

Adult Oriented Business and Sexually Explicit Materials

An ordinance to adopt reasonable regulations for adult oriented business so as to minimize the injury caused by this activity on the public health, safety, and welfare on the persons and property within the township and to regulate the display and sale of sexually explicit materials.

THE CHARTER TOWNSHIP OF MADISON ORDAINS:

Section 1. Legislative Findings and Intent

The Township Board of Madison Charter Township recognizes and concludes that an "adult oriented business" as that term is more particularly described in Section 3 of this Ordinance, engages in activities which, because of their nature, are known to have seriously objectionable operational characteristics. Adult Oriented Businesses have a deleterious effect on adjacent areas and unless properly regulated will result in the destruction of neighboring property values and a threat to the public health, safety and welfare of the persons in Madison Charter Township. Accordingly, it is the intent and purpose of the Madison Charter Township Board to regulate, but not to exclude, Adult Oriented Businesses in the Township, so as to minimize the injury caused by their activities on the public health, safety, and welfare on the persons and property within the Township.

Section 2. Short Title

This Ordinance shall be known and may be cited and referred to as the Madison Charter Township Adult Oriented Business Ordinance and shall hereinafter be referred to as "this Ordinance."

Section 3. Definitions

The following definitions shall apply in the interpretation and enforcement of this Ordinance:

- 3.1 *Adult Oriented Business.* Adult Oriented Business means the following types of businesses:
- a. *Adult Bookstore.* An business having a substantial or significant portion of its stock in trade devoted to the sale or rental of sexually explicit materials.

- b. *Adult Cabaret.* An business which features one or more dancers, strippers, male or female impersonators or similar entertainers, performers, wait staff or other persons who reveal or show specific anatomical areas of their bodies or who engage in, perform, or simulate specific sexual activities.
 - c. *Adult Motion Picture Theater.* An business used for presenting to others motion picture films, video cassettes, cable television, or other visual media, distinguished or characterized by an emphasis on specific sexual activities or specific anatomical areas for observation by patrons therein.
 - d. *Adult Novelty Business.* An business having a substantial or significant portion of its stock in trades devoted to the sale or rental of adult novelty items.
 - e. *Adult Personal Services Business.* An business having a person or persons, while nude or while displaying specific anatomical areas, providing another person or persons personal services including, but not limited to massage parlors, exotic rubs, modeling studios, tattoo parlors, body painting studios, wrestling studios, and theatrical performances.
- 3.2 *Adult Magazines.* Any magazine designed to appeal to erotic or sexual appetites or inclinations through the pictorial, photographic or other graphic depiction of subject matter distinguished or characterized by:
- a. the portrayal of one or more persons involved or engaging in specified sexual activities; or
 - b. by an emphasis on the display of human specified anatomical areas.
- 3.3 *Adult Movies.* Any movie, whether recorded or stored on film, videotape, or digital media designed to appeal to erotic or sexual appetites or inclinations, through the pictorial, photographic or other graphic depiction of subject matter distinguished or characterized by:
- a. the portrayal of one or more persons involved in or engaging in specific sexual activities; or
 - b. by an emphasis on the display of human specified body areas.
- 3.4 *Adult Novelty Items.* Any instrument, device, or paraphernalia which depicts or describes any specific anatomical area or any specific sexual act, or which is designed for use, or commonly used, in connection with specific sexual activities, excluding condoms and other birth control and disease prevention products
- 3.5 *Business.* A business or enterprise which utilizes any building, structure,

premises, parcel, place or area, regardless of whether the business operated as is a sole proprietorship, partnership, corporation or limited liability company.

