

Village of Edwardsburg, Michigan

Ordinance Number: 2009 - 01

Sexually Oriented Business (SOB)

THE VILLAGE OF EDWARDSBURG ORDAINS:

SECTION 1: Conduct in sexually oriented businesses.

(1) Purpose and Findings.

a. The Village of Edwardsburg 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, as detailed in the findings adopted by the village council at its regular may, 2009, meeting, and the public comments at that meeting expressed by property owners near a sexually oriented business who personally observed the said secondary effects.

b. The Village council also relies upon findings concerning secondary effects contained in additional reports as well as in cases upholding regulations of nudity and the time, place, and manner of operation of sexually oriented businesses: *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir., 2008), Rehearing and Rehearing *En Banc* Den., 8/14/08; *Déjà vu of Cincinnati, L.L.C. v. Union Township*, 411 F.3d 777 (6th Cir. 2005); *Bronco's Entertainment, Ltd. V. Charter Township of Van Buren*, 2005 U.S. App. LEXIS 18496 (6th Cir.2005); *Charter Township of Van Buren v. Garter Belt, Inc.*, 258 Mich. App. 594 (2003) (following *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000), *Barnes v. Glen Theatre, Inc.* 501 U.S. 560 (1991), and *California v. LaRue*, 409 U.S. 109 (1972)); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *G.M. Enterprises, Inc. V. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *In re Tennessee Public Indecency Statute*, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); *Currence v. City of Cincinnati*, 2002 U.S. App. LEXIS 1258);

Jott, Inc. v Clinton Township, 224 Mich. App. 513 (1997); *Michigan ex rel. Wayne County Prosecutor v. Dizzy Duck*, 449 Mich. 353 (1995); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Tilv B Inc. v. City of Newport Beach* 69 Cal. App. 4th 1 (Cal. App. 1997); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F. Supp. 1428 (M.D. Fla. 1997); *City of Elko v. Abed*, 2004 Minn. App. LEXIS 360 (Minn. App. 2004); *Center for fair public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Richland Bookmart, Inc. v. Nichols*, 278 F.3d 570 (6th Cir. 2002); *DiMa Corp. v.*

Town of Hallie, 185 F.3d 823 (7th Cir. 1999); Lady J. Lingerie, Inc. v. City of Jacksonville, 176 F.3d 1358 (11th Cir. 1998); Nat'l Amusements Inc. v. Town of Dedham, 43 F.3d 731 (1st Cir. 1995); Mitchell v. Comm'n on Adult Enter. Est. of the State of Delaware, 10 F.3d 123 (3rd Cir. 1993); Star Satellite, Inc. v. City of Biloxi, 779 F.2d 1074 (5th Cir. 1986); Heideman v. South Salt Lake City, 2006 U.S. App. LEXIS 2745 (10th Cir. 2006); Fantasyland Video, Inc. v. San Diego County, 373 F. Supp. 2d 1094 (S.D. Cal. 2005); State ex rel. Nasal v. BJS No. 2, Inc. 127 Ohio Misc. 2d 101 (Ohio Ct. Comm. Pleas 2003); Baby Dolls Topless Saloons, Inc. v. City of Dallas, 295 F.3d 471 (5th Cir. 2002); ZJ. Gifts D-2, L.L.C. v. City of Aurora, 136 F.3d 683 (10th Cir. 1998); World Wide Video of Washington, Inc. v. City of Spokane, 368 F.3d 1186 (9th Cir. 2004); Andy's Restaurant & Lounge, Inc. v. City of Gary, Case No. 2:01-CV-327 (N.D. Ind. 2005); Summaries of Kay Reports Concerning the Negative Secondary Effects of Sexually Oriented Businesses; Rome, Georgia – 1996; San Diego, California – 2003; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; and numerous media reports, in finding that;

- (i) Sexually oriented businesses, as a category of commercial uses, are often 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, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (ii) Illegal and unsanitary acts involving nudity, including lewd conduct, masturbation, oral and anal sex, occur at unregulated sexually oriented businesses, including those businesses which provide private or semi-private rooms, booths, or cubicles for viewing films, videos, or live performances.
- (iii) Each of the foregoing negative secondary effects constitutes a harm which the Village has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the Village's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the Village'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 Village. The Village finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

