

Chapter 20

SEXUALLY ORIENTED BUSINESSES

20.01 Purpose

It is the purpose and intent of the Chapter to regulate sexually oriented businesses to promote the health and safety of the citizens of the Township and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the Township, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative material or expression, including sexually oriented materials. Similarly, it is not the intent nor effect of this Chapter to restrict or deny access by adults to sexually oriented materials or expression 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 the Chapter to condone or legitimize the distribution of obscene material.

20.02 Establishment and Classification of Businesses Regulated.

- A. Sexually oriented businesses include the following: adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motion picture theatre, adult theatre, sexual encounter establishment, or nude model studio.
- B. The establishment of a sexually oriented business shall be permitted only in the "I" Planned Industrial Park District and shall be subject to the following restrictions:
 - 1. No person shall cause or permit the establishment of any sexually oriented business within seven hundred and fifty (750) feet of another sexually oriented business or within seven hundred and fifty (750) feet of any religious institution, school, library, public park or recreational facility that is attended by persons under eighteen (18) years of age, or within seven hundred and fifty (750) feet of a residential district.

20.03. Location Restrictions and Requirements for Sexually Oriented Businesses.

The Miami Township Zoning Resolution hereby requires that sexually oriented businesses shall be permitted only as provided in Section 20.02. A zoning certificate shall be required before the establishment of a sexually oriented business. In addition, any sexually oriented business shall be subject to the following restrictions:

- A. No sexually oriented business shall be operated within seven hundred and fifty (750) feet of: (a) any religious institution; (b) any school; (c) any library; (d) any public park; (e) any recreational facility that is attended by persons under eighteen (18) years of age or (f) any residential zoning district.
- B. No sexually oriented business shall be operated within seven hundred and fifty (750) feet of another such business, which will include those stated in Subparagraph 20.02 (B)(1).
- C. Nothing in this Chapter shall prohibit a person from appearing in a state of nudity for a modeling class operated:
 1. By a proprietary school, licensed by the State of Ohio; a college, junior college, or university supported entirely or partly by taxation;
 2. By 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. In a structure:
 - Which has no sign visible from the exterior of the structure and no other advertising that indicates a 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 nude model is on the premises at any one time.

20.04. Measurement of Distance.

- A. Distances shall be measured in a straight line, without regard to intervening structures or topography (i.e., as measured on a map).
- B. The distances shall be measured from the exterior faces (including architectural projections) of the exterior walls of the principal building containing the proposed sexually oriented business.
- C. The distances shall be measured to the exterior faces (including architectural projections) of the exterior walls of any principal building containing another sexually oriented business or any religious institution.
- D. If the proposed sexually oriented business is to be located within a tenant space, then the distances shall be measured from the exterior faces (including architectural projections) of the walls creating the boundaries of the tenant space, and not from that of the entire multi-tenant building.
- E. If another sexually oriented business or any religious institution or school is located within a tenant space, then the distances shall be measured to the exterior

- faces (including architectural projections) of the walls creating the boundaries of the tenant space, and not from that of the entire multi-tenant building.
- F. Regarding distance measurements to a residential district, the distances shall be measured from the exterior faces (including any architectural projections) of the exterior walls of the principal building containing the proposed sexually oriented business to the closest point of the residential district as established by the Miami Township Zoning Map. If the proposed sexually oriented business is to be located within a tenant space, then the distances shall be measured from the exterior faces (including architectural projections) of the walls creating the boundaries of the tenant space, and not from that of the entire multi-tenant building.
 - G. Regarding distance measurements to a public park or school not within a tenant space, the distances shall be measured from the exterior faces (including any architectural projections) of the exterior walls of the principal building containing the proposed sexually oriented business to the closest point of the parcel line (as established by the Clermont County Auditor) of the parcel containing the public park or school. If the proposed sexually oriented business is to be located within a tenant space, then the distances shall be measured from the exterior faces (including architectural projections) of the walls creating the boundaries of the tenant space, and not from that of the entire multi-tenant building.

20.05. Zoning Certificate Required.

- A. No sexually oriented business shall be permitted to operate without a valid Zoning Certificate for a sexually oriented business issued by the Township. Upon request, the Community Development Director or his designee shall provide an applicant for a sexually oriented business an application for a commercial zoning certificate, which shall serve as the required application form.
- B. An application for a zoning certificate must be made on a form provided by the Township. Any person desiring to operate a sexually oriented business shall file with the Township an original and two copies of all materials required for submission.
- C. An application fee shall also be submitted in accordance with the schedule determined by the Board of Trustees.
- D. All property included in a sexually oriented business must meet all the underlying conditions applicable in the "I" Planned Industrial Park District.
- E. The completed application shall also contain the following information and shall be accompanied by the following documents:
 - 1. A map, drawn to scale and marked to show the location of all land uses and zoning districts within seven hundred and fifty (750) feet of the

principal building or tenant space in which the sexually oriented business is to be located. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

F. Approval of Application.

1. The Community Development Director or his designee, shall approve the application for a zoning certificate unless:
 - An applicant has failed to provide information required by this Chapter or the application for the issuance of a zoning certificate.
 - The applicant has falsely answered a question or request for information on the application form.
 - The application fee required by this Chapter was not paid.
 - The proposed business does not comply with the zoning locational requirements for a sexually oriented business.
2. If the Community Development Director or his designee denies the application, he shall notify the applicant of the denial and state the reason(s) for the denial. The applicant shall be given an opportunity to correct identified deficiencies.
3. The Community Development Director shall issue the Zoning Certificate or provide notice and reasons of denial within ten days of the submission of the application.

