

ORDINANCE NO. 07-29 AC CMS

AN ORDINANCE AMENDING THE CITY OF OBERLIN ZONING CODE TO LIMIT SEXUALLY ORIENTED BUSINESSES TO SPECIFIED ZONING DISTRICTS AND REQUIRING THAT THEY MEET LOCATIONAL CRITERIA

WHEREAS, the City of Oberlin City Council finds 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, thereby contributing to urban blight and downgrading the quality of life in the adjacent area: and

WHEREAS, the City of Oberlin City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare 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 City of Oberlin City Council has determined that locational criteria will serve to protect the health, safety, and general welfare of the people of this city; 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 City of Oberlin City Council to condone or legitimize the distribution of obscene material, and the City Council 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.

NOW, THEREFORE, Be it ordained by the Council of the City of Oberlin, Lorain County, State of Ohio, a majority of all members elected thereto concurring:

SECTION 1. PURPOSE AND FINDINGS.

- (1) Purpose. It is the purpose of this amendment to regulate SEXUALLY ORIENTED BUSINESSES in order to promote the health, safety, morals, and general welfare of the citizens of the City of Oberlin, and to establish reasonable and uniform regulations to prevent the deleterious location of SEXUALLY ORIENTED BUSINESSES within the City of Oberlin. 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.

(2) Findings. The City Council has received substantial evidence concerning the adverse secondary effects of adult uses on the community in findings incorporated in the cases of *Young v. American Mini Theatres*, 426 U.S. 50 (1976); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); and *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); and in studies of the adverse secondary effects of adult uses on the community contained in: the "Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard" dated October 23, 1991, conducted by Richard McCleary, Ph.D. and James W. Meeker, J.D., Ph.D.; and the "Kansas City, Missouri Adult Use Study" dated April 1998 conducted by Eric Kelly in association with Connie Cooper, the "Adult Entertainment Study" dated November 1994 conducted by the New York City Department of Planning; "Adult Entertainment Businesses in Indianapolis, An Analysis" dated February 1984, conducted by the Department of Metropolitan Development of the City of Indianapolis; the "Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses" dated June 6, 1989, conducted by the Attorney General for the State of Minnesota, and "A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver" dated January 1998, prepared by the Office of Planning & Development in consultation with the City Attorney's Office, City and County of Denver, Colorado.

SECTION 2. The City of Oberlin, Ohio, Zoning Code is hereby amended to add provisions limiting Sexually Oriented Businesses to specified zoning districts and requiring that they meet locational criteria, as set forth in Exhibit A attached hereto and incorporated herein by reference.

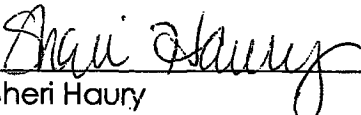
SECTION 3. That it is hereby found and determined that all formal actions of the City Council concerning or related to the adoption of this Ordinance were adopted in an open meeting of the City Council and that all deliberations of the City Council were held in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 4. That this Ordinance shall become effective at the earliest date allowed by law.

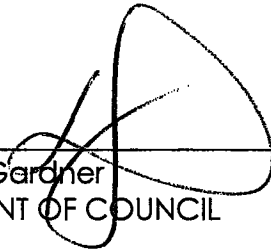
PASSED: 1st Reading – March 19, 2007
2nd Reading – April 2, 2007 (Amended - Exhibit)
3rd Reading – April 16, 2007 (Tabled – 4 Ayes/3 Nays)
3rd Reading – May 7, 2007

PAGE 3 – ORDINANCE NO. 07-29

ATTEST:



Sheri Haury
INTERIM CLERK OF COUNCIL



Daniel Gardner
PRESIDENT OF COUNCIL

POSTED: May 8, 2007

EFFECTIVE DATE: June 7, 2007

S:/ORD07-29.ZoningRegulatingSexuallyOrientBus

Exhibit A

ORDINANCE NO. 07-29 AC CMS

Amended April 2, 2007

SECTION 1. PURPOSE AND FINDINGS.

- (1) Purpose. It is the purpose of this amendment to regulate SEXUALLY ORIENTED BUSINESSES in order to promote the health, safety, morals, and general welfare of the citizens of the City of Oberlin, and to establish reasonable and uniform regulations to prevent the deleterious location of SEXUALLY ORIENTED BUSINESSES within the City of Oberlin. 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.
- (2) Findings. The City Council has 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), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to: Denver, Colorado; Garden Grove, California; Kansas City, Missouri; Indianapolis, Indiana; Minneapolis, Minnesota; and New York, New York.

SECTION 2. DEFINITIONS.

- (1) ADULT ARCADE means any place to which the public is permitted or invited where either or both (i) motion picture machines, projectors, DVDs, 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, DVDs, 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 which regularly features:

- (a) persons who appear in a "state of nudity" or "state of semi-nudity"; or
- (b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (c) live entertainment of an erotic nature including exotic dancers, strippers, male or female impersonators, or similar entertainment; or
- (d) films, motion pictures, video cassettes, DVDs, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

- (4) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, DVDs, 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 "specified anatomical areas" or by "specified sexual activities," and which does not also meet the definition of a "mainstream performance house."

