

CHAPTER 1195
Adult Use Regulations

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1195.01 PURPOSE AND FINDINGS.

- (a) Purpose. The City of Wooster has determined that permitting sexually oriented businesses, as defined in this Chapter, in proximity to residential, institutional, and non-adult oriented retail uses would have a detrimental effect on such adjacent uses. It has been demonstrated that sexually oriented businesses, as defined in this Chapter, have been known to cause undesirable secondary effects on residential and institutional uses, particularly those where children are present, as well as adjacent non-sexually oriented business oriented retail uses. The provisions of this Chapter 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 Chapter 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 Chapter to condone or legitimize the distribution of obscene material. Therefore, in order to prevent potential deterioration in Wooster's retail areas; and to avoid potential adverse impacts on residential and institutional uses particularly those where children are present, and thereby protecting the public health, safety and welfare, sexually oriented businesses, as defined in this Section, shall be permitted only in the M-2 and M-4 Districts subject to the following regulations.
- (b) Findings. The City 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; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; and Seattle, Washington. (Ord. 2006-49. Passed 5-21-07.)

1195.02 DEFINITIONS.

For purposes of this Chapter, the words and phrases defined in this Section shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

- (a) "Adult Arcade" shall mean any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing specified sexual activities or specified anatomical areas.
- (b) "Adult Bookstore," "Adult Novelty Store," or "Adult Video Store" means a commercial establishment which has a significant or substantial portion of its stock- in trade in, or derives a significant or substantial portion of its revenues from, or devotes a significant or substantial portion of its interior business or advertising to, or maintains a substantial section of its sales or display space to the sale or rental, for any form of consideration, to, any one or more of the following:
 - (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas;
 - (2) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.
- (c) "Adult Cabaret" means a nightclub, bar, juice bar, restaurant bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:
 - (1) Persons who appear semi-nude,
 - (2) Live performances which are distinguished or characterized by an emphasis upon the exposure of specified anatomical areas or specified sexual activities, or
 - (3) Films, motion pictures, videocassettes, digital video discs ("DVDs"), slides, or other photographic reproductions which are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas.
- (d) "Adult motel" means a motel, hotel, or similar commercial establishment which: (1) offers public accommodations, for any form of consideration, and which regularly provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, DVDs, slides, or other photographic reproductions which are distinguished or characterized by an emphasis upon the exhibition or description of specified sexual

activities or specified anatomical areas and which regularly advertise the availability of such 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, and (2) offers a sleeping room for rent for a period of time less than ten (10) hours.

- (e) "Adult Motion Picture Theater" means a commercial establishment where films, motion pictures, videocassettes, DVDs, slides, or similar photographic reproductions which are distinguished or characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas are regularly shown for any form of consideration.
- (f) "Adult Theater" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features: (1) persons who appear semi-nude or (2) live performances which are distinguished or characterized by an emphasis upon the exposure of specified anatomical areas or specified sexual activities.
- (g) "Controlling Interest" means the power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The ownership, control, or power to vote twenty percent (20%) or more of any class of voting securities of a business shall be presumed, subject to rebuttal to be the power to direct the management, operation or policies of the business.
- (h) "Distinguished or Characterized by an Emphasis Upon" means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas," the films so described are those in which the dominant or principal character and theme are the exhibition or description of specified anatomical areas or specified sexual activities.
- (i) "Establish or Establishment" shall mean and include any of the following:
 - (1) The opening or commencement of a sexually oriented business as a new business;
 - (2) The conversion of an existing business, whether or not a sexually oriented business, to a sexually oriented business;
 - (3) The addition of a sexually oriented business to any other existing sexually oriented business; or
 - (4) The relocation of a sexually oriented business.
- (j) "Nudity" or "State of Nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the areola.
- (k) "Operate" or "Cause to be Operated" shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any person on

the premises of a sexually oriented business who is authorized to exercise overall operational control of the business or who causes to function or who puts or keeps in operation the business. 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. More than one person may be an "Operator" at any given time.

