

ORDINANCE NO. _____

Date Passed:

AN ORDINANCE ADDING SECTION 110-555 OF THE MUNICIPAL CODE OF THE CITY OF ROCHELLE TO CATEGORIZE AND PROVIDE FOR ZONING OF SEXUALLY-ORIENTED LAND USES

WHEREAS, the City of Rochelle is a body politic and corporate, organized and existing pursuant to the Illinois Municipal Code, 65 ILCS 5/1-1-1, et. seq.; and

WHEREAS, Section 11-13-1, et seq., of the Illinois Municipal Code authorizes municipalities to adopt and amend a zoning ordinance for the regulation of various zoning districts, including each district's permitted uses; and

WHEREAS, Article X ("Standards and Requirements for Miscellaneous Uses") of Chapter 110 ("Zoning") of the Rochelle Municipal Code currently provides for certain restrictions relating to specific, miscellaneous uses of property, including zoning district limitations, location restrictions, and parking requirements for said uses; and

WHEREAS, the City Council finds it in the best interests of the City to more accurately define a miscellaneous use for "Sexually-Oriented Land Uses" to ensure compliance with the Zoning Code, ensure Sexually-Oriented Land Uses are permitted in limited circumstances provided therein, and to fully define the varieties of Sexually-Oriented Land Uses; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROCHELLE, OGLE COUNTY, ILLINOIS, that **Chapter 110** of the Municipal Code of the City of Rochelle be amended as follows:

1. By deleting the following from Section 110-9 - Definitions:

~~"Sexually oriented materials means movies, films, slides, animated pictures, pictures, photographs, books, videos, DVDs, and computer software which show contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio, or anal penetration, also, artificial devices which are similar in appearance to male or female sexual organs; excepting those materials which are available as a reference in a public library, or accredited educational facility or school, or as used in connection with counseling, therapy, or treatment by a state licensed medical or mental health facility or person."~~

~~Sexually oriented materials, sales or rentals, means any sale, rental, use, or opportunity to view, whether in connection with another business or use or not, of sexually oriented materials."~~

2. By replacing the term "Sexually oriented materials, sale or rental" with "Sexually-oriented land use" in the chart in Section 110-291 – District Use Classification List, and by adding a "0" under the I-2 classification.
3. By adding to Chapter 110, the following section:

"Sec. 110-555. – SEXUALLY-ORIENTED LAND USES.

(a) Definitions.

(1) *Adult Arcade*. A place to which the public is permitted or invited wherein coin-operated, slug-operated, electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of Specified Sexual Activities or Specified Anatomical Areas.

(2) *Adult Bookstore*. An establishment which advertises, sells, rents, or offers for sale or rent Adult Material, which is not open to the public generally, and which excludes any minor by reason of age. The provisions of this subsection are not intended to apply if the presumption is rebutted by evidence that establishes that at the establishment:

- a. Admission is not restricted to adults only; and
- b. All Adult Material is accessible only by employees; and
- c. The gross income from the sale and/or rental of adult material comprises less than ten percent of the gross income from the sale and rental of the goods or services at the establishment, and the individual items of adult material offered for sale and/or rent comprise less than 25 percent of the total individual new items publicly displayed as stock in trade in any of the following categories: books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, videotapes, slides, or other visual representations, or recordings or other audio matter, or less than 25 percent of the individual used items publicly displayed at the establishment as stock in trade in the same categories set out above.

(3) *Adult Club*. Any establishment wherein admission is limited to members of the establishment and their guests, and facilities are maintained and used for the

engagement of members and guests of the club in Specified Sexual Activities or the exhibition of Specified Anatomical Areas, or for the exhibition to members and guests of the club of Specified Sexual Activities or Specified Anatomical Areas.

(4) *Adult Material.* Any one or more of the following, regardless of whether it is new or used:

- a. Books, magazines, periodicals, or other printed matter, paintings, drawings or other publications or graphic media, or photographs, films, motion pictures, video cassettes or disks, slides, or other visual representations, or recordings, or other audio matter, which have as their primary or dominant theme matter depicting, illustrating, describing, or relating to a Specified Sexual Activity or Specified Anatomical Area; or
- b. Instruments, novelties, devices, or paraphernalia which are designed for use in connection with Specified Sexual Activities.

