

**CHARTER TOWNSHIP OF GARFIELD
ORDINANCE NO. 51**

ADULT BUSINESS LICENSING ORDINANCE

AN ORDINANCE ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS FOR ADULT BUSINESSES WITHIN THE CHARTER TOWNSHIP OF GARFIELD, GRAND TRAVERSE COUNTY, MICHIGAN.

Section

- Preamble
- 1. Rationale and Findings.
- 2. Definitions.
- 3. License Required.
- 4. Issuance of License.
- 5. Fees.
- 6. Inspection.
- 7. Expiration and Renewal of License.
- 8. Suspension.
- 9. Revocation.
- 10. Hearing; License Denial, Suspension, Revocation; Appeal.
- 11. Transfer of License.
- 12. Hours of Operation.
- 13. Regulations Pertaining to Exhibition of Sexually Explicit Films on Premises.
- 14. Loitering and Exterior Lighting and Monitoring Requirements.
- 15. Penalties; Equitable Remedies.
- 16. Applicability of Ordinance to Existing Businesses.
- 17. Prohibited Conduct.
- 18. Scieneter Required to Prove Violation or Business Licensee Liability.
- 19. Failure of Township to Meet Deadline Not to Risk Applicant/Licensee Rights.
- 20. Severability.
- 21. Conflicting Code Provisions Repealed.
- 22. Effective Date.

WHEREAS, adult businesses require special supervision from the public safety agencies of the Township in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Township; and

WHEREAS, the Township finds that adult businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that adult businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, the Township desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, *see, e.g., Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual novelty devices); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007) (upholding ban on sexual novelty devices); and

WHEREAS, the Township recognizes its constitutional duty to interpret, construe, and amend its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any regulation, the Township accepts as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Michigan Constitutions, Michigan Code, and the Michigan Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the U.S. Constitution or the Michigan Constitution, but to enact legislation to further the content-neutral governmental interests of the Township, to wit, the controlling of secondary effects of adult businesses.

THE CHARTER TOWNSHIP OF GARFIELD ORDAINS:

Section 1. Rationale and findings.

(a) Purpose. It is the purpose of this Ordinance to regulate adult businesses in order to promote the health, safety, and general welfare of the citizens of the Township, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult businesses within the Township. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor 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 effect of this Ordinance to condone or legitimize the distribution of obscene material.

(b) Findings and Rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Township, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and

Sensations, Inc. v. City of Grand Rapids, --- F.3d ---, 2008 WL 2097410 (6th Cir. May 20, 2008); *Deja Vu of Nashville, Inc. v. Metropolitan Gov't of Nashville and Davidson County*, 466 F.3d 391 (6th Cir. 2006); *Deja Vu of Cincinnati, L.L.C. v. Union Township Bd. Of Trustees*, 411 F.3d 777 (6th Cir. 2005) (*en banc*); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *City of Chicago v. Pooh Bah Enterprises, Inc.*, 865 N.E.2d 133 (Ill. 2006); *Andy's Restaurant & Lounge, Inc. v. City of Gary*, 466 F.3d 550 (7th Cir. 2006); *181 South, Inc. v. Fischer*, 454 F.3d 228 (3rd Cir. 2006); *Bronco's Entertainment, Ltd. v. Charter Twp. of Van Buren*, 421 F.3d 440 (6th Cir. 2005); *Charter Twp. of Van Buren v. Garter Belt, Inc.*, 258 Mich. App. 594 (2003); *Jott, Inc. v. Clinton Twp.*, 224 Mich. App. 513 (1997); *Michigan ex rel. Wayne County Prosecutor v. Dizzy Duck*, 449 Mich. 353 (1995); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Kentucky Restaurant Concepts, Inc. v. City of Louisville*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *Restaurant Ventures v. Lexington-Fayette Urban County Gov't*, 60 S.W.3d 572 (Ky. Ct. App. 2001); *Deja Vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001); *Ctr. for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Bigg Wolf Discount Video Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Brandywine, Inc. v. City of Richmond*, 359 F.3d 830 (6th Cir. 2004); *Currence v. City of Cincinnati*, 28 Fed. Appx. 438 (6th Cir. Jan. 24, 2002); *Broadway Books v. Roberts*, 642 F. Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Bamon Corp. v. City of Dayton*, 923 F.2d 470 (6th Cir. 1991); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Threesome Entertainment v. Strittmather*, 4 F. Supp. 2d 710 (N.D. Ohio 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *In re Tennessee Public Indecency Statute*, 172 F.3d 873 (6th Cir. Jan. 13 1999)(table); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005);

