

CITY OF GENEVA, ILLINOIS

ORDINANCE NO. 2010-64

**AN ORDINANCE ADDING CHAPTER 17 TO TITLE
OF THE CITY CODE OF THE CITY OF GENEVA:**

ADULT USE BUSINESS REGULATION

WHEREAS, adult use businesses require special supervision from the City of Geneva in order to protect and preserve the health, safety, morals, and welfare of the patrons of such businesses as well as the citizens of the City of Geneva; and

WHEREAS, the Geneva City Council finds that adult use 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 the City of Geneva which demands reasonable regulation of adult use 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 adult use 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 adult use 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 adult use 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, the Geneva City Council 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, the Geneva City Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of the City of Geneva; and

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

WHEREAS, it is not the intent of the Geneva City Council to condone or legitimize the distribution of obscene material, and the Geneva City Council recognizes that state and federal law prohibits the distribution of obscene materials, and expects and encourages state and local law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City of Geneva.

NOW THEREFORE, be it hereby ordained by the Mayor and City Council of the City of Geneva, Kane County, Illinois, as follows:

SECTION 1: That the City Code of Geneva, Illinois is hereby amended by adding a new Chapter 17, “Adult Uses Business Regulation,” to Title 4, “Business and License Regulations.”

TITLE 4

BUSINESS AND LICENSE REGULATIONS

CHAPTER 17

ADULT USE BUSINESS REGULATION

SECTION:

- 4-17-1: Purpose and Findings
- 4-17-2: Definitions
- 4-17-3: Classification
- 4-17-4: License Required
- 4-17-5: Issuance of License
- 4-17-6: Fees
- 4-17-7: Inspection
- 4-17-8: Expiration of License
- 4-17-9: Suspension
- 4-17-10: Revocation
- 4-17-11: Hearing; License Denial, Suspension, Revocation; Appeal
- 4-17-12: Transfer of License

- 4-17-13: Location of Adult Use Businesses
- 4-17-14: Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos, or Live Entertainment in Viewing Rooms
- 4-17-15: Additional Regulations Concerning Public Nudity
- 4-17-16: Prohibition Against Children in an Adult Use Business
- 4-17-17: Prohibition Against Consumption of Alcohol
- 4-17-18: Hours of Operation
- 4-17-19: Exemptions
- 4-17-20: Injunction
- 4-17-21: Severability

4-17-1 **PURPOSE AND FINDINGS**

- (A) *Purpose:* It is the purpose of this Ordinance to regulate adult use businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City of Geneva, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult use businesses within the City of Geneva. 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 adult use 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:* There is no question that local governments have a substantial interest in preventing crime, maintaining property values and protecting retail trade, commercial districts, neighborhoods and quality of life for its constituents. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Geneva City Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976), *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.*, 120 S. Ct. 1382 (2000), *R.V.S., LLC v. City of Rockford*, 2003 WL 21354607 (U.S. District N.D. Illinois, 2003), *XLP Corp., et al. v. Lake County* (2nd Dist Case No. 2-04-0255), *County of Cook v. Renaissance Arcade and Bookstore, et al.*, 122 Ill.2d.123 (1988), *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (7th Circuit, 1996), *SOB, Inc. v. County of Benton*, 317 F. 3d, 856 (8th Circuit, 2003), *Illinois One News, Inc. v. City of Marshall*, No. 06-1828

