

ORDINANCE NO. 64**AN ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESSES
IN THE TOWN OF GRAND RAPIDS**

64.1 INTENT: It is the intent of this ordinance to regulate Sexually Oriented Businesses and related activities to promote the health, safety, and general welfare of the citizens of the Town of Grand Rapids, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of Sexually Oriented Businesses within the Town of Grand Rapids. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of 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 materials.

64.2 FINDINGS: Based on evidence concerning the adverse secondary effects of Sexually Oriented Businesses on the community in reports made available to the Town Board, and on the holdings and findings in the cases of *City of Erie v. Pay's A.M.*, 120 S. Ct. 1382 (2000); *City of Renton v. Playtime Theatres. Inc.*, 475 U.S. 41(1986); *Young v. American Mini Theatres.* 426 U.S. 50, (1976); *Barnes v. Glen Theatre. Inc.*, 501 U.S. 560 (1991); *City of Newport. KY v. Iacobucci*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *Schultz v. City of Cumberland*, Case Nos. 98-4 126 and 98-4209 (7th Cir., September 26, 2000)(2000 U.S. App. LEXIS 23773); *DLS, Inc. v. City of Chattanooga*, 107 F 3d 403 (6th Cir. 1997); *Key. Inc. v. Kitsap County*, 793 F. 2d 1053(9th Cir. 1986); *Hang On. Inc. v. City of Arlington*, 6SF. 3d 1248 (5th Cir. 1995); *East of the River Enterprises II v. City of Hudson*, 2000 WI. App. Lexis 734 (Ct. App. Aug. 1,2000); and *Urmanski v. Town of Bradley*, 2000 WI App.141,613 N.W.2d 905 (Ct. App. 2000), as well as studies and summaries of studies conducted in other cities, including, but not limited to, Los Angeles, California; Whittier, California; Austin, Texas; Oklahoma City, Oklahoma; St. Cloud, Minnesota; Toledo, Ohio; Oconomowoc, Wisconsin; and Beaumont, Texas; and findings reported in the *Regulation of Adult Entertainment Establishments in St. Croix County, Wisconsin*; and the *Report of the Attorney General's Working Group of Sexually Oriented Businesses* (June 6, 1989, State of Minnesota), the Town Board finds that:

- A.** Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located.

- B. Studies of the relationship between sexually oriented businesses and neighborhood property values have found a negative impact on both residential and commercial property values.
- C. Sexually oriented businesses may contribute to an increased public health risk through the spread of sexually transmitted diseases.
- D. There is an increase in the potential for infiltration by organized crime for the purpose of unlawful conduct.
- E. The consumption of alcoholic beverages on the premises of a Sexually Oriented Businesses exacerbates the deleterious secondary effects of such businesses on the community.

64.3 DEFINITIONS: The following terms shall have the following meanings:

- A. 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 maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”
- B. Adult bookstore or adult video store means a commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
 - 1) books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe “specified sexual activities” or “specified anatomical areas”; or
 - 2) instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities.” A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as ADULT BOOKSTORE or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe “specified sexual activities” or “specified anatomical areas.” A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.
- C. Adult cabaret means a nightclub, dance hall, bar, restaurant, or similar commercial establishment that regularly features:

- 1) Persons who appear in a state of Nudity or Semi-nudity; or
 - 2) Live performances that are characterized by “specified sexual activities”; or
 - 3) Films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the depiction or description of “specified sexual activities” or Nudity or “specified anatomical areas”.
- D.** Adult motel means a hotel, motel or similar commercial establishment which:
- 1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions, which are characterized by the depiction 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 reproductions; or
 - 2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
 - 3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours,
- E.** 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 that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”
- F.** Adult theater means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of nudity or semi-nudity, and/or live performances that are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.
- G.** Breast means the human female mammary gland.
- H.** Buttocks means the area at the rear of the human body referred to as the gluteus maximus, the fleshy part of the body at the back of the hips upon which a person sits.
- I.** Employee means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises,

nor does “employee” include a person exclusively on the premises as a patron or customer.

