

CITY OF NEW BUFFALO
SEXUALLY ORIENTED BUSINESSES
ORDINANCE NO. 186

AN ORDINANCE OF THE CITY OF NEW BUFFALO REGULATING SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR THE PURPOSE AND FINDINGS; PROVIDING FOR DEFINITIONS "ADULT ARCADE," "ADULT BOOKSTORE," "ADULT NOVELTY STORE OR ADULT VIDEO STORE," "ADULT CABARET," "ADULT MOTEL," "ADULT MOTION PICTURE THEATER OR ADULT LIVE STAGE PERFORMING THEATER," "EMPLOYEE," "ESCORT," "ESCORT AGENCY," "ESTABLISHMENT," "LICENSEE," "NUDE MODEL STUDIO," "NUDITY/STATE OF NUDITY," "PERSON," "SEMI-NUDE/SEMI-NUDE CONDITION," "SEXUAL ENCOUNTER CENTER," "SEXUALLY ORIENTED BUSINESS," "SPECIFIED ANATOMICAL AREAS," "SPECIFIED CRIMINAL ACTIVITY," "SPECIFIED SEXUAL ACTIVITIES," "SUBSTANTIAL ENLARGEMENT," "TRANSFER OF OWNERSHIP OR CONTROL"; PROVIDING FOR CLASSIFICATION OF SEXUALLY ORIENTED BUSINESS; PROVIDING FOR A LICENSE REQUIREMENT; PROVIDING FOR THE ISSUANCE OF LICENSES; PROVIDING FOR FEES; PROVIDING FOR INSPECTION REQUIREMENT; PROVIDING FOR THE EXPIRATION OF LICENSES; PROVIDING THE SUSPENSION OF LICENSES; PROVIDING FOR THE REVOCATION OF LICENSES; PROVIDING FOR THE TRANSFER OF LICENSES; PROVIDING FOR THE LOCATION OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR ADDITIONAL REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS, OR LIVE ENTERTAINMENT IN VIEWING ROOMS; PROVIDING FOR ADDITIONAL REGULATIONS FOR ESCORT AGENCIES; PROVIDING FOR ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS; PROVIDING FOR ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY; PROVIDING FOR THE PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS; PROVIDING FOR THE PROHIBITION AGAINST ALCOHOL IN A SEXUALLY ORIENTED BUSINESS; PROVIDING FOR THE HOURS OF OPERATION; PROVIDING FOR EXEMPTIONS; PROVIDING FOR THE PENALTY FOR VIOLATION; PROVIDING FOR THE REPEAL OF CONFLICTING ORDINANCES AND THE SAVINGS OF ALL PENDING MATTERS; PROVIDING FOR THE EFFECTIVE DATE HEREOF.

THE CITY OF NEW BUFFALO ORDAINS:

SEXUALLY ORIENTED BUSINESSES

Section 1 PURPOSE AND FINDINGS

A. Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable

access to 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 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. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City, 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); and

Sensations, Inc. v. City of Grand Rapids, 526 F.3d 291 (6th Cir. 2008); *Deja Vu of Nashville, Inc. v. Metropolitan Gov't of Nashville and Davidson County*, 466 F.3d 391 (6th Cir. 2006); *Deja Vu of Cincinnati, L.L.C. v. Union Township Bd. Of Trustees*, 411 F.3d 777 (6th Cir. 2005) (en banc); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *City of Chicago V. Pooh Bah Enterprises, Inc.*, 865 N.E.2d 133 (Ill. 2006); *Andy's Restaurant & Lounge, Inc. v. City of Gary*, 466 F.3d 550 (7th Cir. 2006); *181 South, Inc. V. Fischer*, 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 exrel. Wayne County Prosecutor v. Dizzy Duck*, 449 Mich. 353 (1995); *Z.J. Gifts D-2, 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); *Little Mack Entm't II, Inc. v. Twp. of Marengo*, 2008 WL 2783252 (W.D. Mich. July 17, 2008); *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); *Deja Vu of Nashville, Inc., et al v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001); *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); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Brandywine, 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*, 642 F. Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F. Supp. 378 (E.D. Ky. 1993); *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, 4 F. Supp. 2d 710 (N.D. Ohio 1998); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1999); In re Tennessee Public Indecency Statute, 172 F.3d 873 (6th Cir. Jan. 13 1999)(table); World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Ben's Bar, Inc. v. Village of Somerset, 316 F.3d 702 (7th Cir. 2003); Daytona Grand, Inc. v. City of Daytona Beach, 490 F.3d 860 (11th Cir. 2007); Williams v. Morgan, 478 F.3d 1316 (11th Cir. 2007); H&A Land Corp. v. City of Kennedale, 480 F.3d 336 (5th Cir. 2007); Illinois One News, Inc. v. City of Marshall, 477 F.3d 461 (7th Cir. 2007); G.M. Enterprises, Inc. v. Town of St. Joseph, 350 F.3d 631 (7th Cir. 2003); RichlandBookmart, Inc. v. Nichols, 137 F.3d 435 (6th Cir. 1998); Spokane Arcade, Inc. v. City of Spokane, 75 F.3d 663 (9th Cir. 1996); Gammoh v. City of La Habra, 395 F.3d 1114 (9th Cir. 2005); People ex rel. Deters V. The Lion's Den, Inc., Case No. 04-CH-26, Modified Permanent Injunction Order (III. Fourth Judicial Circuit, Effingham County, July 13, 2005); Reliable Consultants, Inc. v. City of Kennedale, No. 4:05-CV-1 66-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

