

FARMINGTON TOWNSHIP

ORDINANCE NO. 02-20-06B

**CREATING ORDINANCE NO. 02-20-06B
OF THE FARMINGTON TOWNSHIP MUNICIPAL CODE RELATING
TO LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES**

The Town Board of Farmington Township does ordain as follows:

Whereas, it is a lawful purpose of the Town Board for Farmington Township to enact regulatory ordinances protecting and promoting the general welfare, health and safety of its citizens; and

Whereas, the Town Board is empowered to enact such ordinances pursuant to the Constitution and Laws of the State of Wisconsin; and

Whereas, many sexually oriented businesses install booths with doors in which patrons can view adult oriented movies or videotapes or films or view other forms of adult entertainment, and

Whereas, it is well known and has been found in Milwaukee and Kenosha Counties, Wisconsin; Chattanooga, Tennessee; Newport News, Virginia; and Marion County, Indiana, to name a few locales, that the viewing booths in sexually oriented businesses are used to engage in sexual acts, including but not limited to intercourse, sodomy, oral copulation and masturbation, resulting in unsafe and unsanitary conditions in said booths; and

Whereas, the Town Board finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution, and for sexual liaisons of a casual nature; and

Whereas, the concern over sexually transmitted diseases is a legitimate health concern of Farmington Township which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

Whereas, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

Whereas, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

Whereas, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close

proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

Whereas, it is recognized that the consumption of alcohol beverages on the premises of a sexually oriented business may exacerbate the deleterious secondary effects of such business on the community; and

Whereas, Farmington Township desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and

Whereas, Farmington Township has determined that locational criteria alone does not adequately protect the health, safety, and general welfare of the people of this Township; and

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

Whereas, it is not the intent of Town Board to condone or legitimize the distribution of obscene material, and the Town Board recognizes that state and federal law prohibits the distribution of obscene materials, and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in Farmington Township,

Now, therefore, pursuant to the authority granted by the Constitution and by the legislature of the State of Wisconsin, the Town Board of Farmington Township does ordain that Ordinance No. 2005-001 of the municipal code of Farmington Township is hereby created to read as follows:

ORDINANCE NO. 02-20-06B

**LICENSING AND REGULATION
OF SEXUALLY ORIENTED BUSINESSES**

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Section I. Purpose and Findings

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

B. Findings: Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to Farmington Township, and on findings incorporated in the cases of *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *FW/PBS Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre, Inc.* 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *East of River Enterprises v. City of Hudson*, Case No. 99-1801 (Unpublished)(Wis. Ct. App., April 11, 2000); *East of River Enterprises v. City of Hudson*, Case No. 99-2667 (Unpublished)(Wis. Ct. App., Aug. 1, 2000); *Ben's Bar, Inc v. City of Somerset*, 316 F.3d 702 7th Cir. 2003); and on studies in other communities including, but not limited to: Phoenix, Arizona; Houston, Texas; Minneapolis, Minnesota; St. Paul, Minnesota; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Dallas, Texas;

Newport News, Virginia; Bellevue, Washington; New York, New York; and St. Croix County, Wisconsin; and the Report of the Attorney General's Working Group of Sexually Oriented Businesses (June 6, 1989, State of Minnesota); and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Preventions; Farmington Township finds that:

(1) Sexually oriented businesses lend themselves to ancillary and unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of sexually oriented businesses, defined in this Ordinance as adult theaters and adult cabarets, engage in higher incidences of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented business, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purposes of engaging in sex within the premises of such sexually oriented businesses.

(6) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to, syphilis, gonorrhea, chlamydia, human immunodeficiency virus infection (HIV), genital herpes, hepatitis B, Non A, Non B, amebiasis, salmonella infections and shigella infections.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases to the Center for Disease Control (CDC) of acquired immunodeficiency syndrome (AIDS) caused by the HIV virus in the United States: 600 in 1982; 253,448 in 1992; and 902,223 through December 31, 2003.

(8) The State of Wisconsin Division of Public Health indicated that on July 25, 1986, there were 96 cases of AIDS reported in the state, including 54 cases that resulted in death. Through 2004, there were 5,690 cumulative cases of AIDS reported, including 3,100 cases resulting in death.

(9) The number of cases of syphilis in the United States reported to CDC annually was in excess of 34,000 cases in 2003.

(10) The number of cases of gonorrhea in the United States reported to CDC annually remains at a high level, with over 330,000 cases being reported in 2003.

(11) In his report of October 22, 1986, the Surgeon General of the United States has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components and from an infected mother to her newborn.

(12) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(13) Sanitary conditions in some sexually oriented businesses are unhealthy in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(14) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view adult oriented films.

(15) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located.

(16) Studies of the relationship between sexually oriented business and neighborhood property values have found a negative impact on both residential and commercial property values.

(17) There is an increase in the potential for infiltration by organized crime for the purpose of unlawful conduct.

(18) The consumption of alcoholic beverages on the premises of sexually oriented businesses exacerbated the deleterious secondary effects of such businesses on the community. In fact, the Supreme Court has gone so far as to assert that "[c]ommon sense indicates that any form of nudity coupled with alcohol begets undesirable behavior." *Ben's Bar*, 316 F.3d 702, citing *New York State Liquor Auth. v. Bellanca*, 452 U.S. 714, 718 (1981).

(19) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect the substantial government concerns addressed in the above subsections.

(20) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of Farmington Township. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(21) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in sexually oriented businesses.

(22) The disclosure of certain information by those persons ultimately responsible for the day to day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(23) In the prevention of the spread of communicable diseases, it is desirable to obtain a limited amount of information regarding certain employees who may engage in the conduct which this Ordinance is designed to prevent, or who are likely to be witnesses to such conduct.

(24) The general welfare, health, morals and safety of the citizens of Farmington Township will be promoted by the enactment of this Ordinance.

Section II. Definitions.

A. "Adult Arcade" means any place to which the public is permitted or invited, wherein coin-operated or slug operated or electronically, electrically, or mechanically controlled or 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 time, and where the images so displayed are distinguished or characterized by their emphasis upon matters exhibiting "specified sexual activities" or "specified anatomical areas".

B. "Adult Bookstore" or "Adult Video Store" means a commercial establishment that has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:

(1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, digital video discs, videocassettes, compact discs, slides or other visual representations, which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas"; or

(2) instruments, devices or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.

A commercial establishment may have many different principal business purposes, but if any involve the offering for sale or rental, for any form of consideration, the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas" it can still be categorized as an ADULT BOOKSTORE or ADULT VIDEO STORE.

This definition shall expressly exclude films, motion pictures, digital video discs, videocassettes, slides or other similar photographic reproductions given an "R" rating by the Motion Picture Association of America.

C. "Adult Cabaret" means a nightclub, dance hall, bar, restaurant, or similar commercial establishment which regularly features:

- (1) persons who appear semi-nude; or
- (2) live performances that are characterized by the exposure of "specified sexual activities" or "specified anatomical areas"; or
- (3) films, motion pictures, digital video disc, videocassettes, slides, or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas".

This definition shall expressly exclude films, motion pictures, digital video discs, videocassettes, slides, or other similar photographic reproductions given an "R" rating by the Motion Picture Association of America.

D. "Adult Motel" means a hotel, motel 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, digital video discs, video cassettes, slides or other photographic reproductions, which are characterized by the depiction of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or
- (2) offers a sleeping room for rent for a period of time that is less than ten (10) 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 ten (10) hours.

E. "Adult Motion Picture Theater" means a commercial establishment where, for any form of consideration, films, motion pictures, digital video disc, videocassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas". This definition shall expressly exclude films, motion pictures, digital video discs, videocassettes, slides, or other similar photographic reproductions given an "R" rating by the Motion Picture Association of America.

F. "Adult Theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exposure of "specified sexual activities" or "specified anatomical areas".

G. "Directly" means to require physical contact. For instance, when this Ordinance prohibits an employee to receive a gratuity "directly" from a patron, it prohibits the direct touching of skin, other body parts or clothing.

H. "Distinguished" or "characterized by" means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films which are distinguished or characterized by an emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas", the films so described are those whose dominant or principal character and theme are the exhibition or display of "specified sexual activities" or "specified anatomical areas".

I. "Employee", "employ" 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, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. 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.

J. "Escort" means a person who, for consideration, and for another person, agrees or offers to privately model lingerie or to privately perform a striptease.

K. "Escort Agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

L. "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 any existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) the addition of any sexually oriented business to any other existing sexually oriented business; or

(4) the relocation of any sexually oriented business.

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

N. "Nude", "nudity" or "state of nudity", means the showing of the human male or female genitals, pubic area, vulva, or anus, with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or areola, or the showing of the covered male genitals in a discernibly turgid state.

O. "Operate" or "cause to be operated" 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 is authorized to exercise operational control of the business, or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

P. "Person" means an individual, proprietorship, partnership, corporation, limited liability company, limited liability partnership, association, or other legal entity.

Q. "Premises" means the real property upon which the sexually oriented business is located, and all appurtenance thereto and buildings thereon, including, but not limited to the sexually oriented business the grounds, the private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control or supervision of the owner or operator of the business.

R. "Regularly features" or "regularly shows" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as part of the ongoing business of the sexually oriented business.

S. "Semi-nude" or "semi-nude condition" means the showing of the human male or female genitals, pubic area, vulva or anus, with not more than a complete opaque covering, or the showing of the female breast with not more than a complete opaque covering of any part of the nipple or areola.

T. "Sexual encounter center" means a business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of "specified sexual activities". The definition of sexual encounter center or any sexually oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

U. "Sexually oriented business" means an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, or sexual encounter center.

V. "Simulation" means the (actual or) simulated displaying of the pubic hair, anus, vulva, genitals or breast areola.

W. "Specified Anatomical Areas" means:

(1) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(2) less than completely and opaquely covered human female genitals, pubic region, vulva, anus or the nipple and areola.

X. "Specified Criminal Activity" means any of the following offenses:

(1) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(2) for which:

(a) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(b) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(c) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

Y. "Specified sexual activities" means:

(1) the fondling of another person's genitals, pubic region, anus, or female breasts;

(2) actual or simulated sex acts, normal or perverted, including intercourse, oral copulation, masturbation, sodomy, bestiality, or flagellation.

(3) excretory functions as part of, or in connection with, any of the activities set forth in Subsections (1) and (2), above.

Z. "Substantial enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent, as the floor areas exist on the date this Ordinance takes effect.

AA. "Town Board" means the Town Board of Farmington Township, Waupaca County, Wisconsin.

BB. "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:

- (1) the sale, lease, or sublease of the business;
- (2) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; 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.

Section III. Classification.

“Sexually oriented businesses” are classified as follows:

- A. adult arcades;
- B. adult bookstores or adult video stores;
- C. adult cabarets;
- D. adult motels;
- E. adult motion picture theaters;
- F. adult theaters;
- G. escort agencies;
- H. sexual encounter centers.

Section IV. License Required.

A. Except as provided in Subsection (F) below, from and after the effective date of this Ordinance, no sexually oriented business shall be operated or maintained in Farmington Township without first obtaining a license to operate issued by the Town Board.

B. A license may be issued only for one (1) classification of a sexually oriented business located at one fixed and certain place. Any person, partnership, or corporation, which desires to operate more than one sexually oriented business, must have a license for each such business.

C. The operator of any sexually oriented business shall not employ any person to work for such business who is not licensed as a sexually oriented business employee by the Town Board pursuant to this ordinance.

D. No person shall obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this ordinance.

E. No licensee may transfer ownership or control of the sexually oriented business to any other person, partnership or corporation.

F. All sexually oriented businesses existing at the time of the passage of this Ordinance must submit an application for a license within sixty (60) days of the passing of this Ordinance.

Section V. Application for License for the Operator and Employees.

A. Any person, partnership or corporation desiring to secure a license as an operator or an employee shall submit an application to the Town Clerk. The application shall be filed in triplicate and dated by the Town Clerk. One copy of the application shall be distributed promptly by the Town Clerk to the Waupaca County Sheriff's Department and one copy returned to the applicant.

B. If the Waupaca County Sheriff's Department is aware of any information bearing on the applicant's qualifications, that information shall be filed in writing with the Town Clerk.

C. An application for a license must be made on forms provided by Farmington Township. All applicants must be qualified according to the provisions of this Ordinance.

D. An application shall be considered complete if it includes the information required in this Section.

E. An applicant for a license shall furnish the following information under oath:

(1) Name, or any other name (including "stage" names) or aliases used by the individual, current address and telephone number(s).

(2) Written proof that the individual is at least eighteen (18) years of age, their height, weight, and hair and eye color. Applicant's fingerprints shall be provided on a form provided by the police or sheriff's department. Written proof of age may be in the form of either (i) a copy of a birth certificate and current photo, (ii) a current driver's license with picture, or (iii) other picture identification document issued by a governmental agency and demonstrating proof of age.

(3) The name, business location, business mailing address and phone number of the proposed sexually oriented business.

(4) A statement as to whether the licensee of the sexually oriented business intends to serve, sell, use or provide any intoxicating liquor, cereal malt beverage or any type of alcoholic beverage on the premises of the sexually oriented business.

(5) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the names, and all information as required per Subsections 1,2,4,7 and 8 of Section V. E. of this ordinance, of all shareholders of the corporation owning more than five percent (5%) of the stock in said corporation and all officers and directors of the corporation, and the name and address of the registered agents.

(6) If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest, the application shall state the names, and all information as required per subsections 1,2,4,7 and 8 of Section V. E. of this ordinance, of all persons having a financial interest in the partnership, joint venture or other type of organization.

(7) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

(8) Whether the applicant or a person residing with the applicant holds or has had any other license under this ordinance or other similar sexually oriented business ordinance from another city, county, state or country denied, suspended or revoked. If so, the names, *dates* and locations of such other licensed businesses shall be provided.

(9) The single classification of license for which the applicant is filing.

F. A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business shall accompany the application for a sexually oriented business. 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, shall not be varied from and shall comply with this ordinance.

G. If the person who wishes to operate a sexually oriented business is an individual, he or she shall sign the application for a license as applicant. If the person who wishes to operate a sexually oriented business is other than an individual (such as a corporation, partnership or other entity), each officer, director, general partner, or other person identified in Section V. E. (5) and (6) shall sign the application for a license as the applicant. Each applicant must be qualified under this section and each applicant shall be considered as a licensee if the license is granted.

H. Within twenty-one (21) days of receiving an application for a license, the Town Clerk shall notify the applicant whether the application is granted or denied.

I. Whenever an application is denied, the Town 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 ten (10) days thereafter, as hereinafter provided.

J. Failure or refusal of the applicant to give any information relevant to the application or his or her refusal to submit to or cooperate with regard to any information 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 Town Board.

Section VI. Standards for Issuance of License.

A. The Town Board shall approve the issuance of a license unless one or more of the following is found to be true:

(1) An applicant (including all individuals, officers, directors, shareholders, or persons with a financial interest in the organization) is less than eighteen (18) years of age.

(2) An applicant is delinquent in any payment owed to Farmington Township of taxes, fees, fines or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business.

(3) An applicant has failed to provide information as required in Section V. for issuance of the license.

(4) The license application fee required by this Ordinance has not been paid.

(5) An applicant has given false or misleading answers, information or data on any license application, or material facts were omitted from the application.

(6) The proposed sexually oriented business is not in compliance with the location restrictions established or physical layout restrictions established for sexually oriented businesses in this Ordinance.

(7) The applicant states or the Town Board subsequently discovers that the applicant intends to serve, sell, use or provide any intoxicating liquor, cereal malt beverages, or any type of alcoholic beverages on the premises of the sexually oriented business.

(8) The applicant has been convicted of a "specified criminal activity" as defined in this Ordinance.

(9) The proposed sexually oriented business license is for more than one classification as found in Section III.

B. 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, the address of the sexually oriented business, and the classification for which the license is issued pursuant to Section III.

Section VII. Fees.

A license fee of \$250.00 shall be submitted with every application for a sexually oriented business license. A license fee of \$100.00 shall be submitted with every application for a sexually oriented business employee license. If the application is denied, one-half (1/2) of the fee shall be returned to the person or persons who posted such fee, and the remainder shall be applied toward processing and administrative costs.

Section VIII. Display of Licenses.

All licenses shall be displayed in a conspicuous public place, at or near the entrance of the sexually oriented business, so they may be easily read at any time.

