

MINUTES OF THE MEETING OF APRIL 28, 2003

The regular meeting of Canton City Council was held on Monday, April 28, 2003, at 7:30 P.M. in the Canton City Council Chamber. The meeting was called to order by President of Council Ray Denczak. The roll call was then taken (as follows) by Clerk of Council Debbie Vanckunas. The invocation was given by Councilmember R. A. Mallonn II, followed by the Pledge of Allegiance led by President of Council Denczak.

PRESIDENT DENCZAK: With a quorum present, the Chair calls this meeting of Canton City Council to order. Roll call please.

ROLL CALL TAKEN BY CLERK OF COUNCIL:

12 COUNCILMEMBERS PRESENT: (BILL SMUCKLER, DONALD E. CASAR, MARY M. BABCOCK, GREG HAWK, KATHLEEN ALTIERI BUCHER, RICHARD A. MALLONN II, CRAIG MASSEY, JOHN R. MROCZKOWSKI, DAVID R. DOUGHERTY, RICHARD D. HART, ROSEMARY DIAMOND, & JOE CARBENIA)

NO COUNCILMEMBERS ABSENT

AGENDA CORRECTIONS & CHANGES

PRESIDENT DENCZAK: Agenda Corrections, Members—you're asked to suspend Rule 22A to add the Second Reading of Ordinances 6 through 9'er. The Chair will recognize that motion now, Member Smuckler.

MEMBER SMUCKLER: Mr. President, I move we suspend Rule 22A and add Ordinances 6 through 9 back to the agenda; seconded.

PRESIDENT DENCZAK: Moved and seconded to suspend Rule 22A to add Ordinances 6 through 9'er to the agenda; are there any remarks?... If not, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Rule 22A is suspended and the Ordinances are a legal part of your agenda under Second Readings. This brings your agenda up to date, Members of Council.

PUBLIC HEARINGS

PRESIDENT DENCZAK: There is no public hearing scheduled at this time.

PUBLIC SPEAKS (ORDINANCES OR RESOLUTIONS FOR ADOPTION ONLY)

PRESIDENT DENCZAK: No one has signed up for Public Speaks under Resolutions or Ordinances for Adoption.

INFORMAL RESOLUTIONS

PRESIDENT DENCZAK: Informal Resolutions--excusing members. It will not be necessary to excuse members; let the journal show that all Members of Council are present. Resolution #43 please.

PRESIDENT DENCZAK CALLED UPON CLERK OF COUNCIL VANCKUNAS TO READ RESOLUTIONS #43 THROUGH 49 BY TITLE, AS SHOWN BELOW. THE RESOLUTIONS ARE ON FILE IN THEIR ENTIRETY IN THE COUNCIL OFFICE WITH THE AGENDA ITEMS FILE DATED April 28, 2003.

43. MASSEY, CRAIG, WARD 4 MEMBER: COMMENDING VOLUNTEERS WHO CONTRIBUTED TO A MASSIVE CLEAN UP OF HISTORIC ROWLAND CEMETERY. - ADOPTED

MEMBER SMUCKLER: Mr. President, I move we adopt Resolution #43; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Resolution #43; are there any remarks?...

MEMBER MASSEY: Mr. President, I would like to have that resolution read.

PRESIDENT DENCZAK: Madam Clerk, will you please read the resolution?

READ BY CLERK OF COUNCIL VANCKUNAS: *An Informal Resolution Submitted By Craig Massey, Ward 4 Councilmember, on this 23rd day of April, 2003. Whereas, There is a very historic area in the City of Canton that is rarely recognized. **The Rowland Cemetery** is Canton's oldest burial ground, founded in 1861; and Whereas, There is a veteran of every war from the Revolutionary through Korea buried at the cemetery. It is important to maintain and preserve these monuments to Canton's citizens who fought bravely for the American way of life; and Whereas, Available endowment funds to maintain the cemetery amount to only approximately \$600.00 per year. The cemetery cannot be reasonably maintained without volunteers and financial contributors; and Whereas, On Saturday, April 19th, 2003, approximately 50 individuals completed a massive clean-up of the cemetery, and erected an iron sign identifying the cemetery at the E. Tuscarawas Street entrance. The volunteers proudly helped to restore and preserve an historic area for the future, and certainly are deserving of our heartfelt commendation for a job well done; Now, Therefore, Be It Resolved: That we, the Members of the Council of the City of Canton, Ohio, do hereby join with all the citizens of the City of Canton in paying tribute and officially acknowledging the hard work of the following: Nick Ohman, Boy Scout of Troop #912, Employees of Anheuser-Busch Sales, Canton, Ohio, R.G. Drage School, Orwick Tree Removal, T. Rowley Lawn Service, & Southway Fence Company for contributing in an unselfish manner toward promoting a high standard of excellence by serving the public good and providing role models for the spirit of volunteerism which is so necessary for the preservation of our city's history, and the continuance of its future.*

PRESIDENT DENCZAK: Are there any remarks?.... If not, the question you are voting on now is the resolution. By voice vote, all those in favor, signify by saying aye--those opposed, no.

NO REMARKS

RESOLUTION ADOPTED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: The resolution is adopted. The Chair understands that Nick Ohman and Tom Hale are here to...please step forward to the microphone on my right. And anyone else who is deserving of this recognition, please come forward.

MEMBER MASSEY: Ladies and gentlemen, I would like to take this opportunity...

PRESIDENT DENCZAK: One moment please. Ma'am, you with the camera, come up here so you can get a picture of their face. And if you've got any film left, you can take a picture of me. (LAUGHTER)

MEMBER MASSEY: Ladies and gentlemen, I would like to take this opportunity to thank Nick Ohman of Boy Scout Troop 912, and also Mr. Tom Hale of Anheuser-Busch. (APPLAUSE) Rowland Cemetery is the oldest cemetery in Canton, Ohio. I want to thank all the volunteers that participated. Thank you very much.

PRESIDENT DENCZAK: The Chair understands also that Mr. Brechbill and Mr. Tom Harmon are in the audience, would you please stand for recognition. ...Tom Harmon, don't you recognize your name? All right, good job, well done. (APPLAUSE)

44. SMUCKLER, BILL, AT-LARGE MEMBER: COMMENDING MARK RUDNER FOR BEING HONORED WITH THE CANTON JEWISH COMMUNITY CENTER'S SANFORD & JACOB FURMAN AWARD. - ADOPTED

MEMBER SMUCKLER: Mr. President, I move we adopt Resolution #44; seconded.

PRESIDENT DENCZAK: Moved and seconded that Resolution #44 be adopted; are there any remarks?... If not, by voice vote, all those in favor, signify by saying aye—those opposed, no.

NO REMARKS

RESOLUTION ADOPTED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Resolution #44 is adopted.

45. SMUCKLER, BILL AT-LARGE MEMBER: COMMENDING DR. CLIFFORD JOHNSON FOR BEING HONORED WITH THE CANTON JEWISH COMMUNITY CENTER'S DR. H. L. GINSBURG AWARD. - ADOPTED

MEMBER SMUCKLER: Mr. President, I move we adopt Resolution #45; seconded.

PRESIDENT DENCZAK: Moved and seconded that Resolution 45 be adopted; are there any remarks under this resolution?... Very well, by voice vote, all those in favor, signify by saying aye—those opposed, no.

NO REMARKS

RESOLUTION ADOPTED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Resolution 45 is adopted.

46. SMUCKLER, BILL, AT-LARGE MEMBER: COMMENDING DRENNIA PALLOTTA FOR BEING

HONORED WITH THE CANTON JEWISH COMMUNITY CENTER'S A. L. HELING AWARD. -
ADOPTED

MEMBER SMUCKLER: Mr. President, I move we adopt Resolution #46; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Resolution 46; are there any remarks under this resolution?... Very well, by voice vote, all those in favor signify by saying aye—those opposed, no.

NO REMARKS

RESOLUTION ADOPTED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Resolution #46 is adopted.

47. SMUCKLER, BILL, AT-LARGE MEMBER: COMMENDING REBECCA LIBSTER FOR BEING
HONORED WITH THE CANTON JEWISH COMMUNITY CENTER'S A. L. HELING AWARD. -
ADOPTED

MEMBER SMUCKLER: Mr. President, I move we adopt Resolution #47; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Resolution 47; are there any remarks under this resolution?... Very well, by voice vote, all those in favor signify by saying aye—those opposed, no.

NO REMARKS

RESOLUTION ADOPTED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Resolution #47 is adopted.

48. SMUCKLER, BILL, AT-LARGE MEMBER: COMMENDING LARRY LIBSTER FOR BEING
HONORED WITH THE CANTON JEWISH COMMUNITY CENTER'S A. L. HELING AWARD. -
ADOPTED

MEMBER SMUCKLER: Mr. President, I move we adopt Resolution #48; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Resolution 48; are there any remarks under this resolution?... Very well, by voice vote, all those in favor signify by saying aye—those opposed, no.

NO REMARKS

RESOLUTION ADOPTED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Resolution 48 is adopted.

49. SMUCKLER, BILL, AT-LARGE MEMBER: COMMENDING ANDREW SPERA FOR BEING
HONORED WITH THE CANTON JEWISH COMMUNITY CENTER'S GARY D. SHIFMAN
AWARD. - ADOPTED

MEMBER SMUCKLER: Mr. President, I move we adopt Resolution #48...I'm sorry, 49; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Resolution 49; are there any remarks under this resolution?... Very well, by voice vote, all those in favor signify by saying aye—those opposed, no.

NO REMARKS

RESOLUTION ADOPTED BY UNANIMOUS VOICE VOTE

PRESIDENT DENCZAK: Resolution 49 is adopted.

COMMUNICATIONS

PRESIDENT DENCZAK: We're now under Communications. All Communications are received as read.

NOTE: ALL COMMUNICATIONS WHICH FOLLOW, LISTED BY AGENDA TITLE, ARE ON FILE IN THEIR ENTIRETY IN THE COUNCIL OFFICE WITH THE AGENDA ITEMS FILE DATED April 28, 2003.

163. MICHAEL A. GRAVILLA/CANTON CITY SCHOOLS, 400 FULTON ROAD NW, CANTON, OHIO 44703/617 MCKINLEY AVENUE SW, CANTON, OHIO 44707: REQUEST TO REZONE LOTS 4501 & 4502 LOCATED AT 400-409 FULTON NW FROM R-1A TO PB-4 PLANNED BUSINESS DISTRICT TO RELOCATE "CLEAN-UPS BY MIKE" FROM NORTHEAST CORNER TO SOUTHEAST CORNER OF FULTON & 4TH NW. - REFERRED TO PLANNING COMMISSION
164. LAMBOS INVESTMENT PARTNERS, LIMITED, 1207 LINCOLN WAY EAST, PO BOX 389, MASSILLON, OHIO 44648: REQUEST TO REZONE LOTS 16240, 16241, 39877, 39878 & 39880 LOCATED AT 121 SMITH AVENUE NW FROM R-1A TO PB-3 PLANNED GENERAL BUSINESS TO PROVIDE ADDITIONAL PARKING & ALLOW A LONGER DRIVE THRU IN THE CONSTRUCTION OF A NEW RESTAURANT . - REFERRED TO PLANNING COMMISSION
165. LIQUOR CONTROL DIVISION, STATE OF OHIO, 6606 TUSSING ROAD, PO BOX 4005, REYNOLDSBURG, OHIO 43068-9005: NOTIFICATION OF HEARING TO BE HELD 5/7/03 AT 11:00 A.M. AT CITY HALL COUNCIL CAUCUS RM RE: C1,C2,D6 LIQUOR PERMIT APPLICATION REQUESTED BY LA TIENDA HISPANA OVIEDOS CORP. - REFERRED TO INTERGOVERNMENTAL & PUBLIC SERVICE COMMITTEE
166. LIQUOR CONTROL DIVISION, STATE OF OHIO, 6606 TUSSING ROAD, PO BOX 4005, REYNOLDSBURG, OHIO 43068-9005: REQUEST FOR NEW C1,2 LIQUOR LICENSE BY TRAI SH ENTERPRISES, DBA CHERRY MARKET LOCATED @ 1494 CHERRY AVE SE. - REFERRED TO INTERGOVERNMENTAL & PUBLIC SERVICE COMMITTEE
167. LIQUOR CONTROL DIVISION, STATE OF OHIO, STATE OF OHIO, 6606 TUSSING ROAD, PO BOX 4005, REYNOLDSBURG, OHIO 43068-9005: REQUEST FOR NEW D5 LIQUOR LICENSE BY TODD DIMICHELE, DBA STARK COUNTY SPORTS CLUB LOCATED @ 508 CLEVELAND AVE NW. - REFERRED TO INTERGOVERNMENTAL & PUBLIC SERVICE COMMITTEE
168. MAYOR RICHARD D. WATKINS & FINANCE CHAIRMAN JOHN R. MROCKOWSKI, CITY

