CHARTER TOWNSHIP OF WEST BLOOMFIELD

ORDINANCE NO. C- 776
AMENDMENT TO CHAPTER 6 TO ADD
ARTICLE V. SEXUALLY ORIENTED BUSINESSES

AN ORDINANCE TO AMEND CHAPTER 6 OF THE CODE OF ORDINANCES ENTITLED AMUSEMENTS AND ENTERTAINMENT TO ADD ARTICLE V. SEXUALLY ORIENTED BUSINESSES.

THE CHARTER TOWNSHIP OF WEST BLOOMFIELD ORDAINS:

Section 1 of Ordinance

Chapter 6 of the West Bloomfield Charter Township Code of Ordinances is hereby amended by adding Article V. Sexually Oriented Businesses, sections 6-120 through 6-190, to read as follows:

ARTICLE V. SEXUALLY ORIENTED BUSINESSES

DIVISION 1. GENERALLY

Sec. 6-120. Purpose and findings.

(a) Purpose. It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the Township, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the Township. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to deny access by adults to sexually oriented materials protected by the First Amendment of the United Constitution and/or Michigan Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.


(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to: personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, loitering, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Alcohol consumption impairs judgment and lowers inhibitions, thereby increasing the risk of adverse secondary effects.

(2) Physical contact between employees of sexually oriented businesses, including “bed” dances, “couch” dances, and “lap” dances as they are commonly called, are associated with and can lead to illicit sexual activities, including public masturbation, lewdness, and prostitution, as well as other negative effects, including sexual assault;

(3) Each of the negative secondary effects targeted by this article, constitutes a harm which the Township has a substantial government interest in preventing and/or abating. This substantial government interest in preventing such negative secondary effects, which is the Township’s rationale for this article, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the Township’s interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the Township. The Township finds that the cases and documentation relied on in this article are reasonably believed to be relevant to the Township’s interest in preventing negative secondary effects.

The Township hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

Sec. 6-121 to 6-124. Reserved.
DIVISION 2. DEFINITIONS AND CLASSIFICATIONS

Sec. 6-125. Definitions.

For purposes of this article, the words and phrases defined in this article shall have the meanings herein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Adult bookstore or adult video store means a commercial establishment which, as one (1) of its principal business purposes, offers for sale or rental for any form of consideration any one (1) or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas." A principal business purpose, as discussed in the previous sentence, exists when the commercial establishment:

1. Has a substantial or significant portion of its displayed merchandise which consists of the enumerated material; or

2. Has a substantial or significant portion of the wholesale value of its displayed merchandise which consists of the enumerated material; or

3. Has a substantial or significant portion of the retail value of its displayed merchandise which consists of the enumerated material; or

4. Derives a substantial or significant portion of its revenues from the sale or rental, for any form of consideration of the enumerated material; or

5. Maintains a substantial or significant section of its interior floor space for the sale or rental of the enumerated material; or

6. Regularly features the enumerated materials, and prohibits access by minors, because of age, to the premises, and advertises itself as offering the enumerated material on signage visible from public right-of-way; or

7. Maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or specified "anatomical areas."
Adult cabaret means a nightclub, bar, juice bar, restaurant, bottle club, coffee shop, or similar commercial establishment, regardless of whether alcoholic beverages are served, which regularly features persons who appear semi-nude. No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.

Adult motel means a motel, hotel, or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

(2) Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or

(3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twenty-four (24) hours.

Adult motion picture theater means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or "specified anatomical areas" are regularly shown to more than five (5) persons for any form of consideration.

Characterized by means describing the essential character or quality of an item. As applied in this ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

Employ, employee and employment describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Establish or establishment means and includes any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
(3) The addition of any sexually oriented business to any other existing sexually oriented business.

_Influential interest_ means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business; or (2) ownership of a financial interest of ten (10) percent or more of a business or of any class of voting securities of a business; or (3) holding an office, such as: president, vice president, secretary, treasurer, managing member, managing director, etc., in a legal entity which operates the sexually oriented business.