- 3.6 *Massage Parlor.* Any business where private massage is practiced, used, or made available as a principal use of the premises.
- 3.7 *Materials.* Anything tangible, whether through the medium of reading, observation, sound, or in any other manner, including, but not limited to, anything printed or written, any book, magazine, newspaper, pamphlet, picture, drawing, pictorial representation, greeting cards, motion picture, photograph, video tape, video disk, film, transparency, slide, audiotape, audio disk, computer tape, holographic images, or any other medium used to electronically produce or reproduce images, or any mechanical, chemical, or electronic reproduction. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects whether or not processing or other acts are required to make the content of the material apparent. This definition is intended to include material which is the product of any technology, whether that technology is available on the effective date of this Ordinance or becomes available after that date.
- 3.8 *Sexually Explicit Materials.* Any adult magazine, any adult movie, any adult novelty item and any other material depicting or portraying specific anatomical areas or specific sexual activities as defined in this Ordinance.
- 3.9 *Specific Anatomical Areas.* Less than completely and opaquely covered human genitals, pubic regions, buttocks, and female breasts below a point immediately above the line of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- 3.10 *Specific Sexual Activities.* Activities which include, but are not limited to: human genitals in a state of sexual stimulation or arousal; acts of masturbation, sexual intercourse, or sodomy; fondling or other erotic touching of genitals, pubic regions, buttocks, or female breasts.
- 3.11 *Substantial or Significant Portion.* An business is deemed to have a substantial or significant portion of its stock in trade devoted to sexually explicit materials if:
- a. Twenty-five percent (25%) of the business's retail floor space (i.e., excluding bathrooms, office areas, fitting rooms, eating areas, storage rooms/closets, etc.) is used for the sale of sexually explicit materials; or
 - b. Twenty-five percent (25%) of the business's visible inventory is comprised of sexually explicit materials; or
 - c. Twenty-five percent (25%) of the business's gross revenues are generated by the sale or rental of sexually explicit materials.

Section 4. Location

An Adult Oriented Business regulated by this Ordinance may be located in the Township only in conformance with the following restrictions:

- 4.1 No Adult Oriented Business shall be permitted within five hundred (500) feet of any of the following:
- a. a state licensed child care facility;
 - b. a church, place of worship, or other religious facility;
 - c. a day nursery, preschool, primary school, secondary school, college or university;
 - d. a public library, public building, public park, public playground;
 - e. a zoning district (excluding agricultural districts) in which residential uses are permitted;
 - f. a dwelling used or designed for residential purposes, regardless of the zoning district in which it is located;
 - g. any other Adult Oriented Business.
- 4.2 The distances provided for in this section shall be measured by projecting a straight line without regard for intervening buildings or structures between the nearest point of the property line of the Adult Oriented Business and property line of the use, structure or zoning district proscribed in subsection 4.1, above.

Section 5. Persons Younger Than Eighteen Prohibited From Entry.

No person under the age of 18 years shall enter or be on the premises of an adult oriented business at any time the adult oriented business is open, nor shall any owner, partner, performer, contractor, or employee of an adult oriented business sell or provide goods, merchandise, or services to persons under the age of 18.

Section 6. License Required

No Adult Oriented Business shall be established, maintained, or conducted in Madison Charter Township by any person without the owner or operator first obtaining a license to operate such place from the Township Board. Any such license shall be valid only one year from the date of issuance.

Section 7. Application

Every owner or operator as defined herein desiring to obtain a license as required by this Ordinance shall file a written application to the Township of Madison, together with an application fee of \$500.00 or as provided by resolution of the Township Board to defray the costs of administration of this Ordinance in the initial phase of licensing. The application shall be filed with the Township Clerk who shall be responsible for processing the application and forwarding the same to the Township Board. The application shall include the following information:

