ORDINANCE NO. 1-2011

AN ORDINANCE AMENDING THE CODE OF THE TOWNSHIP OF GREENE, CHAPTER 170, ZONING TO ADD SEXUALLY ORIENTED BUSINESSES AS A I-DISTRICT CONDITIONAL USE

BE IT ENACTED AND ORDAINED by the Supervisors of Greene Township, Beaver County, Pennsylvania, following public hearing pursuant to public notice, that Ordinance No. 1-2003, the "Code of the Township of Greene," is hereby amended as follows:

I. Chapter 170, Article III, §170-6, Definitions, shall be amended as follows:

A. The following definitions shall be deleted:

1. Hotel, Motel, Boarding or Lodging House
2. Personal and Business Services

B. The following definitions shall be added:

1. ADULT ARCADE - 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 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 the depicting or describing of specified sexual activities or specified anatomical areas.

2. ADULT BOOKSTORE or ADULT VIDEO STORE

A. A commercial establishment which, as one of its business purposes, offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, videocassette or video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or

(2) Instruments, devices or paraphernalia which are designated for use in connection with specified sexual activities.

B. A commercial establishment may have other business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore or adult video store so long as one of its business purposes is the offering for sale or rental for consideration of the specified materials which depict or describe specified sexual activities or specified anatomical areas.

3. ADULT CABARET - A nightclub, bar, restaurant or similar commercial establishment which regularly features:

   A. Persons who appear in the state of nudity; or

   B. Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

   C. Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified anatomical areas or by specified sexual activities.

4. ADULT DAY CARE - A service offered to adults with supervisory needs as an accessory to assisted living or nursing facilities.

5. ADULT MOTEL - A hotel, motel or similar commercial establishment which:

   A. Offers accommodations to the public for any form of consideration for the purpose of providing patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the description of specified anatomical areas or by specified sexual activities, and has a sign visible from the public right of way which advertises the availability of this adult-type of photographic reproductions; or

   B. Offers any single sleeping room for rent three or more times in one calendar day.

6. ADULT MOTION-PICTURE THEATER - A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified anatomical areas or by specified sexual activities.

7. ADULT THEATER - A theater, concert hall auditorium, stage or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

8. BOARDINGHOUSE - Any dwelling in which more than three persons either individually or as families are housed or lodged for hire with or without meals. A rooming house or a furnished room house shall be deemed a boardinghouse.

22. SEXUAL ENCOUNTER CENTER - A business, commercial enterprise, or adult club, whether or not for profit, that, as one of its primary business purposes, offers for any form of consideration:

A. Physical contact in the form of wrestling or tumbling between persons of the same or opposite sex; or

B. Activities between persons of the same or opposite sex when one or more of the persons is in a state of nudity or seminude.

23. SEXUALLY ORIENTED BUSINESS - An adult arcade, adult bookstore or adult video store, adult cabaret, adult club, adult motel, adult motion-picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

24. SPECIFIED ANATOMICAL AREAS - The male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

25. SPECIFIED SEXUAL ACTIVITIES

A. Includes any of the following:

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

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;

(3) Masturbation, actual or simulated; or

(4) Excretory functions as part of or in connection with any of the activities set forth in Subsection A(1) through (3) above.

26. TOWNSHIP – The Township of Greene

C. The following definitions shall be amended:

1. OWNER - Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a court.

2. PRIVATE CLUB AND/OR LODGE - An organization, including fraternal clubs, lodges, social clubs and recreational clubs, catering exclusively to members and their guests; or premises and buildings for recreation or athletic purposes which are not conducted primarily for gain, provided that any vending stands, merchandising or commercial activities are conducted only as required generally for the membership of such club. A sexual encounter center and sexually oriented business which are regulated under §170-33.E are specifically excluded from the definition of private club and/or lodge.

II. Chapter 170, Article XI, I Industrial District shall be amended as follows:

A. Chapter 170, Article XI, I Industrial District, §170-32, Statement of Purpose and Use Summary, shall be amended as follows:

"Sexually Oriented Business" shall be added as an I Conditional Use.

B. Chapter 170, Article XI, I Industrial District, §170-33, Conditional Use Provisions, shall be amended by adding the following:

§ 170-33.E Sexually oriented business operations.

(1) Purpose and intent. It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety and general welfare of the citizens of the Township and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented business within the Township. The provisions of this chapter have neither the purposes nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect 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.

(2) Classification. Sexually oriented businesses are classified as follows:

(a) Adult arcades.

(b) Adult bookstores or adult video stores.

