

## FRANKLIN TOWNSHIP

### ORDINANCE NO. 105-12

#### ADULT ENTERTAINMENT ORDINANCE

**AN ORDINANCE TO PROTECT AND SECURE THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE BY THE REGULATION OF CERTAIN FORMS OF ADULT ENTERTAINMENT WITHIN THE TOWNSHIP OF FRANKLIN, CLARE COUNTY, MICHIGAN; AND TO REPEAL ANY ORDINANCE OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.**

**THE FRANKLIN TOWNSHIP BOARD (Clare County, Michigan) ORDAINS:**

**Section 1: TITLE**

This Ordinance is to be known and cited as the "Franklin Township Adult Entertainment Ordinance."

**Section 2: PURPOSE AND FINDINGS**

- A. Purpose. The Township Board of Franklin Township recognizes and concludes that the activity occurring in adult entertainment facilities, as defined in this Ordinance, is an activity that, because of its nature, is known to have seriously objectionable operational characteristics, and thus is an activity that if not regulated has a deleterious effect on adjacent areas, detrimentally affect property values, and threaten the public health, safety, and welfare of the Township and its residents. This Ordinance is intended to establish reasonable and uniform regulations governing adult entertainment facilities in order to promote the health, safety, and general welfare of the citizens of the Township; to combat undesirable secondary effects of adult entertainment facilities on surrounding areas; to help ensure areas surrounding adult entertainment facilities do not experience deleterious, blighting, or downgrading; and to further the Township's interest in preserving the quality of life in the Township. This Ordinance is not intended to and does not impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.
- B. Findings and Rationale. There is myriad evidence of the adverse secondary effects of adult entertainment facilities presented in many legal court decisions, including *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 427 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Daytona Grand, Inc. v. City of Daytona Beach*, 2007 LEXIS 15361 (11th Cir. 2007); *Deja Vu of Nashville, Inc. v. Metropolitan Gov't of Nashville and Davidson County*, 2006 WL 2882969 (6th Cir. 2006); *Berlin Charter Twp v. Proud*, 2004 WL 357963, *Truckor v. Erie Twp*, 283 Mich. App. 154 (2009); *Sensations, Inc. v. City of Grand Rapids*, No. 1:06-cv-300, R. 73, Opinion (W.D. Mich. Oct. 23, 2006); *Deja Vu of Cincinnati, L.L.C. v. Union Township Bd. Of Trustees*, 411 F.3d 777 (6th Cir. 2005) (*en banc*); *Bronco's Entertainment, Ltd. v. Charter Twp. of Van Buren*, 421 F.3d 440 (6th Cir. 2005); *Charter Twp. of Van Buren v. Garter Belt, Inc.*, 258 Mich. App. 594 (2003); and *Jott, Inc. v. Clinton Twp.*, 224 Mich. App. 513 (1997). There is also myriad reports of many municipalities concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles,

California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota). Based on that legislative information cited above, the Township finds as follows:

1. The Township Board finds that the studies and reports of secondary effects of Adult Entertainment Facilities set out above are reasonably relevant to problem that the Township seeks to address in regulating Adult Entertainment Facilities.
2. Adult Entertainment Facilities, including sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
3. Activities within one Adult Entertainment Facility, including sexually oriented businesses, should be separated from activities occurring in another sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
4. At least 50 communicable diseases may be spread by activities occurring in Adult Entertainment Facilities, including sexually oriented businesses, such as syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, hepatitis C, salmonella infections, and shigella infections (e.g., Study of Fort Myers, Florida).
5. Crime statistics show that all types of crimes occur with more frequency in neighborhoods where sexually oriented businesses are located [e.g., Crime-Related Secondary Effects of Sexually-Oriented Businesses: Report to the City Attorney, Richard McCleary, Ph.D., May 6, 2007; Crime Risk in the vicinity of a Sexually Oriented Business: A report to the Centralia City Attorney's Office, Richard McCleary, Ph.D., February 28, 2004.]
6. The fact that an Adult Entertainment Facility applicant has been convicted of a sex-crime felony under Michigan law, 1974 PA 266, leads to the rational conclusion that that applicant may engage in that conduct in an Adult Entertainment Facility, where sexual activities often occur.
7. Each of the foregoing negative secondary effects constitutes a harm that the Township has a substantial government interest in preventing and abating. Adult entertainment facilities have operational characteristics that should be reasonably regulated to further the substantial governmental concerns cited above. A reasonable permit procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of the Adult Entertainment Facility. Further, these regulations will incentivize Adult Entertainment Facility owners and operators to see that their business is run consistent with the health, safety, and welfare of the Township and its residents. It is appropriate to require reasonable assurances that the Adult Entertainment Facility permit holder is the actual operator of the Adult Entertainment Facility, fully in possession and control of the premises and activities occurring within. These substantial government interests in preventing secondary effects, which is the Township's rationale for this Ordinance, exist independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the Township's interest in

regulating adult entertainment facilities extends to preventing future secondary effects of either current or future adult entertainment facility businesses that may locate in the Township. The Township finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

8. For the reasons set out above, and because adult entertainment facilities possess unique characteristics, and because minors are excluded from such facilities by virtue of age, these facilities are permitted only if the Township Board grants an Adult Entertainment Facility permit for the facility.