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; 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; Ft. Worth, Texas - 2004; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; McCleary Report - 2006; New York, New York Times Square - 1994; Jackson County, Missouri - 2008; Warren, Michigan - 2005; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota),

the City finds as follows:

1. 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.

2. 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.

3. Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented businesses and non-sexually oriented businesses. Additionally, the City'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 City. The City finds that the cases and documentation set forth above and relied on by the City are reasonably believed to be relevant to said secondary effects.

The City 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.

Section 2 DEFINITIONS

A. "ADULT ARCADE" means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images 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" or "specified anatomical areas".

B. "ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE" means a commercial establishment having thirty percent (30%) or more of all usable interior, retail, wholesale, or warehouse space devoted to the distribution, display, or storage of books, magazines, and other periodicals and/or photographs, drawings, slides, films, video tapes, recording tapes, and/or novelty items which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "specified Sexual Activities" or "specified Anatomical Areas" (as defined herein).

C. "ADULT CABARET" an establishment which regularly features persons who appear semi-nude.

D. "ADULT MOTEL" means a hotel, motel or similar commercial establishment which:

1. offers accommodations to the public for any form of consideration; 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 for a period of time that is less than ten (10) hours;
or

3. allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

E. "ADULT MOTION PICTURE THEATER OR ADULT LIVE STAGE PERFORMING THEATER" means an enclosed building used for presenting material distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified" Sexual Activities" or "specified" Anatomical Areas" (as defined herein) for observation by patrons therein. Such establishment is customarily not open to the public generally, but only to one or more classes of the public, excluding any minor by reason of age.

F. "EMPLOYEE" means a person who performs any service on the premises of a 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 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.

G. "ESCORT" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

H. "ESCORT AGENCY" means a person or 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.

"ESTABLISHMENT" means and includes any of the following:

1. the opening or commencement of any sexually oriented business as a new business;
2. the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. the additions of any sexually oriented business to any other existing sexually oriented business; or
4. the relocation of any sexually oriented business.

J. "LICENSEE" means a person in whose name a license to operate a sexually oriented 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 a sexually oriented business.

K. "NUDE MODEL STUDIO" means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified" anatomical Areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by

the State of Michigan or a college, junior college or university support 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 support entirely or partly by taxation; or in a structure:

1. that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
2. where in order to participate in a class a student must enroll at least three days in advance of the class; and
3. where no more than one nude or semi-nude model is on the premises at any one time.

"NUDITY or a STATE OF NUDITY" means the showing of the human male or female genitals, public area, vulva, anus, anal cleft or cleavage 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. Nudity or a state of nudity does not include the following:

1. A woman's breast-feeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.
2. Material as defined in Section 2 of Act No. 343 of the Public Acts of 1984, being Section 752.362 of the Michigan Compiled Laws.
3. Sexually explicit visual material as defined in Section 3 of Act No. 33 of the Public Acts of 1978, being Section 722.673 of the Michigan Compiled Laws.

M. "PERSON" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

N. "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 bikini, dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part. Semi-nudity or a state of Semi-nude Condition does not include the following:

1. A woman's breast-feeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.
2. Material as defined in Section 2 of Act No. 343 of the Public Acts of 1984, being Section 752.362 of the Michigan Compiled Laws.
3. Sexually explicit visual material as defined in Section 3 of Act No. 33 of the Public Acts of 1978, being Section 722.673 of the Michigan Compiled Laws.

