

**TOWNSHIP OF CHIKAMING  
BERRIEN COUNTY, MICHIGAN**

**ORDINANCE NO. 109**

Adopted: December 19, 2002

**AN ORDINANCE PROVIDING FOR THE REGULATION OF THE LOCATION OF SEXUALLY ORIENTED BUSINESSES BY DISPERSING SEXUALLY ORIENTED BUSINESSES AND LIMITING THEM TO SPECIFIED ZONING DISTRICTS; PROVIDING FOR LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES; AND PROVIDING ADDITIONAL HEALTH AND SAFETY REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES; AND REPEALING SECTIONS INCONSISTENT THEREWITH**

**THE TOWNSHIP OF CHIKAMING, BERRIEN COUNTY, MICHIGAN ORDAINS:**

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

**WHEREAS**, the Township Board has conducted an extensive review of land use studies concerning the secondary effects of sexually oriented businesses in other municipalities including, but not limited to, Garden Grove, California (1991); Phoenix, Arizona (1986); Minneapolis, Minnesota (1980); Houston, Texas (1983); Indianapolis, Indiana (1984); Amarillo, Texas (1977); City of Los Angeles, California (1977); Cleveland, Ohio (1977); Austin, Texas (1986); Seattle, Washington (1989); Oklahoma City (1986); Beaumont, Texas (1982); and Whittier, California (1978); and

**WHEREAS**, from review of other municipalities studies and testimony from its citizens there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both existing businesses around them and the surrounding residential areas adjacent to them, causing among other adverse secondary effects, increased crime and downgrading of property values; and

**WHEREAS**, it is recognized that sexually oriented businesses, due to their nature, have serious objectional operational characteristics, particularly when they are operating in close proximity to each other, thereby contributing to crime, lower property values, urban blight and downgrading of the quality of life in the adjacent area; and

**WHEREAS**, the Township Board finds that sexually oriented businesses are frequently used for unlawful sexual activities including prostitution; and

**WHEREAS**, increased crime and unhealthful conduct tend to accompany, concentrate around and be aggravated by sexually oriented businesses including but not limited to prostitution, pandering, exposing minors to harmful materials, possession and distribution of obscene materials and child pornography, possession and sale of controlled substances and violent crimes against persons and property; and

**WHEREAS**, concern over sexually transmitted diseases is a legitimate health concern of the Township which demands reasonable regulations of sexually oriented businesses in order to protect the health and well being of the citizens; and

**WHEREAS**, the Township Board has considered in part, each of the following matters: (a) areas within close walking distance of single and multiple family dwellings should be free of sexually oriented business uses; (b) areas where children could be expected to walk, patronize, or frequent to be free of sexually oriented business uses; (c) sexually oriented business uses should be located in areas of the Township which are not in close proximity to residential uses, churches, parks, or other public facilities and

schools; (d) the image of the Township of Chikaming as a pleasant attractive place to reside will be adversely affected by the presence of sexually oriented business uses in close proximity to residential land uses, churches, parks and other public facilities, and schools; (e) sexually oriented business land use should be regulated to separate it from other dissimilar uses as any other land use should be separated from uses with characteristics different from itself; (f) residents of the Township of Chikaming and persons who are non-residents but use the Township for seasonal residences, shopping and other commercial needs will move from the community or shop elsewhere if sexually oriented businesses land uses are allowed to be located in close proximity to residential uses, churches, parks, and other public facilities, and schools; (g) merchants in the Township are concerned about the adverse impact and the character and quality of the Township in the event that sexually oriented business land uses are located within close proximity to residential uses, churches, parks, and other public facilities, and schools, and that such locations will reduce retail trade to commercial uses in the vicinity, thus reducing property values and tax revenues to the Township; and that such adverse affect on property values and business would cause the loss to some commercial districts within the Township leading to further deterioration of the commercial quality of the Township; and (h) no evidence has been presented to show that location of sexually oriented businesses within the Township will improve the commercial viability or quality of life of the community; and

**WHEREAS**, licensing and other police power regulations are legitimate reasonable means of accountability to insure the operator of sexually oriented businesses comply with reasonable regulations and are located in places which minimize the adverse secondary effects which naturally accompany the operation; and

**WHEREAS**, the Township Board finds that there would be a deterioration in the quality of businesses which choose to operate in and around such sexually oriented businesses; and

**WHEREAS**, the Township Board desires to minimize and control these adverse secondary effects and thereby protect the health, safety and welfare of the citizens; protect the citizens from increased crime; preserve the quality of life; preserve the property values and the character of surrounding neighborhoods and businesses, deter the spread of urban blight and protect against the threat to health from the spread of communicable and social diseases; and

