

BLOOMINGDLE TOWNSHIP, VAN BUREN COUNTY, MICHIGAN

ADULT ENTERTAINMENT ORDINANCE Ordinance No. 128

The Bloomingdale Township Board, Van Buren County, Michigan, in order to regulate adult entertainment within the Township of Bloomingdale, Van Buren County, Michigan, and provide penalties for the violation hereof

THE TOWNSHIP OF BLOOMINGDALE, VAN BUREN COUNTY, MICHIGAN, HEREBY ORDAINS:

Section 1. Definitions.

The following definitions shall apply in the interpretation and enforcement of this Ordinance unless otherwise specifically stated:

(A) "Adult bookstore" - An establishment that has as a substantial portion of its stock-in trade and offers for sale, for any form of consideration, any one or more of the following:

(1) books, magazines, periodicals or other printed matter, or photographs, films, movies, motion pictures, video cassettes, slides, or other visual representations that are characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas, or

(2) instruments, devices, or paraphernalia designed for use as part of, or in connection with, specified sexual activities.

(B) "Adult cabaret" means a nightclub, restaurant, or other establishment which regularly features or displays:

(1) Live performances predominantly characterized by an emphasis on the exposure of any specified anatomical area or by any specified sexual activity; or

(2) Films, motion pictures, video cassettes, slides, other photographic reproductions, or visual media predominantly characterized by an emphasis on the depiction or description of any specified sexual activity or any specified anatomical area.

(C) "Adult merchandise store " means an establishment that emphasizes merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area. An establishment emphasizes merchandise that is predominantly distinguished by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area U any one or more of the following applies to the establishment:

(1) At least 25% of the establishment's retail floor space (i.e., excluding bathrooms, office areas, fitting rooms, eating areas, storage rooms/closets, etc.) is used for the sale of merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing

or relating to any specified sexual activity or any specified anatomical area.

(2) At least 25% of the establishment's visible inventory is comprised of merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area.

(3) 25% of the establishment's gross revenues are generated by the sale or rental of merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area.

(4) The establishment is operated consistent with its being an adult entertainment business (e. g., advertising is

directed to an "adults only" market; the establishment self imposes [or imposes consistent with state or federal law] prohibitions on minors being present in the establishment; segregated areas of the business are devoted predominantly to the sale or rental of such merchandise; etc.),

(5) The establishment displays merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area such that that merchandise is visible to patrons in the store and without cover (as opposed to a situation where a de minimus amount of such merchandise, (while available for sale or rental, is covered or otherwise shielded from the view of patrons).

(6) A comparison between (a) the establishment's ratio of general product to merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area, and (b) other retail establishments' ratio of general product to merchandise that is predominantly distinguished or characterized by its emphasis on matter depicting, describing or relating to any specified sexual activity or any specified anatomical area, indicates that the establishment emphasizes merchandise depicting, describing or relating to any specified sexual activity or any specified anatomical area.

(7) An Establishment with a segment or section devoted to the sale or display of Adult Entertainment Merchandise.

(D) "Adult motel" means a hotel, motel or similar establishment that:

(1) Offers accommodation to the public for any form of consideration and provides patrons with closed circuit television (as distinguished from commercial cable services) transmissions, films, motion pictures, video cassettes, slides, other photographic reproductions or visual media that are characterized by an emphasis on the depiction or description of any specified sexual activity or any specified anatomical area; or

(2) Offers a sleeping room for rent, or allows a tenant or occupant of a sleeping room to sub rent the room, for a period of time that is less than ten (10) hours, if the rental of such rooms accounts for more than ten percent (10%) of the establishments gross revenues.

(E) "Adult entertainment business" means a business or commercial establishment engaging in one or more of the following enterprises:

(1) adult cabaret; (2) adult merchandise store; (3) adult motel; (4) adult theater; (5) escort agency; (6) nude model studio; (7)sexual encounter center; or (8) adult bookstore.

(1*) adult theater" means a theater, concert hall, auditorium, or similar establishment which regularly features live performances predominantly characterized by an emphasis on the exposure of any specified anatomical area or by any specified sexual activity or which regularly or primarily shows films, motion pictures, video cassettes, slides, other photographic reproductions or visual media predominantly characterized by an emphasis on the depiction or description of any specified sexual activity or any specified anatomical area. This definition includes, without limitation, establishments which offer individual viewing booths.

(G) "Escort" means a person who, for any form of consideration and regardless of who pays that consideration, agrees to act or offers to act as a companion or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(H) "Escort agency " means a person or entity which furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration. An escort agency is deemed to be operated in the location where (1) a request for an escort is received, or (2) the escort and the person requesting the escort are together.

