacent to such structure of such violation. Such notice shall also state that if this violation is cured within ten days no further action shall be taken. If such structure or object remains in place after such ten days, the Director or his designee, shall cause such object or structure to be removed.
- (b) When any structure or object is found in violation of Section 907.01 and such structure or object is a clear and present danger to the health, safety and welfare of the public, the Director or his designee, is authorized to immediately remove such object or structure until claimed by its rightful owner or disposed of according to law.

(Ord. 82-O-77, Passed 8-2-82)

907.99 - Penalty.

Whoever violates any provision of Section 907.01 is guilty of maintaining an illegal structure or object and shall be guilty of a minor misdemeanor.

(Ord. 2011-O-1895, Passed 6-27-11)

CHAPTER 911 - REPAIR AND MAINTENANCE OF CURBS, SIDEWALKS AND DRIVEWAYS³¹

Footnotes:

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State Law reference— Construction or repair at owner's expense—See ORC 729.01 et seq.; Notice to construct or repair sidewalks—ORC 729.03 et seq.

911.01 - Definitions.

The following terms shall be defined as follows:

City means the City of Huber Heights, Ohio.

Construction means the construction or new work where no work has previously been done.

Director means the Director of Public Service or his authorized representative.

Driveway means any driveway, approach or runway designed for the ingress and egress of vehicular traffic for a given parcel of real property.

Person means any person, persons, partnership or corporation.

Reconstruction means the relaying, rebuilding or repair of old work in part or as a whole.

Right-of-way means any public property dedicated for public use as a street, avenue, boulevard, lane, alley or public thoroughfare.

Street means any street, highway, alley, avenue, or other public way in the City designed to be used by vehicular traffic.

Sidewalk means any main or approach sidewalk, between the curb line and private property line designed to be used by pedestrian traffic.

(Ord. 82-O-72, Passed 7-19-82)

911.02 - Duty to repair and clean sidewalks and curbs.

- (a) Owners or occupants of any lands shall keep all abutting sidewalks and curbs in repair and all abutting sidewalks free from any nuisance.
- (b) The owner of any lot or land abutting upon any street shall repair, or keep in repair and free from nuisance and obstruction, the sidewalk in front of such lot or land after due notice of a resolution of Council ordering the repair of such sidewalk, the removal of such obstruction or the abatement of such nuisance.
- (c) If the owner or person having charge of such land fails to comply with such notice, Council shall cause the sidewalks to be repaired. All expenses and labor costs incurred shall, when approved by Council, be paid out of City funds not otherwise appropriated. Council shall make a written return to the County Auditor of its action, with a statement of the charges for its services, the amount paid for labor, the fees of the officers serving notices and a proper description of the premises. Such amounts, when

allowed, shall be entered upon the tax duplicate and be a lien upon such lands from and after the date of the entry and be collected as other taxes and returned to the City with the General Fund. Such remedy shall be in addition to the penalty provided in Section 911.99.

- (d) Sidewalks and curbs shall be repaired to conform to the walks and curbs they adjoin unless such adjoining walks are not in conformity with the requirements of the Director of Public Service, in which event as much of the sidewalk as in the opinion of the Director requires repairs, shall be reconstructed to conform to such requirements; provided, however, that temporary repairs may be made of such materials and in such manner as may be approved by the Director.
- (e) Concrete sidewalks that is located in front of a zoned residential property and is designated by the City as a Bikepath is to be repaired or replaced by the City when such repairs are selected or required by the City. A City Bikepath is defined as an eight foot wide concrete sidewalk located within the street right-of-way and is part of a designated path that is to be used for bicycles or pedestrians. It is located outside the traveled way and physically separate from motorized vehicular traffic. The Bikepath also may be used by skaters, joggers, users of manual and motorized wheelchairs, and other authorized motorized and non-motorized users.

(Ord. 82-O-72, Passed 7-19-82; Ord. 2011-O-1895, Passed 6-27-11; Ord. 2015-O-2153, Passed 2-23-15)

911.03 - Construction.

Whenever any sidewalks, curbs or driveway aprons within the public thoroughfare and related work or installation are constructed, repaired or altered, such construction shall be subject to inspection and approval by the Director of Public Service or his designee as to plans and installation, and the work shall be in conformity with the requirements prescribed by the Director and in conformity with the established grade of such street areas.

(Ord. 82-O-72, Passed 7-19-82)

911.04 - Rules and regulations by director.