(7th Circuit, Feb. 13,2007)and on studies in other communities including, but not limited to: Newport News, Virginia (“Adult Use Study”, Newport News Department of Planning and Development, March 1996); New York, New York (“Adult Entertainment Study”, Department of City Planning, 2nd Printing, November 1994); Rochester, New York (“Sexually-Oriented Business Study”, July 2000); Denver, Colorado (“A Report on the Secondary Impacts of Adult Use Businesses in the City of Denver”, for the Denver City Council, January, 1988); Manatee County, Florida (“Adult Entertainment Business Study for Manatee County”, June, 1987); *METRO PLANNER*, October, 1995, Volume 8, Number 2; *NEW YORK TIMES*, pp. AR 14, 18, “Wrapping Nude Dancing in a Cloak of Law”; *American Planning Association Planning Advisory Service Report No. 495/496* (“Formal Studies of Sex Businesses: What They Tell Us About Real and Perceived Impacts”); *American Planning Association Planning Advisory Service Report No. 495/496* (Oedipus, Inc., “Survey Regarding Businesses with Video-viewing Booths or with Less than a Significant or Substantial Portion of Their Stock in Trade in Adult Materials, Kansas City, Missouri”); *American Planning Association Planning Advisory Service Report No. 495/496* (“Survey of Appraisers by Department of Zoning, City of Rochester, New York”); *American Planning Association Planning Advisory Service Report No. 495/496* (Fort Worth, Texas “Documentation of Secondary Effects of Sexually Oriented Businesses”, 1988); *American Planning Association Planning Advisory Service Report No. 495/496* (Indianapolis, Indiana “Adult Entertainment Businesses in Indianapolis, An Analysis”, 1984); *American Planning Association Planning Advisory Service Report No. 495/496* (Phoenix, Arizona study, May 1979); *American Planning Association Planning Advisory Service Report No. 495/496* (St. Paul, Minnesota “Effects on Surrounding Area of Adult Entertainment Businesses in St. Paul”, 1978); *American Planning Association Planning Advisory Service Report No. 495/496* (Tucson, Arizona “Memoranda from Citizens Advisory Planning Committee and Assistant Chief of Police”, 1990); and *American Planning Association Planning Advisory Service Report No. 495/496* (Whittier, California study, 1994), Saratoga Springs Study 2007 (Saratoga Springs, FL, “Secondary Effects Study of Adult Oriented Business, 3/7/2007), Ellicottville, New York Study (“Ellicottville NY Adult Business Study”, January, 1998), the Geneva City Council finds:

- (1) Adult use businesses lend themselves to ancillary 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 adult use businesses engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts, including masturbation, and oral and anal sex, occur at adult use businesses, 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 purpose of engaging in sex within the premises of such adult use businesses.
- (6) At least 50 communicable diseases may be spread by activities occurring in adult use businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), 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 of AIDS (acquired immunodeficiency syndrome) caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982; 2,200 in 1983; 4,600 in 1984; 8,555 in 1985, 253,448 through 1992, and more than 1,000,000 in 2006. (Reported by KA Fenton, RO Valdiserri, National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (proposed, Center for Disease Control, June 2006.)
- (8) Since 1981 and to the present, there has been an increasing cumulative number of persons testing positive for the HIV antibody test in the State of Illinois.
- (9) The number of cases of gonorrhea in the United States reported annually remains at a high level, with 355,991 cases being reported in 2007. (Reported by U.S. Department of Health and Human Services, November , 2007)
- (10) 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.

- (11) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- (12) It has been reported that 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.
- (13) Numerous studies and reports have determined that semen is found in the areas of adult use businesses where persons view “adult” oriented films. *Final Report of the Attorney General’s Commission on Pornography*, pg. 377 (1986).
- (14) The findings noted in Subsections (1) through (13) raise substantial governmental concerns.
- (15) Adult use businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- (16) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the adult use businesses. Further, such a licensing procedure will place an incentive on the operators to see that the adult use business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City of Geneva. It is appropriate to require reasonable assurances that the licensee is the actual operator of the adult use business, fully in possession and control of the premises and activities occurring therein.
- (17) 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 adult theaters.
- (18) Requiring licensees of adult use businesses to keep information regarding current employees and certain past employees will help

reduce the incidence of certain types of criminal behavior and prevent minors from working in such establishments.

- (19) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the adult use 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.
- (20) 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.
- (21) The fact that an applicant for an adult use business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this Ordinance.
- (22) The barring of such individuals from the management of adult use businesses for a period of years serves as a deterrent to, and prevents conduct which leads to, the transmission of sexually transmitted diseases.
- (23) The general welfare, health, morals, and safety of the citizens of the City of Geneva will be promoted by the enactment of this Ordinance.

4-17-2: **DEFINITIONS:** Words, terms and phrases in this Ordinance shall be defined as follows:

- (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 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, Adult Novelty Store or Adult Video Store means a commercial establishment which 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, video cassettes, 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;”
 - (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.
- (C) Adult Cabaret means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:
- (1) persons who appear nude or semi-nude; or
 - (2) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities;” or
 - (3) films, motion pictures, video cassettes, slides, compact discs or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas.”
- (D) Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”
- (E) 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 anatomical areas” or by “specified sexual activities.”

- (F) Adult Use Business means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, escort agency or semi-nude model studio.
- (G) Distinguished or Characterized by an Emphasis Upon 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 anatomical areas” or “specified sexual activities.”
- (H) Employee, Employ, and Employment describe and pertain to any person who performs any service on the premises of an adult use 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.
- (I) Enforcement Officer shall mean the City of Geneva Code Compliance Officer of the City or such other City employee as the City Administrator may designate.
- (J) Escort means a person who, for consideration, and for another person, agrees or offers: (1) to act as a companion, guide, or date, or (2) to privately model lingerie, or (3) to privately perform a striptease.
- (K) Escort Agency means a person or business association that for a fee, tip, or other consideration, furnishes, offers to furnish, or advertises to furnish, escorts as one of its primary business purposes.
- (L) Establish or Establishment means and includes any of the following:
- (1) the opening or commencement of any adult use business as a new business;
 - (2) the conversion of an existing business, whether or not an adult use business, to any adult use business;
 - (3) the addition of any adult use business to any other existing adult use business; or
 - (4) the relocation of any adult use business.

- (M) Licensee means a person in whose name a license to operate an adult uses business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in an adult use business.
- (N) Nude, Nudity or a State of Nudity means the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft 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 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 an adult use 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 an adult use business regardless of whether that person is an owner, part owner, or licensee of the business.
- (P) Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (Q) Regularly Features or Regularly Shown 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 a part of the ongoing business of the adult uses business.
- (R) Semi-nude or in a Semi-nude Condition means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.
- (S) Semi-nude Model Studio means a commercial establishment which regularly features a person (or persons) who appears semi-nude and is provided to be observed, sketched, drawn, painted, sculptured, or photographed by other persons who pay money or any form of consideration, but shall not include a proprietary school licensed by the State of Illinois or a college, junior college or university supported entirely or in part by public taxation; a private college or university which

maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

(T) 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 genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

(U) 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 relating to an adult use business; sexual assault; molestation of a child; 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 (2) 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 (5) 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 (5) 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 (2) or more misdemeanor offenses or a 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.

(V) Specified Sexual Activities means any of the following:

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

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

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

(W) Substantial Enlargement of an adult use business means the increase in floor areas occupied by the business by more than 25 percent, as the floor areas exist on the date this Ordinance takes effect.

(X) Transfer of Ownership or Control of an adult use 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.

4-17-3: **CLASSIFICATION:** Adult Use Businesses are classified as follows:

(A) adult arcades;

(B) adult bookstores, adult novelty stores, or adult video stores;

(C) adult cabarets;

(D) adult motion picture theaters;

(F) adult theaters; and

- (G) escort agencies. and
- (H) semi-nude model studios

4-17-4: **LICENSE REQUIRED:**

- (A) It is unlawful:
 - (1) For any person to operate an adult use business without a valid adult use business license issued by the City of Geneva pursuant to this Ordinance.
 - (2) For any person who operates an adult use business to employ a person to work for the adult use business who is not licensed as an adult use business employee by the City of Geneva pursuant to this Ordinance.
 - (3) For any person to obtain employment with an adult use business without having secured an adult use business employee license pursuant to this Ordinance.
- (B) An application for a license must be made on a form provided by the City of Geneva. All applicants must be qualified according to the provisions of this Ordinance.
- (C) An applicant for an adult use business license or an adult use business employee license shall file with the Community Development Director of the City (hereinafter "DIRECTOR") (or such other City employee as the City Administrator may designate) a completed application made on a form prescribed and provided by the City Administrator. An application shall be considered complete if it includes the information required in this Section. The applicant shall be required to be qualified according to the provisions of this Ordinance. The application shall be notarized. The application shall include the information called for in Subsections (1) through (5), and where applicable, Subsection (6) and (7), as follows:
 - (1) The full true name and any other names used in the preceding five (5) years.
 - (2) The current business address.

