

CHAPTER 1360

Sexually Oriented Businesses

1360.01	Purpose.	1360.04	Regulations.
1360.02	Regulated Uses.	1360.05	Waivers, conditions
1360.03	Definitions.		and Limitations.

CROSS REFERENCES

Zoning and planning in home rules cities - MCLA 117.4i
Regulation of location of trades, buildings and uses by local authorities - MCLA 125.581
Regulation of buildings; authority to zone - MCLA 125.582
Regulation of congested areas - MCLA 125.583
Uses of land or structures not conforming to ordinances; powers of legislative bodies; acquisition of property - MCLA 125.583a
Signs - B & H Chapter 1476

1360.01 PURPOSE

- (A) In the development and execution of this Chapter, it is recognized that there are some uses which, because of their very nature, have serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or when one or more of them are located in near proximity to a residential zone, church, school, daycare center, or dedicated park, thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects shall not contribute to the blighting or downgrading of the surrounding neighborhood. These special regulations are itemized in this Chapter. These controls are for the purpose of preventing a concentration of these uses within any one area, or to prevent deterioration or blighting of nearby neighborhoods. These controls do not legitimize activities, which are prohibited in other Chapters of the City's Ordinances.
- (B) In regulating sexually oriented businesses, it is the purpose of this Chapter 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 Chapter 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 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.
- (C) 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 incorporated in the cases of *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *Thomas v. Chicago Park District*, 122 S. Ct. 775 (2002), *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560

(1991); *California v. LaRue*, 409 U.S. 109 (1972); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *East Brooks Books, Inc. v. City of Memphis*, 48 F.3d 220 (6th Cir. 1995); *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); *Richland Bookmart v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Dèjà vu v. Metro Government*, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); *Bamon Corp. v. City of Dayton*, 7923 F.2d 470 (6th Cir. 1991); *Threesome Entertainment v. Strittmather*, 4 F.Supp.2d 710 (N.D. Ohio 1998); *J.L. Spoons, Inc. v. City of Brunswick*, 49 F.Supp.2d 1032 (N.D. Ohio 1999); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *Nightclubs, Inc. v. City of Paducah*, 202 F.3d 884 (6th Cir. 2000); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Dèjà vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 2001 U.S. App. LEXIS 26007 (6th Cir. Dec. 6, 2001); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *Connection Distrib. Co. v. Reno*, 154 F.3d 281 (6th Cir. 1998); *Sundance Assocs. v. Reno*, 139 F.3d 804 (10th Cir. 1998); *American Library Association v. Reno*, 33 F.3d 78 (D.C. Cir. 1994); *American Target Advertising, Inc. v. Giani*, 199 F.3d 1241 (10th Cir. 2000); *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); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 2002 U.S. Dist. LEXIS 1896 (D.Md., Feb. 6, 2002); *Currence v. Cincinnati*, 2002 U.S. App. LEXIS 1258 (6th Cir., Jan. 24, 2002); and *City of Grand Rapids, Michigan - 137 - November 5, 2007 Chapter 61 Zoning Ordinance Article 9 – Use Regulations* other cases; and on testimony to Congress in 136 Cong. Rec. S 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S 5636; 134 Cong. Rec. E 3750; and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1979; Minneapolis, Minnesota-1980; Houston, Texas - 1997; Amarillo, Texas; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington -1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio - and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York Times Square study - 1994; Phoenix, Arizona - 1995-98; and also on findings from the paper entitled "Stripclubs According to trippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000, 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 that sexually oriented businesses as a category of establishments are correlated with harmful secondary effects, and that the foregoing reports are reasonably believed to be relevant to the problems that the City of Traverse City is seeking to abate and prevent in the future. (Ord. 814. Passed 11-03-08.)

1360.02 REGULATED USES.

Uses subject to these controls and referred to herein as Regulated Uses are as follows:

- Adult book or video stores.
- Adult cabarets.

- Adult motion picture theaters.
- Adult novelty stores.
- Adult panorams.
- Burlesque halls.

(Ord. 814. Passed 11-03-08.)

1360.03 DEFINITIONS.

As used in this Chapter:

Adult book or video store means an establishment having a substantial or significant portion of its business devoted to books, magazines, periodicals, films or video tapes 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.

Adult cabaret means a cabaret which regularly features go-go dancers, strippers, or similar entertainers; or waiters, waitresses or other employees showing specified anatomical areas or specified sexual activities.

Adult motion picture theater means an establishment regularly used for presenting motion pictures 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.

Adult novelty store means an establishment that has a substantial or significant portion of its business devoted to the sale of devices which stimulate human genitals or devices designed for sexual stimulation.

Adult panoram means an establishment having a substantial or significant portion of its business devoted to an entertainment use where patrons view in individual viewing booths, films, tapes, or live entertainment showing specified sexual activities or specified anatomical areas.