**WHEREAS**, the Township Board recognizes that the exceptions, where sexually oriented businesses are permitted to be established without regard to distance regulations, are either inward looking configurations, or those isolated from direct view from public streets, parks, schools, boys' clubs, girls' clubs, or similar youth organizations, public buildings, religious institutions or residential districts or uses. This configuration reduces the adverse secondary effects associated with sexually oriented businesses by segregating such businesses away from the aforementioned sensitive uses, and placing them in a location where they do not effect the public health, safety, and moral climate of the community as a whole. It decreases the problems of harassment of neighborhood adults and children, littering of sexually explicit reading material, printed material, and paraphernalia, loitering, and visual blight; and

**WHEREAS**, the Township Board has considered the decisions of the United States Supreme Court regarding local regulation of sexually oriented businesses including but not limited, to *Young v. American Mini-Theatres, Inc.*, 427 U.S. 50 (1976) *reh. denied* 429 U.S. 873; *Renton v. Playtime Theatres*, 475 U.S. 41 (1986) *reh. denied* 475 U.S. 1132; *FW/PBS, Inc., v. Dallas*, 493 U.S. 215 (1990); and *Barnes v. Glen Theatre*, 501 U.S. 560 (1991); and *City of National City v. Wiener, et al.*, 3 Cal.4th 832 (1993); *Topanga Press, Inc., et al., v. City of Los Angeles*, 939 F.2d 1524 (1993); and

**WHEREAS**, the Township Board has determined that locational criteria alone do not adequately protect health, safety and general welfare of the people of Chikaming Township and thus certain requirements with respect to the ownership and operation of sexually oriented businesses is in the public interest; and

**WHEREAS**, the Township Board consistent with sale and consumption of alcohol and outside advertising limitations further finds that restricted hours of operation will further prevent the adverse secondary effects of sexually oriented business; and

**WHEREAS**, the intent of this ordinance is not to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the adverse secondary effects of sexually oriented businesses; and

**WHEREAS**, the intent of the Township Board is not to condone or legitimize the distribution of obscene material, and the Board recognizes that state law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state obscenity statutes against such illegal activities in Chikaming Township; and

**WHEREAS**, the Township Board finds that the live entertainment presented by some sexually oriented business establishments involves a considerable amount of bodily contact between patrons and performers, including physical contact while giving and receiving gratuities, including hugging, kissing, and sexual fondling of performers and patrons; and

**WHEREAS**, the Township Board finds that a number of courts have upheld distance limitations between performers and patrons, prohibitions against physical contact between performers and patrons, and direct payment and receipt of gratuities between performers and patrons at sexually oriented business establishments that provide live entertainment: *BSA, Inc., v. King County*, 804 F.2d 1104, 1110-11 (9th Cir. 1986) (six feet); *Kev, Inc., v. Kitsap County*, 793 F.2d 1091 (9th Cir. 1986) (ten feet); *Zanganeh v. Hymes*, 844 F.Supp. 1087, 1091 (D.Md. 1994) (six feet); *T-Marc, Inc., v. Pinellas County*, 804 F. Supp. 1500, 1506 (M.D.Fla. 1992) (three feet), *DLS, Inc., v. City of Chatanooga*, 894 F. Supp. 1140 (E.D. Tenn. 1995) (six feet and prohibiting direct payment and receipt of gratuities); *Parker v. Whitfield County*, 463 S.E.2d 116 (Ga. 1995)(prohibiting tipping and contact between dancers and patrons); and *Hang On, Inc., v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995) (*aff'd* prohibition on touching or any contact between dancers and patrons); and

**WHEREAS**, the Township Board recognizes that preventing prostitution and the spread of sexually transmitted diseases are clearly within its police powers. *Southeastern Promotions, Inc., v. Conrad*, 341 F. Supp. 465, 477 (E.D. Tenn. 1972), *rev'd* on other grounds, 420 U.S. 546 (1975). The Township Board believes that prohibiting physical contact between performers and patrons at a sexually oriented business establishments, prohibiting performers from soliciting payment of gratuities from patrons, and prohibiting the direct payment of gratuities to performers by patrons are a reasonable and effective means of addressing these legitimate governmental interests. The intent of the Township is not to place any impermissible burden on any constitutionally protected expression or expressive conduct by the enactment or enforcement of such regulations.

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

#### **SECTION 1. PURPOSE AND INTENT.**

The purpose and intent of this Ordinance is to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the Township and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of sexually oriented businesses within the Township; thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. 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 not 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 the ordinance to condone or legitimize the distribution of obscene material.

## 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, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

F. “Permitted or Licensed Premises” means any premises that requires a license and/or permit and that is classified as a sexually oriented business.

G. "Permittee and/or Licensee" means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

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

I. "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.

J. "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.

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

L. "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.

M. "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.

N. "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.

O. "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.

P. "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.

Q. "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.

R. "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.

S. "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. 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. 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. 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 existing youth organization or public park or public building or any properties zoned for residential use or used for residential purposes.

## **SECTION 5. LOCATION OF SEXUALLY ORIENTED BUSINESSES.**

The Township of Chikaming hereby requires that sexually oriented businesses shall be permitted only as provided in Section 3. Permits for sexually oriented businesses shall be required and governed by the procedures and policies specified in Section 8 *et seq.*, of this division. 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.
4. A person commits a misdemeanor if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business within the same building, structure, or portion thereof, except as provided in Section 3.B., or causes the substantial enlargement of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.
5. It is a defense to prosecution under this section if a person appearing in a state of nudity did so in a modeling class operated:
  - a. by a proprietary school, licensed by the State of Michigan; a college, junior college, or university supported entirely or partly by taxation;
  - b. by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
  - c. in a structure:
    - (1) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
    - (2) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
    - (3) where no more than one nude model is on the premises at any one time.



## **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, shall be deemed a non-conforming use. A non-conforming use will be permitted to continue for a period of one year, with a possible extension of one year to be granted by the Township Board only upon a convincing showing of extreme financial hardship which is defined as the recovery of the initial financial investment in the nonconforming use, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at the particular location is the conforming use and the later established business(es) in non-conforming, except as provided in Section 3.B.

B. A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of a sexually oriented business permit and/or license, 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. This provision applies only to the renewal of a valid permit and/or license and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

C. Any establishment subject to the provision of this section shall apply for the permit provided for by Section 10 within ninety (90) days of the effective date of this ordinance. Any establishment, existing prior to the effective date of this ordinance, shall comply with the regulations pertaining to Sections 20 and 22, within ninety (90) days of the effective date of this ordinance, and all other applicable permit regulations within ninety (90) days of the effective date of this ordinance.

## **SECTION 7. INJUNCTION.**

A person who operates or causes to be operated a sexually oriented business without having a valid permit due to locational 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. SEXUALLY ORIENTED BUSINESS PERMIT: PURPOSE AND INTENT.**

The intent and purpose of this ordinance to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the Township; and to establish reasonable and uniform regulations to prevent deleterious 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 of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Ordinance to restrict or deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this Ordinance to in any way condone or legitimize the distribution of obscene or harmful to minors' material.

## **SECTION 9. PERMIT REQUIRED.**

A. No sexually oriented business shall be permitted to operate without a valid sexually oriented business permit issued by the Township for the particular type of business. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business without said permit.

B. The Township Supervisor or his designee is responsible for granting, denying, revoking, renewing, suspending, and canceling sexually oriented business permits for proposed or existing sexually oriented businesses. The Township Supervisor or his designee is also responsible for ascertaining whether a proposed sexually oriented business for which a permit is being applied for complies with all locational requirements of Sections 3, 5, and 6 of this Ordinance, all applicable zoning laws and/or regulations now in effect or as amended or enacted subsequent to the effective date of this Ordinance in the Township and the Township's Master Plan.

C. The Chikaming Township Police Department is responsible for providing information on whether an applicant has been convicted of a specified criminal act during the time period set forth.

D. The Township is responsible for inspecting a proposed, permitted or non-permitted sexually oriented business in order to ascertain whether it is in compliance with applicable statutes and ordinances.

E. An application for a permit must be made on a form provided the Township. Any person desiring to operate a sexually oriented business shall file with the Township an original and two copies of a sworn permit application on the standard application form supplied by the Township.

F. The completed application shall contain the following information and shall be accompanied by the following documents:

1. If the applicant is:

a. an individual, the individual shall state his/her legal name and any aliases and submit satisfactory proof that he/she is eighteen years of age;

b. a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

c. a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of Michigan, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he must state 1) the sexually oriented business's fictitious name and 2) submit the required assumed name registration documents.

3. Whether the applicant or any of the other individuals listed pursuant to Section 9 of this Ordinance has, within the two (2) or five (5) year period as specified in Section 11 immediately preceding the date of the application, been convicted of a specified criminal act, and if so, the specified criminal act involved, the date of conviction and the place of conviction.

4. Whether the applicant or any of the other individuals pursuant to Section 9 and or licensees of this Ordinance has had a previous permit under this Ordinance or other similar sexually oriented business ordinances from another municipality denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or any other individuals listed pursuant to Section 9 has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is permitted under this Ordinance whose permit has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

5. Whether the applicant or any other individual listed pursuant to Section 9 holds any other permits and/or licenses under this Ordinance or other similar sexually oriented business ordinance from any municipality and, if so, the names and locations of such other permitted businesses.
6. The single classification of permit for which the applicant is filing.
7. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.
8. The applicant's mailing address.
9. The applicant's date of birth.
10. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
11. A current, certified, straight-line drawing prepared within thirty (30) days prior to application by a Michigan registered land surveyor depicting the property lines and the structures containing any established existing uses regulated this Ordinance within 1,000 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within 1,000 feet of the property to be certified; and the property lines of any residentially zoned area or residential property within 250 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted. Section 3.B., is excepted from this requirement.
12. If a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a permit as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity which wishes to operate such a business, each individual having a ten (10%) or greater interest in the corporation must sign the application for a permit as applicant.
13. If a person wishes to operate a sexually oriented business which shall exhibit on the premises films, video cassettes, or other video reproductions which depict specified sexual activities or specified anatomical areas; then said person shall comply with the application requirements stated at Section 20 *et seq.*

G. Applicants for a permit under this Section shall have a continuing duty to promptly supplement application information required by this Section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) days from the date of such change, by supplementing the application on file with the Township Supervisor or his designee, shall be grounds for suspension of a permit.

H. In the event that the Township Supervisor or his designee determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, he shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. (The time period for granting or denying a permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.)

I. The applicant must be qualified according to the provisions of this Ordinance and the premises must be inspected and found to be in compliance with health, fire and building codes and laws.

J. The applicant shall be required to pay a non-refundable application fee of one hundred dollars (\$100.00) at the time of filing an application under this Section of this Ordinance.

K. Prior to obtaining any permit or license to operate any sexually oriented business defined in this Ordinance, and as part of any application for a permit under this Section, the applicant shall obtain from the Township or its designee a certification that the proposed location of such business complies with the locational requirements of Section 5 and 6 of this Ordinance.

L. The fact that a person possesses other types of State or Township permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business permit.

M. By applying for a permit under this Ordinance, the applicant shall be deemed to have consented to the provisions of this Ordinance and to the exercise by the Township Supervisor or his designee, the Chikaming Township Police Department and all other municipal agencies charged with enforcing the laws, ordinances and codes applicable in the Township of their respective responsibilities under this Ordinance.

N. The applicant shall be required to provide the Township with the names of any and all employees who are required to be licensed pursuant to Section 19 of this Ordinance. This shall be a continuing requirement even after a permit is granted or renewed.

#### **SECTION 10. INVESTIGATION AND APPLICATION.**

A. Upon receipt of an application properly filed with the Township and upon payment of the non-refundable application fee, the Township or its designee, shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to the Chikaming Township Police Department and any other agencies responsible for enforcement of health, fire and building codes and laws. Each department or agency shall promptly conduct an investigation of the applicant, application and the proposed sexually oriented business in accordance with its responsibilities under law and as set forth in this Ordinance. Said investigation shall be completed within thirty (30) days of receipt of the application by the Township or its designee. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it, and, in the event it disapproves, state the reasons therefor. The Chikaming Township Police Department shall only be required to certify the NCIC records request check mentioned at Section 11. The Chikaming Township Police Department shall not be required to approve or disapprove applications.

B. A department or agency shall disapprove an application if it finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the Township. After its indication of approval or disapproval, each department or agency shall immediately return the photocopy of the application to the Township or its designee.

#### **SECTION 11. ISSUANCE OF PERMIT.**

A. The Township Supervisor or his designee, shall grant or deny an application for a permit within thirty (30) days from the date of its proper filing. Upon the expiration of the thirtieth (30th) day, unless the applicant requests and is granted a reasonable extension of time, the applicant shall be permitted to begin operating the business for which the permit is sought, unless and until the Township or its designee, notifies the applicant of a denial of the application and states the reason(s) for that denial.

##### **B. Grant of Application for Permit**

1. The Township Supervisor or his designee, shall grant the application unless one or more of the criteria set forth in Section C below is present.

2. The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit shall also indicate that the Sexually Oriented Business whether permitted or not may

be subject to prohibitions against public nudity and indecency pursuant to the United States Supreme Court decision in *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991). The permit shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be read easily at any time.

### C. Denial of Application for Permit

1. The Township Supervisor or his designee, shall deny the application for any of the following reasons:

a. An applicant is under eighteen years of age.

b. An applicant or an applicant's spouse is overdue on his/her payment to the Township of taxes, fees, fines, or penalties assessed against him/her or imposed upon him/her in relation to a sexually oriented business.

c. An applicant has failed to provide information required by this Section or permit application for the issuance of the permit or has falsely answered a question or request for information on the application form.

d. The premises to be used for the sexually oriented business have not been approved as being in compliance with health, fire and building codes by the department or agency responsible under law for investigating said compliance.

e. The application or permit fees required by this Ordinance have not been paid.

f. An applicant of the proposed business is in violation of, or is not in compliance with, any of the provisions of this Ordinance including but not limited to the locational requirements for a sexually oriented business under Section 3, 5 and 6.

g. The granting of the application would violate a statute, ordinance, or court order.

h. The applicant has a permit under this Ordinance which has been suspended or revoked.

i. An applicant has been convicted of a "specified criminal" act for which:

(1) less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the "specified criminal" acts which are sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations;

(2) less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; for the "specified criminal" acts which are sexual crimes against children, sexual abuse, rape or crimes connected with another sexually oriented business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations.