(c) Adult cabarets.

(d) Adult motels.

(e) Adult motion-picture theaters.

(f) Adult theater.

(g) Escort agencies.

(h) Nude model studios.

(i) Sexual encounter centers.

(3) Location and operation of sexually oriented business.

(a) A person is guilty of a violation of this chapter if he operates or causes to be operated a sexually oriented business outside of the district in which a sexually oriented business is a permitted use. No sexually oriented business shall be located outside a district in which a sexually oriented business is a permitted use. Sexually oriented businesses, as defined herein, shall be permitted in the I, Industrial Zoning District of Greene Township as a conditional use.

(b) No person may operate or cause to be operated a sexually oriented business within 1,000 feet of:

[1] A church.

[2] A public or private pre-elementary, elementary or secondary school.

[3] A public library.

[4] A child-care facility or nursery school.

[5] A public park.

[6] A nursing home.

[7] A sanitarium.

[8] A retirement or convalescent home.

[9] A group home.

[10] A personal care home.

[11] An establishment which is licensed to and does sell alcoholic beverages.

[12] Other sexually oriented businesses.

[13] A residential boundary (A-1, R-1, or R-2 Zoning District).

[14] Property boundary of residential dwelling.

(c) A person is guilty of a violation of this chapter if he causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building, structure or portion thereof.

(d) For the purpose of the ordinance, measurement 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 listed in Subsection (3)(b)[1] to [14] above.

(e) For purposes of Subsection (3)(b)([12]) 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 closed exterior wall of the structure in which each business is located.

(f) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit, to those premises listed in Subsection (3)(b)[1] to [14] above within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and does not apply when an application for a permit is submitted after a permit has expired or has been revoked.

(g) All activities pertaining to sexually oriented businesses shall be conducted entirely within the confines of the building. No theater which shows adult-related films shall project the film outside the confines of a building. No music or sound emitting from the business shall be audible to normal human hearing at any time at any exterior property line of the business.

(h) The following hours of operation shall be adhered to by all sexually oriented businesses:

[1] No sexually oriented business shall be open from 2:00 a.m. to 11:00 a.m. daily.

[2] No sexually oriented business shall be open on Sunday and holidays except that a sexually oriented business open on Saturday may remain open until 2:00 a.m. on Sunday morning.

(i) The maximum gross floor area of any building which is utilized for an adult-related business shall be 2,500 square feet.

(j) No exterior sign which advertises any adult-related business shall include any lewd or obscene work or any figure, picture or painting which utilizes sexually explicit graphics. Other regulations pertaining to commercial signs in this chapter shall also be adhered to.

(k) To ensure that the regulations of this section are adhered to by the applicant, the following information shall be provided with the application for a conditional use:

[1] A site survey of the property and building proposed for the sexually oriented business and a survey illustrating the distance to the location, size and type of all buildings and uses within 2,500 feet of the building proposed for the business. Also, the zoning district classification within 2,500 feet of the property and building proposed for the business shall be illustrated on the site survey. The survey shall be prepared and sealed by a surveyor licensed by the State of Pennsylvania and shall be at a scale no less than one inch to 100 feet.

The survey shall indicate the scale, date drawn, North point, tax parcel number of all parcels illustrated, the names of any roads or highways illustrated and shall be on paper measuring no less than 24 inches by 36 inches. Fifteen copies of the survey shall be submitted with the application.

[2] The above-referenced site survey shall indicate the proposed parking layout, landscaping, lighting, sign location, building location and any other exterior improvements.

(l) In addition to a conditional use permit, a site plan shall be required for the development of the site. Requirements for the site plan are in Chapter 146, Subdivision and Land Development, and this chapter.

(m) Alcoholic beverages shall not be permitted on the premises of a sexually oriented business.

III. Chapter 170, Article XVI, §170-74, Zoning Permits and Occupancy Permits, shall be amended by adding the following:

A (5) The operation of or cause to operate a sexually oriented business

a) The operation of or cause to operate a sexually oriented business, other than an adult motel, which maintains on the premises one or more viewing rooms for live performances, film or videocassette or other video or other image production or reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

i. The application for a permit to operate a sexually oriented business shall be accompanied by a floor plan and plot plan diagram of the premises showing a plan thereof specifying the location of one or more managers' stations, the location of all viewing rooms, partitions and doors and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A managers' station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted if granted. A professionally prepared diagram in the nature of an engineer's or architects blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all interior areas of the premises to an accuracy of plus or minus six inches. The Zoning Officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

ii. The application should be sworn to be true and correct by the applicant.

iii. No alteration in the configuration or location of a managers' station may be made without the prior approval of the Zoning Officer or his designee.