(2) Definitions

- a. The terms in this Ordinance shall have the meanings ascribed to them in, section 5.16.02, R – “Regulated Uses” – In the Grand Rapids, Michigan, City Code, which is incorporated herein by reference, unless otherwise indicated herein.
- b. In addition, the following terms shall have the meaning ascribed to them as follows:
 - (i) “Employee” means a person who performs any service for any consideration on the premises of a sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated as 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 sexually oriented 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.
 - (ii) “Nudity,” “Nude,” or “State of Nudity” means the knowing or intentional live display of a human genital organ or anus with less than a fully opaque covering or a female’s breast with less than a fully opaque covering of the nipple and areola. Nudity, as used in this section, does not include a woman’s breastfeeding of a baby whether or not the nipple or areola is exposed during or incidental to the feeding.
 - (iii) “Operate” or “Cause to Operate” shall mean to cause to function or to put or keep in a state of doing business. “Operator” means any person on the premises of a sexually oriented business who exercises overall operational control of the business or a part of the business, who can open or close the business to the public, or who causes to function or who puts or keeps the business open or in operation. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner or part owner of the business.
 - (iv) “Semi-Nudity,” “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 and extending across the

width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

- (v) "Sexually Oriented Business" for purposes of this Chapter shall mean any adult motion picture theater, adult bookstore, adult novelty store, adult video store, adult cabaret or semi-nude model studio as defined in Section 5.16.02, R – "Regulated Uses" – of the Grand Rapids, Michigan, City Code.
- (vi) "Patron" means a customer of the sexually oriented business or a person from the general public, not an "employee" of the business, who is on the premises to obtain, receive, or view the products, services, or performances offered by the business.
- (vii) "Regularly" means recurring, attending, or functioning at fixed or uniform intervals.

(3) Unlawful Activities:

- a. Nothing contained in this Ordinance is intended, or shall be construed, to permit or authorize activities which are unlawful under state law or any other Village ordinance. It is unlawful and a violation of this Ordinance for an operator to knowingly or intentionally violate the provisions of this Ordinance or to allow, either knowingly or intentionally, an employee or a patron to violate the provisions of this Ordinance. It shall be a defense to prosecution that the person prosecuted was powerless to prevent the violation.
- b. No person shall knowingly or intentionally, in a sexually oriented business, appear before a patron or patrons in a state of nudity, regardless of whether such public nudity is expressive in nature.
- c. No employee shall knowingly or intentionally, in a sexually oriented business, appear within view of any patron in a semi-nude condition unless the employee, while semi-nude, shall be and remain at least ten (10) feet from all patrons and on a fixed stage at least eighteen

(18) inches from the floor in a room of at least six hundred (600) square feet.

- d. A sexually oriented business which exhibits on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disk, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements: The interior or the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator'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 (1) of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one (1) employee is on duty and situated in an operator's station at all times that any person is on the portion of the premises monitored by that operator station. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
- (e) Sexually oriented businesses that do not have stages or interior configurations which meet at least the minimum requirements of this section shall be given one hundred eighty (180) days from the effective date of this Article to comply with the stage and building requirements of this section. During said one hundred eighty (180) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least ten (10) feet from all patrons.
- (f) No employee who regularly appears within view of patrons in a semi-nude condition in a sexually oriented business shall knowingly or intentionally touch a patron or the clothing of a patron in a sexually oriented business.

- (G) No operator shall allow or permit a sexually oriented business to be or remain open between the hours of two o'clock (2:00) a.m. and two o'clock (2:00) p.m. on any day.
- (H) Violation of this Ordinance shall, in addition to all other penalties provided in this Ordinance, constitute a Nuisance.

(4) Scierter Required to Prove Violation or Business Liability.

- A. For purposes of Section 5(A) of This Ordinance, this Ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of Section 5(A). Notwithstanding anything to the contrary, for the purposes of the Penalty provided in Section 5(A), an act by an employee shall be imputed to the sexually oriented business for purposes of finding a violation of this Ordinance only if an owner, officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability under Section 5(A) that the person to whom liability is imputed was powerless to prevent the act.
- b. For purposes of the Remedies provided in Section 5(B) of this Ordinance, it shall be sufficient to show negligence by either an employee, or an owner, officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, and the principal of *respondent superior* shall be fully applicable.