OF CANTON: REQUEST TO ADOPT LEGISLATION WHICH WILL LEVY A \$5 ANNUAL MOTOR VEHICLE LICENSE TAX ON VEHICLES REGISTERED IN CITY OF CANTON. - REFERRED TO LAW DIRECTOR (See O#3, 1st Rdg)

169. SAFETY DIRECTOR JOSEPH J. CONCATTO, CITY OF CANTON: REQUEST AUTHORIZATION TO REQUEST ODOT TO PROCEED WITH INTERSECTION UPGRADES FOR 23 INTERSECTIONS ALONG CLEVELAND AVE NW FROM 8th ST NW TO 47th ST NW, AUTHORIZE MAYOR TO EXECUTE & ENTER INTO THE CONTRACT, & DIRECT CLERK OF COUNCIL TO TRANSMIT AN EXECUTED COPY OF THE ORDINANCE. - REFERRED TO LAW DIRECTOR (See O#4, 1st Rdg)
170. SERVICE DIRECTOR MICHAEL L. MILLER & SAFETY DIRECTOR JOSEPH J. CONCATTO, CITY OF CANTON: REQUEST TO ADVERTISE, RECEIVE BIDS & CONTRACT &/OR ALTERNATIVELY ENTER INTO A COOPERATIVE PURCHASING AGREEMENT FOR THE PURCHASE OF VARIOUS VEHICLES FROM THE 4502 CAPITAL BUDGET. - REFERRED TO LAW DIRECTOR (See O#5, 1st Rdg)

ORDINANCES & FORMAL RESOLUTIONS FOR FIRST READING

PRESIDENT DENCZAK: We're now under Ordinances & Formal Resolutions for their first reading and referral. Let the journal show that all ordinances are being given their reading as required by state law. Ordinance #1 please.

NOTE: PRESIDENT DENCZAK CALLED UPON CLERK VANCKUNAS TO READ THE FOLLOWING ORDINANCES #1 THROUGH #5 FOR THE FIRST TIME BY TITLE & ANNOUNCED THE COMMITTEE REFERRAL, AS FOLLOWS.

- #1 (1ST RDG) AN ORDINANCE APPROVING AND ACCEPTING THE REPLATTING AND RENUMBERING OF PART OF LOT NO. 35828; AND DECLARING THE SAME TO BE AN EMERGENCY
Referred to the Public Safety & Thoroughfares Committee
- #2 (1ST RDG) AN ORDINANCE AMENDING ORDINANCE NO. 55/77, AS AMENDED, KNOWN AS THE CITY OF CANTON ZONING ORDINANCE; AND DECLARING THE SAME TO BE AN EMERGENCY
Referred to the 2nd Reading portion of next Council Agenda
- #3 (1ST RDG) AN ORDINANCE IMPOSING A MOTOR VEHICLE LICENSE TAX PURSUANT TO OHIO REVISED CODE SECTION 4504.172
Referred to the Public Safety & Thoroughfares & Finance Committees
- #4 (1ST RDG) AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO CONTRACT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE UPGRADING OF INTERSECTIONS; AND DECLARING THE SAME TO BE AN EMERGENCY
Referred to the Public Safety & Thoroughfares & Finance Committees
- #5 (1ST RDG) AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE AND/OR

DIRECTOR OF PUBLIC SAFETY TO ADVERTISE, RECEIVE BIDS AND ENTER INTO CONTRACT(S) FOR THE PURCHASE OF VARIOUS MOTOR VEHICLES AND OTHER ITEMS OF RELATED EQUIPMENT FOR VARIOUS CITY DEPARTMENTS; AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE AND/OR DIRECTOR OF PUBLIC SAFETY TO ALTERNATIVELY PURCHASE SAID VEHICLES AND EQUIPMENT PURSUANT TO REVISED CODE SECTIONS 125.04 AND 5513.01; AND DECLARING THE SAME TO BE AN EMERGENCY

Referred to the Public Property Capital Improvement & Finance Committees

ORDINANCES & FORMAL RESOLUTIONS FOR SECOND READING

PRESIDENT DENCZAK: Ordinances & Formal Resolutions for their second reading.

NOTE: PRESIDENT DENCZAK CALLED UPON CLERK VANCKUNAS TO READ THE FOLLOWING ORDINANCES #6 THROUGH #9 FOR THE SECOND TIME BY TITLE, AS FOLLOWS.

- #6 (2ND RDG) AN ORDINANCE AUTHORIZING THE CITY AUDITOR TO ESTABLISH THE 2425 LAW DEPARTMENT DISPUTE RESOLUTION FUND
- #7 (2ND RDG) AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ENTER INTO CONTRACT WITH OHIO POWER COMPANY DBA AMERICAN ELECTRIC POWER TO PROVIDE ELECTRIC ENERGY TO THE WATER POLLUTION CONTROL CENTER; AND DECLARING THE SAME TO BE AN EMERGENCY
- #8 (2ND RDG) AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE, RECEIVE BIDS AND ENTER INTO CONTRACT FOR THE IRA TURPIN WAY, N.E. IMPROVEMENT PROJECT; AND DECLARING THE SAME TO BE AN EMERGENCY
- #9 (2ND RDG) AN ORDINANCE AUTHORIZING AND CONSENTING TO THE REMOVAL AND REPLACEMENT OF DECK ON THE CHERRY AVENUE S.E. STRUCTURE OVER CSX, N&S AND CONRAIL RAILROADS, UNDER THE SUPERVISION OF THE DIRECTOR OF TRANSPORTATION OF THE STATE OF OHIO; AND DECLARING THE SAME TO BE AN EMERGENCY

ORDINANCES & FORMAL RESOLUTIONS FOR THIRD READING

PRESIDENT DENCZAK: Ordinances and Formal Resolutions for their third and final reading.

NOTE: PRESIDENT DENCZAK CALLED UPON CLERK VANCKUNAS TO READ THE FOLLOWING ORDINANCES #10 THROUGH #23 FOR THE THIRD & FINAL TIME BY TITLE, AS FOLLOWS.

- #10 (3RD RDG) **ADOPTED AS ORDINANCE NO. 70/2003** AN ORDINANCE AMENDING SUBSECTION (b) TO SECTION 151.08, OVERTIME AND COMPENSATORY TIME FOR NONEXEMPT AND EXEMPT EMPLOYEES, OF THE CODIFIED ORDINANCES OF THE CITY OF CANTON; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #10; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance #10; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 11 YEAS, 1 NAY (CARBENIA)

PRESIDENT DENCZAK: Ordinance #10 is adopted.

#10 ADOPTED AS ORDINANCE NO. 70/2003

#11 (3RD RDG) **ADOPTED AS ORDINANCE NO. 71/2003** AN ORDINANCE APPROVING A CONTRACT AMENDMENT BETWEEN THE CITY OF CANTON AND LOCAL 3449 AND OHIO COUNCIL 8, AFSCME; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #11; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance #11; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 11 YEAS, 1 NAY (HART)

PRESIDENT DENCZAK: Ordinance #11 is adopted.

#11 ADOPTED AS ORDINANCE NO. 71/2003

#12 (3RD RDG) **ADOPTED AS ORDINANCE NO. 72/2003** AN ORDINANCE AMENDING EXHIBIT A TO ORDINANCE NO. 40/2000, AS AMENDED, THE CLASSIFICATION PLAN FOR BARGAINING UNIT PERSONNEL EMPLOYED BY THE CITY OF CANTON; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #12; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance #12; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 11 YEAS, 1 NAY (HART)

PRESIDENT DENCZAK: Ordinance #12 is adopted.

#12 ADOPTED AS ORDINANCE NO. 72/2003

#13 (3RD RDG) **ADOPTED AS ORDINANCE NO. 73/2003** AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SAFETY TO ADVERTISE, RECEIVE BIDS AND ENTER INTO CONTRACT IN AN AMOUNT NOT TO EXCEED \$44,000.00 FOR THE PURCHASE AND INSTALLATION OF AN HV/AC SYSTEM; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #13; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance 13; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #13 is adopted.

#13 ADOPTED AS ORDINANCE NO. 73/2003

#14 (3RD RDG) **ADOPTED AS ORDINANCE NO. 74/2003** AN ORDINANCE AUTHORIZING THE DIRECTOR OF PUBLIC SERVICE TO ADVERTISE, RECEIVE BIDS AND ENTER INTO CONTRACT FOR THE PURCHASE OF PORTABLE BLEACHERS; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #14; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance 14; are there any remarks under this ordinance?...

MEMBER CASAR: Mr. President, may I ask the Service Director a few questions please. (INAUDIBLE RESPONSE) Service Director Miller, a couple basic questions, number one, how many bleachers are we planning on purchasing?

SERVICE DIRECTOR MILLER: We're planning on purchasing a minimum of 20 in an amount not to exceed \$60,000.

MEMBER CASAR: And these bleachers, and I appreciate the list that you gave to all Councilmen this evening of where they're going to be used and so forth and etc.--in committee last week, as a member of the Park and Recreation Committee, I asked you the question in regards to, and I know they'll be used for the Hall of Fame as they have been in the past and I'm sure these will be used along with the other 64 that we have throughout the City, or a majority of them, and last week I asked you the question if it was possible if we could discuss with the Chamber of Commerce to possibly receive or share with the Chamber of Commerce the money they charge or the fee they charge for the tickets to sit on these bleachers. Being the fact that our City workers, you know, go around, collect these bleachers, set them up, tear them down, take them back. And in the past had to go to Alliance or wherever else they've got these bleachers from. And the fact is, why I asked this question, in a perfect world when the City of Canton was pretty financially set or we was in pretty good shape financially, we did this. And this was something that was out of community pride, out of community, our share of the Hall of Fame, to put on this once a year function for not only the City of Canton, but for the rest of the United States to see this, it's a very good thing. And so I'm not questioning the fact is that the notoriety we get from it is fine and etc., and etc. But my question is I would like to see the City of Canton negotiate with the Chamber of Commerce and that we should receive part of the revenue that's brought in from the selling of this place for the people to watch this parade at. And last week I asked you talk with us, have you done that?

SERVICE DIRECTOR MILLER: As far as talking with the Chamber about the amounts, that is something that I've spoke with with the Mayor and that's something that the Mayor can speak to.

MAYOR WATKINS: Mr. President, Member Casar, Members of Council. We have a continuing dialogue with the Chamber and others, including Hall of Fame and other entities, the sponsors and so forth, to try to see what we can do to make some recoupment. We need these bleachers and over a period of a short couple of years, we'll recover the money that's being expended on them right now. Because the ones we have are deteriorating, they're creating problems for us, they give us a liability in the event that they start to collapse—some of them have. So is the dialogue continuing?...yes, sir, it is. And we will continue that.

