

**TOWNSHIP OF CHIKAMING
BERRIEN COUNTY, MICHIGAN**

ORDINANCE NO. 110
Adopted: May 6, 2003

**AN ORDINANCE AMENDING ORDINANCE NO. 109 CONCERNING THE
REGULATION OF SEXUALLY ORIENTED BUSINESSES; ELIMINATING
LICENSING REQUIREMENTS AND CERTAIN REGULATORY PROVISIONS; AND
REPEALING SECTIONS INCONSISTENT THEREWITH**

THE TOWNSHIP OF CHIKAMING, BERRIEN COUNTY, MICHIGAN ORDAINS:

WHEREAS, the Township of Chikaming adopted Ordinance 109, which sought to regulate and license sexually oriented businesses in the Township of Chikaming; and

WHEREAS, it is the intent of the Township Board to amend Ordinance 109 to, among other things, eliminate certain regulations and licensing requirements contained in that Ordinance and not to reenact them in the future.

NOW THEREFORE, the Township Board of the Township of Chikaming does ordain as follows:

SECTION 1. Township of Chikaming Ordinance 109, Section 1, is hereby amended to read as follows:

SECTION 1. PURPOSE AND FINDINGS

A. Purpose. In the development and execution of this ordinance, it is recognized that there are some uses, commonly known as adult uses or sexually oriented businesses, which, because of their very nature, have serious objectionable operational characteristics. The impacts of these objectionable characteristics are exacerbated when sexually oriented businesses are left uncontrolled as to the time, place, and manner of their operation. Special regulation of these adult uses is necessary to prevent adverse effects and to ensure that these adverse effects will not contribute to crime or the blighting and downgrading of the surrounding neighborhood.

It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Township, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented 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. This ordinance is based on evidence of the adverse secondary effects of adult uses that is within the common knowledge of municipalities and is widely reported in judicial opinions, media reports, land use studies, and crime impact reports made available to the Township Board, several of which are set forth herein. Additionally, the Township Board relies on repeated judicial findings of municipalities' reasonable reliance on this body of secondary effects evidence to support time, place, and manner regulations of sexually oriented businesses. The Board relies upon and incorporates the findings of secondary effects discussed in the

following non-exhaustive list of cases from the U.S. Supreme Court: *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728 (2002); *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); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *California v. LaRue*, 409 U.S. 109 (1972).

The Board also relies on relevant decisions of federal appellate and trial courts: *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Currence v. City of Cincinnati*, 2002 U.S. App. LEXIS 1258; *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); *Déjà vu v. Metro Government*, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); *Bamon Corp. v. City of Dayton*, 7923 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); *Déjà vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001); *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); *World Wide Video of Washington, Inc. v. City of Spokane*, 227 F.3d 1143 (E.D. Wash. 2002); *Threesome Entertainment v. Strittmather*, 4 F.Supp.2d 710 (N.D. Ohio 1998); *Kentucky Restaurant Concepts, Inc. v. City of Louisville and Jefferson County*, 209 F.Supp.2d 672 (W.D. Ky. 2002); *Richland Bookmart v. Nichols*, 137 F.3d 435 (6th Cir. 1998) (upholding hours of operation restriction as applied to retail-only adult bookstore with no live entertainment or video booths on premises); *Richland Bookmart v. Nichols*, 278 F.3d 570 (6th Cir. 2002) (same); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986) (upholding hours of operation regulation); *Ben Rich Trading, Inc. v. City of Vineland*, 126 F.3d 155 (3d Cir. 1997) (same); *National Amusements v. Town of Dedham*, 43 F.3d 731 (1st Cir. 1995) (same); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999) (same); *Lady Lingerie v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999) (same); *L.J. Concepts, Inc. v. City of Phoenix*, No. 99-17270/17271 (9th Cir. 2000) (unpublished opinion) (same); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000) (same); *Clinton Books, Inc. v. City of Memphis*, No. CT-00768-01 (Memphis Circuit Court, Order dated April 2, 2003) (same); *Mitchell v. Commission on Adult Entertainment Establishments*, 10 F.3d 123 (3d Cir. 1993); *City of National City v. Wiener, et al.*, 3 Cal.4th 832 (1993).

Additionally, the Board expressly relies upon Michigan cases relating to adult businesses, municipal regulatory authority, and public nuisances including, but not limited to, the following cases: *Rental Property Owners Association of Kent County v. City of Grand Rapids*, 455 Mich. 246, 566 N.W.2d 514 (1996); *Michigan ex rel Wayne County Prosecutor v. Dizzy Duck*, 449 Mich. 353, 535 N.W.2d 178 (1995); *City of Warren v. Executive Art Studio*, 1998 Mich. App. LEXIS 2258 (1998); *Tally v. City of Detroit*, 54 Mich. App. 328 (1974); *Jott, Inc. v. Clinton Township*, 224 Mich. App. 513 (1997). The Board notes that media reports also discuss the harms associated with adult businesses: See, e.g., *Muskegon Man Convicted in Beating Death of Adult Bookstore Manager*, Associated Press State & Local Wire, Sept. 9, 1999; *Dave Murray, Adult Business Ordinance Upheld*, The Grand Rapids Press, Nov. 9, 2000; *Katie Merx, X-rated Inkster Theater Razed: Officials, Cops, Residents Cheer Demolition of Melody*, An Embarrassment for 22 Years, The Detroit News, August 19, 1999, at D3 (discussing documented sexual activity in and around adult business); *Craig Garrett, Suburbs Declare War on Smut Shops*, The Detroit News, June 30, 1999, at A1 (describing how adult theater patrons would solicit young people in the area for sex); *Justin Hyde, Warren Leaders Want to Pursue Product Liability Against Porn Shop*, Associated Press State & Local Wire, Feb. 4, 1999 (child rapist arrested in adult bookstore).

The Board further relies on reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1984; Minneapolis, Minnesota - 1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas - 1977; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio - 1977; Dallas, Texas - 1997; McCleary Report, Alliance, Ohio - 2002; Tucson, Arizona -

1990; Testimony, Warner-Robins, Georgia – 2000; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; St. Cloud, Minnesota – 1994; New York Times Square study - 1994; Phoenix, Arizona -1995-98; and also on findings of physical abuse from the paper entitled “Stripclubs According to Strippers: Exposing Workplace Sexual Violence,” by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from “Sexually Oriented Businesses: An Insider’s View,” by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000, and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota). Based on the cases and reports documenting the adverse impact of adult businesses, the Board finds:

1. Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, negative impacts on property values, urban blight, pornographic litter and discarding of sexual items, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, illicit drug use and drug trafficking, and sexual assault and exploitation.
2. Sexual acts, including masturbation, oral and anal sex, occur at unregulated sexually oriented businesses, either in the parking lot and areas adjacent to the business, or in private or semi-private booths, rooms, or cubicles, or in live sexually explicit shows.
3. Each of the foregoing negative secondary effects constitutes a harm which the Township has a substantial government interest in preventing in the future and/or abating.

SECTION 2. Township of Chikaming Ordinance 109, Section 2. is hereby amended to read as follows:

SECTION 2. DEFINITIONS.

For the purposes of this division, certain terms and words are defined as follows:

A. “Sexually oriented businesses” are those businesses defined as follows:

1. “Adult arcade” means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five or fewer persons each, are regularly used to show 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.”
2. “Adult Bookstore,” “Adult Novelty Store” or “Adult Video Store” means a commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale, rental for any form of consideration, of any one or more of the following:
 - a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact disks, digital video disks, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas;”
 - b. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

- c. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing “specified sexual activities” or “specified anatomical areas,” and still be categorized as an adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe “specified anatomical areas” or “specified sexual activities.”
3. “Adult cabaret” means a nightclub, bar, restaurant “bottle club,” or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features: (a) persons who appear nude or in a state of nudity or semi-nude; (b) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities,” or (c) 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.”
 4. “Adult motel” means a motel, hotel or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmission, 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 which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazine, pamphlets or leaflets, radio or television, or (b) offers a sleeping room for rent for a period of time less than ten (10) hours; or (c) allows a tenants or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.
 5. “Adult motion picture theater” means a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” are regularly shown for any form of consideration.
 6. “Adult theatre” means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of “specified anatomical areas” or by “specified sexual activities.”
 7. “Massage parlor” means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with “specified sexual activities,” or where any person providing such treatment, manipulation, or service related thereto, exposes his or her “specified anatomical areas.” The definition of sexually oriented businesses shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

8. "Nude Model Studio" means any place where a person, who regularly appears in a state of nudity or displays, "specified anatomical areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.
9. "Sexual encounter establishment" means a business or commercial establishment, that as one of its primary business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities" or the exposure of "specified anatomical areas" or activities when one or more of the persons is in a state of nudity or semi-nude. The definition of sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

B. "Employee" means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

C. "Establishment" means and includes any of the following:

1. The opening or commencement of any such sexually oriented business as a new business;
2. The conversion of an existing business, whether or not a sexually oriented business, to any of the sexually oriented businesses defined in this chapter;
3. The addition of any of the sexually oriented businesses defined in this chapter to any other existing sexually oriented business; or
4. The relocation of any such sexually oriented business.

D. "Nudity" or "State of Nudity" means: (a) the appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or (b) a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

E. "Operator" means and includes the owner, custodian, manager, employee, or person in charge of the premises of the sexually oriented business, provided that a person may be deemed an "operator" only the person actually exercise substantial control over the activities occurring on the premises of the sexually oriented business.

F. "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

G. "Public building" means any building owned, leased or held by the United States, the State of Michigan, the County of Berrien, the Township, any school district, or any other agency or political subdivision of the State or the United States, which building is used for governmental purposes.

H. "Public park" or "recreation area" means public land which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness area, or similar public land within the Township which is under the control, operation, or management of the Township.

I. "Religious institution" means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related activities.

J. "Residential District or Use" means a single family, duplex, townhouse, multiple family, or mobile park or subdivision and campground as defined in the Chikaming Township Zoning Ordinance.

K. "School" means any public or private educational facility including but not limited to child day care facilities, nursery school, preschools, kindergartens, elementary schools; primary school, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, colleges and universities. School includes the school ground, but does not include the facilities used primarily for another purpose and only incidentally as a school.

L. "Semi-Nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

M. "Sexually Oriented Business" means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theatre, adult theatre, massage parlor, sexual encounter establishment or nude model studio.

N. "Specified Anatomical Areas," as used in this division means and includes any of the following:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or
2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

O. "Specified Sexual Activities," as used in this Division means and includes any of the following:

1. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts;
2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
3. Masturbation, actual or simulated; or
4. Human genitals in a state of sexual stimulation, arousal or tumescence;
5. Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (4) of this subsection.

P. "Substantial Enlargement of a Sexually Oriented Business" means increase in the floor areas occupied by the business by more than 15%, as the floor areas exist on December 19, 2002.

Q. "Transfer of Ownership or Control of a Sexually Oriented Business" means and includes any of the following:

1. The sale, lease or sublease of the business;

2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means;

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

SECTION 3. Township of Chikaming Ordinance 109, Section 3, is hereby amended to read as follows:

SECTION 3. ESTABLISHMENT AND CLASSIFICATION OF BUSINESSES REGULATED.

A. The establishment of a sexually oriented business shall be permitted in the C, Commercial District provided for in the Chikaming Township Zoning Ordinance, and shall be subject to the following restrictions unless excepted from the restrictions pursuant to Section 6. No person shall cause or permit the establishment of any of the following sexually oriented businesses, as defined above, within 1,000 feet of another such business or within 1,000 feet of any religious institution, school, boys' club, girls' club, or similar existing youth organization, or public park or public building, or within 250 feet of any property zoned for residential use or used for residential purposes and are classified as follows:

1. adult arcade
2. adult bookstore, adult novelty store or adult video store
3. adult cabaret
4. adult motel
5. adult motion picture theater
6. adult theater
7. massage parlor
8. sexual encounter establishment
9. nude model studio

A sexually oriented business listed herein may be established within 250 feet of any property zoned for residential use or used for residential purposes provided the greenbelt standards set forth in Section 15.18 of the Chikaming Township Zoning Ordinance are met and further provided that fencing shall be installed and maintained within the greenbelt to prohibit passage between the properties.

B. Nothing in this Section prohibits the location of sexually oriented businesses within retail shopping centers in all Commercial zones wherein such activities will have their only frontage upon enclosed malls or malls isolated from direct view from public streets, parks, schools, religious institutions, boys' clubs, girls' clubs, or similar existing youth organization, public buildings or residential districts or uses without regard to the distance requirements of subsection A., above.

