

**Ordinance No 2004 - 5**

**Conewago Township Zoning Ordinance Amendment**

Be it enacted and ordained under the grant of powers by the General Assembly of the Commonwealth of Pennsylvania, Act 247, the Pennsylvania Municipalities Planning Code, July 31, 1968, as amended.

**Section 1: Section 903 shall be amended as follows:**

- A. Wind energy conversion system may be allowed or denied by the Board of Supervisors, after recommendation by the Planning Commission, pursuant to the express standards and criteria set forth in Part 10 of this Chapter. (Ord. 1985-1, 10/9/1985, Art. 9

**Section 2: Section 903 shall be amended by adding the following Conditional Use:**

- B. Sexually Oriented Business may be allowed or denied by the Board of Supervisors, after recommendations by the Planning Commission, pursuant to the express standards and criteria set forth in Part 10 of this Chapter, and the Conewago Township Sexually Oriented Business Licensing Ordinance.

**Section 3: Section 1001 shall be renumbered as follows:**

Existing Section 1001 .24.F shall be renumbered to 26.

Existing Section 1001.25 shall be renumbered to 27

Existing Section 1001.26 shall be renumbered to 28

**Section 4: Section 1001 shall be amended by adding the following new Section:**

25. Purpose and Legislative Findings

A. Purpose

Pursuant to the authority granted in the Second Class Township Code to promote and secure the health, cleanliness, comfort and safety of the citizens of Conewago Township, to regulate and inspect the use and occupancy of public buildings, to regulate places of public entertainment, amusement and recreation, and to prevent and prohibit public nuisances due to adverse secondary effects, Conewago Township has developed the following provisions to minimize and control the adverse secondary effects of Sexually Oriented Businesses and thereby protect the health, safety and welfare of its citizens; protect the citizens' property values and character of surrounding neighborhoods; and deter the spread of blight.

The Board of Supervisors has determined that the following provisions and associated licensing requirements are a legitimate and reasonable means of accountability to insure that operators of Sexually Oriented Businesses comply with reasonable regulations and to

insure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

The Board of Supervisors does not intend the following provisions 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. It is not the intent of the Board in enacting this legislation to deny any person rights of speech protected by the Constitution of the United States or the Constitution of Pennsylvania, or both, nor is it the intent of the Board to impose, by this legislation, any additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, videotapes, books and other materials. Further, by enacting this legislation, the Board does not intend to deny or restrict the rights of any adult to obtain or view, or both, any sexually oriented materials or conduct protected by the Constitution of the United States or the Constitution of Pennsylvania, or both, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of sexually oriented may have to sell, distribute, or exhibit these materials.

B. Legislative Findings: The Board of Supervisors finds:

1. Law enforcement personnel have determined, and statistics and studies performed in a substantial number of communities in this Commonwealth, and in the United States indicate that Sexually Oriented Businesses have adverse secondary effects, including those specified and recognized at 68 Pa. C.S.A. § 5501(a), which secondary effects should be regulated to protect the public health, safety and welfare. These secondary effects include, but are not limited to, the spread of communicable diseases, performance of sexual acts in public places, presence of discarded sexually oriented materials on public and private property, sexual harassment, obscenity, prostitution and other illegal sexual activities, crime, decreased property values and neighborhood deterioration.
2. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in depositions and hearings conducted by the United States District Court for the Middle District of Pennsylvania, Case No. 3:CV99-1801 (Judge Munley), and by the United States District Court for the Western District of Pennsylvania, Case No. 98-1140 (Judge Lancaster); and in reports made available to the Township and on 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; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Biloxi, Mississippi; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the Report of the Attorney General's Working Group On The Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Township finds:

- (a) Sexually Oriented Businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
- (b) Certain employees of Sexually Oriented Businesses defined in this engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (c) Sexual acts, including masturbation, and oral and anal sex, occur at Sexually Oriented Businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. Furthermore, adult bookstores tend to attract homosexual men who engage in unprotected, high-risk sexual activities.
- (d) Offering and providing such space encourages such activities, which creates unhealthy conditions.
- (e) Persons frequent certain adult theatres, adult arcades, and other Sexually Oriented Businesses for the purpose of engaging in sex within the premises of such Sexually Oriented Businesses.
- (f) At least 50 communicable diseases may be spread by activities occurring in Sexually Oriented Businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
- (g) The Surgeon General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
- (h) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- (i) Sanitary conditions in some Sexually Oriented Businesses are unhealthy, in part, because the activities conducted there are unhealthy, and in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

