

Chapter 13

Licenses, Permits and General Business Regulations

Part 1 Adult Businesses

A. Adult Business Regulations

- §13-101. Title
- §13-102. Purpose, Findings, and Intent
- §13-103. Definitions
- §13-104. Standards
- §13-105. License Required
- §13-106. Issuance of License
- §13-107. Fees
- §13-108. Inspection
- §13-109. Expiration of License
- §13-110. Suspension
- §13-111. Revocations and Appeals of Denials, Suspensions, or Revocations
- §13-112. Transfer of License
- §13-113. Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos, or Live Entertainment in Viewing Rooms
- §13-114. Additional Regulations for Escort Agencies
- §13-115. Additional Regulations for Nude Model Studios
- §13-116. Additional Regulations Concerning Public Nudity
- §13-117. Prohibition Against Children in an Adult Business
- §13-118. Exemption for Modeling Class
- §13-119. Enforcement Officer
- §13-120. Enforcement Remedies

B. Nude Activities

- §13-131. Title
- §13-132. Definitions
- §13-133. Nudity, Sexual Conduct Prohibited
- §13-134. Enforcement Officer
- §13-135. Penalties

C. Obscene Materials and Activities

- §13-141. Purpose and Title
- §13-142. Offenses Defined
- §13-143. Exemption
- §13-144. Enforcement Officer
- §13-145. Penalties

Part 1

Adult Businesses

A. Adult Business Regulations

§13-101. Title.

This Part shall be known and may be cited as the “Clifton Township Adult Business Regulation Ordinance.”

(Ord. 1-2000, 6/10/2000, §1)

§13-102. Purpose, Findings, and Intent.

1. Purpose.

A. Pursuant to the authority granted in the Second Class Township Code, 53 P.S. §65101 *et seq.*, to prohibit nuisances; to promote the health, cleanliness, comfort, and safety of the citizens of the Township; and to regulate the time of opening and closing, and the conduct of places of public entertainment, amusement, and recreation, the Township of Clifton enacts this Part to minimize and control the adverse effects of adult businesses and thereby protect the health, safety, and welfare of its citizens; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of blight.

B. The Board of Supervisors has determined that location criteria alone do not adequately protect the health, safety, and general welfare fo the people of the Township, and that licensing is a legitimate and reasonable means of accountability to insure that operators of adult businesses comply with reasonable regulations and to insure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

C. The Board of Supervisors does not intend this Part to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of adult businesses.

2. Findings. The Board of Supervisors finds:

A. In adopting these standards which apply to adult businesses, the Township Board of Supervisors has made the following findings in regard to the secondary effects on the health, safety, and welfare of the citizens of the Township. The findings are based on evidence concerning the welfare of the citizens of the Township. The findings are based on evidence concerning the adverse secondary effects of adult businesses on the community presented in hearings and in reports made available to the Board of Supervisors, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theaters*, 427 U.S. 50 (1976), and *Northend Cinema, Inc., v. Seattle*, 585 P. 2d 1153 (Wash. 1978), and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Saint Paul, Minnesota; Manatee County, Florida; Houston Texas; Indianapolis, Indiana; Amarillo, Texas; Los Angeles, California; Austin, Texas; Seattle, Washington; Oklahoma City,

Oklahoma; Beaumont, Texas; and New York City, New York; and also on findings found in the *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses*, June 6, 1989, State of Minnesota.

(1) The concern over sexually transmitted diseases is a legitimate health concern of the Township which demands regulation of adult businesses and adult uses in order to protect the health and well-being of the citizens.

(2) Certain employees of adult business regulated by this Part as adult theaters and cabarets engage in higher incidents of certain types of sexually oriented behavior at these businesses than employees of other establishments.

(3) Sexual acts occur at adult businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows, as regulated by this Part as adult book stores, adult novelty shops, adult video stores, adult motion picture theaters, or adult arcades.

(4) Offering and providing such space encourages such activities, which create unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other adult businesses for the purpose of engaging in sex within the premises of such adult businesses.

(6) At least 50 communicable diseases may be spread by activities occurring in adult businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (AIDS), genital herpes, hepatitis B, non B amebiasis, salmonella infections, and shigella infections; and, the incidence of many of these diseases is on the increase.

(7) Sanitary conditions in some adult businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(8) There is convincing documented evidence that adult businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading or property values, and the decline of the overall character of the community. A number of municipal studies, including the 1986 Austin, Texas study, have demonstrated this.

(9) It is generally recognized that adult businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to neighborhood blight and downgrading the quality of life in the adjacent area. A number of municipal studies, including the 1986 Austin, Texas study, have demonstrated this.

(10) The Township desires to minimize and control these adverse secondary effects and thereby protect the health, safety, and welfare of the citizenry, protect the citizens from increased crime; preserve the quality of life, preserve property values and the character of the surrounding community.

B. The findings noted in paragraph .A above raise substantial governmental

concerns.

C. Adult businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

D. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the adult businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the adult business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the Township. It is appropriate to require reasonable assurances that the licensee is the actual operator of the adult business, fully in possession and control of the premises and activities occurring therein.

E. Removal of doors on adult booths and requiring sufficient lighting on premises with viewing booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

F. Requiring of adult businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

G. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the adult business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

H. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this Part is designed to prevent or who are likely to be witnesses to such activity.

I. The fact that an applicant for an adult business license has been convicted of a sexually related crime leads to the rational assumption that the applicant is likely to engage in that conduct in contravention of this Part.

J. The barring of such individuals from the management of adult businesses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

K. The general welfare, health, and safety of the citizens of the Township will be promoted by the enactment of this Part.

L. Limitation of operating hours of adult businesses to certain hours on Mondays through Saturdays, and closure of such businesses on Sundays and holidays reduces the adverse secondary effects of such businesses, including particularly, but not limited to late night noise levels, crime, and sexually offensive materials and activities in public areas, and promotes the public health, safety, and welfare.

3. *Intent.* It is the intent of this Part to:

A. Regulate adult business in order to promote the public health, safety, and welfare by minimizing the secondary effects on the community which are associated with such businesses, and which include difficulties for law enforcement, trash

disposal, deleterious effects on business and residential property values, increased crime (particularly the corruption of morals of minors and prostitution), and drive residents and businesses to move elsewhere.