and based upon reports concerning secondary effects occurring in and around adult businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove,

California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Kennedale, Texas – 2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; McCleary Report – 2006; New York, New York Times Square - 1994; Jackson County, Missouri – 2008; and the Report of the Attorney General's Working Group On The Regulation Of Adult businesses, (June 6, 1989, State of Minnesota),

the Township finds as follows:

(1) Adult businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

(2) Each of the foregoing negative secondary effects constitutes a harm which the Township has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the Township's rationale for this Ordinance, exists independent of any comparative analysis between adult businesses and non-adult businesses. Additionally, the Township's interest in regulating adult businesses extends to preventing future secondary effects of either current or future adult businesses that may locate in the Township. The Township finds that the cases and documentation set forth above and relied on by the Township are reasonably believed to be relevant to said secondary effects.

The Township hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult businesses, including the judicial opinions and reports related to such secondary effects.

Section 2. Definitions.

For purposes of this Ordinance, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Administrator means the Township Code Enforcement Officer as that term is defined in Township Ordinance No. 20 as amended.

Adult Arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images for any form of consideration 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 (as those terms are defined elsewhere herein).

Adult Bookstore or Adult Video Store means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of Specified Sexual Activities or Specified Anatomical Areas.

A “principal business activity” exists where:

- a. at least 35% of the establishment’s displayed merchandise consists of said items, or
- b. at least 35% of the wholesale value of the establishment’s displayed merchandise is in said items, or
- c. at least 35% of the fair market value of the establishment’s displayed merchandise is in said items, or
- d. at least 35% of the establishment’s gross revenues derive from the sale or rental, for any form of consideration, of said items, or
- e. at least 35% of the establishment’s interior business space or, if less than 35%, at least five hundred square feet (500 sq. ft.) of the establishment’s interior business space, is maintained for the display, sale, and/or rental of the foregoing items (aisles and walkways used to access said items shall be included in “interior business space” maintained for the display, sale, and/or rental of said items); or
- f. the establishment offers for sale or rental at least two thousand five hundred (2,500) of the foregoing items; or
- g. the establishment regularly features said items and regularly advertises itself or holds itself out as an establishment that caters to adult sexual interests by using “adult,” “XXX,” “sex,” “erotic,” or substantially similar language.

Adult Business means and includes any of the following (all as defined elsewhere in this Section of the Ordinance):

- a. Adult Arcade
- b. Adult Bookstore or Adult Video Store
- c. Adult Cabarets
- d. Adult Motel
- e. Adult Motion Picture Theaters
- f. Adult Theaters
- g. Escort Agency

- h. Sexual Encounter Centers; and
- i. Sexual Device Shop

Adult Cabaret means a nightclub, bar, juice bar, restaurant, or similar commercial establishment which regularly features:

- a. persons who appear in a state of semi-nudity; or
- b. films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction of Specified Sexual Activities or Specified Anatomical Areas.

Adult Motel means a hotel, motel or similar commercial establishment which:

- a. offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproduction;
- b. offers a sleeping room for rent for a pre-designated period of time that is less than twelve (12) hours; or
- c. allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twelve (12) hours.

Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

Adult Theater means a theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of semi-nudity.

Characterized by means describing the essential character or quality of an item. As applied in this Ordinance, no business shall be classified as an adult business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Township means the Charter Township of Garfield, Grand Traverse County, Michigan.

