

VILLAGE OF NEWCOMERSTOWN

ORDINANCE NO. 27-2021

PASSED: November 1, 2021

ORDINANCE REGULATING ADULT ORIENTED ESTABLISHMENTS AND REPEALING ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH.

WHEREAS, Council has deemed it necessary to REGULATE ADULT ORIENTED ESTABLISHMENTS.

NOW, THEREFORE, BE IT ORDAINED by the council of the Village of Newcomerstown, Tuscarawas County, Ohio as follows:

Section 1: All provisions of Ordinances and Resolutions in conflict with the provisions and terms of this ordinance shall be and is herewith amended in accordance with this ordinance.

Section 2: The content of this ordinance shall be followed as:

1.0 PURPOSE AND INTENT

- A. In the development and adoption of this ordinance, it is recognized that there are some adult businesses which due to their very nature, have serious objectionable operational characteristics. The characteristics of these uses are further heightened by their concentration in any one area having a negative effect upon adjacent areas. It is the purpose of this ordinance to regulate the location and concentration of adult entertainment establishments, as herein defined, in order to achieve the following:
- (1) To preserve the character and quality of life in the Village of Newcomerstown's neighborhoods and business areas.
 - (2) To control such documented harmful and adverse secondary effects of adult uses on the surrounding areas as decreased property values, loss of business for surrounding nonadult businesses, and deterioration of neighborhoods.
 - (3) To restrict minors' access to adult uses.
 - (4) To maintain the general welfare and safety for the Village of Newcomerstown's residents.
- B. It is not the intent nor the effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; neither is it the intent nor the effect of this ordinance to condone or legitimize the distribution of obscene materials.

2.0 DEFINITIONS

- 2.1. "Adult oriented establishment" shall include, but is not limited to, "adult bookstores," "adult motion picture theatres," "adult mini-motion picture establishments" or "adult cabarets," and further means any premises to which public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common area of the premises for the purposes of viewing adult oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated, or maintained for profit, direct or indirect. An adult-oriented establishment may or may not be open or available to the public generally.

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2.2 “Adult bookstore” means a retail establishment that has:

- A. As a substantial or significant portion of its business the sale or rental of, or a substantial or significant portion of its stock in trade for sale or rental of.
 - (1) Publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section; and/or
 - (2) Sexually oriented devices, as defined in this section.
- B. As used in this definition, publications include, by way of illustration, books, magazines, other periodicals, movies, videotapes, and other products offered in photographic, electronic, magnetic, digital, or other imaging medium.
- C. Any of the following shall be indicia that an establishment has as one of its principal business purposes the sale or rental of publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, and/or sexually oriented devices, as defined in this section:
 - (1) The business advertises the sale or rental of adult publications including but not limited to “x-rated” movies and/or sexually oriented devices;
 - (2) Access by persons under eighteen (18) years of age to the business establishment or portions of the business establishment is restricted;
 - (3) Signs or notices are posted outside and/or inside the business establishment indicating that the material offered for sale or rental might be offensive;
 - (4) The building or portion of the building containing the business establishment does not have windows or has windows that are screened or otherwise obstructed or are situated in a manner that restricts visual access from outside the building to materials displayed within for sale or rental;
 - (5) The above factors shall be considered along with all other factors and available information.
- D. Notwithstanding the foregoing, a general circulation video store that does not offer for sale and sexually oriented devices shall not constitute an “adult bookstore” even though it offers for sale and/or rental videotapes which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section, so long as:
 - (1) Such described videotapes are stocked and displayed in a room separate from the area of the business establishment where general circulation videotapes are stocked and displayed;
 - (2) Access by persons under eighteen (18) years of age to the room where such described videotapes are stocked and displayed is restricted;
 - (3) The square footage of the separate room where such described videotapes are stocked;

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(4) and displayed is no more than ten (10) percent of the square footage of the area where general circulation videotapes are stocked and displayed; and

(5) The general circulation videotapes portion of the business establishment offers a quantity and selection of new release general circulation videotapes that is typical of a general circulation video store and offers a quantity and selection of other general circulation video tapes that are organized and displayed in a manner that is typical of a general circulation video store.

