

CHAPTER 16

SEXUALLY ORIENTED BUSINESS – REGULATIONS AND REQUIREMENTS FOR OPERATION WITHIN A COMMERCIAL ZONE

Section 16.01 - PURPOSE

The purpose of this chapter is to regulate sexually oriented businesses and related activities to promote health, safety, morals, and general welfare of the citizens of Elk Rapids Township, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Township. The provisions of this chapter 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 not the intent or effect of this chapter 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 chapter to condone or legitimize the distribution of obscene material.

Section 16.02 - FINDINGS AND RATIONALE

Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Elk Rapids Township Planning Commission and the Township Board, and on findings, interpretations, and narrowing constructions incorporated in the cases of *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; and *Déjà vu of Nashville, Inc. v. Metropolitan Gov't of Nashville and Davidson County*, 2006 WL 2882969 (6th Cir. 2006); *Sensations, Inc. V. City of Grand Rapids*, No. 1:06-cv-300, R.73, Opinion (W.D. Mich. Oct. 23, 2006); *729 Inc. v. Kenton County*, 2006 WL 2842884 (E.D. Ky. 2006); *Déjà vu of Cincinnati, L.L.C. v. Union Bd. of Trustees*, 411 F.3d 546 (5th Cir. 2006); *City of Chicago v. Pooh Bah Enterprises, Inc.*, 2006 WL 2827608 (Ill. 2006); *Sensations, Inc. v. City of Grand Rapids*, 2006 WL 2504388 (W.D. Mich. 2006); *Andy's Restaurant & Lounge, Inc. v. City of Gary*, 2006 WL 2873027 (7th Cir. 2006); *181 South, Inc. v. Fischere*, 454 F.3d 228 (3rd Cir. 2006); *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); *Jott Inc. v. Clinton Twp.*, 224 Mich. App. 513 (1997); *Michigan ex rel. Wayne County Prosecutor v. Dizzy Duck*, 449 Mich. 353 (1995); *Z.J. Gifts D2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Kentucky Restaurant Concepts, Inc. v. City of Louisville*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *Restaurant Ventures v. Lexington-Fayette Urban County Gov't*. 60 S.W. 3d 572 (Ky. Ct. App. 2001; *Déjà vu of Nashville, Inc. et al. v. Metropolitan Government of Nashville and Davidson County*, 274 F. 3d 377 (6th Cir. 2001); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Township of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Ctr. For Fair Public Policy v. Maricopa County*, 336 F. 3d 1153 (9th Cir. 2003); *Bigg Wolf Discount Video Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Kentucky Restaurant Concepts, Inc. v. Metro Gov't*. Case No. 04-CI-01967

(Jefferson Circuit Court, Summary Judgment Order, Dec. 14, 2004); *DLS Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Brandywyne, Inc. v. City of Richmond*, 359 F.3d 830 (6th Cir. 2004); *Currence v. City of Cincinnati*, 28 Fed. Appx. 438 (6th Cir. Jan 24, 2002); *Broadway Books v. Roberts*, 642F. Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *Richland Bookmart v. Nichols*, 137 F. 3d 435 (6th Cir. 1998); *Bamon Corp. v. City of Dayton*, 923 F. 2d 470 (6th Cir. 1991); *Triplett Grille, Inc. v. City of Akron*, 40 F. 3d 129 (6th Cir. 1994); *O'Connor v. City and County of Denver*, 894 F. 2d 1210 (10th Cir. 1990); *Threesome Entertainment v. Strittmather*, 4F. Supp. 2d 710 (N.D. Ohio 1998); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *In re Tennessee Public Indecency Statute*, 172 F.3d 873 (6th Cir. Jan. 13 1999);

And, based upon reports 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; Ellicottville, New York, 1998; Phoenix, Arizona - 1979, 1995-98; Los Angeles, California - 1977; Whittier, California - 1978; New Hanover Co, North Carolina - 1989; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; 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),

The Township Board Finds:

- A. 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.
- B. Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other 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.
- C. Each of the foregoing negative secondary effects constitutes a harm which the Township has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the Township's rationale for this Chapter, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the Township'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 Township. The Township finds that the cases and documentation relied on in this Chapter are reasonably believed to be relevant to said secondary effects.