- (3) A set of fingerprints suitable for conducting necessary background checks pursuant to this Ordinance, and the applicant's Social Security Number, to be used for the same purpose.
- (4) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to an adult use business, and whether any license or permit has been denied, revoked, or suspended, and if so, the reason or reasons therefor.
- (5) Written proof of age, 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.
- (6) If the application is for an adult use business license, the name, business location, legal description, business mailing address and phone number of the proposed adult use business.
- (7) If the application is for an adult use business license, the name and address of the statutory agent or other agent authorized to receive service of process.

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

- (D) The application for an adult use business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but shall be drawn to a designated scale of not less than 1:20 or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
- (E) If the person who wishes to operate an adult use business is an individual, he or she shall sign the application for a license as applicant. If the person that wishes to operate an adult use business is other than an individual (such as a corporation), each officer, director, general partner, or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as the applicant. Each applicant shall be considered as a licensee if a license is granted.

- (F) The information provided by an applicant in connection with the application for a license under this Ordinance shall be maintained by the DIRECTOR on a confidential basis, and may be disclosed only: (1) to other governmental agencies in connection with a law enforcement or public safety function, or (2) as may otherwise be required by law or a court order.

4-17-5: **ISSUANCE OF LICENSE:**

- (A) Within 20 business days after the receipt of a completed application, the DIRECTOR shall either issue a license, or issue a written notice of intent to deny a license, to the applicant. The DIRECTOR shall approve the issuance of a license unless one or more of the following is found to be true:
 - (1) An applicant is less than 18 years of age.
 - (2) An applicant is delinquent in the payment to the City of Geneva of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to an adult use business.
 - (3) An applicant has failed to provide complete information as required by Section 4-17-4 for issuance of the license.
 - (4) An applicant has been convicted of a specified criminal activity. The fact that a conviction is being appealed shall have no effect under this Subsection. For the purpose of this Subsection, “conviction:”
 - (a) means a conviction or a guilty plea; and
 - (b) includes a conviction of any business entity for which the applicant had, at the time of the offense leading to the conviction for a specified criminal activity, a management responsibility or a controlling interest.
 - (5) The license application fee required by this Ordinance has not been paid.
 - (6) An applicant has falsely answered a question or request for information on the application form.

- (7) The proposed adult use business is located in a zoning district other than a district in which adult use businesses are allowed to operate under the City of Geneva Zoning Regulations, or is not in compliance with the location restrictions established for adult use businesses in this Chapter under Section 4-17-13.
- (B) An applicant that is ineligible for a license due to Subsection (A)(4) of this Section may qualify for an adult use business license only when the time period required by the applicable Subsection in Section 4-17-2(U) has elapsed.
- (C) 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 that applicant, the expiration date, and, if the license is for an adult use business, the address of the adult use business. An adult use business employee license shall contain a photograph of the licensee. The adult use business license shall be posted in a conspicuous place at or near the entrance to the adult uses business so that it may be easily read at any time. An adult use business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing, and shall produce such license for inspection upon request by a law enforcement officer or other authorized City of Geneva official.
- (D) If a license is granted to operate an adult use business, the business to be operated as delineated on the Application shall be commenced on the premises identified on the Application within 180 days from the date the license was granted. In the event the business is not so commenced within the 180 day period, the license shall automatically be deemed to have been terminated and revoked and a new application process shall be required for the Applicant to request the license be re-granted. The DIRECTOR shall have the authority to extend the 180 deadline upon good cause shown, but for no longer than an additional 60 days.

4-17-6: **FEES:**

- (A) The non-refundable initial license fee and annual renewal fee for an adult use business license or an adult use business employee license shall be set by the Geneva City Council at an amount determined to be sufficient to pay the cost of administering this program, subject to Subsections (B) and (C) herein.
- (B) In no event shall the fees exceed \$400.00 for the initial license and \$200.00 for the annual renewal fee for an adult use business license.

