

**OHIO TOWNSHIP  
ALLEGHENY COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 227**

**AN ORDINANCE AMENDING THE ZONING ORDINANCE OF OHIO  
TOWNSHIP TO REGULATE THE TIME, MANNER AND PLACE OF  
SEXUALLY ORIENTED BUSINESS**

WHEREAS, the Board of Supervisors of Ohio Township finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexually liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the Ohio Township which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, permitting and/or licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, 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 neighborhood blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Ohio Township 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 neighborhood blight; 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 addressed the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the Board of Supervisors to condone or legitimize the distribution of obscene material; and

WHEREAS, the Board of Supervisors of Ohio Township has determined that the amendment of the Zoning Ordinance and the provisions of the Zoning Ordinance are the appropriate Ordinances of Ohio Township to require compliance with the provisions of the following Ordinance; and

WHEREAS, a public hearing and proper advertisement of the same have been duly made.

NOW, THEREFORE, pursuant to the authority granted by the Constitution and General Assembly of the Commonwealth of Pennsylvania, BE IT ORDAINED AND ENACTED by the Board of Supervisors of Ohio Township as follows:

SECTION 1 - PURPOSE AND INTENT:

It is the purpose of this Ordinance to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the Township, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses with the Township. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not 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.

SECTION 2 - DEFINITIONS:

- A. **ADULT ARCADE** means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machine, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
- B. **ADULT BOOKSTORE** or **ADULT VIDEO STORE** means a commercial establishment which, as one of the principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
  - i. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or
  - ii. 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 or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an ADULT BOOKSTORE 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 depict or describe "specified activities" or "specified anatomical areas."

- C. **ADULT CABARET** means a nightclub, or bar, or similar commercial establishment which regularly features:
  - i. Persons who appear in the state of nudity; and
  - ii. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
  - iii. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or by "specified anatomical areas".
- D. **ADULT MOTEL** means a hotel, motel or similar commercial establishment which:
  - i. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, 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"; and which advertises the availability of this adult type of photographic reproductions; or
  - ii. Offers sleeping rooms for rent four (4) or more times in one calendar day during five (5) or more calendar days in any continuous 30-day period.
- E. **ADULT MOTION PICTURE THEATER** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or other photographic reproduction are regularly shown which are characterized by the depiction or description of "special sexual activities" or by "specified anatomical areas."
- F. **ADULT THEATER** means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performance which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities."
- G. **ESCORT** means a person who, for 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.

- H. **ESCORT AGENCY** means a person or business association who furnishes, offers to furnish, or advertise to furnish escorts as one of the primary business purposes for a fee, tip, or other consideration.
- I. **PERMITTEE and/or LICENSE** means a person in whose name a permit and/or license or operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.
- J. **NUDE MODEL STUDIO** means any place where a person who appears in a state of nudity or 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.
- K. **NUDITY or a STATE OF NUDITY** means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.
- L. **PERSON** means an individual proprietorship, partnership, corporation, association, or other legal entity.
- M. **SEMI-NUDE** means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
- N. **SEXUAL ENCOUNTER CENTER** means a business or commercial enterprise that, as one if its primary business purposes, offers for any form of consideration:
- i. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; and
  - 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-nude.
- O. **SEXUALLY ORIENTED BUSINESS** means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
- P. **SPECIFIED ANATOMICAL AREAS** means the male genitals and/or the vulva or more intimate parts of the female genitals.
- Q. **SPECIFIED SEXUAL ACTIVITIES** means and includes any of the following:
- i. The fondling or other erotic touching of human genitals, public region, buttocks, anus, or female breasts;
  - ii. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

- iii. Masturbation, actual or simulated; or
  - iv. Excretory functions as part of or on connection with any of the activities set forth in i. through iii. above.
- R. **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 date of enactment of this Ordinance.
- S. **TOWNSHIP** means Township of Ohio .
- T. **TRANSFER OF OWNERSHIP OR CONTROL** of a sexually oriented business means and includes any of the following:
- i. The sale, lease, or sublease of the business;
  - ii. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
  - iii. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION 3 - CLASSIFICATION:

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;
- F. Adult theaters;
- G. Escort agencies;
- H. Nude model studios; and
- I. Sexual encounter centers.

SECTION 4 - PERMIT REQUIRED:

- A. Any person who operates a sexually oriented business without a valid permit issued by the Township is guilty of a violation of the Zoning Ordinance of the Township.

- B. An Application for a permit to operate a sexually oriented business must be made on a form provided by the Code Enforcement Officer of the Township. The application must be accompanied by a sketch or diagram showing the floor plan and plot plan configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to any accuracy of plus or minus six inches.
- C. If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity which wishes to operate such a business, each individual having a direct or indirect interest of ten percent (10%) or greater in the corporation must sign the application for a permit as applicant.
- D. The fact that a person possesses other types of Township permits does not exempt the person from the requirement of obtaining a sexually oriented business permit.