Section 16.03 - DEFINITIONS

- A. Adult Arcade: Any place to which the public is permitted or invited wherein coin operated or slug operated or electronically, electrically, or motion picture machines, projectors, or other image producing devices are maintained to show images for any form of consideration to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of Specified

Sexual Activities and Specified Anatomical Areas (as those terms are defined elsewhere herein).

- B. Adult Bookstore or Adult Video Store: A commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of Specified Sexual Activities and Specified Anatomical Areas; or
 2. Instruments, devices, or paraphernalia which are designed for use in connection with Specified Sexual Activities.
 3. A "principal business purpose" exists where:
 - a. at least 25% of the establishment's displayed merchandise consists of said items, or
 - b. at least 25% of the wholesale value of the establishment's displayed merchandise is in said items, or
 - c. at least 25% of the fair market value of the establishment's displayed merchandise is in said items, or
 - d. at least 25% of the establishment's gross revenues derive from the sale or rental, for any form of consideration, of said items, or
 - e. at least 25% of the establishment's interior business space or, if less than 25%, at least five hundred square feet (500 sq. ft.) of the establishment's interior business space, is maintained for the display, sale, and/or rental of the foregoing items (aisles and walkways used to access said items shall be included in "interior business space" maintained for the display, sale, and/or rental of said items); or
 - f. the establishment offers for sale or rental at least two thousand five hundred (2,500) of the foregoing items; or
 - g. the establishment regularly features said items and regularly advertises itself or holds itself out as an establishment that caters to adult sexual interests by using "adult," "XXX," "sex," "erotic," or substantially similar language.
- C. Adult Cabaret: A nightclub, bar, restaurant, or similar commercial establishment which regularly features:
1. Persons who appear in a state of semi-nudity or nudity; or
 2. Live performances which are characterized by exposure of Specified Sexual Activities and Specified Anatomical Areas; or
 3. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities and Specified Anatomical Areas.
- D. Adult Motel: A hotel, motel or similar commercial establishment which:

1. Offers accommodation to the public for any form of consideration and provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or
 2. Offers a sleeping room for rent or sub-rent for a period of time that is less than twelve (12) hours.
- E. Adult Motion Picture Theater: Commercial establishments where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of Specified Anatomical Areas or Specified Sexual Activities are regularly shown.
- F. Adult Theater: A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of Specified Anatomical Areas and by Specified Sexual Activities.
- G. Characterized by: Means describing the essential character or quality of an item. As applied in this Section, no business shall be classified as a Sexually Oriented Business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.
- H. Escort Agency: A business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.
- I. Escort: A person who, for consideration, agrees or offers to act as a companion or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- J. Establishment: Means and includes any of the following:
1. The opening or commencement of any Sexually Oriented Business;
 2. The conversion of an existing business, whether or not a Sexually Oriented Business, to any Sexually Oriented Business;
 3. The addition of any Sexually Oriented Business to any other existing Sexually Oriented Business; or
 4. The relocation of any Sexually Oriented Business.
- K. Family Child Care Center or Group Child Care Center: A licensed facility, other than a private home, receiving more than six pre-school or school age children for group care for periods of less than 24 hours a day, and where the parents or guardians are not immediately available to the child. It includes a facility which provides care for not less than two consecutive weeks, regardless of the number of hours of care per day. The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative pre-school, play group or drop-in center.

