



TO: Members of the Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
Susan M. Lancaster, Assistant City Attorney
DATE: June 13, 2007
SUBJECT: Adult Use Businesses – Licensing Ordinance

The Planning Commission has reviewed the proposed Adult Use Business zoning amendments, and has recommended approval of the revisions to provide some additional safeguards for the City of Troy. A public hearing on these proposed revisions is set for the June 18, 2007 City Council meeting. The recommended version of the Adult Use Business zoning amendments requires each proposed operator to submit to an annual licensing procedure. Therefore, a proposed Adult Use Business Licensing schedule has also been prepared for City Council consideration.

The enactment of a new Adult Use Business License also requires amendments to Chapter 60 (fees) and Chapter 3 (enforcement authority), which are also submitted for Council review, in draft form. Minor revisions to the formatting must still be made. The definitions in the proposed new Chapter 76 mirror the definitions in the proposed Adult Use Business zoning amendments. As a result, any modification to the proposed zoning text will likely require a similar change to the licensing ordinance. For this reason, the proposed ordinances are provided as informational items at this time. Any City Council modifications can be incorporated prior to submission of the ordinances for approval. However, since it is essential that the licensing and application procedure are linked to the proposed zoning changes, the proposed resolution makes the effective dates of all Adult Use Business amendments in Chapter 3, 39, 60, and 76 the same.

In addition to the definitions section, the new proposed Chapter 76 also sets forth the Adult Use Business Application requirements, as well as the investigation process. The proposed ordinance also specifies the factors that can be considered in deciding whether or not to grant a requested special use approval for an Adult Use Business. Grounds for suspension of a license are also set forth in the proposed Chapter 76, as well as the required standard of conduct.

Please let us know if you have any questions or concerns about the proposed Adult Use Business Licensing ordinance. Absent objections from City Council, this item will be brought back as an action item on a subsequent City Council agenda.

CITY OF TROY
AN ORDINANCE TO AMEND
CHAPTER 3 OF THE CODE OF ORDINANCES
OF THE CITY OF TROY

The City of Troy ordains:

Section 1. Short Title

This ordinance shall be known and may be cited as an amendment to Chapter 3 of the Code of the City of Troy.

Section 2. Amendment to Section 1.141 (6) of Chapter 3

Section 1.141 (6) is hereby amended to provide that a City of Troy Building Inspector shall have authority to issue and serve appearance tickets to Adult Use Businesses if he/she has reasonable cause to believe that the person has committed a violation of Chapter 76.

Section 1.141 (6) is amended by the addition of the following:

Section 1.141 (6) A City of Troy Building Inspector shall have authority to issue and serve upon a person an appearance ticket, a Municipal Civil Infraction notice of violation and/or a Municipal Civil Infraction citation, if he/she has reasonable cause to believe that the person has committed a violation of any of the following provisions of the Troy City Code.

Chapter 76. Adult Use Businesses Licenses

Section 3. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This Ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this Ordinance adopting this penal regulation, for offenses committed prior to the effective date of this Ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this Ordinance may be continued, for offenses committed prior to the effective date of this Ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 4. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this Ordinance shall remain in full force and effect.

Section 5. Effective Date.

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a regular meeting of the City Council held at City Hall, 500 W. Big Beaver Road, Troy, MI, on the _____ day of _____, 2007.

Louise E. Schilling, Mayor

Tonni Bartholomew, City Clerk

CITY OF TROY
AN ORDINANCE TO AMEND
CHAPTER 60 OF THE CODE OF ORDINANCES
OF THE CITY OF TROY

The City of Troy ordains:

Section 1. Short Title

This ordinance shall be known and may be cited as an amendment to Chapter 60 of the Code of the City of Troy.

Section 2. Amendment to Section 60.03 – Fee Schedule of Chapter 60.

Section 60.03 - Fee Schedule is hereby amended to provide a license fee and renewal fee for Adult Use Businesses.

Section 60.03 - Fee Schedule. Is amended by the addition of the following new fees:

ITEM/SERVICE:

FEE:

Adult Use Business

Application Fee

\$500.00

Investigation Fee

\$500 for up to and including 4 persons and an additional \$100 per person thereafter

Annual License Renewal Fee

\$500.00

Section 3. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly repealed or amended by this Ordinance adopting this penal regulation, for offenses committed prior to the effective date of this Ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date

of this Ordinance may be continued, for offenses committed prior to the effective date of this Ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 4. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this Ordinance shall remain in full force and effect.

Section 5. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a regular meeting of the City Council held at City Hall, 500 W. Big Beaver Road, Troy, MI, on the _____ day of _____, 2007.