MEMBER CASAR: Mayor, I don't have any problem with us purchasing these bleachers for the use in our parks and our recreation facilities, I have no problem with that, I know they're needed. I was Chairman of the Park & Recreation for 10 years. My problem is that as a councilman, we're chastised, we're criticized, and...because of deficit spending, whatever. In my opinion, this is a place, a new...where we could get new revenue. And I think that we should, if we don't try, I don't feel we're doing our job. We should go to the Chamber and say, we are in a financial crunch, as you know, and we, the City of Canton, would like to receive 50%...

PRESIDENT DENCZAK: Member Casar, your 3 minutes are up.

MEMBER CASAR:50% of what is take in. And I feel that that would be fair and I would appreciate, Mayor, if you would negotiate along those terms. If I could have your word on that, I would support this piece of legislation this evening.

MAYOR WATKINS: You don't need my word on it. Mr. President, you don't need my word on it. I am negotiating, I have talked with them and I talked with them as late as today. We'll continue those discussions to see what we can do.

PRESIDENT DENCZAK: Anybody else have anything to say under this ordinance?

SERVICE DIRECTOR MILLER: Mr. President, just one other thing that I did point out in committee, I wanted to go on the record for here. One of the things that we are doing with this purchase is with the Capital Improvement money, we are going to save a great deal of General Fund money that's expended each year and going to other locales to pick up bleachers that we do now. Rather than going somewhere else, we'll have them right here in Canton. We'll have use of them the other 364 days a year, or at least the other 51 weeks of the year that they aren't down on the parade route. And it will save countless amount of hours that currently is spent going to get bleachers and bringing them to the parade route which has been done for years and years and years. We'll save that money so that the manpower can be used for other things in the wards rather than going out to pick these up.

PRESIDENT DENCZAK: Any other remarks?...

MEMBER CASAR: Mr. President, thank you, Service Director Miller because you basically said we're going to save money by not going out and so forth and etc for the Hall of Fame. And that's exactly my point. That's exactly my point. The City of Canton, the taxpayers of the City of Canton, are putting out a lot of money every year. And I think it's time that we receive some money back from this event that we're gracious enough, that as taxpayers of the City of Canton that we do, and it's time that we do this. It's another form of revenue that's not tapped and we've rose prices on our permits, we've...on the court fees, we're raised prices...everything that's been possible to do, this legislation and other department heads have done it. And I think it's time that the Administration says that it not only negotiate with them, but says to the Chamber of Commerce, we have to receive half of what...I'm throwing out half, I'd like to see it all, but let's be honest, I think half would be a good figure.

MAYOR WATKINS: Mr. President. Member Casar, as I said I'm going to continue these negotiations and discussions. We have an obligation too, I think, on the part of the City to support the Hall of Fame Weekend and the Parade program because it is important to all of us. In addition, we do have additional costs that are incumbent upon us in going out and picking up these bleachers that we do now for other special programs. These take place down at the ballparks, they take place at the Southeast Community Center...any of the other programs that we have, we have to go out and pick up bleachers. This will eliminate the necessity for that too.

PRESIDENT DENCZAK: Any other remarks?... The question you are voting on now is Ordinance #14; roll call vote please.

NO FURTHER REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance 14 is adopted.

#14 ADOPTED AS ORDINANCE NO. 74/2003

#15 (3RD RDG) **ADOPTED AS ORDINANCE NO. 75/2003** AN ORDINANCE ESTABLISHING THE FAIR MARKET VALUE OF CITY-OWNED PROPERTY IN CONJUNCTION WITH I-77 WIDENING PROJECT PHASE II; AUTHORIZING TEMPORARY EASEMENTS AND THE SALE AND CONVEYANCE OF SAID PROPERTY; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #15; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance 15; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #15 is adopted.

#15 ADOPTED AS ORDINANCE NO. 75/2003

#16 (3RD RDG) **ADOPTED AS ORDINANCE NO. 76/2003** AN ORDINANCE AUTHORIZING WAIVING THE ANNUAL ADJUSTMENT TO THE BASE SEWER RATE AS ESTABLISHED BY THE CONSUMER PRICE INDEX PURSUANT TO SECTION 947.06, SEWER RATES, OF THE CODIFIED ORDINANCES OF THE CITY OF CANTON; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #16; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance 16; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #16 is adopted.

#16 ADOPTED AS ORDINANCE NO. 76/2003

#17 (3RD RDG) **ADOPTED AS ORDINANCE NO. 77/2003** AN ORDINANCE AUTHORIZING THE ADMINISTRATION AND CITY COUNCIL TO ACCEPT AN EMERGENCY TELEPHONE NOTIFICATION SYSTEM; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #17; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance 17; are there any remarks?... If not, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #17 is adopted.

#17 ADOPTED AS ORDINANCE NO. 77/2003

#18 (3RD RDG) **ADOPTED AS ORDINANCE NO. 78/2003** AN ORDINANCE ESTABLISHING THE FAIR MARKET VALUE OF REAL PROPERTY IN CONJUNCTION WITH THE SCENIC RAILROAD PROJECT; AUTHORIZING THE MAYOR AND/OR DIRECTOR OF PUBLIC SERVICE TO NEGOTIATE AND PURCHASE SAID PARCELS AT THE ESTABLISHED FAIR MARKET VALUE; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #18; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance 18; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #18 is adopted.

#18 ADOPTED AS ORDINANCE NO. 78/2003

#19 (3RD RDG) **ADOPTED AS ORDINANCE NO. 79/2003** AN ORDINANCE EXTENDING THE CITY INCOME TAX FILING DATE OF APRIL 30 FOR MILITARY RESERVISTS CALLED TO ACTIVE DUTY OR RECENTLY DISCHARGED FROM ACTIVE DUTY FOR OPERATION IRAQI FREEDOM; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #19; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance 19; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #19 is adopted.

#19 ADOPTED AS ORDINANCE NO. 79/2003

#20 (3RD RDG) **ADOPTED AS ORDINANCE NO. 80/2003** AN ORDINANCE NAMING AN UNNAMED ALLEY IN THE CITY OF CANTON, LONG PLACE, S.E.

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #20; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance #20; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #20 is adopted.

#20 ADOPTED AS ORDINANCE NO. 80/2003

#21 (3RD RDG) **ADOPTED AS ORDINANCE NO. 81/2003** AN ORDINANCE NAMING AN UNNAMED ALLEY IN THE CITY OF CANTON, RANDLE COURT, S.E.

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #21; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance 21; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #21 is adopted.

#21 ADOPTED AS ORDINANCE NO. 81/2003

#22 (3RD RDG) **ADOPTED AS ORDINANCE NO. 82/2003** AN ORDINANCE NAMING AN UNNAMED ALLEY IN THE CITY OF CANTON, LAFAY COURT, S.W.

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #22; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance 22; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #22 is adopted.

#22 ADOPTED AS ORDINANCE NO. 82/2003

#23 (3RD RDG) **ADOPTED AS ORDINANCE NO. 83/2003** AN ORDINANCE NAMING AN UNNAMED ALLEY IN THE CITY OF CANTON, RAMOS COURT, S.E.

MEMBER SMUCKLER: Mr. President, I move we adopt ordinance #23; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt ordinance 23; are there any remarks under this ordinance?... Very well, roll call vote please.

NO REMARKS

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #23 is adopted.

#23 ADOPTED AS ORDINANCE NO. 83/2003

ORDINANCES & FORMAL RESOLUTIONS – POSTPONED MATTER

PRESIDENT DENCZAK: Members of Council you have a Postponed Matter--Member Smuckler...?

POSTPONED FROM 3/3, 10, 17 & 24 & 4/7 & 21/2003:

#24 **AMENDED & ADOPTED AS ORDINANCE NO. 84/2003** (PREVIOUSLY RECEIVED ALL 3 RDGS) AN ORDINANCE AMENDING CHAPTER 787, SEXUALLY ORIENTED BUSINESSES OF THE CODIFIED ORDINANCES OF THE CITY OF CANTON; AND DECLARING THE SAME TO BE AN EMERGENCY

MEMBER SMUCKLER: Mr. President, I move we adopt Ordinance #24; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adopt Ordinance #24; are there any remarks under this ordinance?...

MEMBER SMUCKLER: Mr. President, I move to amend Ordinance #24 with the written amendment before every Councilmember; seconded.

AMENDMENT: Pursuant to Rule No. 36, I hereby move to amend Agenda Item No. 24 by the substitution of the attached ordinance for the one currently pending before Council. The ordinance being substituted for the third reading includes the following changes: 1) Sexually oriented business employees, rather than the City, will be required to conduct background checks of prospective employees. Employers are prohibited from employing individuals who have engaged in specified criminal activity. Employers are also required to terminate employees who commit certain offenses or who provide false information on the application. A failure on the part of the employer to perform these duties is a criminal violation. 2) The closing hours of operation have been changed from 12:00 midnight to 2:30 a.m. The opening hours remain unchanged. 3) If a business has a section of the premises devoted to non-adult media, 16 or 17-year old minors may enter that portion of the premises only, provided the minor is with a parent. 4) Technical changes have been made to the appeals section of the ordinance to incorporate additional due process rights.

ATTACHED ORDINANCE:

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 787, SEXUALLY ORIENTED BUSINESSES, OF THE CODIFIED ORDINANCES OF THE CITY OF CANTON; AND DECLARING THE SAME TO BE AN EMERGENCY

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANTON, STATE OF OHIO, THAT:

Section 1. Chapter 787, Sexually Oriented Businesses, of the Codified Ordinances of the City of Canton be and the same is hereby amended to read as follows:

Chapter 787
SEXUALLY ORIENTED BUSINESSES

787.01 DEFINITIONS.

(a) *“Adult arcade” means any place to which the public is permitted or invited where one or more viewing booths are available to patrons where the images shown and/or live entertainment presented are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.*

(b) *“Adult cabaret” means a nightclub, bar, restaurant or similar commercial establishment that regularly features:*

- (1) *Persons who appear in a state of nudity or state of semi-nudity; or*
- (2) *Live entertainment, exhibition, performance or dance by persons whose entertainment, exhibition, performance or dance is distinguished or characterized by an emphasis on the depiction or description of specified anatomical areas or specified sexual activities; or*
- (3) *Adult media.*

(c) *“Adult media” means magazines, books, photographic reproductions, videotapes, movies, slides, compact discs in any format (e.g., cd-rom, cd-r, cd-rw), digital video discs in any format (e.g., dvd), other devices used to reproduce or record computer images, or other print, video, film, electronic, computer-based, analog, or digital media distinguished or characterized by an emphasis on matter, whether simulated or real, depicting or describing specified sexual activities or specified anatomical areas.*

(d) *“Adult media store” means an establishment which has a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a significant or substantial section of its sales or display space to the sale or rental for any form of consideration of any adult media.*

(e) *“Adult model studio” is any establishment open to the public where a person who regularly appears in a state of nudity or semi-nudity or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or otherwise depicted by other persons who pay money or any form of consideration. “Adult model studio” shall also include any establishment which offers for sale or viewing any apparel or other items which are displayed by models who regularly appear in a state of nudity or semi-nudity. “Adult model studio” shall not include:*

- (1) *A proprietary school licensed by the State of Ohio, or a college, junior college or university supported entirely or in part by public taxation;*
- (2) *A private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or*

- (3) *A structure which has no sign visible from the exterior of the structure and no other advertising that indicates a model is available for viewing; where in order to participate in a class a student must enroll at least three days in advance of the class; and where no more than one nude or semi-nude model is on the premises at any one time.*

(f) *“Adult motel” means a hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration; and regularly provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, compact discs in any format, digital video discs in any format or other photographic reproductions or computer images which are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas, and has a sign visible from the public right of way which regularly advertises the availability of such sexually oriented type of matter.*

(g) *“Adult motion picture theater” means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, compact discs in any format (e.g., cd-rom, cd-r, cd-rw), digital video discs in any format (e.g., dvd), other devices used to reproduce or record computer images, or similar photographic reproductions or other projected images are regularly shown, if such images presented are distinguished or characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.*