Employ, Employee, and Employment describe and pertain to any person who performs any service on the premises of an adult business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort Agency means a person or business association who furnishes, offers to furnish, or advertises to furnish Escorts as one of its primary business purposes for a fee, tip, or other consideration.

Establish or Establishment shall mean and include any of the following:

- a. The opening or commencement of any adult business as a new business;
- b. The conversion of an existing business, whether or not an adult business, to any adult business; or
- c. The addition of any adult business to any other existing adult business.

Hearing Officer means an attorney, not otherwise employed by the Township, who is licensed to practice law in Michigan, and retained to serve as an independent tribunal to conduct hearings under this Ordinance.

Influential Interest means any of the following: (1) the actual power to operate the adult business or control the operation, management or policies of the adult business or legal entity which operates the adult business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the adult business.

Interior Business Space means the floor area inside an adult business that is visible or accessible to patrons for any reason, excluding restrooms.

Licensee shall mean a person in whose name a license to operate an adult business has been issued, as well as the individual or individuals listed as an applicant on the application for an adult business license. In the case of an "employee," it shall mean the person in whose name the adult business employee license has been issued.

Nudity or a State of Nudity means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or

the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

Operator means any person on the premises of an adult business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated an adult business regardless of whether that person is an owner, part owner, or licensee of the business.

Person shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

Premises means the real property upon which the adult business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for an adult business license.

Regularly means the consistent and repeated doing of an act on an ongoing basis.

Semi-Nude or State of Semi-Nudity means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

Sexual Device means any three (3) dimensional object designed 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 commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the 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.

Sexual Device Shop means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any pharmacy, drug store, medical clinic, any establishment primarily dedicated to providing medical or healthcare products or services, or any establishment that does not limit access to its premises or a portion of its premises to adults only.

Sexual Encounter Center means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- a. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

- b. activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

Specified Anatomical Areas means and includes:

- a. Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
- b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified Criminal Activity means any of the following specified crimes for which less than five years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- a. criminal sexual conduct, public indecency, statutory rape, rape of a child, sexual exploitation of a minor, indecent exposure;
- b. prostitution, patronizing prostitution, promoting prostitution;
- c. obscenity;
- d. dealing in controlled substances;
- e. racketeering, tax evasion, money laundering;
- f. any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- g. any offense in another jurisdiction that, had the predicate act(s) been committed in Michigan, would have constituted any of the foregoing offenses.

Specified Sexual Activities means any of the following:

- a. intercourse, oral copulation, masturbation or sodomy; or
- b. excretory functions as a part of or in connection with any of the activities described in (a) above.

Transfer of Ownership or Control of an adult business shall mean any of the following:

- a. The sale, lease, or sublease of the business;
- b. The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

- c. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Viewing Room shall mean the room, booth, or area where a patron of an adult business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

Section 3. License required.

(a) *Business License.* It shall be unlawful for any person to operate an adult business in the Township without a valid adult business license.

(b) *Employee License.* It shall be unlawful for any person to be an “employee,” as defined in this Ordinance, of an adult business in the Township without a valid adult business employee license, except that a person who is a licensee under a valid adult business license shall not be required to also obtain an adult business employee license.

(c) *Application.* An applicant for an adult business license or an adult business employee license shall file in person at the office of the Township Code Enforcement Officer a completed application made on a form provided by the Township Clerk. An adult business may designate an individual with an influential interest in the business to file its application for an adult business license in person on behalf of the business. The application shall be signed as required by subsection (d) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate licensing fee:

(1) The applicant’s full legal name and any other names used by the applicant in the preceding five (5) years.

(2) Current business address or another mailing address for the applicant.

(3) Written proof of age, in the form of a driver’s license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

(4) If the application is for an adult business license, the business name, location, legal description, mailing address and phone number of the adult business.