The Director of Public Service is hereby authorized to adopt, promulgate, amend and enforce such administrative rules and regulations as may be necessary to execute and enforce the provisions of this chapter and is further specifically authorized and empowered to fix and establish, in compliance with the Building Code and adopted specifications, the thickness, width, materials and specifications of sidewalks, driveways and curbing to be installed, altered or repaired within the limits of any public street and the manner of performing any work relating to the matters referred to in this chapter. Such rules and regulations shall be kept on file and open to public inspection in the office of the Director and shall be published in the same manner as City ordinances. No driveway shall be constructed or reconstructed if the nearest edge of such driveway is less than 65 feet from the intersecting curb line on the stopside of any main thoroughfare.

(Ord. 82-O-72, Passed 7-19-82)

911.05 - Permission required for underground installations.

Upon application by the abutting owner for a license, permit or the privilege for the construction or installation, maintenance or use of a structure placed or built beneath the sidewalk, the Director of Public Service is hereby authorized to enter into a written contract granting the same upon such terms and specifications as shall protect and save harmless the City from any and all damages or claims arising therefrom, its construction, installation, maintenance or use, and for such duration of time and on such

conditions as are compatible with the installation and the need and use of such space for the benefit of the public, as determined by the Director.

(Ord. 82-O-72, Passed 7-19-82)

911.99 - Penalty.

Whoever violates Sections 911.02 to 911.05 or any regulation promulgated under Section 911.04 is guilty of failure to maintain or repair a sidewalk, curb or driveway and shall be guilty of failure to maintain or repair a sidewalk, curb or driveway and shall be guilty of a minor misdemeanor.

(Ord. 2011-O-1895, Passed 6-27-11)

CHAPTER 915 - DRIVEWAY ACCESS POLICY¹⁴¹

Footnotes:

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Cross reference— Driveway apron permit—See Code § 903.02(e); Subdivision driveway culverts—See Code § 1115.26.

915.01 - General purpose.

This chapter contains policies and regulations for the location and design of residential, farm, commercial, industrial and institutional driveways. It is a general policy of this chapter that maintaining a careful blend between the needs and safety of the motoring public and pedestrians, safely together with the needs and desires of the adjacent property owners shall result in a program that is most beneficial to all parties. "Direct driveway access to abutting property represents a service to the traveling public, driveways are not special concessions to landowners." - Federal Driveway Guidelines.

Regulations governing ingress and egress at gasoline service stations are also included in this chapter.

(Ord. 88-O-299, Passed 4-25-88)

915.02 - Access policies.

- (a) *Limited Access*. If a highway is now or is designated as an ultimate fully limited access freeway and access rights have been acquired (I-70, SR 4) and if:
- (1) The existing highway has no private access points existing, direct access to such highway shall not be permitted.
 - (2) The existing highway has private access points and the ultimate freeway design has been determined, access improvements may be permitted that shall fit the ultimate freeway plan. At the time the improvement is permitted, the method for deleting the access point shall be determined and necessary agreements made with the property owner to facilitate the deletion of the access point in the future.

Interstate 70, State Route 4 and State Route 235 within the corporate limits of the City are fully limited access roadways and no private access to them shall be permitted.

- (b) *Controlled Access Roads.* Modifications of existing points of access or changes from one location to another may be permitted if such modification or change would be beneficial to both the roadway operation and property development; however, new, additional points of access shall not be permitted. Modifications may also include the closing of narrow permissible access points in exchange for a wider point of access at a new location. Controlled access roads shall include all major and minor arterial roadways and may include portions of major collector roads, when so designated by the City Engineer.
- (c) *Nonlimited Access Roads.* Access to a nonlimited access road is permissible at any and all points along the street; however, such access is subject to the conditions prescribed by the City Engineer.

(Ord. 88-O-299, Passed 4-25-88)

915.03 - Design regulations.

- (a) *Number of Driveways Permitted.* Only one driveway to a property having a single use may be permitted, unless a variance is granted. Variances may be granted for uses other than residential when the frontage width of the property would make internal circulation difficult through only one access point or when other extenuating circumstances exist, such as the mix of traffic, etc. For residential properties, variances may be granted for circular drives. Although, circular drives may not be installed, unless the property has at least 160 feet of frontage and the second access point would not be located in an area of traffic congestion or other area where placing a driveway cut would be unwise. At corner residential lots consideration shall be given to a second access, when such access would be for the exclusive use of recreational vehicle (RV) parking in accordance with other City codes.