(h) *“Adult novelty store” means an establishment which has a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising or maintains a significant or substantial section of its sales or display space to the sale or rental, for any form of consideration, of sexually oriented novelties or toys.*

(i) *“Adult theater” means a theater, concert hall, auditorium or similar commercial establishment that regularly features persons who appear in a state of nudity or semi-nudity or live performances which are distinguished or characterized by an emphasis on the depiction or description of specified anatomical areas or specified sexual activities.*

(j) *“Church” means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.*

(k) *“Community service district” means those districts defined in Chapter 1144 of the Zoning Code of the City of Canton.*

(l) *“Convalescent home”, “nursing home” or “extended care facility” means those facilities defined in Section 1123.17 of the City of Canton Zoning Code.*

(m) *“Distinguished or characterized by an emphasis on” means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis on” the description or depiction of “specified sexual activities or specified anatomical areas,” the films so described are those in which the dominant or principal character and theme are the description or depiction of specified sexual activities or specified anatomical areas.*

(n) *“Employ,” “Employee” or “Employment” describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the person is paid a salary, wage, or other compensation by the operator of the 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.*

(o) *“Enforcement Officer” means the License Records Technician or his or her designee.*

(p) *“Escort” means a person who, for consideration, agrees or offers to act as a companion, guide or date for another person or who, for consideration, agrees or offers to privately model in a state of nudity or semi-nudity or to perform a striptease for another person.*

(q) *“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.*

(r) *“Establish or establishment of a sexually oriented business” means and includes any of the following:*

- (1) *The opening or commencement of any sexually oriented business as a new business;*
- (2) *The conversion of an existing business, whether or not a sexually oriented business, to any other sexually oriented business;*
- (3) *The addition of any sexually oriented business to any other existing sexually oriented business; or*
- (4) *The relocation of any sexually oriented business.*

(s) *“Gross public floor area” means the total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture arcades, service areas, behind-computer areas, storage areas visible from such other areas, restrooms (whether or not labeled “public”), areas used for cabarets or similar shows (including stage areas), plus aisles, hallways and entryways serving such areas.*

(t) *“Historic site” and “historic landmark” means those sites and structures defined in Chapter 1105.02 of the City of Canton Zoning Code.*

(u) *“Nudity” means the showing of either of the following:*

- (1) *The human male or female genitals, pubic area or buttocks with less than a fully opaque covering; or*
- (2) *The female breast with less than a fully opaque covering on part of the nipple.*

(v) *“Open space” means that area defined in Section 1123.62 of the City of Canton Zoning Code.*

(w) *“Operate” means to control or hold primary responsibility for the operation of a sexually oriented*

business, either as a business entity, as an individual, or as part of a group of individuals with shared responsibility. "Operator" means any person on the premises of a sexually oriented business who is authorized to exercise overall operational control or hold primary responsibility for the operation of a sexually oriented business. A person may be found to be the operator of a sexually oriented business whether or not that person is an owner, part owner or permittee of the business.

(x) "Permit" means a permit to operate a sexually oriented business issued pursuant to this Chapter.

(y) "Person" means an individual, sole proprietorship, partnership, corporation, limited liability company, association or other legal entity.

(z) "Public park" means public land or recreation area which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the City which is under the control, operation or management of a political subdivision of, and/or the state or federal government.

(aa) "Regularly features" or "regularly shown" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

(bb) "Residential district" means those areas zoned Residential District in the City of Canton Zoning Code.

(cc) "Residential social service facility" means those facilities as defined in Section 1123.641 of the City of Canton Zoning Code.

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

(ee) "Semi-nudity" or "semi-nude" means exposing to view, with less than a fully opaque covering, any portion of the pubic area, female breast below the top of the areola or any portion of the buttocks. This definition shall include the entire lower portion of the female breast, but shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, leotard, bathing suit, or other clothing, provided that the areola is not exposed in whole or in part.

(ff) "Sexually oriented business/establishment" means any of the following:

(1) Adult arcade;

(2) Adult cabaret;

(3) Adult media store;

- (4) *Adult model studio;*
- (5) *Adult motel;*
- (6) *Adult motion picture theater;*
- (7) *Adult novelty store;*
- (8) *Adult theater; or*
- (9) *Escort agency.*

(gg) *"Sexually oriented entertainment activity" means the sale, rental or exhibition for any form of consideration, of adult media, sexually oriented novelties or toys, or live performances which are distinguished or characterized by an emphasis on the exposure or display of specified sexual activity or specified anatomical areas.*

(hh) *"Sexually oriented novelties or toys" means instruments, devices, or paraphernalia which are designed or marketed primarily for use to stimulate human genital organs or in connection with specified sexual activities, or for sadomasochistic use or abuse of themselves or others, but shall not include anatomical models, including representations of human genital organs or female breasts, or other models, displays, and exhibits produced and marketed primarily for use in the practice of medicine or law or for use by an educational institution*

(ii) *"Specified anatomical areas" means:*

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

(ij) *"Specified criminal activity" means any of the following offenses:*

- (1) *Prostitution or promotion of prostitution; dissemination of obscenity or illegal pornography; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; lewdness; sexual battery; rape; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving the same elements from any jurisdiction regardless of the exact title of the offense; for which:*

- A. *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;*

B. 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; or

C. 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 combination of misdemeanor offenses occurring within any 24-month period.

(2) The fact that a conviction is being appealed or a stay has been granted shall have no effect on the disqualification of the applicant.

(kk) "Specified sexual activities" means:

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

(2) Acts of human masturbation, sexual intercourse (vaginal or anal), sodomy, fellatio, cunnilingus, insertion of any part of the body or instrument into vaginal or anal cavity;

(3) Fondling or erotic touching of another person's human genitals, pubic region, buttocks or female breasts; or

(4) Excretory functions as part of or in connection with any activity set forth in (kk)(1)(2) or (3) above.

(ll) "Stock in trade" means the individual items displayed in areas open to the public and offered for sale or rental in an establishment.

(mm) "Teen Club" means those clubs defined in Section 727.02(c) of the Codified Ordinances of the City of Canton.

(nn) "Viewing booth" means any viewing room of less than 150 square feet of floor space or area to which the public may gain admittance, wherein a still or motion picture machine, projector, video monitor, or similar equipment is available for the purpose of showing still or motion pictures, videos, or similar images or photographic reproductions to five or fewer persons at any one time, or where live entertainment is presented.

(oo) "Youth oriented establishment" means an establishment which caters to or provides services primarily to persons younger than 18 years of age or any boys' club, girls' club, community center or similar establishment that regularly serves persons younger than 18 years of age.

787.02 SCOPE.

This Chapter governs sexually oriented businesses within the City and the owners, operators, persons in charge and employees of such establishments.

787.03 PERMIT REQUIRED.

(a) No person shall establish, engage in, conduct or carry on, or knowingly permit to be established, engaged in, conducted or carried on in the City, the operation of any sexually oriented business without first having obtained a permit from the City.

(b) No person who operates a sexually oriented business shall employ a person to work and/or perform services on the premises of the sexually oriented business unless the person who operates the business complies with Section 787.10 of this Chapter.

(c) A separate permit is required for each location at which a sexually oriented business is operated.

(d) Whoever violates this section is guilty of a misdemeanor of the first degree.

787.04 APPLICATION FOR SEXUALLY ORIENTED BUSINESS PERMIT; FEE.

(a) Application for an original or renewal permit shall be in writing on forms prescribed by the City and shall be filed with the Enforcement Officer.

(b) A nonrefundable filing fee shall be paid at the time of filing the application as follows:

(1) \$350.00 for an initial permit to operate a sexually oriented business.

(2) \$200.00 for a renewal permit to operate a sexually oriented business.

(c) An application for a permit to operate a sexually oriented business shall identify the address where the sexually oriented business is located or to be located and:

(1) If the person who desires to operate a sexually oriented business is an individual, he shall sign the application for a permit as applicant; or

(2) If the person who desires to operate a sexually oriented business is other than an individual, each officer, director, general partner or other individual who will participate directly in decisions relating to management and control of the business shall sign the application for a permit as applicant.

(d) Each person identified in section (c) above, as well as the business entity itself, shall be considered a permit applicant, must qualify as a permittee under this Chapter, and shall be considered a permittee if a permit is granted.

(e) An application for a sexually oriented business permit shall be completed according to the instructions on the form, which shall require the following:

(1) If the applicant is:

- A. *An individual, state the legal name and any aliases of such individual.*
 - B. *A partnership, state the complete name of the partnership and whether the partnership is general or limited, the state or other jurisdiction under which it is organized; the address of its principal office in Ohio; its federal identification number; and the full name, business address and date of birth of each general partner or other person who will participate directly in decisions relating to management and control of the business.*
 - C. *A corporation, the name of the corporation; the state or other jurisdiction under which it is organized; the address of its principal office; the address of its principal office in Ohio; its federal identification number; the name and address of its statutory agent in Ohio; and the full name, business address and date of birth of each officer, director or other person who will participate directly in decisions relating to management and control of the business.*
- (2) *If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, state the fictitious name to be used and submit copies of documentation evidencing the registration of the business name under applicable laws.*
 - (3) *State whether any applicant has had a previous permit under this chapter or other similar regulation of another jurisdiction denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit or license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation and the reasons therefore.*
 - (4) *State whether any applicant holds any other permits or licenses under this chapter or other similar regulation from this or another jurisdiction and, if so, the names and locations of such other licensed businesses.*
 - (5) *Submit a plan, sketch or diagram showing the configuration of the premises of the sexually oriented business including the location of all stages and customer seating and a statement of total floor space occupied by the business. If the sexually oriented business intends to install viewing booths as described in Section 787.14(a), the plan, sketch or diagram shall comply with that Section.*

(f) Applicants for a permit under this section shall have a continuing duty to supplement promptly application information required by this section in the event that such information changes in any way from what is stated on the application. The failure to comply with such continuing duty within 30 days from the date of such change by supplementing the application on file with the City shall be grounds for suspension of a permit.

787.05 ACTION ON APPLICATION.

(a) Upon the filing of a completed application under Section 787.04 for a sexually oriented business permit, the Enforcement Officer shall immediately issue a Temporary Permit to the applicant, which Temporary Permit shall expire upon the final decision of the City to grant or deny the permit. Within 40 days of the initial filing date of the completed application, the Enforcement Officer shall issue to the applicant, by certified mail, either a permit or a letter of intent to deny the permit.

(b) The Enforcement Officer shall approve the issuance of a permit unless one or more of the following is found to be true by a preponderance of evidence:

- (1) The applicant has failed to provide information as required by Section 787.04 for issuance of a permit or has falsely answered a question or request for information on the application form;*
- (2) If the applicant is a partnership, limited liability company, corporation or other legal entity, the applicant is not in good standing in the jurisdiction where organized;*
- (3) The operation or location of a sexually oriented business at the specified premises would violate the City of Canton Zoning Code including without limitation Chapter 1156 and any amendments thereto;*
- (4) The applicant is under 18 years of age;*
- (5) The applicant has been convicted of or pled guilty to a specified criminal activity as defined in Section 787.01 of this Chapter;*
- (6) The permit application fee required by this Chapter has not been paid.*

(c) A permit or renewal permit to operate a sexually oriented business shall contain the address of the premises where the permitted business is located, the name and address of the permit holder, and the date of issuance and date of expiration of the permit.

787.06 EXPIRATION OF PERMIT.

(a) A permit to operate a sexually oriented business is valid for one year, and expires on the anniversary of the date of issuance, unless sooner revoked as provided in these regulations.

(b) Application for renewal shall be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the permit shall not be affected.

787.07 DISPLAY OF PERMIT.

The permit to operate a sexually oriented business shall be prominently displayed in an area of the

establishment open to the public.