- J.** Entertainer means
- 1) Any person who appears in a state of Semi-nudity in a Sexually Oriented Business; or
 - 2) Any person who engages in live performances that are characterized by “specified sexual activities.”
- K.** 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.
- L.** 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,
- M.** Establishment means and includes any of the following:
- 1) The opening or commencement of any Sexually Oriented Business as a new business;
 - 2) The conversion of an existing business, whether or not a Sexually Oriented Business to any Sexually Oriented Business;
 - 3) The additions of any Sexually Oriented Business to any other existing Sexually Oriented Business; or
 - 4) The relocation of any Sexually Oriented Business; or
 - 5) A Sexually Oriented Business or premises on which the Sexually Oriented Business is located.
- N.** Licensed day-care center means a facility licensed by the State of Wisconsin, under sec. 48.65, Stats, whether situated within the Town or not, that provides care, training, education, custody, treatment or supervision for more than four (4) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for profit or charges for the services it offers.
- O.** Nudity or state of nudity means the appearance of the human bare anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or the nipple or areola of the female breast, with less than a fully opaque covering; or the showing of the covered male genitals in a discernibly turgid state;
- P.** Operator means the person on the premises who is responsible for the control and management of the Sexually Oriented Business.

- Q.** Patron means a customer on the premises of a Sexually Oriented Business,
- R.** Person means an individual, proprietorship, partnership, corporation, association, or other legal entity,
- S.** Premises means the real property upon which the Sexually Oriented Business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the Sexually Oriented Business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control or supervision of the owner or operator of the business.
- T.** Regularly means recurring on a basis which is frequently, customarily or typically.
- U.** Semi-nude or semi-nudity means the exposure of a bare male or female buttocks or the female breast below a horizontal line across the top of the areola at its highest point with less than a complete and opaque covering.
- V.** Sexual encounter center means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
- 1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - 2) 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.
- W.** Sexually Oriented Business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, or sexual encounter center.
- X.** Specified anatomical areas means:
- 1) The human male genitals in a discernibly turgid state, even if fully and opaquely covered;
 - 2) Less than completely and opaquely covered human anus, anal cleft or cleavage, genitals, pubic region, or the nipple or areola of the female breast.
- Y.** Specified sexual activity means:
- 1) The fondling or other erotic touching of human genitals, pubic regions, buttocks, anus, or female breasts, whether covered or uncovered;

- 2) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
- 3) Masturbation, actual or simulated, or;
- 4) Excretory functions as part of or in connection with any of the activities set forth in 1) through 3) above.

64.4 REGULATION OF SEXUALLY ORIENTED BUSINESSES:

- A. It shall be a violation of this ordinance for any Person to knowingly and intentionally appear in a state of Nudity in a Sexually Oriented Business.
- B. No person shall perform specified sexual activities on the licensed premises.
- C. The use of simulated sexual organs is prohibited on the licensed premises.
- D. The sale, use, or consumption of alcoholic beverages on the Premises of a Sexually Oriented Business is prohibited,
- E. No Person, Employee or Patron shall be permitted to have any physical contact with any Entertainer on the Premises during any performance. All performances shall only occur on a stage or table that is elevated at least eighteen (18) inches above the immediate floor level. To prevent actual physical contact between an Entertainer and any other Person, Employee, or Patron, all performances shall not be less than five (5) feet from any area occupied by any Patron. Persons, Employees and Patrons shall not have any physical contact with, and shall not be less than five (5) feet from, any Entertainer during the payment of a tip or gratuity.
- F. It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the Premises of a Sexually Oriented Business at any time the Sexually Oriented Business is open for business.
- G. It shall be the duty of the Operator of each Sexually Oriented Business to ensure that an attendant is stationed at each public entrance to the Sexually Oriented Business at all times during such Sexually Oriented Businesses regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the Sexually Oriented Business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished a valid:
 - 1) Operator's, commercial operator's, or chauffeur's driver's license; or
 - 2) Personal identification card issued by the state of residence of the individual seeking entry reflecting that such person is eighteen (18) years of age or older; or

