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**ADULT BUSINESS ORDINANCE
CITY OF GAYLORD, MICHIGAN**

Ord. no. 100195, eff. August 17, 1997; amended ord. eff. August 30, 2009

20.601

Sec. 1. **PURPOSES.**

Some uses of land, because of their nature, have serious operational characteristics, especially when located in close proximity to residential zones, which according to many studies, evidence serious adverse secondary effects on a community. Regulation of these uses through location is imperative to ensure that the adverse effect of these adult uses will not contribute to the blighting or downgrading of this city. This ordinance is intended to prevent the deterioration or blighting of residential neighborhoods to promote the public health, safety, morals and welfare of the community.

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Sec. 2. **DEFINITIONS.**

- a. **Adult Business** includes, but is not limited to, “adult book store”, “adult video stores”, “adult personal service businesses”, “adult cabarets”, “adult novelty businesses”, “nude modeling studios”, and “adult motion picture theaters”.
(Amended ord. eff. August 30, 2009)
- b. **Adult book store** means an establishment which has in excess off fifty percent (50%) of its stock-in-trade for sale or rent, which stock-in-trade consists of books, magazines, newspapers, videotapes, video discs and motion pictures, which are characterized by an emphasis on “specified sexual activities” or “specified anatomical areas”, or which establishment excludes admission to minors by virtue of age.
- c. **Adult cabaret** means a cafe, restaurant or bar where patrons are entertained by dancers, strippers or male or female impersonators, whether accompanied by music or not, whose conduct is characterized by an emphasis on “specified sexual activities” or “specified anatomical areas”.
- d. **Adult video store** means an establishment which has in excess of fifty percent (50%) of its stock-in-trade for sale or rental to the public or patrons, video cassettes or video tapes, having as a dominant theme an emphasis on matter depicting, describing or relating to “specified sexual activity” or “specified anatomical areas”.
- e. **Adult motion picture theater** means any establishment, or part thereof, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas”, as defined herein, for observation by patrons therein.
- f. **Adult novelty business** means a business which has a principle activity the sale of devices which stimulate human genitals or devices designed for sexual stimulation.
- g. **Adult person service business** means a business having as its principle activity a person, while nude or while displaying specified anatomical areas, providing

personal services for another person. Such businesses include, but are not limited to, modeling studios, body painting studios, wrestling studios, conversations parlors and theatrical performances or entertainment.

h. **Specified sexual activities** means:

1. The stimulation or arousal of human genitalia;
2. Acts of human masturbation, sexual intercourse or sodomy; or
3. Fondling or other erotic touching of human genitalia, pubic region, buttock or female breast.

i. **Specified anatomical areas** means:

1. Less than completely and/or opaquely covered:
 - a. Human genitalia and pubic region;
 - b. Buttock; or
 - c. Female breast below a point immediately above the top of the areola; or
2. Human male genitalia in a discernibly turgid state, even if completely and opaquely covered.

j. **Buttock** includes the anus and perineum of any person.

k. **Church** means a building used for regular public worship services and exempt from taxation under the General Property Tax Act of the State.

l. **Nude modeling studio** means any building, structure, premises or part thereof used primarily as a place which offers as its principal activity the providing of models to display specified anatomical areas for artists and photographers for a fee.

m. **Protected use** means a church, school or public park or child daycare facility.

n. **Public park** means any park owned and maintained by the City.

o. **School** means a public or private school offering education to students enrolled in pre-kindergarten, kindergarten, one or more grades of one through twelve, or post secondary education.

p. **Sexual intercourse** includes fellatio, cunnilingus, anal intercourse and any other intrusion, however slight, or any part of a person's body, or of any object into the genital or anal openings of another's body.

q. **Sodomy** means sexual bestiality.

- r. **Tattoo parlor** means a business having as its principal activity the application or placing, by any method, of designs, letters, scrolls, figures, symbols or other marks upon or under the human skin with ink or any other substance resulting in the coloration of the skin by the aid of needles or any other instrument designed to touch or puncture the skin.

20.603 **Sec. 3. AUTHORIZATION.**

The City Council may, by issuance of a Special Use Permit, authorize the uses specified within this Ordinance only in the C-2 zoning district and only in compliance with the procedures and regulations set forth below:

- a. The parcel upon which the use is intended is located outside a three hundred (300) foot radius of any parcel upon which is located any residence, dwelling place, daycare facility, church, school, public park, or public library.
- b. No adult businesses may be established, operated or maintained within three hundred (300) feet of any other adult business.
- c. Distance limitations shall be measured in a straight line, without regard to intervening structures or objects, from the parcel or lot line of the adult business or building containing an adult business to the nearest lot line of the protected use specified above.
- d. Granting of a special use permit under these provisions shall be contingent upon the applicant(s) obtaining or maintaining an Adult Business License.
- e. If employees/patrons promote, offer, allow or engage in acts of prostitution on the premises, the special use permit may be suspended or revoked. No criminal charge need be brought. These acts may be shown by a preponderance of the evidence.

20.604 **Sec. 4. MISCELLANEOUS REQUIREMENTS.**

- a. No person shall reside in or permit any person to reside on the premises of an adult business.

20.605 **Sec. 5. PROCEDURE.**

The procedure and requirements established for Special Uses as contained in the City of Gaylord Zoning Ordinance shall be followed to process an application for an adult business.

20.606 **Sec. 6. LICENSE.**

- a. From and after the effective date of this ordinance, no adult business shall be operated or maintained in the City of Gaylord without first obtaining a

license to operate issued by the City of Gaylord.

- b. A license may be issued only for one (1) adult business located at a fixed and certain place. Any person, partnership, or corporation which desires to operate more than one adult business must have a license for each.
- c. No license or interest in a license may be transferred to any person, partnership, or corporation.

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Sec. 7. APPLICATION FOR LICENSE.

- a. Any person, partnership or corporation desiring to secure a license shall make to the City Clerk. The application shall be dated by the City Clerk. A copy of the application shall be distributed promptly by the City Clerk to the Gaylord City Police Department and to the applicant.
- b. The application for a license shall be upon a form provided by the City Clerk. An applicant for a license, which shall include all partners or limited partners of a partnership applicant, and all officers and directors of a corporate applicant and all stockholders including more than five percent (5%) of the stock of a corporate applicant, or any other person who is interested directly in the ownership or operation of the business, shall furnish the following information under oath:
 - 1. Name and address, including all aliases.
 - 2. Date and birth.
 - 3. Social Security Number.
 - 4. Michigan vehicle operator's license number.
 - 5. Written proof that the individual is at least eighteen (18) years of age.
 - 6. All residential addresses of the applicant for the past three (3) years.
 - 7. The applicant's height, weight, color of eyes and hair.
 - 8. The business, occupation or employment of the applicant for five (5) years immediately preceding the date of application.
 - 9. Whether the applicant previously operated in this or any other county, city or state under an adult entertainment establishment license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.
 - 10. All criminal statute, whether federal or state, or city ordinance violation convictions, forfeiture of bond or pleadings of nolo contendere on all criminal charges, except minor traffic violations.
 - 11. Fingerprints and two (2) portrait photographs at least two (2) inches by two (2) inches of the applicant.
 - 12. The address of the adult entertainment establishment to be operated by the applicant.
 - 13. If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agent and the name and

address of all shareholders owning more than five percent (5%) of the stock in said corporation and all officers and directors of the corporation.

- c. Within thirty (30) days of receiving an application for a license, the City Clerk shall notify the applicant whether application is granted or denied.
- d. Whenever an application is denied, the City Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held within thirty (30) days thereafter before the Council, as hereinafter provided.
- e. Failure or refusal of the applicant to give information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this ordinance shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the City Clerk.