(I) "Materials " means anything tangible, whether through the medium of reading, observation, sound or in any other manner, including, but not limited to, anything printed or written, any book, magazine, newspaper, pamphlet, picture, drawing, pictorial representation, motion picture, photograph, video tape, video disk, film, transparency, slide, audiotape, audio disk, computer tape, holographic images, or any other medium used to electronically

produce or reproduce images, or any mechanical, chemical, or electronic reproduction. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects whether or not processing or other acts are required to make the content of the material apparent. This definition is intended to include material which is the product of any technology, whether that technology is available on the effective date of this Ordinance or becomes available after that date.

(J) "Merchandise " means material and novelties.

(K) "Novelty" means any instrument, device, or paraphernalia which depicts or describes any specific anatomical area or any specific sexual act, or which is designed for use, or commonly used, in connection with specific sexual activities, excluding condoms and other birth control and disease prevention products.

(L) "Nude model studio" means any place where a person displays any specified anatomical area is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by any other person who pays money or any form of consideration.

(M) "Sexual encounter center" means an establishment, except that which is part of the practice of and under the supervision and control of a physician, psychologist, or psychiatrist licensed to practice in Michigan that offers:

(1) Activities between male and female persons and/or persons of the same sex when one or more of the persons exposes or displays any specified anatomical area; or

(2) The matching and/or exchanging of persons for any specified sexual activities.

(N) "Specified anatomical area" means any one or more of the following:

(1) Less than completely and opaquely covered human genitals, anus, or female breast at or below the top of the areola; or

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(O) "Specified sexual activity" means any of the following:

(1)The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast; or

(2) A sex act, actual or simulated, including intercourse, oral copulation, or sodomy; or

(3) Masturbation, actual or simulated; or

(4) Excretory functions as part of or in connection with any of activities set forth in (1), (2) or (3) above; or

(5) Physical violence, bondage, mutilation, or rape, actual or simulated, as part of or as related to, any of the activities described above.

(P) "Substantial portion " means a use or activity accounting for more than twenty (25%) percent of any one or more of the following: stock-in-trade, display, space, floor space, or viewing time, movie display time, or entertainment time measured per month.

Section 2. General Requirements for Adult Entertainment Businesses.

All adult entertainment businesses shall comply with the following:

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

(B) No adult entertainment business may be established, operated, or maintained within 500 feet of a church, state

licensed day care facility, public library, public park, pre-school, elementary school, middle school, or high school.

(C) No adult entertainment business may be established, operated or maintained within 500 feet of any other adult entertainment business.

(D) Distance limitations shall be measured in a straight line from the parcel or lot lines of both the subject parcel and the parcels occupied by uses specified above.

(E) No owner, employee or patron of an adult entertainment establishment shall promote, offer, solicit, allow or engage in acts of prostitution on the premises. Any adult entertainment business that is in violation of this subsection will be immediately shut-down from operation. No criminal charge need be brought for the closing of the premises. The acts described in this subsection may be proved by a preponderance of the evidence.

(F) The following shall not be visible or audible to a person outside the building in which an adult entertainment business is operated, whether through a window or doorway or otherwise:

(1) Any depiction or description in any material of any specified sexual activity or any specified anatomical area; or

(2) Any novelty; or

(3) Any person engaging in any specified sexual activity or exposing any specified anatomical area. .

(G) No person or establishment shall operate an adult entertainment business:

(1) Before 8:00 a.m. or after 1:00 a.m. Monday through Saturday; or

(2) On any Sunday or legal holiday. .

(H) No adult entertainment business shall engage in business unless each of the following are satisfied:

(1) At least two employees, excluding entertainers, are on the premises of the business at all times the business is open; and

(2) The business is equipped with operational security cameras which shall be used at all times the business is open.

(I) Any booth, room, or cubicle, located in any adult entertainment business, used by patrons for

the viewing of merchandise or any other entertainment must comply with all of the following requirements:

(1) It must be unobstructed by any door, lock, or other entrance and exit control device;

(2) One side must be totally open to a public, lighted aisle so that there is an unobstructed view at all times from the adjoining aisle of any occupant;

(3) It must be illuminated such that a person of normal visual acuity looking into the booth, room, or cubicle from the entrance adjoining the public lighted aisle can clearly determine the number of people within; and

(4) There shall be no holes or openings in any side or rear wall not relating to utility, ventilation, or temperature control services or otherwise required by any governmental code or authority.

(J) No sign or advertising for an adult entertainment business may include any photographs, silhouettes, drawings, or other representations of any specified anatomical area or any specified sexual activity.

(K) All adult entertainment businesses shall be open to inspection by the Township ordinance enforcement officer, the building inspector any public safety officer, any police officer, any Sheriff's deputy, or any Michigan State Police trooper for the purpose of ensuring compliance with the law at any time the establishment is occupied or open for business.

(L) Each escort agency shall maintain permanent records on the premises showing the name, address, and telephone number of every person for whom an escort is provided, the fee paid, the name of the escort or escorts so provided, and the location where the escort and the person requesting the escort initially meet. These records shall be made available, upon demand and without prior notice, to any Township official inspecting the premises pursuant to this Ordinance.

(M) All adult entertainment businesses shall maintain a level of illumination in all common areas that will allow a clear determination of the number of people within that area.

(N) All adult entertainment businesses shall be maintained a clean and sanitary manner at all times.

(O) All adult entertainment businesses' register of employees shall be available immediately for inspection by police or other authorized Township authorities upon demand.

Section 3. Additional Requirements for Adult Entertainment Businesses Offering Live Entertainment.

Live entertainment means for the purpose of this Ordinance any live performance predominantly characterized by an emphasis on the exposure of any specified anatomical area or by any specified sexual activity.

(A) Any adult entertainment business offering live entertainment shall provide all of the following:

(1) A dressing room for performers with direct access between the dressing area and the performance area or stage so that the performer may enter the performance area or stage without entering the area from which patrons will view the performance;

(2) That the access, performance area, or stage and dressing room is handicapped accessible to the extent required by the Americans With Disabilities Act and the Elliott Larsen Civil Rights Act;

(3) That all performances shall occur on a stage elevated at least 18 inches above the immediate floor level and removed at least six feet from the nearest employee or patron; and

(4) That the dressing area for performers be separate and not freely accessible from areas of the business accessible to patrons, and that the dressing area contains hot and cold running water and toilet facilities.

(B) There shall be no physical contact between any performer and any other performer or between any performer and any owner, independent contractor, employee, patron or other person during or for at least 15 minutes following such performance. "Physical contact" for purposes of this subsection includes, but is not limited to, any contact in which any part of the body or clothing of one person touches any part of the body or clothing of the other person or if a person causes anything under that persons direct control to touch any part of the body or clothing of another person. No specified sexual activity within its definition in this ordinance shall occur at any time at any establishment offering live entertainment within this section.

(C) No alcohol shall be served in any adult entertainment business offering live nude entertainment. Live nude entertainment means for the purpose of this Ordinance any live performance in which any pubic area of the performer is exposed in any way to patrons or employees.

Section 4. Registration.

Each adult entertainment business shall register its existence with the Township Clerk and will be subject to inspection by authorized Township authorities prior to commencing business. The registration shall provide the following information:

(A) The name including aliases, residence address and business address, telephone number, date of birth, last four digits of social security number, Michigan or other valid state vehicle operator 's license number of the applicant and manager. U the applicant is a partnership, limited liability company, corporation, or similar business entity, the name and residence address of each of the officers, directors, managers, and each of the owners, partners, or shareholders owning 10% interest or more, either directly or beneficially, shall also be provided.

(B) The name, address, and telephone number of the owner of the building where the business will be conducted; also, the name, address, and telephone number of the building manager (if different from the owner).

(C) The location, mailing address, and all telephone numbers where the business is to be conducted.

(D) A description of the adult entertainment to be provided by the business, hours of operations, proof of alcohol license K applicable, and proof of any permit required by local or county regulations.

Section. 5. Prohibited Conduct.

(4) Except on a stage or other area of performance as specified in Section 3, no person within an adult entertainment business shall display to the view of any other person any specified anatomical area.

(B) No person shall engage in any specified sexual activity on the premises of an adult entertainment business.

Section 6. Violations.

The following shall be a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500) and cost of prosecution or by imprisonment for a period not to exceed ninety (90) days, or both such fine and imprisonment in the discretion of the court:

(4) A violation of any provision of this Ordinance; or

(B) Permitting, allowing, encouraging, or promoting any violation of any provision of this Ordinance, including by any owner, manager, employee, patron, customer, officer, partner or other person; or

(C) Aiding, assisting, or abetting the violation of any provision of this Ordinance.

A violation of any provision of this Ordinance shall also be a nuisance per se and the Township may seek an injunction against the violation.

Section 7. Title.

This Ordinance shall be known as the Bloomingdale Township Adult Entertainment Ordinance.

Section 8. Severability.

The phrases, sentences, sections, and provisions of this Ordinance are severable and the finding that any portion hereof is unconstitutional or otherwise unenforceable shall not detract from or affect the enforceability of the remainder of this Ordinance.

Section 9. Effective Date.

This Ordinance shall become effective upon publication in a newspaper of general circulation in the Township.