

**AMENDING THE CODE OF ORDINANCES OF THE CITY OF MASON,
OHIO, SECTIONS 723.02, 723.03, 723.08, AND 723.13 AND DECLARING AN
EMERGENCY**

WHEREAS, in follow-up to the extensive study conducted prior to enactment of Chapter 723 it has been determined by the council for the City of Mason that sexually oriented businesses have a negative effect on the businesses and the residential areas adjacent to them and cause adverse secondary effects including increased crime and decreased property values; and

WHEREAS, it is the stated purpose of the City of Mason in enacting Chapter 723 of the City of Mason Code of Ordinances to minimize the adverse secondary effects associated with sexually oriented businesses and to create a buffer zone between sexually oriented businesses and specific identified protected uses as set forth in Chapter 723 by establishing a minimum distance between sexually oriented businesses and said protected uses; and

WHEREAS, the impact of negative secondary effects is intensified when sexually oriented businesses are located in close proximity to businesses that primarily sell and serve alcohol, whether or not food is also sold and served; and

WHEREAS, it has been determined by the City of Mason that such adverse effects can be further minimized by requiring minimum distance between sexually oriented businesses and establishments that primarily sell and serve alcohol.

WHEREAS, in accomplishment of Mason's stated purpose to minimize the negative effects of sexually oriented businesses, it is not the intention of the City of Mason to limit speech or other constitutionally protected activities nor to prevent a sexually oriented business owner from lawfully obtaining a permit to operate a sexually oriented business; and

WHEREAS, it has been determined that amendment is required to the permit provisions of Chapter 723 as well as clarification in the definition section as to protected uses; and

NOW THEREFORE BE IT ORDAINED by the Council and City of Mason, Ohio, 7 members elected thereto concurring:

Section 1. That Section 723.02(k)(1) regarding the definition of protected uses is hereby amended.

Section 2. That Section 723.02(e) is added to define "Liquor License."

Section 3. That Sections 723.08 and 723.13 regarding issuance of a permit, suspension of a permit, revocation of a permit and judicial review of permit denial, suspension or revocation are hereby amended.

Section 4. That Section 723.03 regarding the location of sexually oriented businesses is hereby amended.

Section 5. That said amendments to the above-stated sections are set out in the attached Exhibit "A" which is incorporated herein by reference.

Section 6. That all other provisions of Chapter 723 shall remain in full force and effect.

Section 7. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety and welfare and shall be effective immediately upon passage. The reason for the declaration of emergency is the need to have this Ordinance in effect at the earliest possible date for the sake of the public health and safety.

Passed this 25th day of September 2000.



Mayor

Attest:



Clerk of Council

EXHIBIT A

723.02 DEFINITIONS

For purposes of this Chapter, certain terms and words are defined as follows:

- (a) “Sexually oriented businesses” are those businesses defined as:
- (1) “Adult Bookstore,” “Adult Novelty Store” or “Adult Video Store” meaning a commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale or rental, for any form of consideration, of any one or more of the following:
 - i. 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 or description of “specified sexual activities” or “specified anatomical areas”;
 - ii. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse.
 - (2) “Adult cabaret” means a nightclub, bar, restaurant, “bottle club,” or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:
 - i. Persons who appear nude or in a state of nudity or semi-nude;
 - 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 “specified anatomical areas.”
 - (3) “Adult motel” means a motel, hotel or similar commercial establishment which offers public accommodations, for any form of consideration, which 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 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;

- (4) "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, 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.
 - (5) "Adult theatre" 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 live performances which are characterized by exposure of "specified anatomical areas" or by "specified sexual activities."
 - (6) "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.
 - (7) "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 manipulation of the human body which occurs as a part of or in connection with "specified sexual activities," or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "specified anatomical areas." The definition of sexually oriented businesses 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.
 - (8) "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.
 - (9) "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-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 engages in medically approved and recognized sexual therapy.
- (b) "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.

