

**ORDINANCE NO. 718
SAGINAW CHARTER TOWNSHIP
SAGINAW COUNTY, MICHIGAN**

AN ORDINANCE TO AMEND THE SAGINAW TOWNSHIP ZONING ORDINANCE, ZONING MAP,
(ORDINANCE #423 OF THE SAGINAW CHARTER TOWNSHIP CODE OF ORDINANCES),
SAGINAW COUNTY, MICHIGAN

The Charter Township of Saginaw, Saginaw County, Michigan

ORDAINS:

The Saginaw Township Zoning Ordinance and attached map entitled "Township Zoning District Map", Saginaw Township, Saginaw County, Michigan be and hereby is amended as follows:

Proposed Amendment

ZONING

CHAPTER 2. DEFINITIONS

Sec. 202. Definitions.

82. *Sexually Oriented Business.* An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center. The following definitions shall apply to sexually oriented businesses:

- a) ***Adult Arcade.*** Any place to which the public is permitted or invited wherein cash-operated, credit-operated, coin-operated or slug-operated or electronically, internet or mechanically controlled still or motion picture machines, projectors or other image producing devices are maintained to show images and where the images so displayed are distinguished or characterized by the depicting or describing of "sexually explicit activities" or "specified anatomical areas".
- b) ***Adult Bookstore or Adult Video Store.*** An establishment which offers for sale or rental for any form of consideration, as one of its principal business purposes, any one or more of the following:
 - i) Books, computer diskettes, tapes or hard drives, magazines, periodicals or other printed matter or photographs, films, motion pictures, video matter or photographs, cassettes or video reproductions, slides or other visual representation and/or items which depict or describe "sexually explicit activities" or "specified anatomical areas" or which are characterized by their emphasis upon exhibition or description of 'sexually explicit activities' or "specified anatomical areas"; or
 - ii) Instruments, devices or paraphernalia which are characterized by their emphasis upon "sexually explicit activities" or "specified anatomical areas" or designed for use in connection with "sexually explicit activities"; or

iii) Items, materials or paraphernalia depicting, displaying, advertising or packaged as "sexually explicit activities" or which depict or describe, or are characterized by their emphasis upon, the exhibition or description of "specified anatomical areas".

iv) For purposes of this Ordinance, "principal business purpose" means:

a) The devotion of a significant or substantial portion of its stock-in-trade or interior floor space, meaning thirty percent (30%) or more of the interior floor area as defined by the applicable Building Code; or

b) The receipt of fifty (50%) percent of more of its annual revenues from the sale of the items listed above. Revenue is a gross increase in assets or a gross decrease in liabilities recognized and measured in conformity with generally accepted accounting principles; or

c) The devotion of a significant or substantial portion of its advertising expenditures to the promotion of the sale, rental or viewing of books, magazines, periodicals or other printed matter, or photographs, film, motion pictures, video cassettes, compact discs, slides or other visual representations, items, materials, or paraphernalia which are characterized by the depiction, description, display, advertising or packaging of "sexually explicit activities" or "specified anatomical areas".

d) An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing "sexually explicit activities" or "specified anatomical areas", and still be characterized as an adult book store, adult novelty or retail store or adult video store. Such other business purposes will not serve to exempt such establishment from being categorized as an adult bookstore, adult novelty store, adult video store, so long as the establishment falls within the definition of an adult bookstore, adult novelty store or adult video store as set forth above.

c) *Adult Cabaret.* A nightclub, bar, restaurant or similar commercial establishment, whether or not alcohol is served, which regularly features:

i) Persons who appear in a state of restricted nudity, and/or other material while opaque does not completely cover the entire buttocks (e.g., g-strings) or all portions of the breast below the topmost portion of the areola; or

ii) Live performances of an erotic nature which are characterized by the partial exposure of "specified anatomical areas" or "sexually explicit activities" that occur away from the common area of the establishment, such as on a stage, on poles, in booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises wherein an entertainer or waitress provides adult entertainment to members of the public, a patron or a member, when such adult entertainment is held, conducted, operated or maintained for a direct or indirect profit; or

iii) Films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of "sexually explicit activities" or "specified anatomical areas".

