

ORDINANCE NO. 2004-4

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF CONEWAGO TOWNSHIP, DAUPHIN COUNTY, PENNSYLVANIA, PROVIDING FOR THE LICENSING OF ADULT BOOK STORES, SEXUALLY ORIENTED BUSINESSES, PROVIDING FOR REGULATION OF SEXUALLY ORIENTED BUSINESSES AND ADULT BOOKSTORES, INCLUDING ITS EMPLOYEES, AND PROVIDING FOR MISCELLANEOUS REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES AND ADULT BOOKSTORES, AND PROVIDING PENALTIES FOR VIOLATIONS HEREINAFTER.

BE IT ENACTED AND ORDAINED by the Board of Supervisors of Conewago Township, Dauphin County, Pennsylvania, hereby enacted and ordained as follows:

SECTION I: TITLE

This Ordinance shall be known as the Conewago Township Sexually Oriented Business Licensing Ordinance.

SECTION II: PURPOSE

It is the purpose of this Ordinance to regulate sexually oriented businesses and adult bookstores in order to protect the health, safety, morals and general welfare of the citizens of Conewago Township, Dauphin County, 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 Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any materials, including sexually oriented materials. Similarly, it is not the intent or effect 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.

SECTION III: DEFINITIONS

The following words and phrases, when used in this Ordinance, shall have the meanings ascribed to them as set forth hereinafter.

"Sexually oriented businesses" are those businesses defined as follows:

1. "Adult arcade" means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or

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other image producing machines, for viewing by five or fewer persons each, are regularly used to show 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."

2. commercial establishment which has 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, slides, or other visual representations which are characterized by and emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas;"
 - B) 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) An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas," and still be categorized by and emphasis on as an adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized by and emphasis on as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials characterized by and emphasis on depicting or description which depict or describe "specified sexual activities" or "specified anatomical areas;"

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3. "Adult cabaret" means a nightclub, bar, restaurant "bottle club," or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features: (a) persons who appear nude or in a state of nudity or semi-nude; (b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities," or (c) 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 motel" means a motel, hotel, or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, 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," and which advertises the availability of this sexually oriented type of 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, or (b) offers a sleeping room for rent for a period of time less than ten (10) hours; or (c) allows a tenant or occupant to sub-rent the sleeping room for a period of time of less than ten (10) hours.
5. "Adult motion picture theater" means a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.
6. "Adult theatre" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by and emphasis on exposure of "specified anatomical areas" or by "specified sexual activities."
7. "Escort" means a person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

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8. "Escort Agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
9. "Massage parlor" means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with "specified sexual activities," or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "specified anatomical areas." The definition of sexually oriented businesses shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.
10. "Nude Model Studio" means any place where a person, who regularly appears in a state of nudity or displays "specified anatomical areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons.
11. "Sexual encounter establishment" means a business or commercial establishment, that as one of its primary purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas" or activities when one or more of the persons is in a state of nudity or seminude. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.
12. "Employee" means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.
13. "Establishment" means and includes the following:

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- 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 of the sexually oriented businesses defined in this Ordinance;
 - C) The addition of any of the sexually oriented businesses defined in this Ordinance to any other existing sexually oriented business.
14. "Nudity" or "State of Nudity" means: (a) the appearance of human bare buttocks, anus, male genitals, female genitals, or the areola or nipple of the female breast; or (b) a state of dress which fails to opaquely and fully cover human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast; or (c) the showing of the covered male genital in a discernible turgid state.
15. "Operator" means and includes the owner, licenses holder, Custodian, manager, operator or person in charge of any permitted or licensed premises.
16. "Permitted or Licensed Premises" means any premises that requires a license and/or permit and that is classified as a sexually oriented business.
17. "Permittee and/or Licensee" means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.
18. "Person" means an individual, proprietorship, partnership, corporation, association or other legal entity.
19. "Public building" means any building owned, leased or held by the United States, the State, the County, the Township, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used for governmental purposes.
20. "Public park" or "recreation area" means public land 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, open space, wilderness areas, or similar public land within the Township which is under the control, operation, or management of the Township park and recreation authorities.

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21. "Religious institution" means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.
22. "School" means any public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities.
23. "Semi-Nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae and nipple of the female breast, as well as portions of the body covered by supporting straps or devices.
24. "Sexually Oriented Business" means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theatre, adult theatre, massage parlor, sexual encounter establishment, escorts, escort agency or nude model studio.
25. "Specified Anatomical Areas," as used in this Ordinance, means THE MALE GENITALS IN A STATE OF SEXUAL AROUSAL AND/OR THE VULVA OR MORE INTIMATE PARTS OF THE FEMALE GENITALS
26. "Specified Sexual Activities," as used in this Ordinance, means and includes any of the following:
 - A) The 'fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts
 - B) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
 - C) Masturbation, actual or simulated;
 - D) Human genitals in a state of sexual stimulation, arousal or tumescence;

- E) Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (4) of this subsection.
- 27. "Substantial Enlargement of a Sexually Oriented Business" means an increase in the floor areas occupied by the business by more than 15%, as the floor areas exist on the effective date of this Ordinance.
- 28. "Transfer of Ownership or Control of a Sexually Oriented Business" means and includes any of the following:
 - A) The sale, lease or sublease of the business;
 - B) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means;
 - C) The establishment of a trust, gift or other similar legal devise which transfers ownership or control of the business except for transfer by bequest or other operation of law upon the death of a person possessing ownership or control.

