

ARTICLE XIX - SEXUALLY ORIENTED BUSINESSES AMENDMENT TO THE AUSTINTOWN TOWNSHIP ZONING RESOLUTION LIMITING SEXUALLY ORIENTED BUSINESSES TO SPECIFIED ZONING DISTRICTS AND REQUIRING THAT THEY MEET LOCATIONAL CRITERIA AND BE DISPERSED

ARTICLE XIX - WHEREAS, the Austintown Township Trustees find that there is convincing documented evidence that SEXUALLY ORIENTED BUSINESSES, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that SEXUALLY ORIENTED BUSINESSES, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Austintown Township Trustees desire to minimize and control these adverse effects and thereby protect the health, safety, and morals of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the Austintown Township Trustees have determined that locational criteria will serve to protect health, safety, and morals of the people of this Township; and

WHEREAS, it is not the intent of this amendment to suppress any speech activities protected by the First Amendment, but to enact a content neutral amendment which addresses the secondary effects of SEXUALLY ORIENTED BUSINESSES; and

WHEREAS, it is not the intent of the Austintown Township Trustees to condone or legitimize the distribution of obscene material, and the Trustees recognizes that state and federal law prohibits the distribution of obscene materials, and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the Township.

BE IT ENACTED BY THE TRUSTEES OF AUSTINTOWN TOWNSHIP, OHIO:

1900-PURPOSE AND FINDINGS - PURPOSE. It is the purpose of this amendment to regulate SEXUALLY ORIENTED 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 within 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.

FINDINGS. The Township Trustees have received substantial evidence concerning the adverse secondary effects of adult uses on the community in findings incorporated in the cases of City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986) and Young v. American Mini Theatres, 426 U.S. 50 (1976); in evidence concerning the adverse secondary effects of Sexually Oriented Businesses on the community presented in hearings before the Township Trustees; and on studies in other cities including New York, New York; Indianapolis, Indiana; and the State of Minnesota.

1901-DEFINITIONS -

1. **ADULT ARCADE** means any place to which the public is permitted or invited where either or both (i) motion picture machines, projectors, video or laser disc players, or (ii) other video or image-producing devices are available, run via coin, token, or any form of consideration, to show images to five or fewer persons at one time; and where the images shown and/or live entertainment presented are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

2. **ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE** means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

- a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
- (b) instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

3. **ADULT CABARET** means a nightclub, bar, restaurant, or similar commercial establishment that regularly features: (1) persons who appear in a "state of nudity" or "seminude"; or (2) live entertainment characterized by the depiction or description of specified anatomical areas or specified sexual activities; or (3) live entertainment of an erotic nature including exotic dancers, strippers, male or female impersonators, or similar entertainment. In the event that there is a conflict between this definition and the definition of "Adult Cabaret" in any Resolution authorized by O.R.C. § 503.52 et seq. adopted by the Board of Trustees and lawfully in effect, the definition in the aforementioned Resolution shall prevail.

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

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

6. **COVERING** means any clothing or wearing apparel, including pasties, but does not include any substance that can be washed off the skin, such as paint or makeup, or any substance designed to simulate the appearance of the anatomical area beneath it.

7. **ESTABLISHMENT** means and includes any of the following:

- (a) the opening or commencement of any Sexually Oriented Business as a new business;
- (b) the conversion of an existing business, whether or not a Sexually Oriented Business, to any Sexually Oriented Business;
- (c) the additions of any Sexually Oriented Business to any other existing Sexually Oriented Business; or
- (d) the relocation of any Sexually Oriented Business.

8. **NUDE MODEL STUDIO** means any place where a person who appears semi-nude or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include:

- (a) a proprietary school licensed by the State of Ohio, or a college, junior college, or university supported entirely or in part by public taxation.
- (b) a private college or university that offers educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (c) an establishment holding classes in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person 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 semi-nude model is on the premises at any one time.

9. **NUDITY or a STATE OF NUDITY or NUDE** means exposing to view the genitals, pubic area, vulva, perineum, anus, anal cleft or cleavage, or pubic hair less than a fully opaque covering; exposing to view any portion of the areola of the female breast with less than a fully opaque covering; exposing to view male genitals in a discernibly turgid state, even if entirely covered by an opaque covering; exposing to view any device, costume, or covering that gives the appearance of or simulates any of these anatomical areas.

