

**ORDINANCE NO. 2023-886**  
**UPPER MERION TOWNSHIP**  
**MONTGOMERY COUNTY, PENNSYLVANIA**

**AN ORDINANCE REPEALING AND REPLACING ARTICLE XXXVIII,  
SEXUALLY ORIENTED BUSINESSES, OF CHAPTER 165 OF THE UPPER MERION  
TOWNSHIP CODE, ZONING, TO PROVIDE FOR NEW DEFINITIONS; USE AND  
SITE REQUIREMENTS AND CONDITIONS; AND INSPECTION RIGHTS**

**WHEREAS**, the Pennsylvania Second Class Township Code and the Pennsylvania Planning Code, 52 P.S. § 10101, *et seq.*, authorizes the Board of Supervisors (“Board”) of Upper Merion Township (“Township”) to make, amend, and adopt ordinances that are consistent with the constitution and laws of the Commonwealth of Pennsylvania when necessary for the proper management, care and control of the Township and the maintenance of peace, good government, health and welfare of the Township and its citizens;

**WHEREAS**, the Board intends to preserve, maintain, and enhance the community existing within Upper Merion Township while providing for legitimate uses within the Township;

**WHEREAS**, certain uses can cause a deleterious effect on the aesthetics and economics of the surrounding areas and immediate neighboring uses;

**WHEREAS**, certain uses are only legally permitted to be enjoyed or accessed by adults, and therefore are inappropriate to be in zoning districts heavily traversed and occupied by young children and minors;

**WHEREAS**, the Board desires to amend its Zoning Code, Article XXXVIII, as set forth below, to amend the current regulations on Sexually Oriented Businesses;

**WHEREAS**, the Board has met the procedural requirements of the Pennsylvania Municipalities Planning Code for the adoption of the proposed ordinance, including advertising and holding a public hearing;

**WHEREAS**, the Board, after due consideration of the proposed ordinance at a duly advertised public hearing, has determined that the health, safety and general welfare of the residents of Upper Merion Township will be served by this amendment of the Upper Merion Zoning Ordinance.

**NOW THEREFORE, BE IT ORDAINED AND ENACTED** by the Board of Supervisors of Upper Merion Township, Montgomery County, Pennsylvania as follows:

**SECTION I. CODE AMENDMENT. Article XXXVIII Sexually Oriented Businesses, is hereby repealed in its entirety and replaced as follows:**

**ARTICLE XXXVIII Sexually Oriented Businesses.**

**§165-266 Purpose and Findings.**

- A. Certain types of Sexually Oriented Businesses possess characteristics that may be objectionable to the public or illegal to display or sell to minors.
- B. When concentrated, certain types of Sexually Oriented Businesses may be found to have a deleterious effect upon adjacent areas.
- C. The activities of certain Sexually Oriented Businesses have been associated with increases in noise, parking impacts, loitering, littering, and disturbances in the peace.
- D. Special regulations are necessary to prevent the overconcentration of Sexually Oriented Businesses and to mitigate the negative impacts associated with these uses.
- E. Special regulation of these uses is necessary to ensure that the adverse effects of Sexually Oriented Businesses will not contribute to the blighting or downgrading of the surrounding neighborhood nor create an adverse effect on minors.
- F. Reasonable conditions on Sexually Oriented Businesses, such as limitation on hours of operation, exterior lighting, display materials, and other similar conditions, are necessary to protect the public health, safety, and welfare.

**§165-267 Definitions.**

As used in this Article, the following terms shall have the meanings indicated:

**ADULT ARCADE.** Any place to which the public is permitted or invited wherein coin or slug operated, or electronically, electrically, or mechanically controlled still picture or motion picture machines, projectors, virtual reality sets, games, or other image-producing devices are maintained to show images or permit experiences where the images so displayed are distinguished or characterized by an emphasis on depicting, describing, replicating, or experiencing “Specified Sexual Activities” and/or “Specified Anatomical Areas.”