- L. Nude Model Studio: Any place where a person who displays Specific Anatomical Areas is provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration.
- M. Nudity or State of Nudity: The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernible turgid state even if completely and opaquely covered.
- N. Person: An individual, proprietorship, partnership, corporation, association or other legal entity.
- O. Public Park: A recreational area which has been designated for park or recreational activities, including but not limited, to a park, playground, nature trail, athletic field, basketball or tennis court pedestrian/bicycle path, wilderness area, or other similar public land within the Elk Rapids Township or the Village of Elk Rapids.
- P. Semi-Nude: 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.
- Q. Sexual Encounter Center: A business or commercial enterprise that, as one of its principal business purposes, offers for any consideration for Specified Sexual Activities.
- R. Sexually Oriented Businesses: Includes but is not limited to: adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.
- S. Specified Anatomical Area: The male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.
- T. Specified Sexual Activities: Includes any of the following:
 1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
 2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, bestiality or sodomy;
 3. Masturbation, actual or simulated; or
 4. Excretory functions as part of or in connection with any of the activities set forth in 1 through 3 above.

Section 16.04 - PERMIT REQUIRED

- A. A Sexually Oriented Business is only permitted in the Commercial Zone as a Special Exception Use. It shall be unlawful for a person to operate a Sexually Oriented Business in a Commercial Zone without a Special Exception Use permit approved by the Elk Rapids Township Planning Commission and a valid Sexually Oriented Business License issued by the Township Clerk in accordance with the requirements of Ordinance No. 1-2010, Elk

Rapids Township. The fact that a person possesses other types of state or county permits and/or licenses does not exempt the person from the requirement of obtaining a Special Exception Use permit and Sexually Oriented Business License from Elk Rapids Township.

- B. An application for a Special Exception Use permit shall be made on a form provided by Elk Rapids Township and, in addition to the requirements established in this chapter, shall meet the requirements of Section 19.07 of the Zoning Ordinance.
- C. All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information as to enable Elk Rapids Township to determine whether the applicant meets the qualifications established in this chapter.
- D. All applications shall include a statement that:
 - 1. The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and
 - 2. The applicant has read the provisions of this chapter.

Section 16.05 - PLANNING COMMISSION REVIEW AND HEARING

The Elk Rapids Planning Commission shall review the application and conduct a public hearing in accordance with the requirements of this chapter and Section 19.07 – Special Exceptions.

Section 16.06 - ISSUANCE OR NON-ISSUANCE OF SPECIAL EXCEPTION USE PERMIT

- A. A Special Exception Use Permit under this chapter shall not be approved by the Elk Rapids Township Planning Commission if the applicant has failed to provide information reasonably necessary for the issuance of the permit or has falsely answered a question or request for information on the application form or required in this chapter.
- B. The decision of the Elk Rapids Township Planning Commission regarding approval, denial, or approval with conditions of the permit application shall be served upon the applicant in writing within fourteen (14) days of the date of the decision.
- C. Decisions of the Elk Rapids Township Planning Commission to approve, deny or approve with conditions a Special Exception Use permit may be appealed to the Circuit Court, pursuant to law.

Section 16.07 - LOCATION OF SEXUALLY ORIENTED BUSINESSES

- A. A Sexually Oriented Business may not be operated within 750 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 nursery schools, preschools, special education schools, public or private elementary, intermediate, junior high, middle or high schools;
 3. a Family Child Care Center or Group Child Care Center;
 4. another Sexually Oriented Business;
 5. a public park; and/or
 6. an entertainment or food business which is oriented primarily towards children or family entertainment; or a premises, licensed pursuant to the alcoholic beverage control regulations of the State of Michigan.
- B. A Sexually Oriented Business may not be operated within 500 feet of a boundary of any residentially zoned district or any residential structure.
- C. A Sexually Oriented Business may not be operated in the same building, structure, or portion thereof, containing another Sexually Oriented Business.
- D. For the purpose of this chapter, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a Sexually Oriented Business is conducted to the nearest property line of the premises of those entities identified in Section 16.07 A thru C above.

Section 16.08 - ADDITIONAL REGULATIONS FOR ADULT MOTELS

- A. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than twelve (12) hours duration creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.
- B. A person commits a Civil Infraction if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a Sexually Oriented Business license, rents or sub-rents a sleeping room to two or more persons and, within twelve (12) hours from the time the room is rented, rents or sub-rents the same sleeping room again.
- C. For the purposes of subsection (B) of this section, the terms "rent" or "sub-rent" means the act of permitting a room to be occupied for any form of consideration.

Section 16.09 - ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS

- A. A nude model studio shall not employ any person under the age of 18 years.
- B. A person under the age of 18 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or visible to any other person.

- C. A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.
- D. A violation of this section shall be grounds for criminal prosecution of both the underage person, and of any licensee, owner, operator, and employees who permitted the violation of the section by the underage person.
- E. It is a defense to prosecution under this chapter that a person appearing in a state of nudity did so in a modeling class operated:
 - 1. by a proprietary school, licensed by the State of Michigan, a college, junior college, or university supported entirely or partly by taxation;
 - 2. by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;
 - 3. by or in an art related business:
 - a. which has no sign visible from the exterior of the structure or other advertising that indicates a nude or semi-nude person is available for viewing; and
 - b. where, in order to participate in a class a student must enroll at least three days in advance of the class; and
 - c. where no more than one nude or semi-nude model is on the premises at any one time.

Section 16.10 - ADDITIONAL REQUIREMENTS FOR A SEXUALLY ORIENTED BUSINESS WITH LIVE ENTERTAINMENT

Any sexually oriented business offering live entertainment shall further comply with all of the following:

- A. A dressing area for performers must be provided with direct access to the performance area or stage, with direct access back from the performance area or stage to the dressing area, such that the performer may enter and leave the performance area or stage without entering the area from which patrons view the performance.
- B. Access to the performance area, stage, and dressing room must be handicap accessible to the extent required by law.
- C. The performance area or stage must be elevated at least 18 inches above the area from which patrons will view the performance.
- D. The dressing area for performers must be separate and not freely accessible from areas of the business accessible to patrons.
- E. The performers' dressing area must have hot and cold running water and adequate toilet facilities.
- F. An employee, owner, independent contractor, or performer of any type whose activities are characterized by the display of Specified Anatomical Areas or Specified Sexual Activities shall not engage in any physical contact with, or be within six feet of, patrons during

performances; neither shall any such person receive tips or gratuities from patrons for performances.

- G. It shall be a violation of this Chapter for any employee who regularly appears semi-nude in a sexually oriented business to sit with or visit at the table of or counter seating a customer on the premises of a sexually oriented business within one (1) hour of that employee appearing semi-nude.
- H. A sign in a form to be prescribed by the Township Zoning Administrator, and summarizing the provisions of subsections F and G, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

Section 16.11 - REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS

- A. A person who operates or causes to be operated a Sexually Oriented Business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film video cassette, live entertainment, or other video reproduction which is characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:
 - 1. Upon application for a Sexually Oriented Business Special Exception Use Permit, 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. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint 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;
 - 2. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Elk Rapids Township Zoning Administrator;
 - 3. It is the duty of the permittee(s) and operator(s) of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises;
 - 4. 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 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.

5. It shall be the duty of the permittee(s) and operator(s), and also that of the agent(s) or employee(s) present in the premises to ensure that the view area specified in Subsection (4) of this Section, remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and 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.
 6. 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 one (1) foot candle as measured at the floor level.
 7. It shall be the duty of the permittee(s) and operator(s), and also that of the agent(s) or employee(s) present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
 8. No permittee(s) or operator(s) shall allow openings of any kind to exist between viewing rooms or booths.
- B. A person having a duty under Subsection 1 through 8 above commits a Civil Infraction if he/she knowingly fails to fulfill that duty.