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

11. **PRINCIPAL BUSINESS PURPOSE** means forty percent (40%) or more of the stock in trade of the business offered for sale or rental for consideration measured as a percentage of either the total linear feet of merchandise for sale or rental for consideration on display or the gross receipts of merchandise for sale or rental for consideration, whichever is the greater.

12. **SEMINUDITY or SEMINUDE CONDITION or SEMINUDE** means exposing to view, with less than a fully opaque covering, any portion of the 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.

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

- (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (b) activities between male and female persons and/or persons of the same sex when one or more of the persons is semi-nude.

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

15. **SPECIFIED ANATOMICAL AREAS** means:

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

16. **SPECIFIED SEXUAL ACTIVITIES** means any of the following: (a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; (b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or (c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

17. **SUBSTANTIAL ENLARGEMENT** of a Sexually Oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this amendment takes effect.

1902-SEXUALLY ORIENTED BUSINESS are classified as follows

- 1. adult arcades;
- 2. adult bookstores, adult novelty stores, or adult video stores;
- 3. adult cabarets;
- 4. adult motion picture theaters;
- 5. adult theaters;
- 6. nude model studios; and
- 7. sexual encounter centers.

1903-LOCATION OF SEXUALLY ORIENTED BUSINESSES -

- 1. A Sexually Oriented Business may be located only in accordance with the restrictions contained in (2) through (7) below.
- 2. A Sexually Oriented Business may be located only in an Industrial District or on a lot wholly contained in that portion of a B-2 District that is within 4,000 ft. of the midpoint of the Rte. 46 and I-80 interchange overpass.

3. No Sexually Oriented Business may be established on any lot which abuts Mahoning Ave.
4. No Sexually Oriented Business may be established within 500 feet of:
 - (a) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
 - (b) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private 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 grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
 - (c) A boundary of a residential district as defined in the Zoning Resolution.
 - (d) A public park or recreational area which as 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, wilderness areas, or other similar public land within the Township which is under the control, operation, or management of either the Township or which is operated or managed by another public entity; or
 - (e) An entertainment business which is oriented primarily towards children or family entertainment.
5. No Sexually Oriented Business may be established within 500 feet of the property line of a lot of devoted to a residential use as defined in the Zoning resolution.
6. No Sexually Oriented Business may be established, operated or enlarged within 500 feet of another Sexually Oriented Business.
7. Not more than one Sexually Oriented Business shall be established or operated in the same building, structure, or portion thereof, and the floor area of any Sexually Oriented Business in any building, structure, or portion thereof containing another Sexually Oriented Business may not be increased.
8. For the purpose of subsections (4) & (5) of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a Sexually Oriented Business is operated, to the nearest property line of the premises of a use listed in subsection (4) & (5).
9. For purposes of subsection (6) of this Section, the distance between any two Sexually Oriented Businesses shall be measured in a straight line, without regard to the intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

1904-ADDITIONAL REGULATIONS CONCERNING LOT, YARD, HEIGHT, PARKING, BUILDING AND SITE DESIGN STANDARDS, AND SITE DEVELOPMENT PLAN REQUIREMENTS

1. Lot area and width, setbacks, buffering, yard area, height provisions and other site development requirements for a Sexually Oriented Business are those specified in §§1105-1110 of the Zoning Resolution.
2. Parking requirements for a Sexually Oriented Business are those specified in §1105 of the Zoning Resolution.

1905-SIGN REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES

1. All signs shall be "wall signs" as defined in §1801 of the Zoning Resolution, with a maximum allowable sign area of 40 square feet and shall comply with the standards specified in §1804 of the Zoning Resolution.
2. Review and approval procedures for a sign permit for a Sexually Oriented Business shall be in accordance with the procedures specified in §1801 of the Zoning Resolution.
3. No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or street in front of the building.
4. Window areas shall not be covered or made opaque in any way. No signs shall be placed in any window. A one-square-foot sign may be placed on the door to state hours of operation and admittance to adults only.

1906-SEVERABILITY

If any section, subsection, or clause of this amendment shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected. All amendments or parts of amendments in conflict with the provisions of this amendment are hereby repealed.

1907- This amendment shall be enforced from and after November 27, 2002.

1908 - That it is found and determined that all formal actions of the Trustees concerning and related to the adoption of this amendment were adopted in an open meeting of the Trustees and that all deliberations of the Trustees were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Zoning Resolution, as amended.