- 7.1 Name of owner and operator; if a partnership, names of all partners; if a firm, society, club or association, names of all officers and directors; if a corporation, the objects for which organized, the names and addresses of the officers and directors, and if more than 30% of the outstanding stock of such corporation is owned by one person or in joint ownership, then the name of such person(s);
- 7.2 Addresses of all listed as above;
- 7.3 The location and description of the premises or place where the Adult Oriented Business will be located, and a description of the type of adult oriented activity conducted on the premises;
- 7.4 A site plan showing the location of the Adult Oriented Business and the distance between the nearest point of the property line of the Adult Oriented Business and property line of the use, structure or zoning district proscribed in subsection 4.1, above, measured by projecting a straight line without regard for intervening buildings or structures.
- 7.5 The total square footage of floor space in the room or building in which the Adult Oriented Business will be operated, along with a building and plot plans showing the entire structure and premises and in particular the specific areas where the license is to be utilized. The plans shall demonstrate adequate off-street parking, lighting, refuse disposal facilities, security arrangements for maintaining order, noise control, and, where appropriate, adequate plans for screening.
- 7.6 Whether the owner or operator has at anytime been convicted of a felony or offense involving moral turpitude or has been convicted-of any alcohol or narcotics violation or violation of any gambling laws or ordinances.
- 7.7 Whether or not any permit or license heretofore granted to applicant to engage in any business has been revoked or denied, and, if so, the circumstances surrounding the revocation or denial.
- 7.8 A statement whether the applicant has made application for a similar license on premises other than that described in its application, and the disposition of such application.

- 7.9 A schedule of the days of the week and the hours of such days during which the applicant seeks permission for the operation of the Adult Oriented Business.
- 7.10 The application shall be signed by both the owner and operator. In the case of a club, society, corporation, firm, or association, the owner's signature requirement shall be met by the signature of the President and Secretary or equivalent officers with proper authority. Where the ownership is a partnership, the signature of all general partners are required. Any false or incorrect statements made on any such application shall be immediate and substantial grounds for revocation of a license granted pursuant to such application.

Section 8. Inspection of Premises

Before an Adult Oriented Business license shall be issued, investigation of the application and inspection of the premises shall be made by the Township building official, fire chief, or their agent, and such other departments or agencies as may be deemed necessary by the Township Board to determine whether the premises fully comply with all pertinent ordinances and regulations. Before any Adult Oriented Business license may be recommended for approval, it must be determined that the applicant is providing sufficient off-street parking and sufficient aids and regulations whereby vehicular traffic shall not constitute a nuisance or danger. For a standard of such determination, minimum off-street parking facilities shall be as required by the zoning ordinance of the Charter Township of Madison. Before the fire chief or his agents approve the same, it must be determined that adequate space is provided to permit safe ingress and egress in said premises. The building official shall determine whether the building involved meets all requirements of the Township's building code and other applicable Township ordinances, including the zoning ordinance.

Section 9. Issuance of License

No Adult Oriented Business license shall be issued:

- 9.1 For premises where there exists a violation of the applicable Building, Electrical, Mechanical, Plumbing, or Fire Codes, applicable zoning regulations, applicable Public Health Regulations, or any other applicable Township Ordinance or state law.
- 9.2 For premises where it is determined by the Township Board that the premises do not have adequate off-street parking, exterior and interior lighting, refuse disposal facilities, security arrangements for maintaining order, screening, and noise or nuisance control.
- 9.3 For premises that fail to meet the required distance requirements in Section 4 above.
- 9.4 Until the Township Building Department and the Township Fire Department have

inspected the subject premises and ascertained that all physical requirements have been complied with, the adequacy of security arrangements on the premises for maintaining order and avoiding public disturbance is satisfactory.

Section 10. Time Requirements; License Denial

The Township Board shall act on an license application or license renewal application within sixty (60) days of the date the application is filed with the Township Clerk. If the Township Board determines after a review of the application and accompanying written recommendations that an application for a license under this Ordinance must be denied, the Township Clerk shall inform the applicant of this fact by written notice either personally served on the applicant or mailed by First Class mail to the applicant's last known address. This written notice shall inform the applicant of the reasons the application was denied and of the applicant's right to seek judicial review of the decision.

Section 11. License Renewal Fee

Any application to renew a license previously issued under this Ordinance shall be accompanied by a renewal fee of \$250.00 to help defray the costs of administering the Ordinance during the renewal phase of licensing.