- 2.3 “Adult cabaret” means an establishment that regularly features dancers or other entertainers who provide live adult entertainment, including but not limited to floor shows, exotic dancing, male or female impersonators, or similar entertainment and engage in a private performance, act as private models, display or expose any specified anatomical area(s) to a patron or customer, or wear or display to a customer any covering, tape, pastie, or other device which simulates or gives the appearance of the display or exposure of any specified anatomical area.
- 2.4 “Adult entertainment” means any exhibition of any motion picture, live performance, display or dance of any type, which is distinguished or characterized by an emphasis on any actual or simulated performance of “specified sexual activities” or exhibition and viewing of “specified anatomical areas,” as defined below, appearing unclothed, or the removal of articles of clothing to reveal “specified anatomical areas.”
- 2.5 “Adult mini-motion picture theater” means a commercial establishment with one or more adult mini motion picture booths where:
- A. A substantial or significant portion of business is the presentation and viewing in viewing booths of still or motion pictures that are distinguished or characterized by their emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas,” as defined below, for observation by patrons therein, or
 - B. A substantial or significant portion of the stock of still or motion pictures available for viewing or that are viewed in the viewing booths are distinguished or characterized by their emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas,” as defined below.
 - C. Any of the following shall be indicia that a business establishment has as one of its principal business purposes the presentation and viewing in viewing booths still or motion pictures which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas,” as defined below.
 - (1) Restricted access to the business establishment or portions thereof where viewing booths are located by persons under eighteen (18) years of age.
 - (2) Posted signs or notices outside and/or inside the business establishment indicating that the material offered for presentation and viewing in the viewing booths might be offensive.
 - (3) the above factors shall be considered along with other available information.

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“Sexually oriented device” means any three (3) dimensional objects designed and marketed for stimulation of the male or female human genitals, anus, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

3.0 LICENSE

- 3.1, From and after the effective date of this ordinance, no adult-oriented establishment shall be operated or maintained in the Village of Newcomerstown without first obtaining a license to operate approved by the Village Council.
- 3.2 A license may be issued for only one (1) adult-oriented establishment located at a fixed and certain place per application filed. Any person, partnership or corporation which desires to operate more than one adult oriented establishment must have a license for each.
- 3.3 No license or interest in a license may be transferred to any person, partnership, or corporation.
- 3.4 It shall be unlawful for any entertainer, employee, or operator to knowingly work in or to knowingly perform any service directly related to the operation of any adult oriented establishment which does not have a valid license pursuant to this ordinance.

4.0 APPLICATION FOR LICENSE

- 4.1 Any person, partnership, or corporation desiring to secure a license shall fill out, date, and file an application with the Village of Newcomerstown.
- 4.2 The application for a license shall be upon a form provided by the Village of Newcomerstown. An applicant for a license, interested directly in the ownership or operation of the business, shall furnish the following information under oath.
 - A. The name (including all aliases) and date of birth of the applicant and any partner or limited partner in a partnership applicant; and any shareholder holding more than ten (10%) percent of the stock of a corporate applicant and each corporate officer and director.
 - B. Written proof that any person required to be named under paragraph (b)(1) is at least eighteen (18) years of age.
 - C. A description of the activities to be conducted on the premises. If any booth, room, or cubicle for private viewing of any adult entertainment is intended, a dimensional floor plan and blueprint describing the design of the premises is required.
 - D. The address of the adult-oriented establishment to be operated by the applicant.
 - E. Whether any person required to be named under paragraph (b)(1) is currently operating, or, has previously operated, in this or any other Town, County , City, or State under an adult oriented establishment license or similar business license or permit, whether the applicant has ever had such a

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license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.

- F. If the applicant is a corporation, the application shall also specify the name of the corporation, the date and state of incorporation, and the name and address of the registered agent.
- 4.3 Within thirty-one (31) days of receiving an application for a license, the Fiscal Officer shall notify the applicant whether the application has been denied or granted. The timeline to notify the applicant may be stayed if an application is incomplete. If an application is incomplete, the Fiscal Officer shall notify the applicant of the information required for a complete application. The applicant shall be allowed ten (10) days during which to provide the Village with all required information and/or materials. If additional information is requested, the Fiscal Officer shall provide notice of approval or denial of the application within forty-one (41) days of receiving an application.
- 4.4 Whenever an application is denied, the Fiscal Officer shall advise the applicant in writing of the reasons for such action. The applicant may request a review of the denial failure or refusal of the applicant to give any information to the investigation of the application or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or the applicant's refusal to submit to or cooperate with any investigation required by this ordinance shall be grounds for denial of the application

5.0 STANDARDS FOR ISSUANCE OF LICENSE

- 5.1 To receive a license to operate an adult oriented establishment, an applicant must meet the following standards:
- A. If the applicant is an individual:
- (1) The applicant shall be at least eighteen (18) years of age.
 - (2) The applicant shall not have been found to have previously violated this ordinance within five (5) years immediately preceding the date of application.
 - (3) The applicant shall not have been convicted of any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of application, unless the person has been duly pardoned.
- B. If the applicant is a corporation.
- (1) All officers, directors, shareholders, and agents required to be named under this ordinance are at least eighteen (18) years of age.
 - (2) Neither the corporate applicant nor any officer, director, or shareholder required to be named under this ordinance shall have been found to have previously violated this ordinance within five (5) years immediately preceding the date of application.