Section IX. Renewal of License.

A. Every license issued pursuant to this Ordinance will terminate at the expiration of one (1) year from the date of issuance, unless sooner suspended or revoked. A license must be renewed before operation is allowed to continue. A license may be renewed only by making an application as provided for in Section V. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be upon a form provided by Farmington Township and 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 \$250.00 shall be submitted with the application for renewal of any sexually oriented business. A license renewal fee of \$100.00 shall be submitted with the application for renewal of any sexually oriented business employee license. In addition to the renewal fee, a late penalty in the amount of \$100.00 for the business license and \$50.00 for any employee license shall be assessed against any 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 to the person or persons who posted such fee, and the remainder shall be applied toward processing and administrative costs.

C. If the Waupaca County Sheriff's Department is aware of any information bearing on applicant's qualifications, that information shall be filed in writing with the Town Clerk.

Section X. Inspection.

A. For the purposes of ensuring compliance with this Ordinance, an applicant, operator or licensee shall permit law enforcement officers and any other federal, state, county or municipal agency in the performance of any function connected with the enforcement of this Ordinance, normally and regularly conducted by such agencies, to inspect, at any time the business is occupied or open for business, those portions of the premises of a sexually oriented business which patrons or customers are permitted to occupy.

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.

Section XI. Suspension.

A. The Town Board shall issue a written intent to suspend a license for a sexually oriented business for a period not to exceed thirty (30) days, if it makes an initial determination that a licensee, operator or employee of a licensee has:

- (1) violated or is not in compliance with any section of this Ordinance; or
- (2) refused to allow an inspection of the sexually oriented business premises as authorized by this Ordinance.

B. The Town Board, before suspending any license, shall give the licensee ten (10) days written notice of: the charges against him or her, the Town Board's initial determination and intent to suspend a license, the opportunity to request a review of that initial determination, and the right to an administrative appeal and hearing, as provided in Section XIII. hereof.

C. Suspension shall begin at the end of the tenth (10) day after service upon the licensed person, or upon favorable determination to pursue suspension per the Administrative Review process.

Section XII. Revocation.

A. The Town Board shall issue a written intent to revoke a license for a sexually oriented business if it makes an initial determination that a cause for suspension in Section XI. has occurred and the license has been suspended within the preceding twelve (12) months.

B. The Town Board shall revoke by written notice a license if it determines that any of the following reasons exist:

- (1) Discovery that false or misleading answers, information or data were given on any license application, or material facts were omitted from the application;
- (2) The licensee, operator or any employee of the licensee, violates any provisions of this Ordinance or any rules or regulation adopted by the Town Board pursuant to this Ordinance; provided, however, that in the case of a first offense by a licensee where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days, if the Town Board shall find that the licensee had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge;
- (3) The licensee becomes ineligible to obtain a license or permit;
- (4) Any fee or charge required to be paid by this Ordinance is not paid;

(5) Any intoxicating liquor, cereal malt beverage or other alcoholic beverage is served or consumed on the premises of the sexually oriented business;

(6) The licensee has knowingly allowed or permitted an intoxicated person or persons to enter or remain in the establishment.

(7) A licensee has knowingly allowed possession, use or sale of controlled substances on the premises;

(8) A licensee has knowingly allowed prostitution on the premises;

(9) A licensee has knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended or revoked;

(10) A licensee has knowingly allowed any act or simulation of sexual intercourse, sodomy, oral copulation, masturbation, bestiality, flagellation, or other sexual act to occur in or on the licensed premises. This Subsection will not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either (i) in exchange for money, or (ii) in a public place or within public view.

C. The Town Board, before revoking any license, shall give the licensee at least ten (10) days written notice of: the charges against him or her, the Town Board's initial determination and intent to revoke a license, the opportunity to request a review of that initial determination, and the right to an administrative appeal and hearing, as provided in Section XIII. hereof

D. Revocation shall begin at the end of the tenth (10) day after service upon the licensed person or persons, or upon favorable determination to pursue revocation per the Administrative Review process.

E. The transfer of ownership or control of a license shall automatically and immediately revoke the license.

F. Any licensee whose license is revoked shall not be eligible to receive a license for one (1) year from the date of revocation.