Section 12. Suspension or Revocation of License

Any license issued under this Ordinance may be revoked or suspended during the period of its issuance as a result of any violations of the terms and conditions of the license and this Ordinance. Such revocation or suspension shall be determined by the Township Board at a meeting of the Board preceded by notice to the licensee of the proposed action and the reasons therefore, and the time, date, and place of the meeting at which the matter is to be heard. This notice shall be either personally served or mailed by First Class mail to the applicant's last known address at least seven (7) days prior to the date of the Township Board meeting which this matter is to be heard. The licensee shall have an opportunity to present any evidence or arguments on its own behalf at that time. The extent of the suspension or revocation shall be in the discretion of the Township Board and shall be based upon the nature of the violation or violations which have occurred, the frequency thereof, and the likelihood of their correction with respect to future operations. The reasons for any suspension or revocation shall be set forth in writing and mailed to the licensee at its last known address within seven (7) days after the Township Board decision concerning the same.

Section 13. Regulations Pertaining to Displaying Sexually Explicit Materials.

- 13.1 Any business that sells or rents sexually explicit materials, but is not a regulated Adult Oriented Business, as defined in this Ordinance, shall store or display such materials so that they are not visible to persons outside of the premises.

- 13.2 Any business that sells or rents sexually explicit materials, but is not a regulated Adult Oriented Business, as defined in this Ordinance and permits persons under the age of 18 years unaccompanied by a parent or legal guardian to enter or be on the premises, shall be subject to the following rules and regulations:
- a. All sexually explicit materials shall be stored or displayed so that the materials are covered or otherwise shielded from the view of patrons.
 - b. All sexually explicit materials shall be stored or displayed so that persons under eighteen (18) years of age shall not have access to the materials.
 - c. No owner, partner, performer, contractor, or employee of shall sell or provide sexually explicit materials to persons under eighteen (18) years of age.
 - d. A sign containing the following warning shall be posted, either at the entrance to the premises or, if the sexually explicit materials are segregated from other merchandise being sold or rented, at or near the area where such materials are being displayed, warning anyone entering that sexually explicit materials unsuitable for viewing by minors are present. The dimensions of the sign shall be no less than twelve inches by twelve inches (12" x 12") and the lettering on the sign shall be a minimum of one inch (1") in height.
- “WARNING: Sexually Explicit Materials, not suitable for viewing by minors are displayed in this business establishment.”

Section 14. Repeal

All Ordinances or parts of Ordinances in conflict with this Ordinance are to the extent of such conflict repealed, including without limitation, the prior Ordinance 26 of the Charter Township of Madison, which is replaced by this Ordinance.

Section 15. Severability

This Ordinance, and the various parts, sentences, paragraphs, sections, subsections, phrases, and clauses thereof are declared to be severable and if any of them are adjudged unconstitutional or invalid, it is hereby provided that the remainder of the Ordinance shall not be affected.

Section 16. Penalties and Remedies for Violations

- 16.1 Any person or business violating any provision of this Ordinance shall be deemed responsible for a civil infraction. Penalties may be imposed in fines as follows:

- a. first violation \$100.
- b. second violation within a 4-year period \$125.
- c. third violation within a 4-year period \$250.
- d. fourth or subsequent violation within a 4 year period \$400.

In addition to the penalties any person deemed responsible for a civil infraction shall also be liable for the cost to the Township to prosecute any such violation.

- 16.2 In addition to the foregoing, any violation of this Ordinance shall be deemed a nuisance per se, permitting the Township Board, its officers, agents or any private citizen to take such action in any Court of competent jurisdiction to cause the abatement of such nuisance, including injunctive relief. Further, upon a determination by a court that a person has violated the this Ordinance thereby creating a nuisance per se, the Township shall be entitled to its actual attorney fees incurred in seeking abatement of the nuisance.

Section 17. Effective Date

This Ordinance shall become effective immediately upon publication in a newspaper of general circulation in the Charter Township of Madison, Lenawee, County, Michigan.