SECTION 4. Township of Chikaming Ordinance 109, Section 4, is hereby amended to read as follows:

SECTION 4. MEASUREMENT OF DISTANCE.

As regarding Section 3, paragraph A., the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any sexually oriented business and any religious institution, public or private elementary or secondary school, boys club, girls club, or similar existing youth organization, or public park or public building or any

properties zoned for residential use or used for residential purposes shall also be measured in a straight line, without regard to intervening structures or objects from the nearest point of the property line of the premises where the sexually oriented business is conducted, to the nearest point of the property line of the premises of a religious institution, public or private elementary or secondary school, boys club, girls club, or similar pre-existing youth organization or public park or public building or any properties zoned for residential use or used for residential purposes.

SECTION 5. Township of Chikaming Ordinance 109, Section 5, is hereby amended to read as follows:

SECTION 5. LOCATION OF SEXUALLY ORIENTED BUSINESSES.

The Township of Chikaming hereby requires that sexually oriented businesses shall locate only as provided in Section 3, unless excepted from those restrictions pursuant to Section 6. In addition, any sexually oriented business shall be subject to the following restrictions:

1. A person commits a misdemeanor, if he operates or causes to be operated a sexually oriented business except as provided in Section 3.
2. A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business within 1,000 feet of: (a) any religious institution; (b) any school; (c) a public park; or (d) a boys club, girls club, or similar existing youth organization; or within 250 feet of the boundary of any residential district or a property line of a lot devoted to residential use; except as provided in Section 3.A. and B.
3. A person commits a misdemeanor if he operates or causes to be operated a sexually oriented business within 1,000 feet of another such business, which shall include, any adult arcade, adult book store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor or any sexual encounter establishment, except as provided in Section 3.B.

SECTION 6. Township of Chikaming Ordinance 109, Section 6, is hereby amended to read as follows:

SECTION 6. REGULATIONS GOVERNING EXISTING SEXUALLY ORIENTED BUSINESSES

- A. Any sexually oriented businesses lawfully operating on December 19, 2002, that is in violation of Sections 3 and 5 of this division, is excepted from the locational restrictions of those sections and shall be deemed a non-conforming use permitted to continue pursuant to M.C.L.S. § 125.286.
- B. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of a church, public or private elementary or secondary school, public park, public building within 1,000 feet of the sexually oriented business or of a residential district or residential lot within 250 feet of the sexually oriented business.

SECTION 7. Township of Chikaming Ordinance 109, Section 7, is hereby amended to read as follows:

SECTION 7. INJUNCTION.

A person who operates or causes to be operated a sexually oriented business in violation of the locational restrictions in this ordinance, and is not excepted from such restrictions, is

subject to a suit for injunction as well as prosecution for the criminal violation and shall, upon conviction, be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed ninety(90) days, or by both such fine and imprisonment, at the discretion of the Court. Each day that a violation shall continue shall constitute a separate offense. If an injunction must be sought, attorneys fees and costs will be assessed at the discretion of the Court against the sexually oriented business.

SECTION 8. Township of Chikaming Ordinance 109, Section 8, is hereby deleted.

SECTION 9. Township of Chikaming Ordinance 109, Section 9, is hereby deleted.

SECTION 10. Township of Chikaming Ordinance 109, Section 10, is hereby deleted.

SECTION 11. Township of Chikaming Ordinance 109, Section 11, is hereby deleted.

SECTION 12. Township of Chikaming Ordinance 109, Section 12, is hereby deleted.

SECTION 13. Township of Chikaming Ordinance 109, Section 13, is hereby deleted.

SECTION 14. Township of Chikaming Ordinance 109, Section 14, is hereby deleted.

SECTION 15. Township of Chikaming Ordinance 109, Section 15, is hereby deleted.

SECTION 16. Township of Chikaming Ordinance 109, Section 16, is hereby deleted.

SECTION 17. Township of Chikaming Ordinance 109, Section 17, is hereby deleted.

SECTION 18. Township of Chikaming Ordinance 109, Section 18, is hereby deleted.

SECTION 19. Township of Chikaming Ordinance 109, Section 19, is hereby deleted.

