

MENTOR TOWNSHIP ZONING ORDINANCE No. 26A

AN ORDINANCE TO REGULATE SEXUALLY ORIENTED BUSINESSES.

Section 26.101. Purpose

(1) In the development and execution of this Article, it is recognized that there are some uses which, because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or when one (1) or more of them are located in near proximity to a residential zone, thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this Article. These controls are for the purpose of preventing a concentration of these uses within any one (1) area, or to prevent deterioration or blighting of a nearby residential neighborhood. These controls do not legitimize activities, which are prohibited in other Sections of this Ordinance or other Ordinances.

In regulating sexually oriented businesses, it is the purpose of this article to promote the health, safety, and general welfare of the citizens of the Township, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the Township. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance 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 ordinance to condone or legitimize the distribution of obscene material.

Based on the evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Township Board, and on findings incorporated in the cases of *Pap's A.M. v City of Erie*, 529 U.S. 277 (2000); *Thomas v Chicago Park District*, 122 S. Ct. 775 (2002), *City of Renton v Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v LaRue*, 409 U.S. 109 (1972); *DLS, Inc., v City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997) *East Brooks Books, Inc., v City of Memphis*, 48 F.2d 220 (6th Cir. 1995); *Broadway Books v Roberts*, 642 F. Supp 486 (E.D. Tenn. 1986); *Bright Lights, Inc., v City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Richland Bookmart v Nichols*, 137 F. 3rd 435 (6th Cir. 1998); *Dj vu v Metro Government*, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); *Bamon Corp v City of Dayton*, 7923 F. 2d 470 (6th Cir. 1991); *Threesome Entertainment v Strittmather*, 4 F. Supp. 2d 710 (N.D. Ohio 1998); *J.L. Spoons, Inc., v City of Brunswick*, 49 F. Supp. 2d 1032 (N.D. Ohio 1999); *Triplett Grille, Inc., v City of Akron*, 40 F. 3d 129 (6th Cir, 1994); *Nightclubs, Inc., v City of Paducah*, 202 F. 3d 884 (6th Cir. 2000); *O'Connor v City and County of Denver*, 894 F. 2d 1210 (10th Cir. 1990); *Dj Vu of Nashville, Inc., et al v Metropolitan Government of Nashville and Davidson County*, 2001 U.S. App. LEXIS 26007 (6th Cir. Dec 6, 2001); *Z.J. Gifts D-2, L.L.C. v City of*

Aurora, 136 F. 3d 683 (10th Cir 1998); *Connection Distrib. Co v Reno*, 154 F. 3d 281 (6th Cir. 1998); *Sundance Assocs. v Reno*, 139 F. 3d 804 (10th Cir. 1998); *American Library Association v Reno*, 33 F. 3d 78 (D.C. Cir. 1994); *American Target Advertising, Inc., v Giani*, 199 F. 3d 1241 (10th Cir. 2000); *Z.J. Gifts D-2, L.L.C. v City of Aurora*, 136 F. 3d 683 (10th Cir 1998); *ILQ Investments, Inc., v City of Rochester*, 25 F. 3d 1413 (8th Cir. 1994); *Bigg Wolf Discount Video Movie Sales, Inc., v Montgomery County*, 2002 U.S. Dist. LEXIS 1896 (D. Md., Feb. 6, 2002); *Currence v Cincinnati*, 2002 U.S. App. LEXIS 1258 (6th Cir., Jan. 24, 2002); and other cases; 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 reports of secondary effects occurring in and around sexually oriented businesses, including but not limited to Phoenix, Arizona - 1979; Minneapolis, Minnesota - 1980; Houston, Texas - 1997; Amarillo, Texas; Garden Grove, California -1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio - and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York Times Square study - 1994; Phoenix, Arizona 0 1995-98; 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: A Insider's View,," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Businesses, (June 6, 1989, State of Minnesota), the Township Board finds that sexually oriented businesses as a category of establishment are correlated with harmful secondary effects, and that the foregoing reports are reasonably believed to be relevant to the problems that Mentor Township is seeking to abate and prevent in the future.

(2) Uses subject to these controls are as follows:

- (a) Adult book stores, adult novelty stores, or adult video stores;
- (b) Adult cabarets;
- (c) Adult motion picture theaters:
- (d) Nude or semi-nude model studios; and
- (e) Sexually oriented businesses.

Section 26.102. Definitions.