- (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 make-up, 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 addition of any Sexually Oriented Business to any other existing Sexually Oriented Business; or
- (d) the relocation of any Sexually Oriented Business.

(8) MAINSTREAM PERFORMANCE HOUSE means a theater, concert hall, opera house, museum, educational institution or similar establishment, which regularly features live performances, including plays, operas, ballets, concerts or other similar performances, which are not distinguished or characterized by an emphasis on the depiction, display, or description, or the featuring of "specified anatomical areas" or "specified sexual activities" in that such depiction, display, description or featuring is incidental to the primary purpose of any performance. Performances and showings are regularly featured when they comprise 85 percent of all performances or showings. "Distinguished or characterized by an emphasis upon" means the dominant or principal theme of the object referenced. For example, when the phrase refers to performances which are "distinguished or characterized by an emphasis upon the exhibition or display of specified anatomical areas," the performances so described are those whose dominant or principal character or theme is the exhibition or display of "specified anatomical areas" or "specified sexual activities."

(9) 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:

- (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 that offers educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;
- (3) an arts education organization that has been granted not-for-profit status under § 501(c)(3) of the Internal Revenue Code; or

(4) 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.

(10) 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 with 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; or exposing to view any device, costume, or covering that gives the appearance of or simulates any of these anatomical areas.

(11) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(12) PRINCIPAL BUSINESS PURPOSE means twenty-five percent (25%) 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.

(13) 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.

(14) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(1) physical contact in the form of wrestling or tumbling between persons of the same or opposite sex; or

(2) activities between male and female persons and/or persons of the same sex when one or more of the persons is nude or semi-nude.

Sexual Encounter Center shall not include a business or commercial enterprise that regularly offers as one of its principal business purposes instruction in any of the wrestling styles recognized by the International Federation of Associated Wrestling Styles, also known as *Fédération Internationale des Lutttes Associées* (FILA).

(15) 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.

(16) 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.

(17) 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.

SECTION 3.

SEXUALLY ORIENTED BUSINESSES 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.

SECTION 4. ESTABLISHMENT AND LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(1) Sexually Oriented Businesses may be established and located only in accordance with the restrictions contained in (2) through (4) below.

(2) Sexually Oriented Businesses may be established and located only in those portions of an "M-1" Light Industrial District that are north of East Lorain Street.

(3) No Sexually Oriented Business may be established or located 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, and secondary schools; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

- (c) A structure devoted to a residential use;
 - (d) A public park or recreational 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, wilderness areas, miniature golf course, or other similar family recreation area, and other similarly used publicly-owned land within the City under the control, operation, or management of either the City park and recreation authorities or which is operated or managed by the Lorain County MetroParks; or
 - (e) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State of Ohio.
- (4) For the purpose of subsection (3) 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 lot upon which any building or structure is used as a Sexually Oriented Business, to the nearest portion of the lot upon which is conducted a use listed in subsection (3).

SECTION 5. ADDITIONAL REGULATIONS CONCERNING LOT, YARD, HEIGHT, PARKING, BUILDING AND SITE DESIGN STANDARDS, AND SITE DEVELOPMENT PLAN REQUIREMENTS

- (1) Lot requirements for a Sexually Oriented Business are those specified under §1343.08(c) of this Code.
- (2) Yard requirements for a Sexually Oriented Business are those specified under §1343.08(a) & (b) of this Code.
- (3) Maximum Height Regulations for a Sexually Oriented Business are those specified under §1347.07 of this Code.
- (4) Parking requirements for a Sexually Oriented Business are governed by the provisions contained in Chapter 1349 of this Code.
- (5) Building and site design standards for a Sexually Oriented Business are those specified under §1357.06 of this Code
- (6) Site development plans for a Sexually Oriented Business shall be in accordance with the procedures specified in Chapters 1351 and 1357 of the Codified Ordinances.

SECTION 6. SIGN REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES

- (1) All signs for Sexually Oriented Businesses shall be "wall signs" as defined in §1321.86 of this Code, with a maximum allowable sign area of fifty (50) square feet as measured in accordance with the standards specified in §§1321.83 and 1351.04(a) of this Code, shall not be internally-illuminated, and shall comply with:
 - (a) the location standards specified in §§1351.06(a) & (b) and 1357.10(c)(12) of this Code;
 - (b) the design standards specified in §1357.06(l)(9) of this Code; and
 - (c) the list of prohibited signs specified in §1351.04(d)(6) of this Code.
- (2) All signs shall be maintained in accordance with §1351.04(c) of this Code and may be ordered to be removed in accordance with the provisions of 1351.04(d)(6) of this Code.
- (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 adjacent to 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.
- (5) Review and approval procedures for a sign permit for a Sexually Oriented Business shall be in accordance with the procedures specified in Chapters 1351 and 1357 of the Codified Ordinances.

SECTION 7. 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.