(5) Penalty; Equitable Remedies.

a. CRIMINAL REMEDIES

Any person, business, or entity violating or refusing to comply with any provisions of this Chapter shall, upon conviction, be deemed guilty of a misdemeanor and shall be punished by imposition of a fine not to exceed one hundred dollars (\$100.00) or by imprisonment for a period not to exceed 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. Further, any premises, building, dwelling, or other structure in which a sexually oriented business, as is repeatedly operated or maintained in violation of the provisions of this Chapter shall constitute a public nuisance and shall be subject to civil

abatement proceedings initiated by the Village of Edwardsburg in a court of competent jurisdiction. Each day that a violation is permitted to exist or occur shall constitute a separate operation or maintenance of the violation.

b. CIVIL REMEDIES

- (i) Notwithstanding subsection (A) hereof, the Village may, in addition to prosecution under subsection (A), employ any remedy available at law or in equity to prevent or remedy a violation of any provision of this ordinance. All remedies shall be cumulative, and the doctrine of "election of remedies" shall not apply.
- (ii) Any Person or Entity aggrieved by a violation of this ordinance may institute an action for abatement of the nuisance in addition to any other remedies, at law or in equity, which such person or entity may otherwise have.

(6) Severability.

This Ordinance and each section and provision of herein, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of this Ordinance, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.

- (7) *Ordinance Number 98-01, relating to public nudity, is repealed.*
- (8) This ordinance is adopted under the police power of the Village of Edwardsburg, to provide for the health and safety of the residents of the Village of Edwardsburg, and is not a zoning ordinance. Nothing in this ordinance shall be construed as a repeal, amendment, addition or modification of any provision in the zoning ordinances heretofore, or hereafter, adopted by the Village of Edwardsburg.
- (9) This Ordinance shall be effective twenty (20) days following its publication.

ADOPTED BY THE EDWARDSBURG VILLAGE COUNCIL ON THE 15th
DAY OF JUNE, 2009:

AYES: 4

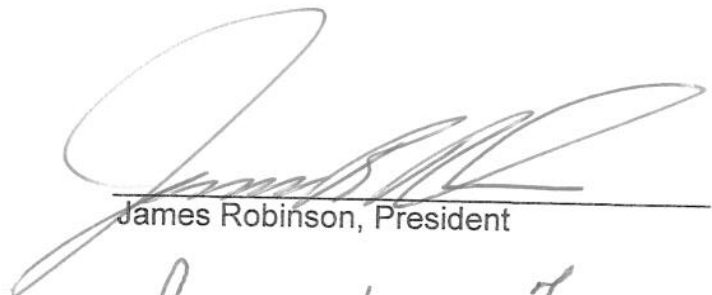
Nancy Stoner, Sherry Dannenberg, Jacque Tighe,
Pat Bellaire

NAYES: 0

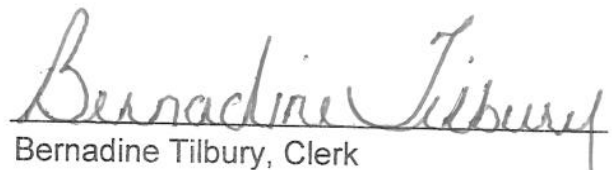
ABSENT 2

Scott Mackling, Bill Rauch

ATTEST:



James Robinson, President



Bernadine Tilbury, Clerk

Resolution Adopting Findings of Fact

AT A SESSION OF THE VILLAGE COUNCIL OF
THE VILLAGE OF EDWARDSBURG HELD AT THE
VILLAGE HALL IN THE VILLAGE OF
EDWARDSBURG ON THE 18th DAY OF MAY, 2009,
BEING A REGULAR SCHEDULED SESSION OF
THE SAID COUNCIL,

Following Posting of Notice to the Residents of the Village of Edwardsburg that there would be a discussion regarding the impact of Sexually Oriented Businesses (SOB) at the next Regular Meeting of the Village Council on May 18, 2009, there having been a presentation by the Cass County Prosecutor, Victor A. Fitz, J.D., and comments by the Village Attorney, William L. LaBre, J.D., and written findings having been previously provided to each of the members of the Village Council, and residents of the Village having made comments relating to SOB's, and the Village Council having had a discussion, the following Resolution was duly made and adopted:

BE IT RESOLVED by the Village Council of the Village of Edwardsburg that the Findings of Fact which are annexed hereto and made a part hereof, are duly made by the Village Council and shall serve as a Factual Basis, and Legislative Findings,

LEGISLATIVE FINDINGS

EDWARDSBURG VILLAGE COUNCIL

The Edwardsburg Village Council (VC) has reviewed existing methods of regulating uses relating to sexually oriented businesses through zoning.