#### SECTION 5 - ISSUANCE OF PERMIT:

- A. The Township Code Enforcement Officer shall approve the issuance of a permit to an applicant within thirty days after receipt of an application unless it finds one or more of the following to be true:
  - i. An applicant is under eighteen (18) years of age.
  - ii. An applicant or an applicant's spouse is overdue in his payment to the Township of taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business.
  - iii. An applicant has failed to provide information reasonable necessary for issuance of the permit or has falsely answered a question or request for information on the application form.
  - iv. An applicant is residing with a person who has been denied a permit by the Township to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
  - v. The premises to be used for the sexually oriented business have been reviewed and have been disapproved by either the Code Enforcement Officer or the First Marshall as not being in compliance with applicable laws and ordinances.
  - vi. The application fee required by this ordinance has not been paid.

- vii. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this Ordinance.
  - viii. An individual applicant or any individual holding a direct or indirect interest of more than ten (10%) percent of a corporate applicant, or any of the officers and directors of a corporate applicant, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; or the manager or other person in charge of the operation of the applicant's business, has or have been convicted of an offense involving sexual misconduct within the Commonwealth of Pennsylvania, including, but not limited to, prostitution, obscenity and possession of child pornography, or convicted of any offense in any jurisdiction other than the Commonwealth of Pennsylvania that would have constituted an offense involving sexual misconduct if committed within the Commonwealth of Pennsylvania. In order for approval to be denied pursuant to this subsection, the person or persons' conviction or release in connection with the sexual misconduct offense must have occurred within two (2) years of the date of application in the event of a misdemeanor and within five (5) years of the date of application in the event of a felony.
- B. The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
  - C. The Code Enforcement Officer and Fire Marshall shall complete their certification that the premises are in compliance or not in compliance within twenty days of receipt of the application by the Code Enforcement Officer. The certification shall be promptly presented to the Code Enforcement Officer.

#### SECTION 6 - FEES:

The annual fee for a sexually oriented business permit is a minimum of Two thousand dollars (\$2,000.00).

#### SECTION 7 - INSPECTION:

- A. An applicant, engineer or permittee, shall permit representatives of the Police Department, Fire Marshall, Code Enforcement Officer, Engineer, or other Township departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring business is occupied or open for business.
- B. If the township Code Enforcement Officer denies renewal of a license, the applicant shall not be issued a permit for one year from the date of denial, except that after ninety(90) days have elapsed since the date of denial, the applicant may be granted a permit if the Code Enforcement Officer finds that the basis of denial of the renewal permit has been corrected or abated.

*MISSING SECTION 8*

SECTION 9 - SUSPENSION OF PERMIT:

The Code Enforcement Officer shall suspend a permit for a period not to exceed thirty (30) days if he determines that a permittee or an employee of a permittee or an occupant of the premises has:

- A. Violated or is not in compliance with any section of this Ordinance;
- B. Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- C. Refused to allow an inspection of the sexually oriented business premises as authorized by this Ordinance;
- D. Knowingly permitted gambling by any person on the sexually oriented business premises;
- E. Failed to man managers' stations and/or maintain viewing rooms as set forth in section 13.

SECTION 10 - REVOCATION OF PERMIT:

- A. The Code Enforcement Officer shall revoke a permit if a cause of suspension set forth in Section 9 occurs and the permit has been suspended within the preceding twelve (12) months.
- B. The Code Enforcement Officer shall revoke a permit if he determines that:
  - i. A permittee, or any of the persons specified in Section 5 (A)(viii), is or has been convicted of the offenses specified in Section 5 (A)(vii);
  - ii. A permittee gave false or misleading information in the material submitted to the Township during the application process;
  - iii. A permittee or an employee of a permittee has knowingly allowed possession, use, or sale of controlled substances on the premises;
  - iv. A permittee or an employee of a permittee has knowingly allowed prostitution on the premises;
  - v. A permittee or an employee of a permittee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended;

- vi. A permittee or an employee of a permit has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other explicit sexual conduct to occur in or on the permitted premises;
  - vii. A permittee is delinquent in payment to the Township or State of any taxes or fees relating to sexually oriented businesses;
  - viii. Any person performing, acting or depicted in the activity is under the age of 18, or any person viewing such activity or allowed admittance is under the age of 18.
- C. When the code Enforcement Officer revokes a permit, the revocation shall continue for one (1) year, and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date revocation became effective, except that if the revocation is pursuant to (B)(I) above, the revocation shall be effective for two (2) years in the event misdemeanor or five (5) years in the case of a felony.
  - D. After denial of any application, or denial of a renewal of an application, or suspension or revocation of a permit, the applicant or license or permittee shall have the right to appeal said action and to seek prompt judicial review of such administrative action in any court of competent jurisdiction.

SECTION 11- TRANSFER OF PERMIT:

A permittee shall not transfer his permit to another person. A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application.

