

RECORD OF ORDINANCES

2005-09
Ordinance No. _____

Passed NOVEMBER 15, 2005

AN ORDINANCE AMENDING SECTION 1103.03 OF THE CODE OF ORDINANCES TO INCLUDE DEFINITIONS RELATED TO THE REGULATION OF SEXUALLY ORIENTED BUSINESSES AND AMENDING THE DEFINITION OF ADULT ENTERTAINMENT FACILITIES; AMENDING SECTION 1145.02 OF THE CODE OF ORDINANCES TO MAKE SEXUALLY ORIENTED BUSINESSES A PERMITTED USE IN I-2 GENERAL INDUSTRIAL DISTRICT; ESTABLISHING SEXUALLY ORIENTED BUSINESSES DEVELOPMENT STANDARDS SECTION 1145.03(g); AMENDING SECTION 1137.02(b)(12) TO DELETE ADULT ENTERTAINMENT FACILITIES AS A SPECIAL USE WITHIN THE GENERAL BUSINESS DISTRICT; AND DELETING THE SPECIAL USE REQUIREMENTS FOR ADULT ENTERTAINMENT FACILITIES IN SECTION 1163.03(b)(1).

WHEREAS, studies have shown that increased crime and unhealthful conduct, including but not limited to prostitution, pandering, exposing minors to harmful materials, possession and distribution of obscene materials and child pornography, possession and sale of controlled substances, and violent crimes against persons and property tend to accompany, concentrate around and be aggravated by sexually oriented businesses; and

WHEREAS, from review of other cities' studies concerning the effects of sexually oriented businesses, including but not limited to studies conducted in New York, New York, Los Angeles, California, the Attorney General's Office of the State of Minnesota, Kansas City, Missouri, Newport News, Virginia, Dallas, Texas, Indianapolis, Indiana, and Garden Grove, California, there is convincing documentary evidence that sexually oriented businesses, because of their nature, have a deleterious effect on both existing businesses around them and the surrounding residential areas adjacent to them, and also cause adverse secondary effects, such as increased crime, downgrading of property values and urban blight; and

WHEREAS, studies conducted in Los Angeles, California and New York, New York have shown that the areas where sexually oriented businesses locate are perceived negatively by the public and further, that the mere negative perception of a neighborhood can lead to disinvestment in residential neighborhoods and a tendency for people to shun business areas where negatively perceived activities are occurring, which can lead to economic decline; and

WHEREAS, it is recognized and studies demonstrate, that sexually oriented businesses can become a regional point of destination and have even greater adverse secondary effects when they are operating in close proximity to each other; and

WHEREAS, the City Council finds that sexually oriented businesses are frequently used for unlawful sexual activities including prostitution and sexual liaisons of a casual nature, with or without the acquiescence of their proprietors; and

WHEREAS, the City Council has considered, among other factors, each of the following matters: (a) areas within close walking distance of residential districts should be free of sexually oriented business uses; (b) areas such as parks and school grounds where children could be expected to walk, patronize, or frequent should be free of sexually oriented business uses; (c) sexually oriented business uses should not be located in areas of the City which are in close proximity to churches; (d) the image of the City as a pleasant, attractive place to reside and conduct business will be adversely affected by the presence of sexually oriented business uses in close proximity to churches, parks, libraries, schools and residential districts, or if visible from an Interstate Highway; (e) when sexually oriented business land uses are established within close proximity to other businesses, retail trade can be reduced, thus reducing profits, property values and tax revenues to the City; and that such adverse affect on property values and business would cause economic damage to some businesses within the City, leading to deterioration of the commercial vitality of the City; and (f) no evidence has been presented to show that the establishment of sexually oriented businesses within the City will maintain or improve the commercial viability or quality of life of the community; and

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WHEREAS, the City Council finds that there would be damage to existing businesses and a deterioration in the quality of businesses which chose to operate in and around such sexually oriented businesses; and

WHEREAS, the City Council desires to minimize and control these adverse secondary effects and thereby protect the citizens from increased crime; preserve the quality of life; preserve property values; maintain the character of surrounding neighborhoods and businesses; deter the spread of urban blight; protect against the threat to health from the spread of communicable and social diseases; and otherwise preserve the health, safety and general welfare of its citizens and visitors to the community; and

