

AN ORDINANCE AMENDING THE PLANNING & ZONING CODE BY
LIMITING SEXUALLY ORIENTED BUSINESSES TO A SPECIFIED ZONING
DISTRICT AND REQUIRING THAT THEY MEET LOCATIONAL CRITERIA
AND BE DISPERSED

WHEREAS, the Village of Richfield Council finds that 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 urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Village of Richfield Council 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 urban blight; and

WHEREAS, the Village of Richfield Council has determined that locational criteria will serve to protect the health, safety and generally welfare of the people of this Village; and

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

WHEREAS, it is not the intent of the Village of Richfield Council to condone or legitimize the distribution of obscene material, and the Council 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 the Village.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Richfield,
State of Ohio:

SECTION 1. That Chapter 1185 of the Planning and Zoning Code, being Chapters 1185.01 through 1185.07, be enacted to read as follows:

"CHAPTER 1185
LOCATION OF SEXUALLY ORIENTED BUSINESSES

1185.01 PURPOSE AND FINDINGS.

(a) Purpose. It is the purpose of this Ordinance to regulate Sexually Oriented Businesses in order to promote the health, safety, morals and general welfare of the citizens of the Village, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of Sexually Oriented Businesses within the Village. The provisions of this Ordinance do not have the purpose or effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Further, it is not the intent 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.

(b) Findings. The Village Council has received substantial evidence concerning the adverse secondary effects of adult uses on the community in findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Phoenix, Arizona; Tucson, Arizona; Garden Grove, California; Los Angeles, California; Whittier, California; Indianapolis, Indiana; Minneapolis, Minnesota; St. Paul, Minnesota; New York, New York; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; and Seattle, Washington.

1185.02 DEFINITIONS.

(a) ADULT ARCADE means any place to which the public is permitted or invited where either or both (i) motion picture machines, projectors, video or laser disc players, or (ii) other video or image-producing devices are available, run via coin, token or any form of consideration, to show images to five or fewer persons at one time; and where the images shown and/or live entertainment presented are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

(b) ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

- (1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas";
or

- (2) 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, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE, 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 are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(c) ADULT CABARET means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

- (1) persons who appear in a "state of nudity" or "state of semi-nudity"; or
- (2) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (3) live entertainment of an erotic nature including exotic dancers, strippers, male or female impersonators or similar entertainment; or
- (4) 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."

(d) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(e) ADULT THEATER means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(f) COVERING means any clothing or wearing apparel, including pasties, but does not include any substance that can be washed off the skin, such a paint or make-up, or any substance designed to simulate the appearance of the anatomical area beneath it.

(g) 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 Sexually Oriented Business;
- (3) the additions of any Sexually Oriented Business to any other existing Sexually Oriented Business; or
- (4) the relocation of any Sexually Oriented Business.

(h) NUDE MODEL STUDIO means any place where a person who appears nude or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or similar depicted by other persons who pay money or any form of consideration.

Nude Model Studio shall not include:

(1) a proprietary school licensed by the State of Ohio, or a college, junior college or university supported entirely or in part by public taxation;

(2) a private college or university that offers educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or

(3) an establishment holding classes in a structure that has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; where in order to participate in a class a student must enroll at least three days in advance of the class; and where no more than one semi-nude model is on the premises at any one time.

(i) NUDITY or STATE OF NUDITY or NUDE means exposing to view the genitals, pubic area, vulva, perineum, anus, anal cleft or cleavage, or pubic hair with less than a fully opaque covering; exposing to view any portion of the areola of the female breast with less than a fully opaque covering; exposing to view male genitals in a discernibly turgid state, even if entirely covered by an opaque covering; or exposing to view any device, costume or covering that gives the appearance of or simulates any of these anatomical areas.

(j) PERSON means an individual, proprietorship, partnership, corporation, association or other legal entity.

(k) PRINCIPAL BUSINESS PURPOSE means twenty-five percent (25%) or more of the stock in trade of the business offered for sale or rental for consideration measured as a percentage of either the total linear feet of merchandise for sale or rental for consideration on display or the gross receipts of merchandise for sale or rental for consideration, whichever is greater.

(l) SEMINUDITY or SEMINUDE CONDITION or SEMINUDE means 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.

(m) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(1) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(2) activities between male and female persons and/or persons of the same sex when one or more of the persons is semi-nude.

(n) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, nude model studio or sexual encounter center.

(o) SPECIFIED ANATOMICAL AREAS means:

(1) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(2) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(p) SPECIFIED SEXUAL ACTIVITIES means any of the following:

(1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breast;

(2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation or sodomy; or

(3) excretory functions as part of or in connection with any of the activities set forth in (1) through (2) above.