### **Section 3 REGULATIONS**

- A. **Persons Ineligible.** The Township Board may not grant an Adult Entertainment Facility permit to any person who:
  1. Is less than 18 years of age at the time of the Township's decision;
  2. Has been convicted of a sex-crime felony under Act 266 of the Public Acts of 1974, as amended (now MCL 750.20a through MCL 750.20l).
  3. Is not the proprietor of the facility for which the Permit is sought.
  4. Had a permit or license for an Adult Entertainment Facility or sexually oriented business revoked within 10 years before the date of the application under this Ordinance or a similar ordinance.
- B. **Application Fee and Contents.**
  1. **Fee.** A person desiring to obtain an Adult Entertainment Facility permit application must request in writing to the Township Board along with the non-refundable fee of five hundred dollars (\$500.00).
  2. **Contents.** The Adult Entertainment Facility permit application must be on a form the Township Board provides and must be signed by the applicant. The application materials must present the following:
    - a. the full name and present residential mailing address of the applicant.
    - b. the street and mailing address of the proposed Adult Entertainment Facility.
    - c. a general description of the services to be provided and the merchandise to be offered for sale at the proposed Facility.
    - d. whether the applicant has had a permit or license to operate an Adult Entertainment Facility or similar sexually oriented business revoked in the last 10 years, and, if so, the reasons for such revocation.
    - e. other information to show that the applicant meets all requirements of this Ordinance for an Adult Entertainment Facility permit, including the standards in subsection (B) below.
- C. **Procedure to Process an Adult Entertainment Facility Permit Application.** An applicant for an Adult Entertainment Facility Permit must submit to the Township Board or its designated representative the

application with all the information described in this Section and the required fee. An application is complete if it contains all information subsection (B) requires and is accompanied by the required fee. The Township Board or its designated representative must date a completed application upon receipt with the date that it is received. Applications that are not complete (i.e., those missing required information or are not filled out correctly or lack the required fee) must be returned to the applicant within 3 business days after the Township Board or its designated representative deems the application to be incomplete. All completed applications must be reviewed per the following procedure:

1. Within 5 business days after receipt of a completed application, the Township Board or its designated representative must forward a copy of the completed application to the Township Board members, and to the sheriff, fire chief, and building inspector serving the Township for review in accordance with this Section. The sheriff, fire chief, and building inspector must endeavor to review the application, conduct any necessary inquiries or inspections set out by this Section, and, within 14 calendar days of the Board's or its designated representative's mailing to the public officials the application, report the results of those inquiries and inspections to the Township Board or its designated representative, as follows:
  - a. The sheriff must review the application and determine if the applicant (or if the applicant is a corporation, any director or officer of the applicant) has been convicted of any sex-crime felony under 1974 PA 266 within the last 10 years.
  - b. The fire chief must review the application and determine if the proposed Facility complies with all applicable fire codes.
  - c. The building inspector must review the application and determine if the proposed Facility complies with all applicable electrical, mechanical, building, and plumbing codes.
2. If no report is received from an official identified above within 14 days of the Board's or designated representative's mailing of a copy of the application to those officials, the Township Board must assume that the requirements to be reviewed by that official are met.

D. Standards for Issuance of Permit. The Permit application must be approved if the Township Board determines that the applicant has shown by a preponderance of the evidence that applicant (1) has submitted a complete application as defined in subsection (C); and (2) meets all standards in this subsection (D).

1. No more than one (1) adult entertainment facility shall be permitted in a single structure and on a single parcel of land.
2. No adult entertainment facility shall be located or established within one thousand five hundred (1,500) feet of a public or private school, child care facility, place of worship, public building or park. The required separation distance shall be measured from property line to property line, using the closest points along the property lines involved.
3. No adult entertainment facility shall be located or established within five hundred (500) feet of another adult entertainment facility. The required separation distance shall be measured from property line to property line, using the closest points along the property lines involved.
4. All ingress and egress to the facility must be directly from a hard surfaced road.