B. Establish, content neutral standards applicable to such uses.

C. Have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials including sexually oriented or adult materials.

D. Not totally restrict or deny access by adults to sexually oriented materials or adult materials protected by the First Amendment of the Bill of Rights of the U. S. Constitution.

E. Not deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

F. Not condone or legitimize the distribution of obscene material, or to encourage any violation of the Crimes Code, 18 Pa.C.S.A. §101 *et seq.*, or Obscenity Code.

(Ord. 1-2000, 6/10/2000, §2)

§13-103. Definitions.

Adult arcade - any place to which the public is permitted or invited wherein coin-operated or token-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.” An “adult arcade” shall be considered an “adult business” for the purpose of this Part.

Adult bookstore, adult novelty store or adult video store -

A. A commercial establishment which, as one of its principal business purposes or as a substantial part of its business, offers for sale or rental for any form of consideration, any one or more of the following:

(1) Books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, video cassettes, or video reproductions, slides, or other visual representations which depict or describe “specified sexual activities” or “specified anatomical areas.”

(2) Instruments, devices or paraphernalia which are designed for use in connection with “specified sexual activities.”

B. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as “adult bookstore” or “adult video store.” Such other business purposes will not serve to exempt such commercial establishment from being categorized as an “adult bookstore” or “adult video store” so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe “specified sexual activities” or “specified anatomical areas.”

C. The term adult bookstore shall include but not be limited to an adult video store, and all such uses shall be considered an “adult business” for the purpose of

this Part.

Adult business - any of the following:

A. A use of a building or land for a business which has obscene materials as a substantial or significant portion of its stock-in-trade.

B. A use of a building or land for a business which involves the sale, lease, trade, gift, or display of drug paraphernalia as a substantial or significant portion of its stock-in-trade.

C. Any nightclub, bar, restaurant, arcade, theater, or any other establishment that conducts live performances as part of its business that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities," or films, motion pictures, video cassettes, slides, or other photographic reproductions in which a substantial portion of the total presentation time is devoted to the showing of material that is characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas," or where any "specified sexual activities" are conducted for economic gain or any other form of consideration.

D. Any of the following as defined in this Section:

- (1) Adult arcade.
- (2) Adult bookstore or adult video store.
- (3) Adult live entertainment use or facility.
- (4) Adult motel.
- (5) Adult motion picture theater.
- (6) Adult theater.
- (7) Escort agency.
- (8) Massage parlor.
- (9) Nude model studio.
- (10) Sexual encounter center.

Adult live entertainment use or facility -

A. A commercial use (including, but not limited to, a use selling food or beverages) including live entertainment involving:

(1) Persons (which may include, but is not limited to, waiters, waitresses, dancers, clerks, bartenders, contractors, or others) appearing in a state of nudity.

(2) Live performances which are characterized by the exposure of "specified anatomical areas" or simulated or actual "specified sexual activities."

(3) 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."

B. An "adult live entertainment use or facility" shall be considered an "adult business" for the purpose of this Part.

Adult motel -

A. A hotel, motel, or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration and as part of the consideration provides patrons with closed-circuit television transmissions, 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) Offers sleeping rooms for rent three or more times in one calendar day.

B. An “adult motel” shall be considered an “adult business” for the purpose of this Part.

Adult motion picture theater - a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.” An “adult motion picture theater” shall be considered an “adult business” for the purpose of this Part.

Adult theater - a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of “specified anatomical areas” or specified sexual activities.” An “adult theater” shall be considered an “adult business” for the purpose of this Part.

Drug paraphernalia - any objects, devices, instruments, apparatus, or contrivances, whose primary and traditionally exclusive use is involved with the illegal use of any and all controlled substances under Pennsylvania law.

Employee - a person who performs any service on the premises of an adult business on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

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

Escort agency - a person or business association or establishment which furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

Establishment - includes any of the following:

- A. The opening or commencement of any adult business as a new business.
- B. The conversion of an existing business, whether or not an adult business, to any adult business.
- C. The addition of any adult business to any other existing adult business or to a non-sexually oriented business.
- D. The relocation of any adult business.

Health facility - an establishment primarily engaged in providing services for human health maintenance including hospital facilities, nursing homes, and adult care

facilities, personal care facilities, and medical clinics and offices whether publicly or privately operated.

Licenses - a person in whose name a license to operate an adult business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in an adult business.

Knowingly - having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both:

A. The character and content of any material or performance described herein, which is reasonably susceptible of examination by a licensee or person.

B. The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the licensee or person made a reasonable bona fide attempt to ascertain the true age of such minor.

Massage - the performance of manipulative exercises using the hands and/or a mechanical or bathing device on a person(s)'s skin other than the face or neck by another person(s) that is related to certain monetary compensation, and which does not involve persons who are related to each other by blood, adoption, marriage, or official guardianship.

Massage parlor - a person or business association or establishment which furnishes, offers to furnish, or advertises to furnish as one of its primary business purposes for a fee, tip, or other consideration a massage which involves the exposure of any "specified anatomical areas" or the conduct of any "specified sexual activities."

Nude model studio - any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

Nudity or a state of nudity - the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering or any portions thereof below the top of the areolae.

Obscene materials - any literature, book, magazine, pamphlet, newspaper, paper, comic book, drawing, photograph, figure, image, motion picture, video tape, sound recording, article, instrument, or any other written or recorded matter which depicts or describes any "specified anatomical areas" and/or "specified sexual activities."

Person - an individual, proprietorship, partnership, corporation, association, or other legal entity.

Place of worship - buildings, synagogues, churches, religious retreats, monasteries, seminaries, and shrines used primarily for religious and/or spiritual worship and that are operated for nonprofit and noncommercial purposes.

Public buildings and use - any structure, building, or use owned and operated by a government body or agency including such things as public schools, parks, civic centers, municipal buildings; but excluding solid waste disposal facilities, institutional uses, nursing homes, hospitals, and other use specifically defined by this Part.

Public place - all outdoor areas owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public including, but not

limited to, places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, party rooms, or halls limited to specific members, and party rooms or halls restricted to adults or to patrons invited to attend, whether or not an admission charge is levied.