787.08 SUSPENSION OF PERMIT.

(a) The Enforcement Officer shall issue to the sexually oriented business permittee, by certified mail, a letter of intent to suspend the permit and the reasons therefor if it is determined that a permittee:

- (1) Has violated this Chapter; or*
 - (2) Has knowingly allowed an employee to violate this Chapter.*
- (b) When a permit is suspended, the suspension shall not exceed 30 days.*

787.09 REVOCATION OF PERMIT.

(a) The Enforcement Officer shall issue to the sexually oriented business permittee, by certified mail, a letter of intent to revoke the permit and the reasons therefor if it is determined that:

- (1) The sexually oriented business permittee knowingly has given false or misleading information in the application for the permit or in any document related to the operation of the sexually oriented business;*
- (2) The sexually oriented business permittee knowingly has allowed the possession, use, or sale of controlled substances on the premises. It shall be an affirmative defense that such possession, use, or sale occurred pursuant to a valid medical prescription;*
- (3) The sexually oriented business permittee knowingly has allowed prostitution on the premises;*
- (4) The sexually oriented business permittee knowingly has operated the sexually oriented business during a period of time when the permit was suspended;*
- (5) The sexually oriented business permittee knowingly has allowed a specified sexual activity to occur in or on the permitted premises;*
- (6) The sexually oriented business permittee has had two or more causes of suspension under Section 787.08 of this Chapter occur within a 12 month period.*

(b) When, upon completion of the notice and hearing procedure described in Section 787.23 of this Chapter, the Board of License Appeals revokes a permit, the revocation shall continue for one (1) year from the date revocation becomes effective and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date revocation becomes effective, provided that, if the conditions of Subsection 787.23(f) are met, a Provisional Permit will be granted pursuant to that Subsection. If, subsequent to a revocation based solely on Paragraph (a)(1) of this Section, the Board of License Appeals finds that the basis

for the revocation has been corrected or abated, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date the revocation became effective. If the permit was revoked under Paragraphs (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this Section, the permittee may not be granted another permit until at least one (1) year has elapsed.

787.10 HIRING OF SEXUALLY ORIENTED BUSINESS EMPLOYEES.

(a) No sexually oriented business permittee shall employ any person unless such person first provides to the permittee or operator, in writing:

- (1) Proof of age in the form of a copy of a birth certificate or driver's license or other picture identification issued by a governmental agency;*
- (2) A statement of whether the employee or applicant for employment has been convicted of or pled guilty to a specified criminal activity as defined in Section 787.01 of this Chapter, and, if so, the specified criminal activity involved and the date, place and jurisdiction of each. The statement shall also disclose whether the employee or applicant has had a previous sexually oriented business employee license or permit under any other sexually oriented business ordinance from another political subdivision and whether such permit has been denied, suspended or revoked within the preceding 12 months.*

(b) The permittee shall have a duty to obtain from all employees an updated statement containing the information in subsection (a)(2) on an annual basis.

(c) The permittee shall have a duty to retain the information provided by an employee for the duration of the employment relationship.

(d) Whoever violates or fails to fulfill a duty under this section is guilty of a misdemeanor of the first degree.

787.11 TERMINATION OF EMPLOYMENT.

(a) No sexually oriented business permittee shall employ or continue to employ any person if it is known by the permittee, or reasonably should be known, that the person:

- (1) Failed to provide information as required by Section 787.10(a) or provided false information to the permittee;*
- (2) Is under 18 years of age;*
- (3) Has been convicted of a specified criminal activity as defined in Section 787.01 of this Chapter;*
- (4) Knowingly has allowed the possession, use, or sale of controlled substances in or on the permitted premises;*

- (5) *Knowingly has allowed a specified sexual activity to occur in or on the permitted premises or has engaged in a specified sexual activity in or on the permitted premises;*
- (6) *Knowingly has allowed or engaged in prostitution on the premises; or*
- (7) *Knowingly has violated Sections 787.12, 787.13(d) or 787.17 of this Chapter.*

(b) Whoever violates this section is guilty of a misdemeanor of the first degree.

787.12 INSPECTIONS AND INVESTIGATIONS.

(a) Sexually oriented business permittees or operators shall permit officers or agents of the City to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually oriented business is occupied by patrons or is open for business. The knowing or intentional refusal to permit such an inspection shall not constitute a misdemeanor, but shall constitute a violation of this section for purposes of permit denial, suspension, and/or revocation. This section shall be narrowly construed by the City to authorize reasonable inspections of the permitted premises, but not to authorize a harassing or excessive pattern of inspections.

(b) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

787.13 OPERATION REQUIREMENTS.

(a) All sexually oriented businesses shall be closed between 2:30 a.m. and 1:00 p.m. on Sunday and further, shall not be operated between the hours of 2:30 a.m. and 9:00 a.m. Monday through Saturday, provided that, a sexually oriented business which has obtained a license to sell alcoholic beverages from the State of Ohio may remain open pursuant to the terms of that license but may not conduct sexually oriented entertainment activity after 2:30 a.m.

(b) No person under 18 years of age shall be employed by the establishment in any capacity, whether full-time or part-time, or with or without remuneration or compensation in any form.

(c) No sexually oriented business shall be operated in any manner that permits the observation from outside the premises of any material, entertainment, merchandise, pictures, advertisements, displays or signs describing specified sexual activities or specified anatomical areas or any person in a state of nudity or semi-nudity.

(d) No person shall operate or cause to be operated a sexually oriented business and knowingly or with reasonable cause to know, permit, suffer or allow a person who is younger than 18 years of age to enter or be on the premises at any time the business is open, except that:

- (1) This subsection shall not apply to a person younger than 18 who is on the premises exclusively to perform repairs or maintenance of the premises or equipment on the*

premises or for the delivery of goods to the premises.

QUESTION DIVIDED ON COUNCIL FLOOR—SECTION 787.13(d)(2) WAS DEFEATED:

~~(2) A sexually oriented business that sells or offers for sale both adult media and non-adult media shall not be prohibited from allowing a person who is 16 or 17 years of age (hereafter referred to as a “minor”) to enter the premises, provided that:~~

~~A. No adult media is displayed or sold in the portion of the premises where a minor may enter;~~

~~B. The adult media is displayed in a separate room of the premises (the “adult media room”);~~

~~C. The adult media is not visible outside the adult media room;~~

~~D. Access to the adult media room must be through an opaque door;~~

~~E. The entrance to the adult media room must be, at all times it is open for business, staffed by an employee who shall not allow any person younger than 18 years of age to enter;~~

~~F. All adult media must be purchased in the adult media room and may not be removed from the adult media room unless it is contained in an opaque bag; and~~

~~G. The minor is accompanied by a parent or guardian. It is not necessary that the parent or guardian remain on the premises with the minor if such parent or guardian provides authorization, in person to the operator or manager, for the minor to remain on the premises.~~

(e) It shall be the duty of the permittee or operator of a sexually oriented business to ensure that an attendant is stationed at each public entrance to the business during such business’s regular business hours. It shall be presumed that an attendant knew a person was under 18 years of age unless such attendant asked for and was furnished a valid operator’s license or valid personal identification card issued by the State of Ohio.

(f) Whoever knowingly violates this section is guilty of a misdemeanor of the first degree.

787.14 REGULATIONS PERTAINING TO VIEWING BOOTHS.

(a) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an employee’s station of every area of the premises to which any patron is permitted access for any purpose, including the interior of all video or viewing booths and excluding restrooms. Restrooms may not contain video reproduction equipment, and no entertainment of any kind may be offered in restrooms. If the premises has two or more employees’ stations designed, 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 employee's stations. The view required in this subsection must be by direct line of sight or by use of video cameras and monitors from the employee's station and shall remain unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials. At least one employee shall be on duty and situated in the employee's station at all times that any patron is present inside the premises.

(b) No video or viewing booth may be occupied by more than one person at any time.

(c) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, including both the interior of video or viewing booths and restrooms, at an illumination level of not less than 5.0 foot candles as measured at floor level.

(d) No openings of any kind shall be permitted to exist between video or viewing booths or in any wall of a booth. The walls of each booth shall be inspected regularly to determine if any openings or holes exist.

(e) Whoever knowingly violates this section shall be guilty of a misdemeanor of the third degree.

787.15 REGULATIONS PERTAINING TO ADULT MODEL STUDIOS.

(a) No person under 18 years of age may appear nude or semi-nude in or on the premises of an adult model studio.

(b) No operator of an adult model studio shall permit a person under 18 years of age to appear nude or semi-nude in or on the premises of the adult model studio.

(c) 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.

(d) Whoever knowingly violates this section shall be guilty of a misdemeanor of the first degree.

787.16 LOITERING AND EXTERIOR LIGHTING AND MONITORING REQUIREMENTS.

It shall be the duty of the operator of a sexually oriented business to:

(a) Initiate and enforce a no loitering policy within the external boundaries of the real property upon which the sexually oriented business is located;

(b) Post conspicuous signs stating that no loitering is permitted on such property;

(c) Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every 30 minutes or inspecting such property by use of video cameras and monitors; and

(d) Provide adequate lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. The video cameras and monitors shall operate continuously at all times the premises is open for business. The monitors

shall be installed within a manager's station.

787.17 RULES GOVERNING EMPLOYEE CONDUCT.

(a) A person under 18 years of age shall not accept or continue employment by a sexually oriented business, in any capacity, whether full-time or part-time, or with or without remuneration or compensation in any form.

(b) No employee of a sexually oriented business, in the performance of his or her duties, knowingly shall do any of the following on the permitted premises:

- (1) Place his or her hand upon, touch with any part of his or her body, fondle in any manner, or massage the genitals, pubic area, or buttocks of any other person or the breast of any female or, if the employee is a female, of any other female.*
- (2) Perform, offer or agree to perform any act that would require the touching of the genitals, pubic area or buttocks of any other person or the breasts of any female or, if the employee is a female, of any other female.*
- (3) Uncover the genitals, pubic area or buttocks of any other person or the breast of any female or, if the employee is a female, of any other female.*
- (4) Engage in specified sexual activities, actual or simulated.*
- (5) Appear in a state of nudity or semi-nudity unless the employee is on a stage at least 2 feet from the floor and at least six 6 feet from any customer.*

(c) Any live entertainment that is provided in a private or semi-private room to 5 or fewer persons at any one time must take place in the presence of at least one employee who is not an entertainer and with all doors to such room completely open and ajar if such room is not considered a viewing or video booth.

(d) Whoever violates this section is guilty of a misdemeanor of the first degree.

787.18 LOCATION RESTRICTIONS.

(a) Sexually oriented businesses shall not be operated within 1,000 feet of a church, school, public park or recreational area, residential district, lot containing a residential structure, including multi-family dwellings, another sexually oriented business, nursing home, convalescent home, extended care facility, library, museum, historic site, historic landmark, residential social service facility, any area designated an open space or community service district, bar, tavern or other liquor establishment, teen club or youth oriented establishment, hereinafter collectively referred to as "sensitive uses."

(b) Whoever violates this section is guilty of a misdemeanor of the first degree.

787.19 MEASURE OF DISTANCE.

The required minimum distance between any sexually oriented business and any applicable sensitive

use shall be measured in a straight line, without regard to intervening structures, from the closest property line of the sexually oriented business to the closest property line of the applicable sensitive use.

787.20 APPLICABILITY TO EXISTING BUSINESSES.

(a) Any sexually oriented business lawfully operating on the effective date of this Chapter that is in violation of the location requirements of this Chapter shall be deemed a nonconforming use subject to Section 1127.07 of the Planning and Zoning Code of the City of Canton.

(b) All sexually oriented businesses lawfully operating and in existence and sexually oriented business employees employed on the effective date of this Chapter are hereby granted a de facto temporary permit to continue operation or employment for a period of 180 days following the effective date of this Chapter. Within said 180 days, all sexually oriented businesses and sexually oriented business employees must make application for a permit pursuant to this Chapter. Within said 180 days, sexually oriented businesses must make any necessary changes to the operation and interior configuration of the regulated business premises to conform to this Chapter. All provisions of this Chapter, other than permit, operation and interior configuration requirements for which the 180-day grace period applies, shall apply to the activities of all sexually oriented businesses and sexually oriented business employees whether such business or activities were established or commenced before, on, or after the effective date of this Chapter.

