

ORDINANCE NO. 2009-___

**AN ORDINANCE OF THE TOWNSHIP OF MILFORD,
BUCKS COUNTY, PENNSYLVANIA, AMENDING THE MILFORD TOWNSHIP
PORTION OF THE QUAKERTOWN AREA ZONING ORDINANCE REVISING
CERTAIN PROVISIONS RELATED TO ADULT COMMERCIAL USES, PROVIDING
SPECIFIC STANDARDS FOR THE GRANT OF CONDITIONAL USE APPROVAL
FOR THESE USES AND MAKING CERTAIN OTHER REVISIONS TO SECTION 1108
OF THE ZONING ORDINANCE.**

**BACKGROUND,
LEGISLATIVE FINDINGS AND
STATEMENT OF COMMUNITY DEVELOPMENT OBJECTIVES**

- A. On or about July 18, 1995, the Milford Township Board of Supervisors (the "Board") enacted a new Zoning Ordinance (the "Zoning Ordinance") pursuant to its statutory authority, the Pennsylvania Municipalities Planning Code ("MPC"), Act 247 of 1968, as amended (53 P.S. §10101 et. seq.).
- B. The Zoning Ordinance incorporated Ordinance No. 95 adopted December 7, 1993, which established regulations for Adult Commercial Uses as defined at Section 404 E23 of the Zoning Ordinance.
- C. Ordinance No. 95 in its Statement of Community Development objectives recognized that Adult Commercial Uses are perceived by the public as offensive and inappropriate in residential areas, commercial areas adjacent to residential areas, and central commercial areas as well as in business, office and industrial areas.
- D. Ordinance No. 95 further recognized that establishment of Adult Commercial Uses in areas other than in a Planned Commercial Zoning District would have the potential to offend community moral standards, cause embarrassment and alarm to residents and to proprietors and patrons in other neighborhoods and Zoning Districts. In addition, it recognized that Adult Commercial Uses, if left unregulated, have the potential to cause blight and deterioration of established residential and commercial neighborhoods.
- E. The Board finds that the concerns stated in paragraphs C and D hereof, remain true as of the date of the adoption of the Amendment.
- F. The Board has reviewed numerous studies addressing secondary effects of Adult Commercial Uses including a report of the Attorney General's Working Group on the

Regulation of Sexually Oriented Businesses compiled by Hubert H. Humphrey, III, Attorney General of the State of Minnesota, a Summary of Secondary Effects of Sexually Oriented Businesses, articles written by Daniel Linz and others including Government Regulation of Adult Businesses Through Zoning, an Examination Of The Assumption that Adult Businesses Are Associated with Crime, Supreme Court Decision Making and Negative Secondary Effects of Adult Businesses as well other articles on this subject.

G. The Board is also aware of anecdotal evidence of negative secondary impacts of Adult Commercial Uses in the Milford area, including an article in the Morning Call dated December 22, 2007, concerning the robbery of a patron by a dancer at an area strip club.

H. Based upon its review of the above-described articles and its general awareness of issues related to secondary effects of Adult Commercial Uses, the Board finds that these uses are often associated with prostitution, pandering, illegal sex acts, sex crimes and problems with underage patrons and dancers as well as other illegal activity such as drug use and property crimes.

I. The Board further finds that the community development objectives stated above and the public health, safety and welfare of the residents of Milford Township will be served by amending the provisions of Section 404 E23 and by providing specific requirements for Adult Commercial Uses under Section 1108 of the Zoning Ordinance.

J. In accordance with MPC requirements, copies of this proposed Ordinance were forwarded to the Bucks County Planning Commission and the Milford Township Planning Commission on March 6, 2009, for their review and comment.

K. In accordance with MPC requirements, notice of a public hearing to consider the adoption of this Ordinance was duly advertised in the Intelligencer on _____ and _____.

L. The proposed Zoning Ordinance Amendment has been advertised, considered and reviewed and a hearing held all in accordance with the requirements of Section 609 of the MPC (53 P.S. §10609).