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Sec. 8. STANDARDS FOR ISSUANCE OF LICENSE

- a. To receive a license to operate an adult business, an applicant must meet the following standards:
 - 1. If the applicant is an individual:
 - 2. The applicant shall be at least eighteen (18) years of age.
 - 3. The applicant shall have not been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.
 - 4. The applicant shall not have been found to have previously violated this ordinance or a substantially similar ordinance within five (5) years immediately preceding the date of the application.
- b. If the applicant is a corporation:
 - 1. All officers, directors and stockholders required to be named under Section 8(b) shall be at least eighteen (18) years of age.
 - 2. No officer, director or stockholder required to be name under Section 8(b) shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.
 - 3. No officer, director or stockholder required to be named under Section 8(b) shall have been found to have previously violated this ordinance or a substantially similar ordinance within five (5) years

immediately preceding the date of the application.

- c. If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest:
1. All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age.
 2. No person having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.
 3. No person having a financial interest in the partnership, joint venture or other type of organization shall have been found to have violated any provision of this ordinance or a substantially similar ordinance within five (5) years immediately preceding the date of the application.
 4. No license shall be issued unless the Gaylord City Police Department has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the City Clerk no later than twenty-one (21) days after the date of the application.

20.609 **Sec. 9. FEES.**

A license fee of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be submitted with the application for a license. If the application is denied, one-half (1/2) of the fee shall be returned.

20.610 **Sec. 10. DISPLAY OF LICENSE OF PERMIT.**

The license shall be displayed in a conspicuous public place in the adult entertainment establishment.

20.611 **Sec. 11. RENEWAL OF LICENSE OR PERMIT.**

- a. Every license issued pursuant to this Ordinance will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the City Clerk. The application for renewal shall be filed in triplicate with and dated by the City Clerk. A copy of the application for renewal shall be distributed promptly by the City Clerk to the Gaylord City Police Department and to the business operator. The application for renewal shall be upon a form provided by the City Clerk and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.
- b. A license renewal fee of TWO HUNDRED FIFTY and NO/100 DOLLARS

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(\$250.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of ONE HUNDRED and NO/100 DOLLARS (\$100.00) shall be assessed against the applicant who files for a renewal less than sixty (60) days before the license expires. If the application is denied, one-half (1/2) of the total fees collected shall be returned.

- c. If the Gaylord City Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the City Clerk.

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Sec. 12. REVOCATION OR SUSPENSION OF LICENSE.

- a. The City Council can revoke or suspend a license or permit for any of the following reasons:

1. Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.
2. The operator or any employee of the operator has violated any provision of this Ordinance or any rule or regulation adopted by the City Council pursuant to this ordinance; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days if the Council shall find that the operator had no actual or constructive knowledge of such violation and could not be the exercise of due diligence have had such actual or constructive knowledge.
3. The operator becomes ineligible to obtain a license or permit or the operator is convicted of, or pleads nolo contendere to any felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature.
4. Any cost or fee required to be paid by this Ordinance is not paid.
5. Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult entertainment establishment.
6. The operator fails to maintain a special use permit for the site as required by the zoning ordinance, or fails to comply with conditions of the special use permit.

- b. The Council, before revoking or suspending any license or permit, shall give the operator at least ten (10) day's written notice of the charges against him, and the opportunity for a public hearing before the City Council, as hereinafter provided.

1. Before the City Council revokes or suspends a license issued herein, the City Council shall cause written notice to be sent by certified mail to the licensee or applicant affected, at the address stated in the license or application informing such person of the right to a hearing upon request.
2. If the licensee does not request a hearing within fourteen (14) days of

the date the notice was sent, the license may be forthwith revoked or suspended. If the licensee requests a hearing before the City Council regarding said proposed revocation or suspension, said hearing shall be held within twenty-one (21) days after the date of the written request.