SECTION 20. Township of Chikaming Ordinance 109, Section 20, is hereby amended to read as follows:

SECTION 20. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS IN BOOTHS OR ROOMS OF LESS THAN 150 SQUARE FEET.

A. A person who operates or causes to be operated a sexually oriented business which regularly exhibits on the premises in a public viewing room of less than one hundred fifty (150) square feet of floor space, films, video cassettes or other video reproductions that are characterized by an emphasis on the display of specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. The interior of the business shall have a designated portion of the premises designated as a manager's station. Patrons shall not be permitted in the manager's station. A manager's station may not exceed thirty-two (32) square feet of floor area and may have no dimension greater than eight (8) feet.
2. It is the duty of the owners and operator of the premises to insure that at least one employee is on duty and situated at each manager's station at all times that any patron is present inside the premises.
3. The interior of the premises shall be configured in such a manner that there is an unobstructed view, by direct line of sight, from a manager's station to every

area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment.

4. No booth or viewing room may be occupied by more than one person at any one time. No holes shall be allowed in the walls or partitions which separate each viewing room from an adjoining viewing room or restroom.

5. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access and an illumination of not less than two (2.0) foot candle as measured at the floor level.

B. A person having a duty under Section 20.A.1.-5. commits a misdemeanor if he/she knowingly fails to fulfill that duty.

SECTION 21. Township of Chikaming Ordinance 109, Section 21, is hereby amended to read as follows:

SECTION 21. PROHIBITIONS REGARDING MINORS AND SEXUALLY ORIENTED BUSINESSES.

A person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business and knowingly or with reasonable cause to know, permits, suffers, or allows:

- A. Admittance of a person under eighteen (18) years of age to the business premises;
- B. A person under eighteen (18) years of age to remain at the business premises;
- C. A person under eighteen (18) years of age to purchase goods or services at the business premises;
- D. A person who is under eighteen (18) years of age to work at the business premises as an employee.

SECTION 22. Township of Chikaming Ordinance 109, Section 22, is hereby amended to read as follows:

SECTION 22. LIGHTING REGULATIONS.

The interior of a sexually oriented business premises shall be lit with a lighting system which provides an average maintained horizontal illumination of one (1.0) foot candle of light inside the business in those areas to which patrons are permitted.

SECTION 23. Township of Chikaming Ordinance 109, Section 23, is hereby amended to read as follows:

SECTION 23. HOURS OF OPERATION.

It shall be a violation of this chapter and a person commits a misdemeanor if the person operates or causes to be operated a sexually oriented business between the hours of 2:00 a.m. and 7:00 a.m., on any day, or between the hours of 2:00 a.m. and 12:00 noon on Sunday.

SECTION 24. Township of Chikaming Ordinance 109, Section 24, is hereby amended to read as follows:

SECTION 24. LIVE NUDITY AT SEXUALLY ORIENTED BUSINESSES PROHIBITED.

It shall be a violation of this chapter and a person commits a misdemeanor if the person knowingly or intentionally, in a sexually oriented business, appears in a state of nudity. It is unlawful for an operator to knowingly violate this regulation or to allow, either knowingly or through negligent failure to supervise, an employee or a patron to violate this regulation.

SECTION 25. Township of Chikaming Ordinance 109, Section 25, is hereby amended to read as follows:

SECTION 25. REGULATIONS PERTAINING TO LIVE ENTERTAINMENT.

It is unlawful for an operator to knowingly violate the following regulations or to allow, either knowingly or through negligent failure to supervise, an employee or a patron to violate the following regulations.

A. It shall be a violation of this chapter for an employee to knowingly or intentionally, in an adult regulated use, appear in a semi-nude condition unless the employee, while semi-nude, shall be at least six (6) feet from any patron or customer and on a fixed stage at least eighteen (18) inches from the floor.

B. It shall be a violation of this chapter for any employee, while semi-nude in an adult regulated use, to knowingly or intentionally receive any pay or gratuity directly from any patron or customer or for any patron or customer to knowingly or intentionally pay or give any gratuity directly to any employee, while said employee is semi-nude in an adult regulated use.

C. It shall be a violation of this chapter for any employee, who regularly appears semi-nude in an adult regulated use, to knowingly or intentionally touch a customer or the clothing of a customer.