NOW THEREFORE, be it ENACTED and ORDAINED and it is hereby **ENACTED AND ORDAINED** by the Board of Supervisors of Milford Township, Bucks County, Pennsylvania, that the Zoning Ordinance is hereby amended as follows:

SECTION 01: Section 404 E23 – Adult Commercial Uses shall continue to be permitted only in the PC – Planned Commercial Zoning District as a Conditional Use.

SECTION 02: The definition of Adult Entertainment Cabaret contained at Section 404 E23 is revised and restated as follows:

Adult Entertainment Cabaret – A public or private establishment which is licensed to serve food and/or alcoholic beverages, which features ~~live sex,~~ topless dancers, strippers, male or female impersonators, or similar entertainers, or similar establishment to which access is limited to persons eighteen (18) years of age or older.

All other provisions of Section 404 E23, Adult Commercial Uses, shall remain in effect.

SECTION 03: Amend Section 1108.c to add the following sentence after subparagraphs 1 through 6 thereof:

Because of the First Amendment implications of Use E23 – Adult Commercial Uses, it is conclusively presumed that Adult Commercial Uses meeting the specific requirements and standards provided at Section 1108.d(4)(j) satisfy the requirements of subsections c(1),(2) and (3) above.

SECTION 04: Section 1108.d(4) is amended to add a new subsection (j) providing as follows:

(j) Use E23 – Adult Commercial Uses

1. Management, employees and agents of the Adult Commercial Use shall take reasonable steps to assure that neither acts of prostitution, solicitation of prostitution or sales or use of illegal substances, occur within or outside the building on the Property. Specifically, management, employees, security personnel and dancers shall not knowingly engage in or permit others within the building to engage in, solicit or

arrange for acts of prostitution either within the building or on the grounds outside of that building.

2. Management, employees and agents of the Adult Commercial Use shall not knowingly permit the sale, use or exchange of controlled substances such as marijuana, cocaine, heroin or other drugs regulated by the Pennsylvania Crimes Code or the Controlled Substance, Drug, Device or Cosmetic Act either within the building or on the grounds outside the building.

3. In accordance with the requirements of the Pennsylvania Adult Oriented Establishments law, 68 PA. C.S.A. §5501 et. seq., all areas where dancers perform or have any interaction with patrons or areas where adult oriented movies or materials may be viewed shall be clearly visible from common areas of the premises. No such rooms or other space where pornographic movies or pornographic materials may be viewed or adult entertainment activities occur shall be installed such that these areas are not clearly visible from common areas in the premises.

4. Managers, employees, and "independent contractors", of the Adult Commercial Use, including dancers, shall not knowingly permit patrons to touch the genital areas of dancers or dancers to touch the genital areas of patrons.

5. Managers, employees, and "independent contractors", of the Adult commercial Use (including dancers) not knowingly permit patrons to engage in acts of masturbation on the Property.

6. Persons responsible for operating Adult Commercial Uses, including managers and supervisory personnel shall not knowingly employ or secure as "contractors" any persons to work as sales clerks, servers, dancers, entertainers, or security personnel who have been convicted of any of the following provisions of the Pennsylvania Crimes Code: prostitution, solicitation of prostitution or any of the following sexual offenses: 18 Pa. C.S. §3121(c) & (d); 18 Pa. C.S. §3123(a)(7),(b) and (c); 18 Pa. C.S. §6318; 18 Pa. C.S. §6312; and 18 Pa. C.S. §6320. In addition such persons shall not have been convicted of a crime under 35 Pa. C. S. A §780-113 (except clauses 16, 31, 32 and 33) or 18 Ps. C.S.A. §6106 related to carrying a firearm without a license or §6105 related to persons convicted of serious offenses not to possess a firearm. All sales clerk, dancers, entertainers, and security personnel shall be

required to sign a form, substantially the same as Appendix B-1 attached hereto, containing questions concerning prior convictions or charges for prostitution, solicitation of prostitution and offenses enumerated above. Such persons shall be required to consent to a "background check" utilizing the Pennsylvania State Police Request for Criminal Record Check form (as revised) and shall be required to provide to the entity operating the Adult Commercial Use their date of birth and Social Security number. The background check described above shall be conducted with respect to each sales clerk, entertainer, employee, security personnel or other person participating in the operation of the Adult Commercial Use to assure that said persons have not been convicted of any of the crimes cited above in this subsection. Copies of the results of the background check shall be maintained on the premises for a period of one year. Copies of the results with the date of birth and Social security number blocked out shall be available for inspection by the Township Code official no more than once in any 90 day period.