- (c) "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.
- (d) "Establishment" means and includes any of the following:
 - (1) The opening or commencement of any sexually oriented 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.
- (e) "Liquor License" means a license issued by the State of Ohio to serve or sell alcohol as permitted under Chapter 4301 of the Revised Code.
- (f) "Nudity" or "State of Nudity" means:
 - (1) The appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or
 - (2) A state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.
- (g) "Operator" means and includes the owner, permit holder, custodian, manager, operator, or person in charge of any permitted or licensed premises.
- (h) "Permitted or Licensed Premises" means any premises that requires a license and/or permit and that is classified as a sexually oriented business.
- (i) "Permittee and/or Licensee" means a person in whose name a permit and/or license to 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) "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (k) "Protected Uses" are those uses listed below and defined as:
 - (1) "Public building" means any building owned, leased, or held by the United States, the state, the county, the city, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used for governmental purposes including but not limited to public libraries.

- (2) “Public park” or “recreation area” means public land 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, open space, wilderness areas, or similar public land within the city which is under the control, operation, or management of the city park and recreation authorities.
 - (3) “Religious institution” means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.
 - (4) “Residential District or Use” means a single family, duplex, townhouse, multiple family, or mobile park or subdivision and campground as defined in the Zoning Code.
 - (5) “School” means any public or private educational facility including but not limited to 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, continuation schools, special education schools, junior colleges, and universities. School includes the school grounds, but does not include any facilities used primarily for another purpose and only incidentally as a school.
- (l) “Public Use” means any use designed for the benefit and/or accommodation of the general public which is available to all persons, without restriction, regardless of whether or not a fee for admittance is charged.
 - (m) “Semi-Nude” means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.
 - (n) “Specified Anatomical Areas” as used in this division means and includes any of the following:
 - (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or
 - (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.
 - (o) “Specified Sexual Activities” as used in this division means and includes any of the following:
 - (1) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; or
 - (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; or
 - (5) Excretory functions as part of or in connection with any of the activities set forth in subdivisions (A) through (D) of this subsection.
- (p) “Specified Criminal Acts” are sexual crimes against children, sexual abuse, rape, gross sexual imposition, and other crimes connected with sexually oriented businesses including but not limited to distribution of obscenity or other material harmful to minors, pandering, prostitution or tax violations in connection with a sexually oriented business.
- (q) “Substantial Enlargement of a Sexually Oriented Business” means increase in the floor areas occupied by the business by more than fifteen percent, as the floor areas exist on January 10, 1996.
- (r) “Transfer of Ownership or Control of a Sexually Oriented Business” means and includes any of the following:
- (1) The sale, lease or sublease of the business;
 - (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means;
 - (3) The establishment of a trust, gift, or other similar legal devise which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

723.03 ESTABLISHMENT AND CLASSIFICATION OF REGULATED BUSINESSES

- (a) Sexually oriented business shall be established only in select commercial and industrial zones and shall be subject to the restrictions of this Chapter. Specifically, sexually oriented businesses shall be allowed to locate in areas zoned B-2, B-3, HT-1, I-1 and I-2 provided the other requirements of this Chapter are met. No person shall establish a sexually oriented business within 750 feet of another such business or within 750 feet of any protected uses defined as any religious institution, school, park or other public use, or within 750 feet of any property zoned or used for residential purposes or within 750 feet of an establishment holding a valid Ohio liquor license and which engages primarily in the sale and service of alcohol for consumption on the premises of the establishment whether or not food is also served. Sexually oriented businesses, as defined in Section 723.02, are classified as follows:
- (1) Adult bookstore, adult novelty store or adult video store;
 - (2) Adult cabaret;

- (3) Adult motel;
 - (4) Adult motion picture theater;
 - (5) Adult theater;
 - (6) Massage parlor;
 - (7) Sexual encounter establishment;
 - (8) Escort agency; or
 - (9) Nude model studio
- (b) Nothing in this Section prohibits the location of sexually oriented businesses within retail shopping centers in B-2 and B-3 commercial zones where such activities will have their only frontage upon enclosed malls or malls isolated from direct view from public streets, religious institutions, schools, parks, or other public facilities and residential areas without regard to the distance requirements of subsection (a) above, except where a protected use, such as a day care facility, is located within an enclosed or isolated mall.
- (c) Nothing in this Section prohibits the location of sexually oriented businesses within 750 feet of any establishment licensed to sell but not serve alcohol on its premises such as a grocery store, mini-mart or gas station. The provisions of this section also do not apply to establishments that engage primarily in the sale and service of food, whether or not the establishment also holds a liquor license, such as where an establishment holds D-5, D-5a, D-5b, D-5c, D-5d, D-5e, D-5f, D-5g, D-5h, D-5i, D-5j or D-7 permit as defined in Revised Code Sections 4303.18, 4303.181 and 4303.183.

