

## Appendix E - Sexually Oriented Businesses

### Purpose

The purpose of this Article is to establish reasonable and uniform regulations to minimize and control the negative secondary effects of sexually oriented businesses within the municipality in order to promote the health, safety, and welfare of the citizens of the municipality. The provisions of this Article have neither the purpose nor the effect of imposing a limitation or restriction on the content any communicative materials or communication, including sexually oriented entertainment. Similarly, it is not the purpose or effect of this Article to restrict or deny access by adults to sexually oriented entertainment protected by the First Amendment, or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market. Furthermore, it is not the intent or effect of this Article to condone or legitimize the distribution or exhibition of entertainment that is obscene.

### Findings

Based on evidence concerning the adverse secondary effects of sexually oriented businesses presented to the municipality from findings incorporated in the cases of *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S.Ct. 1382 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986) *Young v. American Mini Theaters*, 426 U.S. 50 (1976), *Berg v. Health and Hospital Corporation*, 865 F.2d 797 (7<sup>th</sup> Cir 1989); *Ellwest Stereo Theaters v. Wenner*, 681 F.2d 1243 (9<sup>th</sup> Cir. 1982); *Bamon Corp v. City of Dayton*, 730 F.Supp 80 (S.D. Ohio, 1990) and *EWAP Inc. v. City of Los Angeles*, 97 Cal. App 3d 179, 158 Cal. Rptr. (1979), and on studies in other cities including the *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses* (Minnesota, 1989); *Memorandum re: Adult Entertainment Ordinance*, of the Assistant Chief of Police of the Tucson, Arizona (May 1, 1990); Hecht, Peter R., Ph.D., *Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses* (March 31, 1996); *Adult Entertainment Businesses in Indianapolis, An Analysis* (1984) and McCleary, Richard, Ph.D. and Meeker, James W., Ph.D., *Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard*, (Garden Grove, CA, October 23, 1991), this Legislative body finds:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities.
2. Sexual acts, including masturbation, oral sex and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or rooms for viewing films, videos, or live sexually oriented entertainment. Such activities may result in spreading communicable diseases such as syphilis, gonorrhea, and human immunodeficiency virus (HIV).

3. Studies conducted in other cities have demonstrated a correlation between sexually oriented business and a decrease in the residential and commercial property values that surround them, especially those properties within 1,000 feet of such businesses.
4. Studies conducted in other cities have demonstrated a correlation between sexually oriented businesses and increased crime in the neighborhood, including sex-related crimes like prostitution, obscenity, and sexual assault. This correlation is especially acute when more than one sexually oriented business is located in a neighborhood, and when a sexually oriented business is located near a public open space such as a park, cemetery or school.
5. Studies conducted in other cities have demonstrated a correlation between sexually oriented businesses and increased harassment and propositioning of women, children and the elderly in the neighborhood.
6. Studies conducted in other cities have demonstrated a correlation between sexually oriented businesses and offensive material such as pornographic magazines and used condoms being discarded in the surrounding neighborhood, making them available to children.
7. Location of sexually oriented business in a neighborhood can create a “sex for sale” reputation in a neighborhood.
8. The foregoing findings raise substantial governmental interests and concerns.
9. The municipality cannot entirely prohibit sexually oriented businesses that are not obscene from locating within the municipality.
10. The municipality can effect reasonable locational regulations which it believes will ameliorate these deleterious secondary effects associated with sexually oriented businesses
11. Locating sexually oriented businesses in an industrial zone will ameliorate these deleterious secondary effects associated with sexually oriented businesses.
12. Requiring sexually oriented businesses to be located 1,000 feet from any other sexually oriented businesses will ameliorate these deleterious secondary effects associated with sexually oriented businesses.

13. Requiring sexually oriented businesses to be located 1,000 feet from any school, day care center, cemetery, public park including any lineal recreational area like a bike path, public housing, place of religious worship, lot zoned for residential purposes and lot used for residential purposes, complies with the requirements of state law 65 ILCS 5/11-5-1.5, and will ameliorate these deleterious secondary effects associated with sexually oriented businesses.
14. U.S. Route 12, State Route 173, Johnsburg/Wilmot Road, Spring Grove Road and Winn Road are the main thoroughfares in the municipality, and more than any other locations in the municipality reflect on the economic status of the municipality.
15. Accordingly, a decrease in the property values and an increase in visible crime along these thoroughfares will affect the property values of the municipality as a whole in a way that other locations would not.
16. Preventing sexually oriented businesses from locating directly on, or within 500 feet of U.S. Route 12, State Route 173, Johnsburg/Wilmot Road, Spring Grove Road and Winn Road will help to conserve property values in the municipality as a whole, while still providing an adequate number of sites and acreage available for the location of sexually oriented businesses.
17. At the time this Article was approved, the regulations set forth herein provided certain sites would be available for sexually oriented businesses in the municipality.

## Definitions

Unless the context otherwise requires, the following terms as used in this Appendix shall be construed accordingly to the definitions given below.