- (C) In no event shall the fees exceed \$150.00 for the initial license, and \$100.00 for the annual renewal fee, for an adult use business employee license.

4-17-7: **INSPECTION:** For the purpose of ensuring compliance with this Ordinance, an applicant, operator or licensee shall permit law enforcement officers and any other federal, state, county or City of Geneva 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 an adult uses business which patrons or customers are permitted to occupy.

4-17-8: **EXPIRATION OF LICENSE:**

- (A) Each license shall expire on April 30th and may be renewed only by making application as provided in Section 4-17-4. An application for renewal shall be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be suspended or extended by reason of such application.
- (B) If the City of Geneva denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to the denial, the City of Geneva finds that the basis for denial of the renewal license has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date that the denial became final.

4-17-9: **SUSPENSION:** The Enforcement Officer shall issue a written statement of intent to suspend a license for a period not to exceed 30 days if a determination has been made by the Enforcement Officer that a licensee or an employee of a licensee has:

- (A) violated or is not in compliance with any section of this Ordinance; or
- (B) refused to allow an inspection of the adult use business premises as authorized by this Ordinance.

4-17-10: **REVOCAION:**

- (A) The Enforcement Officer shall issue a written statement of intent to revoke an adult use business license if a cause of suspension set forth in Section 4-17-9 occurs and the license has been suspended within the preceding 12 months.
- (B) The Enforcement Officer shall issue a written statement of intent to revoke an adult use business license if the Officer determines that:
 - (1) a licensee gave false or misleading information in the material submitted during the application process;
 - (2) a licensee has knowingly allowed or participated in possession, use, or sale of controlled substances on the premises;
 - (3) a licensee has knowingly allowed or participated in prostitution on the premises;
 - (4) a licensee has knowingly operated the adult use business during a period of time when the licensee's license was suspended;
 - (5) a licensee has knowingly allowed or participated in any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises.
- (C) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (D) When, after the notice and hearing procedure described in Section 4-17-11, the Enforcement Officer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult use business license for one (1) year from the date revocation becomes effective, provided that, if the conditions of Section 4-17-11(F) are met, a Provisional License will be granted pursuant to that Section. If, subsequent to revocation, the Enforcement Officer finds that the basis for the revocation found in Subsection (B)(1) of this Section has been corrected, the applicant shall be granted a license if at least 90 days have elapsed since the date the revocation became effective.

4-17-11: **HEARING; LICENSE DENIAL, SUSPENSION, REVOCATION; APPEAL:**

- (A) If the Enforcement Officer determines that facts exist for denial, suspension, or revocation of a license under this Ordinance, the

Enforcement Officer shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend, or revoke the license, including the grounds therefor, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the City. Within five (5) business days of receipt of such notice, the respondent may provide to the Enforcement Officer, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three (3) business days of the receipt of respondent's written response, or if no written response was received, within eight (8) business days from the date the notice of intent was sent, the Enforcement Officer shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding, which hearing shall be held no later than fifteen (15) days after the date the notice of intent was sent unless the City and the licensee mutually agree to a later date.

- (B) The Adjudication Hearing Officer shall conduct the hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the Enforcement Officer in the time stated or, if after the hearing, the Adjudication Hearing Officer finds that grounds as specified in this Ordinance exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five (5) days after the Enforcement Officer sends, by certified mail, written notice that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.
- (C) The powers and duties of the Adjudication Hearing Officer shall include:
 - (1) Hearing testimony and accepting evidence that is relevant to the issue of the proposed denial, suspension, or revocation;
 - (2) Issuing subpoenas directing witnesses to appear and give relevant testimony at the hearing upon the request of parties or their representatives;
 - (3) Preserving and authenticating the record of the hearing and all exhibits and evidence introduced at the hearing; and
 - (4) Issuing a determination, based on evidence presented at the hearing of whether grounds for the proposed denial, suspension or revocation exists. The determination shall be in writing and shall include a written finding of fact and decision. Such decision shall

be transmitted to the Enforcement Officer within three (3) business days after entry by the Adjudication Hearing Officer.