- 3)** Passport or official identity card issued by the government of the nation of which the individual seeking entry is a citizen.
- H.** No Person shall cause another to commit a violation of this ordinance, nor shall any Person permit such violation to occur on any Premises under his/her control, tenancy, management or ownership.
- I.** No Sexually Oriented Business regulated by this Ordinance may remain open between the hours of 2:00 a.m. and 8:00 a.m., except on Saturday and Sunday, when the closed hours shall be between 2:30 a.m. and 8:00 a.m.
- J.** All Premises governed by this Ordinance shall be required to post signs provided by the Town of Grand Rapids, which state: By Town of Grand Rapids Ordinance: The use or consumption of alcoholic beverages on these premises is prohibited. No person shall be permitted to have any physical contact with any entertainer. No person shall be less than five (5) feet from any entertainer, including during the payment of tips. Violators may be subject to a fine of not less than one hundred dollars (\$100) and not more than five hundred dollars (\$500) per violation.
- K.** Each entryway to a Sexually Oriented Business featuring live entertainment shall through use of a vestibule, screening, or double doors, and with window coverings, eliminate any direct line of sight from the exterior of the building to any Entertainer on the Premises. There shall be no interior entrance to or exit from a Sexually Oriented Business from or into an adjoining premise which is not a Sexually Oriented Business. The interior premises of a Sexually Oriented Business shall not be visible by any means from another premise, whether adjoining or separate, which, is not a Sexually Oriented Business,
- L.** Law enforcement access: Law enforcement shall be allowed access to the Premises at all times.
- M.** Manager: A manager shall be on the Premises at all times the Business is open. The manager shall be responsible for controlling the behavior of customers and Entertainers.
- N.** Monitoring: The business shall be equipped with video cameras sufficient to monitor and record the parking lot and entire exterior of the building for a minimum distance of ten (10) feet from the exterior walls. Recordings of the monitoring shall be kept for a minimum of seven (7) days and shall be provided to law enforcement upon request.
- O.** Exterior Lighting: The entire parking lot shall be illuminated sufficiently for patrons to safely walk to and from their vehicles. A ten (10) foot perimeter of the exterior of the building shall be illuminated sufficiently to allow the adequate performance of the video surveillance required in sec. 64.4 N.

- N.** Physical Layout of Premises: No Sexually Oriented Business shall have available for customers, patrons, or members, any booth, room or cubicle for the private viewing of any adult entertainment unless the following requirements are complied with:
- 1)** Access. Each booth, room, or cubicle shall:
 - a)** Be separated from adjacent booths, rooms, or cubicles and any non-public areas by a wall;
 - b)** Have at least one (1) side totally open to a public, lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth, room, or cubicle;
 - c)** Have solid, nonbreakable walls without any openings, extended from the floor to a height of not less than six (6) feet and shall be light colored, with a nonabsorbent, smooth textured and easily cleanable surface;
 - d)** Have a light colored, nonabsorbent, smooth textured and easily cleanable floor;
 - e)** Have at all times when not in use a minimum lighting level of ten (10) foot candles as measured three (3) feet above the floor.
 - 2)** Only one (1) individual shall occupy a booth, room, or cubicle at any time.
 - 3)** The Operator shall ensure there is conspicuously posted inside each booth, stall, partitioned portion of a room, or individual room an un-mutilated and un-defaced sign or poster supplied by the Health Department which contains information regarding sexually transmitted diseases and the telephone numbers from which additional information can be sought.
 - 4)** The Operator shall ensure that there is conspicuously displayed at a place near the main entrance of the Establishment, or portion thereof, any information, brochures, or pamphlets supplied by the Health Department pertaining to sexually transmitted diseases.
 - 5)** The Operator shall ensure there is posted regulations concerning booth occupancy on signs with lettering at least one (1) inch high that are placed in conspicuous areas of the establishment and in each of the viewing enclosures.
 - 6)** Public Display: The public display, through windows, doors, signs or otherwise, of explicit materials, depictions and performances are prohibited.

64.5 LOCATION RESTRICTIONS

- A.** A sexually oriented business may not be operated within:
- 1) One thousand five hundred (1500) feet of a church, chapel, synagogue, or regular place of religious worship;
 - 2) One thousand five hundred (1500) feet of a school; public or private preschool, elementary, middle or high school; or youth recreational center, or library;
 - 3) One thousand five hundred (1500) feet of a licensed day-care center, clinic or hospital;
 - 4) One thousand five hundred (1500) feet of a Recreational District;
 - 5) One thousand five hundred (1500) feet of a Residential District;
 - 6) One thousand five hundred (1500) feet of a licensed bar or tavern;
 - 7) One thousand (1000) feet of a Sexually Oriented Business;
- B.** A Sexually Oriented Business may not be operated in the same building, structure, or portion thereof, containing another Sexually Oriented Business.
- C.** For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a Sexually Oriented Business is conducted, to the nearest property line or boundary of a property enumerated above.

64.6 ANNUAL SEXUALLY ORIENTED BUSINESS LICENSE REQUIRED

- A.** Application: Application for an annual Sexually Oriented Business license shall be made to the Town Clerk. The Clerk shall notify the Police Department and Fire Chief of the license application, publish a Class I notice of such application and have the license application submitted to the Town Board within thirty (30) days of application. Investigating officials shall submit written reports and recommendations to the Town Board. A public hearing shall be held on the application, preceded by a Class II notice. The Town Board may take any testimony regarding the granting or denial of such license. The application shall include the following:
- 1) Name, including all aliases, address and date of birth of applicant;
 - 2) Written proof that the individual is at least eighteen (18) years of age;
 - 3) All residential addresses of the applicant for the past ten (10) years;
 - 4) The business, occupation, or employment of the applicant for ten (10) years immediately preceding the date of application;
 - 5) The exact nature of the entertainment to be conducted;
 - 6) Whether the applicant previously operated in this or any other state, county or municipality under a Sexually Oriented Business license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefore, and the business entity or trade name under which the applicant operated that was

subject to the suspension or revocation (the applicant shall provide the name of the municipality/state where such license was suspended or revoked);

- 7) All criminal and traffic convictions, whether Federal or State, or municipal Ordinance violation convictions and forfeiture of bond on all charges, except traffic offenses;
- 8) Fingerprints made by a law enforcement agency and two (2) portrait photographs of at least two (2) inches by two (2) inches of the applicant;
- 9) The address of the sexually oriented business to be operated by the applicant;
- 10) Proof of right to occupy the premises; and
- 11) If the applicant is a corporation, the application shall specify the name of the corporation, the date and State of incorporation, and the name and address of the registered agent of the corporation.

B. General Standards: To receive a license to operate a sexually oriented business, an applicant must meet the following standards:

- 1) If the applicant is an individual:
 - a) The applicant shall be at least eighteen (18) years of age;
 - b) Subject to Chapter 111, Wis. Stats., the applicant shall not have been convicted of or pleaded nolo contendere, or have charges pending or deferred prosecution to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
 - c) The applicant shall not have been found to have previously violated this Ordinance within five (5) years immediately preceding the date of the application.
- 2) If the applicant is a corporation:
 - a) All officers, directors, and others required to be named under paragraph (a) above shall be at least eighteen (18) years of age;
 - b) Subject to Chapter 111, Wis. Stats., no officer, director, or other person required to be named under paragraph (a) above shall have been convicted of a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
 - c) No officer, director or other person required to be named under paragraph (a) above shall have been found to have previously violated this Ordinance within five (5) years immediately preceding the date of the application.
- 3) If the applicant is a partnership, joint venture, limited liability company or any other type of organization where two (2) or more persons have a financial interest:

- a) All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age;
 - b) Subject to Chapter 111, Wis. Stats., no person having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
 - c) No person having a financial interest in the partnership, joint venture or other type of organization shall have been found to have violated any provision of this Ordinance within five (5) years immediately preceding the date of the application.
- C. Investigation. No license shall be issued unless the Town of Grand Rapids Police Department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the Town Clerk no later than thirty (30) days after the application.
- D. Inspection: The Fire Chief and/or Police Chief or their designee shall inspect the Premises proposed to be licensed to verify compliance with the Town Code of Ordinances, and shall report compliance findings to the Town Clerk within thirty (30) days of the date of application.
- E. Proof: No license shall be issued unless the applicant provides proof of one (1) of the following:
 - 1) Ownership of a properly zoned building or parcel of real property upon which a building can be constructed. Proper zoning includes permissible nonconforming use status.
 - 2) A lease on a building which is properly zoned to house the Establishment. Proper zoning includes permissible non-conforming use status.
 - 3) An option to purchase property which is properly zoned for the Establishment.
 - 4) An option to lease property which is properly zoned for the Establishment. Proper zoning includes permissible use stats.
- F. Action: The Town Board shall approve, modify or reject the application based on the factors set forth in this Ordinance. The reasons for the action taken shall be specified in the written record of the Town Board.
- G. Probationary Period: If a license issuance is approved by a majority of the Town Board, an initial applicant shall be granted a probationary license by the Clerk. An annual license shall be granted if, upon the expiration of the six (6) month probationary period, no violations under this Ordinance occur and the applicant corrects any deficiencies or problems that the applicant is directed to correct. If, however, for any reason, the application

is denied by the Town Board, the Town Board shall specify the findings made that support that denial.