7. A "No Loitering" sign shall be placed on each side and on the front and rear of the parking lot of an Adult Commercial use in a location approved by the Township Code Official to alert the general public that loitering is prohibited. Each sign shall be not less than 8 inches wide and 12 inches high and shall be placed on a post such that the bottom of the sign is approximately 5 feet from the ground. Between sundown and closing, management, employees and agents of the Adult Commercial Use on an hourly basis shall police the parking lot and other areas outside the building to assure that patrons, dancers and/or other persons, do not gather outside the building. If, during any period of time when the establishment is open for business, two or more patrons, dancers and/or other persons are observed outside together for a continuous period greater than ten (10) minutes, a violation of this provision shall be deemed to have occurred. This provision shall not apply to management, employees or security personnel who police the outside areas to assure compliance with this provision nor to employees, vendors, agents and others who are engaging in legitimate activities such as deliveries of food, supplies and other products to the business, maintenance, deposit of trash in receptacles, snow removal, and the like. Records verifying compliance with any actions taken shall be maintained on forms substantially in the form attached as

Appendix B-9 hereof. Completed forms shall be maintained on the property for a period of one (1) year and shall be available for inspection by the Township Code Official upon request but not more than four (4) times during any twelve (12) month period.

8. If the establishment where an Adult Commercial Use is conducted offers alcohol for sale or permits alcohol to be consumed on the premises, the following additional provisions shall apply.

i. At least one person shall be on the premises at all times when it is open for business, who has been duly certified pursuant to the Responsible Alcohol Management Program ("RAMP") operated by the Pennsylvania Liquor Control Board. At least one owner/manager shall also be certified under the RAMP program.

ii. Any person who sells or dispenses alcohol on the premises shall have obtained a certificate under the RAMP program.

iii. Within ninety (90) days of the date of this approval, the operator or manager shall provide Township with copies of all certifications issued to demonstrate compliance with provisions i. and ii. hereof. Certifications shall be updated quarterly to demonstrate compliance with the provisions of i and ii hereof.

iv. No patrons under the age of 21 years shall be permitted on the Property during regular hours of operation.

v. No dancers under 21 years of age shall be permitted to dance or otherwise entertain at an adult entertainment cabaret. No sales clerk employed in an Adult Commercial Use shall be under 21 years of age.

vi. Any persons charged with policing, screening or otherwise assuring compliance with the aforesaid age restrictions shall have been trained in identifying false or fake driver's licenses or other forms of identification through the RAMP program or receive other similar training as approved by the Board and shall have on file with the manager or operator a certification or other suitable evidence that such training has been completed.

vii. Owners, managers, employees and servers of alcoholic beverages shall not knowingly permit visibly intoxicated persons to continue to be served alcohol.

viii. Any owner, manager, employee, security personnel or server who observes a visibly intoxicated person leaving the building shall determine whether that person is operating an automobile. If a visibly intoxicated person is observed operating an automobile by any of the aforesaid persons, that person shall immediately contact the police and document the incident, including providing a description of the automobile and other information available to that person.

9. To the extent any of the following state statutes are in effect and apply to the activities conducted on the premises of an Adult Commercial Use, management, employees, "independent contractors", and others on the premises with management's actual or implied consent, shall comply with the following:

i. 18 PA. C.S.A. §5903 A et. seq. of the Pennsylvania Crimes Code, as amended, related to obscene activities.

ii. The "Bottle Club" or "BYOB" law, 18 PA. C.S.A. §732 A et. seq.

iii. The Pennsylvania Liquor Code, 47 P.S. § 4-492 et. seq., as amended.

10. Any change of an Adult Commercial Use from one such Use (i.e. Adult Commercial Bookstore) to another Adult Commercial Use (i.e. Adult Entertainment Cabaret), shall require further conditional use approval and a demonstration of compliance with the special provisions set forth herein.

