ORDINANCE NO. 2015-17

AN ORDINANCE AMENDING SECTION 1204.04(D)(15) AND SECTION 1217.02 OF THE CITY OF MONROE PLANNING AND ZONING CODE TO AMEND REGULATIONS AND DEFINITIONS CONCERNING SEXUALLY ORIENTED BUSINESSES.

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City; and

WHEREAS, the City Council finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, *see, e.g., Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10th Cir. 2003) ("On its face, the Ordinance applies to all 'sexually oriented businesses,' which include establishments such as 'adult motels' and 'adult novelty stores,' which are not engaged in expressive activity."); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual devices); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); and

WHEREAS, there is documented evidence of sexually oriented businesses, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially "adult" nature, *see, e.g., Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001) (finding retail adult store's "argument that it is not an adult entertainment establishment" to be "frivolous at best"); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that "the accuracy and credibility" of the evidence on inventory in adult retail store was suspect, and that testimony was "less than candid" and "suggested an intention to obscure the actual amount of sexually explicit material sold"); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999) (documenting manipulation of inventory to avoid adult classification); *Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002)

(noting that "the nonadult video selections appeared old and several of its display cases were covered with cobwebs"); and

WHEREAS, the manner in which an establishment holds itself out to the public is a reasonable consideration in determining whether the establishment is a sexually oriented business, *see, e.g., East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360, 365 (6th Cir. 2009) ("A prominent display advertising an establishment as an 'adult store,' moreover, is a more objective indicator that the store is of the kind the Act aims to regulate, than the mere share of its stock or trade comprised of adult materials."); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 261 (1991) (Scalia, J., concurring in part and dissenting in part) ("[I]t is most implausible that any enterprise which has as its constant intentional objective the sale of such [sexual] material does not advertise or promote it as such."); *see also Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995) (rejecting First Amendment challenge to statute which used the phrase "holding out" to identify conduct indicative of the practice of public accountancy, but did not ban any speech); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010) (O'Scannlain, J., concurring) (concluding that whether an entity "holds itself out" as religious is a neutral factor and that factor helps to ensure that the entity is a *bona fide* religious entity); and

WHEREAS, the City intends to regulate such businesses as sexually oriented businesses through a narrowly tailored ordinance designed to serve the substantial government interest in preventing the negative secondary effects of sexually oriented businesses; and

WHEREAS, the City's regulations shall be narrowly construed to accomplish this end; and

WHEREAS, the City recognizes its constitutional duty to interpret and construe its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the City and the City Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Ohio Constitutions, Ohio Code, and the Ohio Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the Ohio Constitution, but to enact legislation to further the content-neutral governmental interests of the City, to wit, the controlling of secondary effects of sexually oriented businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MONROE, STATE OF OHIO, THAT:

SECTION 1: Section 1204.04(D)(15) of the City of Monroe Planning and Zoning Code is hereby amended to read as follows:

(15) Sexually Oriented Businesses

Sexually oriented businesses are permitted in the C-2 District subject to the following standards:

a) A sexually oriented business, as defined in this code must be located more than 1,000 feet from all the following uses:

i) Any "R" residential district as established by this code or established by the zoning ordinance of any adjacent political subdivision;

ii) Any permanently established religious place of worship, school, library or public playground attended by persons under the age of 18;

iii) Any other recreational facility or amusement park attended by persons under 18 years of age;

iv) Any hotel, motel or bed and breakfast lodging establishment;

v) Any other sexually oriented business; or

vi) Any establishment licensed by the State of Ohio for the sale of beer or intoxicating liquor for consumption on the premises.

b) For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or objects, from the closest part of the structure used in conjunction with the sexually oriented business to the closest point on a property boundary or right-of-way associated with any of the land uses identified in division (a), subparts (i)–(vi) above. If the sexually oriented business is located in a multi-tenant structure or development, the distance shall be measured from the closest part of the tenant space occupied by the sexually oriented business to the closest point on a boundary of an "R" residential district identified in subpart (i) above, and to the closest part of the tenant space occupied by a land use identified in subparts (ii)-(vi) above.

c) The Code Enforcement Officer shall issue a zoning permit for a sexually oriented business under Section 1203.12: Zoning Permit if the sexually oriented business is seeking to locate in a C-2 District and the proposed location of the sexually oriented business is at least 1,000 feet from the uses listed in division (a) of this section. The determination shall be made without a public hearing being held and must be made within 10 days of the effective date of this section or within 10 days of the receipt of a completed application for a zoning permit, whichever is less. An applicant or an aggrieved party may appeal a decision of the Code Enforcement Officer or the Planning Commission to the BZA pursuant to Section 1203.11: Appeals. Such appeal must be made within 30 days of the claimed adverse decision. The BZA shall hear and decide sexually oriented business appeals within 30 days of the filing of the appeal by the applicant or the aggrieved party. Further appeal shall be to a court of competent jurisdiction as provided by law.

d) See Chapter 860 of the Business Regulation and Taxation Code for additional provisions relating to Sexually Oriented Businesses.

SECTION 2: Section 1217.02 of the City of Monroe Planning and Zoning Code is hereby amended by amending the definition of Sexually Oriented Businesses to read as follows:

Sexually Oriented Businesses
See definition of "Sexually Oriented Business" in Section 860.02 of the Business Regulation and Taxation Code of the Codified Ordinances.

SECTION 3: Section 1217.02 of the City of Monroe Planning and Zoning Code is hereby amended by deleting the following terms and definitions:

Adult Arcade
Adult Bookstore, Adult Novelty Store, or Adult Video Store
Adult Cabaret
Adult Motel
Adult Motion Picture Theater
Adult Theater
Established or Establishment (Sexually Oriented Businesses)
Nudity or a State of Nudity
Semi-Nude Model Studio
Semi-Nude or Partially-Nude
Sexual Encounter Establishment
Specified Anatomical Areas
Specified Sexual Activity

SECTION 4: This measure shall take effect and be in full force from and after the earliest period allowed by law.

PASSED: July 14, 2015

ATTEST:

Clerk of Council

APPROVED:

Mayor

First Reading: June 23, 2015

"I, the undersigned Clerk of Council of the city of Monroe, Ohio, hereby certify the foregoing (ordinance or resolution) was published as required by Section 7.16 of the Charter of the City of Monroe.

Clerk of Council
City of Monroe, Ohio

This legislation was enacted in an open meeting pursuant to the terms and provisions of the Sunshine Law, Section 121.22 of the O...