- H.** License term: The license granted under this Ordinance shall expire on June 30th of each year and each license shall be subject to revocation as hereinafter provided.
- I.** Form of License: The Town Clerk shall be responsible for, following Town Board action, issuing licenses under this Ordinance. All such licenses shall specify the nature of the holder of the license and the date for which it is applicable, as well as any conditions that may be imposed by the Town. All such licenses shall be open to public inspection and posted in public view on the Premises for which issued.
- J.** Fee: All license applications shall be accompanied by a fee set by the Town Board by resolution.
- K.** Number of Licenses Limited: No more than two (2) sexually oriented business licenses, issued under this Ordinance, shall be issued within the Town of Grand Rapids at one (1) time, and no more than one (1) license shall be issued to any one (1) individual, partnership or corporation.
- L.** Renewals: The holder of an annual license granted under this Ordinance shall submit an application for renewal at least sixty (60) days before the expiration of the license; failure to comply with this application schedule shall mean that the license shall lapse and any new application shall be reviewed as a new application. Such license may be renewed pursuant to the provisions of this Ordinance_ that apply as to notice being given by the Town Clerk and provisions for publication and action by the Town Board.
- M.** Penalty: In addition to any other actions allowed by law or taken by the Town Board, including the action of license revocation or non-renewal, anyone who violates any of the provisions of this Ordinance shall be subject to forfeiture for each and every offense, together with the costs of prosecution. If such forfeiture and costs are not paid, such person so convicted shall be subject to any civil penalties or other penalties available by law. Citations may be issued to the license holder or to his/her employees, operators or agents.
- N.** License Suspension, Revocation or Non-Renewal:
 - 1)** In General: Any sexually oriented business license granted herein may be revoked, suspended or not be renewed by the Town Board as follows:
 - a)** If the applicant has made or recorded any statement required by this Ordinance knowing it to be false or fraudulent or intentionally deceptive.

- b) After one (1) conviction of any Establishment personnel of an offense under Ch. 944 Wis. Stats., or of an offense against the person or property of a patron of the Establishment or of an offense involving substance scheduled in Subchapter II of Ch. 961, Wis. Stats., where there is shown the participation or knowledge of any other establishment personnel or of any individual within the business structure of the applicant.
 - c) For the violation of any provision of this Ordinance; in such case the license shall be revoked after the second (2nd) conviction thereof in any license year.
 - 2) Notice of Hearing: No license shall be revoked, suspended, or not renewed by the Town Board except upon due notice and hearing to determine whether grounds for such action exist. Such hearing shall be held before the Town Board. Notice of such hearing shall be in writing and shall state the grounds of the complaint against the licensee. The notice shall be served upon the licensee at least fifteen (15) days prior to the date of the hearing and shall state the time and place thereof.
 - 3) Hearing: The licensee shall be entitled to be heard, to be represented by counsel, to cross examine opposing witnesses, to present witnesses on his or her own behalf under subpoena by the Town Board if such is required, and the hearing may be stenographically recorded at the licensee's option and expense. At the conclusion of such hearing, the Town Board shall prepare findings of fact and conclusions of law as to what, if any, action the Town Board will take with respect to the license. The Town Board shall provide the complainant and licensee with a copy of the report.
 - O. License Transfer: Any license granted under the provisions of this Ordinance shall not be transferable. All license applications shall be original or for a renewal.
- 64.7 EXEMPTIONS:** The provisions of this Ordinance do not apply to the following establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis; and in which the predominant business or attraction is not the offering of entertainment which is intended for the sexual interests or titillation of customers; and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or semi-nude performances. While expressive live nudity may occur within these establishments, this Ordinance seeks only to minimize and prevent the secondary effects of Sexually Oriented Businesses on the community. Negative secondary effects have not been associated with these establishments.

64.8 PENALTIES:

- A.** Violations of this Ordinance or the Town Zoning Ordinance are declared to be a public nuisance per se, which shall be abated by the Town Attorney by way of civil abatement procedures.
- B.** Any individual, partnership, or corporation who violates any of the provisions of this Ordinance shall be subject to the forfeiture and penalty specified in Ordinance 39. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues.

64.9 SEVERABILITY: If any portion, subsection, sentence, clause, phrase, word or provision of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct and independent provision, and any such holdings shall not affect the validity of the remaining portions of this Ordinance. It is the legislative intent of the Town Board that this Ordinance would have been adopted if such illegal provision had not been included or any illegal application had not been made.

This ordinance shall take effect from and after the date of its passage and publication as provided by law.

HISTORY

Declaration/Ordinance/Resolution No.

Dated

RESOLUTION NO:

2011-07

10-February-2011 (adopted)