d) *Adult Massage Parlor.* Any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other manipulation of the human body which occurs as part of or in connection with specified sexual

activities, or where any person providing such treatment, manipulation, or service related thereto, exposes his or her specified anatomical areas. The definition of sexually oriented business shall not include the practice of massage in any licensed hospital, nor by a licensed chiropractor or osteopath, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semi-professional or professional athlete or athletic team or school athletic program nor a therapeutic massage practitioner. An Adult Massage Parlor is considered a sexually oriented business for purposes of this Ordinance.

e) *Adult Motel*. A hotel, motel or similar establishment which:

- i) Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are regularly characterized by the depiction or description of "sexually explicit activities" or "specified anatomical areas"; and which advertises the availability of this adult type of material by means of a sign, visible from the public right-of-way, or by means of any off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio, internet or television; or
- ii) Permits patrons to be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for electric transmission over the World Wide Web; or
- iii) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- iv) 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.

f) *Adult Motion Picture Theater*. An establishment where, for any form of consideration, films, motion pictures, video cassettes, compact discs, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "sexually explicit activities" or "specified anatomical areas".

g) *Adult Theater*. A theater, concert hall, auditorium or similar establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by the performance of "sexually explicit activities". This definition does not include a theater which features occasional live nude performances with serious literary, artistic or political value and which has no adverse secondary effects.

h) *Adult Use Business*. An adult arcade, adult bookstore, adult novelty or retail store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio and/or a sexual encounter establishment or any business determined by the Building Official, Township Manager, and/or the Chief of Police, to be an adult use because of the similarities in the characteristics and activities of the business with regulated adult business uses, such as nudity, semi-nudity, exposure of "sexually explicit activities" and/or "specified anatomical areas". The definition of "adult use 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.

i) *Alcoholic Commercial Establishment*. Any hotel, motel, tavern, restaurant, park, nightclub, cocktail lounge, burlesque house, bar, cabaret, taproom, club or other similar establishment

licensed by the State of Michigan Liquor Control Commission, or where alcoholic beverages, including beer, are dispensed and/or consumed. This definition shall exclude a theater or auditorium.

j) *Entertainer*. A person who performs some type of activity or pose with the intent of allowing others to witness that activity or pose.

k) *Escort*. A person who, for consideration in any form, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately perform as an entertainer, including, but not limited to, the modeling of lingerie, the removal of clothing and the performance of a dance or skit. Under this definition, "privately" shall mean a performance for an individual or that individual's guests.

l) *Escort Agency*. A person or business association that furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip or other consideration.

m) *Establishment*. Any of the following:

- i) The opening or commencement of any sexually oriented business as a new business; or
- ii) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
- iii) The location or relocation of any sexually oriented business.

n) *Licensee*. The individual listed as an applicant on the application of a sexually oriented business license, or a person whose name appears on a license to operate an adult use business.

o) *Licensing Officer*. The Clerk of Saginaw Township or his/her designee.

p) *Manager*. An operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees, or is otherwise responsible for the operation of the sexually oriented business.

q) *Massage*. The treating of external parts of the body for remedial or hygienic purposes, consisting of stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating with the hands or with the aid of any mechanical or electrical apparatus or appliances, with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointment or other such similar preparations commonly used in the practice of massage, under such circumstances that it is reasonably expected that the person to whom the treatment is provided shall pay any consideration whatsoever therefore. For purposes of this Ordinance, the term "bodywork" shall mean massage.

r) *Nude Model Studio*. Any place where a person appears in a state of nudity or displays "specific anatomical areas", and is provided money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons. This includes modeling studios that provide for nude modeling on an occasional basis, but it does not include a modeling studio whose primary function is to provide art classes as part of a college, university or educational institution and which is certified by the State of Michigan.

s) *Nudity or a State of Nudity*. The appearance of a human bare buttock, anus, male genitals, female genitals or female breasts.

t) *Operator*. The owner, licensee, manager or person in charge of any premises.

u) *Peep Booth*. An adult motion picture theater with a viewing room or cubical of less than one hundred fifty (150) square feet of floor space.

v) *Premises or Licensed Premises*. Any premises that requires a sexually oriented business license and that is classified as a sexually oriented business.