Recreational facilities, public - parks, swimming pools, playgrounds, tennis courts, and other recreational facilities owned and operated by the Township, County, School District, State, or Federal government.

Residence - a structure or portion thereof which is used exclusively for human habitation.

School, public or private - an educational institution primarily for persons between the ages of 5 and 19 that primarily provides State-required or largely State-funded educational programs, or an institution of higher learning authorized to grant associate, bachelors, masters, and/or doctorate degrees.

Semi-nude or in a semi-nude condition - the state of dress in which clothing partially or non-opaquely covers "specified anatomical areas."

Semi-public building or use - buildings or uses operated by non-profit, community-based organizations for the general use of Township residents, including churches, fire houses, ambulance buildings, private schools, libraries, and the like.

Sexual encounter center -

A. A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex.

(2) 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-nude.

B. A "sexual encounter center" shall be considered an "adult business" for the purpose of this Part.

Specified anatomical areas - any of the following:

A. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae.

B. Human male genitals in a discernable turgid state, even if completely and opaquely covered.

Specified criminal activity - any of the following offenses:

A. Prostitution or promotion of prostitution, dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries.

B. For which:

(1) Less than 2 years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later

date, if the conviction is of a misdemeanor offense.

(2) Less than 5 years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense.

(3) Less than 5 years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combinations thereof.

C. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

Specified sexual activities - any of the following:

A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts.

B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy.

C. Masturbation, actual or simulated.

D. Excretory functions as part of or in connection with any of the activities set forth in paragraphs .A, .B, and .C of this definition.

Township - Township of Clifton, Lackawanna County, Pennsylvania.

Transfer of ownership or control of an adult business - includes any of the following:

A. The sale, lease, or sublease of the business.

B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means.

C. The establishment of a trust, gift, or other similar legal device which transfer the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Viewing booths - booths, stalls, partitioned portions of a room, rooms, or other enclosures which are available for viewing (A) films, movies, videos, or visual reproductions of any kind depicting or describing "specified sexual activities" or "specified anatomical areas," or (B) persons who appear in a state of nudity or semi-nudity or who offer performances or presentations characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(Ord. 1-2000, 6/10/2000, §3)

§13-104. Standards.

The following standards shall apply to adult businesses:

A. *Setback*. Adult businesses shall not be located less than:

(1) One hundred fifty feet from any property line or public road right-of-way.

(2) One thousand feet from any:

(a) Residence.

- (b) Commercial enterprises catering primarily to persons under 18 years of age.
 - (c) Public or semi-public building or use.
 - (d) Public recreation facility.
 - (e) Health facility.
 - (f) Any establishment that sells alcoholic beverages.
- (3) One thousand five hundred feet from any:
- (a) Place of worship.
 - (b) Public or private school.

B. *Similar Businesses.* Adult businesses shall not be located within 500 lineal feet of any existing adult business.

C. *Measurement.* The setback distances established in this Section shall be measured from the nearest edge of the building used for the subject use, measured in a straight line (without regard to intervening structures or objects) to the nearest lot line of the premises of a use from which the required setback applies.

D. *Enlargement.* Any enlargement or expansion of an existing, legally created adult business shall be subject to the provisions of this Section and all other applicable standards of this Part.

E. *Limit of One Use.* It shall be a violation of this Part for any person to cause or permit the operation, establishment, or maintenance of more than one adult business in the same building, structure or portion thereof, or an increase of floor area of any adult business in any building, structure, or portion thereof that contains another adult business.

F. *Location of New Neighboring Uses.* An adult business lawfully operating as a conforming use shall not be rendered a nonconforming use if, subsequent to the grant of any required Township license, a use from which an adult business is required to provide a setback under this Section is developed within the required setback distance. Any additions or expansions of the use shall comply with all setbacks required by this Section.

G. *Alcohol.* No adult business shall be operated in combination with the sale and/or consumption of alcoholic beverages on the premises.

H. *Visibility and Signs.* No sexually explicit material, signs, silhouette, display, or word shall be visible at any time from outside of the building. Exterior signs shall be limited to a maximum of 30 square feet; and, the total area of all signs attached to the building facade shall not exceed 20 square feet. Content of such signs shall be limited to only the text of the name of the business and the hours of operation.

I. *Hours of Operation.* No adult business shall be open for business before 10 a.m., Monday through Saturday or after 11 p.m., Monday through Saturday. Adult businesses shall be closed at all times on Sundays and legal holidays.

(Ord. 1-2000, 6/10/2000, §4)

§13-105. License Required.

All adult businesses shall be required to obtain an annual license from the

Township in accord with this Section, and such license shall also be required for any adult business operating prior to the enactment of these provisions.

A. It is unlawful:

(1) For any person to operate an adult business without a valid adult business license issued by the Township pursuant to this Part.

(2) For any person who operates an adult business to employ a person to work for the adult business who is not licensed as an adult business employee by the Township pursuant to this Part.

(3) For any person to obtain employment with an adult business without having secured an adult business employee license pursuant to this Part.

(4) Beginning on the sixtieth day after enactment of this Part for any person to continue to operate any adult business in operation at the time of enactment of the Part without a valid adult business license pursuant to this Part.

(5) Beginning on the sixtieth day after enactment of this Part for any person who operates an adult business in operation at the time of enactment of the Part to employ a person to work for the adult business who is not licensed as an adult business employee by the Township pursuant to this Part.

(6) Beginning on the sixtieth day after enactment of this Part for any person to obtain employment with an adult business in operation at the time of enactment of this Part without having secured an adult business employee license pursuant to this Part.

B. *Application.* An application for a license to operate an adult business must be made on a form provided by the enforcement officer. The application must be accompanied by a sketch or diagram showing the floor plan and plot plan configuration of the premises, including a statement of total floor space occupied by the business. A sketch or diagram need not be professionally prepared, but must be drawn to a designated scale, or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus 6 inches.

C. *Qualification.* All applicants must be qualified according to the provisions of this Part. The application may request and the applicant shall provide such information (including fingerprints) as to enable the Township to determine whether the applicant meets the qualifications established in this Part.