As used in this Article, the following terms shall have the indicated meanings:

(1) Adult motion picture theater. An establishment regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," as defined herein, for observation by patrons therein.

(2) Adult Bookstore, Adult Novelty Store, or Adult Video Store. A commercial establishment which has significant or substantial portion of its inventory, or derives a significant or substantial portion of its revenues, or maintains a significant or substantial portion of it s revenues, or

maintains a significant or substantial section of its sales and display space, to the sale or rental, for any form of consideration, of any one (1) or more of the following:

(a) Books, magazines, periodicals or other printed and/or electronic or digital matter, or photographs, films, motion pictures, video cassettes, compact discs, slides or other visual representations which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas."

(b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use of abuse of themselves or others.

For others of this definition, "significant or substantial portion: means thirty (30) percent or more of the term modified by such phrase.

(3) Specified sexual activities. Specified sexual activities are defined as:

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

(b) Acts of human masturbation, sexual intercourse or sodomy;

(c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(4) Specified anatomical areas. Specified anatomical areas are defined as:

(a) Less than completely and opaquely covered:

(i) Human genitals, pubic region,

(ii) Buttock, and

(iii) The nipple and/or areola of the female breast; and

(b) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

(5) Adult cabaret. A nightclub, bar, juice bar, restaurant bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

(a) Persons who appear nude or semi-nude,

(b) Live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities," or

(c) Films, motion pictures, videocassettes, slides, electronic, digital or other photographic reproductions which are characterized by their emphasis upon the exhibition of or description of "specified sexual activities" or specified anatomical areas."

(6) Nude or semi-nude model studios. Any building, structure, premises or part thereof regularly used solely or primarily as a place which offers as its principal activity the providing of models to display any films or performances consistently offered as a part of the ongoing business of the adult entertainment business.

(7) Regular Features or Regularly Shown. A consistent and substantial course of conduct such that the films or performances exhibited on the premises constitute a substantial or significant portion of the films or performances consistently offered as an art of the ongoing business of the adult entertainment business.

(8) Sexually oriented business. An adult bookstore, video store, or novelty store, adult cabaret, adult motion picture theater, or a commercial establishment that regularly features the sale, rental or exhibition for any form of consideration of books, films, videos, DVDs, magazines, or other visual representation of live performance which are characterized by an emphasis on the exposure of display of specified sexual activities or specified anatomical areas.

Section 26.103. Permitted Uses.

Any of the regulated uses listed in Section 26.101(2) are permitted if:

- (1) The use is located within a zone district where the use is specifically permitted; and
- (2) The use is located more than five hundred (500) feet from any residential zone district, measured to the nearest lot line of the proposed use.
- (3) The use is not located within one thousand (1,000) feet of one (1) other regulated use, measured from the nearest lot line to the nearest lot line on a straight-line basis.

If the proposed use is within five hundred (500) feet of a residential zone, or within one thousand (1,000) feet of one (1) other regulated use, the Zoning Board of Appeals may grant a variance pursuant to the standards provided in Section 26.103 of the Zoning Ordinance and pursuant to the following procedures:

- (a) The Land Use Officer will serve notice on all owners and occupiers of all property within five hundred (500) feet of the proposed use.
- (b) Said notice will give a minimum of thirty (30) days from the mailing of the notice until the Zoning Board of Appeals hearing on the matter.
- (c) Said notice will include a postcard addressed to the Township, containing spaces for stating approval or disapproval of the proposed regulated use and including space for commentary.
- (d) The total number of postcards returned prior to the hearing will be tallied. The votes yea and any will also be tallied. These votes will be considered as evidence, in the Zoning Board of Appeal's decision.

Section 26.104. Limit on Reapplication.

No application for a regulated use which has been denied wholly or in part shall be resubmitted for a period of ninety (90) days from the date of said order of denial, except on the grounds of new evidence found valid by the Board of Zoning Appeals.

Section 26.105. Expansion and Discontinuance of Use.

Establishments where uses subject to the control of this Article are located shall not be expanded in any manner without first applying for and receiving the approval of the Zoning Board of Appeals as provided in Section 26.103. Further, if a use subject to the control of this Article is discontinued for more than thirty (30) days, the use may not be reestablished without applying for and receiving the approval of the Zoning Board of Appeals as provided in Section 26.103.

Nothing in this Article shall prevent the reconstruction, replacing, or rebuilding and continued use of any building or structure the uses of which make it subject to the controls of this Article which is damaged by fire, collapse, explosion or act of God.