

Upon motion by \_\_\_\_\_, seconded by \_\_\_\_\_, the following Ordinance was duly enacted, \_\_\_\_\_ voting in favor of enactment, \_\_\_\_\_ voting against enactment.

**ORDINANCE 99-2**

**An Ordinance amending Ordinance No. 74-29 as amended, known as the Millcreek Township Zoning Ordinance, to amend and establish definitions and regulations governing uses of land as adult-oriented establishments or bottle clubs or BYOB clubs; and containing repealor and severability clauses.**

**WHEREAS**, the Millcreek Township Zoning Ordinance since January 1978 has included definitions and regulations governing certain uses of land in the Township for adult-oriented establishment purposes; and

**WHEREAS**, the Zoning Ordinance has defined certain types of adult entertainment uses, generally adult bookstores and adult movie theaters; and

**WHEREAS**, Act No. 120 of 1996, 68 Pa. C.S.A. § 5501, et seq. as enacted by the General Assembly establishes additional definitions of adult entertainment and adult-oriented establishment uses; and

**WHEREAS**, the Board of Supervisors finds that it is necessary for the proper regulation of such uses and protection of the public health, welfare and safety that the Zoning Ordinance define such uses so as to clearly provide for all adult entertainment and oriented uses; and

**WHEREAS**, the Board of Supervisors finds that it is necessary for the protection of the public health, safety and welfare that regulations be established for protection of other uses of land and residents and occupants of land in the vicinity of adult-oriented establishments, and for the future development of land in the Township; and

**WHEREAS**, the Board of Supervisors finds that it is necessary for protection of the public health, safety and welfare that definitions clearly establishing bottle clubs and BYOB clubs be established, and that regulations governing their authorization be amended; and

**WHEREAS**, after public notice and public hearing as required by the Municipalities Planning Code, the Millcreek Township Planning Commission has recommended that the definitions and regulations in this ordinance be enacted.

**IT IS HEREBY ORDAINED AND ENACTED** by the Board of Supervisors of the Township of Millcreek, Erie County, Pennsylvania, and it is ordained and enacted, as follows:

**SECTION 1.** Article III of the Millcreek Township Zoning Ordinance is hereby amended to amend and add the following terms and definitions:

- 23. **MASSAGE PARLOR** - An establishment or business which provides the services of massage and body manipulation, including exercises, heat and light treatments of the body and all forms

of physiotherapy, unless operated by a medical practitioner, professional physical therapist or chiropractor licensed by the Commonwealth of Pennsylvania. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

49. **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.

50. **ADULT MOTEL -** a motel, hotel, inn or similar establishment offering public accommodations for any consideration, which provides patrons with material distinguished or characterized by an emphasis on and/or depiction or descriptions of sexual activities or specified anatomical areas. This use shall be deemed included within the definition of an adult-oriented establishment.

51. **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 drive-in movie theaters.

(5) Adult motels.

(6) Massage parlors.

(7) 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. "Motion pictures" shall include material, chat rooms and other material available through the Internet and motion pictures or videos available through cable, satellite or other television services on computers or equipment used in the establishment.

(8) 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.

52. **BATH HOUSE** - An establishment or business which provides the services of baths or spas of all kinds, including all forms and methods of hydrotherapy during which specified anatomical areas are displayed but no specified sexual activity occurs. This term shall be deemed included within “adult-oriented establishment.”
53. **BOTTLE CLUB** - An establishment operated for profit or pecuniary gain which is not licensed by the Pennsylvania Liquor Control Board and admits patrons upon payment of a fee, cover charge or membership fee and in which alcoholic liquors, alcohol or malt or brewed beverages are not legally sold but where alcoholic liquors, alcohol or malt or brewed beverages are either provided by the operator or agents or employees of the operator for consumption on the premises or are brought into or kept at the establishment by the patrons or persons assembling there for use and consumption. The term shall not include a licensee under the Liquor Code. The permissibility of a use of land involving to any extent a bottle club shall be determined according to the principal intended use.
54. **BYOB CLUB** - Any facility operated for profit or pecuniary gain which is not licensed by the Pennsylvania Liquor Control Board wherein patrons may consume alcoholic liquors, alcohol or malt or brewed beverages which said patrons have carried or brought into the premises. The term shall not include a licensee under the Liquor Code. The permissibility of a use of land involving to any extent a bottle club shall be determined according to the principal intended use.
55. **SPECIFIED ANATOMICAL AREAS** -
- (1) Less than completely and opaquely covered:
    - (i) human genitals or pubic region;
    - (ii) buttocks; or
    - (iii) female breasts below a point immediately above the top of the areola.
  - (2) Human male genitals in a discernible turgid state, even if completely opaquely covered.
56. **SPECIFIED SEXUAL ACTIVITIES** - The term includes any of the following:
- (1) Human genitals in a state of sexual stimulation or arousal.
  - (2) Acts of human masturbation, sexual intercourse or sodomy.