O. "SEXUAL ENCOUNTER CENTER" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

1. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

2. activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

P. "SEXUALLY ORIENTED BUSINESS" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater or adult live stage performing theater, escort agency, nude model studio, or sexual encounter center.

Q. "SPECIFIED ANATOMICAL AREAS" means portions of the human body defined as follows:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, or female breast below a point immediately above the top of the areola, and

2. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

R. "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; sexual assault, molestation of a child; gambling; or 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 conviction, whichever is the later date, if the convictions are of two or more misdemeanors or 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.

S. "SPECIFIED SEXUAL ACTIVITIES" means the explicit display of one or more of the following:

1. Human genitals in a state of sexual stimulation or arousal.

2. Acts of human masturbation, sexual intercourse, oral copulation or sodomy.

T. "SUBSTANTIAL ENLARGEMENT" of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this ordinance takes effect.

U. "TRANSFER OF OWNERSHIP OR CONTROL" of a sexually oriented 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.

Section 3 CLASSIFICATION

A. Sexually oriented businesses are classified as follows:

1. adult arcades;
2. adult bookstores, adult novelty stores, or adult video stores;
3. adult cabarets;
4. adult motels;
5. adult motion picture theaters or adult live stage performing theaters;
6. escort agencies;
7. nude model studios; and
8. sexual encounter centers.

Section 4 LICENSE REQUIRED

A. It is unlawful:

1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this ordinance.
2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the City pursuant to this ordinance.
3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this ordinance.

B. An application for a license must be made on a form provided by the City.

C. All applicants must be qualified according to the provisions of this ordinance. An

application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in subsection (E) of this section, accompanied by the appropriate licensing fee.

D. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a thirty (30) percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following Section and each applicant shall be considered a licensee if a license is granted.

E. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

If the applicant is:

(a) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is eighteen (18) years of age;

(b) a partnership, the partnership shall state its complete name and the names of all general partners and whether the partnership is general or limited;

(c) a corporation, the corporation shall state its complete name, the date of its incorporation, the names and capacity of all officers, directors and stockholders with at least thirty percent (30%) ownership interest in the corporation, and the name of the registered corporate agent and the address of the registered office for service of process.

2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state the sexually oriented business's fictitious name.

3. Whether the applicant has been convicted of a specific criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

4. Whether the applicant has had a previous license under this ordinance or other similar sexually oriented business ordinances from another municipality or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

5. Whether the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another municipality or county and, if so, the names and locations of such other licensed businesses.

6. The category(ies) of sexually oriented business that the applicant intends to engage in at the licensed premises.

7. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

8. The applicant's business address or other mailing address.

9. A recent photograph of the applicant(s).

10. The applicant's driver's license number and/or his/her state or federally issued tax identification number.

11. 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 it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

12. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures of any land use identified in Section 12 of this Ordinance that is within one thousand (1000) feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is legally in existence at the time an application is submitted.

13. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, videos cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall also comply with the application requirements set forth in Section 14.

E. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the City the following information:

1. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
2. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency;
3. Height, weight, hair and eye color;
4. Present business telephone number, if any;
5. Present business address or other mailing address; and
6. Date, issuing state and number of driver's permit or other identification card information.
7. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. The police department shall provide fingerprinting service upon request for a nominal fee during business hours.
8. A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other municipality, county or state has ever had license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
9. A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

Section 5 ISSUANCE OF LICENSE

A. Upon the filing of a completed application for a sexually oriented business employee license, the City shall immediately issue a temporary license to the applicant if the applicant seeks to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The application shall then be immediately referred to the appropriate City departments for an investigation to be made on such information as is contained in the application. The application process shall be completed within thirty (30) days from the date the completed application is filed, and the City shall issue a license, unless:

1. The applicant has failed to provide information required under the terms of this ordinance for issuance of the license or has falsely answered a question or request for information on the application form;
2. The applicant is under the age of eighteen (18) years;
3. The applicant has been convicted of a "specified criminal activity" as defined in this ordinance;
4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance;
5. The applicant has had a sexually oriented business employee license revoked by the City within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section 10.

B. A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the City that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 6.

C. Within thirty (30) days after receipt of a completed sexually oriented business license application, the City shall approve or deny the issuance of a license to an applicant. The City shall approve the issuance of a license to an applicant unless:

1. An applicant is under eighteen (18) years of age.
2. An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any sexually oriented business.
3. An applicant has failed to provide information required under the terms of this ordinance for issuance of the license or has falsely answered a question or

request for information on the application form.