SECTION 12 - LOCATION OF SEXUALLY ORIENTED BUSINESSES:

- A. A person is guilty if a violation of the Zoning Ordinance if he operates or causes to be operated a sexually oriented business outside of the district in which a sexually oriented business is a permitted use. No sexually oriented businesses shall be located outside a district in which a sexually oriented business is a permitted use. Sexually oriented businesses as defined herein shall be permitted in L-1 Light Industrial Zoning District as a Special Exception.
- B. A person is guilty of a violation of the Zoning Ordinance if he operates or causes to be operated a sexually oriented business within five hundred (500) feet of.
  - i. A church, synagogue or other religious facility;
  - ii. A public or private pre-elementary, elementary, or secondary school, college, university or any institution of higher learning;
  - iii. A public library;

- iv. A child care facility, or nursery school;
  - v. A public park adjacent to any residential district.
- C. A person is guilty of a violation of the Zoning Ordinance if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership of control of a sexually oriented business within five thousand feet (5000') of another sexually oriented business.
- D. A person is guilty of a violation of the Zoning Ordinance if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof; or the increase of floor areas of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.
- E. For the purpose of this Ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property line of the premises on which the building or structure used as a part of the premises where a sexually oriented business is located, to the nearest property line of the premises of a church, public or private pre-elementary, elementary, or secondary school, public library, child care facility, or nursery school; or to the nearest boundary of an affected public park.
- F. For purposes of subsection C of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest property line of the premises on which each business is located.
- G. An sexually oriented business lawfully operating on date of enactment of the Ordinance that is in violation of subsection A through F of this section 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. In the event that two or more sexually oriented businesses are within five thousand (5,000') feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.
- H. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit, of a church, public or private pre-elementary, elementary, or secondary school, public library child care facility, nursery school or public park within one thousand (1,000') feet of the sexually oriented business. This provision applies only to the renewal of a valid permit, and does not apply when an application for a permit is submitted after a permit has expired or has been revoked.

SECTION 13 - REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS:

- A. A person who operates or causes to be operated a sexually oriented business which exhibits on the premises in a viewing room (a separate compartment or cubicle) of less than one hundred fifty (15) square feet of floor space, a film or video cassette, or other video or other image production or reproduction which depicts "specified sexual activities" or "specified anatomical areas" shall comply with the following requirements:
- i. The application for a permit to operate a sexually oriented business shall be accompanied by a floor plan and plot plan diagram of the premises showing a plan thereof specifying the location of one or more manager's stations, the location of all viewing rooms, partitions and doors and location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The Code Enforcement Officer may waive the foregoing diagram that was previously submitted and certified that the configuration of the premises has not been altered since it was prepared.
  - ii. The application shall be sworn to be true and correct by the applicant.
  - iii. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Code Enforcement Officer or his designee.
  - iv. It is the duty of the owners and operators of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
  - v. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron access for any purpose, excluding restrooms. Restrooms may not contain video reproduction or viewing equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

- vi. It shall be the duty of the owners and operators, and it shall also be the duty of any agents and employees present on the premises to ensure that the view area specified in subsection v. remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted any access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection i. of this section.
- vii. No viewing room may be occupied by more than one (1) person at any time. No connections or openings to an adjoining viewing room shall be permitted.
- viii. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) foot candle as measured at the floor level.
- ix. It shall be the duty of the owners and operators and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

B. A person having a duty under subsection I through ix. of subsection A is guilty if a violation of the Zoning Ordinance if he knowingly fails to fulfill that duty:

SECTION 14 - EXEMPTIONS:

- A. It is a defense to a prosecution under Section 5 and Section 12 that a person appearing is a state of nudity did so in a modeling class operated in a viewing room.
  - i. By a proprietary school, licensed by the Commonwealth of Pennsylvania, or a college, junior college, or university supported entirely or partly by taxation;
  - ii. 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
  - iii. In a structure -
    - (a) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
    - (b) where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
    - (c) where no more than one (1) nude model is on the premises at any one time.

SECTION 15 - INJUNCTION:

A person who operates or causes to be operated a sexually oriented business without a valid permit or on violation of this Ordinance is subject to an action in equity or a suit for injunction as well as citations for violations of the Zoning Ordinance.

SECTION 16 - SEVERABILITY:

The provisions of the Ordinance are severable and, if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court or competent jurisdiction, such decision of the court shall not affect the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the intent of the Council that this Ordinance would have been adopted is such illegal, invalid or unconstitutional section, sentence, clause, part or provision had not been included herein.

SECTION 17 - EFFECTIVE DATE:

This Ordinance shall take effect and be in force from and after its enactment as required by law.

8th ENACTED by the Board of Supervisors of the Township of Ohio , at a public meeting on the day of FEBRUARY, 1999.

ATTEST:

OHIO TOWNSHIP  
BOARD OF SUPERVISORS

John H. Sullivan Jr  
Secretary

George Wible  
GEORGE WIBLE