D. *Signature.* If the person who wishes to operate an adult business is an individual, he/she must sign the application for the license as the applicant. For a person who wishes to operate an adult business as other than an individual, each individual who has a 10 percent or greater interest in the business must sign the application for a license as applicant. If a corporation is listed as owner of an adult business, or as the entity which wishes to operate such a business, each individual having a direct or indirect interest of 10 percent or greater in the corporation must sign the application for a license as applicant, and shall provide their home address and full legal name.

E. *Information Required.* The completed application for an adult business license shall contain the following information and shall be accompanied by the following documents:

- (1) If the applicant is:
 - (a) An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least 18 years of age.
 - (b) A partnership, the partnership shall state its complete name, and the name of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any.
 - (c) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its State of incorporation and qualified and authorized to conduct business in Pennsylvania, the names and capacity of all officers, directors, and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
- (2) If the applicant intends to operate the adult business under a name other than that of the applicant, he or she must state (a) the adult business' fictitious name and (b) submit the required registration documents.
- (3) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this Part, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
- (4) Whether the applicant, or a person residing with the applicant, has had a previous license under this Part or other similar adult business ordinance from another municipality, state, or county denied, suspended, or revoked, including the name and location of the adult business for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director, or principal stockholder of a corporation that is licensed under this Part whose license has previously been denied, suspended, or revoked, including the name and location of the adult business for which the license was denied, suspended, or revoked as well as the date of denial, suspension, or revocation.
- (5) Whether the applicant or a person residing with the applicant holds any other licenses under this Part or other similar adult business ordinance from another municipality, state, or county and, if so, the names and locations of such other licensed businesses.
- (6) The specific classification of sexually oriented use for which the applicant is filing along with a detailed description of each and every activity encompassed by the proposed adult business, which description shall thoroughly demonstrate compliance and/or intended compliance with all provisions of the Part.
- (7) The location of the proposed adult business, including a legal description of the property, street address, and telephone number(s), if any.
- (8) The applicant's mailing address and residential address.
- (9) A recent photograph of the applicant(s).
- (10) The applicant's driver's license number, Social Security Number, and

his/her State or Federally issued tax identification number.

(11) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but 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 6 inches.

(12) A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines of the property to be certified and all public and private roads, structures and land uses located within the setback areas established by Township ordinance for adult businesses.

(13) If an applicant wishes to operate an adult business, which includes viewing booths, then the applicant shall also comply with the application requirements set forth in this Part and shall separately apply for and obtain a building and occupancy permit for the installation of the viewing booths.

(14) The application form shall inform the applicant that (a) separate applications are required for any necessary zoning permits, subdivision and land development approvals, or building and occupancy permits and that the applicant may apply for such permits by contacting the enforcement officer and (b) that Department of Labor and Industry approval is required.

F. *Additional Information.* Before any applicant may be issued an adult business employee license, the applicant shall submit on a form to be provided by the Township the following information:

- (1) The applicant's name or any other name (including "stage" names) or aliases used by the individual.
- (2) Age, date, and place of birth.
- (3) Height, weight, hair, and eye color.
- (4) Present residence address and telephone number.
- (5) Present business address and telephone number.
- (6) Date, issuing state and number of driver's license, or other identification card information.
- (7) Social Security number.
- (8) Proof that the individual is at least 18 years of age.

G. *Identification, License History, and Criminal Convictions.* Attached to the application for an adult business employee license as provided above, shall be the following:

- (1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by any police department. Any fees for the photographs and fingerprints shall be paid by the applicant.
- (2) A statement detailing the license history of the applicant for the 5 years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, municipality, state, or country any business or has ever had

a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(3) A statement whether the applicant has been convicted of a specified criminal activity as defined in this Part and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

(Ord. 1-2000, 6/10/2000, §5)

§13-106. Issuance of License.

An adult business license shall only be issued for the specific classification of adult business as permitted by Township ordinances and as proposed by the applicant. The license, if granted, shall state the name of the person or persons to whom it is granted, the expiration date, the address of the adult business and the specific classification of adult business for which the license is issued. The license shall state that the adult business shall not commence until all required zoning, subdivision and land development and/or building code, and Department of Labor and Industry approvals are obtained by the applicant. All licenses shall be posted in a conspicuous place at or near the entrance to the adult business to be easily read at any time.

A. *Application.* Upon the filing of said application in a fully completed form for an adult business license or for an adult business employee license, the application shall then be referred to the Township enforcement officer for review and investigation. The Township enforcement officer shall utilize any available resources through the Pennsylvania State Police, the Commonwealth of Pennsylvania, and/or other law enforcement agencies as may be necessary to complete the review and investigation required by this Part. Within 30 days from the date the completed application is filed, the Township enforcement officer shall issue a license, unless it is determined by the Township enforcement officer that one or more of the following findings is true:

(1) The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

(2) The applicant is under the age of 18 years.

(3) An individual applicant or any individual holding a direct or indirect interest of more than 10 percent of a corporate applicant, or any of the officers or directors of a corporate applicant (if the applicant is a corporation), or any of the partners including limited partners (if the applicant is a partnership) or manager or other person in charge of the operation of the applicant's business has or have been convicted of a "specified criminal activity" as defined in this Part.

(4) The adult business employee license is to be used for employment in a business prohibited by local or State law, statute, rule, or regulation, or prohibited by a particular provision of this Part.

(5) The applicant has had an adult business employee license revoked by the Township within 2 years of the date of the current application. If the adult business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this Part shall be subject to appeal as set forth in this Part.

(6) An applicant is residing with the person who has been denied a license by the enforcement officer to operate an adult business within the preceding 12 months or residing with a person whose license to operate an adult business has been revoked within the preceding 12 months.

(7) An applicant's license to operate an adult business, issued by any jurisdiction, has been revoked within the preceding 12 months.

(8) The required application, investigation, and license fees have not been paid.

(9) The proposed adult business is in violation of or is not in compliance with any of the provisions of this Part.

B. *Annual Review.* A license granted pursuant to this Part shall be subject to annual renewal upon the written application of the applicant and a finding by the Township that the applicant has not been convicted of any specified criminal activity as defined in this Part or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in §13-107.

C. *Other Permits.* The fact that a person possesses other types of Township permits does not exempt the person from the requirement of obtaining an adult business license.

D. *Time for Action.* The enforcement officer shall complete the certification that the premises is in compliance or not in compliance within 20 days of receipt of the application by the Township.

E. *Manager.* Each adult business shall provide the name of a responsible on-site manager as part of the license. Such manager shall have the authority to ensure that the use complies with this Part, in addition to the responsibilities held by the owners of the business. The business and home address and telephone numbers of such manager shall be reported in writing to the enforcement officer. If such name, address or telephone number of such manager changes, the change shall be reported in writing to the enforcement officer within 1 working day.

F. *License Information.* The license, if granted, shall state on its face, the name of the person or persons to whom it is granted, the expiration date and the address of the adult business. The license shall be posted in a conspicuous place at or near the entrance to the adult business so that it may be easily read at any time.

G. *Denial.* A license denial shall conform to the provisions of §13-111.4.

H. *Aggrieved Parties.* Any person aggrieved by the grant of a license may appeal, in writing, within 10 days from the date of issuance of the license, to the Township Board of Supervisors. The Township Board of Supervisors shall then hold a local agency law hearing within 20 days of the date of filing of the appeal and

render a decision within 10 days from the end of the hearing. Appeals from a decision of the Township Board of Supervisors may be taken to court subject to §13-111.5 of this Chapter.

(*Ord. 1-2000, 6/10/2000, §6*)

§13-107. Fees.

1. *Application and Investigation Fee.* Every application for an adult business license (whether for a new license or for renewal of an existing license) shall be accompanied by a non-refundable application and investigation fee in an amount as established from time to time by resolution of the Board of Supervisors. [*Ord. 3-2008*]

2. *Annual Fee.* In addition to the application and investigation fee required above, every adult business that is granted a license (new or renewal) shall pay to the Township an annual non-refundable license fee in an amount as established from time to time by resolution of the Board of Supervisors. [*Ord. 3-2008*]

3. *Employee License Fee.* Every application for an adult business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual, non-refundable application, investigation, and license fee in an amount as established from time to time by resolution of the Board of Supervisors. [*Ord. 3-2008*]

4. *Submission.* All license applications and fees shall be submitted to the office of the Township Secretary, and, thereafter, the applications shall be forwarded to the Township enforcement officer for review and investigation and approval or denial.

(*Ord. 1-2000, 6/10/2000, §7; as amended by Ord. 3-2008, 11/13/2008*)

§13-108. Inspection.

1. *Inspection.* An applicant or licensee, and his/her employees, shall permit representatives of the Police Department, Fire Department, and the enforcement officer, to inspect the premises of an adult business for the purpose of ensuring compliance with the law, at any time that the adult business is occupied or opened for business.

2. *Violation.* A person who operates an adult business or his/her agent or employee is in violation of this Part if he/she refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

(*Ord. 1-2000, 6/10/2000, §8*)

§13-109. Expiration of License.

1. *Validity.* Each license shall expire 1 year from the date of issuance and may be renewed only by making application as provided in this Part. 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 pendency of the application will not prevent the expiration of the license.

2. *Renewal.* If the enforcement officer denies renewal of a license, the applicant shall not be issued a license for 1 year from the date of denial, except that after 90 days have elapsed since the date of denial, the applicant may be granted a license if the enforcement officer finds that basis for denial of the renewal license has been corrected and abated.

(Ord. 1-2000, 6/10/2000, §9)

§13-110. Suspension.

The Township enforcement officer shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee has:

- A. Violated or is not in compliance with any Section of this Part.
- B. Engaged in any use of alcoholic beverages while on the adult business premises or permitted the consumption or sale of any alcoholic beverage on the premises.
- C. Allowed a visibly intoxicated person on the premises at any time that the adult business is open for business.
- D. Refused to allow an inspection of an adult business premises as authorized by this Part.
- E. Knowingly permitted gambling by any person on an adult business premises.

(Ord. 1-2000, 6/10/2000, §10)

§13-111. Revocations and Appeals of Denials, Suspensions, or Revocations.

1. *Relationship to Suspension.* The Township enforcement officer shall revoke a license if a cause of suspension in §13-110 occurs and the license has been suspended within the preceding 12 months.

2. *Determination.* The Township enforcement officer shall revoke a license if he determines that:

- A. A licensee gave false or misleading information in the material submitted during the application process.
- B. A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises.
- C. A licensee has knowingly allowed prostitution on the premises.
- D. A licensee knowingly operated the adult business during a period of time when the licensee's license was suspended.
- E. A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the license premises.
- F. A licensee is delinquent in payment to the Township for any licensing fees past due.
- G. A licensee or any other person specified in §13-106.A.3 above, is or has been convicted of the offenses specified in the said subsection.

3. *Term of Revocation.* When the Township revokes a license, the revocation shall continue for 1 year, and the licensee shall not be issued an adult business license for 1 year from the date the revocation became effective. If, subsequent to revocation, the Township finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective.

4. *Appeal.* All license application, renewal, suspension, or revocation decisions shall be sent in writing to the applicant or licensee. All such decisions which deny, suspend or revoke a license shall state specifically the ordinance requirement not met and any other basis for the decision. After denial of an application, or denial of a renewal of an application, or after suspension or revocation of any license, the applicant or licensee may appeal pursuant to the local agency law to the Township Board of Supervisors. The Township Board of Supervisors will then hold a Local Agency Law hearing within 20 days from the date the appeal is filed and will render a written decision within 10 days from the date such hearing concludes. Any such appeal must be filed, in writing, with the Township Secretary/Treasurer, within 10 days from the date of mailing of the decision appealed from. Failure to file said appeal with the Township Secretary/Treasurer within 10 days from the date of the mailing of the decision appealed from shall be deemed a conclusive determination as to the issues or matters addressed by the written decision. In the case of a denial of a license renewal, or in the case of a license suspension or revocation, the licensee may continue to operate to the same extent as immediately prior to the suspension or revocation until the earlier of: (A) the expiration of the 10 day appeal period without filing of an appeal; or (B) the date of a decision dismissing any appeal.