w) *Principal Owner*. Any person owning, directly or beneficially:

i) Ten percent (10%) or more of a corporation's equity securities; or

ii) Ten percent (10%) or more of the membership interests in a limited liability company; or

iii) In the case of any other legal entity, ten percent (10%) or more of the ownership interests in the entity.

x) *Private Room*. A room in a hotel/motel that is not a peep booth, has a bed and a bath in the room or adjacent room, and is used primarily for lodging.

y) *Regular or Regularly* shall mean recurring, attending or functioning at fixed or uniform intervals.

z) *Semi-Nude*. A state of dress in which clothing covers no more than the genitals, pubic region and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

aa) *Sexual Encounter Center*. A business or enterprise that, as one (1) of its primary business purposes, offers a place where two (2) or more persons may congregate, associate or consort for the purpose of "sexually explicit activities" or the exposure of "specified anatomical areas" for any form of consideration, including, but not limited to:

i) Physical contact in the form of wrestling or tumbling between persons of the same or opposite sex; or

ii) Activities when one or more of the persons is in a state of nudity or semi-nudity; or

iii) Permits patrons to display or be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for recording or transmission over the World Wide Web or any other media.

bb) *Sexually Explicit Activities*. Any of the following:

i) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts; or

ii) Sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation or sodomy; or

iii) Masturbation, actual or simulated; or

iv) Any activity intended to arouse, appeal to or gratify a person's lust, passions or sexual desires; or

v) The display of human genitals in a state of sexual stimulation, arousal or tumescence; or

vi) The display of excretory function as part of or in connection with any of the activity set forth in a.) through e.) above.

cc) *Sexually Oriented Business.* An adult arcade, adult bookstore or adult video store, adult novelty or retail store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center or similar establishment or any place that permits patrons to be filmed or photographed performing "sexually explicit activities" or displaying "specified anatomical areas" for electronic transmission over the World Wide Web. "Sexually oriented" when used to describe film, motion picture, videocassette, slides, or other photographic reproductions shall mean film, movies, motion picture videocassette, slides or other photographic reproductions that regularly depict material which is distinguished or characterized by an emphasis on matter depicting or describing "sexually explicit activities" or "specified anatomical areas" offered for observation by the patron(s) on the premises of a sexually oriented business. The definition of "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.

dd) *Specified Anatomical Areas.* Any of the following:

i) Less than completely and opaquely covered human genitals, pubic region or pubic hair, buttock, or female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola, or any combination of the foregoing; or

ii) Human genitals in a state of sexual arousal, even if opaquely and completely covered.

ee) *Specified Criminal Acts.* Sexual crimes against children, sexual abuse, criminal sexual conduct, rape, crimes classified as sexual crimes by the State of Michigan or any other state, or crimes connected with another adult use business, including, but not limited to, the distribution of obscenity, prostitution and/or pandering.

ff) *Significant or Substantial Portion.* Thirty percent (30%) or more of the term modified by such phrase. If a business has twenty-nine (29%) percent or less of its stock-in-trade or interior floor space devoted to sexually oriented material, the use does not qualify as a Regulated Use. However, based upon the potential negative secondary impacts which relate to the sale, display and/or exhibition of sexually oriented materials, additional regulations of these materials is required as follows:

i) *Floor Space/Display Restrictions:* The sale, display or exhibition of sexually oriented materials shall be limited to no more than twenty-nine (29%) percent of the total stock in trade or interior floor space. The sexually oriented materials shall be located in the rear portion of a building away from its main entrance area. The sexually oriented materials shall be separated by racks, walls or other means that would restrict visibility into the area displaying the sexually oriented materials. No sexually explicit materials shall be permitted to be placed on the non-adult side of this separation.

ii) No sexually explicit materials shall be displayed in any of the business's

windows at any time or visible from the exterior of the business or building. Additionally, no portion of the ceiling in a business or building will be permitted to be used to display sexually explicit materials.

iii) Magazines that contain "sexually explicit activities" or "specified anatomical areas" may be located outside an area specifically devoted to sexually explicit materials. However, the merchandise rack on which the materials are placed must be located immediately adjacent to the separate area that sells the sexually explicit materials, and contain opaque blinders that only allow viewing of the magazine title.

iv) Height Restrictions: The height of the racks and display walls upon which sexually explicit material can be displayed shall be limited to six (6') feet.

And renumber remaining definitions accordingly.