The VC began its investigation when members of the community responded to the location of live entertainment establishment which exhibited topless dancing by questioning whether such a business, or other sexually oriented businesses, could be regulated by the Edwardsburg Village Council. The Village of Edwardsburg residents challenged the VC to be proactive and address the issues relating to the location of sexually oriented businesses before another such business opened in the area. Members of the Edwardsburg Village Council were informed about the law and the problems associated with sexually oriented businesses by the Cass County Prosecutor, Victor Fitz, and by the Village Attorney, William L. LaBre, regarding the regulation of sexually oriented businesses which detailed the problems with the live entertainment business in the Village, and focused on controlling the negative secondary effects of these type of businesses through zoning and certain targeted police power ordinances.

With VC support, an ordinance was drafted. The ordinance was reviewed in detail by the VC members. The members went over each word of the draft ordinance and working with the Edwardsburg Village Council's civil counsel regarding changes the ordinance and limitations imposed by statute and common law on the regulation of SOBs.

The draft "amendment" was presented to the entire VC which scheduled a public hearing regarding the amendment's adoption, and posted notice to the public regarding the discussion. Members of the VC were provided with a set of materials relating to the regulation of SOBs to review. Those materials included the following:

1. Report of the (Minnesota) Attorney General's Working Group on the Regulation of Sexually Oriented Businesses.
2. Appendix containing 14 studies relating to land use and Sexually Oriented Businesses.
3. Survey of Pennsylvania Police Chiefs.
4. Land Use Study from Garden Grove, California.
5. Excerpts from Lansing, Michigan's IMPACT OF ADULT ENTERTAINMENT USES study of April, 1988.
6. SOB study from Amarillo, Texas.
7. SOB study from Indianapolis, Indiana.
8. SOB study from Austin, Texas.
9. Executive Summary from SOB study in New York, New York.
10. Report of the Ad Hoc Committee on Adult Business Regulation, Traverse City, Michigan.
11. Amendment from the Charter Edwardsburg Village Council of Garfield.
12. Model Text for Adult and Sexually-Oriented Business, Leelanau County Planning Commission.
13. MTA sample ordinance.
14. Boyne City's SOB ordinance.
15. City of St. Ignace's SOB ordinance.

16. Elmwood Edwardsburg Village Council's SOB ordinance.
 17. Sample ordinances from MML including Paw Paw and Mattawan, Michigan.
 18. City of Cadillac's SOB ordinance.
 19. American Family Law Center's proposed SOB ordinance.
 20. Present Edwardsburg Village Council Ordinance regarding public nudity.
 21. Michigan Administrative Rules R436.1407 and R436.1409.
 22. *Odyssey of T.C. Inc. v Blair Edwardsburg Village Council*
 23. *Young v American Mini-Theatres, Inc.*
 24. *City of Renton v Playtime Theatres, Inc.*
 25. *FW/PBS, Inc. v City of Dallas*
 26. *Schad v Borough of Mount Ephram*
 27. *Keego Harbor Co. v City of Keego Harbor*
 28. *Kev, Inc. v Kitsap County*
 29. *S&G News v City of Southgate*
 30. *Berg v Health and Hospital Corporation of Marion County*
 31. *Zoning and Free Speech: A review of Adult Entertainment Caselaw*
 32. *Regulating Sex Businesses*
 33. Article from April 3, 1996 Northern Express
 34. Article from August 27, 1996 Record Eagle
 35. Letter from State Rep. Michelle McManus to MaryAnn Atkinson of 11/20/96
- Additionally, individual members of the VC reviewed a Clark, Boardman, Callaghan volume by Jules B. Gerard titled "Local Regulation of Adult Businesses".

The above information, coupled with the testimony taken at the public hearing and the oral legal analysis of the amendment provided by the county prosecutor and village counsel establish the facts and rationale needed to support the proposed zoning ordinance amendment.

SPECIFIC FINDINGS OF FACT

- 1.) Edwardsburg is a primarily rural community with publicly owned land but with a developed and concentrated commercial zone located in an area which is being currently described and considered as a Development Corridor, and an industrial location South of and contiguous to the Village. In this developed area, large stores have opened in recent years, with more stores and shopping complexes expected to open in the coming years.
2. Economic growth in Edwardsburg and surrounding areas has been steady and primarily residential, and is expected to continue, given the growth experienced by the adjoining counties of St. Joseph and Elkhart, in the State of Indiana, where a significant portion of local residents work. Preserving and increasing the local tax base is an important consideration in planning for the future of the Edwardsburg.
3. Commercial zones within the Edwardsburg area, defined as the Village of Edwardsburg, Townships of Ontwa, Milton and Jefferson, Northern Elkhart County, Indiana, the City of Elkhart, Indiana, and St. Joseph County, Indiana, are found primarily in those areas at or near M-62 and at or near U.S. 12, the major highways servicing the area. Many of the commercial areas in Edwardsburg are surrounded by residential uses and neighborhoods.