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(3) No officer, director, shareholder, or agent required to be named under this ordinance, or the corporate applicant, shall have been convicted of any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of the application, unless the person or applicant has been duly pardoned.

C. If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest.

(1) All persons having a financial interest in the partnership, joint venture, or other type of organization shall be at least eighteen (18) years of age.

(2) Neither the applicant nor any person having a financial interest in the organization shall have been found to have violated any provision of this ordinance within five (5) years immediately preceding the date of application.

(3) No applicant or person having a financial interest in the partnership, joint venture, or other type of organization shall have been convicted of any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of application, unless the person or applicant has been duly pardoned.

5.2 Prior to granting the license, the Fiscal Officer shall determine whether the applicant complies with all applicable restrictions on location and has substantially complied with all building, zoning, plumbing, electrical, fire, and health codes, The Town may consult with such third parties as may be necessary to determine such compliance.

6.0 FEES

6.1 A license fee shall be submitted with the application for the license in the amount specified by the Mayor/Fiscal Officer.

7.0 DISPLAY OF LICENSE

7.1 The license shall be displayed in a conspicuous, public place in the adult-oriented establishment.

8.0 RENEWAL OF LICENSE

8.1 Every license issued pursuant to this ordinance will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the Village. The application for renewal shall be filed in duplicate and dated by the Fiscal Officer. A copy of the application for renewal shall be distributed promptly by the Village. The application for renewal shall be on a form provided by the Village and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license. 8.2 A license renewal fee in the amount specified by the Fiscal Officer the resolution shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty in an amount specified by resolution shall be

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assessed against the applicant who files for a renewal less than sixty (60) days before the license expires.

- A. Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.
- B. The operator, entertainer, or any employee of the operator, violates and provision of this ordinance or any rule or regulation adopted by the Village Council pursuant to this ordinance, provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee or customer, the penalty shall not exceed a suspension of thirty (30) days if the Village Council shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.
- C. The operator becomes ineligible to obtain a license.
- D. Any cost of fee required to be paid by this ordinance is not paid.
- E. Any intoxicating liquor, wine, or fermented malt beverage, narcotic or controlled substance is served or consumed on the premises of the adult oriented establishment.
- F. Any operator, employee or entertainer sells, furnishes, gives, or displays, or causes to be sold, furnished, given, or displayed to any minor any adult oriented entertainment or adult oriented material.

9.0 REVOCATION, SUSPENSION, AND NON-RENEWAL OF LICENSE

- 9.1 A license issued under this ordinance may be suspended or revoked for any of the following reasons.
- 9.2 Any patron or employee violates any state law relating to restrictions on smoking on the premises of the adult oriented establishment.
- 9.3 The transfer of a license or any interest in a license shall automatically immediately revoke the license without any action required by the Village Council.
- 9.4 Any operator whose license is revoked and who seeks to obtain a new license under this ordinance must apply for a license or permit according to the new license application provisions set forth in this ordinance and must meet the standards for the issuance of a new license as set forth in this ordinance. No location or premises for which a license has been revoked shall be used as an adult oriented establishment for six (6) months from the date of revocation.

10.0 LOCATION

- 10.1 No adult-oriented establishment shall be located:
 - A. Within 1,500 feet of a residential district as defined in the Newcomerstown Ordinance.
 - B. Within 1,500 feet of an existing adult oriented establishment.

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- C. Within 2 miles of any pre-existing school, church, or day care center.
- D. Within 1,500 feet of any pre-existing establishment licensed to sell or dispense fermented malt beverages or intoxicating liquor.
- E. Within 1,500 feet of any pre-existing public park, resort, campground, or recreational vehicle (RV) park.

10.2 For purposes of this section, distances are to be measured in a straight line, without regard to intervening structures or objects, from the property line of the adult oriented establishment to the nearest property line of another adult oriented establishment, school, place of worship, or residential district or establishment selling or dispensing fermented malt beverages or intoxicating liquor.

11.0 HOURS OF OPERATION

11.1 No adult-oriented establishment shall be open between the hours of 2 a.m. and 8 a.m., Monday through Friday, or between the hours of 2:30 a.m. and 8 a.m. on Saturdays and Sundays

12.0 PHYSICAL LAYOUT OF ADULT ORIENTED ESTABLISHMENT

12.1 Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the adult oriented establishment and shall be unobstructed by any door, lock, or other control-type devices. Each booth, room, or cubicle shall be viewable from the public area of the adult oriented establishment.