5. Applicant has not violated any part of the Township's Ordinances or applicable fire, mechanical, electrical, and building codes within the last 10 years.
6. Applicant has no prior criminal convictions of a sex-crime felony under 1974 PA 266.
7. Applicant has not presented any material false information in its application.
8. Applicant is at least 18 years old as of the date of the Township Board 's decision.
9. Applicant has not had an Adult Entertainment Facility Permit or similar license or permit for a sexually oriented business revoked within the 12 months before the date of the application.
10. Operational hours are proposed to be between 11:00 a.m. and 2:00 a.m. only.
11. The premises is equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access, at an illumination of at least 1 foot candle measured at floor level.
12. Activities within adult entertainment facilities will be shielded from the public so that no person outside the facility may see the activities occurring inside the facility (but the shielding must not obstruct an exit sign or block an exit).
13. All changing of attire by employees or performers must consist of separate rooms for male employees and performers, and female employees and performers, and must occur within a completely enclosed room to which patrons are barred from accessing.

E. Decision-Deadlines; Notice of Decision.

1. The Township Board must make a decision on the Permit request within 60 days after the Township's receipt of a completed application. Before making its decision, the Township Board must consider the application at a public meeting and, at that meeting, hear from the applicant and all interested persons, and give notice of the public meeting to all persons who own property within 300 feet of the proposed facility. The Board may request and receive additional reports and information from Township consultants, attorneys, or employees regarding the application. Within 60 days of the receipt of the completed application, the Township Board must approve, approve with conditions, or deny the Permit request per the standards in subsections (A), (C)(1)(a)-(d), and (D) .
2. The Board's decision must be in writing and identify the reasons for its decision, with findings of fact. Within 3 days after the Board's decision, the Township Board or its designated representative must serve on the applicant the decision by either personal service or by mailing the decision to the applicant's last known address by first class mail. If the decision is a denial, the written notice must inform the applicant of the applicant's right to judicial review of the decision. The application is deemed denied on the day that the notice of denial is delivered to the applicant personally (if served personally) or on the third day after it is placed in the United States mail (if served by mail). If such a person aggrieved by the decision of the Board seeks judicial review, then a temporary Adult Entertainment Facility Permit must be issued pending the outcome of the appeal.

- F. Appeals to Court. Any person aggrieved by the Township Board's decision may appeal that decision to a court of competent jurisdiction per the Michigan Constitution and applicable state and federal law.
- G. Permit Deemed Granted. If the Township Board does not issue a decision granting or denying an Adult Entertainment Facility Permit request within 60 days after the Clerk receives a completed application, then the Adult Entertainment Facility Permit request is deemed to have been granted.
- H. General Requirements in Operating an Adult Entertainment Facility.

All Adult Entertainment Facility permit holders must comply with each of the following requirements:

1. All Township Ordinances must be complied with.
2. The permit holder may not allow a person under 18 years old to enter the Facility at any time the Facility is open for business.
3. The permit holder may not employ a person under 18 years old to work at the Facility.
4. The exterior of the Facility may not have any photographs, silhouettes, drawings, or pictorial representations that depict "specified anatomical areas" or "specified sexual activities."
5. The merchandise or activities within the premises may not be visible or audible from outside the business premises.
6. No person may engage in any "specified sexual activities" on the premises of an Adult Entertainment Facility.

#### **Section 4: DEFINITIONS**

***Adult Entertainment Facility.*** Adult entertainment facility means any of the following:

- A. ***Adult Book Store.*** An establishment or use which has a significant portion of its stock in trade books, magazines, periodicals, newspapers, slides, pictures, cassettes, videotapes, videodiscs, motion picture films, or other printed, recorded, or electronic material that are distinguished or characterized by an emphasis on matters depicting, describing, or relating to "Specified Sexual Activities" or "Specified Anatomical Areas"; or an establishment with a segment or section devoted to the sale or display of such material that exceeds 35% of the total usable retail space. "Usable Retail Space" is defined as that area used for or intended to be used for the sale of merchandise or services, or for use to serve patrons, clients, or customers. The portion of the floor area which is used or intended to be used principally for the storage or processing of merchandise, hallways, or for utilities or sanitary facilities shall be excluded from the computation of "Usable Retail Space."
- B. ***Adult Cabaret.*** A nightclub, theater, or other establishment that has as an activity live performances by one or more topless and/or bottomless dancers, "go go" dancers, exotic dancers, strippers, or similar entertainers, wait staff, or other persons, where those performances are distinguished or characterized by an emphasis on showing, depicting, or describing "Specified Sexual Activities" or "Specified Anatomical Areas."
- C. ***Adult Mini Motion Picture Theater.*** An establishment, in a completely enclosed building or room with a capacity for less than fifty (50) persons, that regularly offers for a fee the viewing of motion picture films, video cassettes or tapes, cable television, or other visual display that are distinguished or

characterized by an emphasis on showing, depicting, or describing "Specified Sexual Activities" or "Specified Anatomical Areas," for observation by patrons to that establishment.