(q) 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 the date this Ordinance takes effect.

1185.03 CLASSIFICATIONS.

Sexually Oriented Businesses are classified as follows:

- (a) adult arcades;
- (b) adult bookstores, adult novelty stores or adult video stores;
- (c) adult cabarets;
- (d) adult motion picture theaters;
- (e) adult theaters;
- (f) nude model studios; and
- (g) sexual encounter centers.

1185.04 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(a) Sexually Oriented Businesses may be located only in accordance with the restrictions contained in (b) through (h) below.

(b) Sexually Oriented Businesses may be located only in those areas which are south of federal Interstate Highway 271 (I-271) and zoned as Industrial (I) Districts.

(c) No Sexually Oriented Business may be established on a lot which borders on or touches Brecksville Road, Broadview Road extension or federal Interstate Highways 77 or 271.

(d) No Sexually Oriented Business may be established within five hundred (500) feet of:

(1) a church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

(2) a public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens,

elementary schools, private 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 facilities used primarily for another purpose and only incidentally as a school;

(4) a public park or recreational area 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, wilderness areas or other similar public land within the Village which is under the control, operation or management of either the Village park and recreation authorities or which is operated or managed by the Cuyahoga Valley National Recreation Area;

(5) the property line of a lot devoted to a residential use as defined in the Zoning Code; or

(6) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State of Ohio.

(e) No Sexually Oriented Business may be established, operated or enlarged within 1,000 feet of another Sexually Oriented Business.

(f) Not more than one Sexually Oriented Business shall be established or operated in the same building, structure or portion thereof, and the floor area of any Sexually Oriented Business in any building, structure or portion thereof containing another Sexually Oriented Business may not be increased.

(g) For the purpose of subsection (d) of this Section, measurement shall be made in a straight line, without regard to intervening structures or objects from the nearest portion of the building or structure used as the part of the premises where a Sexually Oriented Business is conducted, to the nearest property line of the premises of a use listed in subsection (d).

(h) For purposes of subsection (e) of this Section, the distance between any two Sexually Oriented Businesses shall be measured in a straight line, without regard to the intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

1185.05 ADDITIONAL REGULATIONS CONCERNING LOT, YARD, HEIGHT, PARKING, BUILDING AND SITE DESIGN STANDARDS, AND SITE DEVELOPMENT PLAN REQUIREMENTS.

(a) Lot requirements for Sexually Oriented Businesses are those specified in Section 1143.03 of this Code.

(b) Yard requirements for a Sexually Oriented Business are those specified in Section 1143.04 of this Code.

(c) Maximum height regulations for a Sexually Oriented Business are those specified in Section 1143.05 of this Code.

(d) Parking requirements for a Sexually Oriented Business are governed by the provisions contained in Chapter 1153 of this Code.

(e) Building and site design standards for a Sexually Oriented Business are those specified in Section 1143.08 of this Code.

(f) Site development plans for a Sexually Oriented Business shall be submitted to the Planning and Zoning Commission in accordance with the procedures specified in Section 1151.02 of this Code.

(g) Review and approval procedures for a site development plan for a Sexually Oriented Business shall be in accordance with the procedures specified in Chapter 727 of this Code, Licensing and Operation of Sexually Oriented Businesses.

1185.06 SIGN REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES.

(a) All signs shall be "wall signs" as defined in Section 1171.02(21) of this Code, with a maximum allowable sign area of fifty square feet as measured in accordance with the standards specified in Section 1171.04(a)(1)-(2) of this Code, and shall comply with the location standards specified in Sections 1171.05(a) and 1171.09(a) of this Code, and the illumination standards specified in Section 1171.06 of this Code.

(b) Review and approval procedures for a sign permit for a Sexually Oriented Business shall be in accordance with the procedures specified in Chapter 727 of this Code, Licensing and Operation of Sexually Oriented Businesses.

(c) All signs shall be maintained in accordance with Section 1171.13 of this Code and may be ordered to be removed in accordance with the provisions of Section 1171.13 of this Code.

(d) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or street in front of the building.

(e) Window areas shall not be covered or made opaque in any way. No signs shall be placed in any window. A one-square-foot sign may be placed on the door to state hours of operation and admittance to adults only.

1185.07 SEVERABILITY.

If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected."

SECTION 2. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and related to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code, as amended.

SECTION 4. This Ordinance shall take effect and be in force from and after August 20, 1998.

Passed: July 21, 1998

Michael Lyons
President of Council

Donald W. Jensen
Mayor

Dated: 7/27/98

ATTEST:

Carole Gibson
Clerk of Council