**Employee.** A natural person who performs any service or work on the premises of a sexually oriented business, including but not limited to providing entertainment, performing work of a management or supervisory nature, or performing support functions, on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. EMPLOYEE does not include a person on the premises exclusively for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

**Excretory Functions.** Urination, defecation, lactation, ejaculation and menstruation. It shall not mean urination and defecation performed in a public or employee-only restroom in the manner in which those facilities are intended to be used, and when not performed or presented for a commercial purpose. It shall not mean lactation as part of breast-feeding an infant, unless performed or displayed for a commercial purpose other than education and training in the art, science or technique of breast-feeding an infant.

**Municipality.** The Village of Spring Grove, Illinois.

**Nudity or Nude.** Exposing to view specified anatomical areas or any device, costume, or covering that gives the appearance of or simulates any specified anatomical areas.

**Patron.** Any natural person who is not an employee.

**Semi-nudity or Semi-nude.** 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.

**Sexually Oriented Amusement Device.** Any machine or device which is designed, intended, displayed or kept as an amusement or entertainment, and may be operated upon the insertion of a coin, slug, token, plate, disc, electronic key, credit card, debit card or any similar item, or the use of which is made available for any valuable consideration, and which displays a natural person, people, or characters as in cartoons and animation, live or by any medium, including without limitation film, motion picture machine, projector, filmstrip, videotape, digital video disc (DVD), laser disc, compact disc (CD), floppy disc, photograph, slide, television, book, magazine, and computer software, engaged in specified sexual activity or displaying specified anatomical areas.

**Sexually Oriented Business.** Any of the following when done in a place where the public is invited or permitted, or when done for any commercial purpose including sale and rental, regardless of who pays or receives the consideration therefor, and regardless of the form of consideration:

- A. Live exhibition or display of a natural person or people in the state of nudity or semi-nudity, or engaged in specified sexual activities or excretory functions;
- B. Any premises with a sexually oriented amusement device;
- C. The rental or leasing of a hotel room, motel room or similar room for a period not exceeding ten hours, but not including dining rooms, banquet rooms, ball rooms, conference rooms and similar facilities if they are used or to be used for specified sexual activities or excretory functions;

- D. Offering of physical contact in the form of wrestling or tumbling between natural persons of the same or opposite sex, when one or more of the persons is nude or semi-nude, and also the offering of physical contact which constitutes specified sexual activities regardless of the sex of the person performing or receiving the contact;
- E. Offering of products, services or activities by or with a natural person or people when one or more of the people, whether a patron, agent, employee or otherwise, is in a state of nudity or semi-nudity.
- F. Displaying or offering to others any recorded depiction of a natural person, or created image or character, as in cartoons and animation, by any medium, including without limitation film, videotape, closed-circuit television, digital video disc (DVD), laser disc, compact disc (CD), floppy disc, photograph, slide, television, book, magazine, and computer software, which is:
  - 1. Characterized or distinguished by an emphasis on the depiction or description of specified sexual activities, excretory functions, or specified anatomical areas; or
  - 2. Advertised or otherwise held out to the public as being characterized or distinguished by an emphasis on the depiction or description of specified sexual activities, excretory functions, or specified anatomical areas, including without limitation, the use of the term “adult” and the use of the designation of one or more “X” such as, but not limited to, “XXX”.
- G. The display and offering to others of novelties, instruments, devices, or paraphernalia that are designed primarily for use in connection with specified sexual activities or that give the appearance of or simulate any of the specified anatomical areas.
- H. The term Sexually Oriented Business shall exclude the following:
  - 1. The display and offering to others of condoms, spermicide or other non-prescription contraceptives, unless displayed and offered to others on the premises of a business which would otherwise be considered a sexually oriented business;
  - 2. The display and offering to others of drugs, instruments or devices which require a prescription, that are designed primarily for use in connection with specified sexual activities, and which are in fact dispensed by or under the supervision of a pharmacist licensed by the State of Illinois;

3. The display and offering to others of instruments, devices, or paraphernalia that are designed primarily for use in connection with specified sexual activities if they are displayed and offered to others on the premises where a pharmacist licensed by the State of Illinois is employed to dispense prescription drugs, instruments or devices;
4. Breast-feeding an infant, unless performed or displayed for a commercial purpose other than education and training in the art, science or technique of breast-feeding an infant;
5. The display and offering to others of motion pictures, by any format, which have received a rating from the Motion Picture Association of America of G, PG, PG-13, R or NC-17, when offered or displayed substantially in their entirety;
6. Libraries and museums funded in whole or in part by federal, state or local governmental funds;
7. The display and offering to others of items which would otherwise qualify as a sexually oriented business pursuant to this Section, if and only if the display and offering are done for a commercial purpose, and all of the following apply to the business displaying and offering such items to others:
  - a. Less than 5% of its gross income comes from the sale, rental or exhibition of the following types of items:
    - i. items which are characterized or distinguished by an emphasis on the depiction or description of specified sexual activities, excretory functions, or specified anatomical areas or any combination thereof, and
    - ii. items which are advertised or otherwise held out to the public as being characterized or distinguished by an emphasis on the depiction or description of specified sexual activities, excretory functions, or specified anatomical areas or any combination thereof, including without limitation, the use of the term "adult" and the use of the designation of one or more "X" such as, but not limited to, "XXX"; and
  - b. Less than 5% of its display space is used for the sale, rental or exhibition of the items described in paragraph 7.a.i and 7.b.ii above; and

