

04/29/05

ORDINANCE NO. _____

AN ORDINANCE TO AMEND SECTION 138-1074 OF CHAPTER 138, ZONING, OF THE CODE OF ORDINANCES OF THE CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, TO UPDATE AND MODIFY DEFINITIONS AND REGULATIONS GOVERNING ADULT BUSINESSES, TO SUPPLEMENT THE STATEMENT OF PURPOSE FOR THE REGULATIONS, TO REPEAL INCONSISTENT ORDINANCES, AND TO PRESCRIBE A PENALTY FOR VIOLATIONS.

THE CITY OF ROCHESTER HILLS ORDAINS:

Section 1. Section 138-1074 of Chapter 138 of the Code of Ordinances of the City of Rochester Hills shall be amended as follows:

Sec. 138-1074. Adult businesses; definitions; regulations.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Adult bookstore ~~or, adult novelty store, or adult video store~~ means an establishment that has having a substantial or significant portion of its inventory, or derives a substantial or significant portion of its revenues, or maintains a substantial or significant of its sales and display space, to the sale or rental, for any form of consideration, of any of the following: stock in trade in

- (1) Books, magazines, periodicals or other printed material, photographs or slides whether in printed, electronic or digital format, video cassettes, discs, motion pictures or films or media recorded, pressed, engraved or prepared for playback and books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or, or an establishment with a segment or section devoted to the sale, rental and/or display of such material.
- (2) Instruments, devices, or paraphernalia which are designed to be used for, or are marketed primarily for, stimulation of human genital organs or for sadomasochistic use or abuse of the patron or others.

For purposes of this definition, "substantial or significant portion" means twenty-five (25) percent or more of the term modified.

Adult cabaret means an establishment which regularly features:

- (1) One or more dancers, strippers, male or female impersonators or similar entertainers, performers, wait staff or other persons who reveal or show specified anatomical areas of their bodies or who engage in, perform or simulate specified sexual activities.
- (2) Films, motion pictures, video cassettes, slides, disks, digital, electronic or other photographic reproductions, which are distinguished or characterized by their emphasis on the exhibition or description of specified anatomical areas or specified sexual activities.

Adult motion picture theater means an enclosed building or other establishment that regularly features ~~used for presenting~~ motion picture films, videocassettes, disks, cable television, computer feed or any other such visual media, distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

Specified anatomical areas means:

- (1) Less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means:

- (1) Human genitals in a state of sexual stimulation or arousal.
- (2) Acts of human masturbation, sexual intercourse or sodomy.
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

Regularly features~~Used~~, in the definition of the terms "adult motion picture theater" and "adult cabaret" in this subsection, describes a continuing course of conduct of exhibiting specified sexual activities and specified anatomical areas in a manner which appeals to a prurient interest.

- (b) Purpose. In the development and execution of this subsection, it is recognized that there are some uses which, because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or when one or more of them are located near a residential zone, thereby having a

deleterious effect upon the adjacent area. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These regulations are itemized in this section. These controls are for the purpose of preventing a concentration of these uses within any one area, or to prevent deterioration or blighting of a nearby residential neighborhood. These controls do not legitimize activities, which are prohibited by other sections of this Code.

In regulating sexually oriented businesses, it is the purpose of this section to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this section have neither the purpose, nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent, nor effect of this section 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 section to condone or legitimize the distribution of obscene material.

Based on evidence of the adverse secondary effects of adult uses presented in hearings and reports made available to the City, and on findings incorporated in the cases of *Pap's AM v City of Erie*, 529 U.S. 277 (2000); *Thomas v Chicago Park District*, 534 U.S. 316 (2002); *City of Renton v Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Young v American Mini Theaters*, 427 U.S. 50 (1976); *Barnes v Glen Theater, Inc.*, 501 U.S. 560 (1991); *California v LaRue*, 409 U.S. 109 (1972); *Executive Arts Studio, Inc v City of Grand Rapids*, 391 F3d 783 (6th Cir 2005); *DLS, Inc v Chattanooga*, 107 F3d 403 (6th Cir 1997); *East Brooks Books, Inc v City of Memphis*, 48 F3d 220 (6th Cir 1995); *Executive Arts Studio, Inc v City of Grand Rapids*, 227 FSupp2d 731 (WD Mich 2002); *Broadway Books v Roberts*, 642 FSupp 486 (ED Tenn 1986); *Bright Lines Inc v City of Newport*, 830 FSupp 378 (ED Ky 1993); *Richland Bookmart v Nichols*, 137 F3d 435 (6th Cir 1998); *Threesome Entertainment v Strittmather*, 4 FSupp2d 710 (ND Ohio 1998); *JL Spoons, Inc v City of Brunswick*, 49 FSupp2d 1032 (ND Ohio 1999); *Triplett Grille, Inc v City of Akron*, 40 F3d 129 (6th Cir 1994); *Nightclubs, Inc v City of Paducah*, 202 F3d 884 (6th Cir 2000); *O'Connor v City and County of Denver*, 894 F2d 1210 (10th Cir 1990); *ZJ Gifts D-2 LLC v City of Aurora*, 136 F3d 683 (10th Cir 1998); *Connection Distributors Co v Reno*, 154 F3d 281 (6th Cir 1998); *Sundance Associates v Reno*, 139 F3d 804 (10th Cir 1998); *American Library Association v Reno*, 33 F3d 78 (DC Cir 1994); *American Target Advertising, Inc v Giani*, 199 F3d 1241 (10th Cir 2000);