- (j) Numerous studies and reports have determined that semen is found in the areas of Sexually Oriented Businesses where persons view “adult” oriented films.
  - (k) Numerous studies have indicated that Sexually Oriented Businesses have a substantial negative impact on property values and cause neighborhood blight.
  - (l) The findings noted in paragraph (a) through (k) raise substantial governmental concerns.
3. Sexually Oriented Businesses have adverse secondary effects in the nature of a public nuisance, which secondary effects should be regulated to protect the public health, safety and welfare.
  4. Sexually Oriented Businesses have operational characteristics, which should be reasonably regulated in order to protect those substantial governmental concerns.
  5. As an integrated part of this legislation, a reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the Sexually Oriented Business. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the Sexually Oriented Business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the Township. It is appropriate to require reasonable assurances that the licensee is the actual operator of the Sexually Oriented Business, fully in possession and control of the premises and activities occurring therein.
  6. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters and bookstores.
  7. Requiring licensees of Sexually Oriented Businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
  8. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the Sexually Oriented Business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

Conewago Twp. Ord. No. 2004-5 – Sexually Oriented Business – 11/10/2004

9. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this Ordinance is designed to prevent or who are likely to be witnesses to such activity.
  10. The fact that an applicant for an adult or sexually oriented use license has been convicted of a sexually related crime leads to the rational assumption that the applicant is likely to engage in that conduct in contravention of this Ordinance.
  11. The barring of such individuals from the management of sexually oriented uses for a period of years serves as a deterrent to and prevents conduct, which leads to the transmission of sexually transmitted diseases.
  12. The general welfare, health and safety of the citizens of the Township will be promoted by the enactment of this Ordinance.
  12. The reasonable regulation and supervision of Sexually Oriented Businesses tends to discourage sexual acts and prostitution and thereby promote the health, safety and welfare of patrons, clients and customers of these businesses.
  13. The continued unregulated operation of such Sexually Oriented Businesses would be detrimental to the general health, safety and welfare of citizens of Conewago Township.
- C. Sexually-Oriented Businesses may be established in the Wholesale-Manufacturing District as a Conditional Use subject to review and submission requirements as required in the Zoning Ordinance and specifically the following conditions:
1. Persons or owners who intend to open a Sexually Oriented Business must obtain from the Township a permit, upon the effective date of adoption of a Licensing Ordinance, to operate such an enterprise and must pay a license fee as set by the resolution of the Supervisors of the Township.
  2. Sexually Oriented Businesses cannot be located within the following separation distances:
    - (a) No Sexually Oriented Business shall operate or be established within one thousand (1,000) feet of any religious institution, school, public or private park, or youth club or organization.
  3. The separation distance between a Sexually Oriented Business and the above--referenced uses shall be measured in a straight line, without regard for intervening structures, from the property line associated with the identified use.
    - (a) Sexually Oriented Businesses shall be fully screened from adjoining properties with suitable evergreen trees as to provide a complete visual

barrier between the Sexually Oriented Use and adjoining property. Conewago Township Board of Supervisors shall approve the screening plan.

**Section 5: Section 1001.27.D shall be deleted and the following Sections relettered:**

Existing Section E shall be relettered to D

Existing Section F shall be relettered to E

Existing Section G shall be relettered to F

**Section 6: All other Sections of the Conewago Township Zoning Ordinance not heretofore amended shall remain the same.**

**Section 7: REPEALER. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.**

**Section 8: EFFECTIVE DATE. This Ordinance shall take effect on the 13<sup>th</sup> day of October 2004**

**Section 9: ENACTMENT. ENACTED AND ORDAINED INTO AN ORDINANCE THIS 10<sup>th</sup> DAY OF NOVEMBER, 2004**

Conewago Township  
Dauphin County, Pennsylvania

ATTEST: Shirley Bretz, Secretary

Jay Brandt, Chairman  
John Rochat, Vice-Chairman  
Galen Shelly, Supervisor

\\GRACELAND\VOL2\SHARE\02\021 141 03\50B\Zontng Amendmct.doc

**Disclaimer:** This computer version of a public record was prepared by *Conewago Online*, which is not affiliated with the township government. Accuracy is not guaranteed. Last revised: 11/10/2004 01:00 pm. © 2004 by Joel Buckley.