SECTION 26. Township of Chikaming Ordinance 109, Section 26, is hereby deleted.

SECTION 27. Township of Chikaming Ordinance 109, Section 27, is hereby deleted.

SECTION 28. Township of Chikaming Ordinance 109, Section 28, is hereby amended to read as follows:

SECTION 28. CRIMINAL PENALTIES AND ADDITIONAL LEGAL, EQUITABLE AND INJUNCTIVE RELIEF.

A. In addition to whatever penalties are applicable under the Michigan Criminal Statutes, if any person knowingly fails or refuses to obey or comply with or violates any of the criminal provisions of this Ordinance, such person upon conviction of such offense shall be punished by a fine not to exceed \$500.00 or by imprisonment not to exceed ninety(90) days, or by both such fine and imprisonment, at the discretion of the Court. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.

B. Nothing herein contained shall prevent or restrict the Township from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

C. All remedies and penalties provided for in this Section shall be cumulative and independently available to the Township and the Township shall be authorized to pursue any and all remedies set forth in this Section to the full extent allowed by law.

SECTION 29. Township of Chikaming Ordinance 109, Section 29, is hereby amended to read as follows:

SECTION 29. IMMUNITY FROM PROSECUTION.

The Township and its designee, the Chikaming Township Police Department, the Berrien County Sheriff's Department and all other departments and agencies, and all other Township officers, agents and employees, charged with enforcement of State and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable, good faith enforcement within the scope of authority conferred by this Ordinance.

SECTION 30. Township of Chikaming Ordinance 109, Section 30, is hereby amended to read as follows:

SECTION 30. SCIENTER REQUIRED; SEVERABILITY OF ORDINANCE PROVISIONS.

A. Notwithstanding anything to the contrary, for the purposes of this ordinance, an act by an employee shall be imputed to the sexually oriented business for the purpose of establishing a violation of this ordinance only if the operator on duty at the time of the act allowed, either knowingly or through negligent failure to supervise, a violation of this ordinance to occur. It shall be a defense to liability that the operator was powerless to prevent the violation.

B. This ordinance and each section and provision of said chapter 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 chapter, 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.

SECTION 31. Township of Chikaming Ordinance 109, Section 31, is hereby amended to read as follows:

SECTION 31. CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed upon the passage of this ordinance.

SECTION 32. Township of Chikaming Ordinance 109, Section 32, is hereby amended to read as follows:

SECTION 32. DECLARING AN EMERGENCY.

This ordinance was adopted by the Chikaming Township Board at a meeting held in the Chikaming Township Public Safety Building on the 6th day of May, 2003. This Ordinance is hereby declared an emergency measure, necessary for the immediate preservation of the public peace, health, safety, and welfare of the citizens of the Township of Chikaming; and for the

further reason that this Ordinance may impact pending litigation; and provided it receives the necessary number of votes of the members elected to the Township Board, it shall take effect and be in force immediately upon its passage. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Jeanne S. Dudeck
 Jeanne S. Dudeck, Clerk
 Township of Chikaming

Attest:

Carl R. Anderson
 Carl R. Anderson, Supervisor
 Township of Chikaming

CERTIFICATION

I do hereby certify that the foregoing constitutes a true and complete copy of Ordinance No. 110, duly adopted by the Township Board of the Township of Chikaming, Berrien County, Michigan, at a special meeting held on the 6th day of May, 2003. I further certify that Gibson moved the adoption of said ordinance and Marske supported said motion. The names and the members of the Township Board and their vote on the foregoing ordinance were as follows:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Marske	<u>X</u>	___	___	___
Gibson	<u>X</u>	___	___	___
Simmons	<u>X</u>	___	___	___
Dudeck	<u>X</u>	___	___	___
Anderson	<u>X</u>	___	___	___

I further certify that the aforesaid ordinance was recorded in the Ordinance Book for the Township of Chikaming on the 7 day of May, 2003, and such recording has been authenticated by the signatures of the Supervisor and Township Clerk. I further certify that the foregoing ordinance was published in full in the Southcounty Gazette, a newspaper circulated in the Township of Chikaming, Berrien County, Michigan, on the 12th day of May, 2003.

Dated: May 7, 2003

Jeanne S. Dudeck
 Jeanne S. Dudeck, Clerk
 Township of Chikaming