**ADULT CABARET.** A nightclub, theater, adult dance studio, men’s social club, music or performance studio, or other establishment which features live performances to one or more persons by topless and/or bottomless dancers, “go-go” dancers, exotic dancers, strippers or similar entertainers, where such performances are distinguished or characterized by an emphasis on depicting or simulating “Specified Sexual Activities” and/or “Specified Anatomical Areas” and where the average person, applying contemporary community standards would find that the performance, taken as a whole, appeals to the prurient interest, depicts or describes “Specified

Sexual Activities” and/or “Specified Anatomical Areas” in a patently offensive way, and lacks serious literary, artistic, political, or scientific value.

**ADULT ENTERTAINMENT FACILITY.** An Adult Newsrack, Adult Store, Adult Theater, Adult Arcade, Adult Novelty Store, Adult Model Studio, Sexual Encounter Center, or any other similar Sexually Oriented Business, or any combination of two or more of such uses. A business containing a 25 percent (25%) or more of the total wall space, display area, or stock-in-trade of a combination of such products or inventory regulated under the definitions of Adult Store, Adult Novelty Store, and/or an Adult Video Store shall be deemed to be an Adult Entertainment Facility.

**ADULT MATERIALS.** Items or actions with an emphasis on depicting, describing, containing, showing, or replicating “Specified Sexual Activities” and/or “Specified Anatomical Areas.” where the average person, applying contemporary community standards would find that the material, taken as a whole, appeals to the prurient interest, depicts or describes “Specified Sexual Activities” and/or “Specified Anatomical Areas” in a patently offensive way, and lacks serious literary, artistic, political, or scientific value.

**ADULT MODEL STUDIO.** Any business where, for any form of consideration or gratuity, figure models who display “Specified Anatomical Areas” are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons paying such consideration or gratuity. This does not include accredited educational institutions, which may employ models in fine art courses.

**ADULT NEWSRACK.** Any self-service or coin-operated or card-operated machine or device that dispenses or provides access to Adult Materials.

**ADULT NOVELTY STORE.** A building, or portion thereof, in which 25 percent (25%) or more of the display area of the store’s products or inventory is used for the distribution, sale, transfer, offer for sale and/or rental or offer for rental of any device, instrument, game, toy, or paraphernalia evidently designed or marketed for sexual stimulation of human genital organs or for sadomasochistic use.

**ADULT STORE.** Any building, or portion thereof, where space devoted to sale or display Adult Materials composes 25 percent (25%) or more or 500 square feet, whichever is less, of any one or more of the following:

- a. Wall space;
- b. Any display area other than wall space (e.g. tables, racks, and/or any other display areas or structures); or
- c. stock in trade (inventories not on display, but on site).

**ADULT THEATER.** A commercial establishment, or portion thereof, whether open or enclosed, that is substantially devoted to, or marketed for, the public depiction of Specified Sexual Activities” or “Specified Anatomical Areas” for observation by persons therein through films, motion pictures, videocassettes, slides, DVDs or Blue-ray Disks, electronic files or movies, slides, virtual depiction or experience, or other similar materials (“Films”), where the average person, applying contemporary community standards would find that the Films, taken as a whole, appeal

to the prurient interest, depict or describes “Specified Sexual Activities” and/or “Specified Anatomical Areas” in a patently offensive way, and lack serious literary, artistic, political, or scientific value..

**ADULT VIDEO STORE.** A building, or portion thereof, in which 25 percent (25%) or more of the display area of the store’s products or stock in trade (inventories not on display but on site) is used for the distribution, sale, transfer, offer for sale and/or rental or offer for rental, or presentation of videos, movies, motion pictures, slides, tapes, films, DVDs, Blu-ray disks, electronic files downloads or movies, video games, virtual reality presentations, or similar items (“Videos”)—of “Specified Sexual Activities or “Specified Anatomical Areas” and the Video taken as a whole, appeals to the prurient interest, depicts or describes “Specified Sexual Activities” and/or “Specified Anatomical Areas” in a patently offensive way, and lacks serious literary, artistic, political, or scientific value.