5. *Appeal to Court.* Any person aggrieved by a decision of the Township Board of Supervisors may appeal to a court of competent jurisdiction. The Township shall, upon filing of such appeal, consent to any request by a license applicant or licensee to the court to give expedited review to such appeal. The Township shall certify any record to the court within 20 days of any request by the court to do so.

(Ord. 1-2000, 6/10/2000, §11)

§13-112. Transfer of License.

A licensee shall not transfer his/her license to another, nor shall a licensee operate an adult business under the authority of a license at any place other than the address designated in the application.

(Ord. 1-2000, 6/10/2000, §12)

§13-113. Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos, or Live Entertainment in Viewing Rooms.

1. *Operator.* A person who operates viewing booths or causes them to be operated shall comply with the following regulations:

A. Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north of to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of interior of the premises to an accuracy of plus

or minus 6 inches. The Township 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.

B. The application shall be sworn to be true and correct by the applicant.

C. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

D. The interior of the premises shall be configured in such a manner that there is an unobstructed view from the manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of 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. In addition, all viewing booths shall have at least one side fully open so that all of the area inside the booth is open to the view of persons in the public area of the establishment.

E. It shall be the duty of the licensees to ensure that the view area specified in paragraph .D remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other materials and, at all times, 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 in the application filed pursuant to paragraph A.

F. No viewing room may be occupied by more than one person at any time.

G. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 5 foot candle as measured at the floor level.

H. It shall be the duty of the licensees to ensure that the illumination described above as maintained at all times that any patron is present in the premises.

I. No licensee shall allow openings of any kind to exist between viewing rooms or booths.

J. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

K. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

L. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

M. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within 48 inches of the floor.

2. *Violation of Duty.* A person having a duty under subsection .1.A or .1.M above commits a violation of this Part if he knowingly fails to fulfill that duty.
(*Ord. 1-2000, 6/10/2000, §13*)

§13-114. Additional Regulations for Escort Agencies.

1. An escort agency shall not employ any person under the age of 18 years.
2. A person commits a violation of this Part if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.
(*Ord. 1-2000, 6/10/2000, §14*)

§13-115. Additional Regulations for Nude Model Studios.

1. A nude model studio shall not employ any person under the age of 18 years.
2. A person under the age of 18 years commits a violation of this Part if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection .2 if the person under 18 years was in a restroom not open to public view or visible to any person.
3. A person commits a violation of this Part if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
4. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.
(*Ord. 1-2000, 6/10/2000, §15*)

§13-116. Additional Regulations Concerning Public Nudity.

1. It shall be a violation of this Part for a person to knowingly and intentionally, in a public place:

- A. Engage in sexual intercourse or to engage in deviate sexual intercourse as defined by the Pennsylvania Crimes Code, 18 Pa.C.S.A. §101 *et seq.*
- B. Appear in a state of nudity.
- C. Fondle the genitals of himself, herself or another person.
- D. This section shall not apply to:
 - (1) Any child under 10 years of age.
 - (2) Any individual exposing a breast in the process of breast-feeding an infant under 2 years of age.
 - (3) The exercise of free speech or free expression in the form of artistic and theatrical performances. It is the intention of the Township that this Section be construed, enforced and interpreted in such a manner as will cause the least possible infringement of the constitutional rights of free speech, free expression, due process, equal protection, or other fundamental rights.

2. It shall be a violation of this Part for a person who knowingly or intentionally in an adult business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least 10 feet from any patron or customer and on a

stage at least 2 feet from the floor.

3. It shall be a violation of this Part for an employee, while semi-nude in an adult business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in an adult business.

(*Ord. 1-2000, 6/10/2000, §16*)

§13-117. Prohibition Against Children in an Adult Business.

A person commits a violation of this Part if the person knowingly allows a person under the age of 18 years on the premises of an adult business.

(*Ord. 1-2000, 6/10/2000, §17*)

§13-118. Exemption for Modeling Class.

1. It is a defense to prosecution under §13-116 that a person appearing in a state of nudity did so in a modeling class operated:

A. By a proprietary school, licensed by the Commonwealth of Pennsylvania, a college, junior college, or university supported entirely or partly by taxation.

B. 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.

C. In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing.

(2) Where, in order to participate in a class a student must enroll at least 3 days in advance of the class.

(3) Where no more than one nude model is on the premises at any one time.

(*Ord. 1-2000, 6/10/2000, §18*)

§13-119. Enforcement Officer.

The Board of Supervisors may appoint one or more enforcement officers, who may be an individual, firm, or agency of the Township, to conduct inspections, make reports and administer other parts of this Part as determined by the Board of Supervisors.

(*Ord. 1-2000, 6/10/2000, §19*)

§13-120. Enforcement Remedies.

1. Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense. [*Ord. 3-2008*]

2. *Other Remedies.* In addition to any penalty therein provided, any person, persons, firm, partnership, or corporation who or which shall violate any provision of this Chapter shall be subject to any law or laws, of the Commonwealth of Pennsylvania, which affords a remedy for such violation in any court of the Commonwealth, including but not limited to, equitable or injunctive relief.

(*Ord. 1-2000, 6/10/2000, §20; as amended by Ord. 3-2008, 11/13/2008*)

B. Nude Activities**§13-131. Title.**

This Part shall be known and may be cited as the “Clifton Township Nude Activities Ordinance.”

(Ord. 2-2000, 6/10/2000, §1)

§13-132. Definitions.

Alcohol - ethyl alcohol of any degree of proof originally produced by the distillation of any fermented liquid, whether rectified or diluted with or without water, whatever may be the origin thereof, and shall include synthetic ethyl alcohol, but shall not mean or include ethyl alcohol, whether or not diluted, that has been denatured or otherwise rendered unfit for beverage purposes.

Alcoholic beverage -

A. Any liquor, alcoholic, spirituous, vinous, fermented, or other alcoholic beverage, or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented, or otherwise alcoholic, including all drinks or drinkable liquids, preparations, or mixtures, and reused, recovered, or redistilled denatured alcohol usable or taxable for beverage purposes which contain more than ½ of 1 percent of alcohol by volume.

