ARTICLE 9
SEXUALLY ORIENTED BUSINESSES

9.01	Intent	9.05	Location
9.02	Purpose and Findings	9.06	Regulations
9.03	Definitions	9.07	Sign Regulations
9.04	Classifications	9.08	Severability

9.01 INTENT

WHEREAS, the **Auburn Township Zoning Commission and Board of Township Trustees** find 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 **Auburn Township Zoning Commission and Board of Township Trustees** desire 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 **Auburn Township Zoning Commission and Board of Township Trustees** have determined that locational criteria will serve to protect the health, safety, and general welfare of the people of this Township; and

WHEREAS, it is not the intent of this amendment to suppress any speech activities protected by the First Amendment, but to enact a content neutral amendment which addresses the secondary effects of SEXUALLY ORIENTED BUSINESSES; and

WHEREAS, it is not the intent of the **Auburn Township Zoning Commission and Board of Township Trustees** to condone or legitimize the distribution of obscene material, and they recognize 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 Township.

BE IT ENACTED BY THE **ZONING COMMISSION AND BOARD OF TOWNSHIP TRUSTEES** OF AUBURN TOWNSHIP, OHIO;

9.02 PURPOSE AND FINDINGS

(1) Purpose. It is the purpose of this amendment to designate areas where SEXUALLY ORIENTED BUSINESSES may be located in order to promote the health, safety, morals, and general welfare of the citizens of the Township, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of SEXUALLY ORIENTED BUSINESSES within the Township. The provisions of this amendment 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 amendment 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 amendment to condone or legitimize the distribution of obscene material.

(2) Findings. There is substantial evidence concerning the adverse secondary effects of adult uses on the community in findings incorporated 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 Township, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; and Seattle, Washington. Said cases and studies have been reviewed by the Township.

9.03 DEFINITIONS

(1) **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."

(2) **ADULT BOOKS. 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:

(a) 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

(b) 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 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."

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

(a) persons who appear in a "state of nudity" or "state of semi-nudity"; or

(b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(c) live entertainment of an erotic nature including exotic dancers, strippers, male or female impersonators, or similar entertainment; or

(d) 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."

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

(5) **ADULT THEATER** means a theater, concert hall, auditorium, or other 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."

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

(7) **ESTABLISHMENT** means and includes any of the following:

(a) the opening or commencement of any Sexually Oriented Business as a new business;

(b) the conversion of an existing business, whether or not a Sexually Oriented Business, to any Sexually Oriented Business;

(c) the addition(s) of any Sexually Oriented Business to any other existing Sexually Oriented Business; or

(d) the relocation of any Sexually Oriented Business.

(8) **NUDE MODEL STUDIO** means any place where a person who appears seminude or who displays specified anatomical areas provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly 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.

(9) **NUDITY or a STATE OF NUDITY or NUDE** means exposing to view the genitals, pubic area, vulva, perineum, anus, anal cleft or cleavage, or pubic area 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.

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

(11) **PRINCIPAL BUSINESS PURPOSE** means forty percent (40%) 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 the greater.

(12) **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 male or female 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.

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

(a) physical contact including wrestling or tumbling between persons of the opposite sex; or

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

(14) **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.

(15) **SPECIFIED ANATOMICAL AREAS** means:

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

(b) 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.

(16) **SPECIFIED SEXUAL ACTIVITIES** means any of the following:

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

(b) sex acts, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

(17) **SUBSTANTIAL ENLARGEMENT** of a Sexually Oriented business means the increase in floor area(s) occupied by the business by more than twenty-five percent (25%), of the floor area existing on the date this amendment takes effect.

9.04 CLASSIFICATIONS

SEXUALLY ORIENTED BUSINESSES are classified as follows:

(1) adult arcades;
(2) adult bookstores, adult novelty stores, or adult video stores; adult cabarets;
(3) adult motion picture theaters;
(4) adult theaters;
(5) nude model studios; and
(6) sexual encounter centers.