- D. **Adult Model Studio.** Any place where its principal activity provides, for any form of consideration or gratuity, figure models display "Specified Anatomical Areas" to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons paying such considerations or gratuities, except that this provision shall not apply to any bona fide art school or similar educational institution.
- E. **Adult Novelty Business.** Any establishment which has as a significant part of its stock or trade devices, items, or objects for sale that are distinguished or characterized by an emphasis on stimulating human genitals for sexual stimulation.
- F. **Adult Personal Service Establishment.** Any business, agency, or service whose principal activity is to arrange, solicit, or provide for the benefit of its customers or clients any of the following: escorts, dates, models, unlicensed therapists, companions, or entertainers, either on or off the premises, for the purpose of engaging in "Specified Sexual Activities" or "Specified Acts of Violence," or displaying "Specified Anatomical Areas" as defined herein. These establishments include, but are not limited to: escort service businesses, exotic rub businesses, Adult Model Studios, and tattoo parlors.
- G. **Adult Sexual Encounter Center.** Any business, agency, or person who, for any form of consideration or gratuity, that regularly provides a place where three or more persons, not all members of the same family, may congregate, assemble, or associate for a purpose distinguished or characterized by an emphasis on engaging in "Specified Sexual Activities" or exposing "Specified Anatomical Areas."
- H. **Specified Anatomical Areas.** Less than completely and opaquely covered: a) human genitals, pubic region, b) buttock, and c) female breast below a point immediately above the top of the areola; and human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- I. **Specified Sexual Activities.** Human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse, or sodomy; or fondling or other erotic touching of human genitals, pubic region, buttock, or female breast.

The following uses are not included within the definition of an Adult Entertainment Facility:

1. A facility in which services are routinely provided by a licensed physician, a licensed chiropractor, a licensed osteopath, a licensed or certified physical or massage therapist, a licensed practical nurse, or any other similarly licensed medical professional.
2. A facility that provides electrolysis treatment by a licensed operator of electrolysis equipment;
3. A facility providing continuing instruction in martial or performing arts or in organized athletic activities;
4. A hospitals, nursing home, medical clinic, or medical office; and,
5. A barber shop or beauty parlor, health spa or salon, which offers massage to the scalp, face, the neck, or shoulders only.

**Section 5: SEVERABILITY**

Should any part of this Ordinance be declared by any court to be invalid, that declaration does not affect the validity of the remaining parts of this Ordinance.

**Section 6: PENALTY**

The Township may enforce any violation of this Ordinance by:

1. Criminal Penalties. A violation of the provisions of this Ordinance is declared a misdemeanor; any person who violates this Ordinance may, upon conviction thereof, be fined not more than five hundred dollars (\$500) or imprisoned for not more than ninety (90) days, or both. Each occurrence must be considered a separate offense.
  
2. Injunction and Abatement. In addition to any other remedies that may be available under this Ordinance, the Township may commence proceedings in a court of proper jurisdiction to enjoin or abate a violation of this Ordinance. Such proceedings must be governed by the applicable statutes and court rules of the State of Michigan, and the Township if it prevails may recover from the violator its reasonable attorney's fees incurred in the suit.

**Section 7: REPEAL**

All Ordinances or parts of Ordinances in conflict herewith, including the Township's Public Entertainment Ordinance adopted in 1987 and which took effect on August 20, 1987, are hereby repealed.

**Section 8: EFFECTIVE DATE**

This Ordinance takes effect 30 days after it or a proper summary of it is published as required by law.

**ADOPTED:**

Motion: Trustee McLavy / Seconded: Trustee Dalton

YEAS: 5

NAYS: 0

STATE OF MICHIGAN                    )  
   )ss  
 COUNTY OF CLARE                    )

**CLERK'S CERTIFICATION**

I, Diane Blackburn, the duly elected, qualified and acting Clerk of the Township of Franklin, Clare County, certify that the above Adult Entertainment Ordinance was adopted at a regular meeting of the Franklin Township Board held at the Franklin Township Office, 9809 N. M-18 Gladwin, Michigan, on the **20th** day of **September, 2012**, by a majority of the members of the board presenting and voting.

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Diane Blackburn, Clerk