B. Any malt or brewed beverage, beer, lager beer, ale, porter or similar fermented malt beverage containing ½ of 1 percent or more of alcohol by volume, by whatever name such beverage may be called.

C. Any whiskey or alcoholic distillate from a fermented mash of grain, capable of being used for beverage purposes.

Establishments dealing in alcoholic beverages - any business or commercial establishment (whether open to the public at large or where entrance is limited by cover charge or membership requirement), including those licensed by the Commonwealth for sale and/or service of alcoholic beverages; and any bottle club; hotel; motel; restaurant; night club; country club; cabaret; meeting facility utilized by any religious, social, fraternal, or similar organization; business or commercial establishment where a product or article is sold, dispensed, served, or provided with the knowledge, actual or implied, that the same will be, or is intended to be mixed, combined with or drunk in connection or combination with an alcoholic beverage on the premises of said business or commercial establishment; or business or commercial establishment where the consumption of alcoholic beverages is permitted. A private residence, whether permanent or temporary in nature, is not an establishment dealing in alcoholic beverages.

Person - a natural person, association, or corporation. Whenever used in a clause prescribing or imposing a fine, imprisonment or both, the term “person,” as applied to “association,” shall mean the partners or members thereof, and, as applied to “corporation,” shall mean the officers thereof, except, as to incorporated clubs, the term “person” shall mean such individual or individuals who are under possession and sale of alcoholic beverages therein.

(Ord. 2-2000, 6/10/2000, §2)

§13-133. Nudity, Sexual Conduct Prohibited.

1. No person shall expose to public view his or her genitals including, without limitation, the human male genitals in a discernibly turgid state, even if covered, pubic area, vulva, anus, anal cleft or cleavage, or buttocks, or any simulation thereof, in an establishment dealing in alcoholic beverages.

A. For purposes of this subsection .1, “buttocks” shall include the area at the rear of the body which lies between two imaginary lines running parallel to the ground when a person is standing, the first or top such line drawn at the top of the cleavage of the nates (i.e., the prominence formed by the muscles running from the back of the hip to the back of the leg) and the second or bottom line drawn at the lowest visible point of this cleavage or the lowest point of the curvature of the fleshy protuberance, whichever is lower, and between two imaginary lines on each side of the body, which lines are perpendicular to the ground and to the horizontal lines described above, and which perpendicular lines are drawn through the point at which each nate meets the outer side of each leg. This Part would be violated, therefore, if any portion of this area is visible from any vantage point.

2. No female shall expose to public view any portion of the breast below a horizontal line across the top of the areola at its highest point, or simulation thereof, in an establishment dealing in alcoholic beverages. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human breast exhibited by a dress, blouse, shirt, opaque leotard, bathing suit, or any other wearing apparel, provided the areola is not exposed or visible in whole or in part.

3. No person maintaining, owning, or operating an establishment dealing in alcoholic beverages shall suffer or permit any person to expose to public view his or her genitals, including, without limitation, the human male genitals in a discernibly turgid state, even if covered, pubic area, vulva, anus, anal cleft or cleavage, or buttocks as defined in subsection .1 here above, or any simulation thereof, within the establishment dealing in alcoholic beverages.

4. No person maintaining, owning, or operating an establishment dealing in alcoholic beverages shall suffer or permit any female person to expose to public view any portion of her breasts as defined in subsection .2 here above, or any simulation thereof, within the establishment dealing in alcoholic beverages.

5. No person shall engage in and no person maintaining, owning, or operating an establishment dealing in alcoholic beverages shall suffer or permit any sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act which is prohibited by law, the touching, caressing, or fondling of the female breast as that term is defined in subsection .2 here above, buttocks as that term is defined in subsection .1 here above, anus, or genitals including, without limitation, the human male genitals in a discernibly turgid state, even if covered, or the simulation thereof, within an establishment dealing in alcoholic beverages.

6. No person shall cause and no person maintaining, owning, or operating an establishment dealing in alcoholic beverages shall suffer or permit the exposition or availability of any graphic presentation, including photographs, pictures, or the projection of film, which depicts human genitals including, without limitation, the human male genitals in a discernibly turgid state, even if covered, pubic area, vulva,

anus, anal cleft or cleavage, buttocks as that term is defined in subsection .1 here above, female breasts as that term is defined in subsection .2 here above, sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, any sexual act prohibited by law, the touching, caressing, or fondling of the female breast as that term is defined in subsection .2 here above, buttocks as that term is defined in subsection .1 here above, anus, or genitals, including, without limitation, the human male genitals in a discernibly turgid state, even if covered, scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described in subsections .1 through .6, inclusive, here above, or any simulation thereof, within any establishment dealing in alcoholic beverages.

(*Ord. 2-2000, 6/10/2000, §3*)

§13-134. Enforcement Officer.

The Board of Supervisors may appoint one or more enforcement officers, who may be an individual, firm, or agency of the Township, to conduct inspections, make reports and administer other parts of this Part as determined by the Board of Supervisors.

(*Ord. 2-2000, 6/10/2000, §4*)

§13-135. Penalties.

1. Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense. [*Ord. 3-2008*]

2. *Other Remedies.* In addition to any penalty therein provided, any person, persons, firm, partnership, or corporation who or which shall violate any provision of this Part shall be subject to any law or laws, of the Commonwealth of Pennsylvania, which affords a remedy for such violation in any court of the Commonwealth, including but not limited to, equitable or injunctive relief.

(*Ord. 2-2000, 6/10/2000, §5; as amended by Ord. 3-2008, 11/13/2008*)

C. Obscene Materials and Activities

§13-141. Purpose and Title.

1. *Purpose.* Pursuant to the authority granted in the Second Class Township Code to prohibit nuisances; to promote the health, cleanliness, comfort, and safety of the citizens of Clifton Township and the authority of political subdivisions of the Commonwealth of Pennsylvania to enact local ordinances to regulate, inter alia, the sale, distribution, display and exhibition of and activities concerning obscene and other sexual material as provided for in §5903(k) of the Crimes Code, 18 Pa.C.S.A. §5903(k) and as upheld by the United States District Court for the Eastern District of Pennsylvania, in *Brown v. Pornography Commission of Lower Southampton Township*, 620 F. Supp 1199 (1985), the Township of Clifton enacts this Part.