4. An applicant has been denied a license by the City to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
5. An applicant has been convicted of a specified criminal activity defined in this ordinance.
6. The premises to be used for the sexually oriented business have been disapproved by the health department, fire department, or the building official as being out of compliance with applicable health, fire, or building laws and ordinances.
7. The license fee required by this ordinance has not been paid.
8. The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this ordinance or is not in compliance with locational requirements of this ordinance or the locational requirements of any other part of the City's ordinances.

D. The license, if granted shall state on its face the kind of license, the name of the person or persons to whom it is granted, and the expiration date. Sexually oriented business licenses shall further state the address of the sexually oriented business and the classification for which the license is issued pursuant to Section 3. Sexually oriented business licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. Sexually oriented business employee licenses shall be kept on the licensee's person or on the premises of the sexually oriented business where the licensee is working.

E. The health department, fire department, and the building official shall complete their certification that the premises is in compliance or not in compliance within twenty-five (25) days of receipt of the application by the City.

Section 6 FEES

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: one hundred dollars (\$100) for the initial fee for a sexually oriented business license and fifty dollars (\$50) for annual renewal; fifty dollars (\$50) for the initial sexually oriented business employee license and twenty-five dollars (\$25) for annual renewal.

Section 7 INSPECTION

A. An applicant or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning Department, or other City departments or agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this ordinance, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this ordinance, but not to authorize a harassing or excessive pattern of inspections.

B. A person who operates a sexually oriented business or his agent or employee commits

a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business.

Section 8 EXPIRATION OF LICENSE

A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 4. Application for renewal shall be made at least sixty (60) days before the expiration date, and when made less than sixty (60) days before the expiration date, the expiration of the license will not be affected.

B. When the City denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the City finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

Section 9 SUSPENSION

A. The City shall suspend a license for a period not to exceed thirty (30) days if it determines that the licensee has:

1. knowingly violated any section of this ordinance;
2. refused to allow an inspection of the sexually oriented business premises as authorized by this ordinance.

Section 10 REVOCATION

A. The City shall revoke a license if a cause of suspension in Section 9 occurs and the license has been previously suspended within the preceding twelve (12) months.

B. The City shall revoke a license if it determines that:

1. a licensee gave false information in the material submitted during the application process;
2. a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
3. a licensee has knowingly allowed prostitution on the premises;
4. a licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
5. except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or
6. a licensee is delinquent in payment to the City, County, or State for any taxes or fees in relation to a sexually oriented business.

C. When the City revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

D. After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such

administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

Section 11 HEARING: LICENSE DENIAL SUSPENSION REVOCATION; APPEAL:
TRANSFER OF
LICENSE

A. When the City issues a written notice of intent to deny, suspend, or revoke a license, the City shall immediately send such notice, which shall include the specific grounds under this Ordinance for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the City for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the City, a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the City's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued, and shall be subject to the provisions of subsection (b) of this Section.

If the respondent does make a written request for a hearing within said ten (10) days, then the City shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The City shall provide for the hearing to be transcribed.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the City's witnesses. The City shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this Ordinance, to the respondent within five (5) days after the hearing. If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the thirtieth (30th) day after it is rendered. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the City to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the City shall contemporaneously therewith issue the license to the applicant.

B. If any court action challenging a licensing decision is initiated, the City shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the decision. The following shall apply to any sexually oriented business that is, in all respects, lawfully operating as a sexually oriented business, or any sexually oriented business employee that is, in all respects, lawfully employed as a sexually oriented

business employee, on the date on which the completed business or employee application, as applicable, is filed with the Clerk of the City: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of the denial, suspension, or revocation, the City shall immediately issue the applicant or licensee (respondent) a Provisional License. The Provisional License shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the City's enforcement.

C. A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

Section 12 LOCATION OF SEXUALLY ORIENTED BUSINESSES

A. It shall be unlawful for any person to operate or cause to be operated a sexually oriented business within two hundred fifty (250) 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 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 residential district as defined in the New Buffalo City Zoning Ordinance and Zoning Map, or the city limit boundary;
4. A public park or recreational area which has been designated for park or recreational activities including but not limited to: parks, playgrounds, beaches, marinas, boat launches, picnic shelters, nature trails, swimming pools, athletic fields, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, dog parks, or other similar public lands within the City which is under the control, operation, or management of the City's Park and Recreation Board;
5. The property line of a lot devoted to a residential use as defined in the City of New Buffalo Zoning Ordinance;
6. An entertainment business which is oriented primarily towards children or family entertainment; or
7. A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State.