Commercial properties on corners may be permitted an access on both streets, if traffic safety conditions are met. Driveways on corner lots, where one street has large traffic volumes, should generally be placed on the lower volume road. When two or more facilities are located on a single property and one driveway cannot provide adequate access, more than one drive may be permitted. Each request for more than one drive shall be accompanied by sufficient information to justify the variance request.

- (b) *Restricted Movements.* The City reserves the right to control the type of ingress and egress on any thoroughfare street where traffic and safety condition may dictate the limiting of certain access movements, such as restricting of "left-in", "left-out" or "right-out" movements. Thoroughfare streets include major and minor collectors, major and minor arterials and limited access routes, as defined by the City's Thoroughfare Plan.
- (c) *Joint Driveways.* A jointly owned driveway may be permitted upon joint application by both property owners.
- (d) *Median Openings.* Where medians exist, new median openings for any use shall not be permitted in a highway which is divided by a raised or depressed median or by precast dividers except median openings for public roads or streets or large traffic generators such as large shopping centers or industrial plants may be permitted, if satisfactorily justified and in the public's interest. The City may create new medians when traffic conditions warrant restrictions of the crossover movement.
- (e) *Location of Driveways at Roadway Intersections.* New driveways shall not begin closer to an existing street intersection than that 40 feet from a stop bar or crosswalk on residential intersections. The City Engineer shall evaluate requests for location of driveways of other uses than residential by considering traffic volumes, type of land use, pavement width, lane usage, sight distance restrictions, etc.
- (f) *Right-of-way and Cross Corner Use Restrictions and Prohibitions.* In intersection areas there shall be no parking, no servicing of vehicles, no erection of lights, signs or other advertising devices in the street right-of-way within 30 feet of a traffic control device or within 20 feet of a crosswalk as provided by the City Traffic Code. Shrubs, evergreen bushes, fences and plantings within the 40 feet crosscorner dimension at intersections shall be confined to private property and shall be kept to an overall height of 30 inches or less measured at the sidewalk.
- (g) *Future Roadway Improvement Controls.* Future roadway improvements can be determined by reviewing the City's Thoroughfare Plan and the State Route 201/202 Access Control Plan. The location

and design of driveways or public road approaches shall be governed by the right-of-way lines, pavement edges, intersection radii and elevations of the future street.

- (h) *Encroachment of Driveway on Adjacent Frontage.* A permit may be issued for the construction of a driveway which encroaches on the abutting property frontage only when written permission from the affected property owner is presented and made a part of the record of the permit and only when such encroachment does not interfere with an existing driveway.
- (i) *Intermediate Islands.* Two adjacent driveways shall be separated by an intermediate island of a minimum width of six feet for curbed areas and 15 feet for uncurbed areas.
- (j) *Driveway Design.*
 - (1) *Grades.* Driveway approaches shall slope no more than ten percent, unless approval is granted by the City Engineer.
 - (2) *Widths.* Driveway widths shall be measured perpendicular to the driveway centerline and shall not normally exceed a width of 25 feet, a width greater than 25 feet may be permitted if a variance is approved.
 - (3) *Intersection angle.* The intersection angle is the interior angle between the driveway centerline and the centerline of street. Permissible intersection angles are 65 degrees to 90 degrees.
 - (4) *Radii or wedge area.* The driveway radii or widened wedge area shall be in accordance with the City's standard drawings.
 - (5) *Paving.* All driveway aprons abutting all public or private roads, except when the main road is gravel, shall be paved at the time of initial construction or as soon as weather permits, as follows:
 - A. Eight inch Portland Cement Concrete Pavement on three inches of 304 Aggregate Base (commercial or industrial approaches).
 - B. Six inch Portland Cement Concrete Pavement on three inches of 304 Aggregate Base (residential).
 - C. Six inch 304 Aggregate Base topped with two inches limestone (agricultural).
 - (6) *Curbing.*
 - A. Driveway aprons abutting curbed roads shall be curbed. The curb shall be depressed to a one and one-half inch height across the driveway opening. In industrial areas the curb may be omitted across the driveway opening and the grade across the gutter line shall be flush. Radius curbing shall be installed on industrial drives, however.
 - B. Driveways abutting uncurbed or rural roads shall be curbed; however, the curb shall not extend closer to the through pavement edge than six feet.

(Ord. 88-O-299, Passed 4-25-88; Ord. 88-O-323, Passed 10-3-88; Ord. 2011-O-1895, Passed 6-27-11)

915.04 - Gasoline service station access.

- (a) Commercial establishments, which have as their principal business the retail of gasoline, shall be allowed two access points to the property, unless the property is less than 100 feet in frontage, in which case the City Engineer shall review the case with special emphasis on the internal circulation patterns. At corner lots only one driveway shall generally be permitted on each street.

Any additional driveway requests shall be studied with respect to location of left turn storage bays, medians, traffic volume and congestion, accident potential, etc.

- (1) Where an existing pavement may not be set to a final grade, the apron within ten feet of the existing road may be paved in asphalt, while the balance of the apron to the future right-of-way line shall be paved in concrete.

(Ord. 88-O-299, Passed 4-25-88)

915.05 - Application for permit and preparation of application plan.

- (a) The owner or applicant is responsible for the preparation of a detailed plan to accompany the permit application for a new or modified driveway. The plan shall contain enough information for the following:
 - (1) Permit reviewing authorities to make an intelligent and conclusive review of the application.
 - (2) Enable the contractor to construct the proposed facility in accordance with the terms of the permit.
 - (3) Enable the inspector to ensure that the facility is constructed in accordance with the terms of the permit.
 - (4) Serve as a record of the construction authorized by the City.
- (b) Plans prepared to meet the above requirements shall contain the following information:
 - (1) Title showing name of owner or lessor, street location where the driveway is to be located;
 - (2) Location of site with respect to nearest intersection with a named and/or numbered road;
 - (3) North arrow and scale of plan in feet per inch;
 - (4) Width and type of main roadway pavement; curb location and type, if curbing exists; median location and type, if median exists;
 - (5) Dimension from edge of pavement to centerline of roadside drainage ditch and direction of flow in ditch;
 - (6) Location and size of existing, or proposed drainage structures or pipes;
 - (7) Dimension from street centerline to right-of-way line;
 - (8) Location or property lines, width of frontage;
 - (9) Width, pavement type, skew, profile and radii on driveways, or approaches;
 - (10) Location of pump islands, buildings and parking areas and/or such other features that shall determine the internal traffic pattern;
 - (11) Location of adjacent commercial installations, traffic signals that shall influence the external traffic pattern; and
 - (12) Any additional information that shall present an accurate description of the proposed site.

(Ord. 88-O-299, Passed 4-25-88)

915.06 - Waiver or establishment of policies or regulations.

An applicant, whose request for a driveway access has been denied by the City Engineer, may appeal this decision to the City Manager within ten days of the receipt of a written denial. The City Manager reserves the right to waive policies when the application of such would create a hazard in the operation of the street or roadway. The City Manager further reserves the right to establish such additional requirements, for unusual conditions, as may be necessary to prevent operational hazards along the road. An applicant may request an appeal of a ruling by the City Manager to Council within ten days of written notice of such ruling from the City Manager. However, Council is not obligated to review such appeal when an opinion has been rendered by the City Manager.

(Ord. 2011-O-1895, Passed 6-27-11)

915.99 - Penalty.

- (a) Whoever violates or continues to violate any provision of these rules and regulations, or whoever violates or continues to violate any provision of these rules and regulations beyond the time limit for compliance set forth in the order, notice of violation or compliance schedule established by the City Manager, shall be subject to the following:
 - (1) The first violation shall constitute a third degree misdemeanor. Each subsequent violation of the same provision by the same offender shall constitute a misdemeanor of the first degree. If the subsequent violation is a continuing one, each day of such violation shall constitute a separate violation.

(Ord. 2011-O-1895, Passed 6-27-11)

CHAPTER 919 - STREET LIGHTING ASSESSMENT PROCEDURE^[5]

Footnotes:

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Cross reference— Subdivision street lighting—See § 1115.14.

State Law reference— Assessments—See ORC 701.05 and Ch. 727.

919.01 - Procedure.