- (3) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

The term does not include any of the following:

- (1) Medical publications or films or bona fide educational publications or films.
- (2) Any art or photography publications which devote at least 25% of the lineage of each issue to articles and advertisements dealing with subjects of art or photography.
- (3) Any news periodical which reports or describes current events and which from time to time publishes photographs of nude or seminude persons in connection with the dissemination of the news.
- (4) Any publication or films which describe and report different cultures and which from time to time publish or show photographs or depictions of nude or seminude persons when describing cultures in which nudity or seminudity is indigenous to the populations.

**SECTION 2.** Section 408 of the Zoning Ordinance is amended to provide that adult entertainment and adult-oriented establishments not otherwise described as uses shall be permitted uses in "C" Business zoning districts, as follows:

<u>Use #</u>	<u>Permitted Use</u>	<u>f-Street Parking Requirements</u>
50	Adult entertainment establishment not listed	One space for every two seats
51	Adult-oriented establishment not otherwise listed	One space for every three seats

**SECTION 3.** Section 410 of the Zoning Ordinance is amended to provide that a bath house shall be a permitted use in the Light Industry District, as follows:

<u>Use #</u>	<u>Permitted Use</u>	<u>ff-Street Parking Requirements</u>
17	Bath house	One space for each 50 square feet

**SECTION 4.** Section 808 of the Zoning Ordinance is amended and reenacted to provide as follows:

**SECTION 808. PERFORMANCE STANDARDS - ADULT ENTERTAINMENT AND ADULT-ORIENTED USES, BOTTLE CLUBS**

A. An Adult Book Store, Adult Motion Picture Theater, Adult Drive-In Movie Theater, Adult Mini-Picture Theater, Massage Parlor, Bath House and all other adult entertainment and adult-oriented uses authorized by this ordinance shall be located so as not to be less distant than:

- (1) One thousand feet (1,000') from the nearest property line of any other Adult Book Store, Adult Motion Picture Theater, Adult Drive-In Movie Theater, Adult Mini-Picture Theater, Massage Parlor, Bath House or other Adult Entertainment or Adult-Oriented uses; and

- (2) One thousand feet (1,000') from the nearest property line of any church, school, other institution of learning or education, hospital, library, park or playground; and
  - (3) Three hundred feet (300') from the nearest property line of any premises zoned for residential purposes, this including all Residential Districts and the Agriculture District.
  
- B. No property, building or structure shall be used as an Adult Book Store, Adult Motion Picture Theater, Adult Drive-In Movie Theater, Adult Mini-Picture Theater, Massage Parlor, Bottle Club, BYOB Club, Bath House and/or other Adult Entertainment or Adult-Oriented establishment without a certificate of occupancy for the proposed use first being issued, and the use thereafter shall comply with the terms of the issued certificate of occupancy absent a properly issued amendment thereof. In addition to other requirements established in this ordinance, an application for certificate of occupancy for such establishment must identify the owner(s) and lessee(s) of the premises and the person(s) responsible for management and conduct of the business.
  
- C. All adult-oriented establishments and adult entertainment establishments shall at all times comply with regulations imposed on such uses under Pennsylvania law, including but not limited to those established in 68 Pa. C.S.A. § 5501, et seq. as may in the future be amended.
  
- D. All regulations in this ordinance governing buffering, planting strips, open areas and off-street parking shall be strictly enforced.
  
- E. Uses authorized under this ordinance shall not be deemed to include activities including or fostering prostitution or other activities declared to be violations of Federal, Pennsylvania or Township laws or ordinances.
  
- F. No person operating an adult entertainment or adult-oriented establishment shall permit or cause to be permitted the display or placement on the building or premises of any document, stock in trade or other material of any nature which depicts, describes or relates to specified anatomical areas and/or specified sexual activities and may be viewed from a public street, highway, sidewalk or adjacent property.
  
- G. A bottle club or BYOB club shall not be deemed a principal use, the principal use under this ordinance to be deemed the principal activity to be conducted on the premises, unless the principal use is for the term as defined in this Ordinance.
  
- H. A use involving the use as a bottle club or BYOB club, where authorized under this ordinance, shall be located so as not to be less distant than:
  - (1) One thousand feet (1,000') from the nearest property line of any other bottle club or BYOB club; and
  - (2) One thousand feet (1,000') from the nearest property line of any church, school, other institution of learning or education, hospital, library, park or playground; and
  - (3) Three hundred feet (300') from the nearest property line of any premises zoned for

residential purposes, this including all Residential Districts and the Agriculture District.

**SECTION 5.** If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person, property or circumstances is for any reason held invalid or unconstitutional by any court, such holding shall not be construed to affect the validity of any of the remaining provisions of this Ordinance or its application, for such portion shall be deemed as a separate, distinct and independent provision from the remaining provisions which shall be and remain in full force and effect. It is declared the legislative intent that this Ordinance would have been adopted had such valid or unconstitutional provision of its application not been included herein.

**SECTION 6.** All Ordinances or parts of any Ordinances inconsistent herewith are hereby repealed.

**BE IT ENACTED** this 26<sup>th</sup> day of **January, 1999**.

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Suzanne R. Weber, Secretary

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