**PUBLIC VIEW.** Exposes to the view of persons outside the building in which a Sexually Oriented Business is located or a portion of a building used for a Sexually Oriented Business.

**SEXUAL ENCOUNTER CENTER.** Any business, agency, or person who, as one of its principal business purposes, for any form of consideration or gratuity, provides a place where two or more persons, not all members of the same family, may congregate, assemble or associate for the purpose of engaging in “Specified Sexual Activities,” exposing “Specified Anatomical Areas,” or physical contact in the form of wrestling or tumbling between persons when one (1) or more of the persons is in a state of nudity or semi-nude. This term shall not be interpreted to include private rooms in hotels, motels, rooming houses, lodging houses, tourist homes, or similar businesses.

**SEXUALLY ORIENTED BUSINESS.** Includes the following types of businesses.

1. Adult Newsrack,
2. Adult Store,
3. Adult Entertainment Facility,
4. Adult Arcade,
5. Adult Theater,
6. Adult Novelty Store,
7. Adult Video Store,
8. Adult Cabaret,
9. Adult Model Studio, and/or
10. Sexual Encounter Center

**SPECIFIED ANATOMICAL AREAS.** Less than completely and opaquely covered:

- a. Human genitals;
- b. Human buttocks or anus;
- c. Human female breast below a point immediately above the top of the areola;
- d. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES.** Specified Sexual Activities are comprised of the following:

- a. Actual or simulated sexual intercourse, oral copulation, anal intercourse or copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship;
- b. Clearly depicted human genitals in a state of sexual stimulation, arousal, or tumescence;
- c. Human or animal masturbation, sodomy, oral copulation, coitus, cunnilingus, fellatio, or ejaculation, whether actual or simulated;
- d. Fondling or erotic lewd touching of nude human genitals, public region, buttocks, or breast;
- e. Masochism, erotic or sexually oriented torture, beating or infliction of pain, whether actual or simulated;
- f. Erotic lewd touching, fondling, or other contact with an animal by a human being;
- g. Human excretion, urination, menstruation, or vaginal or anal irrigation in the context of a sexual relationship; and
- h. Any combination of the above items a through g.

**§165-268 Use Standards for Sexually Oriented Businesses.**

- A. Sexually Oriented Businesses are only permitted when such use is permitted in the underlying zoning district.
- B. Sexually Oriented Businesses shall comply with all applicable federal, Commonwealth, and Township laws and obtain all required licenses and permits required to operate.
- C. Distance Requirement. The parcel of land where the Sexually Oriented Business is situated shall be located at least 1,000 feet from parcels containing the following uses:
  - (a) A place of worship and assembly;
  - (b) A public or private pre-elementary, elementary or secondary school;
  - (c) A public library;
  - (d) A child-care facility or nursery school;
  - (e) A boundary of any residential district;
  - (f) A public park adjacent to a residential district;
  - (g) A community/recreation center; or
  - (h) Another Sexually Oriented Business
- D. Hours of Operation. The hours of operation of a Sexually Oriented Business shall be limited to between 8 a.m. and 10 p.m. on Sunday, Monday, Tuesday, Wednesday and Thursday, and from 8 a.m. to 11 p.m. on Friday and Saturday.
- E. Display. No Sexually Oriented Business, including but not limited to an Adult Newsrack, shall display, advertise, or exhibit any material or signage in a manner which

exposes to the Public View photographs, depictions, videos, illustrations or other similar images or actions of “Specified Sexual Activities,” “Specified Anatomical Areas,” or naked persons in poses which emphasize or direct the viewer’s attention to the subject’s breasts, buttocks, or genitals.