Section 16.12 - SEXUALLY EXPLICIT PERFORMANCE PROHIBITED

- A. No person shall dance, entertain, display or otherwise engage in any exhibition or performance in such a manner as to expose to the view of any person within a Sexually Oriented Business, or in any other commercial establishment, any Specified Anatomical Areas, or any device, costume or covering which gives the appearance of or simulates any Specified Anatomical Areas.
- B. No person shall engage in any Specified Sexual Activities on the premises of a Sexually Oriented Business.
- C. It shall be unlawful for any person to knowingly promote the commission of any of the unlawful acts listed in subsections A or B of this section.

Section 16.13 - EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES

- A. It shall be unlawful for permittee(s), operator(s) or employee(s) of a Sexually Oriented Business to display or allow merchandise or activities within the establishment to be visible from any point outside of the establishment.
- B. It shall be unlawful for permittee(s), operator(s) or employee(s) of a Sexually Oriented Business to display or allow the exterior portion of the establishment to have any words, lettering, photographs, silhouettes, drawings, graphics or other pictorial representations of a sexual or explicit manner except to the extent otherwise permitted by the provisions of this chapter.
- C. Signage shall be in accordance with the requirements of Chapter 3 of the Elk Rapids Township Zoning Ordinance, except that only the name of the establishment shall be

permitted on the sign. Photographs, silhouettes, drawings, graphics or other pictorial representations of a sexual or explicit nature are prohibited.

- D. It shall be the duty of the operator of a Sexually Oriented Business to:
1. Post conspicuous signs approved by the Township Zoning Administrator stating that no loitering is permitted on such property.
 2. Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors.
 3. Provide dark sky type lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
- E. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.
- F. No Sexually Oriented Business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

Section 16.14 - PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS

- A. It shall be unlawful for permittee(s), operator(s) or employee(s) of a Sexually Oriented Business to knowingly allow a person under the age of eighteen (18) years to enter or be on the premises of the establishment.
- B. It shall be the duty of the permittee(s) and/or operator(s) of a Sexually Oriented Business to ensure that an attendant is stationed at each public entrance to the establishment at all times during regular business hours. It shall be the duty of the attendant to not allow any person under the age of eighteen (18) years to enter the establishment. It shall be presumed that an attendant knew a person was under the age of eighteen (18) years unless such attendant asked for and was furnished;
1. A valid operator's, commercial operator's or chauffeur's driver's license; or
 2. A valid government issued photo identification certificate reflecting that such person is eighteen (18) years of age or older.

Section 16.15 - HOURS OF OPERATION

No Sexually Oriented Business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and noon (12:00) P.M. on Sundays.

Section 16.16 - NOTICES

- A. Any notice required or permitted to be given by Elk Rapids Township or any other agency under this chapter, to any owner, applicant, operator, permittee or any other entity having any interest in the Sexually Oriented Business establishment, shall be by personal delivery or by certified United States Mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit or in a transfer application that has been noticed to Elk Rapids Township. Notices mailed as stated above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, Elk Rapids Township shall cause it to be posted at the principal entrance to the establishment.
- B. Any notice required or permitted to be given to Elk Rapids Township by any person under this Ordinance shall not be deemed given until and unless it is received in the principal office of Elk Rapids Township.
- C. It shall be the duty of each owner, applicant, operator, permittee or any other entity having any interest in the Sexually Oriented Business establishment to furnish notice to the Elk Rapids Township Zoning Administrator, in writing, any change of residence or mailing address.

Section 16.17 - ADMINISTRATIVE LIABILITY

No officer, agent or employee of Elk Rapids Township shall render himself or herself personally liable for any damages that may accrue to any person as a result of any act required or permitted in the discharge of his or her duties under or in the enforcement of this Ordinance.

Section 16.18 - SEVERABILITY AND CAPTIONS

This Ordinance and its various parts, sections, subsections, sentences, phrases and clauses are declared to be severable. If any part, section, subsection, sentence, phrase or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected. The captions included at the beginning of each Section are for convenience only and shall not be considered a part of this Ordinance.