

*Revised*  
*1/16/01*

AN ORDINANCE OF MONTROSE BOROUGH  
TO PROVIDE FOR THE LICENSING AND REGULATION OF  
SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES,  
PRESCRIBE FEES, FINES AND PENALTIES FOR VIOLATIONS.

IT is hereby ENACTED AND ORDAINED by the Borough Council of the Borough of Montrose, Susquehanna County, Pennsylvania as follows:

SECTION 1. PURPOSE AND INTENT: It is declared to be the purpose and intent of this Ordinance to protect the public health, safety, welfare, and morals of the community, to promote the stability of property values, and impose restrictions upon those activities which pander to gross sexuality in a manner that would detract from the neighborhood, adversely affect the property values, increase crime and violence, and be repugnant to the morals of the community. In recognition of the protections afforded to the citizens under the First and Fourteenth Amendments, it is not the intent of this ordinance to inhibit freedom of speech or the press, but rather to deter those who establish or patronize such establishments of adult entertainment as defined below, from imposing their moral standards upon the rest of the community; and further recognizing that those parts of a community, which become centers of such establishments, frequently become places of criminal activity and indecent behavior. It is the concern of the citizens of this Borough that the establishment of such businesses is contrary to the health, safety, and welfare of our community.

The Borough Council has determined that licensing is a legitimate and reasonable means of accountability to insure that operators of sexually oriented 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. The Borough Council does not intend this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance.

SECTION 2. DEFINITIONS: As used in this Ordinance the following words and phrases shall have the meanings indicated unless the context clearly indicates a different meaning.

A. ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or form of consideration, or electronically, electrically, or mechanically controlled still motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained, not located within viewing booths, 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 of "specified sexual activities" or "specified anatomical areas".

B. ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its substantial business activities, (a 15% or greater of gross rental or sales of any movie with a rating above "R"), 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, CD ROM discs or other computer software, or other visual representations which, are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

2. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities".

C. ADULT CABARET means a nightclub, bar, restaurant, or other commercial establishment, with or without a liquor license, which regularly features:

1. Persons who appear in a state of nudity, semi-nudity; or
2. Live performances which are characterized by the exposure of "specified anatomical areas" or by the "specified sexual activities", or
3. Films, motion pictures, video cassettes, slides, or other photographic reproductions or visual presentations of any other kind which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

D. ADULT MOTION PICTURE THEATER means establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions or visual presentations or any kind are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

E. ADULT THEATER means a theater, concert hall, dance hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities".

F. EMPLOYEE means a person who performs any service on the premises of a sexually oriented 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 premise for repair or maintenance of the premises or equipment on the premise, or for the delivery of goods to the premise.

G. ESCORT means a person who, for the purpose 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.

H. 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.

I. 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 or expansion of an existing business, whether or not a sexually oriented business, to a sexually oriented business;
3. The addition of any sexually oriented business to any other existing sexually oriented business or to a non-sexually oriented business; or
4. The relocation of any sexually oriented business.

J. LICENSEE means a person in whose name a license to operate a sexually oriented 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 a sexually oriented business.

K. NUDE MODEL STUDIO means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Pennsylvania or a college, junior college or university supported entirely or in part by public taxation; 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; provided:

1. That no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
2. Where in order to participate in a class a student must enroll at least three days in advance of the class; and
3. Where no more than one nude or semi-nude model is on the premise at any one time.

L. NUDITY OR A STATE OF NUDITY means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of female breasts with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernible turgid state.

M. PERSON means an individual, proprietorship, partnership, corporation, association or other legal entity.

N. SEMI-NUDE OR IN A SEMI-NUDE CONDITION means the state of dress in which

clothing partially or non-opaquely covers Specified Anatomical Areas.

O. SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purpose, offers for any form of consideration:

1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex, or
2. Activities between 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.

P. SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or adult motel.

Q. SPECIFIED ANATOMICAL AREAS means human genitals, pubic region, anus, buttocks, female breast(s) below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state, even if completely covered.

R. SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:

1. Prostitution or promotion of prostitution; dissemination of obscenity, sale, distribution or display of harmful material to a minor; sexual performances by a child; possession or distribution of child pornography; public lewdness; indecent exposure; molestation of a child; sexual assault; indecency with a child; engaging in organized criminal activity; 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;

2. For which:

- a) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

- b) Less than five 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; or

- c) Less than five 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 combination of misdemeanor offenses occurring within any twenty-four month period.

3. 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.

S. SPECIFIED SEXUAL ACTIVITIES means any of the following:

1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
3. Excretory functions as part of or in connection with any of the activities set forth in (1) and (2) above.

T. TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes 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 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 control.

U. VIEWING BOOTHS means booths, stalls, partitioned portions of a room, rooms or other enclosures which are available for viewing (1) films, movies, videos or visual reproductions of any kind depicting or describing "specified sexual activities" or "specified anatomical areas", or (2) 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".

V. KNOWINGLY means 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 a licensee or person; and
2. 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.

W. ADULT MOTEL means a hotel, motel or similar commercial establishment which:

1. Offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, slides, video cassettes or other photographic reproductions which are characterized by the depiction or description of "specified anatomical areas" or "specified sexual activities"; and has a sign visible for the public right-of-way which advertises the availability of photographic reproductions.

2. Offers a sleeping room for rent for a period of time that is less than four hours; or

3. Allows a tenant or occupant of the sleeping room to sublet the room for a period of time that is less than four hours.

SECTION 3. LOCATION RESTRICTIONS: No person shall cause or permit the establishment of any of the following adult entertainment businesses, as defined above, within 800 feet of any residential dwelling, or within 1,000 feet of any school, park, playground, day care facility, place of worship, community center, governmental building, licensed liquor establishment or existing adult entertainment business, adult bookstore, adult dancing establishment, adult motel, escort agency, sexual encounter center, adult arcade or adult theaters.

1. The establishment of an adult entertainment business shall include the opening of such business as a new business, the relocation of such business or the conversion of an existing business location to any of the following uses: adult bookstore, adult dancing establishment, adult motel, escort agency, sexual encounter center, adult arcades or adult theaters.

#### SECTION 4: LICENSE REQUIRED

##### A. It is unlawful:

1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Borough pursuant to this Ordinance;

2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Borough pursuant to this Ordinance; or

3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this Ordinance.

B. An application for a license must be made on a form provided by the Borough.

C. All applicants must be qualified according to the provisions of this Ordinance. The application may request and the applicant shall provide such information as to enable the Borough to determine whether the applicant meets the qualifications established in this Ordinance.

D. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has twenty percent or greater interest in the business must sign the application for a license as an applicant. Each applicant must be qualified under the following section and each applicant shall be considered a license if a license is granted.

E. The completed application for a sexually oriented 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 eighteen 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 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 a sexually oriented business under the name other than that of the applicant, he or she must state (a) the sexually oriented 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 Ordinance, 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 Ordinance or other similar sexually oriented business ordinance from another municipality, state, or county denied, suspended or revoked, including the name and the location

of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of 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 Ordinance whose license has been previously denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit 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 Ordinance or other similar sexually oriented 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 sexually oriented business, which description shall thoroughly demonstrate compliance and/or intended compliance with all provisions of this Ordinance.

7. The location of the proposed sexually oriented 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 permit 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 six (6) inches.

12. A current certificate and straight-line drawing prepared within thirty days prior to application by a registered land surveyor depicting the property lines, the property to be certified.

13. The application form shall inform the applicant that (1) separate applications are required for any necessary subdivision and land development approvals or building and occupancy permits and that the applicant may apply for such permits by contacting the County Planning Commission and (2) that Department of Labor and Industry approval is required.

F. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the Borough 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; and
8. Proof that the individual is at least eighteen (18) years of age.

G. Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

1. A color photograph of the applicant clearly showing the applicant's face. Any fees for the photographs shall be paid by the applicant.
2. A statement detailing the license history of the applicant for the five (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 such denial, revocation or suspension, State the name, the name of the issuing or denying jurisdiction, and describe in full the reason for 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 Ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

#### SECTION 5: ISSUANCE OF LICENSE

A. Upon the filing of said application in a fully completed form for a sexually oriented business license or for a sexually oriented business employee, license, the application shall then be transferred to the Borough Council or their designee for review and investigation. The Borough Council or their designee 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 Ordinance. Within ninety (90) days from the date the completed application is filed, the Borough Council or their designee shall issue a license, unless it is determined by the Borough Council or their designee 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 eighteen years;
3. The applicant has been convicted of a "specified criminal activity" as defined in this Ordinance;
4. The sexually oriented 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 Ordinance;
5. The applicant has had a sexually oriented business employee license revoked by the Borough within two (2) years of the date of the current application. If the sexually oriented 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 subsection shall be subject to appeal as set forth in Section 10.
6. The required application, investigation and license fees have not been paid.
7. An applicant's license to operate a sexually oriented business, issued by any jurisdiction, has been revoked within preceding twelve (12) months.
8. The proposed sexually oriented business is in violation of or is not in compliance with any of the provisions of this Ordinance.

B. A license granted pursuant to this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the Borough that the applicant has not been convicted of any specified criminal activity as defined in this Ordinance 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 fees as set forth in Section 6.

C. The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the

specific classification of sexually oriented use for which the license is issued. Licenses for sexually oriented businesses shall state that the sexually oriented business shall not commence until all necessary subdivision and land development, and/or building code approvals and Department of Labor and Industry approvals are obtained. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they can be easily read at any time.

D. Applications for building and occupancy shall be processed and either denied or approved within thirty (30) days of a complete application by the Borough.

E. A sexually oriented business license shall be issued for the specific classification of sexually oriented use as permitted by ordinance and applied for.

F. A license denial shall conform to the provisions of Section 10, D.

G. Any person aggrieved by the grant of a license may appeal, in writing, within the ten (10) days from the date of issuance of the license, to the Borough Council. The Borough Council shall then hold a local agency law hearing within twenty (20) days of the date of filing of the appeal and render a decision within ten (10) days from the end of the hearing. Appeals from a decision of the Borough Council may be taken to court subject to Section 10, E of this Ordinance.

## SECTION 6: FEES

A. Every application for a sexually oriented 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 set by resolution of the Borough Council.

B. In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the Borough an annual nonrefundable license fee in an amount set by resolution of the Borough Council within thirty (30) days of license issuance or renewal.

C. Every application for a sexually oriented business employee license (whether for a new license or renewal of an existing license) shall be accompanied by an annual non-refundable application, investigation and license fee in an amount set by resolution of the Borough Council.

D. All license applications and fees shall be submitted to the office of the Borough Secretary and, thereafter, the applications shall be forwarded to the Borough Council or their designee for review and investigation and approval or denial.

## SECTION 7: INSPECTION

A. An applicant or licensee shall permit authorized Borough officials and their agents or consultants to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law at any time it is occupied or open for business.

B. A person who operates a sexually oriented business or his agent or employee commits a violation of this Ordinance if he refuses to permit such lawful inspection of the premise at any time it is occupied or open for business.

#### SECTION 8: EXPIRATION OF LICENSE

A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 5. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the date of expiration of the license will not be extended.

B. When the Borough denies renewal of a license the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Borough finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

#### SECTION 9: SUSPENSION

A. The Borough Council or their designee shall suspend a license for a period not to exceed thirty (30) days if he determines that a licensee or an employee of a licensee has:

1. Violated or is not in compliance with any provision of this Ordinance;
2. Refuses to allow inspection of the sexually oriented business premises as authorized by this Ordinance; or
3. Knowingly permitted gambling by any person on the sexually oriented business premises.

#### SECTION 10: REVOCATION AND APPEALS OF DENIALS, SUSPENSIONS, OR REVOCATIONS

A. The Borough Council or their designees shall revoke a license if a cause of suspension in Section 9 occurs and the license has been suspended within the preceding twelve (12) months.

B. The Borough Council or their designee shall revoke a license if he determines that:

1. A licensee gave false or misleading information in the material submitted during the application process;
2. A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
3. A licensee has knowingly allowed prostitution on the premises;

4. A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

5. A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur on or in the license premises; or

6. A licensee is delinquent in payment to the Borough for any licensing fees past due.

C. When the Borough revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Borough finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date of revocation became effective.