11. The sale or transfer of the business to another entity intending to operate an Adult Commercial Use shall require an application for a zoning permit by the entity proposing to operate the Adult Commercial Use. Prior to the issuance of zoning permit, the applicant shall appear before the Board of Supervisors at a public meeting and present the Board with facts sufficient to determine whether the applicant's intended use is in compliance with the conditions of approval.

12. The hours of operation of an Adult Commercial Use shall be no greater than from 12:00 noon to 2:00 a.m. Monday through Saturday and 4:00 p.m. to 12:00 p.m. on Sundays. Provided a zoning use permit covering the activity has been issued, activities which do not violate the other provisions of this approval (such as restaurant) may be conducted at hours outside the hours of operation specified herein.

13. No outdoor speakers or amplifiers shall be installed on the premises where an Adult Commercial Use is conducted.

14. No sound levels generated from activities on the Property shall exceed 50 dba at the Property boundaries between the hours of 10:00 p.m. and 7:00 a.m. In addition, all activities on the Property shall comply with the requirements of §508 of the Milford Township Zoning Ordinance.

15. No sound amplifier, musical instrument or other sound generating device shall be permitted to operate on the Property between the hours of 10:00 p.m. and 10:00 a.m. in such a manner as to create a noise disturbance across a real property line.

16. The operators and managers of an Adult Commercial Use shall enforce the Policies and Procedures substantially in the form of Appendix B of the Zoning Ordinance attached hereto, to the extent they are applicable for the type of Adult Commercial Use proposed. The Township Code Official or other authorized Township employee shall have the right, not to be exercised more than once in any ninety (90) day period, to audit the records maintained for compliance with this provision. Identity information shall not be required except as may be reasonably required in a criminal investigation or enforcement action.

17. Owners and operators of an Adult Commercial Use, including managers, shall be responsible for enforcement of the Policies and Procedures attached hereto as Appendix B of the Zoning Ordinance, regarding physical contact between dancers and patrons which incorporate the provisions related to same set forth herein. These rules and regulations shall be posted in the entry way to the building. The Chief Executive Officer of the Applicant, Operations Manager and General Manager shall be responsible for obtaining the signature on a form incorporating these regulations and signed by each dancer who performs. These forms shall be maintained on the premises for a period of ninety (90) days following the last date a dancer performs. The Township Code Official or other authorized Township employee shall have the right, not to be exercised more than once in any ninety (90) day period, to audit the records maintained for compliance with this provision. Entertainers shall be assigned a security number ("SN") consisting of the last four numbers of their Social

Security number. No other identifying information shall be required except in a criminal investigation or enforcement action.

18. Milford Township or its duly authorized agents shall be permitted at all reasonable times to go upon and inspect the Property for compliance with the terms and provisions hereof.

19. If the owner, operator, managers, employees, "independent contractors", or other persons on the Property with the permission of operator of the Adult Commercial Use, violates one or more of the above provisions, the Board of Supervisors shall be entitled to institute enforcement actions against the operator of the Adult Commercial Use and any individual violating said provisions and the Township shall have all enforcement remedies permitted under §617 and 617.2 of the Pennsylvania Municipalities Planning Code (53 P.S. §§10617 and 10617.2) for a violation of a municipal zoning ordinance. Enforcement remedies shall include the right to preliminary and final injunctive relief as well as the right to impose fines for such violations.

SECTION 05: Repealer

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 06: Severability

The provisions of this Ordinance are declared to be severable. If any sentence, clause, section or part of this Ordinance is for any reason determined to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of this authority that such remainder shall be and shall remain in full force and effect.

SECTION 07: Captions

The captions to sections throughout this Ordinance are intended solely to facilitate reading of, and reference to, the sections and provisions of this Ordinance.

Such captions shall not affect the meaning or interpretation of this Ordinance.

SECTION 08: Effective Date

All provisions of this Ordinance shall take effect five (5) days after the date of its enactment.

ORDAINED and ENACTED this ____ day of _____ 200__.

BOARD OF SUPERVISORS
MILFORD TOWNSHIP

ATTEST:

Jeffrey Vey,
Township Manager

Robert B. Mansfield, Chair

Charles Strunk, Vice Chair

Timothy Damiani, Member