_Licensee_ means a person in whose name a license to operate a sexually oriented business has been issued, as well as, the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

_Nudity_ or a _state of nudity_ means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

_Operate_ or _cause to operate_ means to cause to function or to put or keep in a state of doing business.

_Operator_ means any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business, or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

_Person_ shall mean individual, proprietorship, partnership, firm, corporation, association, or other legal entity.

_Premises_ means the real property upon which the sexually oriented business is located, and all appurtenances thereto, all buildings and structures thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to section 6-130 of this article.

_Regularly_ means the consistent and repeated doing of an act on an ongoing basis.

_Semi-nude_ or _state of semi-nudity_ means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.
Semi-nude model studio means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appear in a state of semi-nudity 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 semi-nude person is available for viewing; and

b. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class.

Sexual device means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

Sexual device shop means a commercial establishment that regularly features sexual devices as any part of its business carried on in the premises. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services.

Sexual encounter center shall mean a business or commercial enterprise that, as one (1) of its principal business purposes, regularly features for any form of consideration, physical contact between two (2) or more persons when one (1) or more of the persons is semi-nude. Nothing in this definition shall be construed to include establishments regulated and licensed pursuant to the Massage Therapy Act, Public Health Code, Article 15, Part 179A, MCL 333.17951 et. seq. and licensed pursuant to Chapter 14 of the Township Code of Ordinances.

Sexually oriented business means an "adult bookstore or adult video store," an "adult cabaret," an "adult motel," an "adult motion picture theater," a "semi-nude model studio," a "sexual device shop," or a "sexual encounter center."

Specified anatomical areas means and includes:

(1) Less than completely and opaquely covered: human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and
(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

*Specified criminal activity* means:

(1) Any of the following specified offenses, as amended from time to time, for which less than seven (7) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

a. Criminal sexual conduct, MCL 750.520a - 750.520g, child sexually abusive activity, MCL 750.145c, computer crimes against children, MCL 750.145d(1)(a);

b. Prostitution-related offenses, MCL 750.448-750.449a;

c. Offenses related to obscenity, MCL 752.365, and material harmful to minors, MCL 750.142-750.143; or

d. Indecent exposure, MCL 750.335a.

(2) Any attempt, solicitation, or conspiracy to commit one (1) of the foregoing offenses; or

(3) Any offense enumerated in the Township Code of Ordinances which substantially corresponds to one of the foregoing state offenses; or

(4) Any offense in another jurisdiction that, had the predicate act(s) been committed in Michigan, would have constituted any of the foregoing offenses.

*Specified sexual activity* means any of the following:

(1) Intercourse, oral copulation, masturbation or sodomy; or

(2) Excretory functions as a part of or in connection with any of the activities described in (1) above.

*Township* means the Charter Township of West Bloomfield, Michigan, including its officials, employees, and agents.

*Township Clerk* means the Charter Township of West Bloomfield Township Clerk or the Clerk's designee.

*Township Board* means the Township Board for the Charter Township of West Bloomfield, Michigan.

*Transfer of ownership or control of a sexually oriented business* shall mean any of the following:

(1) The sale, lease, or sublease of the business;
(2) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

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

*Viewing room* shall mean the room, booth, or area of a sexually oriented business where a patron of the sexually oriented business is positioned while watching a film, videocassette, digital video disk, or other video reproduction.

**Sec. 6-126. Classifications.**

The classifications for sexually oriented businesses shall be as follows:

(1) Adult bookstore or adult video store;

(2) Adult cabaret;

(3) Adult motel;

(4) Adult motion picture theater;

(5) Semi-nude model studio;

(6) Sexual device shop;

(7) Sexual encounter center.

**Sec. 6-127 to 6-129. Reserved.**

**DIVISION 3. LICENSE**

**Sec. 6-130. - License required.**

(a) *Business license.* It shall be unlawful for any person to operate a sexually oriented business in the Township without a valid sexually oriented business license.

(b) *Employee license.* It shall be unlawful for any person to be an "employee," as defined in this article, of a sexually oriented business in the Township without a valid sexually oriented business employee license.

(c) *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall annually file in person at the office of the Township Clerk a completed application made on a form provided by the Township Clerk. The application shall be signed as required by subsection (e) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in paragraphs (1) through (7) below, accompanied by the appropriate fee identified in section 6-132.
(1) The applicant's full true name and any other names used by the applicant in the preceding five (5) years.

(2) Current business address or another mailing address of the applicant.

(3) Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

(4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

(5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(6) A statement of whether any applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each, as well as, the dates of conviction and release from confinement, where applicable.

(7) A statement as to whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years, and at the time during which the applicant had the influential interest:

   a. Been declared by a court of law to be a nuisance, as defined under the Revised Judicature Act, MCL 600.3801; or

   b. Been subject to a court order of closure or padlocking.

The information provided pursuant to paragraphs (1) through (7) of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Township Clerk within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) Diagram. An application for a sexually oriented business license shall be accompanied by a legal description, including the parcel identification number and street address, of the property where the business is located, and a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business, and shall designate all portions of the premises in which patrons will not be permitted. The sketch or diagram need not be professionally prepared but shall 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. In addition, to review compliance with sections 6-157(2) and 6-159 of this article, applicants shall submit a diagram indicating that the interior configuration meets the requirements of section 6-159(a)(1).
(e) **Signature.** If a person who wishes to operate a sexually oriented business is an individual, the person shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under section 6-131, and each applicant shall be considered a licensee if a license is granted.

(f) **Disclosure.** The information provided by an applicant in connection with an application for a license under this article shall be maintained by the Township Clerk’s Office and all personal information shall be deemed confidential and may be disclosed only as required by law or by court order.

**Sec. 6-131. Issuance of license.**

(a) **Business license.** Upon the filing of a completed application under section 6-130 for a sexually oriented business license, the Township Clerk shall immediately issue a temporary license to the applicant if the completed application is from a pre-existing sexually oriented business that, on the date that the completed application is submitted, is lawfully operating a sexually oriented business in the Township and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The temporary license shall expire upon the final decision of the Township to deny or grant an annual license. Also upon the filing of the completed application, the Township Clerk shall immediately forward a complete copy to the Police Administration and the Community Development Department to review the application for compliance with the requirements of this ordinance. Within thirty (30) days of the filing date of a completed sexually oriented business license application, the Township Clerk shall issue a license to the applicant or issue to the applicant a written notice of intent to deny the application. The Township Clerk shall issue a license unless:

1. **Age.** An applicant is less than eighteen (18) years of age.

2. **Information.** An applicant has failed to provide information as required by section 6-130, for issuance of a license or has falsely answered a question or request for information on the application form.

3. **Fee.** The license application fee required by this article has not been paid.

4. **Planning/zoning.** The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this article, applicable provisions of the zoning ordinance, the zoning district or location requirements of the Charter Township of West Bloomfield Code of Ordinances. Upon filing an application for a building permit, plan review, or certificate of occupancy, for a sexually oriented business, the applicant shall also file a copy with the Township Clerk.
(5) Prior nuisance. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous seven (7) years, and at the time during which the applicant had the influential interest:

a. Been declared by a court of law to be a nuisance, as defined under the Revised Judicature Act, MCL 600.3801; or

b. Been subject to an order of closure or padlocking.

(6) Criminal history. An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

(b) Employee license. Upon the filing of a completed application under section 6-130 for a sexually oriented business employee license, the Township Clerk shall immediately issue a temporary license to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The temporary license shall expire upon the final decision of the Township to deny or grant an annual license. Within thirty (30) days of the filing date of a completed sexually oriented business employee license application, the Township Clerk shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Township Clerk shall approve the issuance of a license unless:

(1) Age. The applicant is less than eighteen (18) years of age.

(2) Information. The applicant has failed to provide information as required by section 6-130 for issuance of a license or has falsely answered a question or request for information on the application form.

(3) Fee. The license application fee required by this article has not been paid.

(4) Prior nuisance. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous seven (7) years, and at the time during which the applicant had the influential interest:

a. Been declared by a court of law to be a nuisance as defined under the Revised Judicature Act, MCL 600.3801; or

b. Been subject to an order of closure or padlocking.

(5) Criminal history. The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this article.

(c) License contents; posting; possession. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall
be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

(d) Other laws applicable. Nothing in this article shall be construed to exempt the licensee from any other requirements set forth by Township ordinance, state or federal law.

Sec. 6-132. Fees.

The fees for a license under this article shall be established by resolution adopted by the Township Board and shall be placed on file, and made available, at the office of the Township Clerk.

Sec. 6-133. Inspection.

(a) Sexually oriented businesses or sexually oriented business employees shall permit the Township to inspect the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this article, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the Township to authorize only reasonable inspections of the licensed premises pursuant to this Article.

(b) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

Sec. 6-134. Transfer of license.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

Sec. 6-135. Expiration of license.

(a) Each license shall expire annually on the thirty-first day of March unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in section 6-130 and section 6-132.

(b) Application for renewal shall be made not more than ninety (90) days nor less than sixty (60) days before the expiration date of the current license, and when made less than sixty (60) days before the expiration date, the expiration of the license will not be affected.

Sec. 6-136. Effect of Township's failure to act

In the event that the Township is required to do some act pursuant to this article within a prescribed time, and fails to complete such act within the time prescribed, said failure shall not
prevent the exercise of constitutional rights of an applicant or licensee. If the act not completed in the time prescribed includes approval of a condition necessary for approval of a sexually oriented business license, or a sexually oriented business employee's license, including renewal, the condition shall be deemed met the day after the deadline for Township action has passed.

Sec. 6-137. Pre-existing businesses.

All existing sexually oriented businesses, and sexually oriented business employees, are hereby granted a de facto temporary license to continue operation or employment for a period of one hundred twenty (120) days following the effective date of this ordinance. By the end of said one hundred twenty (120) days, all sexually oriented businesses and sexually oriented business employees shall apply for a license, as applicable, and shall conform to the requirements of this Article.

Sec. 6-138 to 6-144. Reserved.

DIVISION 4. DENIAL, SUSPENSION, REVOCATION, HEARING

Sec. 6-145. Denial.

In the event the Township Clerk issues a written notice of intent to deny for failure to comply with the requirements of section 6-131, the provisions of section 6-148 shall apply.

Sec. 6-146. - Suspension.

(a) Business. The Township Clerk shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this article or has knowingly allowed an employee to violate this article.

(b) Employee. The Township Clerk shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed thirty (30) days if the employee has knowingly violated this article.

Sec. 6-147. - Revocation.

(a) Violation after previous suspension. The Township Clerk shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violates this article or has knowingly allowed an employee to violate this article and the licensee's license has been suspended within the previous twelve (12) month period.

(b) The Township Clerk shall issue written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for a license;
(2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises;

(3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;

(4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or

(5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.

(c) **Effect of appeal of conviction.** The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes and the license shall be reinstated.

(d) **Time period of revocation.** When, after the notice and hearing procedure described in section 6-148, the Township revokes a license, the revocation shall continue for two (2) years and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for two (2) years from the date revocation becomes effective.

**Sec. 6-148. Hearing, denial, suspension, revocation, appeal.**

(a) **Notice.** When the Township Clerk issues a written notice of intent to deny, suspend, or revoke a license, the Clerk shall immediately send such notice, which shall include the specific grounds under this article for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the business address provided by the licensee on the application on file with the Township Clerk. The notice shall specify the location and the date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which the hearing officer shall conduct a hearing on the intent to deny, suspend, or revoke the license.

(b) **Hearing.** At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on respondent's behalf, and cross-examine any of the Township Clerk's witnesses. The Township Clerk may be represented by the Township Attorney or other attorney as designated, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) consecutive days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a written decision, including specific reasons for the decision pursuant to this ordinance. The written decision shall be issued to the parties within five (5) days after the hearing. Either party may appeal such decision to a court of competent jurisdiction.
(c) **Hearing Officer.** The Hearing Officer shall be an attorney, not otherwise retained or employed by the Township, who is licensed to practice in the State of Michigan and appointed by the Township Board to serve as an independent tribunal to conduct the hearing in accordance with this article.

(d) **Decision.** Upon issuance of the decision, the following shall apply:

(1) *Deny, suspend, revoke.* If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30) day after it is rendered. The decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction.

(2) *No grounds to deny, suspend, revoke.* If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the Township Clerk to immediately withdraw the intent to deny, suspend, or revoke the license, and to notify the respondent in writing, by certified mail, that the intent to deny, suspend or revoke is withdrawn. If the respondent is not yet licensed, the Township Clerk shall contemporaneously therewith issue the license to the applicant.

(e) **Court Action.** If any court action challenging the Township decision or the Hearing Officer's decision is initiated, the Township shall:

(1) Consent to expedited briefing and/or disposition of the action;

(2) Comply with any expedited schedule set by the court; and

(3) Facilitate prompt judicial review of the proceedings.

(4) The following shall apply to any sexually oriented business that is in operation as of the effective date of this ordinance: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the Township enforcement of the denial, suspension, or revocation, the Township shall immediately issue the respondent a provisional license. The provisional license shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin Township enforcement.

**Sec. 6-149 to 6-154. - Reserved.**
DIVISION 5. REGULATIONS

Sec. 6-155. Hours of operation.

Sexually oriented businesses shall not be open for business, or remain open for business between 12:00 midnight and 6:00 a.m. on any day. Adult motels are excluded from this section.

Sec. 6-156. Loitering, exterior lighting, and monitoring requirements.

(a) Required. It shall be the duty of the operator of a sexually oriented business to:

(1) Sign. Post conspicuous signs stating that no loitering is permitted on such property;

(2) Monitor. Designate one (1) or more employees to monitor, while the premises are open for business, the activities of persons on such property by visually inspecting, the interior and exterior of such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitoring;

(3) Exterior. Provide lighting of the exterior premises, including all parking areas, to provide for visual inspection and security. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station. All exterior lighting shall be shall comply with all provisions of Section 5.6 of the Zoning Ordinance.

(4) No access area. It shall be the duty of the operator, and of any employees present on the premises, to ensure 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 paragraph (1) of this subsection.

(b) Failure to fulfill duty. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Sec. 6-157. Prohibited activities.

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

(1) Nudity. It shall be a violation of this article for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(2) Semi-nudity. It shall be a violation of this article for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.
(3) **Physical contact.** It shall be a violation of this article for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer on the premises of a sexually oriented business.

(4) **Alcoholic beverages.** It shall be a violation of this article for any person to drink, imbibe, possess or consume alcoholic beverages on the premises of a sexually oriented business.

A sign, that shall be a minimum of eight and one-half inches by eleven inches and the lettering used shall be at least one-quarter (1/4) inch in height, that provides notice of the provisions of paragraphs (1), (2), (3), and (4) of this section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

**Sec. 6-158. Prohibition against minors in a sexually oriented business.**

It shall be a violation of this article for any person to knowingly allow a person under the age of eighteen (18) years to be or remain on the premises of a sexually oriented business.

**Sec. 6-159. Regulations pertaining to exhibition of sexually explicit films on premises.**

(a) **Requirements.** A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disk, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:

(1) **Diagram.** Each application for a sexually oriented business license shall contain a diagram of the premises which complies with all the following:

(i) the diagram shall show the location of all operator's stations, viewing rooms, overhead lighting fixtures, and restrooms;

(ii) the diagram shall show all portions of the premises designated as areas in which patrons will not be permitted;

(iii) the diagram shall include a statement that restrooms shall not contain video reproduction equipment;

(iv) the diagram shall designate the place at which the license will be conspicuously posted, if granted;

(v) a professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north and shall be drawn to a designated scale, or 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.

(vi) 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, the Township Clerk may waive the requirement
that a new diagram be submitted with the renewal application.

(2) No access area. It shall be the duty of the operator, and of any employees present
on the premises, to ensure 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 paragraph (1) of this subsection.

(3) Lighting. The interior premises shall be equipped with overhead lighting fixtures
of sufficient intensity to illuminate every place to which patrons are permitted
access at an illumination of not less than five (5.0) foot candles as measured at the
floor level. It shall be the duty of the operator, and of any employees present on
the premises, to ensure that the illumination described above is maintained at all
times that the premises is occupied by patrons or open for business.

(4) No Sexual Activity. It shall be the duty of the operator, and of any employees
present on the premises, to ensure that no sexual activity occurs in or on the
licensed premises.

(5) Signs. It shall be the duty of the operator to post conspicuous signs in well-
lighted entry areas of the business stating all of the following:

a. That the occupancy of viewing rooms is limited to one (1) person.

b. That sexual activity on the premises is prohibited.

c. That the making of openings between viewing rooms is prohibited.

d. That violators will be required to leave the premises.

e. That violations of subparagraphs a., b. and c. of this paragraph are unlawful.

(6) Operator Duty. It shall be the duty of the operator to enforce the regulations
articulated in (5)a. though e. above.

(7) Unobstructed view. The interior of the premises shall be configured in such a
manner that there is an unobstructed view from an operator's station of every area
of the premises, including the interior of each viewing room but excluding
restrooms, to which any patron is permitted access for any purpose. An operator's
station shall not exceed thirty-two (32) square feet of floor area. If the premises
has two (2) or more operator'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 (1) of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one (1) employee is on duty and situated in an operator's station at all times that any patron is on the portion of the premises monitored by that operator station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(b) *Failure to fulfill duty.* It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Sec. 6-160 to 6-164. Reserved.

DIVISION 6. PENALTIES AND ENFORCEMENT

Sec. 6-165. Penalties and enforcement.

(a) *Misdemeanor.* A person who violates or fails to comply with any of the provisions of this article shall be guilty of a misdemeanor, punishable by a maximum fine of five hundred dollars ($500.00) and/or a maximum of ninety (90) days imprisonment. Each day a violation is committed, or permitted to continue, it shall constitute a separate offense and shall be treated as a separate offense.

(b) *Civil proceedings.* The Township Attorney or designee is hereby authorized to institute civil proceedings necessary for the enforcement of this article to restrain or correct violations hereof. Such proceedings, including injunctive relief, shall be brought in the name of the Township, however, the institution of civil proceedings shall not preclude enforcement of misdemeanor, administrative or any other proceeding authorized by ordinance, state or federal law.

Sec. 6-166. Sciente required to prove violation of business licensee liability.

This article does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this article. Notwithstanding anything to the contrary, for the purposes of this article, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this article, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.
Sec. 6-167 to 6-169. Reserved.

DIVISON 7. SEVERABILITY

Sec. 6-170. Severability.

This article, and each section and provision are declared to be independent; and not withstanding any other evidence of legislative intent, it is declared to be the controlling legislative intent that if any provision of this article, or the application thereof to any person or circumstance is held to be invalid, all remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby; and it is further declared that such sections and provisions would have been passed independently of such section or provision found to be invalid. Should any procedural aspect of this article be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this article.

Sec. 6-171. Conflicting Code provisions repealed.

Any provision(s) in the Charter Township of West Bloomfield Code of Ordinances specifically in conflict with any provision in this ordinance is hereby deemed inoperative and repealed.

Sec. 6-172 to 6-190. Reserved.

Section 2 of Ordinance

This Ordinance shall take effect immediately upon publication.

CERTIFICATION

I certify that this Ordinance was adopted by the Board of Trustees of the Charter Township of West Bloomfield at a meeting duly called and held on July 22, 2013.

CHARTER TOWNSHIP OF WEST BLOOMFIELD

July 23, 2013
Date

By: [Signature]
Catherine Shaughnessy, Clerk