- (D) If the Adjudication Hearing Officer finds that no grounds exist for denial, suspension, or revocation of a license, then within five (5) days after the hearing, the Enforcement Officer shall withdraw the intent to deny, suspend, or revoke the license, and shall so notify the respondent in writing by certified mail of such action and shall contemporaneously issue the license.
- (E) When a decision to deny, suspend, or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied, or whose license has been suspended or revoked, shall have the right to appeal such action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City of Geneva's enforcement of the denial, suspension, or revocation, the City of Geneva shall immediately issue the aggrieved party a Provisional License. The Provisional License shall allow the aggrieved party to continue operation of the adult uses business or to continue employment as an adult use business employee, as the case may be, and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain, or otherwise enjoin the City of Geneva's enforcement.

4-17-12: **TRANSFER OF LICENSE:** A licensee shall not transfer his or her license to another, nor shall a licensee operate an adult use business under the authority of a license at any place other than the address designated in the application.

4-17-13: **LOCATION OF ADULT USE BUSINESSES:**

- (A) A person commits a violation if that person operates or causes to be operated an adult use business in any zoning district other than a district in which adult uses businesses are allowed to operate under the City of Geneva Zoning Regulations.
- (B) A person commits a violation if the person operates or causes to be operated an adult use business within Nine Hundred (900) feet of:
 - (1) A church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities;

- (2) A public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior or community colleges, and universities. "School" includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
 - (3) A boundary of a zoning district allowing residential or dwelling structures as a permitted or special use within the boundaries of the City of Geneva;
 - (4) A public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, swimming pool, reservoir, athletic field, basketball or tennis courts, wilderness areas, or other similar public land within the City which is under the ownership, control, operation, or management of any unit of local government;
 - (5) Any premises licensed pursuant to the alcoholic beverage control regulations of the State.
- (C) A person commits a violation if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of an adult use business within Nine Hundred (900) feet of a residential dwelling structure, whether or not such structure is located within the municipal boundaries of the City of Geneva. For the purpose of this Subsection, the distance between the adult use business and residential dwelling structure shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which the adult use business is located to the closest exterior wall of the residential dwelling structure.
- (D) A person commits a violation if that person causes or permits the operation, establishment, substantial enlargement (as defined at Section 4-17-2 [W]), or transfer of ownership or control of an adult use business within Nine Hundred (900) feet of another adult use business.
- (E) A person commits a violation if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of an adult use business on any zoning lot with street frontage

on Fabyan Parkway, Illinois State Route 38 or Kirk Road within the City Limits of the City of Geneva.

- (F) A person commits a violation if that person causes or permits the operation, establishment, or maintenance of more than one adult use business in the same building, structure, or portion thereof, or the increase of floor area of any adult uses business in any building, structure, or portion thereof containing another adult use business.
- (G) For the purpose of Subsection (B) of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where an adult use business is conducted, to the nearest property line of the premises of a use listed in Subsection (B). The presence of a City, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.
- (H) For purposes of Subsection (D) of this Section, the distance between any two adult use businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.
- (I) Any adult use business lawfully operating on the effective date of this Ordinance that is in violation of Subsection (A) through (F) of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two or more adult use businesses are within Nine Hundred (900) feet of one another and otherwise in a permissible location, the adult use business which was first established and continually operating at a particular location is the conforming use and the later established business(es) is/are nonconforming.
- (J) An adult use business lawfully operating as conforming to the requirements of Subsection (B) of this Section is not rendered nonconforming by the location, subsequent to the grant or renewal of the adult use business license, of a use listed in Subsection (B) of this Section within Nine Hundred (900) feet of the adult uses business. This provision applies only to the renewal of a valid license, and does not apply when an application is made for a license after the applicant's previous license has expired or been revoked.