(5) If the application is for an adult business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a Specified Criminal Activity as defined in this Ordinance, and if so, each

Specified Criminal Activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

(7) A statement of whether any adult business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (i) been declared by a court of law to be a nuisance; or
- (ii) been subject to a court order of closure or padlocking.

(8) An application for an adult business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this Ordinance shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the Township Code Enforcement Officer within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) *Signature.* A person who seeks an adult business employee license under this section shall sign the application for a license. If a person who seeks an adult business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks an adult business license is other than an individual, each person with an influential interest in the adult business or in a legal entity that controls the adult business shall sign the application for a license as applicant. Each applicant must be qualified under this Ordinance and each applicant shall be considered a licensee if a license is granted.

(e) The information provided by an applicant in connection with an application for a license under this Ordinance shall be maintained by the office of the Township Clerk on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by court order.

Section 4. Issuance of license.

(a) *Business License.* Upon the filing of a completed application for an adult business license, the Township Code Enforcement Officer shall immediately issue a Temporary License to the applicant if the completed application is from a preexisting adult business that is lawfully operating in the Township and the completed application, on its face, indicates that the applicant is entitled to an annual adult business license. The Temporary License shall expire upon the final decision of the Township to deny or grant an annual license. Within twenty (20) days of

the filing of a completed adult business license application, the Township Code Enforcement Officer shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Township Code Enforcement Officer shall issue a license unless:

(1) An applicant is less than eighteen (18) years of age.

(2) An applicant has failed to provide information required by this Ordinance for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Ordinance has not been paid.

(4) The adult business, as defined herein, is not in compliance with the interior configuration requirements of this Ordinance or is not in compliance with locational requirements of any other part of the Township Code.

(5) Any adult business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

(i) been declared by a court of law to be a nuisance; or

(ii) been subject to an order of closure or padlocking.

(6) An applicant has been convicted of or pled guilty or nolo contendere to a Specified Criminal Activity, as defined in this Ordinance.

(b) *Employee License.* Upon the filing of a completed application for an adult business employee license, the Township Code Enforcement Officer shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed adult business and the completed application, on its face, indicates that the applicant is entitled to an annual adult business employee license. The Temporary License shall expire upon the final decision of the Township to deny or grant an annual license. Within twenty (20) days of the filing of a completed adult business employee license application, the Township Code Enforcement Officer shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Township Code Enforcement Officer shall issue a license unless:

(1) The applicant is less than eighteen (18) years of age.

(2) The applicant has failed to provide information as required by this Ordinance for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Ordinance has not been paid.

(4) Any adult business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (i) been declared by a court of law to be a nuisance; or
- (ii) been subject to an order of closure or padlocking.

(5) The applicant has been convicted of or pled guilty or nolo contendere to a Specified Criminal Activity, as defined in this Ordinance.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for an adult business, the address of the adult business. The adult business license shall be posted in a conspicuous place at or near the entrance to the adult business so that it may be read at any time that the business is occupied by patrons or is open to the public. An adult business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

Section 5. Fees.

The initial license and annual renewal fees for adult business licenses and adult business employee licenses shall be as follows: one hundred dollars (\$100) for the initial fee for an adult business license and fifty dollars (\$50) for annual renewal; fifty dollars (\$50) for the initial adult business employee license and twenty-five dollars (\$25) for annual renewal.

Section 6. Inspection.

(a) Adult businesses and adult business employees shall permit the Township Code Enforcement Officer and his or her agents to inspect, from time to time on an occasional basis, the portions of the adult business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Ordinance, during those times when the adult business is occupied by patrons or is open to the public. This section shall be narrowly construed by the Township to authorize reasonable inspections of the licensed premises pursuant to this Ordinance, but not to authorize a harassing or excessive pattern of inspections.

(b) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

Section 7. Expiration and renewal of license.

(a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this Ordinance.

(b) Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

Section 8. Suspension.