(3) less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two or more misdemeanor offenses for "specified criminal" acts which are sexual crimes against children, sexually oriented business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering or tax violations, offenses occurring within any twenty-four month period;

(4) the fact that a conviction is being appealed shall have no effect on disqualification of the applicant;

(5) an applicant who has been convicted of the above described "specified criminal acts" may qualify for a sexually oriented business permit only when the time period required above in Section 11 (i) has elapsed.

j. An applicant knowingly has in his or her employ, an employee who does not have a valid license as required in Section 19 of this Ordinance.

2. If the Township Supervisor or his designee, denies the application, he shall notify the applicant of the denial and state the reason(s) for the denial.

3. If a person applies for a permit for a particular location within a period of twelve (12) months from the date of denial of a previous application for a permit at the location, and there has not been an intervening change in the circumstances which could reasonably be expected to lead to a different decision regarding the former reasons for denial, the application shall be denied.

#### **SECTION 12. ANNUAL PERMIT FEE.**

The annual fee for a sexually oriented business permit is Four Hundred Dollars (\$400.00).

#### **SECTION 13. INSPECTION.**

A. An applicant or permittee shall permit representatives of the Township Zoning and Building department, the County Health Department, and the Fire Department to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

B. It shall be unlawful and a person who operates a sexually oriented business, regardless of whether or not a permit has been issued for said business under this Ordinance, or his/her agent or employee, commits a misdemeanor if he/she refuses to permit such lawful inspection of the premises at any time that it is occupied or open for business.

#### **SECTION 14. EXPIRATION OF PERMIT.**

A. Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 11 (for renewals, filing of original survey shall be sufficient) of this Ordinance. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the permit will not be affected.

B. When the Township Supervisor or his designee, denies, renewal of the permit, the applicant shall not be issued a permit under this Ordinance for one (1) year from the date of denial. If subsequent to denial, the Township or its designee, finds that the basis for denial of the renewal of the permit has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date denial became final.

#### **SECTION 15. SUSPENSION OF PERMIT.**

A. The Township Supervisor or his designee, shall suspend a permit for a period not to exceed thirty (30) days if he determines that a permittee, or an employee of a permittee, has:

1. Violated or is not in compliance with any section of this Ordinance; or
2. Been under the influence of alcoholic beverages while working in the sexually oriented business premises; or

3. Refused to allow an inspection of sexually oriented business premises as authorized by this Ordinance; or
4. Knowingly permitted gambling by any person on the sexually oriented business premises; or
5. Operated the sexually oriented business in violation of a building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the division, department or agency charged with enforcing said rules or laws. In the event of such statute, code, ordinance, or regulation violation, the Township or its designee, shall promptly notify the permittee of the violation and shall allow the permittee a seven (7) day period in which to correct the violation. If the permittee fails to correct the violation before the expiration of the seven (7) day period, the Township or its designee, shall forthwith suspend the permit and shall notify the permittee of the suspension.
6. Engaged in permit transfer contrary to Section 18 of this Ordinance. In the event that the Township or its designee, suspends a permit on the ground that a permittee engaged in a permit transfer contrary to Section 18 of this Ordinance, the Township Supervisor or his designee shall forthwith notify the permittee of the suspension. The suspension shall remain in effect until the applicable section of this Ordinance has been satisfied.
7. Operated the sexually oriented business in violation of the hours of operation in Section 23.
8. Knowingly employs a person who does not have a valid license as required in Section 19 of this Ordinance.

B. The suspension shall remain in effect until the violation of the statute, code, ordinance or regulation in question has been corrected.

## SECTION 16. REVOCATION OF PERMIT.

- A. The Township Supervisor or his designee shall revoke a permit if a cause of suspension in Section 15 of this Ordinance occurs and the permit has been suspended within the preceding twelve (12) months.
- B. The Township Supervisor or his designee, shall revoke a permit upon determining that:
  1. A permittee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a permit; or
  2. A permittee or an employee has knowingly allowed possession, use or sale of controlled substances in or on the premises; or
  3. A permittee or an employee has knowingly allowed prostitution on the premises; or
  4. A permittee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended; or
  5. A permittee has been convicted of a "specified criminal act" for which the time period required in Section 11 of this Ordinance has not elapsed; or
  6. On two or more occasions within a twelve (12) month period, a person or persons committed an offense, occurring in or on the permitted premises, constituting a "specified criminal act" for which a conviction has been obtained, and the person or persons were

employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the permit; or

7. A permittee is convicted of tax violations for any taxes or fees related to a sexually oriented business; or

8. A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or any other specified sexual activities to occur in or on the permitted premises.

9. A permittee has been operating more than one sexually oriented business under a single roof except as provided in Section 3.B.

C. When the Township Supervisor or his designee, revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date the revocation became effective. If, subsequent to revocation, the Township Supervisor or his designee finds that the basis for revocation under Section 16 of this Ordinance has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date revocation became effective. If the permit was revoked under Section 16 of this Ordinance, an applicant may not be granted another permit until the number of years required under Section 16. have elapsed.

#### **SECTION 17. JUDICIAL REVIEW OF PERMIT DENIAL, SUSPENSION OR REVOCATION.**

After denial of an application or denial of a renewal of an application, or suspension or revocation of a permit, the applicant or permittee may seek prompt review of such administrative action through the Township Board. If the denial, suspension or revocation is affirmed upon review, the administrative action shall be promptly reviewed by the Court.

#### **SECTION 18. TRANSFER OF PERMIT.**

A. A permittee shall not operate a sexually oriented business under the authority of a permit at any place other than the address designated in the application for permit.

B. A permittee shall not transfer his/her permit to another person unless and until such other person satisfies the following requirements:

1. Obtains an amendment to the permit from the Township Supervisor or his designee, which provides that he/she is now the permittee, which amendment may be obtained only if he/she has completed and properly filed an application with the Township Supervisor or his designee, setting forth the information called for under Section 11 of this Ordinance in the application; and

2. Pays a transfer fee of twenty percent (20%) of the annual permit fee set by this Ordinance.

C. No permit may be transferred when the Township Supervisor or his designee has notified the permittee that suspension or revocation proceedings have been or will be brought against the permittee.

D. A permittee shall not transfer his permit to another location.

E. Any attempt to transfer a permit either directly or indirectly in violation of this Section is hereby declared void and the permit shall be deemed revoked.



**SECTION 19. SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE.**

A. Each individual to be employed in a sexually oriented business, as defined in Section 2 of this Ordinance, who engages in the services rendered by a nude model studio, sexual encounter establishment, massage parlor, or a live performer or entertainer shall be required to obtain a Sexually Oriented Business Employee License. Each applicant shall pay a permit fee of twenty-five dollars (\$25.00). Said fee is to cover reasonable administrative costs of the licensing application process.

B. Before any applicant may be issued a Sexually Oriented Business Employee License, the applicant shall submit on a form to be provided by the Township Supervisor or his or her designee the following information:

1. The applicant's name or any other names (including "stage" names) or aliases used by the individual;
2. Date of birth;
3. Present mailing address; and
4. Satisfactory proof that the individual is at least eighteen (18) years of age.
5. A statement detailing the license or permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate, in this or any other county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying or jurisdiction, and described in full the reasons for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
6. Whether the applicant has been convicted of a "specified criminal" act as defined in Section 11(i) of this Ordinance. This information shall include the date, place, nature of each conviction or plea of nolo contendere and identifying the convicting jurisdiction.
7. The Township Supervisor or his or her designee shall refer the Sexually Oriented Business Employee License Application to the Chikaming Township Police Department for an investigation to be made of such information as is contained on the application. The application process shall be completed within ten (10) days from the date the completed application is filed. After the investigation, the Township Supervisor or his designee shall issue a license unless the report from the Police Department finds that one or more of the following findings is true:
  - a. That the applicant has knowingly made any false, misleading, or fraudulent statement of a material fact in the application for a license, or in any report or record required to be filed with the police department or other department of the Township.
  - b. That the applicant is under eighteen (18) years of age;
  - c. That the applicant has been convicted of a "specified criminal act" as defined in Section 11(i) of this Ordinance;
  - d. That the Sexually Oriented Business Employee License is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by particular provisions of this Ordinance;

e. That the applicant has had a Sexually Oriented Business Employee License revoked by the Township within two (2) years of the date of the current application.

C. Renewal of license:

1. A license granted pursuant to this Section shall be subject to annual renewal by the Township Supervisor or his designee upon the written application of the applicant and a finding by the Township Supervisor or his designee and the Chikaming Township Police Department that the applicant has not been convicted of any "specified criminal act" as defined in Section 11(i) of this Ordinance or committed any act during the existence of the previous license period which would be grounds to deny the initial permit application.
2. The renewal of the license shall be subject to payment of a fee as set by a resolution of the Township Board.

**SECTION 20. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS IN VIDEO BOOTHS.**

A. A person who operates or causes to be operated a sexually oriented business, other than a sexually oriented motel/hotel and regardless of whether or not a permit has been issued to said business under this Ordinance, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette or other video reproductions which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. Upon application for a sexually oriented business permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations, the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area with no dimension greater than eight (8) feet. The diagram shall also designate the place at which this permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Township Supervisor or his designee, may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
2. The application shall be sworn to be true and correct by the applicant.
3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Township or its designee.
4. 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.
5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is

permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

6. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present on the premises to insure that the view area specified in Subsection 5 remains unobstructed by any doors, walls, merchandise, display racks or other materials or person at all times and to insure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection a. of this Section.

