

**LEBOEUF TOWNSHIP
ERIE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2010- 1

AN ORDINANCE

ADOPTING AN ORDINANCE ENTITLED "PUBLIC INDECENCY", PROHIBITING CERTAIN UNLAWFUL ACTS IN PUBLIC PLACES, PROVIDING DEFINITIONS RELATING THERETO, AND PROVIDING RESTRICTIONS ON THE OPERATION, CONDUCT AND LOCATION FOR ADULT ENTERTAINMENT OR ADULT-ORIENTED ESTABLISHMENTS OPERATING WITHIN LEBOEUF TOWNSHIP, ERIE COUNTY; PROVIDING PENALTIES FOR THE VIOLATORS THEREOF, INCLUDING FINES, IMPRISONMENT AND DECLARATION OF PUBLIC NUISANCE.

WHEREAS, the LeBoeuf Township Supervisors (the "Supervisors") of the LeBoeuf Township (the "Township"), Erie County, Pennsylvania have at various times expressed concern regarding the negative secondary effects caused by the location of adult-oriented and adult entertainment establishments on surrounding business and residential neighborhoods and that certain lewd, immoral and indecent activities carried on in public places are highly detrimental to the public health, safety and welfare, and lead to the debasement of both women and men, the exposure of minors to indecent activity, the promotion of violence, public intoxication, prostitution and other serious criminal activity; and

WHEREAS, the Supervisors are fully aware of and fully respect the fundamental constitutional guarantees of free speech and free expression and realizes that restrictions of such freedoms must be carefully drafted and enforced so that speech and expression are not curtailed beyond the point at which it is essential to further the Township's substantial interests in promoting and protecting the public health, safety and welfare, in preventing crime, in protecting retail trade and maintaining property values and in preserving the quality of residential neighborhoods, commercial districts and rural areas; and

WHEREAS, the Supervisors have, at various times, expressed its findings that the presence of adult entertainment and adult-oriented establishments have the negative secondary effects of decreasing commercial and residential property values, attracting transients, increasing traffic congestion and parking problems, traffic accidents and littering of discarded materials of a sexual nature, decreasing retail trade and the resulting loss of business, as well as increasing certain lewd, immoral and indecent activities and crime, such acts which are detrimental to the public health, safety and welfare and which could lead to the debasement of children, women and men, the exposure of minors to indecent activity and the promotion of violence, intoxication and other serious criminal activities; and

WHEREAS, the Supervisors are particularly concerned with the hours of operation of adult-oriented and adult entertainment establishments as much of the area of the Township is zoned commercial use which also allows, and which has, substantial residential use; and

WHEREAS, adult-oriented and adult entertainment establishments which operate late into the night and early morning create increased traffic congestion on primarily unlit rural roads within areas heavily used as residences and further create parking problems on such roads and which would cause disturbances and loud noise in such residential use areas; and

WHEREAS, the Supervisors have expressed their intention to appropriately and constitutionally regulate certain lewd and immoral activities carried on in public places; and

WHEREAS, the Supervisors have determined that it is in the best interest of the citizens of the Township to further regulate the operation of adult entertainment and adult-oriented establishments to protect the health, safety and welfare of the citizens and to preserve the quality of residential use areas through the adoption of this Ordinance; and

WHEREAS, over the years, studies have been initiated by other municipalities throughout the United States of America which have documented the negative secondary effects caused by the location of adult entertainment and adult-oriented establishments; and

WHEREAS, the Supervisors accordingly recognize, find and adopt the following studies which have found, among other things, that adult-oriented and adult entertainment establishments cause negative secondary effects to occur:

1. Survey of Appraisers, Fort Worth and Dallas; Effects on Land Uses on Surrounding Property Values, September 2004.
2. Adult Business Study, Town and Village of Ellicottville, Cattaraugus County, New York, January 1998
3. Crime Risk in the Vicinity of a Sexually Oriented Business: A Report to the Centralia City Attorney's Office, February 2004
4. Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report to the City Attorney; City of Los Angeles – May 2007
5. Study and Recommendations for Adult Entertainment in the Town of Islip, September 1980.
6. Adult Entertainment Businesses in Indianapolis, 1984.
7. Adult Business Study of City of Phoenix Planning Department of 1979.
8. Effects of Adult Entertainment Businesses on Residential Neighborhoods, City of El Paso, 1986.
9. Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Time Square Area, April 1994.
10. Adult Entertainment Study, City of New York, 1994;
11. An Analysis of the effects of SOB's on the Surrounding Neighborhoods, Dallas, Texas, April 1997; and

WHEREAS, the Supervisors recognize, find and assert that sexually oriented businesses and adult oriented businesses are frequently used for unlawful sexual activities including public sexual indecency, prostitution and other sexual encounters; and

WHEREAS, the Supervisors are aware that the General Assembly of the Commonwealth of Pennsylvania has enacted legislation at 68 Pa. C.S.A. §§ 5501, et seq., which imposes regulations upon the activities of adult-oriented and adult entertainment establishments, which regulations exist independently of any action by this Township; and

WHEREAS, the Supervisors concerns over sexually transmitted diseases is a legitimate health concern of the Township which demand reasonable regulation of public indecency to facilitate and combat these secondary affects to the public health, safety and welfare; and

WHEREAS, the Supervisors have determined that, to limit the negative secondary effects caused by the location of adult entertainment or adult-oriented establishments, and to protect the health, welfare and morals of its citizens, it is in the best interest of the Township to better define such use by providing for definitions of adult oriented uses and related definitions, and to constitutionally restrict the location, operation and conduct of adult entertainment or adult-oriented establishments within the Township;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE TOWNSHIP SUPERVISORS OF LEBOEUF TOWNSHIP, ERIE COUNTY, PENNSYLVANIA, AS FOLLOWS:

Section 1.01 Definitions.

1.01.1 Terms used in this ordinance shall be given their general and customary meaning and, where such terms are defined in statutes of the Commonwealth of Pennsylvania or ordinances of LeBoeuf Township, such definitions shall control.

1.01.2 When used in this ordinance, the following terms shall be defined as follows:

- A. **Adult Bookstore** – An establishment having a substantial or significant portion of its stock and trade in; or an establishment which as one of its principal business purposes, offers for sale adult oriented merchandise and which may in conjunction therewith, has facilities for the presentation of adult entertainment for observation by patrons.
- B. **Adult Drive-In Movie Theater** – An outdoor movie theater attended primarily by patrons in their automobiles, used for presenting material, in any form or media (i.e. live shows, film, television, etc.) 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.

C. Adult Entertainment -

(1) An exhibition of any adult-oriented motion pictures, meaning those distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(2) A live performance, display or dance of any type which has as a significant or substantial portion of the performance any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, removal of articles of clothing or appearing unclothed, pantomiming, modeling or any other personal services offered customers.

D. Adult mini-motion picture theater - An enclosed building with a capacity of less than 50 persons which has a principal business purpose of exhibiting, presenting or selling material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

E. Adult motion picture theater - An enclosed building with a capacity of 50 or more persons which has a principal business purpose of exhibiting, presenting or selling material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

F. Adult-oriented establishment - The term includes, without limitation, the following establishments when operated for profit, whether direct or indirect:

(1) Adult bookstores.

(2) Adult motion picture theaters.

(3) Adult mini-motion picture theaters.

(4) Adult Retail Use Establishments.

(5) Any premises to which the public, patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, studios, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult-oriented motion pictures or where an entertainer provides adult entertainment to a member of the public, a patron or a member.