Burlesque hall means an establishment which regularly features live performances which are characterized by entertainers showing specified anatomical areas or specified sexual activities.

Cabaret means a cafe, restaurant, bar, or similar establishment where patrons are entertained by performers who dance or sing or play musical instruments.

Specified anatomical areas are defined as:

- (1) 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
- (2) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

Specified sexual activities are defined as:

- (1) Human genitals in a state or simulated state of sexual stimulation or arousal;
- (2) Acts or simulated acts of human masturbation, sexual intercourse or sodomy;
- (3) Fondling or other erotic touching or simulated fondling or others erotic touching of human genitals, pubic region, buttock or female breast.

Substantial or significant portion. A business will be deemed to have a substantial or significant portion of its stock in trade or services if it meets at least one of the following criteria:

- (1) Thirty-five percent or more of the stock, materials, or services provided are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities, specified anatomical areas, or both.

- (2) Thirty-five percent or more of the usual floor area of the building is used for the sale, display, or provision of services distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities, specified anatomical areas, or both.
- (3) The advertising (on signs, in publications, on television or radio and/or other media forms) associated with the business, describes or relates to specified sexual activities, specified anatomical areas, or both.

(Ord. 814. Passed 11-03-08. Ord. 913. Passed 05-02-11.)

1360.04 REGULATIONS.

The Regulated Uses listed in Section 1360.02 are allowed subject to the following:

- (a) District. The use is located within a C-3 zoning district. A Regulated Use is not allowed in any other zoning district even if it incorporates C-3 zoning district uses.
- (b) Location. The use is located outside a 300-foot radius of a residential district, a church, school, or day care center and outside a 200 foot radius of an officially dedicated park and the Regulated Use is not located within a 1,000 foot radius of another Regulated Use. All measurements under this section shall be made in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the Regulated Use or building containing a Regulated Use to the nearest property line of the residential district, church, school, day care center or park.
- (c) Minors on premises. Persons operating a Regulated Use shall not permit any person under the age of eighteen to be on the premises of said Regulated Use either as an employee or as a customer.
- (d) Hours. The maximum hours of operation of the Regulated Use shall be from 8:00 a.m. to 10:00 p.m.
- (e) Displays. Sexually oriented products or services or any picture or other representation thereof, shall not be displayed so as to be visible from the street or neighboring property.
- (f) Off-street parking. Off-street parking shall be provided the same as other businesses of a similar nature that are not sexually oriented (e.g., movie theaters, retail sales and eating and drinking establishments), except that all parts of the parking area shall be illuminated from dusk until one hour after the business closes.
- (g) Expansion. Once established, a Regulated Use shall not be expanded in any manner without first applying for and receiving a waiver of the Board of Zoning Appeals.
- (h) Discontinuance. If a Regulated Use is discontinued and events cause the areas to not be available for the location of a Regulated Use, the use may not be re-established without applying for and receiving a waiver of the Board of Zoning Appeals.

(Ord. 814. Passed 11-03-08.)

1360.05 WAIVERS, CONDITIONS AND LIMITATIONS.

- (a) Waivers. Prior to the granting of any waiver as herein provided, the Board of Zoning Appeals may impose any such conditions or limitations upon the establishment, location, construction, maintenance, or operation of the Regulated Use as may in its judgment be necessary for the protection of the public interest. Any evidence and any guarantee may be required as proof that the conditions stipulated in connection therewith will be fulfilled.

SEXUALLY ORIENTED BUSINESSES

(b) Procedures. The Board of Zoning Appeals may waive the minimum distance restrictions, allow an expansion, or allow re-establishment after discontinuance, pursuant to the standards provided in sub-section (c) of this section and pursuant to the following procedures:

- (1) The Planning Director will serve notice on all owners and occupiers of all property within 300 feet of the proposed use.
- (2) Said notice will give a minimum of 30 days from the mailing of the notice until the Board of Zoning Appeals hearing on the matter.
- (3) Said notice will include a postcard addressed to the City, containing spaces for stating approval or disapproval of the proposed Regulated Use and including space for commentary.
- (4) The total number of postcards or other written responses returned prior to the hearing will be tallied. The votes yea and nay will also be tallied. These votes will be considered as evidence, in the Board of Zoning Appeals' decision as to whether to grant the waiver.

(c) Standards. The Board of Zoning Appeals may grant a waiver if the following findings are made:

- (1) That the proposed use will not be contrary to the public interest or injurious to nearby properties and that the spirit and intent of this Chapter will be observed.
- (2) That the proposed use will not enlarge or encourage the development of a blighted or deteriorating area in its immediate surrounds.
- (3) That the establishment in the area of a Regulated Use or an additional Regulated Use will not be contrary to any neighborhood conservation, nor will it interfere with any urban renewal.
- (4) That all applicable State laws and local ordinances will be observed.

(Ord. 476. Passed 7-6-99. Ord. 814. Passed 11-3-08.)