CHAPTER 22. SPECIAL USES--SPECIAL USE PERMIT REQUIREMENTS

Sec. 2201. Intent and purpose.

It is the intent of this section to provide a set of procedures and standards for special uses of land or structure which, because of their unique characteristics, require special consideration in relation to the welfare of adjacent properties and the community as a whole.

It is the express purpose of the regulations and standards herein to allow on one hand practical latitude for the investor or developer, but at the same time maintain adequate provisions for the protection of the health, safety, convenience and general welfare of the community. The following, together with previous references in other chapters of this Ordinance, designate the requirements, procedures and standards which must be met before a special use permit can be issued.

Sec. 2202. Permit procedures.

The application for a special use permit shall be submitted and processed under the following procedures:

1. *Submission of application.* An application shall be submitted through the zoning administrator on a special form for that purpose. Each application shall be accompanied by the payment of a fee as established by the local legislative body. In the event the allowance of a desired use requires both a rezoning and special use permit, both requests may be submitted jointly, subject to the following:
 - a) The ordinance procedures for each [request] shall be followed as specified.
 - b) All applicable standards and specifications required by the ordinance shall be observed.
2. *Data required.*
 - a) The special form shall be completed in full by the applicant including a statement by the applicant that section 2203 can be complied with.
 - b) Final approval of a site plan that conforms to the requirements of section 311.
 - c) Preliminary plans and specifications of the proposed development.
3. *Planning commission review and hearing.*

- a) The Planning Commission shall publish notice and hold a public hearing as required for a special use review within sixty (60) days of receiving a technically complete special use and site plan application, as required by Chapter 3, Site Plan Review Requirements and Procedures and Chapter 22, Special Uses – Special Use Permit Requirements.
 - b) The Planning Commission will make its recommendation regarding the special use application at the next regularly scheduled meeting of the Planning Commission following the public hearing held to review the application, unless additional information is required from the applicant. If additional information is required, the Planning Commission will make its recommendation at the next regularly scheduled meeting after receipt of the requested additional information, provided the additional information is received no later than fifteen (15) days prior to the meeting.
 - c) The recommendation of the Planning Commission shall be forwarded to the Township Board within sixty (60) days of the meeting at which the Planning Commission issues its recommendation. The Township Board will render its decision to grant or deny a special use permit or to grant approval with conditions, as stipulated by this Ordinance, at this meeting, unless additional information is requested. If additional information is requested, the Township Board will make its decision at the next regularly scheduled Township Board meeting after receipt of the requested additional information, provided the additional information is received no later than fifteen (15) days prior to the meeting.
 - d) Failure of the Township to act within the above-specified time limits shall not be deemed to constitute the grant of a special use permit.
4. *Legislative body action.* Upon receipt of the planning commission recommendation, the local legislative body shall consider the special use permit application at its next regular meeting. The local legislative body shall approve or disapprove the recommendation of the planning commission, and only upon approval of the legislative body may a special use permit be issued by the zoning administrator.
 5. *Permit expiration.* A special use permit issued pursuant to this chapter shall be valid for one year from the date of issuance of said permit. If construction or change in use has not commenced and proceeded meaningfully toward completion by the end of this one-year period, the zoning administrator shall notify the applicant in writing of the expiration of said permit. The planning commission may grant additional extensions for periods not to exceed one year.
 6. *Revocation.* The legislative body shall have the authority to revoke any special use permit after it has been proved that the holder of the permit has failed to comply with any of the applicable requirements in chapter 22 or other applicable sections. Written notice of violation shall be given by the zoning administrator to the holder of the permit and correction must be made within 30 days. After this 30-day period has expired, an additional notice shall be given by the zoning administrator; the use for which the permit was granted must cease within 60 days from date of second notice.
 7. *Effect of Denial.*

An applicant who has been denied a special use permit may file an action challenging that denial in a court of competent jurisdiction.

No application for a Special Use Permit, which has been denied wholly or in part, shall be resubmitted to the Township for a period of one (1) year from the date of said denial, except on the grounds of new evidence or proof of changed conditions.

Sec. 2203. Permit standards.