2. *Title.* This Part shall be known and may be cited as the “Clifton Township Obscene Materials and Activities Ordinance.”

(Ord. 3-2000, 6/10/2000, §1)

§13-142. Offenses Defined.

1. *Offenses Defined.* No person, knowing the obscene character of the materials or performances involved, shall, within the Township of Clifton:

A. Display or cause or permit the display of any explicit sexual materials as defined in subsection .2 in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee, or similar place in such manner that the display is visible from any public street, highway, sidewalk, transportation facility, or other public thoroughfare, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials.

B. Sell, lend, distribute, exhibit, give away, or show any obscene materials to any person 18 years of age or older or offer to sell, lend, distribute, exhibit, or give away or show, or have in his possession with intent to sell, lend, distribute, exhibit, or give away or show, any obscene materials to any person 18 years of age or older, or knowingly advertise any obscene materials in any manner.

C. Design, copy, draw, photograph, print, utter, publish, or in any manner manufacture or prepare any obscene materials.

D. Write, print, publish, utter, or cause to be written, printed, published, or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom, or by what means any obscene materials can be purchased, obtained, or had.

E. Produce, present, or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to its obscenity.

F. Hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection.

2. *Definitions.* As used in this Part, the following words and phrases shall have the meanings given to them in this subsection .2:

Community - for the purpose of applying the “contemporary community standards” in this Part, “community” means the State.

Knowing - as used in subsection .1, “knowing” means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any material or performance described therein which is reasonably susceptible of examination by the person charged with violation of this Part.

Material - any literature, including any book, magazine, pamphlet, newspaper, story paper, bumper sticker, comic book, or writing; any figure, visual representation, or image, including any drawing, photograph, picture, video tape, or motion picture.

Nude - the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or showing the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

Obscene - any material or performance, if:

(1) The average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest.

(2) The subject matter depicts or describes in a patently offensive way, sexual conduct of a type described in this Part.

(3) The subject matter, taken as a whole, lacks serious literary, artistic, political, educational, or scientific value.

Performance - any play, dance, or other live exhibition performed before an audience.

Sadomasochistic abuse - in a sexual context, flagellation, or torture by or upon a person who is nude or clad in undergarments, a mask, or in a bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one who is nude or so clothed.

Sexual conduct - patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, anal or oral sodomy, and sexual bestiality; and patently offensive representations of masturbation, excretory functions, sadomasochistic abuse, and lewd exhibitions of the genitals.

Transportation facility - any conveyance, premises, or place used for or in connection with public passenger transportation, whether by air, rail, motor vehicle, or any other method, including aircraft, watercraft, railroad cars, buses, and air, boat, railroad, and bus terminals and stations.

3. *Dissemination to Minors*. No person shall knowingly disseminate by sale, loan, or otherwise explicit sexual materials to a minor. “Explicit sexual materials,” as used in this subsection, means materials which are obscene, or:

A. Any picture, photograph, drawing, sculpture, motion picture film, video tape, or similarly visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors.

B. Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in subsection .3.A, here above, or explicit and detailed verbal descriptions or narrative accounts of sexual

excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

4. *Admitting Minor to Show.* It shall be unlawful for any person knowingly to exhibit for monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture show or other presentation or performance which, in whole or in part, depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors, except that the foregoing shall not apply to any minor accompanied by his parent.

5. *Definitions.* As used in subsections .3 and .4 of this Section, the following words and phrases shall have the meanings given to them in this subsection .5:

Minor - any person under age of 18 years.

Nudity - the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

Sexual conduct - acts of masturbation, homosexuality, sexual intercourse, sexual bestiality, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such a person be a female, breast.

Sexual excitement - the condition of human male or female genitals when in a state of sexual stimulation or arousal.

Sadomasochistic abuse - flagellation or torture by or upon a person who is clad in undergarments, a mask or in bizarre costume or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

Harmful to minors - that quality of any description or representation in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

(1) Predominantly appeals to the prurient, shameful, or morbid interest of minors.

(2) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(3) Taken as a whole, lacks serious literary, artistic, political, educational, or scientific value for minors.

Knowingly - having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(1) The character and content of any material or performance described herein which is reasonably susceptible of examination by the person charged with violation of this Part.

(2) The age of the minor; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the person charged with violation of this Part made a reasonable bona fide attempt to ascertain the true age of such minor.

6. *Requiring Sale as a Condition of Business Dealings.* No person shall knowingly require any distributor or retail seller as a condition to sale or delivery for resale or

consignment of any literature, book, magazine, pamphlet, newspaper, story paper, paper, comic book, writing, drawing, photograph, video tape, figure or image, or any written or printed matter, or any article or instrument to purchase, or take by consignment for purpose of sale, resale, or distribution any obscene literature, book, magazine, pamphlet, newspaper, story paper, paper, comic book, writing, drawing, photograph, video tape, figure or image, or any written or printed matter of an obscene nature or any article or instrument of an obscene nature.

(*Ord. 3-2000, 6/10/2000, §2*)

§13-143. Exemption.

Nothing in this Part shall apply to any recognized historical society or museum accorded charitable status by the Federal Government, any country, city, borough, township, or town library, any public library, any library of any school, college or university, or any archive or library under the supervision and control of the Commonwealth or a political subdivision.

(*Ord. 3-2000, 6/10/2000, §3*)

§13-144. Enforcement Officer.

The Board of Supervisors may appoint one or more enforcement officers, who may be an individual, firm, or agency of the Township, to conduct inspections, make reports and administer other parts of this Part as determined by the Board of Supervisors.

(*Ord. 3-2000, 6/10/2000, §4*)

§13-145. Penalties.

1. Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense. [*Ord. 3-2008*]

2. *Other Remedies.* In addition to any penalty therein provided, any person, persons, firm, partnership, or corporation who or which shall violate any provision of this Part shall be subject to any law or laws, of the Commonwealth of Pennsylvania, which affords a remedy for such violation in any court of the Commonwealth, including but not limited to, equitable or injunctive relief.

(*Ord. 3-2000, 6/10/2000, §5; as amended by Ord. 3-2008, 11/13/2008*)