4-17-14: REGULATION PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS, OR LIVE ENTERTAINMENT IN VIEWING ROOMS:

- (A) A person who operates or causes to be operated an adult use business which exhibits on the premises, in a separated, private viewing room or rooms, and not as a motion picture theater arrangement, film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
- (1) Upon application for an adult use license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. The diagram shall also designate the place at which the license, if granted, will be conspicuously posted. A professionally prepared diagram in the nature of an engineer's or architect's plan shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The City of Geneva may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
 - (2) The application shall be sworn to be true and correct by the applicant.
 - (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City of Geneva.
 - (4) It is the duty of the licensee of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

- (5) The interior of the 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. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station.
- (6) It shall be the duty of the licensee to ensure that the view area specified in Subsection (5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (1) of this Section.
- (7) No viewing room may be occupied by more than one (1) person at any time.
- (8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
- (9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
- (12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within 48 inches of the floor.

(B) A person having a duty under Subsection (1) through (14) of Subsection (A) herein commits a violation if he or she knowingly fails to fulfill that duty.

4-17-15: **ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY:**

(A) It shall be a violation for a person to knowingly and intentionally, in an adult use business, appear in a state of nudity or engage in specified sexual activities.

(B) It shall be a violation for a person to knowingly or intentionally, in an adult use business, appear in a semi-nude condition, unless the person is an employee who, while semi-nude, is at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor.

(C) It shall be a violation for an employee, while semi-nude in an adult use 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 an adult use business.

(D) It shall be a violation for an employee, while semi-nude, to knowingly and intentionally touch a customer or the clothing of a customer.

4-17-16: **PROHIBITION AGAINST CHILDREN IN AN ADULT USE BUSINESS:** A licensee commits a violation if the licensee allows a person under the age of 18 years on the premises of an adult use business.

4-17-17: **PROHIBITION AGAINST ALCOHOL CONSUMPTION:** No alcoholic beverages shall be served, consumed, possessed, delivered or transported on or about the premises of an adult use business at any time.

4-17-18: **HOURS OF OPERATION:** No adult use business may remain open to the public or allow occupation of the premises for any private gathering at any time between the hours of 1:00 A.M. and noon on any day.

4-17-19: **EXEMPTIONS:** It is not a violation of the provisions of Section 4-17-15 if a person appearing in a state of nudity did so in a modeling class:

- (A) operated by a proprietary school, licensed by the State of Illinois; a college, junior or community college, or university supported entirely or partly by taxation;
- (B) operated by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior or community college, or university supported entirely or partly by taxation;
- (C) sponsored or sanctioned by a unit of local government as part of an educational class; or
- (D) in a structure:
 - (1) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - (2) where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
 - (3) where no more than one (1) nude model is on the premises at any one time.

4-17-20: **INJUNCTION:** A person who operates or causes to be operated an adult use business without a valid license or in violation of Section 4-17-12 of this Ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable by a fine of \$750.00 for each day an adult use business so operates.

4-17-21: **SEVERABILITY:** Each section and provision of this Ordinance is hereby declared to be independent division(s) and subdivision(s) and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision(s) of said Ordinance, or the application thereof to

any person or circumstance is held to be invalid, 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 passed independently of such section or provision so known to be invalid.

4-17-22: **CONFLICTING ORDINANCES REPEALED:** All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

SECTION 2: This ordinance shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

PRESENTED to the City Council of the City of Geneva, Illinois, this 3rd day of January, 2011.

PASSED by the City Council of the City of Geneva, Illinois, this 3rd day of January, 2011.

APPROVED by me as Mayor of said City of Geneva, Illinois, this 4th day of January, 2011.

Kevin R. Burns, Mayor

ATTEST:

Lynn P. Landberg, City Clerk

COUNCIL VOTE:

Ayes		
Nays		
Absent		
Abstentions		(counted as ayes or nays)
Total Holding Office	10	

**CITY OF GENEVA, ILLINOIS
ORDINANCE 2011-____**

**AN ORDINANCE ADDING CHAPTER 17 TO TITLE 4
OF THE CITY CODE OF THE CITY OF GENEVA:**

ADULT USES BUSINESS REGULATION

**ADOPTED BY THE
MAYOR AND CITY COUNCIL
THIS ____ DAY OF _____, 2011**

Published in pamphlet form
by authority of the Mayor
and City Council of the City of Geneva,
Kane County, Illinois,
This day of , 2011

Prepared by and mail to:

City of Geneva
22 South First Street
Geneva, IL 60134