

## **Preface to Model Ordinance Prohibiting Criminal Conduct in Sexually Oriented Businesses**

In addition to, or in lieu of, adopting the “Model Ordinance Regulating Sexually Oriented Businesses,” Townships and Municipal Corporations may consider adopting the following “Model Ordinance Prohibiting Criminal Conduct in Sexually Oriented Businesses.” Whereas the licensing Ordinance addresses licensing regulations for sexually oriented businesses, the following model criminal conduct Ordinance would simply make certain conduct related to sexually oriented businesses unlawful as approved by the United States Court of Appeals for the Sixth Circuit.<sup>1</sup>

If you have questions concerning this Model Ordinance, please contact the Attorney General’s Office at 614-466-4320.

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<sup>1</sup> *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291; *729, Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485.

[            ] TOWNSHIP  
[            ] COUNTY, OHIO

**REGULATIONS GOVERNING**

**CRIMINAL CONDUCT IN**

**SEXUALLY ORIENTED BUSINESSES**

Adopted by the Board of Trustees, [            ] Township, [            ] County, Ohio,  
pursuant to Sections 503.51 and 503.52 of the Ohio Revised Code, or [    ] Municipal  
Corporation pursuant to Section 715.55 of the Ohio Revised Code.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

**MODEL ORDINANCE PROHIBITING CRIMINAL  
CONDUCT IN SEXUALLY ORIENTED BUSINESSES**

**(I) PURPOSE AND INTENT<sup>2</sup>**

(A) In enacting this Ordinance, pursuant to Sections 503.51 and 503.52 of the Ohio Revised Code, the **[Township Board of Trustees]**<sup>3</sup> makes the following statement of intent and findings:

- (1) Adult entertainment establishments require special supervision from the public safety agencies of **[this Township]** in order to protect and preserve the health, safety, morals, and welfare of the patrons and employees of the businesses as well as the citizens of **[this Township]**.
- (2) The **[Township Board of Trustees]** finds that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature.
- (3) The concern over sexually transmitted diseases is a legitimate health concern of **[this Township]** that demands reasonable regulation of adult entertainment establishments by **[this Township]** in the specified manner, and expanded authority for reasonable regulation of adult entertainment establishments by local governments, in order to protect the health and well-being of the citizens.
- (4) Minimal regulations enacted by **[this Township]** are a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments 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.
- (5) There is convincing documented evidence that adult entertainment establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, cause increased crime, particularly in the overnight hours, and downgrade property values.
- (6) The **[Township Board of Trustees]** desires to minimize and control these adverse effects by regulating adult entertainment establishments in the specified manner. And by minimizing and controlling these adverse effects, the **[Township Board of Trustees]** seeks to 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 urban blight.

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<sup>2</sup> This section is modified from the purpose and intent version included in House Bill No. 23 (2006) and Senate Bill No. 16 (2007). It is placed here to maintain consistency with the enacting legislation.

<sup>3</sup> “[Township Board of Trustees]” and “[Township]” are used as place holders. The Ordinance must be modified to include the correct titles of the Township or Municipal Corporation. For example, Bloom Township Board of Trustees, and Bloom Township; etc.

(7) The **[Township Board of Trustees]** has determined that current local zoning and other locational criteria do not adequately protect the health, safety, and general welfare of the people of **[this Township]** and that expanded regulation of adult entertainment establishments is necessary.

(8) It is not the intent of the **[Township Board of Trustees]** in enacting this act to suppress or authorize the suppression of any speech activities protected by the First Amendment, but to enact content-neutral statutes that address the secondary effects of adult entertainment establishments.

(9) It is not the intent of the **[Township Board of Trustees]** to condone or legitimize the distribution of obscene material, and the **[Township Board of Trustees]** recognizes that state and federal 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 this state.

(B) It is the intent of the **[Township Board of Trustees]** in enacting this Ordinance to regulate in the specified manner adult entertainment establishments in order to promote the health, safety, morals, and general welfare of the citizens of **[this Township]** and establish reasonable regulations to prevent the deleterious secondary effects of adult entertainment establishments within **[this 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 of the **[Township Board of Trustees]** in enacting this Ordinance to restrict or deny, or authorize the restriction or denial of, access by adults to sexually oriented materials protected by the First Amendment, or to deny, or authorize the denial of, access by the distributors and exhibitors of adult entertainment and adult materials to their intended market. Neither is it the intent nor effect of the **[Township Board of Trustees]** in enacting this Ordinance to condone or legitimize the distribution or exhibition of obscene material.