- F. In addition to any other violations and penalties that may be applicable under any laws, it shall be unlawful for any person to knowingly sell, rent, admit, or provide to a minor any Adult Material or grant admission to a Sexually Oriented Business to a minor when providing such materials or access is prohibited under Commonwealth or federal law. For purposes of this Article, a “minor” means an individual who has not attained the age of 18.
- G. Security Program. An on-site security program shall be prepared and implemented as follows:
  - (a) Exterior Lighting. All exterior lighting shall comply with all outdoor lighting requirements of the underlying zoning district where the site is located. In addition, all off-street parking areas and building entries for a Sexually Oriented Business shall be illuminated during all hours of operation with a minimum maintained horizontal illumination of one footcandle of light on the parking surface and/or walkway.
  - (b) Interior Lighting. All interior portions of the Sexually Oriented Business, except those devoted to mini-motion or motion pictures, shall be illuminated during all hours of operation with a lighting system that provides a minimum maintained horizontal illumination of not less than two foot-candles of light on the floor surface.
  - (c) Security Guards. Security guards for Sexually Oriented Businesses may be required if it is determined by the Upper Merion Police Department that their presence is necessary to prevent any unlawful conduct from occurring on the premises.

**§165-269 Site Standards for Sexually Oriented Businesses.**

- A. Façade. For existing buildings, photographs of the building(s) must be provided to the Township upon submittal of a use permit application. The exterior of the building(s) may be required to be repainted and repaired, as needed.
- B. Landscaping and Buffers. All site landscaping, buffers, and screening shall comply with the established requirements of the underlying zoning district where the site is located.

- C. Litter. The exterior, including all signs and accessory buildings and structures, shall be maintained free of litter at all times. The owner or operator shall provide for daily removal of trash, litter, and debris from the premises occupied by the Sexually Oriented Business and on all abutting sidewalks within 20 feet of the premises.
- D. Graffiti. The owner or operator shall remove graffiti from the premises occupied by the Sexually Oriented Business or the improvements thereon within 48 hours' notice of the occurrence.

**§165-270 Inspection; right of entry.**

In order to ensure compliance with this Article, all Sexually Oriented Businesses shall permit representatives of the Upper Merion Township Police Department, the Township Fire Marshal, the Township Building Official, the Township Code Enforcement Department, or other necessary Township departments to inspect the portions of the premises of the Sexually Oriented Business that will be open or accessible to the public. Such inspections shall occur at a time that the Sexually Oriented Business is occupied or open for business. It shall be a violation of this Chapter for a Sexually Oriented Business to refuse to permit an authorized inspection.

**SECTION VII: Repealer.** In addition to the above, all other ordinances or parts of ordinances that are inconsistent herewith, are hereby repealed. Further, it is understood and intended that all other sections, parts, provisions, and ordinances that are not otherwise specifically in conflict or inconsistent with this Ordinance, shall remain in full force and effect, the same being reaffirmed hereby.

**SECTION VIII: Severability.** In the event that any section, sentence, clause, phrase or word of this Ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declarations shall not prevent, preclude, or otherwise foreclose enforcement of any of the remaining portions of this Ordinance.


**SECTION IX: Effective Date.** This Ordinance shall take effect immediately upon its legal enactment.

**SECTION X: Failure to Enforce Not a Waiver.** The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

**SECTION XI: Enactment.** The Board of Supervisors of Upper Merion Township, in the County of Montgomery, Commonwealth of Pennsylvania does hereby approve and ordain this Ordinance for the Township of Upper Merion, this 9th day of Feb., 2023.

**ATTEST:**

**UPPER MERION TOWNSHIP  
BOARD OF SUPERVISORS**

By:   
**Anthony Hamaday, Secretary**

By:   
\_\_\_\_\_, Chairperson,  
**Upper Merion Township  
Board of Supervisors**

**Advertised Ordinance in** Times Herald : January 25, 2023 & February 1, 2023

**Proof of Publication Dated:** February 7, 2023

**Hearing Held:** February 9, 2023

**Ordinance Adopted** Feb. 9, 2023 **as Ordinance No.** 2023-886

**Ordinance Entered:** February 13, 2023