Section XIII. Administrative Review Procedure.

Chapter 68 of the Wisconsin Statutes (2001-02 and as amended) concerning municipal administrative procedure shall govern the administrative procedure and review concerning the granting, denial, renewal, non-renewal, suspension or revocation of a license. A written request for review of an initial determination shall be made by an aggrieved person to the Town Clerk pursuant to the provisions of Secs. 68.08 and 68.09, Stats. The Town Board shall review an initial determination within 15 days of receipt of a request for review. An administrative appeal may be made by an aggrieved person to the Town Clerk pursuant to the provisions of Sec. 68.10, Stats. Within 15 days of receipt of a notice of appeal, the

Town Board shall hold a hearing pursuant to the provisions of Sec. 68.11, Stats. Any party to a proceeding resulting in a final determination under Sec.68.12, Stats. may seek judicial review of such final determination pursuant to the provisions of Sec. 68.13, Stats.

Section XIV. 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 application.

Section XV. Physical Layout of Sexually Oriented Business.

A. The entire premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. The manager's station may not exceed 32 square feet of floor area and shall have been specifically designated on plans previously submitted to Farmington Township.

B. Any sexually oriented business having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any specified anatomical areas or specified sexual activity must comply with the following requirements:

(1) Access. Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the sexually oriented business, and except as provided in Subsection (2)(b) hereof, shall be unobstructed by any door, lock or other control-type devices.

(2) Construction. Every booth, room or cubicle shall meet the following construction requirements:

(a) Each booth, room, or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-public areas by a wall.

(b) Each booth shall have at least one side totally open to the public lighted aisle.

(c) 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.

(d) The floor must be light colored, non-absorbent, smooth textured and easily cleanable.

(e) The lighting level of each booth, room, or cubicle, shall come from overhead light fixtures and shall be a minimum of five (5) foot candles at all times, as measured from the floor.

(3) Occupants. Only one individual shall occupy a booth, room or cubicle at any time. No occupant 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.

Section XVI. Location.

A. No sexually oriented business shall be located:

(1) Within 1,500 feet of an existing sexually oriented business;

(2) Within 1,000 feet of any residential dwelling, included but not limited to houses, apartments, condominiums, or flats.

(3) Within 1,000 feet of any pre-existing place of worship, including but not limited to any church, synagogue, mosque, temple or building which is primarily used for religious worship and related religious activities;

(4) Within 1,000 feet of any public or private educational facility, including but not limited to any child day care establishments, nursery schools, preschools, kindergartens, elementary schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities. "School" includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally at a school.

(5) Within 1,000 feet from any public park or recreational area which has been designated for park or recreational activities, including but not limited to a park, a playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the Farmington Township which is under the control, operation or management of the Township and recreational authorities; or

(6) Within 1,000 feet of any premise that in any manner sells or disperses alcohol or is licensed pursuant to the alcoholic beverage control regulations of Farmington Township or the State.

B. For the purposes of this Section, distances are to be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Subsection (A), hereof. The presence of a county, city, village, town or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

Section XVII. Responsibilities of the Licensee.

A. Every act or omission by an employee constituting a violation of the provisions of this Section shall be deemed the act or omission of the licensee if such act or omission occurs either with the authorization, knowledge, or approval of the licensee, or as a result of the licensee's negligent failure to supervise the employee's conduct, and the licensee shall be punishable for such act or omission in the same manner as if the licensee committed the act or caused the omission.

B. 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 licensee for the purposes of determining whether the licensee's license shall be revoked, suspended or renewed.

C. No employee of a sexually oriented business shall allow any minor to loiter around or to frequent a sexually oriented business. It shall be the duty of the licensee of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented businesses' regular business hours and to prevent any person under the age of eighteen (18) years of age from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

(1) a valid operator's, commercial operator's or chauffeur's driver's license; or

(2) personal identification card issued by the State of Wisconsin reflecting that such person is eighteen (18) years of age or older.

D. The licensee shall maintain the premises in a clean and sanitary manner at all times.

E. The licensee shall maintain at least five (5) foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles is necessary to enable a patron to view any activity in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisle, provided, however, at no time shall there be less than one (1) foot candle of illumination of said aisles, as measured from the floor.