- c. Less than 5% of the items it offers to others are the items described in paragraph 7.a.i and 7.b.ii above; and
- d. The items described paragraph 7.a.i and 7.b.ii above are segregated from all other displays and retail areas of the premises by a solid partition from floor to ceiling with no openings or windows and with entrance and egress by means of a solid door posted with a sign not less than one foot by one foot with the words "UNDER 18 NOT ADMITTED" lettered on the sign, except that magazines characterized or distinguished by an emphasis on the depiction or description of specified sexual activities, excretory functions, or specified anatomical areas or any combination thereof may be displayed on racks or other display cases only if the magazine is encased or otherwise covered up and concealed from common view of anything other than the magazine title or text or other materials which would not be described as sexually oriented.

Certain uses which fall within the definition of Sexually Oriented Business may also constitute uses which are illegal under local, state or federal law, such as obscenity or child pornography. Even if such illegal uses constitute a Sexually Oriented Business under the definition set forth in this Section, they shall not be permitted uses in any district.

**Specified Anatomical Areas.** The human genitals, pubic area, perineum, anus, anal cleft or cleavage, pubic hair, any portion of the areola of the female breast if less than a fully and opaquely covered; and the male genitals in a discernibly turgid state, even if entirely covered by an opaque covering. In determining whether any of the foregoing portions of the anatomy are fully and opaquely covered, coverage by make-up, paint, or similar matter applied directly to the skin, shall not be considered to be fully and opaquely covered.

**Specified Sexual Activities.** Any of the following, whether actual or simulated:

- A. The fondling or other erotic touching of human genitals, pubic area, perineum, anus, anal cleft or cleavage, pubic hair, buttocks, or female breasts, regardless of whether the performer or recipient is clothed, in a state of nudity or in a state of semi-nudity;
- B. The manipulation of the human body of another, including massage, by the use of any portion of manipulator's body, whether covered or uncovered, or by any device, if the person performing the manipulation or the person receiving the manipulation is in a state of nudity or semi-nudity;

- C. Sex acts, normal or perverted, heterosexual, homosexual or bisexual, including without limitation intercourse, fellatio, cunnilingus, anilingus, masturbation, bestiality, sodomy, bondage and discipline, sadism and masochism, and any other act intended to cause sexual arousal;
- D. Sex acts between animals when offered or displayed for the purpose or with the intent of causing the sexual arousal of a human viewer.

### **Special Use**

Any other ordinance or section of any ordinance notwithstanding, and subject to the setback requirements listed below, sexually oriented businesses shall be a special use only in Industrial Zoning District. Sexually oriented businesses shall not be a special use in any other district.

### **Setback Requirements**

No sexually oriented business shall be located.

1. Within 1,000 feet of the property boundary of any other sexually oriented business, and any school, day care center, cemetery, public park including any lineal recreational area like a bike path, public housing, place of religious worship, lot zoned for residential purposes, and lot used for residential purposes; and
2. Within 500 feet of the center line of Route U.S. 12, State Route 173, Johnsbury/Wilmot Road, Spring Grove Road and Winn Road which 500 feet shall be measured from the nearest point of the building, or portion of the building in which the sexually oriented business is located to the nearest point of the center line of U. S. Route 12 or State Route 173, Spring Grove Road or Winn Road; and
3. On a lot which physically touches U. S. Route 12 or State Route 173 or Johnsbury/Wilmot Road or Spring Grove Road or Winn Road.

### **Restrictions on Use**

1. All sexually oriented businesses shall be conducted entirely within a fully enclosed business. No sexually oriented business shall be operated in any manner that permits the observation from outside the building of any image, material or entertainment depicting or describing excretory functions, specified sexual activities or specified anatomical areas or any person in a state of nudity or semi-nudity, whether by means of display, decoration, sign, window or any other means.
2. No sexually oriented business shall be issued a liquor license under the Village's Liquor Control Ordinance.

## **Signage**

No sexually oriented business shall advertise by way of billboard, sign boards or sign, within 1,000 feet of any school, day care center, cemetery, public park including any lineal recreational area like a bike path, public housing, and place of religious worship. In addition, the sign shall comply with the Village's Sign Ordinance.

## **Other Regulations**

The restrictions set forth in this Section shall supersede any other restrictions found in other ordinances or other sections of any ordinance as applied to sexually oriented businesses, if the terms of the restrictions are in conflict.

## **Amortization**

If at the time this Section becomes effective, any sexually oriented business exists in a location not permitted by this Section or is otherwise not in compliance with this Section, then the sexually oriented business shall constitute a legal non-conforming use. However, notwithstanding any other ordinance or section of any ordinance to the contrary, the legal non-conforming sexually oriented business shall come into compliance with the requirements of this Section within one year of the effective date of this Section. No sexually oriented business shall constitute a legal non-conforming use after one year after the effective date of this Section.