Before formulating recommendations on a special use permit application, the planning commission shall establish that the following general standards, as well as specific standards, shall be satisfied:

1. *General standards.* The planning commission shall review each application for the purpose of determining that each proposed use meets the following standards and, in addition, shall find adequate evidence that each use on the proposed site will:
 - a) Be designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity [and] that such a use will not change the essential character of the area in which it is proposed.
 - b) Not be hazardous or disturbing to existing or intended uses in the same general area and will be an improvement to the property in the immediate vicinity and to the community as a whole.
 - c) Be served adequately by essential public facilities and services, such as highways, streets, police, fire protection, drainage structures, refuse disposal, water and sewage facilities and schools.
 - d) Not create excessive additional requirements at public cost for public facilities and services.
 - e) Not involve uses, activities, processes, materials, and equipment or conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, or odors.
 - f) Be consistent with the intent and purpose of the zoning district in which it is proposed to locate such use.
2. *Conditions and safeguards.* The planning commission may recommend and the legislative body may stipulate such additional conditions and safeguards deemed necessary for the general welfare, for the protection of individual property rights, and for insuring that the intent and objectives of this Ordinance will be observed. The breach of any conditions, safeguards, or requirement shall automatically invalidate the permit granted.
3. *Specific requirements.* The general standards and requirements of this section are basic to all uses authorized by special use permit. The specific and detailed requirements set forth in the following sections relate to particular uses and are requirements, which must be met by those uses in addition to the foregoing general standards and requirements where applicable.
4. *Permitted use.* Uses permitted by special use permit shall be those listed by districts as noted in Part II and as herein regulated, controlled or defined.

Sec. 2215. Sexually oriented businesses.

1. *Intent.* It is recognized that there are some uses, which because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this Chapter. Prior to adopting these regulations, the Township reviewed studies prepared on these uses, reviewed ordinances and regulations

prepared by other municipalities, and reviewed applicable federal and state case law. Based on evidence of the adverse effects of adult uses presented in hearings and in reports made available to the Township Board, and on findings incorporated in the cases of *Pap's AM v Township of Erie*, 529 US 277 (2000); *Deja Vu of Nashville v Metropolitan Government of Nashville & Davidson County*, 466 G3d 391 (6th Cir 2006); *Sensations, Inc. v Township of Grand Rapids*, 2006 WL 2504388 (WD MI 2006); *Van Buren Township v Garter Belt*, 258 Mich App 594; 673 NW2d 111 (2003); *Bronco's Entertainment v Charter Township of Van Buren*, 421 F3d 440 (6th Cir 2005); *Thomas v Chicago Park District*, 122 S Ct 775 (2002); *Township of Renton v Playtime Theatres Inc*, 475 US 41 (1986); *Young v American Mini Theatres*, 426 US 50 (1976); *Barnes v Glen Theatre Inc*, 501 US 560 (1991); *California v LaRue*, 409 US 109 (1972); *DLS Inc v Township of Chattanooga*, 107 F3d 403 (6th Cir 1997); *East Brooks Books Inc v Township of Memphis*, 48 F3d 2200 (6th Cir 1995); *Broadway Books v Roberts*, 642 F Supp 4867 (ED Tenn 1986); *Bright Lights Inc v Township of Newport*, 830 F Supp 378 (ED Ky 1993); *Richland Bookmart v Nichols*, 137 F3d 435 (6th Cir 1998); *Richland Bookmart v Nichols*, 278 F3d 570 (6th Cir 2002); *Déjà vu of Cincinnati v Union Township Board of Trustees*, 411 F3d 777 (6th Cir 2005); *Déjà vu of Nashville v Metropolitan Government of Nashville*, 274 F3d 377 (6th Cir 2001); *Bannon Corp v Township of Dayton*, 7923 F2d 470 (6th Cir 1991); *Threesome Entertainment v Strittmather*, 4 F Supp 2d 710 (ND Ohio 1998); *JL Spoons Inc v Township of Brunswick*, 49 F Supp 2d 1032 (ND Ohio 1999); *Triplett Grille Inc v Township of Akron*, 40 F3d 129 (6th Cir 1994); *Nightclubs Inc v Township of Paducah*, 202 F3d 884 (6th Cir 2000); *O'Connor v Township and County of Denver*, 894 F2d 1210 (10th Cir 1990); *Deja Vu of Nashville Inc et al v Metropolitan Government of Nashville and Davidson County*, 2001 USA App LEXIS 26007 (6th Cir Dec 6, 2001); *ZJ Gifts D-2 LLC v Township of Aurora*, 136 F3d 683 (10th Cir 1998); *Connection Distribution Co v Reno*, 154 F3d 281 (6th Cir 1998); *Sundance Associates v Reno*, 139 F3d 804 (10th Cir 1998); *American Library Association v Reno*, 33 F3d 78 (DC Cir 1994); *American Target Advertising Inc v Giani*, 199 F3d 1241 (10th Cir 2000); *ZJ Gifts D-2 LLC v Township of Aurora*, 136 F3d 683 (10th Cir 1998); *ILQ Investments Inc v Township of Rochester*, 25 F3d 1413 (8th Cir 1994); *Bigg Wolf Discount Video Movie Sales Inc v Montgomery County*, 2002 US Dist LEXIS 1896 (D Md Feb 6 2002); *Currence v Cincinnati*, 2002 US App LEXIS 1258 (3rd Cir Jan 24, 2002); and other cases; and on testimony to Congress in 136 Cong Rec S 8987; 135 Cong Rec S 14519; 135 Cong Rec S 5636; 134 Cong Rec E 3750; and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1979; Minneapolis, Minnesota-1980; Houston, Texas - 1997; Amarillo, Texas; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma Township, Oklahoma - 1986; Cleveland, Ohio - and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York Times Square 1993; Bellevue, Washington, - 1998; Newport news, Virginia - 1996; new York Times Square study - 1994; Phoenix, Arizona - 1995-98; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence, " by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House committee on Ethics and Constitutional Law, Jan 12, 2000, and the Report of the Attorney General's Working Group On the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the Township Board finds that sexually oriented businesses as a category of establishments are correlated with harmful secondary effects, and that the foregoing reports are reasonably believed to be relevant to the problems that Saginaw Township is seeking to abate and prevent in the future. The primary control or regulation is for the purpose of preventing a concentration of these uses in any one (1) area that would create such adverse effect(s). It is further the intent of these regulations that these uses only be permitted as special land uses. Uses (collectively "Regulated Uses") subject to these controls are as follows:

2. *Definitions.* Sexually oriented businesses, as defined in Chapter 2 (Definition section of the Zoning Ordinance), shall be subject to the regulations of this Chapter.
3. *Classification.* Sexually oriented businesses are classified as, and include, the following:
 - a) Adult arcades
 - b) Adult bookstores or adult video stores
 - c) Adult cabarets
 - d) Adult massage parlors
 - e) Adult motels
 - f) Adult motion picture theaters
 - g) Adult theaters
 - h) Adult nudity or retail stores
 - i) Escort and escort agencies
 - j) Nude model studios
 - k) Sexual encounter centers
4. *Location of Sexually Oriented Business; Miscellaneous Requirements.*
 - a) A sexually oriented business shall not be located closer than one thousand (1,000) feet to the property line of any of the following:
 - i) Church, religious institution, or building used primarily for religious worship and related religious activities.
 - ii) Public or private elementary or secondary school, vocational school, special education school, junior college or university.
 - iii) Any single-family, two-family or multiple-family zoning district.
 - iv) Any mixed use district
 - v) Any planned unit development
 - vi) Lot or parcel in residential use
 - vii) Public park
 - viii) Existing sexually oriented business
 - ix) Child care facility, nursery or preschool

Measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property site boundary of a sexually oriented business to the nearest property line of the premises of any use, district or right-of-way listed above. The distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects from the site or property boundary in which each business is located. Access easements or portions of the parcel that are exclusively used to provide access to the site of the sexually oriented business shall be excluded from the parcel boundary in determining whether the site complies with the required separation. The intent of this exclusion is to allow sexually oriented businesses to comply with the separation requirement from major thoroughfares by means of an access easement or access strip of land from the site to the thoroughfare.

- b) A sexually oriented business site shall only be located within a zoning district where it is listed as an allowable use after special approval.
- c) A person is in violation of this Ordinance if he/she causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually

oriented business within one thousand (1,000) feet of another sexually oriented business.