787.21 RECORDS.

The information provided by an applicant for a sexually oriented business permit shall be maintained by the Enforcement Officer. All documents shall be endorsed by the Enforcement Officer with the date of filing. Such information shall be kept confidential and shall only be disclosed in accordance with State and Federal law.

787.22 DEPOSITS AND USE OF FEES.

Fees collected by the City for permits under these regulations shall be deposited in the City general fund.

787.23 HEARING AND APPEALS.

(a) If the Enforcement Officer determines that facts exist for denial, suspension or revocation of a permit under this Chapter, the Enforcement Officer shall notify the permittee or applicant (hereafter the "Respondent") in writing of the City's intent to deny, suspend or revoke the permit, including the grounds therefore, by certified mail. The Respondent may appeal the notice of intent to deny, suspend or revoke a sexually oriented business permit under this Chapter. The appeal shall be heard by the Board of License Appeals of the City of Canton pursuant to Chapter 149 of the Codified Ordinances of the City of Canton as follows:

- (1) Within 10 days of receipt of the notice of intent to deny, suspend or revoke, the Respondent may file with the Enforcement Officer a written response that shall*

include a statement of reasons why the Respondent believes the permit should not be denied, suspended or revoked.

- (2) Within 5 days of the filing of the Respondent's written response or if no written response is received, the Enforcement Officer shall notify the Respondent in writing of the date of the hearing on the Respondent's denial, suspension or revocation. Unless the Respondent requests a longer period, the Board of License Appeals must conduct a hearing within 14 days of the filing of the written response. If no written response is received, the hearing shall be conducted within 24 days after the notice of intent to deny, suspend or revoke a sexually oriented business permit has been mailed to the respondent. At the hearing, the Respondent shall have the opportunity to be represented by counsel, present evidence and witnesses on his, her or its behalf, and cross-examine any of the City's witnesses. Once the hearing commences, it may not be adjourned without the consent of the Respondent.*
- (3) Prior to the hearing, the Respondent may request that the Board of License Appeals issue subpoenas to compel the attendance and testimony of witnesses.*

(b) Subsection (a) of this Section shall be construed by the City and the Board of License Appeals so as to guarantee that a "quasi-judicial proceeding" occurs within the meaning ascribed to that phrase under Ohio law.

(c) Within 5 days after the hearing, the Board of License Appeals shall issue a written decision to the Respondent by certified mail. Such decision shall include a statement advising the Respondent of the right to appeal such decision.

(d) If after the hearing, the Board of License Appeals concludes that grounds as specified in this Chapter exist for denial, suspension, or revocation of the permit, then such denial, suspension, or revocation shall become final 5 days after the Respondent receives notice by certified mail of the Board of License Appeals' decision that the permit has been denied, suspended or revoked.

(e) If the Board of License Appeals determines that no grounds exist for denial, suspension, or revocation of a permit, then within 5 days after the hearing, at the Board of License Appeals' instruction, the Enforcement Officer shall withdraw immediately the intent to deny, suspend, or revoke the permit and shall notify the Respondent in writing by certified mail of such action. If Respondent is seeking a new or renewal permit, the Enforcement Officer contemporaneously therewith shall issue a permit to the Respondent.

(f) A permittee or applicant (hereafter the "Aggrieved Party") whose application for a permit has been denied or whose permit has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction. Upon receipt of a properly filed Notice of Appeal, the Enforcement Officer shall immediately issue the Aggrieved Party a Provisional Permit. The Provisional Permit shall allow the Aggrieved Party to continue operation of the sexually oriented business and will expire upon the court's entry of a judgment on the Aggrieved Party's appeal. Within 5 days (or sooner if required by state statute) of the filing of a Notice of Appeal, the Enforcement Officer shall prepare and transmit to the court a transcript of the hearing before the Board of License Appeals.

(g) *A sexually oriented business with a Temporary Permit (as provided in Section 787.05) or a Provisional Permit (as provided in this Section) shall be subject to the provisions of this Chapter.*

787.24 SEVERABILITY CLAUSE.

Each section, subsection, paragraph, subparagraph and provisions (hereafter collectively referred to as "provisions") of this chapter are hereby declared to be independent provisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining provisions and the application of such provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such provisions would have been passed independently of such provision(s) so known to be invalid.

787.25 REMEDIES AVAILABLE TO LAW DIRECTOR.

The Law Director or his designee may institute appropriate legal action, either civil or criminal, as authorized herein, or as may be otherwise available and appropriate either at law or in equity, which may, in the judgment of the Law Director or his designee, be necessary for the enforcement of any provisions or order issued pursuant to this Chapter. Any such suits or proceedings are to be brought in the name of the City.

787.99 CRIMINAL VIOLATION.

Whoever knowingly violates any provisions in this Chapter for which a penalty is not otherwise provided, shall be guilty of a misdemeanor of the fourth degree.

Section 2. *All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.*

Section 3. *This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health or safety of the citizens of the City of Canton; the emergency being to avoid unnecessary delay in bringing the Codified Ordinances of the City into compliance with local, state and federal law. And provided it receives the affirmative vote of two-thirds of the elected and/or appointed members to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.*

PASSED:

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

PRESIDENT DENCZAK: Moved and seconded to amend this ordinance per the copy before each of you. Are there

any remarks under the amendment?... If not, the question...

MEMBER HART: Mr. President, yeah, I just had a, you know, a quick question for the Assistant Law Director. When I look at this in talking to some of the residents up there, I feel that they can live with the, you know, changes in the opening and closing of the businesses. I feel that they can probably live with the employers doing the required background checks. I tend to, and I can't say I can speak for everybody, but many of the residents I've talked to, I still feel that they have a problem and I personally have a problem with the section allowing the 16 or 17-year old minors to enter that portion of the premises providing the parent is with the minor. And I guess my question is what keeps the parent from maybe taking the minor in the adult area? And if indeed, you know, you have another adult if somebody would still be under age taking that person in there even though, if they were, you know, married to somebody who was 21 years old, I don't, you know, personally feel that that's in the best interests of any minors to be in that area or to be tempted. And I guess sometimes I just feel this is just another attempt to desensitize, you know, people to what's going on in that business.

MEMBER DIAMOND: Mr. President...

PRESIDENT DENCZAK: Do you wish to respond to that?

ASSISTANT LAW DIRECTOR MESTEL: I can respond, Mr. President, but would Member Diamond like to go first?...

MEMBER DIAMOND: This business was in my ward until recently when redistricting came about. I don't think there's any justification for allowing any child or teenager in an adult sexually-oriented business. I can't think of a reason why there would be a need with all the malls that we have here that a teenager would need to go shopping in an adult sexually-oriented business. I think it would be difficult unless you plan on having a police officer sit inside the business while they're in operation to regulate that. A lot of 16-year old girls look like they're 23 years old. And I think once you open the door to allowing teenagers, you are exposing those people to a lot of harm. Adult sexually-oriented businesses are for adults, not teenagers, so I will be voting against this amendment. I too think that the other issues are something that the neighbors can deal with, so I guess I would ask that the amendment be separated...is that able to be done? And I would like to vote on section 3 separately from sections 1, 2 and 4 so as not to defeat the entire amendment. Thank you.

PRESIDENT DENCZAK: The one you object to is which section?

MEMBER DIAMOND: Section 3 concerning the 16 and 17 year olds being allowed to enter the business. On the amendment, it's just listed as 3 by itself. There is not a (a), (b), (c) or (d).

ASSISTANT LAW DIRECTOR MESTEL: Mr. President, if I could respond. The amendment provision on the front was just meant to be a summary of the changes of the amendments, but actually within the ordinance itself, it is Section 787.13(d)(2)...is the provision that incorporates that amendment.

MEMBER DIAMOND: Okay, then I would like, Mr. President, I would like that to be separated.

PRESIDENT DENCZAK: On the amendment that's before you now?

MEMBER DIAMOND: Mr. President, I guess I'm confused...if the amendment is just a summary, we're voting on just a summary...wouldn't we...?

ASSISTANT LAW DIRECTOR MESTEL: The ordinance that's attached to the summary is the substituted version of the ordinance, that incorporates the changes that are described in the summary. It is on page 15.

PRESIDENT DENCZAK: Member Diamond, there are so many sections of this ordinance, I want to separate that person that you're concerned with, and the rest of it be as it is.

MEMBER DIAMOND: Mr. President, how ever you deem it appropriate to do so, I would like, under Operation Requirements, which is 787.13, I would like the entire number 2 removed, and that is A through G.

PRESIDENT DENCZAK: That's no problem, Member Diamond. You're asking that this amendment be divided, the question be divided. Members of Council, the entire amendment is as it stands, except you'll be voting on Section 2, A, B, C, D, E, F, G separately, is that understood?... Okay, the question now before Council is the amendment divided. The first question you're going to vote on now is the deletion of Section 2, subsections A through and including number G. Is that understood?... By voice vote, all those in favor....

MEMBER CARBENIA: Mr. Chairman...Mr. President, I'm sorry. I'd like, I have a question for the Assistant Law Director.

PRESIDENT DENCZAK: You may.

MEMBER CARBENIA: Have we negotiated this, and has this been suggested by the Law Department and by the expert lawyer in this type of case?

ASSISTANT LAW DIRECTOR MESTEL: May I respond?

PRESIDENT DENCZAK: Yes, you may.

ASSISTANT LAW DIRECTOR MESTEL: Thank you. With regard to this section, I understand the Members' concerns about individuals under 18 coming onto the premises. Please understand that this is a very, very limited exception. First of all, the business has to be divided and the adult portion of the business has to separate from the non-adult portion. And when I say non-adult portion, as an example, one of the businesses has a tattoo parlor. Now in Ohio, they do permit individuals under 18 to get tattoos if they are accompanied by a parent. So this provision allowing those under 18 years old to come onto the premises doesn't mean that they're allowed to go into the adult portion of the premises. Just into the portion of the premises where they would be allowed to purchase the services. If you look at subsection (d)(2)(e), you will see that the entrance to the adult media room...when you have premises that are both adult and non-adult, that the entrance to the adult media room must be at all times staffed by an employee who's going to check people's ID. So the minor could not get into that portion of the premises. The purpose of this accommodation was in order to settle the Federal lawsuit that's presently pending in United States District Court.

MEMBER DIAMOND: Mr. President, in my opinion, what we are trying to do is make the whole purpose behind this ordinance, is to protect the residents of the City of Canton, so while I certainly accept that there are experts in this field and there are lawsuits in this field, I am not going to approve of allowing teenagers into sexually-oriented businesses. When you go into a tattoo parlor, if you're a 16 or 17-year old with your parent, there are not adult videos behind the wall. There's not adult paraphernalia behind the wall. And number G, under (2), is really perturbing to me...it says in essence that a parent needs only go in and say it's okay for my child to be here, and then they're allowed to leave. What parent in their right mind would drop off and leave their child at an adult sexually-oriented business? I mean that's even in the wording is alien to a body, a governmental body, trying to protect its citizens. So I respectfully concur with Ms.

Mestel that there are experts that say this is what's needed to settle a lawsuit, but I don't agree with us doing so. So I would still ask for the entire Section (2), A through G, to be deleted.

PRESIDENT DENCZAK: Are there any further remarks on this division?

MEMBER SMUCKLER: Mr. President, will we be voting on Section (2) first or the rest of it?

PRESIDENT DENCZAK: Yes, you are voting on the division of Section (2), Sections A through G.

MEMBER SMUCKLER: Thank you.

MEMBER CASAR: Mr. President, these questions have already been brought up on the floor, I did ask the Assistant Law Director the same questions in our Democratic caucus. And received the answers, and I too was not in favor of underage, 16 and 17 year olds, there. So I'll have to support this amendment.