- (a) Upon receipt of a petition for street lighting, Council may, by resolution, declare the necessity to proceed with the improvement. The resolution shall state the location, the lots or lands to be assessed, the method of levying the special assessments, the mode of payment, number of installations and the estimated assessments.
- (b) The Clerk of Council shall cause the publication of the resolution of necessity in a newspaper of general circulation, once a week for two consecutive weeks within the City and shall also mail notice of the passage of the resolution to all affected property owners by regular mail at their last known tax mailing address.
- (c) The Clerk of Council shall also file a copy of the resolution with the County Auditor within 15 days following the passage of the resolution.
- (d) After the adoption of the resolution of necessity, the City Engineer shall cause the improvement to be constructed in accordance with the plans and specifications pursuant to an agreement with the public utility.
- (e) Following construction, the City Manager shall determine the actual cost of the improvement and Council shall assess by ordinance all the lots and lands described in the resolution of necessity. The Clerk of Council shall publish notice of the ordinance of assessment once in a newspaper of general circulation in the City that the assessment has been made and is on file in the office of the Clerk of Council. The Clerk of Council shall certify a copy of the assessment ordinance to the County Auditor within 20 days after passage. This chapter provides the complete and exclusive procedure for street lighting assessments within this City.

(Ord. 90-O-419, Passed 6-4-90)

919.02 - Petitions; assessment renewal; districts.

- (a) All petitions for construction, operating and maintaining street lights are deemed to be for the continuation of the cost of supplying electricity and maintenance and that cost shall be assessed as provided herein.
- (b) Council may, by motion, direct that street light assessments be renewed or recalculated to conform to changes in the contracts between the City and the public utility.
- (c) The City Manager shall prepare and file in the office of the Clerk of Council the renewed, recalculated assessments and the Clerk of Council shall cause to be published in a newspaper of general circulation within the City, once a week for two consecutive weeks a notice that the renewed and recalculated assessments are on file and available for public inspection.
- (d) Not less than five days following the date of the last publication, Council may adopt the renewed and recalculated assessments by ordinance.
- (e) Council may, by ordinance, amend or consolidate street lighting districts and provide for more uniform and equitable basis of assessment for street lights.

(Ord. 90-O-419, Passed 6-4-90)

919.03 - Assessments over \$250.00.

The City Manager shall prepare and file a list of owners of any lot or parcel of land which shall be assessed in excess of \$250.00 per year. The Clerk of Council shall notify such owners by certified mail. If it appears that one or more of the owners cannot be found, the Clerk shall serve the owners by publication once in a newspaper of general circulation within the City.

(Ord. 90-O-419, Passed 6-4-90)

CHAPTER 920 - UTILITY STRUCTURES^[6]

Footnotes:

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Cross reference— Subdivision design standards—See Code § 1109.23.

920.01 - Definitions.

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

Essential Services shall mean providing electricity, water, sewer and/or gas.

Front Yard, Rear Yard and *Side Yard* shall have the same definition as set forth in Chapter 1123 of the Huber Heights Codified Ordinances. Provided, however, in the event a lot is on a corner such that both a front yard and side yard abut a street, the side yard that abuts a street shall also be considered a front yard for purposes of this chapter.

Permit as used in this chapter means a Private Property Utility Structure Permit, issued by the City.

Utility Structure as used in this chapter means any above ground structure, facility, or equipment, including, but not limited to, pedestals, poles, boxes, cabinets, meters, storage facilities, or utility stations, that are associated with a utility providing services to its customers. Such services shall include, but are

not limited to: electricity, natural gas, telecommunications, cable, video and internet service, and water. Utility structures shall not include fire hydrants, traffic control devices, or other City equipment.

(Ord. 2008-O-1746, Passed 6-9-08)

920.02 - Classification.

Utility structures shall be classified by size as follows:

- (a) Small utility structures shall be less than 36 inches in height above grade, less than 36 inches in width, and less than 36 inches in depth.
- (b) Large utility structures shall be greater than 36 inches in height above grade, greater than 36 inches in width, and greater than 36 inches in depth.

If all three dimensions do not fall within the same size classification, then the utility structure will be classified based on the dimension that falls within the largest classification.

(Ord. 2008-O-1746, Passed 6-9-08)

920.03 - Permit requirements.