(C) Based on evidence concerning the adverse secondary effects of adult uses on communities presented in hearings and in reports made available to the legislature and subsequently adopted by the Ohio General Assembly as findings under Section 3 of House Bill 23 (and on findings incorporated in the cases of *Township of Littleton, Colorado v. Z.J. Gifts D-4, L.L.C.* (2004), 541 U.S. 774; *Township of Erie v. Pap's A.M.* (2000), 529 U.S. 277; *Barnes v. Glen Theatre, Inc.* (1991), 501 U.S. 560; *Township of Renton v. Playtime Theatres, Inc.* (1986), 475 U.S. 41; *Young v. American Mini Theatres* (1976), 426 U.S. 50; *California v. LaRue* (1972), 409 U.S. 109; *DLS, Inc. v. Township of Chattanooga* (6th Cir. 1997), 107 F.3d 403; *East Brooks Books, Inc. v. Township of Memphis* (6th Cir. 1995), 48 F.3d 220; *Harris v. Fitchville Township Trustees* (N.D. Ohio 2000), 99 F. Supp.2d 837; *Bamon Corp. v. Township of Dayton* (S.D. Ohio 1990), 730 F. Supp. 90, *aff'd* (6th Cir. 1991), 923 F.2d 470; *Broadway Books v. Roberts* (E.D. Tenn. 1986), 642 F. Supp. 486; *Bright Lights, Inc. v. Township of Newport* (E.D. Ky. 1993), 830 F. Supp. 378; *Richland Bookmart v. Nichols* (6th Cir. 1998), 137 F.3d 435; *Deja Vu v. Metro Government* (6th Cir. 1999), 1999 U.S. App. LEXIS 535; *Threesome Entertainment v. Strittmather* (N.D. Ohio 1998), 4 F.Supp.2d 710; *J.L. Spoons, Inc. v. Township of Brunswick* (N.D. Ohio 1999), 49 F. Supp.2d 1032; *Triplett Grille, Inc. v. Township of Akron* (6th Cir. 1994),

40 F.3d 129; *Nightclubs, Inc. v. Township of Paducah* (6th Cir. 2000), 202 F.3d 884; *O'Connor v. Township and County of Denver* (10th Cir. 1990), 894 F.2d 1210; *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County* (6th Cir. 2001), 2001 U.S. App. LEXIS 26007; *State of Ohio ex rel. Rothal v. Smith* (Ohio C.P. 2002), Summit C.P. No. CV 01094594; *Z.J. Gifts D-2, L.L.C. v. Township of Aurora* (10th Cir. 1998), 136 F.3d 683; *Connection Distrib. Co. v. Reno* (6th Cir. 1998), 154 F.3d 281; *Sundance Assocs. v. Reno* (10th Cir. 1998), 139 F.3d 804; *American Library Association v. Reno* (D.C. Cir. 1994), 33 F.3d 78; *American Target Advertising, Inc. v. Giani* (10th Cir. 2000), 199 F.3d 1241; and other cases and on reports of secondary effects occurring in and around adult entertainment establishments in Phoenix, Arizona (1984); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma Township, Oklahoma (1986); Cleveland, Ohio (1977); Dallas, Texas (1997); St. Croix County, Wisconsin (1993); Bellevue, Washington (1998); Newport News, Virginia (1996); Tucson, Arizona (1990); St. Paul, Minnesota (1988); Oklahoma Township, Oklahoma (1986 and 1992); Beaumont, Texas (1982); New York, New York (1994); Ellicottville, New York (1998); Des Moines, Iowa (1984); Islip, New York (1980); Adams County, Colorado (1987); Manatee County, Florida (1987); New Hanover County, North Carolina (1989); Las Vegas, Nevada (1978); Cattaraugus County, New York (1998); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); New York Times Square study (1994); Report to ACLJ on the Secondary Impacts of Sex Oriented Businesses (1996); findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and on testimony to Congress in 136 Cong. Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636, 134 Cong. Rec. E. 3750; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and from various other police reports, testimony, newspaper reports, and other documentary evidence), and subsequent findings in *Sensations, Inc. v. City of Grand Rapids, Michigan Decency Action Council* (6th Cir. 2008), 526 F.3d 291; *729, Inc. v. Kenton County Fiscal Court* (6th Cir. 2008), 515 F.3d 485; and *Andy's Rest. & Lounge, Inc. v. City of Gary* (7th Cir. 2006), 466 F.3d 550, and the [**Township Board of Trustees**] independent review of the same) the [**Township Board of Trustees**] finds:

(1) Sexually oriented businesses, as a category of commercial uses, are often associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

(2) Illegal and unsanitary acts involving nudity, including lewd conduct, masturbation, oral and anal sex, occur at unregulated sexually oriented businesses, including those businesses which provide private or semi-private rooms, booths, or cubicles for viewing films, videos, or live performances.

(3) Each of the foregoing negative secondary effects constitutes a harm which **[this Township]** has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is **[this Township's]** rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, **[this Township's]** interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in **[this Township]**. The **[Township]** finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

(4) The enactment of this Ordinance will promote the general welfare, health, morals, and safety of the citizens of **[this Township]**.

## **(II) DEFINITIONS<sup>4</sup>**

(A) As used in this Ordinance:

(1) “adult bookstore,” “adult cabaret,” “adult motion picture theater,” “adult video store,” “characterized by,” “nude,” “nudity,” “state of nudity,” “seminude,” “state of seminudity,” “sexual device,” “sexual device shop,” “sexual encounter center,” and “specified anatomical areas” have the same meanings as in Section 2907.40 of the Revised Code; and

(2) “adult arcade,” “adult entertainment,” “adult entertainment establishment,” “adult novelty store,” “adult theater,” “distinguished or characterized by their emphasis upon,” “nude or seminude model studio,” “regularly features,” “regularly shown,” and “sexual encounter establishment” have the same meanings as in Section 2907.39 of the Revised Code.

(B) “EMPLOYEE” means any individual on a full-time, part-time, or contract basis, regardless of whether the individual is denominated an employee, independent contractor, agent, or otherwise, but does not include an individual exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

(C) “IMMEDIATE FAMILY” means a person's spouse residing in the person's household, parents, siblings of the whole or of the half blood, and children, including adopted children.

(D) “LICENSE” means a license to act or operate a sexually oriented business, issued pursuant to this Ordinance.

(E) “LICENSEE” means a person in whose name a license to operate has been issued, as well as the individual(s) designated on the license application as principally responsible for the

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<sup>4</sup> The definitions used in Section (II) must be included. Additional definitions may be included that are not listed here if additional zoning requirements are imposed. These definitions and applicable zoning requirements should be included based on the Township, Village, etc. past practices and history of zoning. Additional zoning requirements and definitions are too location specific to be included here.

operation of the sexually oriented business. With respect to an Employee license issued under this Ordinance, licensee means an employee as defined by sub-section (B) above in whose name a license has been issued authorizing employment at sexually oriented business.

(F) “OPERATE” means to control or hold primary responsibility for the operation of a sexually oriented business, either as a business entity, as an individual, or as part of a group of individuals with shared responsibility. “Operate” or “Cause to be Operated” shall mean to cause to function or to put or keep in operation.

(G) “OPERATOR” means any individual on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

(H) “PATRON” means any individual on the premises of a sexually oriented business, except for any of the following:

(1) An operator or an employee of the sexually oriented business;

(2) An individual who is on the premises exclusively for repair or maintenance of the premises or for the delivery of goods to the premises;

(3) A public employee or a volunteer firefighter emergency medical services worker acting within the scope of the public employee’s or volunteer’s duties as a public employee or volunteer’s duties as a public employee or volunteer.

(I) “PERSON” means an individual, proprietorship, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

(J) “PREMISES” means the real property on which the sexually oriented business is located and all appurtenances to the real property, including, but not limited, to the sexually oriented business, the grounds, private walkways, and parking lots or parking garages adjacent to the real property under the ownership, control, or supervision of the owner or operator of the sexually oriented business.

(K) “SEXUALLY ORIENTED BUSINESS” means an adult arcade, adult bookstore, adult cabaret, adult entertainment establishment, adult motion picture theater, adult novelty store, adult theater, adult video store, sexual device shop, sexual encounter center, and sexual encounter establishment as defined by Section (II), sub-section (A) of this Ordinance, but does not include a business solely by reason of its showing, selling, or renting materials that may depict sex.

### (III) UNLAWFUL ACTIVITIES<sup>5</sup>

(A) Nothing contained in this Ordinance is intended, or shall be construed, to permit or authorize activities which are unlawful under state law or **[Township Board of Trustees]** ordinance. It is unlawful and a violation of this Ordinance for an operator to knowingly or intentionally violate the provisions of this Ordinance or to allow, either knowingly or intentionally, an employee or a patron to violate the provisions of this Ordinance. It shall be a defense to prosecution that the person prosecuted was powerless to prevent the violation.

(B) No person shall knowingly or intentionally, in a sexually oriented business, appear before a patron or patrons in a state of nudity, regardless of whether such public nudity is expressive in nature.<sup>6</sup>

(C) No employee shall knowingly or intentionally, in a sexually oriented business, appear within view of any patron in a semi-nude condition unless the employee, while semi-nude, shall be and remain at least **[zero (0) up to six (6)]** feet from all patrons and on a fixed stage at least **[zero (0) up to twenty-four (24)]** inches from the floor and at least **[zero (0) up to thirty-six (36)]** inches from all parts of a clearly designated area in which patrons will be present.