9.05 LOCATION

(1) Sexually Oriented Businesses shall be classified as a conditional use and may be located only in accordance with the conditions contained below.

(2) Sexually Oriented Businesses may be located only in those areas that are zoned as an I-1 District.

(3) No Sexually Oriented Business may be established on any lot which has frontage, borders on or touches U.S. Route 422 (U.S.R. 422) or State Route 44 (SR44).

(4) No Sexually Oriented Business may be established within 600 feet of:

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

(b) 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, special education schools, junior colleges, and universities. For purposes of determining the distance of 600 feet provided hereinabove, a school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

(c) A boundary of a residential district as defined in the Zoning Resolution;

(d) 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 publicly-owned land within the Township under the control, operation, or management of either the Township or some other public entity;

(e) A private entity the mission or purpose of which is dedicated towards children and families;

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

(5) No Sexually Oriented Business may be established within 600 feet of any permanent structure devoted to a residential use as defined in the Zoning Resolution.

(6) No Sexually Oriented Business may be established, operated or enlarged within 600 feet of another Sexually Oriented Business.

(7) 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 a Sexually Oriented business may not be increased.

(8) For the purpose of subsections (4) and (5) of this Section, measurement shall be made in a straight line, without regard to the 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 portion of the building or structure of a use listed in subsection (4) and (5).

(9) For purposes of subsection (6) 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 portion of the building or structure in which each business is located.

9.06 CONDITIONS

(1) Lot requirements for Sexually Oriented Businesses are those specified for the I-1 District in Articles 4A.04 and 4A.06 of this Zoning Resolution.

(2) Yard requirements for a Sexually Oriented Business are those specified for I-1 District in Article 4A.07 of this Zoning Resolution.

(3) Maximum Height Regulations for a Sexually Oriented Business are those specified in Article 4A.08 of this Zoning Resolution.

(4) Parking requirements for a Sexually Oriented Business are governed by the provisions contained in Articles 4A.04 and 4A.09 of this Zoning Resolution.

(5) Landscaping and Screening Requirements for a Sexually Oriented Business shall be those specified in Article 4A.l0 of this Zoning Resolution.

(6) Development and Design Guidelines for a Sexually Oriented Business shall be those specified in Article 8 of this Zoning Resolution.

(7) Noise Regulations for a Sexually Oriented Business shall be those specified in Article 4A.12 of this Zoning Resolution.

(8) Outdoor Lighting Regulations for a Sexually Oriented Business shall be those specified in Article 4A.11 of this Zoning Resolution.

(9) A sexually oriented business shall be conducted within a fully enclosed building. **(2022)**

(10) Management personnel shall be present at all times when a sexually oriented business is open for operation. **(2022)**

(11) Written proof of compliance with the rules and regulations of the County Building Department, County Water Resources Department, County General Health District Department of Public Health, Township Fire Department, and such other state and federal codes as may be applicable shall be provided to the Zoning Inspector. **(2022)**

(12) A sexually oriented business shall comply with such other specific conditions related to the promotion and protection of the public health, safety, morals, and general welfare as determined by the Board of Zoning Appeals. **(2022)**

9.07 SIGN REGULATIONS

(1) All signs shall be "wall signs," defined as a sign attached to or painted on the wall of a building or structure with the sign face parallel or approximately parallel to the wall, with a maximum allowable sign area of thirty-five (35) square feet as measured in accordance with the standards specified in Article 5.02(i)(8) of this Zoning Resolution, and shall comply with the location and height standards specified in Article 5.02(i)(7) of this Zoning Resolution and the Development and Maintenance Standards specified in Article 5.02(i)(9) of this Zoning Resolution. 3/6/13

(2) 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 road in front of the building. 11/19/13

9.08 SEVERABILITY

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

All amendments or parts of amendments in conflict with the provisions of this amendment are hereby repealed.