B. For the purpose of subsection A 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 to conduct a sexually oriented business, to the nearest property line of the premises of a use listed in subsection A. The presence of a use listed in subsection A that is located outside the geographic boundaries of the City shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

Section 13 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 ten (10) hours creates a rebuttal presumption that the establishment is an adult motel as that term is defined in this ordinance.

B. A person commits a misdemeanor 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 license, he rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

C. For purposes of subsection B of this Section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

Section 14 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 depict specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. Upon application for a sexually oriented business 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. 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 to an accuracy of plus or minus six (6) inches. The City 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.
4. It is the duty of the licensee of the premises to ensure that at least one 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 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 of less than one hundred fifty (150) square feet of floor space may be occupied by more than one 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) 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 forty-eight (48) inches of the floor.

B. A person having a duty under Subsection (1) through (14) of Subsection A above commits a misdemeanor if he knowingly fails to fulfill that duty.

Section 15 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES

A. An escort agency shall not employ any person under the age of eighteen (18) years.

B. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years.

Section 16 ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS

A. A nude model studio shall not employ any person under the age of eighteen (18) years.

B. It shall be unlawful for any person under the age of eighteen (18) years to appear 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 eighteen (18) years was in a restroom not open to public view or visible to any other person.

C. It shall be unlawful for any person to appear in a state of nudity, or to knowingly allow 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 nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

Section 17 PROHIBITED CONDUCT

A. It shall be a misdemeanor for a person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity or depict specified sexual activities.

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

C. It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.

D. It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer in a sexually oriented business.

E. It shall be a misdemeanor for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

Section 18 PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS

It shall be unlawful for any person to knowingly or recklessly allow a person under the age of 18 years on the premises of a sexually oriented business.

Section 19 HOURS OF OPERATION

No sexually oriented business, except for an adult motel, may remain open at any time between 12:00 midnight and 6:00 a.m. on any day.

Section 20 PENALTY

Any person, corporation, partnership or any other legal entity who violates the provisions of this ordinance shall be guilty of a misdemeanor and may be fined not more than Five Hundred Dollars (\$500.00) and/or imprisoned for not more than 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.

Section 21 REPEAL

All other ordinances or parts of ordinances in conflict with the provisions of this ordinance, except as herein provided, are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Section 22 SEVERABILITY

If any section, subsection, clause, phrase, or portion of this ordinance, or any application thereof, is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion, or application thereof, shall be deemed a separate, distinct and independent provisions, and such holding shall not affect the validity of the remaining portion thereof.

Section 23 SAVINGS CLAUSE

The repeal or amendment herein shall not abrogate or affect any offense or act committed or done, or any penalty or forfeiture incurred, or any pending litigation or prosecution of any right established or occurring prior to the effective date of this Ordinance, as amended.

Section 24 EFFECTIVE DATE

This ordinance, as amended, shall take full force and effect 30 days after publication.

I hereby certify that the foregoing is a true and correct copy of the Sexually Oriented Business Ordinance for New Buffalo City, Berrien County, Michigan, duly adopted on the 15 day of December, 2009.

Sandra K. White Clerk

A motion that said Sexually Oriented Business Ordinance be enacted was made by Councilmember Murray and supported by Councilman Lawson at a regular meeting of the New Buffalo City Council on the 15 day of December, 2009.

The names of the City Council and their votes are as follows:

NAME

YES Councilmember's Murray and Maroko, Councilman Kennedy and Lawson and Mayor Geisler
NO

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of an ordinance adopted by the New Buffalo City Board at a meeting held on the 15 day of December, 2009, the original of which is on file in my office and available to the public. Public notice of said meeting was given pursuant to and in compliance with the Open Meetings Act, Act No. 167 of the Public Acts of Michigan 1976, including in the case of a special or rescheduled meeting, notice by posting at least eighteen (18) hours prior to the time set for said meeting.

Dated: December 15, 2009

Sandra K. White, City Clerk

I hereby certify that the complete text or a summary of the foregoing Ordinance was published

in the New Buffalo Times, New Buffalo, Michigan, on the 23rd day of December, 2009, and shall become effective on the 22nd day of January, 2010, which date is 30 days following publication within the New Buffalo Times, a newspaper of general circulation within the City of New Buffalo.

Sandra K. White, City Clerk