F. The licensee shall insure compliance of the sexually oriented business and its patrons with the provisions of this Ordinance.

G. The licensee shall insure that no alcoholic beverages are sold, used, provided or consumed on the premises of a sexually oriented business.

H. The licensee shall not allow or permit any intoxicated person or persons to enter or remain in the establishment.

Section XVIII. Additional Regulations for Escort Agencies.

A. An escort agency shall not employ any person under the age of eighteen (18) years.

B. A person commits an offense under this Section if the person acts as an escort, or agrees to act as an escort, for any person under the age of eighteen (18) years.

Section XIX. Additional Regulations Concerning Sexually Oriented Businesses.

A. It shall be prohibited in a sexually oriented business for a person to appear in a state of nudity or engage in specified sexual activities.

B. It shall be prohibited in a sexually oriented business, to appear in a semi-nude condition, unless the person is an employee, who, while semi-nude, is at least five (5) feet from any patron or customer and on a stage at least two (2) feet from the floor.

C. It shall be prohibited for an employee, while semi-nude in a sexually oriented business, to receive directly any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to any employee, while that employee is semi-nude in a sexually oriented business.

D. It shall be prohibited in a sexually oriented business to serve, sell, use, provide or consume any intoxicating liquor, cereal malt beverage or any other alcoholic beverage.

E. It shall be prohibited to allow or permit any intoxicated person or persons to enter or remain in the establishment.

Section XX. Prohibition Against Children in a Sexually Oriented Business.

It shall be prohibited for a person under the age of eighteen (18) years to be on the premises of a sexually oriented business.

Section XXI. Hours of Operation.

No sexually oriented business shall be open between the hours of 2:00 a.m. and 8:00 a.m. Monday through Saturday, or between the hours of 2:00 a.m. and 12:00 noon on Sundays.

Section XXII. Exclusions.

The provisions of this Ordinance do not apply to the following establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis; and in which the predominant business or attraction is not the offering of entertainment which is intended for sexual interests or titillation of customers; and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or semi-nude performances. While expressive live nudity may occur within these establishments, this ordinance seeks only to minimize and prevent the secondary effects of sexually oriented

businesses on the community. Negative secondary effects have not been associated with the establishments referenced in this Section.

Section XXIII. Enforcement.

The Waupaca County Sheriff's Department shall have the authority to enter any sexually oriented business within Farmington Township at any time the business is occupied or open for business and at all reasonable times to inspect the premises and enforce this Ordinance.

Section XXIV. Penalties and Prosecutions.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this Ordinance is subject to a suit for injunction as well as municipal prosecution. Such violation shall be punishable by forfeiture of \$500.00 plus court costs and assessments, and up to thirty (30) days in jail. Each day a sexually oriented business so operates shall be deemed a separate offense or violation.

Section XXV. Cost of Abatement.

In addition to any other penalty imposed by this Ordinance for the erection, contrivance, creation, continuance or maintenance of a public nuisance, the cost of abating a public nuisance by Farmington Township shall be collected as a debt from the owner, occupant or person causing, permitting or maintaining the nuisance; and if notice to abate the nuisance has been given to the owner, such cost shall be assessed against the real estate as a special charge.

Section XXVI. Severability.

Each section and provision of this Ordinance is hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Ordinance, or the application thereof to any person or circumstance, is held to be invalid by a court of competent jurisdiction, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been enacted independently of such section or provision found to be invalid.

Section XXVII. Conflicting Ordinances Repealed.


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

Section XXVIII. Amortization.

Any sexually oriented business operating on the effective date of this ordinance shall be deemed a nonconforming use. The nonconforming use will be permitted to operate for a period not to exceed one year unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming use(s) shall not be increased, enlarged, extended, or altered from this date forward.

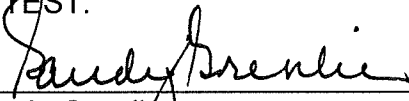
This Ordinance shall be effective upon passage and publication according to law.

PASSED AND ADOPTED by the Town Board of Farmington Township this 20th day of February, 2006.



Donald Fabricius
Town Chair

ATTEST:



Sandy Grenlie
Town Clerk/Treasurer