

**BOROUGH OF UNION CITY
ERIE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 2010- 1076

ZONING ORDINANCE AMENDMENT

AMENDING THE BOROUGH OF UNION CITY ZONING ORDINANCE, NO. 910, OF THE BOROUGH OF UNION CITY, ERIE COUNTY, PENNSYLVANIA BY PROVIDING FOR DEFINITIONS OF ADULT BOOKSTORE, ADULT DRIVE-IN MOVIE THEATER, ADULT ENTERTAINMENT, ADULT MINI-MOTION PICTURE THEATER, ADULT MOTION PICTURE THEATER, ADULT-ORIENTED ESTABLISHMENT, ADULT ORIENTED MERCHANDISE, ADULT RETAIL USE ESTABLISHMENT, SPECIFIED ANATOMICAL AREAS, AND SPECIFIED SEXUAL ACTIVITIES; AND PROVIDING FOR A PERMITTED PRINCIPLE USE IN THE B-2 BUSINESS DISTRICT.

WHEREAS, the Borough of Union City Borough Councillors (the "Council") of the Borough of Union City (the "Borough"), have 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

WHEREAS, the Council is fully aware of and fully respects 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 Borough'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 urban areas; and

WHEREAS, the Council has, 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 and parking problems, traffic accidents and littering, 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 Council has expressed its intention to appropriately and constitutionally regulate adult entertainment and adult-oriented establishments to promote, protect and facilitate the public health, safety, morals and general welfare; 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 Council accordingly recognizes, finds and adopts 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; and

WHEREAS, the Council has determined that, to limit the negative secondary effects caused by the location of adult entertainment or adult-oriented establishments, it is in the best interest of the Borough to better define such use by providing for definitions of adult oriented uses and related definitions and to provide for specific zoning for such use in a constitutional manner;

NOW, THEREFORE, BE IT ENACTED BY BOROUGH COUNCIL OF THE BOROUGH OF UNION CITY, ERIE COUNTY, PENNSYLVANIA, AS FOLLOWS:

Section 1. That Section 202 of the Borough of Union City Zoning Ordinance, No. 910, of the Borough of Union City, Erie County, Pennsylvania be amended by inserting the following definitions in the appropriate alphabetic position:

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.

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.

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.

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.

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.

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.

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, DVDS, 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.

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.

SPECIFIED ANATOMICAL AREAS – AS DEFINED IN 68 PA.C.S.A. 5502, AS MAY BE AMENDED.

SPECIFIED SEXUAL ACTIVITIES - AS DEFINED IN 68 PA.C.S.A. 5502, AS MAY BE AMENDED.

Section 2. That Section 405 of the Borough of Union City Zoning Ordinance, No. 910, of the Borough of Union City, Erie County, Pennsylvania be amended through including "Adult-Oriented Establishment" as a Permitted Principal Use in a B-2 Business District.

Section 3. Severability. 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.

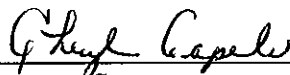
Section 4. All Ordinances and parts thereof conflicting herewith shall be and the same are hereby repealed.

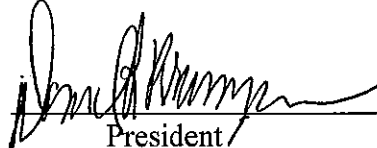
Section 5. This Ordinance shall become effective immediately.

ORDAINED and ENACTED this 13th day of April, 2010.


ATTEST:

BOROUGH OF UNION CITY

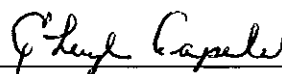

Secretary


President

APPROVED this 13th day of April, 2010.

BY: 
Mayor

I hereby certify that the above is a true copy of the Union City Ordinance No. 1076 adopted by the Council of the Borough of Union City on April 13th, 2010, and advertised in the *Times-Leader* on March 27th, 2010.


Cheryl Capela, Borough Secretary