WHEREAS, the City Council has considered the decisions of the United States Supreme Court regarding local regulation of sexually oriented businesses, including but not limited to, *Young v. American Mini-Theatres, Inc.*, 427 U.S. 50 (1976) reh. denied 429 U.S. 873; *Renton v. Playtime Theatres*, 475 U.S. 41 (1986) reh. denied 475 U.S. 1132; *FW/PBS, Inc. v. Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theater*, 501 U.S. 560 (1991); and *City of Erie v. Pap's A. M.*, 529 U.S. 277 (2000); and various discussions of other courts including, but not limited to, *City of National City v. Wiener, et al.*, 3 Cal. 4th 832 (1992) (as modified Jan. 21, 1993); *Topanga Press, Inc. et al. v. City of Los Angeles*, 989 F. 2d. 1524 (9th Cir., 1993); *East Brooks Books v. City of Memphis*, 48 F.3d 220 (1995); *Richland Bookmart, Inc. d/b/a Town and Country v. Randall E. Nichols*, 137 F. 3d. 435 (6th Cir. 1998); *DLS, Inc. v. City of Chattanooga*, 107 F. 3d. 403 (6th Cir. 1997); and *Hickerson v. City of New York*, 146 F. 3d. 99 (2nd Cir. 1998); and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the adverse secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state 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 City of Brookville; and

WHEREAS, the City wishes to provide and preserve all rights guaranteed under the Constitution to operators and potential operators of sexually oriented businesses in the City of Brookville.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF BROOKVILLE:

SECTION 1: The Code of Ordinances of the City of Brookville, Ohio shall hereby be amended as follows:

(A) Section 1103.03 DEFINITIONS of the Code of Ordinances is hereby amended to include the following definitions:

"Sexually oriented businesses" are those businesses defined as follows:

1. **"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, of other visual representations, for viewing by five (5) or fewer persons each, are regularly used to show films, motion pictures, video cassettes, digital video discs, slides, or other photographic reproductions which 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 has as a significant or substantial (i.e. 50% or more) portion of its stock-in-trade or derives a significant or substantial (i.e. 50% or more) portion of its interior business of advertising to the sale or rental for any form of consideration, of any one or more of the following:

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a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, digital video discs, or other visual representations which are characterized by the depiction 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 or abuse of themselves or others.

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 book store, 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 the definition above is met.

3. "Adult cabaret" means a nightclub, bar, restaurant, private club, bottle club, juice bar or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features: (a) persons who appear nude or semi-nude or in a state of nudity or semi-nudity; (b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or (c) films, motion pictures, video cassettes, digital video discs, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas." "Private Club" shall mean an establishment where patrons may bring in their own bottle or other container of alcohol (including beer, wine or liquor) and purchase a mixture for the same or use of a glass from the club or business.

4. "Adult motel" means a motel, hotel or similar commercial establishment which offers public accommodation, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, digital video discs, slides or other photographic reproductions which are characterized by the depiction of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television.

5. "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, digital video discs, slides or similar photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

6. "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or semi-nudity or live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities" which is not customarily open to the general public during such features because it excludes minors by reason of age.

7. "Escort Agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration. "Escort" means a person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person or to privately appear in the state of nudity or semi-nudity for any person.

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8. "Massage parlor" means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment or manipulation of the human body which occurs as a part of or in connection with "specified sexual activities" is offered, or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "specified anatomical areas." The definition of sexually oriented business shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor, or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program, nor barber shops or beauty salons in which massages are administered only to the scalp, the face, the neck or the shoulder, nor by any other individual licensed by the State of Ohio to perform massages.

9. "Semi-Nude Model Studio" means any place where a person regularly appears in a state of nudity or semi-nudity or displays "specified anatomical areas" for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. Reference above to nudity should not be construed or interpreted to permit nudity or a state of nudity in a "Semi-Nude Model Studio".

10. "Sexual encounter establishment" means a business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration, (i) 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 (ii) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity. 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 of Ohio engages in medically approved and recognized sexual therapy.

"Simulated" means to assume the mere appearance of something, without the reality; to imitate or pretend.

"Specified Sexual Activities" means and includes any of the following:

1. The fondling or intentional touching of human genitals, pubic region, anus, or female breast;
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
3. Masturbation, actual or simulated; or
4. Human genitals in a state of sexual stimulation, arousal or tumescence;
5. Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (4) of this subsection.

"Employee" means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business, or any form of remuneration, tips of any kind or gratuities from the operator or customers of said business.

"Established" means and includes any of the following: