

VILLAGE OF MT. AUBURN

ORDINANCE NO. 78

AN ORDINANCE AMENDING THE ZONING CODE
OF THE VILLAGE OF MT. AUBURN, ILLINOIS
(RE: REGULATING ADULT USES)

ADOPTED BY THE
BOARD OF TRUSTEES
OF THE
VILLAGE OF MT. AUBURN
THIS 6TH DAY OF MARCH, 2000.

PUBLISHED IN PAMPHLET FORM BY AUTHORITY
OF THE BOARD OF TRUSTEES OF THE VILLAGE OF
MT. AUBURN, CHRISTIAN COUNTY, ILLINOIS,
THIS 6TH DAY OF MARCH, 2000.

ORDINANCE NO. 78

AN ORDINANCE AMENDING THE ZONING CODE
OF THE VILLAGE OF MT. AUBURN, ILLINOIS
(RE: REGULATING ADULT USES)

WHEREAS, upon review of various studies regarding the impact of sexually oriented businesses on the community as well as being informed of the findings of similar studies in other communities, the Corporate Authorities of the Village of Mt. Auburn find that sexually oriented businesses are associated with:

- (1) high crime rate areas;
- (2) deteriorated commercial and residential areas;
- (3) depreciation of property values in the area;
- (4) dramatic changes in the character of the neighborhood when more than one sexually oriented business is operating in a given area; and

WHEREAS, sales tax revenues are extremely important to the economic well-being of the Village of Mt. Auburn; and

WHEREAS, persons who use the shopping areas within the Village will shop elsewhere if these shopping areas are identified with adult uses; and

WHEREAS, the intent of the adult use regulations is to protect the public health, safety and welfare by limiting the deleterious effects of sexually oriented businesses on the use and enjoyment of property in adjacent areas; and

WHEREAS, the Corporate Authorities recognize that the First Amendment to the United States Constitution requires that the Village of Mt. Auburn "refrain from effectively denying" expressive adult use operations a reasonable opportunity to open and operate within the Village; and

WHEREAS, these regulations are meant as a narrow means to eliminate, or at least limit, the deleterious effects of adult uses on the health, safety and welfare of the residents, business owners and property owners in the Village of Mt. Auburn; and

WHEREAS, the regulations limiting the areas available for adult uses have been narrowly drafted to separate adult uses from residential areas and from each other; Further, the regulations have been drafted to keep such uses from defining the character of the major commercial areas within the Village.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF TRUSTEES OF THE VILLAGE OF MT. AUBURN, CHRISTIAN COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: That a new Article XIII, be added to Chapter 40 of the Zoning Code of the Village of Mt. Auburn, Illinois as follows:

ARTICLE XIII- ADULT USES

40-13-1. Definitions.

A. Adult Bookstore: An establishment having as a substantial or significant portion of its sales or stock in trade, books, magazines, films for sale or for viewing on premises by use of motion picture devices or by coin operated means, and periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities," or "Specified anatomical areas," or an establishment with a segment or section devoted to the sale or display of such materials, or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, actual sales, presence of video preview or coin operated booths, exclusion of minors from the establishment's premises or any other factors showing the establishment's primary purpose is to purvey such material.

B. Adult Entertainment Cabaret: A public or private establishment which regularly features (i) persons who appear in a state of nudity; or (ii) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or (iii) films, motion pictures, video cassettes, slides or other

photographic or computer reproductions which are characterized by the depictions or description of "specified sexual activities" or "specified anatomical areas."

C. Adult Motion Picture Theater: A building or area used for presenting materials 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.

D. Adult Novelty Store: An establishment having a substantial or significant portion of its sales or stock in trade consisting of toys, devices, clothing "novelties", lotions and other items distinguished or characterized by their emphasis on or use for "specialized sexual activities" or "specified anatomical areas" or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising displays, actual sales, exclusion of minors from the establishment's premises or any other factors showing the establishment's primary purpose is to purvey such material.

E. Adult Use: Adults bookstores, adult motion picture theaters, adult entertainment cabarets, adult clubs allowing nudity at regular or frequent times, adult novelty stores and other similar uses.

F. Employee: Employees, independent contractors or any other person who is retained by the licensee or subject to dismissal from working at the licensed premises.

G. Established or Establishment: mean and include any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) The addition of any sexually oriented business to any other existing sexually oriented business; or

(4) The relocation of any sexually oriented business.

H. Licensee: means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license.

I. Nudity: Nudity, or State of Nudity, means the showing of the human male or female genitals, pubic area, female breasts with less than a full opaque covering below a point immediately above the top of the areola, human male genitals in a discernibly turgid state even if completely and opaquely covered or, that portion of the buttocks which would be covered by a properly worn "thong" type bikini bottom.

J. Operate or Causes to be Operated: means to cause to function or to put or keep in operation. Operator means any person on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business, or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

K. Person: means an individual, proprietorship, partnership, corporation, association, or other legal entity.

L. Public Place: means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public Places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for-profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement), hotels, motels, restaurants, nightclubs, country clubs, cabarets and meeting facilities utilized by social, fraternal or similar organizations. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed a public place. Public places shall not include enclosed single sex public restrooms, enclosed single sex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctors offices, churches, synagogues or similar places when used for circumcisions, baptisms or similar religious ceremonies, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home; nor shall it include a person appearing in a state of nudity in a modeling class operated a (1) a proprietary school licensed by the State; a college, junior college or university supported entirely or partly by taxation; or (2) a private college or university which maintains and operates educational programs in which credits are transferrable to a college, junior college or a university supported entirely or partly by taxation or an accredited private college.

M. Semi-nude: means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

N. "Specified Anatomical Areas": means:

(1) less than completely and opaquely covered; (i) human genitals, (ii) pubic region, (iii) buttocks, (iv) anus, (v) female breasts below a point immediately above the top of the areola; and

(2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

O. "Specified Criminal Activity": Means any of the following offenses:

(1) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a minor; possession or distribution of child pornography; public lewdness; public indecency; indecency with a child; engaged in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(2) For which (i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction which is the later date, if the conviction is of a misdemeanor offense; (ii) less than five years have elapsed since the date of conviction or the date of release from confinement for conviction, whichever is the later date, if the conviction is a felony offense; or (iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement from the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurred within any 24 month period; and

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

P. "Specified Sexual Activities": For the purpose of this Article, "specified sexual activities" means: (i) human genitals in the state of sexual stimulation or arousal; (ii) human masturbation, sexual intercourse, sodomy, oral copulation, artificial or simulated; (iii) fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts; and (iv) excretory functions as part of or in connection with any activities set forth in (i) through (iii) above.

Q. Transfer of Ownership or Control: of a sexually oriented business means 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; or

(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

40-13-2. Liquor. No liquor license shall be issued to the premises where an adult use is conducted or allowed. No liquor shall be given away or allowed to be consumed on any such premises where adult use is allowed or conducted.

40-13-3. Location. Adult uses may be allowed, upon obtaining a special use permit, in an AG-1 District (Agricultural District) provided:

(1) No adult use shall be located within 1,000 feet of the property boundaries of any school, daycare center, cemetery, public park, forest preserve, public housing and place of religious worship. No adult use shall be located within 1,000 feet of the property boundaries of any property located in a R-1 District (Residential District) or R-2 District (Residential District). No adult use shall be located within 1,000 feet of any residential structure in existence on the date of the Public Hearing relating to the application for a Special Use Permit (as set forth in Section 40-13-4). The applicant shall file said application for a Special Use Permit with the Zoning Enforcing Officer and with the Village Clerk and the applicant shall fully comply with the notice requirement of 65 ILCS 5/11-13-7 (State Bar Edition). The measurement shall be from the property line of the real estate as shown by public records upon which the adult use premises is located to the property line of the other property described above.

40-13-4. Special Use Permit Required. No adult use shall operate even at those locations where they may be allowed pursuant to Section 40-13-3 above without first having obtained a Special Use Permit from the Village President and Village Board of Trustees by a two-thirds (2/3) favorable vote of the Village President and all trustees of the Village Board of Trustees, provided that no Special Use Permit shall be granted until it is first submitted to and approved by the Zoning Board of Appeals, after a public hearing. The standards set forth in Section 40-13-5 shall govern in the determination of the Zoning Board of Appeals whether to recommend the granting of or the refusal of such Special Use Permit:

40-13-5. Standards. No adult special use permit shall be granted by the Village Board unless the Board finds:

(A) The design and operation of the facility will not adversely affect the public health and safety;

(B) It will not cause substantial injury to the value of other property in the neighborhood in which it is located;

(C) It will not unduly increase traffic congestion in the public streets and highways in the area in which it is located;

(D) It will not cause additional public expense for fire or police protection;

(E) It will not substantially increase the possibility of criminal acts against persons and properties within 500 feet of such proposed special use or against persons who regularly use such properties.