7. No 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.

8. 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.

9. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present on the premises to insure that the illumination described above is maintained at all times that any patron is present on the premises.

B. A person having a duty under Section 9a(1) - (9) commits a misdemeanor if he/she knowingly fails to fulfill that duty.

## **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, regardless of whether or not a permit has been issued for said business under this Ordinance, and knowingly or with reasonable cause to know, permit, suffer, or allow:

A. Admittance of a person under eighteen (18) years of age to the business premises unless accompanied by a parent or guardian;

B. A person under eighteen (18) years of age to remain at the business premises unless accompanied by a parent or guardian;

C. A person under eighteen (18) years of age to purchase goods or services at the business premises without the specific consent of a parent or guardian; or

D. A person who is under eighteen (18) years of age to work at the business premises as an employee.

## **SECTION 22. ADVERTISING AND LIGHTING REGULATIONS.**

A. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this Ordinance, and advertises the presentation of any activity prohibited by an applicable State statute or local ordinance.

B. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this Ordinance, and displays or otherwise exhibits the materials and/or performances at such sexually oriented business in any advertising which is visible outside the premises. This prohibition shall not extend to advertising of the existence or location of such sexually oriented business.

C. The permittee shall not allow any portion of the interior premises to be visible from outside the premises.

D. All off-street parking areas and premise entries of the sexually oriented business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1.0) foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually oriented business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premise.

E. Nothing contained in this Section of the Ordinance shall relieve the operator(s) of a sexually oriented business from complying with the requirements of the Township of Chikaming, commonly known as the Sexually Oriented Business Ordinance, as it may be amended from time to time, or any subsequently enacted Township ordinances or regulations.

### **SECTION 23. HOURS OF OPERATION.**

A. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this Ordinance, and allows such business to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of hours of 11:00 p.m., through 8:00 a.m., of the following day.

B. It shall be unlawful and a person commits a misdemeanor if, working as an employee of a sexually oriented business, regardless of whether or not a permit has been issued for said business under this Ordinance, said employee engages in a performance, solicits a performance, makes a sale, solicits a sale, provides a service, or solicits a service between the hours of 11:00 p.m., through 8:00 a.m., of the following day.

### **SECTION 24. NUDITY AT SEXUALLY ORIENTED BUSINESSES PROHIBITED.**

A. The United States Supreme Court decision in *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 (1991) which upheld the rights of cities to prohibit live public exposure of a person's private parts, specifically applies to sexually oriented businesses (regardless of whether or not a permit has been issued to said businesses under this Ordinance), including said businesses where no alcoholic beverages are sold, served, or consumed at the premises.

B. Public nudity is prohibited within the Township of Chikaming, including any sexually oriented business. Any sexually oriented business which is found in violation of this section shall have its permit suspended pursuant to the provisions of Section 15.

### **SECTION 25. REGULATIONS PERTAINING TO LIVE ENTERTAINMENT.**

A. For purposes of this Section, "live entertainment" is defined as a person who appears nude, semi-nude, or a performance which is characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

B. No person shall perform live entertainment for patron(s) of a sexually oriented business establishment except upon a stage at least eighteen (18) inches above the level of the floor which is separated by a distance of at least ten (10) feet from the nearest area occupied by patron(s). No patron shall be permitted within ten (10) feet of the stage while the stage is occupied by a performer.

C. The sexually oriented business establishment shall provide separate dressing room facilities for female and male performers which shall not be occupied or used in any way by any one other than performers.

D. The sexually oriented business establishment shall provide access for performers between the stage and the dressing rooms which is completely separated from the patrons. If such separate access is not physically feasible, the establishment shall provide a minimum four (4) foot wide walk aisle for performers between the dressing room area and the stage, with a railing, fence or other barrier separating the patrons and the performers which prevents any physical contact between patrons and performers.

E. No entertainer, either before, during, or after a performance, shall have physical contact with any patron and no patron shall have physical contact with any entertainer either before, during or after a performance. This subsection shall only apply to physical contact while in or on the premises of the establishment.

F. Fixed rails(s) at least thirty (30) inches in height shall be maintained establishing the separations between performers and patrons required by this section.

G. No patron shall directly pay or give any gratuity to any entertainer. A Patron who wishes to pay or give a gratuity to a performer shall place the gratuity in a container that is at all times located separately from the performers for the purpose of preventing any physical contact between a patron and a performer. No performer shall solicit any gratuity from any patron.

