

VILLAGE OF ROSCOMMON

AN ORDINANCE TO REGULATE CONDUCT IN AND OPERATION OF SEXUALLY ORIENTED BUSINESSES.

ORDINANCE NO. 78

THE PEOPLE OF THE VILLAGE OF ROSCOMMON DO ORDAIN:

Section 1. That a new ordinance entitled "Conduct in Sexually Oriented Businesses: be added to the Village of Roscommon's ordinances to read as follows:

Section 1. Conduct in Sexually Oriented Businesses

(1) PURPOSE AND FINDINGS.

a. The Village hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects as detailed in Section 4-21 of the Village of Roscommon Zoning Ordinance.

b. The Village Council also relies upon findings concerning secondary effects contained in additional reports as well as in cases in accord with those cited in Section 4-21A of the Village of Roscommon Zoning Ordinance including those upholding regulations of nudity and the time, place and manner of operation of sexually oriented businesses: *Deja Vu of Cincinnati, L.L. C. v Union Township*, 411 F. 3d 777 (6th Cir. 2005); *Bronco's Entertainment, Ltd. v Charter Township of Van Buren*, 2005 U.S. App. LEXIS 18496 (6th Cir. 2005); *Charter Township of Van Buren v Garter Belt, Inc.*, 258 Mich. App. 594 (2003) (following *City of Erie v Pap's A.M* 529 U.S. 277 (2000), *Barnes v Glen Theatre, Inc.*, 501 U.S. 560 (1991) and *California v LaRue*, 409 U.S. 109 (1972); *Gammoh v City of La Habra*, 395 F. 3d 1114 (9th Cir. 2005); *SOB, Inc. v County of Benton*, 317 F. 3d 856 (8th Cir. 2003); *G.M Enterprises, Inc., v Town of St. Joseph*, 350 F. 3d 631 (7th Cir. 2003); *Heideman v South Salt Lake City*, 348 F. 3d 1182 (10th Cir. 2003); *In re Tennessee Public Indecency Statute*, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); *Currence v City of Cincinnati*, 2002 U.S. App. LEXIS 1258; *Jott, Inc., v Clinton Township*, 224 Mich. App. 513 (1997); *Michigan ex rel. Wayne County Prosecutor v Dizzy Duck*, 449 Mich. 353 (1995); *Key, Inc., v Kitsap County*, 793 F. 2d 1053 (9th Cir. 1986); *Hang On, Inc., v City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Tily B. Inc., v City of Newport Beach*, 69 Cal. App 4th (Cal. App. 1997); *Lady J Lingerie, Inc., v City of Jacksonville*, 973 F. Supp. 1428 (M.D. Fla. 1997); *City of Elko v Abed*, 2004 Minn. App. LEXIS 360 (Minn. App. 2004); *Center for Fair Public Policy v Maricopa County*, 336 F. 3d 1153 (9th Cir. 2003); *Richland Bookmart, Inc., v Nichols*, 137 F. 3d 435 (6th Cir. 1998); *Richland Bookmart, Inc., v Nichols*, 278 F. 3d 570 (6th Cir. 2002); *DiMa Corp. v Town of Hallie*, 185 F. 3d 823 (7th Cir. 1999); *Lady J Lingerie, Inc., v City of Jacksonville* 176 F.3d 1358 (11th Cir. 1998); *Nat'l Amusements Inc., v Town of Dedham* 43 F. 3d 731 (1st Cir. 1995); *Mitchell v Comm'n on Adult Enter. Est. of the State of Delaware*, 10 F. 3d 123 (3d Cir. 1993); *Star Satellite, Inc., v City of Biloxi*, 779 F. 2d 1074 (5th Cir. 1986); *Heideman v South Salt Lake City*, 2006 U.S. App. LEXIS 2745 (10th Cir. 2006); *Fantasyland*

Video, Inc., v San Diego County, 373 F. Supp. 2d 1094 (S.D. Cal. 2005); *State ex rel. Nasal v BJS No. 2 Inc.*, 127 Ohio Misc. 2d 101 (Ohio Ct. Con-ma. Pleas 2003); *Baby Dolls Topless Saloons, Inc., v City of Dallas*, 295 F. 3d 471-2002(5th Cir. 2002); *Z.J Gifts D-2, L.L.C. v City Of Aurora*, 136 F. 3d 683 (10th Cir. 1998); *World Wide Video of Washington, Inc., v City of Spokane*, 368 F. 3d 1186 (9th Cir. 2004); *Andy's Restaurant & Lounge, Inc, v City of Gary, Case No. 2:01-CV-327(N.D. Lid. 2005)*; Summaries of Key Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses; Rome, Georgia - 1996; San Diego, California - 2003; Greensboro, North Carolina - 2003; Dallas, Texas - 1997; and numerous media reports in finding that:

(i) Sexually oriented businesses, as a category of commercial uses, are often associated with a wide variety of averse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, lifter, and sexual assault and exploitation.