(6) An adult entertainment studio or any premises that are physically arranged and used as such, whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

The term "**booths, cubicles, rooms, studios, compartments or stalls**" for purposes of defining adult-oriented establishments does not mean enclosures which are private offices used by the owner, manager or persons employed on the premises for attending to the tasks of their employment, and which are not held out to the public for the purpose of viewing motion pictures or other entertainment for a fee, and which are not open to any persons other than employees.

- G. Adult Oriented Merchandise** – Includes any foods, products, commodities, or other wares, including but not limited to adult-oriented devices which are designed or marketed primarily for the stimulation of specified anatomical areas or sadomasochistic activity, videos, CD ROMS, DVD's, computer disks or other storage devices, magazines, books pamphlets, posters, cards, periodicals or non-clothing novelties which depict, describe or simulate specified anatomical areas or specified sexual activities. This definition shall not apply to birth control devices.
- H. Adult Retail Use Establishment**– An enclosed building, or any portion thereof, which, for money or any other form of consideration, devotes a significant or substantial portion of stock in trade, to the sale, exchange, rental, loan, trade, transfer or viewing of adult orientated merchandise.
- I. Nude** – Being in a state of nudity.
- J. Nudity** – The showing of the human male or female genitals or pubic area or of the buttocks with less than a fully opaque covering; and/or the showing of the female breast with less than a fully opaque covering or any part of the breast below a point immediately above the top of the areola.
- K. Public Indecency** – Shall be deemed to include all actions declared in this ordinance to constitute public indecency. The term shall not include and shall not apply to:
- (1) The act of performing or dancing in the nude in an adult-oriented establishment or in a play or performance open to the general public where the fact that and the existence of the nude performance is made known to patrons prior to their entry to the premises and this ordinance is not otherwise violated; or
 - (2) Any child under ten (10) years of age; or
 - (3) Any individual exposing a breast in the process of breastfeeding an infant under two (2) years of age; or
 - (4) Any person being in a state of nudity other than in a public place, or in circumstances of emergency or which are not within the reasonable control of that person.
- L. Public Place** – Includes all outdoor places owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public, whether or not an admission charge is levied.
- M. Specified anatomical areas** – As defined in 68 PA.C.S.A. 5502, as may be amended.

N. Specified sexual activities - As defined in 68 PA.C.S.A. 5502, as may be amended.

1.02 Public Indecency Prohibited. No person shall commit an act of public indecency in LeBoeuf Township or maintain acts of public indecency as a property owner, lessee, proprietor or manager of a business or other establishment, and it shall be unlawful for any such person to commit or maintain any act(s) of public indecency. An act of public indecency occurs when a person knowingly, intentionally or recklessly, in a public place:

1.02.1 Engages in sexual intercourse.

1.02.2 Engages in deviant sexual intercourse as defined by the Pennsylvania Crimes Code, as may in the future be amended.

1.02.3 Engages in any specified sexual activity as defined at 68 Pa. C.S.A. § 5502, as may in the future be amended, this including:

A. Causing one's own or another person's human genitals to be in a state of sexual stimulation or arousal.

B. Acts of human masturbation, sexual intercourse or sodomy.

C. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts of oneself or any other person in a public place not constituting an adult entertainment for which such activity as to oneself may be an element of the performance.

D. In adult-oriented entertainment, plays or performances, the fondling or erotic touching of human genitals, pubic region, buttocks or female breasts of another person by a performer, patron or other person, and/or of a performer by any patron or person not involved in the play or performance.

1.02.4 Appears in a state of nudity, other than as a performer in a dance, play or performance for which nudity constitutes an aspect of the performance.

1.02.5 Brings, allows or condones entry of a minor to an adult-oriented establishment.

1.02.6 Brings, allows or condones entry of or access by a minor to adult entertainment or adult-oriented materials in any establishment, whether or not an adult-oriented establishment as defined herein or in the Township Zoning Ordinance.