- d) A person is in violation of this Ordinance if he/she causes or permits the operation, establishment or maintenance of more than one (1) sexually oriented business in the same building, structure or portion thereof or the substantial enlargement of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.
- e) All off-street parking areas and entry door areas of a sexually oriented business shall be illuminated from dusk until the closing time of the business with a lighting system which provides an average maintained horizontal illumination of three (3) foot candles on the pavement with an average to minimum uniformity not greater than four to one of light on all parking surfaces and/or walkways and/or meet or exceed the recommendations of the Illuminating Engineering Society of North America (IESNA) enhanced security guidelines and recommendations for parking lots. This requirement is to ensure the personal safety of patrons and employees, and to reduce the incidence of vandalism and other criminal conduct.
- f) No employee in a sexually oriented business shall knowingly or intentionally appear in view of any patron in a semi-nude condition unless the employee, while semi-nude, shall be and remains at least six (6) feet from all patrons and on a fixed stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
- g) No employee in a sexually oriented business shall knowingly or intentionally mingle with patrons unless they are not dancing or have not danced for at least thirty minutes.
- h) Any business now classified as a sexually oriented business lawfully operating on the date of adoption of the Ordinance that is in violation of this Ordinance shall be deemed a nonconforming use.

5. *Nude Entertainment Prohibited in Alcoholic Commercial Establishment.* It shall be unlawful for any person to perform in any alcoholic commercial establishment, to knowingly permit or allow to be performed therein, any of the following acts or conduct:

- a) The public performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellations, or any sexual acts which are prohibited by law;
- b) The actual or simulated touching, caressing or fondling on the breasts, buttocks, anus or genitals in public; or
- c) The actual or simulated public displaying of the pubic hair, anus, vulva or genitals.

It shall be unlawful for the owner, operator, agent or employee of an alcoholic commercial establishment to allow any female to appear in an alcoholic commercial establishment so costumed or dressed that one or both breasts are wholly or substantially exposed to public view. Topless or bottomless or totally uncovered waitresses, bartenders or barmaids, entertainers including dancers, impersonators, lingerie shows, or any other form for the attraction or entertainment of customers, is strictly prohibited. "Wholly or substantially exposed to public view" as it pertains to breasts shall mean the showing of the female breast in an alcoholic commercial establishment with less than a fully opaque covering of all portions of the areola and nipple, and the prohibition shall also extend to such events similar to wet t-shirt contests.

6. *Exterior Display and Signs.* A sexually oriented business is in violation of this Chapter if:

- a) The merchandise or activities of the establishment are visible from any point outside the establishment,

- b) The exterior portions of the establishment or signs having any words, lettering, photographs, silhouettes, drawings or pictorial representations of any specified anatomical area or sexually explicit activity as defined in this Ordinance; or
 - c) There shall be no use of neon or flashing lights.
7. *License Required to Operate a Sexually Oriented Business.* Special use and site plan approval shall be granted on the condition that the operator or owner of a sexually oriented business obtains a license to operate the business as required by Chapter 18 of the Code of Ordinances.
8. *Enforcement.* A violation of the provisions of this Chapter shall be a misdemeanor punishable with a potential fine of five hundred (\$500.00) dollars or a jail term of ninety (90) days, or both.
9. *Injunction.* In addition to the provisions of this Chapter, the Township, at its option, may commence proceedings in a court of competent jurisdiction under the appropriate court rule or statute to enjoin any activity conducted by a sexually oriented business that is deemed to be in violation of these provisions.

The foregoing shall be published in the Township Times, a newspaper of general circulation in the Charter Township of Saginaw, on the 26th day of January, 2011.

This Ordinance shall take effect seven (7) days after publication.

The adopted ordinance, the Saginaw Charter Township Zoning Ordinance, and Zoning Map are available for public inspection at the Saginaw Charter Township Offices, 4980 Shattuck Road, Saginaw, Michigan 48603, during regular business hours. For further information, please contact the Township Clerk's Office, Saginaw Charter Township Hall, (989) 791-9830.

Ayes: Supervisor Braun, Clerk Wazny, Trustees Connolly, Gerhardt, Kelly, and Seaver

Nays: _____

Absent: Treasurer McQuillan

The Ordinance was declared adopted.

Date: January 24, 2011

TIMOTHY J. BRAUN, Supervisor

SHIRLEY M. WAZNY, Clerk

(Z-10-06)