(ii) Illegal and unsanitary acts involving nudity, including lewd conduct, masturbation, oral and anal sex, occur at unregulated sexually oriented businesses, including those businesses which provide private or semi-private rooms, booths, or cubicles for viewing films, videos or live performances.

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

(2) DEFINITIONS

a. The terms in this chapter shall have the meanings ascribed to them in Section 4, 21-B of the Village of Roscommon Zoning Ordinance, unless otherwise indicated herein.

b. In addition, the following terms shall have the meanings ascribed to them as follows:

(i) "Employee" means a person who performs any service for any consideration on the premises of an sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not said person is paid a salary, wage or other compensation by the operator of said sexually oriented business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises or for the delivery of goods to the premises.

(ii) "Nudity", "nude", or "state of nudity" means the knowing or intentional live display of human genital organ or anus with less than a fully opaque covering or a female's breast with less than a fully opaque covering of the nipple and areola. Nudity, as used in this section, does not include a woman's breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.

(iii) "Operate or Cause to Operate" shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who exercises overall operational control of the business or a part of the business, who can open or close the business to the public, or who causes to function or who puts or keeps the business open or in operation. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner or part owner of the business.

(iv) "Semi-nudity", "semi-nude", or in a "semi-nude condition" means the showing of the female breast below a horizontal line across the tope of the areola and extending across the width of the breast at that point or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

(v) "Sexually Oriented Business" for purposes of this chapter shall mean any adult motion picture theater, adult bookstore, adult novelty store, adult video store, adult cabaret or semi-nude model studio as defined in Section 4, 21B of the Village of Roscommon Zoning Ordinance.

(vi) "Patron" means a customer of the sexually oriented business or a person from the general public, not an "employee" of the business, who is on the premise to obtain, receive, or view the products, services, or performances offered by the business.

(vii) "Regularly" means recurring, attending, or functioning at fixed or uniform intervals.

(3) UNLAWFUL ACTIVITIES

a. Nothing contained in this chapter is intended, or shall be construed, to permit or authorize activities which are unlawful under state law or city ordinance. It is unlawful and a violation of this chapter for an operator to knowingly or intentionally violate the provisions of this chapter or to allow, either knowingly or intentionally, an employee or a patron to violate the provisions of this chapter. It shall be a defense to a prosecution that the person prosecuted was powerless to prevent the violation.

b. No person shall knowingly or intentionally, in a sexually oriented business, appear before a patron or patrons in a state of nudity, regardless of whether such public nudity is expressive in nature.

c. No employee shall knowingly or intentionally, in a sexually oriented business, appear within view of any patron in a semi-nude condition unless the employee, while semi-nude, shall be and remain 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 a least six hundred (600) square feet.

d. A sexually oriented business which exhibits on the premises, through any mechanical or electronic image producing device, a film, video cassette, digital video disk, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements: The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room, but excluding restrooms, to which any patron is Permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the operator's stations. The view required in this paragraph must be direct line of sight from the operator's station. It is the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view are specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

e. Sexually oriented businesses that do not have stages or interior configurations which meet at least the minimum requirements of this section shall be given one hundred eighty (180) days from the effective date of this ordinance to comply with the stage and building requirements of this section. During said one hundred eighty (180) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six (6) feet from all patrons.

f. No employee who regularly appears within view of patrons in a semi-nude condition in a sexually oriented business shall knowingly or intentionally touch a patron or the clothing of a patron in a sexually oriented business.

g. No operator shall allow or permit a sexually oriented business to be or remain open between the hours of two o'clock (2:00) A.M. and seven o'clock (7:00) A.M. on any day.

(4) SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LIABILITY

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

(5) PENALTY: EQUITABLE REMEDIES

a. Any person, business, or entity violating or refusing to comply with any provisions of this chapter shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by imposition of a fine not to exceed five hundred dollars (\$500.00) or by imprisonment for a period of not to exceed ninety (90) days, or both. Each day that a violation is permitted to exist or occur, and each separate occurrence, shall constitute a separate offense. Further, any premises, building, dwelling, or other structure in which a sexually oriented business, as defined in Section 4-B of the Village Zoning Ordinance, is repeatedly operated or maintained in violation of the provisions of this chapter shall constitute a public nuisance and shall be subject to civil abatement proceedings initiate by the Village of Roscommon in a court of competent jurisdiction. Each day that a violation is permitted to exist or occur shall constitute a separate operation or maintenance of the violation.

b. Notwithstanding subsection (1) hereof, the Village may employ any remedy available at law or in equity to prevent or remedy a violation of any provision of this chapter.

(6) SEVERABILITY

This ordinance and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, 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 know to be invalid.

Carried by a roll call vote:

Yeas: 6

Nays: 0

I hereby certify that the foregoing is a true transcript of the action of the Village Council of the Village of Roscommon, Michigan, in public session held on the 23rd day of July, 2007

Kathryn V. Murphy, Village Clerk

Published: August 11, 2007

Effective: August 11, 2007