(5) *Adult Photographic or Modeling Studios.* Any business establishment which offers or advertises as its primary business stock in trade the use of its premises for the purpose of photographing or exhibiting Specified Sexual Activities or Specified Anatomical Areas or the modeling of apparel that exhibits Specified Anatomical Areas.

(6) *Adult Theater.* An enclosed building, or an enclosed space within a building, or an open-air area used for presenting either filmed or live plays, dances, or other performances, either by individuals or groups, distinguished or characterized by an emphasis on material depicting, describing, or relating to Specified Sexual Activities or Specified Anatomical Areas for observation by patrons therein. An establishment which has an Adult Arcade is considered to be an Adult Theater.

(7) *Special Cabarets.* Any bar, dance hall, restaurant, or other place of business which features dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or waiters or waitresses that engage in Specified Sexual Activities or display Specified Anatomical Areas, or any such business establishment the advertising, sign, or signs, for which use the words "adult", "topless", "nude", "bottomless", or other words of similar import.

(8) *Specified Sexual Activities.* The following are Specified Sexual Activities, regardless of whether the activity is actual or simulated:

- a. Showing of human genitals in a state of sexual stimulation or arousal;
- b. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, cunnilingus, or excretory functions; or

- c. Fondling or erotic touching of human genitals, pubic region, anus, buttocks, or female breasts.
- (9) *Specified Anatomical Areas.* The following are Specified Anatomical Areas:
- a. Less than completely and opaquely covered human genitals, pubic region, or cleavage of the nates of the buttock.
 - b. Human male genitalia in a discernible turgid state, even if completely and opaquely covered.
 - c. That portion of the human female breast directly or laterally below a point immediately above the top of the areola, which shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by dress, blouse, shirt, leotard, bathing suit, or other wearing apparel, provided that the areola is not so exposed.
 - d. Any covering, tape, plastic, latex spray, paint, or other device which simulates or otherwise gives the appearance of the display or exposure of any of the specified anatomical areas listed above.

(10) *Sexually-Oriented Land Use.* Adult Arcades, Adult Bookstores, Adult Clubs, Adult Photographic or Modeling Studios, Adult Theaters, Special Cabarets, and any other proposed use that is substantially similar in nature to those set forth herein.

(b) *Restrictions - Location.* Sexually-Oriented Land Uses, as defined herein, are permitted in I-3, Heavy Industrial and I-2, General Industrial Zoning Districts as a special use, after obtaining a special use permit, and shall additionally be restricted as to a location in the following manners:

(1) *Other Similar Uses.* Any Sexually-Oriented Land Use shall not be located within a 1,000-foot radius of another Sexually-Oriented Land Use.

(2) *Residential Uses.* Any Sexually-Oriented Land Use shall not be located within a 1,000-foot radius of any area zoned for residential use.

(3) *Place of Worship; Parks.* Any Sexually-Oriented Land Use shall not be located within a 1,000-foot radius of any church, or other place of religious worship, park, playground, or athletic field.

(4) *Schools.* Any Sexually-Oriented Land Use shall not be located within a 1-mile radius of any public or private school.

(5) *Measurement.* The distances provided in this Section shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the parcel of property for which a Sexually-Oriented Land Use is proposed to the nearest point of the property line from which the proposed land use is to be separated.

(c) *Parking Requirements.* Parking shall be provided on premises at the rate of one space per 300 sq. ft. of gross floor area or one space per person at the maximum capacity of the establishment, whichever is greater."

This ordinance shall become effective after its passage, approval and publication as provided by law and shall modify any inconsistent provisions in the municipal code prior to this date.

PASSED AND APPROVED this _____ day of August, 2014.

Ayes:_____ Nays: _____ Abstain:_____

Mayor

Attested: _____
City Clerk