(a) The Township Code Enforcement Officer shall issue a written notice of intent to suspend an adult business license for a period not to exceed thirty (30) days if the adult business licensee has knowingly violated this Ordinance or has knowingly allowed an employee or any other person to violate this Ordinance.

(b) The Township Code Enforcement Officer shall issue a written notice of intent to suspend an adult business employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly violated this Ordinance.

Section 9. Revocation.

(a) The Township Code Enforcement Officer shall issue a written notice of intent to revoke an adult business license or an adult business employee license, as applicable, if the licensee knowingly violates this Ordinance or has knowingly allowed an employee or any other person to violate this Ordinance and a suspension of the licensee's license has become effective within the previous twelve-month (12-mo.) period.

(b) The Township Code Enforcement Officer shall issue a written notice of intent to revoke an adult business license or an adult business employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for the adult business license or the adult business employee license;

(2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the adult business;

(3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the adult business;

(4) The licensee knowingly or recklessly operated the adult business during a period of time when the license was finally suspended or revoked;

(5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the premises of the adult business; or

(6) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to consume alcohol or to appear in a state of semi-nudity on the premises of the adult business.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license

revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in this Ordinance, the Township revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult business license or adult business employee license for one (1) year from the date revocation becomes effective.

Section 10. Hearing; license denial, suspension, revocation; appeal.

(a) When the Township Code Enforcement Officer issues a written notice of intent to deny, suspend, or revoke a license, the Township Code Enforcement Officer shall immediately send such notice, which shall include the specific grounds under this Ordinance for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Township Clerk for the respondent. The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the Township Code Enforcement Officer, a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the Township Code Enforcement Officer's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued, and shall be subject to the provisions of subsection (b) of this Section.

If the respondent does make a written request for a hearing within said ten (10) days, then the Township Code Enforcement Officer shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The Township shall provide for the hearing to be transcribed.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Township Code Enforcement Officer's witnesses. The Township Code Enforcement Officer shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written decision, including specific reasons for the decision pursuant to this Ordinance, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30th) day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the Township Code Enforcement Officer to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such

action. If the respondent is not yet licensed, the Township Code Enforcement Officer shall contemporaneously therewith issue the license to the applicant.

(b) If any court action challenging a licensing decision is initiated, the Township shall prepare and transmit to the court a transcript of the hearing within thirty (30) days after receiving written notice of the filing of the court action. The Township shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any adult business that is lawfully operating as an adult business, or any adult business employee that is lawfully employed as an adult business employee, on the date on which the completed business or employee application, as applicable, is filed with the Township Code Enforcement Officer: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the Township's enforcement of the denial, suspension, or revocation, the Township Code Enforcement Officer shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the adult business or to continue employment as an adult business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the Township's enforcement.

Section 11. Transfer of license.

A licensee shall not transfer his or her license to another, nor shall a licensee operate an adult business under the authority of a license at any place other than the address designated in the adult business license application.

Section 12. Hours of operation.

No adult business, other than an adult motel, shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

Section 13. Regulations pertaining to exhibition of sexually explicit films on premises.

(a) A person who operates or causes to be operated an adult business, other than an adult motel, which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of Specified Sexual Activities or Specified Anatomical Areas shall comply with the following requirements.

(1) Each application for an adult business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be

drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Township Code Enforcement Officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- (i) That the occupancy of viewing rooms less than 150 square feet is limited to one person.
- (ii) That sexual activity on the premises is prohibited.
- (iii) That the making of openings between viewing rooms is prohibited.
- (iv) That violators will be required to leave the premises.
- (v) That violations of these regulations are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (iv) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains

unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

(b) It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly fail to fulfill that duty.

(c) No patron shall knowingly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.

(d) No patron shall knowingly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.

(e) No person shall knowingly make any hole or opening between viewing rooms.

Section 14. Loitering, exterior lighting and monitoring, and interior lighting requirements.

(a) It shall be the duty of the operator of an adult business to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candles as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be the duty of the operator of an adult business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

(c) No adult business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

(d) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Section 15. Penalties; equitable remedies.