20.06. Nonconforming Use.

Any sexually oriented business lawfully operating on the effective date of this Chapter that is in violation of this Chapter shall be deemed a nonconforming use. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within seven hundred and fifty (750) feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at the particular location is the conforming use and the later established business(es) is nonconforming.

20.07. Appeal of Denial or Revocation

After denial of an application or revocation of a zoning certificate, the applicant or permittee may seek prompt review of such administrative action through the Board of Zoning Appeals. The Board of Zoning Appeals shall hear and decide the appeal within sixty days (60) of the date the appeal is filed.

20.08. Advertising and Lighting

- A. No sign, advertisement, promotional material or display of any type shall be shown or exhibited so as to be visible to the public from pedestrian sidewalks or walkways, public or semi-public areas, nor the public right-of-way of any street or roadway except as permitted under Subparagraph 20.08 (D)
- B. No displays, graphics, exhibits of materials and/or performances at such sexually oriented business shall be allowed in any advertising which is visible outside the premises. This prohibition shall not extend to advertising of the existence or location of such sexually oriented business.
- C. The permittee shall not allow any portion of the interior premises to be visible from outside the premises.
- D. Pursuant to Chapter 24, each conforming sexually oriented business shall be permitted both wall and freestanding signs, which announces the name of the business. No off-premise or portable signs shall be permitted.
- E. All off-street parking areas and premise entries of the sexually oriented business shall meet the requirements for parking under Chapter 23 of this Resolution and shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premise.
- F. Nothing contained in this Section of the Chapter shall relieve the operator(s) of a sexually oriented business from complying with other requirements of this Resolution as it may be amended from time to time, or any subsequently enacted resolutions.

20.09. Definitions.

For the purposes of this Chapter, certain terms and words are defined.

Sexually Oriented Businesses are those businesses defined as follows:

- A. Adult Arcade means an establishment where for any form of consideration, one or more still or motion picture projectors, slide projectors or similar machines, or other image producing machines, for viewing by five or fewer persons each, are

regularly used to show films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

- B. Adult Bookstore, Adult Novelty Store or Adult Video Store means an establishment which derives fifty percent or more of its revenue from, or maintains fifty percent or more of its in-store inventory (either measured by display area or retail value) in, one or more of the following:
1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction of specified sexual activities or specified anatomical areas; instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or related to specified sexual activities.
 2. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials 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 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 offering for sale or rental, for some form of consideration, the specified materials which depict or describe specified anatomical areas or specified sexual activities and one or more of the fifty percent thresholds in Subparagraph 20.09 (B) (1) above are met.
- C. Adult Cabaret means a nightclub, bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, in which persons regularly appear in a state of nudity in the performance of their duties and that regularly feature live performances that are characterized by the exposure of specified anatomical areas or specified sexual activities.
- D. Adult Motion Picture Theater means a commercial establishment used for a principal purpose of presenting motion pictures characterized by their emphasis on portrayals of specified anatomical areas or specified sexual activities.
- E. Adult Theater means a theater, concert hall, auditorium, or similar building used for a principal purpose of presenting live acts characterized by their emphasis on individuals in a state of nudity or specified sexual activities.
- F. Nude Model Studio means any place where a person, who regularly appears in a state of nudity or displays specified anatomical areas, is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

- G. Sexual Encounter Establishment means a business or commercial establishment, that as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas or activities when one or more of the persons is in a state of nudity or semi-nude. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.
- H. Establishment means and includes any of the following:
1. The opening or commencement of any such business as a new business;
 2. The conversion of an existing business, whether or not a sexually oriented business, to any of the sexually oriented businesses defined in this Chapter;
 3. The addition of any of the sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or
 4. The relocation of any such sexually oriented business.
- I. Nudity or State of 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; the female breast with less than a fully opaque covering on any part of the nipple.
- J. Operator means and includes the owner, permit holder, custodian, manager, operator or person in charge of any sexually oriented business.
- K. Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- L. Public Park means public land which has been designated for park or recreational activities including 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 Township which is under the control, operation, or management of the Township Board of Trustees, the County Commissioners, the State of Ohio, or the U.S. Government.
- M. Religious Institution means any church, synagogue, mosque, temple or building, which is used primarily for religious worship and related religious activities.
- N. Residential District means the “A,” “R-1,” “R-2,” “R-3,” “R-4,” “T,” “H” “PUD,” and “R-PUD” zoning districts as defined in the Miami Township Zoning Resolution and shown on the Miami Township Zoning Map.

- O. School means any public or private educational facility including 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, special education schools, junior colleges, and universities. School includes the school grounds, but does not include the facilities used primarily for another purpose and only incidentally as a school.
- P. Sexually Oriented Business means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motion picture theatre, adult theater, encounter establishment, or nude model studio.
- Q. Specified Anatomical Areas means and includes any of the following:
 - a. The human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; the female breast with less than a fully opaque covering on any part of the nipple.
- R. Specified Sexual Activities means and includes any of the following:
 - 1. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
 - 2. Masturbation, actual or simulated;
 - 3. Human genitals in a state of sexual stimulation, arousal or tumescence;
 - 4. Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (3) of this Subparagraph.
- S. Tenant Space means a securable area separated from other areas by walls and doors that is available for lease or rent within a multi-tenant building, such as tenant spaces typically found within a shopping mall or strip center.

20.10 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.

Effective Date: January 18, 2008