PRESIDENT DENCZAK: The question you're voting on now is the...the question is divided and you're voting on Section (2), A through G. Are there any further remarks?... If not, I'm going to ask for a roll call vote on this. Roll call vote.

NO FURTHER REMARKS ON #1 DIVISION

ROLL CALL: 0 YEAS, 12 NAYS

PRESIDENT DENCZAK: Members of Council, I think there might be some misunderstanding here....the question before you was the delete, to omit this section...that was the motion that was made, and you all voted no. I'm going to put this up for a vote again so you clearly understand this. The motion was...first of all, the question is divided, forget the rest of the ordinance...the amendment.

MEMBER SMUCKLER: Mr. President, I asked the question earlier, and I'm going to ask it again, are we voting on keeping the section in or keeping it out? We think we're voting on taking it out.

PRESIDENT DENCZAK: You're voting on taking it out, deleting that section from...

MEMBER SMUCKLER: So what would be the sign to take it out?

PRESIDENT DENCZAK: Aye.

MEMBER SMUCKLER: Please...if we have to go through the gymnastics again, we'll go through the gymnastics again, but can we just re-vote or do you....?

PRESIDENT DENCZAK: I think Council misunderstood, and the Chair will ask for another vote.

MEMBER DIAMOND: Mr. President, just so we could be clear, perhaps the vote should be, because number 2 on the amendment is not number (2) in the ordinance. If we...

PRESIDENT DENCZAK: Member Diamond, first of all the question before the Council body now is the amendment, not the ordinance.

MEMBER DIAMOND: But the number 2 on your amendment sheet isn't the same...

PRESIDENT DENCZAK: No, that's correct, you're voting on the amendment, and the amendment has been moved and seconded that you made the motion on. It has nothing to do with the Section (2) on the ordinance.

MEMBER DIAMOND: Okay, you asked if we were going to remove Section (2) from the amendment...

PRESIDENT DENCZAK: Yes, that's it.

MEMBER DIAMOND: Well, that, I would respectfully say is not correct because number 2 on the amendment is the hours. And what I'm concerned about is number 3 on the amendment, which is number (2) in the ordinance. So if we stated Section 787.13, Operation Requirements, that's what I want to delete, but it's Section 3 on here.

PRESIDENT DENCZAK: Member Diamond, at the risk of being attacked by The Repository, your 3 minutes are up. Let's get some understanding, I'm going to ask the Assistant Law Director to explain this.

ASSISTANT LAW DIRECTOR MESTEL: If you will look at the original ordinance that was introduced during the first reading, and instead of looking at the summary sheet, if you go to 787.13, subsection (d), did not permit anyone to come onto the premises unless they were at least 18 years old. In the substituted version that's now before you for the third reading, if you go to Subsection 787.13(d)(2), is the amendment. And (d)(2) allows 16 and 17 year olds to come onto the premises, but only if certain prerequisites are met. That the room has to be separate, that you can't see inside the adult media room from the outside, that there be somebody manning the adult media room that checks the ID of the person, and that a minor be accompanied by a parent. That amendment is described in Section 787.13(d)(2), which is the section that you asked to have divided as I understand, correct?

MEMBER DIAMOND: Mr. President. Ms. Mestel, I have that in front of me, but we, on the amendment page, we were voting to take number 2 out, and you're not, number 2 is the operation hours, and you're not...to divide the amendment, you have to have the corresponding number that goes with the issue. And do you see that it's number 3 on the amendment? On the amendment page are 4 issues. The one dealing with 16 and 17 year olds is issue number 3. And I understand in the ordinance, it's Section (2), A through G. I just want to be clear that we're voting to take out the correct thing, out of the amendment.

ASSISTANT LAW DIRECTOR MESTEL: Yes, you're correct. On the summary page of the amendment, it is described under paragraph 3, yes.

CLERK OF COUNCIL VANCKUNAS: Mr. President, it seems to me as through we should adopt this amendment, so that the amendment is actually before the body. And then amend it to delete the section that you're referring to. This amendment is not before the Body yet; it has not been adopted by Council.

MEMBER DIAMOND: Mr. President, I wanted...I certainly can't vote for this amendment. I wanted to separate the amendment, so that the 16 and 17-year old provision was not before the Body with the entire amendment. How ever you want to do that is fine, but that's the issue.

PRESIDENT DENCZAK: I will put before Council again, the question before you is the amendment, that's the copy you have before each of you. I don't know whether the numbers agree with the original ordinance or not, I don't have that in my possession. I have to take the word of the Assistant Law Director.

MEMBER SMUCKLER: Mr. President...

PRESIDENT DENCZAK: Member Smuckler, let me finish. The question before you now and you voted against the motion, I think Council was misinformed and I think Council should be given another opportunity to vote on it. So if you delete the Section (2), then the amendment proposed by the Law Department is the question and you can vote for the rest of the amendment.

MEMBER SMUCKLER: Mr. President, the Clerk is correct. We should be voting on the amendment, and then making a separate motion to delete it...on the age limitation. People are so confused because of the summary page. They're getting confused by the summary page—that is not amendments on the summary page. Take the summary page and throw it away. It was done with numbers as summary, that's it. The bottom line here is none of that corresponds. It just was an outline of what was changed in here. None of this corresponds to any of the ordinance—as far as numbers go.

MEMBER DIAMOND: Mr. President, a question to Member Smuckler, how can we vote on an amendment that's not before us then?

MEMBER SMUCKLER: I made a motion to amend this ordinance...

PRESIDENT DENCZAK: And you asked that it be divided.

MEMBER SMUCKLER: Right.

PRESIDENT DENCZAK: The question now, Members of Council, listen to me please. I don't know how you could move to adopt the amendment and then after it's adopted ask for a division and delete that section. I think the correct pattern to take now is vote on this motion to divide. You vote on this Section (2), dispose of that, if you will, and then go to the remainder...

MEMBER SMUCKLER: Why do you keep calling it Section (2)?

PRESIDENT DENCZAK: Because that's the way it is on the amendment. The ordinance is not before you right now. The question before you now is this amendment. The Chair is going to ask for another vote by Members of Council. The question you're voting on now is should Section (2) of the amendment—which is the question before you—the amendment as...

MEMBER SMUCKLER: Mr. President, I want to know from the Law Director 'cause I want to get this straight. If we vote no on this amendment, that means the, it's in tact. If we vote yes, it's out of there.

PRESIDENT DENCZAK: No, no...if you vote no on the motion to divide, you'll be voting on just that Section (2), and that will be out of your amendment.

MEMBER SMUCKLER: Mr. President, with all due respect, I don't want this to...she's got a court date on May 5th. Now I want it very clear what happens here. Now she's holding her head. I want to know what we're going to do here.

ASSISTANT LAW DIRECTOR MESTEL: Mr. President, are you having two votes—one on dividing the issues and voting on whether or not we should divide them?...or are you actually voting on the amendment?

PRESIDENT DENCZAK: We're voting on the amendment divided. And the question is Section (2). If that is...

MEMBER MROCZKOWSKI: Mr. President. To clarify the issue as I understand it, the division comes on

787.13(d)(2), am I correct?

ASSISTANT LAW DIRECTOR MESTEL: That's correct.

MEMBER MROCZKOWSKI: Thank you. Call for a vote.

PRESIDENT DENCZAK: On what?...the...on the division? I didn't hear you, I was talking to the Clerk.

MEMBER MROCZKOWSKI: On the clarification and the separation requested by Member Diamond.

MEMBER SMUCKLER: Is this vote on the separation?

PRESIDENT DENCZAK: No, the Chair is granting the separation. The Chair has the authority to divide the question.

MEMBER SMUCKLER: I understand your authority. My question is this, I want to make it crystal clear. If we vote yes, we're voting on this section for the 16 and 17 years old, if we vote yes, does that mean they're banned—or if we vote no, does that mean they're in?

PRESIDENT DENCZAK: On the amendment, if it passes, Section (2) is out, it's no longer a part of the...

MEMBER SMUCKLER: Mr. President, with all due respect, I'd like the Law Director's opinion on this.

PRESIDENT DENCZAK: She makes the big bucks.

MEMBER SMUCKLER: She does.

ASSISTANT LAW DIRECTOR MESTEL: I believe the way it was posed by Member Diamond, when you voted no, you agreed with Member Diamond not to consider that section in the substituted ordinance. Now if you intend that 16 and 17 year olds should come onto the premises, then you would vote yes. If you intend that 16 and 17 year olds not come onto the premises, then you would vote no.

MEMBER SMUCKLER: Mr. President, she has a different interpretation than you have.

PRESIDENT DENCZAK: The motion was to divide the question. And Member Diamond does not want Section (2) to be a part of this amendment. She wants that portion deleted from the amendment. What is so difficult to understand about that? She does not want 16 and 17 years allowed in there according to the original amendment.

MEMBER SMUCKLER: According to the Law Director, that vote we just did takes 16 and 17 year olds out of there then, is that correct?

ASSISTANT LAW DIRECTOR MESTEL: When you said "nay," yes it did. Everybody said "nay," so it took 16 and 17 year olds out. That amendment was...

MEMBER SMUCKLER: So that means 16 and 17 year olds can't go in there, is that correct?

ASSISTANT LAW DIRECTOR MESTEL: That is correct. But I wasn't clear what it was that Council wanted to do..whether you agreed it should be amended, or whether you agree with Member Diamond that it should be the way

the ordinance originally read, which was only 18 years old can come on the premises.

MEMBER SMUCKLER: This vote that I'm assuming we took is in agreement with Member Diamond that 16 and 17 year olds can't go on these premises. So to vote no was the proper response then?

ASSISTANT LAW DIRECTOR MESTEL: Yes.

MEMBER SMUCKLER: Again, Mr. President, she differs on your interpretation.

PRESIDENT DENCZAK: The remainder of the ordinance is before you now, or the amendment, is before you now. Are there any remarks on the remainder of the amendment?... This vote is for the remainder of the amendment. Roll call vote please.

NO FURTHER REMARKS ON DIVISION #2

ROLL CALL: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: The amendment has passed; the question before Council now is the ordinance as amended.

MEMBER SMUCKLER: Mr. President, just for the record, because I want to make sure on this before we take the final vote, this ordinance now stands as the change in hours and who does the record checks, but it still means that anyone under the age of 18, whether they're accompanied by an adult or not accompanied by an adult cannot enter those premises, is that your understanding?

ASSISTANT LAW DIRECTOR MESTEL: Yes, that's my understanding.

MEMBER SMUCKLER: Thank you.

PRESIDENT DENCZAK: Are there any remarks under this ordinance as amended?... If not, roll call vote please.

NO FURTHER REMARKS

ROLL CALL VOTE: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: Ordinance #24, as amended, has been adopted. **ADOPTED AS ORD. NO. 84/2003**

ANNOUNCEMENT OF COMMITTEE MEETINGS

PRESIDENT DENCZAK: Announcement of Committee Meetings please.

MEMBER MROCKOWSKI: Mr. President, Finance Committee will meet on May 12th at 6:15.

PRESIDENT DENCZAK: Any other committees?

MEMBER BABCOCK: Mr. President, Public Safety & Thoroughfares will meet on May the 8th at 6:00.

PRESIDENT DENCZAK: Where at?

MEMBER BABCOCK: Council Chambers.

MEMBER ALTIERI BUCHER: Mr. President, Intergovernmental & Public Service will meet May 12th at 6:15.

PRESIDENT DENCZAK: Any other committees?

MEMBER DOUGHERTY: Mr. President, Public Property Capital Improvements will meet May 12th, 6:15.