Louise E. Schilling, Mayor

Tonni Bartholomew, City Clerk

CITY OF TROY
AN ORDINANCE TO ADD A NEW CHAPTER TO THE CODE
OF THE CITY OF TROY WHICH CHAPTER SHALL BE
DESIGATED AS CHAPTER 76

The City of Troy ordains:

Section 1. Short Title:

This Ordinance shall be known and may be cited as Chapter 76 of the Code of the City of Troy.

Section 2. Adoption of Article VII, Chapter 76

Chapter 76 of the Code of the City of Troy, to provide for the licensing of adult use businesses, to provide for definitions of adult use businesses, to provide for application for a license, to provide for specific requirements and conditions for adult use businesses and to provide for a penalty for violation thereof, is hereby adopted as set forth below:

Section 3. ADULT USE BUSINESS LICENSE

I. Purpose. The purpose and intent of this Chapter is to regulate adult use businesses, to promote the health, safety, morals and general welfare of the citizens of the city, and to establish reasonable and uniform regulations for adult use businesses. The provisions of this Chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including adult materials. Similarly, it is not the intent nor effect of this section to restrict or deny access by adults to adult materials protected by the Constitution of the United States or the Michigan Constitution, or to deny access by the distributors and exhibitors of adult use businesses to their intended market. Neither is it the intent nor effect of this Chapter to condone or legitimize the distribution of obscene material.

II. Definitions. For purposes of this Chapter, the following terms shall have the following meanings:

Adult Arcade. An establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, compact discs or similar machines, or other image producing machines, (whether coin-operated, slug-operated or electronically, electrically, internet or mechanically controlled), for viewing by five (5) or fewer persons each, are used to show films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

Adult Book Store, Adult Novelty or Retail Store or Adult Video Store.

A. An establishment which, as one of its principal business purposes, offers any one or more of the following for sale, rental, or viewing at the site, for any form of consideration:

1. Books, computer diskettes, tapes or hard drives, magazines, periodicals or other printed material, films, motion picture, video cassettes or video reproduction, slides or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; and/or
2. Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities"; and/or

3. Items, materials, gimmicks, or paraphernalia depicting, displaying, advertising or packaged as “specified sexual activities” or depicting or describing “specified anatomical areas”.
- B. For purposes of this section, “principal business purpose” means:
1. The devotion of a significant or substantial portion of its stock-in-trade or interior floor space; or
 2. The receipt of a significant or substantial portion of its revenues from; or
 3. The devotion of a significant or substantial portion of its advertising expenditures to the promotion of the sale, rental or viewing, of books, magazines, periodicals or other printed matter, or photographs, film, motion pictures, video cassettes, compact discs, slides or other visual representations, items, materials, gimmicks, or paraphernalia which are characterized by the depiction, description display, advertising or packaging of “specified sexual activities” or “specified anatomical areas”.
- C. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing “specified sexual activities” or “specified anatomical areas”, and still be categorized as an adult bookstore, adult novelty or retail store or adult video store. Such other business purposes will not serve to exempt such establishment from being categorized as an adult bookstore, adult novelty store or adult video store, so long as the establishment falls within the definition of an adult bookstore, adult novelty store or adult video store as set forth above.

Adult Caberet. A nightclub, club, bar, restaurant or similar commercial establishment which features one or more of the following:

- A. Person(s) who appears nude or in a state of nudity or semi-nudity;
- B. Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”;
- C. Films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

Adult Motel. A motel, hotel or similar commercial establishment which:

- A. Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” and which advertises the availability of this adult type of material by means of a sign, visible from the public right of way, or by means of any off-premises advertising, including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television; and/or
- B. Permits patrons to be filmed or photographed performing sexually explicit activities or displaying “specified anatomical areas”, including transmission over the World Wide Web; and/or
- C. Offers a sleeping room for rent for intervals of time less than ten (10) hours; and/or
- D. Allows a tenant or occupant to sub rent a sleeping room for intervals of less than ten (10) hours.

Adult Motion Picture Theater. A commercial establishment where films, motion pictures, video cassettes, compact discs, slides of “specified sexual activities” or depictions or descriptions of “specified anatomical areas” are regularly shown for any form of consideration.

Adult Theater. A theater, concert hall, auditorium or similar commercial establishment which, for any form or consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of “specified anatomical areas” or by “specified sexual activities.” This definition does not include a theater which features occasional live nude performances with serious literary, artistic, or political value and that have no adverse secondary effects.

Adult Use Business. An adult arcade, adult bookstore, adult novelty or retail store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio and/or a sexual encounter establishments and any business determined by the Planning Director to be an adult use, due to the activities of the business which involve characteristic of adult uses, such as nudity, semi-nudity, exposure of “specified anatomical areas” and/or “specified sexual activities”. The definition of “adult use business” shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State engages in medically approved and recognized sexual therapy.

Employee. A person who works or performs in and/or for an adult use business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

Entertainer. A person who performs some type of activity or pose with the intent of allowing others to witness that activity or pose.

Entertainment. A performance of some type of activity, including, but not limited to, singing, dancing, acting, mime, comedy, recitations, demonstrations, magic tricks, modeling, posing, exhibition, with or without inanimate objects or animals, with the intent of allowing others to witness that activity in live or reproduced format.

Escort. A person who, for consideration in any form, agrees or offers to act as a companion, guide, or date for another person, (or who agrees to privately perform as an entertainer, including but not limited to, the modeling of lingerie, the removal of clothing, and the performance of a dance or skit). Under this definition, “privately” shall mean a performance for an individual and that individual’s guests.

Escort Agency. A person or business that furnishes, offers to furnish, or advertises the furnishing of escorts as one of its primary business purposes, for a fee, tip or any other form of consideration.

Establishment. In regard to an adult use business, means and includes any of the following:

- A. A new business;
 - B. An existing business, whether or not an adult use business, that has been converted to or which adds as a component any adult use business;
 - C. An adult use business that adds a different or expanded adult use business activity to any other existing adult use business;
- or
- D. A relocated adult use business.

Licensee. The individual listed as an applicant on the application for an adult use business license, or a person in whose name a license to operate an adult use business has been issued.

Licensing Officer. The Clerk of the City of Troy or his/her designee.

Manager. An operator, other than a licensee, who is employed by an adult use business to act as a manager or supervisor of employees, or is otherwise responsible for the operation of the adult use business.

Nude Modeling Studio. Any place where a person appears in a state of nudity or displays “specified anatomical areas”, and is provided money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons. This includes modeling studios that provide for nude modeling on an occasional basis, but it does not include modeling studio whose primary function is to provide art classes as part of a college, university or educational institution and which is certified by the State of Michigan.

Nudity or State of Nudity.

- A. The exposure of human male or female genitals, pubic area, buttocks, anus or the areola or nipple of the female breast; and/or
- B. A state of dress which fails to opaquely and fully cover human male or female genitals, pubic area, buttocks, anus or the areola or nipple of the female breast.

Operator. Includes the owner, licensee, manager, or person in charge of any premises.

Peep Booth. An adult motion picture theater with a viewing room or cubical of less than one hundred fifty (150) square feet of floor space.

Person. An individual, proprietorship, partnership, corporation, limited liability company, association or other entity.

Premises or Licensed Premises. Any premises that requires an adult use license and that is classified as an adult use business.

Principal Owner. Any person owning, directly or beneficially: a) ten percent (10%) or more of a corporation’s equity securities; b) ten percent (10%) or more of the membership interests in a limited liability company; or c) in the case of any other entity, ten percent (10%) or more of the ownership interests in the entity.

Private Room. A room in a hotel/motel that is not a peep booth, has a bed, a bathtub, a shower, a toilet and/or a sink in the room or adjacent room, and is used primarily for lodging.

Semi-Nude. A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual Encounter Establishment. A business or commercial establishment that as one of its primary business purposes, offers a place where two (2) or more persons may congregate, associate, or consort for the purpose of “specified sexual activities” or the exposure of “specified anatomical areas” or any activities when one or more of the persons is in a state of nudity or semi-nudity and/or permits patrons to display or be filmed or photographed performing “sexually explicit activities” or displaying “specified anatomical areas” for recording or transmission over the World Wide Web or any other media, for any form of consideration. A hotel/motel will not be classified as a sexual encounter establishment, by virtue of the fact that it offers private rooms for rent.

Specified Anatomical Areas.

- A. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areola; and/or
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified Criminal Acts: Any felony, included but not limited to, crimes involving gambling, weapons, robbery, ID theft, tax evasion, fraudulent activity, sale or manufacture of controlled substances, sexual crimes against children, sexual abuse, criminal sexual conduct, rape, crimes classified as sexual crimes by the State of Michigan or any other state; or crimes connected with another business whether an adult use business or otherwise, including but not limited to, the distribution of obscenity, prostitution, pandering, maintaining a nuisance, repeated acts of disturbing the peace, noise or assaultive behavior violations at the same location, and/or repeated acts involving the excessive use of alcohol by patrons, employees and/or entertainers.

Significant or Substantial Portion. Means thirty (30) percent or more of the term modified by such phrase.

Specified Sexual Activities.

- A. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus or female breasts: and/or
- B. Sex acts, actual or simulated, including but not limited to, intercourse, oral copulation or sodomy; and/or
- C. Masturbation, actual or simulated; and/or
- D. Human genitals in a state of sexual stimulation, arousal or tumescence; and/or
- E. Excretory functions as part of or in connection with any of the activities set forth in subsections (A) through (D) of this definition.

Tip. Any money or other consideration given by a patron or patron's agent to an entertainer. A tip includes, but is not limited to, money, fees, service charges, gifts, salary, donations, stipends, contribution, offer of service, performance of service, payment or any other consideration.

Transfer of Ownership or Control of an Adult Use Business.

- A. The sale, lease or sublease of the business; and/or
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; and/or
- C. The establishment of a trust, management arrangement, gift or other similar legal device which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

III. Location of Business. It shall be unlawful to operate or cause to be operated an adult use business in any location in the City except as provided in Troy's Zoning Ordinance, Chapter 39, Article XXII, Section 22.30.08 of the Code of Ordinances.

IV. License Required; Application Fee; Investigation Fee; License Fee.

- A. No person shall conduct an adult use business without first having obtained an annual adult business license for each separate place of business in the City.
- B. Applicants for a new adult use business license shall pay an application fee and an investigation fee as set by Chapter 60 of the ordinances of the City of Troy. An existing adult use business shall pay an annual license fee as set by Chapter 60 of the ordinances of the City of Troy.
- C. In the event an application or a application for a license renewal for an adult use business license is withdrawn or denied, the application fee, investigation fee and /or license fee shall not be refunded to the applicant. Fees are not transferable.

V. License Application.

- A. All applicants for an adult use business license shall file an application for such license with the City Clerk on forms provided by the Clerk. Each principal owner and all managers and employees shall be named on the application form.
- B. The completed application shall contain the following information and/or shall be accompanied by the following documents:
 1. If the applicant is:
 - a. An individual: the individual shall state his or her legal name and any aliases and shall submit satisfactory proof that he or she is at least eighteen (18) years of age.
 - b. A partnership: the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and attach a copy of the partnership agreement, if any.
 - c. A corporation: the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the statutes of the State of Michigan, or in the case of a foreign corporation, evidence that it is currently authorized to do business in the State of Michigan, the names and titles of all officers, directors and principal owners, and the name of the registered corporate agent and the address of the registered office for service of process.
 - d. A limited liability company: the limited liability company shall state its complete name, the date of filing of the articles of organization and operating agreement, and the names of all managers and members.
 2. Whether the applicant or any other individual required to be listed on the application currently holds or has previously held an adult use business license or currently works or has previously worked for an adult use business, adult entertainment or sexually oriented business; whether that business is or was licensed in another state, city or county; and whether that business license was ever denied, suspended or revoked. The name and location of the adult use business, the reason the permit was denied, suspended or revoked, and the date of the denial, suspension or revocation must be provided on the application.
 3. The location of the proposed adult use business, including a legal description of the property, street address and telephone number(s).
 4. Proof of the applicant's right to possession of the premises where the adult use business is proposed to be located.

5. The name, address and telephone number of the applicant and any other individual listed on the application.
 6. A photocopy of the driver's license or other government issued identification for the individuals listed in Article V and/or Article VI of this Chapter.
 7. A floor plan of the proposed premises that specifies the location and dimensions of any employee's station(s) and demonstrates that there is an unobstructed view from at least one of the employee's stations of every area of the premises to which any patron is permitted access for any purpose, excluding the restrooms. The proposed floor plan shall designate the use of each room or area in the premises and designate those rooms or other areas of the premises where patrons are not permitted. The proposed floor plan need not be professionally prepared but must be drawn to a designate scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. The diagram shall designate the place where the license will be conspicuously posted and the location of any proposed stage.
 8. A current certified drawing prepared, within thirty (30) days prior to the application, by a land surveyor depicting the property lines and the structures containing any adult use business within one thousand (1,000) feet measured from the nearest lot line on a straight-line basis, and depicting the property line of any church, school, childcare facility, public park, residential zoning district or any parcel used for residential purposes, whether zoned residential or not, within five hundred (500) feet from the nearest lot line to the nearest lot line on a straight-line basis.
 9. Whether the applicant or any of the other individuals listed in Article V and/or Article VI of this Chapter have been convicted of a specified criminal act within the times set forth in Article VII. 1.8. of this Chapter, including the nature of the specified criminal act and the date and place of conviction.
 10. Photographs (passport size or approximately two [2] inches by two [2] inches) and fingerprints of all principal owners and each manager, general partner, and, in the case of a corporate applicant, the president of the corporation.
- C. If the applicant is an individual, he/she shall sign the application for a license. If the applicant is a corporation, the application shall be signed by the president or vice-president and attested to by the secretary or assistant secretary. If the applicant is a general partnership, the application shall be signed by a general partner. If the applicant is a limited liability corporation, the application shall be signed by the manager.
- D. If an omission or error is discovered by the City Clerk, he/she shall promptly notify the applicant and returned the application for completion or correction. The City Clerk shall not be required to take any further action. The applicant shall have thirty (30) days to properly complete the application. The time period for granting or denying a license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application. Any application rejected due to an omission or error shall be re-filed only when the omission or error has been remedied. For the purposes of this Chapter, the official application date is the date the City Clerk accepts an application that is complete for filing.
- E. Applicants for a license under this Chapter shall have a continuing duty to promptly supplement application information required by this section in the event that said information changes in any way from what is stated on the application. The failure to comply with this continuing duty within thirty (30) days from the date of such change, by supplementing the application on file with the City Clerk, shall be grounds for the suspension, revocation or denial of an adult business license.

VI. Investigation.

On receipt of a properly completed application and the payment of the application and investigation fees, the City Clerk shall submit the documentation to the Chief of Police, or his/her designee. The Troy Police Department shall investigate the background of each individual applicant, manager, employee, independent contractors, other than building and trade contractors, that act as entertainers, waitress and/or have any contact with patrons in any other way, partners of a partnership, president, vice-president, secretary and treasurer of a corporation, or other officers and the holders of stock of a corporation. Each applicant shall pay a non-refundable and non-transferable investigation fee at the time the application is filed for each person who will be investigated. Fees under this section shall be set by resolution of City Council. The report of the Troy Police Department shall be referred to the City Clerk.

The City Clerk shall transmit a request to the Planning Director for a report determining whether or not the proposed location of the adult use business complies with the locational requirements of this Chapter and the Zoning Ordinance. The Planning Director shall issue a report within five (5) business days of the transmittal of the request for a report from the City Clerk. Except as set out in Article VII. D. of this Chapter, if the Planning Director fails to issue the report, as required, the City Clerk shall presume that the proposed location of the adult use business complies with the Code of Ordinances.

VII. Approval/ Denial of License.

- A. The application of any applicant shall be approved or denied by the City Clerk within fourteen (14) days of the date of the application is officially filed with the City Clerk. The City Clerk shall deny a license if one or more of the following criteria apply:
1. The applicant is under the age of eighteen (18) years of age;
 2. The applicant has made a false statement upon the application or have given false information in connection with an application;
 3. The applicant or any holder of any class of stock, or a director, officer, partner or principal of the applicant has had an adult use business license revoked or suspended anywhere within the State of Michigan or any other state in the United States within one (1) year prior to the application;
 4. The applicant has operated an adult use business which has determined to be a public nuisance in the State of Michigan or any state, county or the city or any other governmental subdivision in the United States within one (1) year prior to the application;
 5. A corporation applicant is not in good standing or is not authorized to do business in the State of Michigan;
 6. The applicant is overdue in the payment of City taxes, fees, fines or penalties assessed against him, her or it or imposed against him, her or it in relation to an adult use business;
 7. The applicant has not obtained the required sales tax license;
 8. The applicant has been convicted of a specified criminal act within the five (5) year period prior to the date the application is filed with the City Clerk.
- B. In the event the City Clerk denies a license, he/she shall notify the applicant in writing by first class mail to the address on the application of the denial and the reasons for the denial. The applicant shall have the right to a hearing before the City Manager as set forth in Article X.C. of this Chapter. A written request for a hearing shall be made to the City Manager within ten (10) days of the date of denial of the license by the City Clerk. A hearing shall be held within fourteen (14) days from the date a timely request for a hearing is received by the City Manager.
1. At the hearing, the City Manager may require the presence of representatives of the Police Department, the City Clerk, the Planning Director, the Building and Zoning Director, City Treasurer, Code Enforcement, the applicant or other interested parties, or

any other individual who may have information relevant to the denial of the license. The City Manager may accept written documentation or hear statements and consider other evidence offered which is relevant to the denial of the license application by the City Clerk.

- a. If the City Manager determines that the applicant is ineligible for a license under this Chapter, he/she shall notify the applicant in writing at the address on the application within two (2) days after the hearing is concludes that the City Clerk's denial of the application is upheld and state the reason(s) therefore.
- b. The City Manager's decision shall be final and may be appealed to the Oakland County Circuit Court in accordance with the State law. Failure of an applicant to timely follow the filing deadlines for an appeal as set out in this Chapter constitutes a waiver of any right the applicant may otherwise have to contest the denial of the application.
- C. Except as set out in Article VII.D., if any city official or department fails to render a timely decision pursuant to the terms of this Chapter, that city official or department shall be deemed to have approved or consented to the issuance of the requested license.
- D. A deadline date for rendering a decision under this Chapter may only be excused and extended for events beyond the control of the decision maker, such as, the death or a sudden serious illness of a spouse, parent, child or sibling; an excused serious illness of the decision maker, or other highly personal issue. It shall be the decision of the City Manager as to whether this paragraph applies to a specific situation. In rendering that decision, the City Manager shall only implement an extension under this paragraph if there is no other city official that is qualified to rendering the required decision. The City Manager's only power after making a decision under this paragraph is to grant an extension to the decision maker for no more than seven (7) days. Only one (1) extension shall be granted under this paragraph. If the City Manager is the decision maker for which an extension is required, it shall be the duty of the Assistant City Manager for Services to grant or deny an extension to the City Manager under this subsection.

VIII. Term of License.

All licenses granted pursuant to this Chapter shall be for a term or one (1) year. Said term shall commence on January 1st of each year and terminate on December 31st of the same year. Applications for a license filed at any other time during the year shall be treated the same as if they were filed January 1st of that year and shall terminate on December 31st of the same year. There shall be a license fee for each year a license is in effect. No prorating of fees shall be permitted.

IX. License Renewal; License Fee.

The renewal of an existing license granted pursuant to this Chapter requires payment of the annual licensing fee set by resolution of City Council and filing of a renewal application with the City Clerk not less than forty-five (45) days prior to the date of expiration. The City Clerk may waive, for good cause shown, this filing time requirement.

X. Suspension or Revocation of License.

- A. The City Manager may suspend a license for a period not to exceed six (6) months or revoke any license granted pursuant to this Chapter upon a finding of any of the following:
 1. Repeated disturbances of the public peace within the licensed establishment or upon any parking areas, sidewalks, walkways, access ways or grounds within the neighborhood of the licensed establishment involving patrons, employees or the licensee;

2. Except as authorized by a valid license issued by the Michigan Liquor Control Commission, the licensee or any employee have offered for sale or knowingly allowed to be consumed or possessed on the licensed premises, or on any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed premises, alcoholic liquor, including, but not limited to, any spirituous, vinous, malt or fermented liquor, beverages, liquids or compounds, or marijuana, narcotics, controlled substances or other dangerous drugs.
 3. The licensee or manager is not on the licensed premises at all times that entertainment of any nature, live or otherwise, is being provided;
 4. Entertainment was offered at the licensed establishment during hours prohibited by Article XIII. of this Chapter.
 5. The licensee, a manager or an employee has allowed or has done nothing to prevent patrons from engaging in a public display or indecency in violation of State law or the Troy Code of Ordinances; or has allowed or done nothing to prevent any act of sexual intercourse, sodomy, oral copulation or masturbation; or has allowed or done nothing to prevent patrons or employees in engaging in acts of prostitution or negotiate for acts of prostitution, within the licensed premises or on any parking areas, sidewalks, walkways, access ways or grounds immediately adjacent to the licensed establishment, when licensee, manager or employee knew or should have known such displays or acts were taking place;
 6. The licensee or manager made a false statement or gave false information in connection with an application for a license or a renewal of a license;
 7. The licensee, manager, or an employee violated or permitted a violation of any provision of this Chapter, including the standard of conduct set forth in Article XIV of this Chapter.
 8. The licensee, manager or an employee of the licensed establishment is under the age of eighteen (18) years.
 9. The licensee, in the case of a corporation, is not in good standing or is not authorized to do business in the State;
 10. The licensee, manager or an employee knowingly operated the facility, part of the facility or allowed any adult activities in the facility of the adult use business during a period of time when the adult use business was suspended or revoked;
 11. The licensee is delinquent to the city, county or state for any taxes or fees past due;
 12. A licensee(s), manager, employee or independent contractor as set out in Article VI has been convicted of a specified criminal act.
- B. Nothing in this Chapter shall prohibit the city from taking any other enforcement action provided for by the Troy Code of Ordinances, the laws of the State, or the laws of the United States.
- C. A licensee shall be entitled to a hearing before the City Manager if the City seeks to suspend or revoke his/her or its license based on a violation of this Chapter. The procedure for suspending or revoking a license is as follows:
1. When there is probable cause to believe that a licensee, a manager or an employee has violated or permitted a violation of this Chapter to occur in or near the licensed establishment, the Police Department, the City Clerk, the Director of Building and

Zoning, the Planning Director, the City Treasurer, Code Enforcement, or any other city department, may file a written complaint with the City Manager setting forth the circumstances of the violation.

2. The City Manager shall provide a copy of the complaint to the licensee, together with notice to appear before the City Manager for the purpose of a hearing on a specified date to show cause why the adult use business license should not be suspended or revoked.
 3. At the hearing, the City Manager may require the presence of representatives of the Police Department, the City Clerk, the Planning Director, the Building and Zoning Director, the City Treasurer, Code Enforcement, the owner, occupant, applicant or other interested parties, or any other individual who may have information relevant to the violation alleged in the complaint. The City Manager may accept written documentation or hear statements and consider other evidence offered which is relevant to the allegations in the complaint. The City Manager shall make findings of fact from the statements and evidence presented as to whether or not the alleged violation occurred. If the City Manager determines, based on a preponderance of evidence, that a violation has occurred, within twenty (20) days after the hearing, the City Manager shall issue a written summary based on the finding of facts. The written summary issued by the City Manager shall order the suspension or revocation of the adult use business license. A copy of the written summary and order shall be served in person on the licensee or mailed by first class mail to his/her or its last known address.
 4. The City Manager shall have the power to administer oaths, issue appearance notices, and when necessary, grant continuances. Appearance notices may be issued to require the presence of persons and production of papers, books and records necessary to make a determination concerning the allegations in a complaint.
 5. The written summary and order of the City Manager shall be a final decision and may be appealed to the Oakland County Circuit Court in accordance with State law. Failure of an applicant to timely appeal the City Manager's order of suspension or revocation constitutes a waiver by licensee of his/her or its right to contest the suspension or revocation of the adult use business license.
 6. In such cases where specified criminal acts are in issue, the provisions of the Michigan Penal Code, Chapter 750, MCL 750.1, et. seq. shall control.
- D. In the event of suspension, revocation or cessation of an adult use business, no portion of the license fee, application fee or investigation fee shall be refunded.
- E. When the City Manager revokes an adult use business license, the revocation shall continue for a one (1) year period. The licensee shall not be issued an adult use business license for one (1) year from the date the revocation became effective.

XI. Display; Transferability; Change of Ownership.

- A. Any adult use business license issued pursuant to this Chapter shall be prominently displayed at all times on the premises for which the license was issued in accordance with Article V. B.7. of this Chapter.
- B. Licenses issued under this Chapter shall not be transferable except as provided herein. Any transfer of ownership or control by a licensee holding an adult use business license shall result in termination of the license unless such licensee, within thirty (30) days prior to any such transfer files a written notice of such transfer accompanied by the application fee and an

investigation fee as required by Article IV this Chapter. Any such transfer shall be reported on forms provided by the City Clerk and shall require the names of all new principal owners and any information as required by Article V of this Chapter. Approval or denial by the City Clerk of such transfer shall be based on the same terms as provided for in this Chapter for the approval or denial of an adult use business license.

- C. When a license has been issued to a husband and wife or to general or limited partners, the death of a spouse or partner shall not require the surviving spouse or partner to obtain a new license. All rights and privileges granted under the original license shall continue in full force and effect as to such survivors for the balance of the license period.
- D. Each license issued under this Chapter is separate and distinct, and no person shall exercise any of the privileges granted under any license other than that which he/she holds. A separate license shall be issued for each specific adult use business and each geographical location.

XII. Manager; Change of Manager.

- A. A registered manager shall be on the premises of an adult use business at all times that entertainment, live or otherwise, is being provided. It shall be unlawful for any person to work as a manager of an adult use business without first registering with the City Clerk. The registration form shall require the applicant to provide his/her legal name and any aliases, home address, telephone numbers and satisfactory proof that he/she is eighteen (18) years of age.
- B. In the event a licensee changes the manager or any employees of an adult use business, the licensee shall report such change and register the new manager or any employees on forms provided by the City Clerk within ten (10) days of such change. Any new employees or manager shall pay the investigation fee approved by resolution of City Council and shall be subject to approval or denial in accordance with the provisions of Article VII of this Chapter.

XIII. Hours of Operation.

It shall be unlawful for an adult use business to be open for business or for the licensee, manager or any employee of a licensee to allow patrons on the licensed premises from twelve o'clock (12:00) midnight until eight (8:00) A.M.

XIV. Standard of Conduct.

- A. The following standards of conduct must be adhered to by employees of any adult use business that offers, conducts or maintains live entertainment:
 - 1. Clothing: No employee or entertainer mingling with the patrons or serving food or beverages shall be unclothed or in such attire, costume or clothing so as to expose to view any specified anatomical area.
 - 2. Touching, Caressing, Fondling: No employee or entertainer shall encourage or knowingly permit any person on the premises to touch, caress, or fondle the breasts, buttocks, anus or genitals of any employee, entertainer or any other person. Touching, caressing or fondling of any part of an employee or entertainer by a patron shall be strictly prohibited.
 - 3. Simulation of Specified Areas: No employee or entertainer shall wear or use any device or covering exposed to view, which simulates the breasts, genitals, anus, pubic hair or any portion thereof.
 - 4. Performance Standards:

- a. No employee or entertainer shall be in such attire, costume or clothing so as to expose any portion of a specified anatomical area except on a stage at least eighteen (18) inches above the immediate floor level and removed at least six (6) feet from the nearest patron or behind a solid, uninterrupted physical barrier which completely separates the employee or entertainer from any patrons. This barrier must be a minimum of one-fourth (1/4) inch thick and have no openings between the employee or entertainer and any patrons. The stage shall be fixed and immovable.
 - b. No employee or entertainer shall perform any obscene acts or obscene acts that simulate specified sexual activities or perform any prohibited activities described in this Chapter.
 5. Use of Inanimate Objects or Animals: No employee or entertainer shall use artificial devices or inanimate objects and/or animals to depict any of the prohibited activities described in this Chapter.
 6. Menu: There shall be posted and conspicuously displayed in every area offering entertainment a list of food and beverage prices.
 7. Alcohol and Liquor: No adult use business shall serve or engage in the sale of alcoholic beverages, including, but not limited to, any spirituous, vinous, malt or fermented liquor, beverages, liquids and compounds. The sale or service of alcohol at an adult use business shall be controlled by the Michigan Liquor Control Code, M.C.L. 436.1101, et. seq., as amended.
 8. Consumption of alcohol: It shall be unlawful to permit the consumption of alcoholic beverages in any adult use business except in relation to a liquor license granted and in compliance with the Michigan Liquor Control Code, M.C.L. 436.1101, et. seq., as amended.
 9. Tips: Any tips for employees or entertainers shall be placed by a patron into a tip box which is permanently affixed in the adult use business and no tip may be handed directly to an employee or entertainer. A licensee that desires to provide for such tips from its patrons shall establish one or more containers to receive tips.
 10. Tip Boxes: An adult use business that provides tip boxes shall conspicuously display in the common area of the premises one or more signs in letters at least one (1) inch high to read as follows:

“EMPLOYEE AND ENTERTAINMENT TIPPING IS REGULATED BY THE CITY
Any tips are to be placed in tip boxes and not handed directly to the employees or entertainers. Any physical contact between the patron and the employee or entertainer is prohibited by law. Violators face maximum penalties of \$500 and/or 90 days in jail.”
 11. Outside Visibility: No entertainment occurring on the premises shall be visible at any time from outside of the premises.
- B. Any licensee who offers, conducts, or maintains live entertainment or an adult arcade which exhibits in a peep booth, a film, videocassette, compact disc, or other video reproduction, shall comply with the following requirements in addition to those set forth in this Chapter:
1. It is the duty of the licensee 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.

2. It is the duty of the licensee and managers of the premises to ensure that any doors to public areas on the premises remain unlocked during business hours.
3. The interior of the premise shall be configured in such a manner that there is an unobstructed view from an employee'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 or other forms of entertainment. If the premises has two (2) or more employee's stations, 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, excluding restrooms, from at least one of the employee's stations. The view required in this Article must be by direct line of sight from the employee's station.
4. No alteration to the configuration of an adult use business may be made without the prior written approval of the Building and Zoning Director.
5. It shall be the duty of the licensee, and it shall also be the duty of any agents, managers and employees present in the premises to ensure that the view area specified in Article XIV. B.3. of this Chapter remains unobstructed by any doors, curtains, drapes, walls, merchandise, display racks or other materials at all times or any person intentionally blocking said view 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 license application filed pursuant to this Chapter.
6. No peep booth may be occupied by more than one person at any one time.
7. Peep booths must be separated from other peep booths by a solid, non-opaque, uninterrupted physical divider which is a minimum of one-fourth (1/4) inch thick and serves to prevent physical contact or visibility between patrons.

XV. Age Restrictions.

Admission to an adult use business is restricted to persons of the age of eighteen (18) years of age or older.

XVI. Right of Entry.

The filing of an application for an adult use business license shall constitute consent of the applicant and licensee and his/her or its agents, managers and/or employees to permit the city's Police Department, Building Department, Planning Department or any other department or agent of the city to conduct routine inspections of any licensed adult use business during the hours the establishment is conducting business.

Section 3. Repeal

All ordinances or parts of ordinances in conflict herewith are hereby repealed only to the extent necessary to give this ordinance full force and effect.

Section 4. Savings

All proceedings pending, and all rights and liabilities existing, acquired or incurred, at the time this Ordinance takes effect, are hereby saved. Such proceedings may be consummated under and according to the ordinance in force at the time such proceedings were commenced. This ordinance shall not be construed to alter, affect, or abate any pending prosecution, or prevent prosecution hereafter instituted under any ordinance specifically or impliedly

repealed or amended by this ordinance adopting this penal regulation, for offenses committed prior to the effective date of this ordinance; and new prosecutions may be instituted and all prosecutions pending at the effective date of this ordinance may be continued, for offenses committed prior to the effective date of this ordinance, under and in accordance with the provisions of any ordinance in force at the time of the commission of such offense.

Section 5. Severability Clause

Should any word, phrase, sentence, paragraph or section of this Ordinance be held invalid or unconstitutional, the remaining provision of this ordinance shall remain in full force and effect.

Section 6. Effective Date

This Ordinance shall become effective ten (10) days from the date hereof or upon publication, whichever shall later occur.

This Ordinance is enacted by the Council of the City of Troy, Oakland County, Michigan, at a Regular Meeting of the City Council held at City Hall, 500 W. Big Beaver, Troy, MI, on the _____ day of _____, _____.

Louise E. Schilling, Mayor

Tonni L. Bartholomew, MMC
City Clerk