(F) The location of the proposed adult use will not violate any of the terms of Section 40-13-3.

(G) All terms and provisions of this Article XIII have been fully complied with.

40-13-6. Registration. The owner of a building or premises, his agent for the purpose of managing, controlling or collecting rents, or any other person managing or controlling a building or premises any part of which contains an adult use, shall file the following information with the Village Clerk and the Zoning Enforcing Officer:

(A) The address of the premises;

(B) The name of the owner of the premises and names of the beneficial owners if the property is in a land trust;

(C) The address of the owner and the beneficial owners;

(D) The name of the business or establishment;

(E) The name(s) and address(es) of the owner(s), beneficial owner(s) or the major stockholders of the business or establishment;

(F) The proposed date of initiation of the adult use;

(G) The specific nature of the adult use;

(H) If the premises or building is leased, a copy of said lease must be attached.

40-13-7. Exterior Display. No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to "special sexual activities" or "specified anatomical areas" from any public way or from any

property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window or other opening.

40-13-8. Existing Adult Uses. Any adult use which existed lawfully, but which became nonconforming upon the adoption of this section to said Zoning Code, may be continued as hereinafter provided:

(A) Upon written notice from the Village to the owners or interests therein that any building, structure, lot or regulated use is nonconforming under that provisions of the Zoning Ordinance as amended, the owners or interest therein shall, within 90 days from the date of such notice, apply to the Village Clerk for a Certificate of Nonconformance.

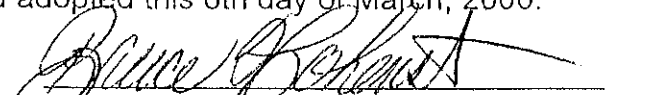
(B) Failure to apply for a Certificate of Nonconformance within 90 days of the notice provided in Section (a) above will require the amortization of the nonconformance within six months of the notice provided for in Section (a).

(C) Nonconformances that have applied for a Certificate of Nonconformance from the Village Clerk shall be discontinued within one year of the notice provided in Section (a) above.

SECTION 3: The provisions of this Ordinance shall be severable in accordance with Chapter 40, Article XIII, Section 40-12-2 of the Zoning Code of the Village of Mt. Auburn, Illinois.

SECTION 4: This Ordinance shall be in full force and effect from and after its passage, approval and publication as provided by law.

ON MOTION DULY MADE AND SECONDED and pursuant to roll call vote, this Ordinance was passed, approved and adopted this 6th day of March, 2000.


BRUCE HOMENSTEIN, Village President
Village of Mt. Auburn, Illinois

ATTEST:

Tammy J. Hamell
TAMMY HAMELL, Village Clerk

(MUNICIPAL SEAL)

AYES: Campbell, Copembaeger, Clayton,
Beck, Bottrell, Hampland

NAYS: _____

ABSENT: _____

FILED IN THE OFFICE OF THE VILLAGE CLERK,
VILLAGE OF MT. AUBURN, ON THE 6TH DAY OF MARCH, 2000.

PUBLISHED IN PAMPHLET FORM ON MARCH 6, 2000.

CERTIFICATE

STATE OF ILLINOIS)
) SS.
COUNTY OF CHRISTIAN)

I, TAMMY HAMELL, certify that I am the duly elected and acting Village Clerk of the Village of Mt. Auburn, Christian County, Illinois.

I further certify that on March 6, 2000, the Board of Trustees of said Village passed and approved Ordinance No. 75 entitled "**AN ORDINANCE AMENDING THE ZONING CODE OF THE VILLAGE OF MT. AUBURN, ILLINOIS (RE: REGULATING ADULT USES)**".

The pamphlet form of Ordinance No. 75, including the Ordinance and a cover sheet thereof was prepared, and a copy of such Ordinance was posted in the Village Hall, commencing on March 6, 2000, and continuing for at least ten days thereafter. Copies of such Ordinance were also available for public inspection upon request in the Office of the Village Clerk.

DATED at Mt. Auburn, Illinois, this 16th day of March, 2000.


TAMMY HAMELL, Village Clerk

(MUNICIPAL SEAL)