1.03 Regulations on Operation and Conduct of Adult-Oriented Establishments.

1.03.1 No establishment constituting an adult entertainment or adult-oriented establishment shall be open for business earlier than 10:00 a.m. on Mondays through Saturdays or 12:00 p.m.

on Sundays, and no such establishment shall be open for business later than 12:00 a.m. on any day of the week.

- 1.03.2 No establishment constituting an adult entertainment or adult-oriented establishment shall be situated or located nearer than one mile from the nearest property line of any other adult entertainment or adult-oriented establishment, or situated or located nearer than 1600 feet from any bottle club, church, day care, school or other institution of learning or education, hospital, library, park, playground or family social service provider. Furthermore, no establishment constituting an adult entertainment or adult-oriented establishment shall be situated or located within 350 feet of any structure utilized as a residence.
- 1.03.3 The Township's Code Enforcement Officer and his or her designees are authorized to inspect adult-oriented establishments at reasonable times for purposes of enforcing the regulations of State law and this ordinance.
- 1.03.4 The Township Supervisors and/or the Township's Code Enforcement Officer, through the Solicitor, shall be authorized to commence by the Township actions at law or in equity to enjoin violations of this ordinance or of 68 Pa. C.S.A. §§ 5501, et seq.
- 1.04 Declaration of Public Nuisance. In addition to the specific penalties provided in this ordinance for violations, it is hereby declared that any building, structure or portion thereof regularly used for acts of public indecency in violation of this ordinance is a public nuisance, subjecting the owner, lessee, proprietor or other operator thereof to any and all actions authorized by the Commonwealth of Pennsylvania or LeBoeuf Township's various Ordinances for the abatement of public nuisances. In the event of any action by the Township to abate a public nuisance, the owner of the subject property shall further be liable for payment to the Township of all costs, attorneys' fees and other related expenses incurred by the Township in such action.

Section 2. Enforcement. The Township's Code Enforcement Officer is hereby authorized and directed to enforce the terms of this ordinance.

Section 3. Penalties for Violation. Any person or entity committing any act(s) prohibited herein shall violate this ordinance. Whoever violates this ordinance, either by commission of a public indecency, or by the promotion or maintenance of public indecency as property owner, proprietor or manager of a business or similar establishment, shall be guilty of a summary offense, and, upon conviction, shall be sentenced to pay a fine of not more than \$1,000.00, or be imprisoned for not more than 90 days, or both. In any enforcement action, a person or entity found to have violated this ordinance shall also be obligated within the judgment to pay all costs and attorney's fees incurred by the Township in the enforcement action. Each day a violation of this ordinance continues shall constitute a separate offense. Each violation of this ordinance shall constitute a separate offense, subject to the prescribed penalty for each violation.

Section 4. Construction and Severability. It is the intention of the Township Supervisors that the provisions of this ordinance be construed, enforced and interpreted in such a manner as

will cause the least possible infringement of the constitutional rights of free speech, free expression, due process, equal protection or other fundamental rights consistent with the purposes of this ordinance. Should a court of competent jurisdiction determine that any part of this ordinance, or any application or enforcement of it is excessively restrictive of such rights or liberties, then such portion of the ordinance, or specific application of the ordinance, shall be severed from the remainder, which shall continue in full force and effect.

Section 5. All Ordinances and parts thereof conflicting herewith, shall be and the same are hereby repealed.

Section 6. This Ordinance shall become effective five (5) days after final passage and approval by the Township Supervisors.

ORDAINED and ENACTED this 28th day of July, 2010.

ATTEST:

LEBOEUF TOWNSHIP

Catherine Wise
Secretary

Richard Gilmore
Supervisor

James H. Glover
Supervisor

Jack Merry
Supervisor

I hereby certify that the above is a true copy of the LeBoeuf Township Ordinance No. 1-2010 adopted by the Supervisors of LeBoeuf Township on July 28, 2010, and advertised in the *Erie Times Newspaper* on July 11, 2010.

Catherine Wise
Secretary

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