

Section 1700 – Sexually Oriented Businesses (Approved April 16, 2024)

A. Purpose

It is the purpose of this Amendment to regulate Sexually Oriented Businesses and Adult Entertainment Businesses in order to promote the health, safety, and morals of the citizens of the Township, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of Sexually Oriented Businesses and Adult Entertainment Businesses with the Township. The provisions of this Amendment do not have the purpose or effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Further, it is not the intent of this Amendment to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Amendment to condone or legitimize the distribution of obscene material.

B. Findings and Rationale

Based on evidence concerning the adverse secondary effects of adult uses on communities presented in hearings and in reports made available to the legislature and subsequently adopted by the Ohio General Assembly as findings under Section 3 of House Bill 23 (and on findings incorporated in the cases of *Township of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.* (2004), 541 U.S. 774; *Township of Erie v. Pap's A.M.* (2000), 529 U.S. 277; *Barnes v. Glen Theatre, Inc.* (1991), 501 U.S. 560; *Township of Renton v. Playtime Theatres, Inc.* (1986), 475 U.S. 41; *Young v. American Mini Theatres* (1976), 426 U.S. 50; *California v. LaRue* (1972), 409 U.S. 109; *DLS, Inc. v. Township of Chattanooga* (6th Cir. 1997), 107 F.3d 403; *East Brooks Books, Inc. v. Township of Memphis* (6th Cir. 1995), 48 F.3d 220; *Harris v. Fitchville Township Trustees* (N.D. Ohio 2000), 99 F. Supp.2d 837; *Bamon Corp. v. Township of Dayton* (S.D. Ohio 1990), 730 F. Supp. 90, *aff'd* (6th Cir. 1991), 923 F.2d 470; *Broadway Books v. Roberts* (E.D. Tenn. 1986), 642 F. Supp. 486; *Bright Lights, Inc. v. Township of Newport* (E.D. Ky. 1993), 830 F. Supp. 378; *Richland Bookmart v. Nichols* (6th Cir. 1998), 137 F.3d 435; *Deja Vu v. Metro Government* (6th Cir. 1999), 1999 U.S. App. LEXIS 535; *Threesome Entertainment v. Strittmather* (N.D. Ohio 1998), 4 F.Supp.2d 710; *J.L. Spoons, Inc. v. Township of Brunswick* (N.D. Ohio 1999), 49 F. Supp.2d 1032; *Triplett Grille, Inc. v. Township of Akron* (6th Cir. 1994), 40 F.3d 129; *Nightclubs, Inc. v. Township of Paducah* (6th Cir. 2000), 202 F.3d 884; *O'Connor v. Township and County of Denver* (10th Cir. 1990), 894 F.2d 1210; *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County* (6th Cir. 2001), 2001 U.S. App. LEXIS 26007; *State of Ohio ex rel. Rothal v. Smith* (Ohio C.P. 2002), Summit C.P. No. CV 01094594; *Z.J. Gifts D-2, L.L.C. v. Township of Aurora* (10th Cir. 1998), 136 F.3d 683; *Connection Distrib. Co. v. Reno* (6th Cir. 1998), 154 F.3d 281; *Sundance Assocs. v. Reno* (10th Cir. 1998), 139 F.3d 804; *American Library Association v. Reno* (D.C. Cir. 1994), 33 F.3d 78; *American Target Advertising, Inc. v. Giani* (10th Cir. 2000), 199 F.3d 1241; and other cases and on reports of secondary effects occurring in and around adult entertainment establishments in Phoenix, Arizona (1984); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma Township, Oklahoma (1986); Cleveland, Ohio (1977); Dallas, Texas (1997); St. Croix County, Wisconsin (1993); Bellevue, Washington (1998); Newport News, Virginia (1996); Tucson, Arizona (1990); St. Paul, Minnesota (1988); Oklahoma Township, Oklahoma (1986 and 1992); Beaumont, Texas (1982); New York, New York (1994); Ellicottville, New York (1998); Des Moines, Iowa

(1984); Islip, New York (1980); Adams County, Colorado (1987); Manatee County, Florida (1987); New Hanover County, North Carolina (1989); Las Vegas, Nevada (1978); Cattaraugus County, New York (1998); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); New York Times Square study (1994); Report to ACLJ on the Secondary Impacts of Sex Oriented Businesses (1996); findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and on testimony to Congress in 136 Cong. Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636, 134 Cong. Rec. E. 3750; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and from various other police reports, testimony, newspaper reports, and other documentary evidence), and subsequent findings in *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291; 729, *Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485; and *Andy's Rest. & Lounge, Inc. v. City of Gary* (7th Cir. 2006), 466 F.3d 550, and the Township's independent review of the same, the Township finds:

- (1) Sexually oriented businesses, as a subcategory of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.
- (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- (3) Each of the foregoing negative secondary effects constitutes a harm which the Township has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this section, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the Township's interest in the zoning of sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the Township. The Township finds that the cases and documentation relied on in this section are reasonably believed to be relevant to said secondary effects.
- (4) The enactment of this Zoning Resolution provision will promote the general welfare, health, morals, and safety of the citizens of this Township.

C. Definitions

1. **Sexually Oriented Business** – also referred to as Adult Entertainment Establishment, means an adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motion picture theater, adult novelty store, adult theater, adult video store, sexual device shop, sexual encounter center, and sexual encounter establishment as defined by subparagraphs (3) and (4) of this Section, therefore is an establishment that has a substantial portion or principle business activity involves the display of specified sexual activities or specified anatomical areas.

2. **Adult Entertainment Establishment** – shall have the same meaning as Sexually Oriented Business
3. **Sexual Encounter Establishment** – shall have the same meaning as R.C. 2907.39(A)(13), which defines it as:
 - a. A business or commercial establishment that, as one of its principal business purposes, offers for any form of consideration a place where either of the following occur:
 - i. Two or more persons may congregate, associate, or consort for the purpose of engaging in specified sexual activities.
 - ii. Two or more persons appear nude or seminude for the purpose of displaying their nude or seminude bodies for their receipt of consideration or compensation in any type or form.
 - b. An establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized therapy, including, but not limited to, massage therapy, as regulated pursuant to section [4731.15](#) of the Revised Code, is not a "sexual encounter establishment."

4. As used in this Section:

- a. "adult bookstore," "adult cabaret," "adult motion picture theater," "adult video store," "characterized by," "nude," "nudity," "state of nudity," "seminude," "state of seminudity," "sexual device," "sexual device shop," "sexual encounter center," "specified anatomical areas," and "specified sexual activity" have the same meanings as in Section 2907.40 of the Revised Code.
- b. "adult arcade," "adult entertainment," "adult entertainment establishment," "adult novelty store," "adult theater," "distinguished or characterized by their emphasis upon," "nude or seminude model studio," "regularly features," "regularly shown," and "sexual encounter establishment" have the same meanings as in Section 2907.39 of the Revised Code.

5. "Substantial portion" of business activity or "principal business activity" means

- a. At least 35 percent of the establishment's displayed merchandise consists of the items;
- b. At least 35 percent of the retail value (defined as the price charged to customers) of the establishment's displayed merchandise consists of the items;
- c. At least 35 percent of the establishment's revenues derive from the sale or rental, for any form of consideration, of the items;
- d. The establishment maintains at least 35 percent of its floor space for the display, sale, or rental of the items (aisles and walkways used to access the items shall be included in "floor space" maintained for the display, sale, or rental of the items);
- e. The establishment maintains at least 500 square feet of its floor space for the display, sale, and/or rental of the items (aisles and walkways used to access the items shall be included in "floor space" maintained for the display, sale, or rental of the items);
- f. The establishment regularly offers for sale or rental at least 2,000 of the items; or
- g. The establishment regularly features the items and regularly advertises itself or holds itself out, in any medium, by using "adult," "adults-only," "XXX," "sex,"

"erotic," or substantially similar language, as an establishment that caters to adult sexual interests.

D. Locations

- a. A Sexually Oriented Business is permitted in I-1 Light Industrial Districts and I-2 Heavy Industrial Districts, subject to the following:
- b. Required Setbacks:
 - i. No such business shall be located within 1,000 feet of another Sexually Oriented Business or Adult Entertainment;
 - ii. No such business shall be located within 1,000 feet of any public or private school, public parks, public library, church or other place of worship;
 - iii. No such business shall be placed within 500 feet of a residential district.
- c. For the purposes of Section (b) above, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as part of the premises where a Sexually Oriented Business is conducted, to the nearest lot line of the premises of a public library, church or other place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot.
- d. For the purposes of Section (b) above, the distance between any two Sexually Oriented Businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.
- e. There shall be no more than one advertisement oriented to each abutting road identifying the use.