SECTION IV: LOCATION OF SEXUALLY ORIENTED BUSINESSES

This Ordinance hereby requires that sexually oriented businesses shall be permitted only after an application for a license has been filed with the Township and a license issued according to the provisions and procedures set forth hereinafter:

- 1. No person shall operate a sexually oriented business without a license; including sexually oriented businesses currently in operation.
- 2. No person shall operate or cause to be operated a sexually oriented business without complying with the provisions of the Conewago Township Zoning Ordinance and being issued a zoning permit.

SECTION V: LICENSES REQUIRED

1. No sexually oriented business shall be permitted to operate without a valid sexually oriented business license issued by the Township for the particular type of business. It shall be unlawful and a person commits a violation of this Ordinance if he/she operates or causes to be operated a sexually oriented business without a license.
2. The Board of Supervisors is responsible for granting, denying, revoking, renewing, suspending, and canceling sexually oriented business licenses. An application shall contain the following information:
 - A) The OWNER(S) name, and any aliases, plus a satisfactory submission of proof that the applicant is at least eighteen (18) years of age;
 - B) If a partnership, it shall state its complete name, and the names of all partners. whether the partnership is general or limited, and a copy of the partnership agreement, if any;
 - C) If it is a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that it is in good standing under the laws of the state of incorporation, the names of all directors, and persons in charge of the day to day operations of the sexually oriented business.
 - D) THE OWNER(S) OR ALL MEMBERS OF A CORPORATION SHALL INCLUDE A SET OF FINGERPRINTS IN THEIR APPLICATION FOR A SEXUALLY ORIENTED BUSINESS LICENSE.
 - E) ALL FEES ASSOCIATED WITH THE PROCESSING AND ISSUANCE OF A SEXUALLY ORIENTED BUSINESS LICENSE SHALL BE SET BY RESOLUTION BY THE CONEWAGO TOWNSHIP BOARD OF SUPERVISORS.
3. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s).
4. The applicant's mailing addresses and residential address.
5. A recent photograph of the applicant(s), plus the Social Security number of the applicant;

6. A certification that all the sexually oriented business complies with all other provisions of this Ordinance and any other local, state, or federal laws that regulates sexually oriented businesses.

SECTION VI: ISSUANCE OF LICENSES

The Conewago Township Board of Supervisors shall grant or deny an application for a license within sixty (60) days from the date of its filing.

SECTION VII: RENEWAL LICENSES

A license issued pursuant to this Ordinance is valid for a period of one (1) year. Any renewal of said license shall occur after an application is filed setting forth the information required for the initial license, confirming and certifying that the sexually oriented business has otherwise complied with all other provisions of this Ordinance, and all other Ordinances in the Township of Conewago, Dauphin County.

SECTION VIII: DENIAL OF A LICENSE

The Township Supervisors shall deny the application or any renewal thereof for any of the following reasons:

1. The applicant is under eighteen (18) years of age;
2. The applicant has overdue payments to the Township for taxes, fines, or penalties assessed against the applicant in relation to the sexually oriented business;
3. An applicant has failed to provide information required by this Ordinance;
4. The premises to be used for the sexually oriented business has not been approved as being in compliance with health, fire and building codes by state, federal or local agencies;
5. The application or renewal fee as not been paid, which said fee shall be set annually by resolution of the Township;
6. The granting of the application would violate a statute, ordinance or court order;
7. The applicant has a license under this Ordinance which has been suspended or revoked;

8. The applicant has been convicted of a misdemeanor or a felony within the last five (5) years.

SECTION IX: TRANSFER OF LICENSES

A license may not be transferred to any other person, partnership, corporation or entity, and must, at all times, remain in the name of the party to whom it is granted.

SECTION X: SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE

1. Each individual to be employed in a sexually oriented business shall pay a license fee as determined by Resolution of the Board of Supervisors of Conewago Township, said fee to cover the costs of the licensing application process.
2. Before any applicant may be issued a Sexually Oriented Business Employee License, the applicant shall submit a form to be provided to the Township Supervisors with the following information:
 - A) The applicant's name or any other names (including "stage" names) or aliases used by the individual;
 - B) Age, date, and place of birth;
 - C) Height, weight, hair and eye color;
 - D) Present residence address and telephone number;
 - E) Present business address and telephone number;
 - F) State driver's license or identification number;
 - G) Social Security number;
 - H) Acceptable written proof that the individual is at least eighteen (18) years of age, such as a birth certificate or driver's license;
 - I) Attached to the application form as provided above, a color photograph of the applicant, clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Township and/or State Police Department;

- J) A statement detailing the license or permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate, in this or any other municipality, county, state or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name, of the denying jurisdiction, and describe in full the reasons for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
- K) Whether the applicant has been convicted of a misdemeanor or felony offense. THE EMPLOYEE SHALL INCLUDE A CURRENT CERTIFIED COPY OF THEIR CRIMINAL HISTORY.

SECTION XI: PENALTIES

In addition to any other penalties under the Crimes Code, if any person fails or refuses to obey, comply with or violates any of the provisions of this Ordinance, such person upon being found liable for a violation, shall pay a civil penalty not to exceed \$1,000.00. Upon default of payment of such fee, such person may undergo imprisonment for a period not to exceed thirty (30) days.

BE IT ENACTED AND ORDAINED into an Ordinance this 10th day of November, 2004

ATTEST:

CONEWAGO TOWNSHIP
BOARD OF SUPERVISORS

SHIRLEY BRETZ, Secretary

By:
JAY M. BRANDT, Chairman

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