ILQ Investments, Inc v City of Rochester, 25 F3d 1413 (8th Cir 1994); Wolff v City of Monticello, 803 FSupp 1568 (D Minn 1992); and other cases; and on testimony to Congress in 136 Cong. Rec. S. 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S. 5636; 134 Cong. Rec. S. 3750; and reports of secondary effects occurring in and around sexually oriented businesses, included but not limited to, Phoenix, Arizona-1979; Minneapolis, Minnesota-1980; Houston, Texas-1997; Garden Grove, California-1991; Los Angeles, California-1977; Whittier, California-1978; Austin, Texas-1986; Seattle, Washington-1989; Oklahoma City, Oklahoma-1986; Cleveland, Ohio-1997; Dallas, Texas-1977; St. Croix County, Wisconsin-1993; Bellevue, Washington-1998; Newport News, Virginia-1996; New York Times Square Study-1994; Phoenix, Arizona-1995-1998; and also on findings from the paper entitled *Strip Clubs 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, January 12, 2000, and the Report of Attorney Generals Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), it is determined necessary for the health, safety and welfare of the city to adopt this section pertaining to and regulating adult businesses for the following reasons:

- (1) Many parents are concerned about the influence of pornographic entertainment outlets and businesses and have chosen the city to raise their families because of the absence of such adult businesses; ~~save one which existed on the effective date of the ordinance from which this section derives.~~
- (2) Location of and easy availability of adult businesses in close proximity to homes, apartments, schools, churches and public parks give an impression of legitimacy to such uses and have adverse effects upon children, established family relations, respect for marital relationships and the concept of nonaggressive consensual sexual relations.
- (3) Location of adult businesses in close proximity to houses, apartments, schools, churches and public parks will draw persons who are not known in the community and will create police and safety problems in areas of the city which should be free of such problems.
- (4) Property values in areas adjacent to adult businesses will decline, thus causing a blight upon both commercial and residential areas of the city.

- (5) Location of adult businesses near or within residential neighborhoods and commercial areas of the city would be disruptive to youth programs such as Boy Scouts, Girl Scouts, Campfire Girls and church youth groups that utilize. ~~Many such youth programs use the commercial areas of the city as a historical research resource.~~
 - (6) Location of adult businesses in close proximity to residential uses, schools, churches, parks and other public facilities will cause a degradation of the community standard of morality. Pornographic material has a degrading effect upon the relationship between spouses.
- (c) Separation distances. An adult motion picture theater, adult bookstore, adult novelty store or adult video store or adult cabaret shall not be located:
- (1) Within 1,000 feet of any residential zoning district (R-1, R-2, R-3, R-4, RCD, RM-1 or MH) or the property line of any single-family, two-family or multiple-family residential use. For purposes of this section, the term "multiple-family residential use" shall specifically include, but not by way of limitation, any retirement, convalescent, assisted living or nursing home or facility or other housing for the elderly.
 - (2) Within 1,000 feet of the property line of any public or private school, college or university, or of any nursery school, day nursery or adult or child care center.
 - (3) Within 1,000 feet of the property line of any church or other religious facility or institution.
 - (4) Within 1,000 feet of any public park.
 - (5) Within 1,000 feet of any other adult motion picture theater, adult bookstore, adult novelty store, adult or video store, or adult cabaret.

The distances provided for in this subsection shall be measured by projecting a straight line, without regard for intervening buildings or structures, from the nearest point of the building, structure or tenant space within which the proposed use is to be located to the nearest point of the property line, specified use or zoning district boundary from which the proposed use is to be separated.

- (d) Zoning district. An adult motion picture theater, adult bookstore, adult novelty store, ~~or adult video store~~, or adult cabaret shall be located only within a B-3 shopping center business district.
- (e) Special land use approval. An adult motion picture theater, adult bookstore, adult novelty store, ~~or adult video store~~, or adult cabaret shall be permitted only by special land use approval granted by the city council after review and recommendation of the planning commission, and after public hearing pursuant to the procedure prescribed ~~discretionary decisions~~ in section 138-1306 pertaining to special and conditional land uses. The special land use shall be approved only if the following criteria are satisfied:
- (1) There has been compliance with all provisions of this section and all other sections of this chapter and this Code.
 - (2) The establishment of an adult motion picture theater, adult bookstore, adult novelty store, ~~adult or~~ video store, or adult cabaret will not have a deleterious effect on the surrounding area or the city in general.
 - (3) There is compliance with the ~~standards~~ findings included in subsection 138-1306(d).

Section 2. Severability. This ordinance and each article, section, subsection, paragraph, subparagraph, part, provision, sentence, word and portion thereof are hereby declared to be severable, and if they or any of them are declared to be invalid or unenforceable for any reason by a court of competent jurisdiction, it is hereby provided that the remainder of this ordinance shall not be affected thereby.

Section 3. Penalty. All violations of this ordinance shall be municipal civil infractions and upon a determination of responsibility therefor shall be punishable by a civil fine of not more than \$500.

Section 4. Repeal, Effective Date, Adoption.

(1) Repeal. All regulatory provisions contained in other City ordinances, which are inconsistent with the provisions of this ordinance, are hereby repealed.

(2) Effective Date. This ordinance shall become effective on _____, following its publication in the *Rochester Eccentric* on _____.

(3) Adoption. This ordinance was adopted by the City Council of the City of Rochester Hills at a meeting thereof held on Wednesday, _____.

Pat Somerville, Mayor
City of Rochester Hills

CERTIFICATE

I hereby certify that the foregoing ordinance was adopted by the City Council
of the City of Rochester Hills at a meeting thereof on Wednesday,

_____.

Jane Leslie, Clerk
City of Rochester Hills

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