PRESIDENT DENCZAK: Any other committees?... Member Babcock, you scheduled a meeting for the 8th for the one question before Council on the agenda. There is another...you have another referral. Ordinances 3 and 4 are on the agenda also, are you going to have a meeting on them?... (INAUDIBLE RESPONSE) Same night?... (INAUDIBLE RESPONSE--SHE REPLIED AFFIRMATIVELY)

PUBLIC SPEAKS (OPEN FORUM--CITY BUSINESS ONLY)

PRESIDENT DENCZAK: Public Speaks, Open Forum. We have several people signed up to speak. The first speaker is Thomas Robinson. State your name and address and your subject please.

MR. ROBINSON: Citizen Thomas L. Robinson, 330 Brad Avenue SE, Canton, Ohio. The last time I was here, Ward 4 Councilman Craig Massey, he made a comment in reference to the fence issue. People that live in glass houses shouldn't be throwing stones. I said when I come back, I'll have pictures. I even have more pictures of Mr. Massey. Shouldn't be a double standard. Whatever citizens in this community, there should be no exceptions. Mr. Massey, Saturday morning, my routine, get up, go get your paper. What he does on his property, he can do what he wants. He was on his adjacent garage. As soon as I pull up, Mr. Massey, he jumps off. When I arrive back, exactly at 11 a.m., Mr. Massey was trimming trees. He has an adjacent property, a vacant lot on the west side. Our Councilman, he was dragging these branches that he trimmed from those trees on his dad's property, he was dragging them on a vacant lot. That's a double standard, and I have pictures, Mr. Massey. The next time I come, I will provide them. I have pictures out here and I hope whomever had an opportunity to review them. It shouldn't be a double standard. If you're going to sling manure, make sure you have the appropriate paper to catch it. What you did, I don't appreciate. You had a double standard--your lifestyle is your business. I want you to deny to this audience that I did not see you drag those branches, they don't have no collection on Saturdays, it wasn't a holiday. And I bag my stuff up and that distorted picture that was in that paper. If you're going to sling something, if you're going to represent the people, and within my allotted time, don't pressure somebody that's outspoken against you, 'cause I don't back down from you or nobody else. You have at least 6 houses in your immediate walking area that are drug houses. You got drug houses on either side of you. I have never seen you address any of those issues. And that fence issue, these people are trying to break into my home. Trying to break in. They don't have the right to harass me. I don't go in your property; otherwise, you would have spoke on it. The so-called Reverend Mayberry, I don't bother them. I would like these people to leave me alone. The Police have been called at least 85 times. I done been to the Prosecutor, they done sent out a letter. You always have the appropriate action to talk to other people, but you never approach me like a man. Is that my allotted time, sir?

PRESIDENT DENCZAK: No, you got 15 seconds.

MR. ROBINSON: I'd like for you to approach me like a man, and I'm going to tell you again Mr. Massey, I haven't disrespected you, I caught you red-handed. The next time, I'm going to bring these pictures. And, again, I don't wear nobody's pink panties, sir.

MEMBER MASSEY: Mr. President...

PRESIDENT DENCZAK: Member Massey, the Chair wishes to advise you that you can either respond now and the gentleman will get another 12 minutes, or you can discuss this under Miscellaneous Business. Which do you wish to do?

MEMBER MASSEY: I wish to respond now.

PRESIDENT DENCZAK: All right, Mr. Thompson, come up here.

MR. ROBINSON: Robinson. You're sharp, Mr. Denczak.

PRESIDENT DENCZAK: I'm sorry.

MR. ROBINSON: You're very sharp, sir. You're very...I appreciate your sharpness.

MEMBER MASSEY: Mr. President. Mr. Robinson, I did turn in to the Building Department problems with your fence, but you came in here some time ago and opened everything up to the public, it wasn't Craig Massey that done that. My job is to clean up my ward. And that's exactly what I'm doing. That so-called fence that you had around your house, which is still around your house....(MR. ROBINSON INTERRUPTING) I'm talking. You had your time, it's my time. It was just wooden crates around your house, okay? Yeah, you did see me cutting branches off of my garage, that's my job, you know, I'm trying to clean out my gutter. But I would appreciate it if you take your camera off of my house that has been pointed at my house for some time now. Mr. Robinson, if you was to come here and talk to me about something positive like black on black crime, community & economic development, bringing jobs into the community, then let's do something like that. But what you're talking about right now...you do disrespect me and I don't know if you wear pink panties or not, I don't know what you wear.

MR. ROBINSON: Well, you're going to find out. I get a response.

PRESIDENT DENCZAK: Yes, you have....

MR. ROBINSON: Before I moved here...I'm allowed to speak, right?

PRESIDENT DENCZAK: Yes.

MR. ROBINSON: Before I moved here, Mr. Massey, that house that I took over and moved in, it was a drug house that manufactured drugs. Over two years. Right up under your nose and you did nothing. The material that you call a fence, the Board, the Zoning Board approved. What you call material. You said that was a fence. That's a vast amount of property to erect anything. Those people that you are covering for, sir, the Mayberrys, so-called reverend, on an on-going basis, they would send their kids and grand kids out in the community and break in anybody's home that they seen something that was worthy. Now you said about pink panties, come up in my property, sneak in my property like you've been sneaking around taking your pictures. Now you said pallets or whatever, why did the Zoning Board approve it? My name is Mr. Robinson, sir, and you said camera—as soon as this election's...I'm not here campaigning, but when it's over, we're going to address some of these issues. And, of course, sir, you did not admit right here to these people that you was dragging those branches onto a property that you told me, when I confronted you like a man, said do not belong to you. Why didn't you bag that stuff up like I did instead of trashing somebody else's neighbor. What kind of representative are you? And I don't wear pink panties and my address is 330 Brad. If you want to confront me like a man, you come up here and you'll find out what kind of panties I wear or don't wear.

MEMBER MASSEY: Mr. President. Mr. Robinson, I'm going to continue to do my job whether you like it or not. And

if you wish to talk to me further, we can talk outside...and that's all I have to say to you, you may sit down at this time.

PRESIDENT DENCZAK: You can respond, you've got 8 minutes.

MR. ROBINSON: Yeah, you're not God, Mr. Massey. You're fallible til this May 6th primary. Now, in reference to talking, I don't live any further than the crack head, Delbert G. Scott, 322 Brad. They are manufacturing drugs within 1,000 feet of Hartford Middle School. You can go and talk to them people that's been constantly been breaking in, damaging that property. You've never seen me over there messing with them people. You can go up to them, why couldn't you bring your mister cute self and knock on my door like you knocked on theirs? What, are you afraid or something, Mr. Massey? I ain't never threatened you, sir. And I know a lot of Masseys, and you've got to be the lowest of all of them.

MEMBER MASSEY: Mr. President, I don't have anything else to say to this gentleman.

PRESIDENT DENCZAK: All right, good. The next speaker is Kenneth Kocinsky, am I pronouncing that right?

MR. KOCINSKY: Yes, sir, I'm going to postpone my presentation.

PRESIDENT DENCZAK: Okay.

MR. KOCINSKY: Thank you.

PRESIDENT DENCZAK: The next speaker is Susan Daniels.

MS. DANIELS: Susan Daniels, 222 - 47th Street NW. I'm back. And I am so sorry to have to be back. I just need to stand before you tonight and clarify some issues concerning our lot split at 47th Street. This is truly the most amazing, troublesome, and puzzling issue. It's basically become a witch hunt. Upon returning from our vacation last evening, we were apprized by our neighbors that Bob and Brenda Mann traveled our neighborhood and gathered signatures for a petition against our lot split. They really have humiliated and belittled my family by doing this, and I will explain why. This is a copy of the petition that I received tonight. There are signatures on here, I saw Mrs. Mann hand it to Mrs. Babcock. I do want you to know that they have signed a false document. The first paragraph address, second paragraph says that it's a fourth acre, but it actually is a third acre. The third paragraph says we have drainage problems; it's already been established by the Planning Commission that we do not. And the last one speaks to deed restrictions, and you all know that those expired in 1984, so this really is a false document. We will, and my husband and I will address this with each and every person who signed on here. They also belittled us by saying that we stole a lawn ornament from them. And as I see neighbors pass my house, I look and I think do they think that I'm a person that would take things...that is so very, very false. And I am so embarrassed to stand here and tell you this. They are saying that we are setting a precedent by splitting our lot, that other people will think that they can do the same, but no one has the strategic property that we do have for a lot that's 130' wide by 150' deep. They have misinformed, slandered, but they did succeed in obtaining signatures, which I spoke about. And it saddens and embarrasses us as a family. We are legally allowed to do a lot split, as you all know. We were advised by a councilmember to withdraw this, but we haven't done anything wrong, so we're going with this. We are really begging you to be reasonable, to be fair...I don't think this would ever be a win or a defeat for the Manns, but I do think it will succeed in showing their ignorance. I am so sorry to say that. I'm so sorry to communicate in such a negative manner, but I just felt that I have to defend my family. Thank you for your time, patience and understanding.

MISCELLANEOUS BUSINESS

PRESIDENT DENCZAK: We're now under Miscellaneous Business; is there any Miscellaneous Business?...

MEMBER DIAMOND: Mr. President, I understand that we have Public Speaks here and I understand it's important that people are allowed to express their opinion, and I understand the rule about if you ask a question, somebody gets additional minutes, but shouldn't there be some sense of professionalism and decency? I don't think the Public Speaks section of this meeting was designed to criticize and berate and personally defy a councilmember. And I don't know, perhaps I'm wrong, perhaps you're allowed to stand up here and say whatever you choose, but I don't think it's a forum for name calling, I don't think it's a forum for a personal dispute to be discussed where public business is supposed to be discussed. And I don't think it is fair that any councilmember be treated in the manner in which Member Massey was treated this evening.

PRESIDENT DENCZAK: Member Diamond, the rules are pretty simple. I have to make sure that the person at this time is not speaking politically for his own candidacy. I agree that he should have taken this matter up privately with Mr. Massey. There is not supposed to be any debate or misconduct by anybody when they come here to speak, but, again, you know that old saying that they have the right under the First Amendment of the Constitution, so I'm not going to be one that's going to be criticized for stopping someone to say what they have to say. I have to be careful that the person is not going to use this format to campaign with. And I understand Mr. Massey is a candidate and he was attacked tonight. I wish that Member Massey would not have responded to him, to keep this man to his three minutes. And then I would have given him an opportunity to speak under Miscellaneous Business. But the Chair has to be careful that no mudslinging is going on, and this seems to be a confrontation between two people over some property and misconduct. I don't know how I can stop that unless I have a specific rule to stop anybody from attacking another member of Council. But I do think that every member of Council, whether they wear pink pants or not, should be able to defend themselves. That's what you're up here for. *The Repository* attacks us all the time publicly. We have to defend ourselves, we have families to think of, they're hurt by our personal attacks, but they have a right under the First Amendment, so I have to be very careful. I wish this doesn't happen, but it does, and that's the sad thing about being in politics. Is there any other Miscellaneous Business?

MEMBER ALTIERI BUCHER: Mr. President, regarding the issue with Mr. Massey, I agree that there shouldn't be a personal speak on that, but the fact is I do know that the Building Board of Appeals did meet on April 17th, and the Board did not approve said fence that Mr. Robinson had put up, which was pallets. They, in fact, said that the fence must be erected in workman-like manner, actual fence posts, and a permit issued because Mr. Robinson's permit has expired on April 22nd. Thank you.

PRESIDENT DENCZAK: Any other Miscellaneous Business?

MEMBER SMUCKLER: I move we adjourn; seconded.

PRESIDENT DENCZAK: Moved and seconded that you adjourn. Roll call please.

NO REMARKS PERMITTED ON THIS MOTION -- ROLL CALL VOTE: 12 YEAS, 0 NAYS

PRESIDENT DENCZAK: This meeting is adjourned. (SOUNDS GAVEL)

ADJOURNMENT TIME: 8:57 P.M.

ATTEST:

DEBRA VANCKUNAS
CLERK OF COUNCIL

APPROVED:

RAY DENCZAK
PRESIDENT OF COUNCIL