12.2 Every booth, room, or cubicle shall meet the following construction requirements:

- A. Each booth, room, or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-public areas by a wall.
- B. Each booth, room, or cubicle shall have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth, room, or cubicle.
- C. All walls shall be solid and without any openings, extended from the floor to a height of not less than six (6) feet and be light colored, non-absorbent, smooth textured, and easily cleanable.
- D. The floor must be light colored, non-absorbent, smooth textured, and easily cleanable.
- E. The lighting level of each booth or cubicle shall be a minimum of ten (10) foot candles at all times, as measured from the floor.

12.3 Only one individual shall occupy a booth, room, or cubicle at any time. No occupant of a booth, room, or cubicle shall engage in any type of sexual activity, cause any bodily discharge or Jitter while in the booth, room, or cubicle. No individual shall damage or deface any portion of the booth, room, or cubicle.

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13.0 ALCOHOLIC BEVERAGES

- 13.1 The sale, use, or consumption of any alcoholic beverages, wine, fermented malt beverages, or intoxicating liquors on the premises of an adult oriented establishment is prohibited.

14.0 RESPONSIBILITIES OF THE OPERATOR

- 14.1 If an employee commits an act or omission constituting a violation of this chapter, either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission. Any such act shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, or renewed.
- 14.2 No employee of an adult oriented establishment shall allow any minor to loiter around or to frequent an adult oriented establishment or to allow any minor to view adult entertainment.
- 14.3 The operator shall maintain the premises in a clean and sanitary manner at all times.
- 14.4 The operator shall maintain at least ten (10) foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room, or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one (1) foot candle of illumination in said aisles, as measured from the floor.
- 14.5 The operator shall insure compliance of the establishment and its patrons with the provisions of this ordinance.

15.0 ADMINISTRATIVE PROCEDURE AND REVIEW

- 15.1 If an owner appeals the non-renewal, revocation, or suspension of a license, that owner will be granted a temporary license applicable while the appeal is pending.

16.0 EXCLUSIONS

- 16.1 All public and private schools are exempt from obtaining a license hereunder when instructing pupils in sex education as part of the curriculum.
- 16.2 Licensed medical care facilities are exempt from obtaining a permit when engaged in the providing of medical care or sex education.

17.0 PENALTIES AND PROSECUTION

- 17.1 Any person, partnership, or corporation found to have violated this chapter shall have any license obtained hereunder revoked.
- 17.2 In addition to the revocation of a permit issued under this ordinance, any person who shall violate any provision of this ordinance or who shall fail to obtain a permit as required hereunder shall upon

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conviction of such violation, be subject to a penalty of a civil forfeiture of not less than fifty (\$50.00) dollars nor more than two-hundred fifty (\$250.00) dollars, together with the costs of prosecution. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this ordinance shall preclude the Village Council from maintaining any appropriate action to prevent or remove a violation of any provision of this ordinance.

18.0 SEVERABILITY

18.1 If any provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other provisions of this ordinance.

19.0 ENFORCEMENT

19.1 Personnel of the Newcomerstown Police Department shall have the authority to enter any adult oriented establishment to inspect the premises and enforce this ordinance. Such inspections shall be limited to public areas and may only be conducted during business hours.

20.0 DISCONTINUATION OF OPERATION

20.1 Any discontinuation in the operation of an adult oriented establishment for a period of twelve (12) months or more shall cause the license to lapse and become void. A license holder whose license has lapsed in this manner shall thereafter be subject to the procedures applicable to the issuance of new licenses.

Section 3. That this resolution shall be and is hereby declared to be an emergency measure for reason that the Village needs to establish fund to appropriate dollars, and for reason thereof this resolution shall be effective immediately upon passage, signing by the Mayor, and posting.

Section 4. This action declared an emergency due to the need to preserve public health, safety and welfare and is passed as such.

Section 5. Council finds and determines that all formal actions relative to the passage of this resolution were taken in an open meeting and that all deliberations of Council which resulted in the passage of this resolution, were taken in meetings open to the public, in full compliance with all legal requirements including R.C. 121.22.

ADOPTED THIS 1ST DAY OF NOVEMBER, 2021

Vote of Council:	Ayes	Nays
Roll Call Vote:		
Heather M. Stein-Wells	___	___
Phillip Lambes	___	___
James Friel	___	___
Allen Collins	___	___
David Shepherd	___	___
Randy Little	___	___

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Attest:

Approved:

Lisa M. Stiteler, Fiscal Officer

Patrick M. Cadle, Mayor