D. 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 permit shall state specifically the ordinance requirement not met and any other basis for the decision. After denial of an application, or denial or 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 Borough Council. The Borough Council will then hold a local agency law hearing within twenty (20) days from the date the appeal is filed and will render a written decision within ten (10) days from the date such hearing concludes. Any such appeal must be filed, in writing, with the Borough Secretary within ten (10) days from the date of mailing of the decision appealed from. Failure to file said appeal with the Borough Secretary within ten (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 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: (1) the expiration of the ten (10) day appeal period without filing of an appeal; or (2) the date of a decision dismissing any appeal.

E. Any person aggrieved by a decision of the Borough Council may appeal to a court of competent jurisdiction. The Borough 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 Borough shall certify any record to the court within twenty (20) days of any request by the court to do so.

#### SECTION 11: TRANSFER OF LICENSE

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

#### SECTION 12: ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY

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

1. Engage in sexual intercourse or to engage in deviate sexual intercourse as defined by the Pennsylvania Crimes Code; or
2. Appear in a state of nudity; or
3. Fondle the genitals of himself, herself or another person.

B. For the purpose of this Ordinance, "Public Place" includes 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 patron invited to attend, whether or not an admission charge is levied. This Section shall not apply to:

- a) Any child under ten years of age; or
- b) Any individual exposing a breast in the process of breast-feeding an infant;
- c) The exercise of free speech expression in the form of artistic and theatrical performances. It is the intention of the Borough 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.

C. It shall be a violation of this Ordinance for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee, who while semi-nude be at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.

D. It shall be a violation of this Ordinance for an employee while semi-nude in a sexually oriented 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 a sexually oriented business.

### SECTION 13: PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS

A. A person commits a violation of this Ordinance if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

### SECTION 14: HOURS OF OPERATION

No sexually oriented business shall be open for business before ten o'clock (10:00) a.m., Monday through Saturday. Sexually oriented businesses shall be closed at all times on Sundays and legal holidays.

#### SECTION 15: VIOLATIONS AND PENALTIES

Any person, firm or corporation who violates or permits the violation of any provisions of this Ordinance or the rules and regulations approved and hereinafter adopted shall pay a fine not exceeding \$1,000.00 for each violation. Whenever such person shall have been officially notified by the Borough that he is committing a violation of this Ordinance or the rules and regulations approved and hereinafter adopted, each day that he shall continue such violation after such notification shall constitute a separate violation punishable by a like fine. Any person who violates or permits the violation of this Ordinance shall pay, in addition to the fine set forth above, all court costs and reasonable attorney's fees incurred by the Borough in connection with any civil enforcement proceedings borough to enforce this Ordinance.

The Borough may commence civil enforcement proceedings to assess fines for violations of this Ordinance. In addition to such civil enforcement proceedings, the Borough may commence, at any time, appropriate actions in equity or otherwise to prevent, restrain, correct, enjoin or abate violations of this Ordinance.

#### SECTION 16: SEVERABILITY

The provisions of this Ordinance are severable and if any section, subsection, clause, sentence or part hereof shall be held or declared illegal, invalid or unconstitutional by any court of competent jurisdiction, the decision shall not affect or impair any remaining sections, subsections, clauses, sentences or parts thereof, of this Ordinance; it is hereby declared to be the intent of the Borough Council that this Ordinance would have been adopted if such illegal, invalid or unconstitutional section, subsection, clause, sentence or part thereof had not been included herein.

SECTION 17: EFFECTIVE DATE

This Ordinance shall be effective immediately upon enactment.

ORDAINED AND ENACTED INTO LAW THIS \_\_\_\_\_ DAY OF  
\_\_\_\_\_, 2000.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ATTEST: \_\_\_\_\_

CERTIFICATE OF ADOPTION:

I hereby certify the foregoing to be an exact copy of an Ordinance adopted by Montrose Borough Council at a regular meeting held on \_\_\_\_\_, 2000.

Secretary \_\_\_\_\_

Seal