3. Any license issued by the City may be immediately suspended by the City Manager or duly appointed City official if it is determined that the licensee has violated or someone at or upon the licensed location has violated the City ordinance or State law and that continued operation under the license is contrary to the public health, safety, and welfare. A licensee shall have the right to a hearing before the City Council on any license suspension by the City Manager and notice thereof shall be given in accordance with 13.b.1 and 13.b.2.
 4. Both the City and the licensee shall be afforded a reasonable opportunity to present evidence on the issue at the hearing. Action taken by the City Council shall be final and any fees hereunder shall not be refunded to the applicant or licensee.
- c. The transfer of a license or any interest in a license shall automatically and immediately revoke the license.
 - d. Any operator whose license is revoked shall not be eligible to receive a license for one (1) year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult entertainment establishment for six (6) months from the date of revocation of the license.

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Sec. 13. PHYSICAL LAYOUT OF ADULT ENTERTAINMENT ESTABLISHMENT

Any adult entertainment business having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

- a. Access. Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult business, and shall be unobstructed by and door, lock or other control-type devices.
- b. Construction. Every booth, room or cubicle shall meet with the following construction requirements:
- c. Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any non-public areas by a wall.
- d. Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same.
- e. All walls shall be solid and without any openings, extended from the floor to a height of not less than six (6) feet and be light colored, non-absorbent,

smooth textured and easily cleanable.

- f. The floor must be light colored, non-absorbent, smooth textured and easily cleanable.
- g. The lighting level of each booth, room or cubicle, when not in use shall be a minimum of ten (10) foot candles at all times, as measured from the floor.
- h. Occupants. Only one individual shall occupy a booth, room or cubicle at anytime. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

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Sec. 14. RESPONSIBILITIES OF THE OPERATOR

- a. The operator shall maintain a register of all employees, showing the name and aliases used by the employee, home address, age, date of birth, sex, height, weight, color of hair and eyes, phone numbers, social security numbers, date of employment and termination, and duties of each employee. The above information on each employee shall be maintained in the register on the premises for a period of three (3) years following termination.
- b. Daily hours of operation of any adult business shall be limited to the period of time from 8:00 a.m. to 2:00 a.m.
- c. The operator shall make the register of employees available immediately for inspection by police upon demand of a member of the Gaylord City Police Department at all reasonable times.
- d. No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any areas where they can be viewed from a public sidewalk adjacent to the establishment.
- e. Any individual viewing booths, entertainment rooms, or similar cubicles designed or used for individuals to view specified anatomical areas or to view specified sexual activities shall not be completely enclosed from the common areas, hallways, or other areas of the adult business.
- f. No employee or patron under 18 years of age shall be allowed on the premises of an adult business.
- g. No intoxicating liquor or cereal malt beverage shall be served or consumed on the premises of an adult business.
- h. The operator shall maintain the premises in a clean and sanitary manner at all times.
- i. Every act or omission by an employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the

operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

- j. Any act or omission of any employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.
- k. No employee of an adult business shall allow any minor to loiter around or to frequent an adult entertainment establishment or to allow any minor to view adult entertainment as defined herein.
- l. The operator shall maintain at least 10 foot candles of light in the public portions of the establishment, including aisles, at all times measured from the floor. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one (1) foot candle of illumination in said aisles, as measured from the floor. The operator shall insure compliance of the establishment and its patrons with the provisions of this Ordinance.

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Sec. 15. PENALTY.

- a. Any person convicted under this chapter shall be subject to a maximum penalty of ninety (90) days in jail, or an equal amount of time of community service, or any combination thereof not exceeding ninety (90) days, plus Five Hundred Dollars (\$500.00) fine, plus actual costs of prosecution, plus mandatory restitution to victims.
- b. Continuing violations. In addition to the penalty provided in division (a) of this section, any condition caused or permitted to exist in violation of the provisions of this code, or any ordinance, shall be deemed a new and separate offense for each day that such condition continues to exist.