(D) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. If the premises has two (2) or more operator'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 (1) of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one (1) employee is on duty and situated in an operator's station at all times that any patron is on the portion of the premises monitored by that operator station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(E) Sexually oriented businesses that do not have stages or interior configurations which meet at least the minimum requirements of this section shall be given one hundred eighty (180) days from the effective date of Section III of this Ordinance to comply with the stage and building requirements of this section. During said one hundred eighty (180) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least **[zero (0) up to six (6)]** feet from all patrons.<sup>7</sup>

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<sup>5</sup> Section (III), sub-section (A) must be included in this Ordinance. Sub-sections (B) – (H) are optional and may be removed from this Ordinance.

<sup>6</sup> If Section (III), sub-section (B) is not included in this Ordinance, then Section (III), sub-section (C) must include “state of nudity” in addition to “semi-nude.”

<sup>7</sup> If Section (III), sub-sections (C) or (D) are included, then Section (III), sub-section (E) must also be included.



(F) No patron who is not a member of the employee's immediate family shall knowingly touch an employee while that employee is nude or seminude or touch the clothing of any employee while that employee is nude or semi-nude.<sup>8</sup>

(G) No employee who regularly appears nude or seminude on the premises of a sexually oriented business and while nude or seminude, shall knowingly touch a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or the clothing of a patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family or allow the patron who is not a member of the employee's immediate family or another employee who is not a member of the employee's immediate family to touch the employee or the clothing of the employee.<sup>9</sup>

(H) Minors Prohibited. No person under the age of 18 years shall be permitted on the premises of a sexually oriented business.

(I) Hours of Operation. No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, except that a sexually oriented business that holds a liquor permit pursuant to Chapter 4303 of the Revised Code may remain open until the hour specified in that permit if it does not conduct, offer, or allow sexually oriented business activity in which the performers appear nude.<sup>10</sup>

(J) The provisions of Section (III), Unlawful Activities, shall not apply to an employee's use of any restroom or any single-sex dressing room that is accessible only to employees, and live performances in which the patron and employee are separated by an impenetrable barrier such as, but not limited too, glass or Plexiglas.

#### **(IV) SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LIABILITY**

This Ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of Section (III) of this Ordinance. Notwithstanding anything to the contrary, for the purposes of Section (III), an act by an employee shall be imputed to the sexually oriented business for purposes of finding a violation of this Section (III) only if an officer, director, general partner or licensee, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

#### **(V) PENALTY; EQUITABLE REMEDIES**

(A) Any person, business, or entity violating or refusing to comply with any provisions of this Ordinance, (except for violations of Section (III), sub-sections (F), (G) or (I)), shall, upon

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<sup>8</sup> Pursuant to R.C. 2907.40(C)(1).

<sup>9</sup> Pursuant to R.C. 2907.40(C)(2).

<sup>10</sup> Pursuant to R.C. 2907.40(C)(2).

conviction, be deemed guilty of a misdemeanor and shall be punished by **[insert misdemeanor level of offense and penalty provisions]**. Each day that a violation is permitted to exist or occur, and each separate occurrence, shall constitute a separate offense. Further, any premises in which a sexually oriented business, as defined in Section (II), sub-section (K) of this Ordinance, is repeatedly operated or maintained in violation of the provisions of this Ordinance shall constitute a public nuisance and shall be subject to civil abatement proceedings initiated by the **[Township Board of Trustees]** in a court of competent jurisdiction. Each day that a violation is permitted to exist or occur shall constitute a separate operation or maintenance of the violation.

(B) Whoever violates Section (III), sub-sections (F) or (G) of this Ordinance shall be guilty of illegal sexually oriented activity in a sexually oriented business. If the offender touches a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of Section (III), sub-sections (F) or (G) of this Ordinance is a misdemeanor of the first degree. If the offender does not touch a specified anatomical area of the patron or employee, or the clothing covering a specified anatomical area, a violation of Section (III), sub-sections (F) or (G) of this Ordinance is a misdemeanor of the fourth degree.<sup>11</sup>

(C) Whoever violates Section (III), sub-section (I) of this Ordinance is guilty of illegally operating a sexually oriented business, a misdemeanor of the first degree.<sup>12</sup>

(D) Notwithstanding Section (V), sub-section (A) hereof, the **[Township Board of Trustees]** may employ any remedy available at law or in equity to prevent or remedy a violation of any provision of this Ordinance.

## **(VI) SEVERABILITY**

If any section, sub-section, paragraph or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, sub-sections, paragraphs, and clauses shall not be affected.

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<sup>11</sup> If Section (III), sub-sections (F) or (G) are included in the Ordinance, then Section (V), sub-section (B) must also be included pursuant to R.C. 2907.40(E).

<sup>12</sup> If Section (III), sub-section (I) is included in the Ordinance, then Section (V), sub-section (C) must also be included pursuant to R.C. 2907.40(D).