- (l) "Person" shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.
- (m) "Regularly Features" or "Regularly Shown" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.
- (n) "Semi-Nude" or "State of Semi-Nudity" shall mean a state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
- (o) "Semi-Nude Model Studio" means any place where a person, who regularly appears in a state of semi-nudity, is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons, except that such a modeling class operated:
 - (1) By a college, junior college, or university supported entirely or partly by taxation;
 - (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
 - (3) In a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing and where, in order to participate in a class a student must enroll at least three days in advance of the class, is not a "Semi-Nude Model Studio."
- (p) "Sexual Encounter Establishment" means a business or commercial establishment which, as one of its principal business purposes, offers, for any form of consideration, a place where two or more persons congregate, associate, or consort for the purpose of engaging in or viewing specified sexual activities or at least one of them appearing in a state of semi-nudity. The definition of "sexual encounter establishment" 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.
- (q) "Sexually Oriented Business" shall mean an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, semi-nude model studio, and/or sexual encounter establishment. The definition of "sexually oriented business" 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.
- (r) "Sexually Oriented Entertainment Activity" means the sale, rental, or exhibition for any form of consideration, of books, films, videocassettes, DVDs, magazines, periodicals, or live performances which are distinguished or characterized by an emphasis upon the exposure or display of specified sexual activities or specified anatomical areas.
 - (s) "Significant or substantial portion" means ten percent (10%) or more.
 - (t) "Specified Anatomical Areas" shall mean human genitals, anus, cleft of the buttocks, or the female breast.
 - (u) "Specified Sexual Activity" means any of the following:
 - (1) Sex acts, normal or perverted, including intercourse, oral copulation, masturbation or sodomy; or
 - (2) Excretory functions as a part of or in connection with any of the activities described in (1) above.
 - (v) "Transfer of Ownership or Control" of a sexually oriented business shall mean 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; or
 - (3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
 - (w) "Viewing Room" shall mean the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, DVD, or other video reproduction.
- (Ord. 2006-49. Passed 5-21-07.)

1195.03 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

- (a) A sexually oriented business shall not be operated or located on any parcel within 1,000 feet of:
 - (1) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
 - (2) A school (public/private) elementary/secondary as defined in Chapter 1103, Definitions, of the Planning and Zoning Code;
 - (3) A boundary of any residential zoning district;
 - (4) A park as defined in Chapter 1103, Definitions, of the Planning and Zoning Code;
 - (5) Any library, as defined in Chapter 1103, Definitions, of the Planning and Zoning Code;
 - (6) Another sexually oriented business.
- (b) No such business shall be located on any parcel or operated within 500 feet of any landmark or historic district.
- (c) Such businesses shall only be located in M-2 (General Manufacturing) or M-4 (Open Space Manufacturing) Zoning District.

- (d) No advertisements, displays, or other promotional materials displaying specified sexual activities or specified anatomical areas shall be shown or exhibited so as to be visible to the public from pedestrian sidewalks or walkways, or from other areas public or semi-public.
- (e) All building openings, entries, windows, etc. for adult uses shall be located, covered, or serviced in such a manner as to prevent a view into the interior from any public or semi-public area, sidewalk or street. For new construction, the building shall be oriented so as to minimize any possibility of viewing the interior from public or semi-public areas.
- (f) No screens, loudspeakers or sound equipment shall be used for adult motion pictures theaters (enclosed or drive-in) that can be seen or discerned by the public from public or semi-public areas.
- (g) For the purposes of this Section, measurements 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 a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or school, or to the nearest boundary of an affected public park, or residential district.
- (h) For the purposes of this Section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects from the closest exterior wall of the structure in which each business is located.
- (i) No person shall establish, operate or cause the establishment or operation of any sexually oriented business in violation of the provisions of this section. Nothing in this Section shall be construed to prohibit or limit the display, sale or rental of descriptive, printed, film or video material or any live performance which, taken as a whole, contains serious literary, artistic, political, medical, educational or scientific value.
- (j) Any sexually oriented business lawfully operating on the effective date of this Planning and Zoning Code that is in violation of Chapter 1195, Adult Regulations, of this Code shall be deemed a nonconforming use. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of a church, public or private school, residential district, public park or library within 1,000 feet, or a landmark or historic district within 500 feet, of the sexually oriented business. When a nonconforming sexually oriented business use of a structure or premises is voluntarily discontinued or abandoned for more than six months, the structure, building, or premises shall not thereafter be used except in conformity with the regulations of the zoning district in which it is located.
(Ord. 2006-49. Passed 5-21-07.)

1195.04 SEVERABILITY.

If any section, subsection or clause of this chapter shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected. (Ord. 2006-49. Passed 5-21-07.)