H. No operator of a sexually oriented business establishment shall cause or allow a performer to contract or engage in any entertainment such as a "couch" or a "straddle" dance with a patron while in or on the establishment premises. No performer shall contract to or engage in a "couch" or "straddle" dance with a patron while in or on the establishment premises. For purposes of this subsection, "couch" or "straddle" dance is defined as an employee of the establishment intentionally touching or coming within ten (10) feet of any patron while engaged in the display or exposure of any "specified anatomical area", or any "specified sexual activity". For purposes of this subsection, employee is defined as it is in Section 2.B.

I. Section 25 shall not apply to an employee of an establishment who, while acting as a waiter, waitress, host, hostess, or bartender, comes within ten (10) feet of a patron. No employee shall engage in any "specified sexual activity" or display or expose any "specified anatomical area" while acting as a waiter, waitress, host, hostess, or bartender.

J. Compliance with this section:

1. For purposes of this Section, establishment is defined as it is in Section 2.C of this Ordinance. No establishment shall be in compliance with this Section until the Township's designated agents have inspected and approved of the establishment's compliance. The Township shall have ten (10) days from the date it receives written notice from the operator that the establishment is ready for inspection to approve or disapprove of compliance required by this Section. Failure to approve or disapprove of compliance within ten (10) days shall constitute a finding of compliance under this Section.
2. The operator of an establishment that has been providing live entertainment under a valid sexually oriented business permit, shall have the time periods listed below in which to bring the establishment into compliance with this Section. Failure to do so while continuing to provide live entertainment shall cause the establishment's permit to be suspended under Section 15 of this Ordinance. The permit shall remain suspended until the establishment is approved the Township's designated agent(s) as being in full compliance with this Section.
3. The operator of an establishment that has been operating under a valid permit for another classification of sexually oriented business and who wishes to provide live entertainment at that establishment, shall apply for and receive a sexually oriented business permit for the operation of an establishment providing live entertainment before any live

entertainment is provided at that establishment. No live entertainment permit shall be issued until the establishment is approved as being in full compliance with this Section and all other applicable requirements of this Ordinance.

4. The applicant for a permit to operate a new establishment who wishes to provide live entertainment, shall apply for and receive a sexually oriented business permit for the operation of an establishment providing live entertainment before any live entertainment is provided. No live entertainment permit shall be issued until the establishment is approved as being in full compliance with this Section and all other applicable requirements of this Ordinance.

5. Subsection B: Sixty (60) days from the date this Section becomes effective.

6. Subsection C: Ninety (90) days from the date this Section becomes effective.

7. Subsection D: Ninety (90) days from the date this Section becomes effective.

8. Subsection E: Upon the date this Section becomes effective.

9. Subsection F: Sixty (60) days from the date this Section becomes effective.

10. Subsection G: Upon the date this Section becomes effective.

11. Subsection H: Upon the date this Section becomes effective.

#### **SECTION 26. ADDITIONAL CRIMINAL PROHIBITIONS FOR THE OPERATION OF A SEXUALLY ORIENTED BUSINESS WITHOUT A VALID PERMIT.**

A. In addition to the criminal provisions found in other sections of this Ordinance, the following additional criminal provisions shall also apply to sexually oriented businesses.

B. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued for said business under this Ordinance, and said person knows or should know that:

1. The business does not have a sexually oriented business permit under this Ordinance for any applicable classification;
2. The business has a permit which is under suspension;
3. The business has a permit which has been revoked; or
4. The business has a permit which has expired.

#### **SECTION 27. EXEMPTIONS.**

A. It is a defense to prosecution for any violation of this Ordinance that a person appearing in a state of nudity did so in a modeling class operated:

1. By a college, junior college, or university supported entirely or partly by taxation;
2. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or,

3. In a structure:

- a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
- b. Where, in order to participate in a class a student must enroll at least three days in advance of the class; and
- c. Where no more than one nude model is on the premises at any one time.

B. It is a defense to prosecution for a violation of this Ordinance that an employee of a sexually oriented business, regardless of whether or not it is permitted under this Ordinance, exposed any specified anatomical area during the employee's bona fide use of a restroom, or during the employees bona fide use of a dressing room which is accessible only to employees.

#### **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 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, 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 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. 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 trespass upon a sexually oriented business while acting within the scope of authority conferred by this Ordinance.

#### **SECTION 30. SEVERABILITY.**

If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity with the remaining section, subsection and clauses shall not be effected thereby.

#### **SECTION 31. CONFLICTING ORDINANCE REPEALED.**

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

**SECTION 32. EFFECTIVE DATE.**

This ordinance was adopted by the Chikaming Township Board at a special meeting held in the Chikaming Township Public Safety Building on the 19th day of December, 2002, shall take effect the 30th day of January, 2003, the same being more than thirty (30) days after the date of publication.

*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. 109, duly adopted by the Township Board of the Township of Chikaming, Berrien County, Michigan, at a special meeting held on the 19th day of December, 2002. I further certify that Dudeck 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 20<sup>th</sup> day of December, 2002, 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 30th day of December, 2002.

Dated: December 20, 2002

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