(a) A person, business, or entity violating or refusing to comply with any provision of this Ordinance shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by

imposition of a fine not to exceed five hundred dollars (\$500.00) or by imprisonment for a period not to exceed ninety (90) days, or both. Each day that a violation is permitted to exist or occur, and each separate occurrence, shall constitute a separate offense. Further, any premises, building, dwelling, or other structure in which an adult business, as defined in this Ordinance, is repeatedly operated or maintained in violation of the provisions of this Ordinance shall constitute a public nuisance and shall be subject to civil abatement proceedings initiated by the Charter Township of Garfield, Grand Traverse County, in a court of competent jurisdiction. Each day that a violation is permitted to exist or occur shall constitute a separate operation or maintenance of the violation.

(b) Notwithstanding subsection (a) hereof, the Township’s legal counsel is hereby authorized to employ any remedy available at law or in equity, including a suit for injunctive relief, to prevent or remedy a violation of any provision of this Ordinance. Such proceedings shall be brought in the name of the Township, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Ordinance, or any of the laws in force in the Township or to exempt anyone violating this Ordinance or any part of the said laws from any penalty which may be incurred.

Section 16. Applicability of Ordinance to existing businesses.

All preexisting adult businesses lawfully operating in the Township in compliance with all state and local laws prior to the effective date of this Ordinance, and all adult business employees working in the Township prior to the effective date of this Ordinance, are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of ninety (90) days following the effective date of this Ordinance. By the end of said ninety (90) days, all adult businesses and adult business employees must conform to and abide by the requirements of this Ordinance.

Section 17. Prohibited conduct.

(a) No patron, employee, or any other person shall knowingly or intentionally, in an adult business, appear in a state of nudity or engage in a specified sexual activity.

(b) No person shall knowingly or intentionally, in an adult business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.

(c) No employee who regularly appears semi-nude in an adult business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult business

(d) No person shall sell, use, or consume alcoholic beverages on the premises of an adult business.

(e) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult business.

(f) No operator or licensee of an adult business shall knowingly violate the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.

(g) A sign in a form to be prescribed by the Township Clerk, and summarizing the provisions of subsections (a), (b), (c), (d), and (e), shall be posted near the entrance of the adult business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

Section 18. Scienter required to prove violation or business licensee liability.

This Ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Ordinance. Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the adult business licensee for purposes of finding a violation of this Ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

Section 19. Failure of Township to meet deadline not to risk applicant/licensee rights.

In the event that a Township official is required to act or to do a thing pursuant to this Ordinance within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the Township official under this Ordinance, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the Township of an applicant or licensee's application for an adult business license or an adult business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the Township's action has passed.

Section 20. Severability.

This Ordinance and each section and provision of said Ordinance hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been

Passed independently of such section or provision so known to be invalid. Should any procedural aspect of this Ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Ordinance.

Section 21. Conflicting code provisions repealed.

Any provision(s) in the Township ordinance book specifically in conflict with any provision in this Ordinance is hereby deemed inoperative and repealed.

Section 22. Effective date.

This Ordinance shall take effect seven (7) days after publication.

Upon roll call vote, the following voted:

YEAS: Lee Wilson, Kay Schumacher, Dennis Habendank, Brad Barnes, Joe McManus, Jim Harvey and Leo Strait

NAYS: None

ABSTAIN: None

ABSENT: None

I hereby certify that the foregoing was duly adopted by the Township Board of Garfield Charter Township, Grand Traverse County, Michigan, at its regular on the 10th day of July, 2008 and that (7) Seven members of the Township Board were in attendance and (7) voted for the adoption of the Ordinance.



Kay Schumacher, Clerk

The Charter Township of Garfield
3848 Veterans Drive
Traverse City, Michigan 49684
INTRODUCED: June 18, 2008
ADOPTED: July 10, 2008
PUBLISHED: July 16, 2008
EFFECTIVE: July 23, 2008