- (a) A Private Property Utility Structure Permit issued by the City Engineer shall be required for the following utility structures:
 - (1) New small utility structures located in the front yard.
 - (2) New large utility structures regardless of location.
 - (3) Replacement of large utility structures in the front yard.
- (b) The City Engineer shall review the application submitted by the utility company and any written concerns submitted by the property owner owning the property where the utility structure will be placed and property owners within 100 feet of the utility structure. The City Engineer shall issue a Permit approving the utility structure, after proof of the required notice is given, if the utility structure meets the location guidelines and screening criteria contained in this chapter.
- (c) No permit is required for the following utility structures:
 - (1) New small utility structures in the side or rear yard.
 - (2) New utility poles regardless of location.
 - (3) Replacement of small utility structures regardless of location; provided that all unused utility structures are promptly removed.
 - (4) Replacement of large utility structures in the side or rear yard, provided that all unused utility structures are promptly removed.
 - (5) Replacement of utility poles regardless of location; provided that all unused utility structures are promptly removed.
 - (6) A utility structure that is physically attached to a building; such as a meter or service box or to the wiring, cable, pipe, or conduit that provides utility service from a service main to the individual property, or to gas meter regulators.
- (d) The City Engineer may grant a utility company temporary approval of a utility structure, prior to notice being sent to property owner(s), when it is necessary in order to timely provide essential services. Within five days after obtaining temporary approval, the utility company shall file for a Permit. Temporary approvals shall expire after 30 days and are conditioned upon the utility company relocating or removing the utility structure within 120 days if a Permit is not granted for the utility structure.

- (e) A utility company providing essential services has temporary approval to install a utility structure that is required to adequately respond to an emergency with respect to those essential services. Provided however, within 14 days after such installation, the utility company shall notify the City Engineer of the emergency and the action taken and shall apply for a Permit as required by this chapter. The utility company shall relocate or remove a utility structure placed during an emergency without a Permit within 120 days of its installation if a permit is not granted for the utility structure.
- (f) The fee for a Permit shall be as determined by City Council from time to time.

(Ord. 2008-O-1746, Passed 6-9-08)

920.04 - Written notice.

If a Permit is required, the utility company shall provide for written notice to the property owner and all property owners within 100 feet of the utility structure. The written notice may be hand-delivered or sent by ordinary mail. A Permit may not be issued until at least seven days after the written notice has been hand-delivered or mailed. If the Utility Structure does not require a Permit, the utility company shall provide post-installation notification to the City Engineer within 30 days.

(Ord. 2008-O-1746, Passed 6-9-08)

920.05 - Placement.

All New or Replaced Utility Structures under this chapter are to be placed within the intersection clearance zone with a ten-foot minimum clearance from fire hydrants and shall not adversely impact the line of sight for any driveways. Where possible, Utility Structures should be located in a platted utility easement. All Utility Structures must be coordinated to the extent possible with existing utility structures, reducing the total number of utility structures, providing the most effective screening, and minimizing the impact on existing trees. Large utility structures shall not be located within the front yard. All pads supporting utility structures shall be concrete.

(Ord. 2008-O-1746, Passed 6-9-08)

920.06 - Visual impact.

The Utility Company shall minimize the visual impact of the utility structure, including size, color and screening. The vistas of the property owner and adjacent property owners shall be considered with a goal of obtaining 50 percent opacity as viewed from neighboring property lines. Fifty percent opacity should be obtained upon installation. However, the City Engineer may permit planting to be postponed due to seasonal conditions. Fifty percent opacity shall not be required for utility poles or for wires and cables. Screening is to be achieved by the use of existing or new vegetation; existing or new fencing; existing structures.

(Ord. 2008-O-1746, Passed 6-9-08)

920.07 - Appeals.

The City Engineer's decision to deny a Permit may be appealed to the City Manager. All appeals on a denial of a Permit must be made in writing within ten calendar days from the date of the action being appealed. If the City Engineer issues a denial of a Permit, the City Engineer shall notify the applicant in writing of the denial, suspension or revocation, including the grounds therefor, within three business days of such decision. If a notice of appeal is timely received by the City Manager, the City Manager shall notify the respondent within three business days of the receipt of the request for appeal of a hearing date

to be within 21 days. The respondent may appear and be heard in person, or by his/her attorney, in opposition to the decision and do any of the following:

- (a) Present his/her positions, arguments and contentions;
- (b) Offer and examine witnesses and present evidence in support;
- (c) Cross-examine witnesses purporting to refute respondent's position, arguments and contentions;
- (d) Offer evidence to refute evidence and testimony offered in opposition to his/her position, arguments and contentions; and
- (e) Offer any such evidence into the record.

The City Manager shall render a decision within five business days after the hearing.

(Ord. 2008-O-1746, Passed 6-9-08)

920.08 - Exceptions.

This chapter shall not apply to utility structures within a Public Right-of-way.

(Ord. 2008-O-1746, Passed 6-9-08)