8

iv. It is the duty of the owners and operators of the premises to ensure that at least one employee is on duty and situated in each managers' station at all times that any patron is present inside the premises.

v. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a managers' station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video reproduction or viewing equipment. If the premises has two or more managers' stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view from at least one of the managers' stations of each area of the premises to which any patron is permitted access for any purpose. The view required in this subsection must be by direct line of sight from the managers' station. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a managers' station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video reproduction or viewing equipment. If the premises has two or more managers' stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view from at least one of the managers' stations of each area of the premises to which any patron is permitted access for any purpose. The view required in this subsection must be by direct line of sight from the managers' station.

vi. It shall be the duty of the owners and operators and it shall also be the duty of any agents and employees present on the premises to ensure that the view area specified in §170-74 (A) (5) of this section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (A)(5)[1] of this section.

vii. No viewing room may be occupied by more than one person at any time. No connections or openings to an adjoining viewing room shall be permitted.

viii. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle as measured at the floor level.

ix. It shall be the duty of the owners and operators and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

b) A person having a duty under §170-74 (A) (5) is guilty of a violation of this chapter if he knowingly fails to fulfill that duty.

c) Exemptions. It is a defense to prosecution under §170-33(E)(3) and subsection (A) (5) that a person appearing in a state of nudity did so in a modeling class operated:

i. By a proprietary school, licensed by the Commonwealth of Pennsylvania or a college, junior college or university supported entirely or partly by taxation;

ii. 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

iii. In a structure:

(a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

(b) Where, in order to participate in a class, a student must enroll at least three days in advance of the class; and

(c) Where no more than one nude model is on the premises at any one time.

d) Injunction. A person who operates or causes to be operated a sexually oriented business without a valid permit or in violation of this chapter is subject to an action in equity or suit for injunction as well as citations for violations of this chapter.

e) The Lot, Area and Dimensional requirements set forth for the I Industrial District, in the Appendices for Chapter 170 shall be amended in accordance with the terms of this Ordinance.

f) Permit requirements

i. Any person who operates a sexually oriented business without a valid permit issued by the Township is guilty of a violation of the Zoning Ordinance of the Township.

ii. The applicant must comply with the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the Zoning Officer.

iii. If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has 10% or greater interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity which wishes to operate such a business, each individual having a direct or indirect interest of 10% or greater in the corporation must sign the application for a permit as applicant.

iv. The fact that a person possesses other types of Township permits does not exempt the person from the requirement of obtaining a sexually oriented business permit.

g) Issuance of permit.

i. The Township Zoning Officer shall approve the issuance of a permit to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true:

(a) The proposed Adult Business does not conform to the township ordinance

(b) An applicant is under 18 years of age.

(c) An applicant or an applicant's spouse is overdue in his payment to the Township of taxes, fees, fines or penalties assessed against him or imposed upon him in relation to a sexually oriented business.

(d) An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the application form.

(e) An applicant is residing with a person who had been denied a permit by the Township to operate a sexually oriented business within the preceding 12 months or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.

(f) The premises to be used for the sexually oriented business have been reviewed and have been disapproved by the Zoning Officer as not being in compliance with applicable laws and ordinances.

(g) The permit fee required by this chapter has not been paid.

(h) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.

(i) An individual applicant or any individual holding a direct or indirect interest of more than 10% of a corporate applicant or any of the officers and directors of a corporate applicant, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; or the manager or other person in charge of the operation of the applicant's business, has or have been convicted of an offense involving sexual misconduct within the Commonwealth of Pennsylvania, including but not limited to prostitution, obscenity and possession of child pornography, or convicted of any offense in any jurisdiction other than the Commonwealth of Pennsylvania that would have constituted an offense involving sexual misconduct if committed within the Commonwealth of Pennsylvania. In order for approval to be denied pursuant to this subsection, the person or persons' convictions or release in connection

(a) Subsection L(ii)(a) above, the revocation shall be effective for two years in the event of a misdemeanor or five years in the case of a felony.

m) Transfer of permit

i. A permittee shall not transfer his permit to another person. A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application.

12

ORDAINED AND ENACTED this 7th day of MARCH, 2011.

ATTEST:

Sandra J. Wright, Secretary

BOARD OF SUPERVISORS OF
GREENE TOWNSHIP

Michael G. Allison, Chairman

Russell D. Morgan, Vice-Chairman

John P. Allison, Supervisor