

RESOLUTION NO. 5 , 2016

**A RESOLUTION ESTABLISHING AN INTERIM DEVELOPMENT CONTROL
OVERLAY DISTRICT TO DEFINE SEXUAL ENCOUNTER ESTABLISHMENTS**

WHEREAS, Montgomery Code Section 151.1313 allows City Council to establish an Interim Development Control Overlay District to regulate uses which need to be studied further because of their potential negative impact which may be inconsistent with the Land Usage Code and Comprehensive Land Use Plan; and

WHEREAS, a “sexual encounter establishment” is defined in the Ohio Revised Code as “a business or commercial establishment that, as one of its principal business purposes, offers for any form of consideration a place where either of the following occur: (i) Two or more persons may congregate, associate, or consort for the purpose of engaging in specified sexual activities; (ii) Two or more persons appear nude or seminude for the purpose of displaying their nude or seminude bodies for their receipt of consideration or compensation in any type or form”; and

WHEREAS, a “sexual encounter center” is defined in the Ohio Revised Code as “a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration physical contact in the form of wrestling or tumbling between individuals of the opposite sex when one or more of the individuals is nude or seminude”; and

WHEREAS, some sexually oriented businesses are entitled by law to certain First Amendment free speech protections and may be regulated by the communities only through the enactment of content-neutral regulations addressing the secondary effects of such establishments; and

WHEREAS, the City has been advised that sexual encounter establishments, sexual encounter centers, swingers clubs, and similar uses may not be entitled to the same protections; and

WHEREAS, Sexual Encounter Businesses are not defined nor regulated within the current Land Usage Code and may have a negative impact upon surrounding business uses and/or residential uses with the community; and

WHEREAS, the City desires to establish an Interim Development Control District throughout the City's Business Corridor to research this issue more fully and, if necessary, revise the Land Usage Code as necessary to regulate such businesses.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The City Council hereby establishes an Interim Development Control Overlay District encompassing all Business Districts within the city and shall suspend the issuance of any zoning certificate or license for operation of a sexual encounter establishment, sexual encounter center, swingers club, or similar use while these interim development controls are in place, initially for a period of three (3) months within such Overlay District.

SECTION 2. During this period the Community Development Director and the Law Director shall investigate and review the law applicable to Sexual Encounter Uses and the secondary effects of such uses on the City as a whole to determine if regulations governing such uses are recommended. Consistent with Code Section 151.1318 the Planning Commission shall commence its study of such use regulations and whether or not such Interim Development Control Overlay District shall be extended. The Community Development Director and Law Director will work with the City Manager and the Planning Commission to prepare any legislation or zoning amendments needed to properly regulate or prohibit the operation of Sexual Encounter Uses in conjunction with the purpose, spirit, and intent of the Montgomery Zoning Code and City of Montgomery Comprehensive Land Use Plan.

SECTION 3. This Resolution shall be in full force and effect from and after its passage.

PASSED: February 17, 2016

ATTEST: Connie M. Gaylor
Connie M. Gaylor, Clerk of Council

Christopher P. Dobrozsi
Christopher P. Dobrozsi, Mayor

APPROVED AS TO FORM:


Terrence M. Donnellon, Law Director