723.07 APPLICATION INVESTIGATION PROCESS

Upon receipt of an application the City shall send photocopies of the application to all city agencies responsible for the enforcement of health, fire, building and zoning codes and laws. Each agency shall investigate the application for compliance with its respective code and approve or disapprove the application within twenty (20) days of the receipt of the application by the City. An agency shall disapprove an application if it finds that the business would be in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the City and the reason(s) for disapproval must be stated.

723.08 ISSUANCE OF PERMIT

- (a) An application shall be granted or denied within thirty (30) days from the date of its proper filing except as provided under subsection (d) herein.
- (b) Grant of Application for Permit:

- (1) An application shall be granted unless one of the criteria of subsection (c) of this Section is met.
 - (2) The permit shall state on its face the name of the person or persons to whom it is granted and the address of the sexually oriented business and the permit expiration date. The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so it can be read at any time.
- (c) Denial of Application for Permit:
- (1) An application may be denied for any of the following reasons:
 - i. An applicant is under eighteen (18) years of age;
 - ii. An applicant or an applicant's spouse is overdue on the payment of taxes, fees, fines, or penalties assessed by the city in relation to a sexually oriented business.
 - iii. An applicant is residing with a person whose permit to operate a sexually oriented business has been denied or revoked within the preceding twelve months.
 - iv. An applicant has failed to provide information as requested in the application or has supplied false information.
 - v. The premises to be used are not in compliance with city health, fire, and/or building codes as determined by the city agency responsible for determining such compliance.
 - vi. The \$100.00 application fee has not been paid.
 - vii. The proposed business does not comply with the 750 feet location requirement of Section 723.03(a).
 - viii. To grant the application would violate a statute, ordinance or court order.
 - ix. The applicant has a permit under this Ordinance which has been suspended or revoked.
 - x. The applicant has been convicted of a specified criminal act within the time limitation of Section 723.06(c)(3).
 - xi. An applicant knowingly has in his/her employ an employee who does not have a valid license as required in Section 723.15.
 - (2) Applicants shall be promptly notified of an application denial and the reasons for denial.

- (d) Cooperation with city agencies: As set forth in Section 723.07, all city agencies responsible for the enforcement of health, fire, building and zoning codes and laws shall determine if the proposed business is in compliance with its area of regulation within 20 days of receipt of the application. If additional information is required from the applicant or if the applicant requests additional time to comply with a statute, code, ordinance, regulation or other law in effect in the City, upon agreement of the applicant, a one time extension of an additional 30 days may be given for the City to grant or deny the application.

723.13 JUDICIAL REVIEW OF PERMIT DENIAL, SUSPENSION OR REVOCATION

An applicant or permittee may seek review of a denial of an application, denial of a renewal of an application, suspension or revocation of a permit through the City Council or special review board if one is established. Review of the denial, suspension or revocation shall take place within 30 days of the application for review or at the next regularly scheduled council meeting. If the denial, suspension or revocation is affirmed on review, the applicant or permittee may seek review of the administration decision in the Hamilton Warren County Court of Common Pleas. The suspension or revocation of a permit will be stayed upon application for review by Council. If the applicant fails to perfect its appeal to the Court of Common Pleas within 60 days of a final Council decision, the stay will dissolve and the suspension or revocation will take immediate effect. If an applicant properly appeals to the Warren County Court of Common Pleas the stay will continue during the pendency of the appeal unless dissolved by the Court. Upon notice of appeal to the Common Pleas Court, the City will prepare an administrative transcript within 20 days.