4. The Village of Edwardsburg has one sexually oriented business in place, to wit, "Escape Reality" which has been licensed by the State to serve alcohol and featured live performances by topless women. Criminal Prosecution, and a civil action for nuisance abatement under Chapter 38 of the Michigan Revised Judicature Act are currently pending, based on the said Sexually Oriented Business having expanded to include prostitution and dealing in controlled substances.

5. The Township of Ontwa is actively involved in drafting an ordinance relating to the regulation of sexually oriented businesses, and there is a desire on the part of the governing bodies in the township, the village, and the community at large to have a "uniform front" of regulation throughout the local area.

6. There is convincing documentary evidence in the form of studies from around the country finding that SOBs, due to their very nature, have serious objectionable operational characteristics, particularly when they are located nearby another SOB, thereby contributing to blight and the general downgrading of the quality of life in adjacent areas. Particularly noteworthy, but by no means exhaustive, are the following findings:

A. A study titled Social Impact of Adult Entertainment Facilities conducted in **Lansing, Michigan**, found that:

(i) There is a significant correlation between poor neighborhood housing conditions and the presence of an adult business;

(ii) There is a significant decrease in surrounding residential property values resulting from the existence of a nearby SOB;

(iii) There is a significant increase in the general crime rate in areas having two or more SOBs;

(iv) There is a reduction in the relative condition of housing in a neighborhood following the establishment of an SOB in that neighborhood;

(v) The number of residential structures used for rental housing increased over time following the introduction of an SOB in the surrounding area;

(vi) Those living nearby an SOB strongly favor regulating SOBs, while those frequenting SOBs [predominately white, married, middle-class males ages 26-35] do not favor the location of SOBs in their neighborhoods.

B. A study conducted in **Indianapolis, Indiana**:

found areas in the city having one or more SOBs had crime rates that were 23% higher than control areas without SOBs, and which were 46% higher than the average crime rate in

the city. Sex-related crimes increased over 20% in the SOB areas versus the control sites. Residential areas with SOBs suffered higher crime rates than commercial areas with SOBs, with sex-related crimes being four times more common in said residential areas than in the commercial districts.

Home values near SOBs were found to have relatively high values but increased only half as fast as the rate homes in the control areas increased, and at one-third the rate that homes in the city as a whole increased. The study found residential properties near SOBs placed on the market at amounts substantially lower than comparable homes in control "areas without SOBs. Real estate professionals noted that properties turned over more often in areas near SOBs than in the rest of the city, and a survey of real estate appraisers found that 59% of the appraisers felt a home located within one block of an SOB would suffer an immediate decrease in value from 1-20%. The decrease was felt to be even more pronounced in residential versus commercial areas of the city. Further, the appraisers felt the decrease in values dropped off significantly the further the property was from the SOB.

C. A study conducted in **Austin, Texas**, sex-related crimes in areas near an SOB were found to be from 177-482% higher than in control areas. Real estate appraisers in the city suggested that an SOB located within one block of a residential area decreases home values in the area, and that the location of an SOB is a sign that an area is decaying. The appraisers felt homebuyers might have a more difficult time securing financing in areas near an SOB. A study of the license plates of SOB patrons found that 44% were transient, or not from the city. Of the 81 patrons tracked, only three plates were registered as being located within one mile of the SOB.

D. A study conducted in **Amarillo, Texas**, found that street crimes in areas immediately surrounding SOBs were considerably more frequent than in the remainder of the city. Further, the study concluded that concentrations of SOBs have detrimental effects on surrounding residential and commercial uses. The study found that these detrimental effects were the result of:

- (i) noise, lighting, and traffic generated by pedestrian and vehicular traffic frequenting the SOBs;
- (ii) the possibility of an increase in street crimes in areas with high pedestrian traffic;
- (iii) the tendency of the public to avoid areas where SOBs are located, thus leading to the deterioration of surrounding commercial and residential activities; and

E. The **Minnesota Attorney General** issued a report finding, among other things,

- (i) that there was compelling evidence to conclude that SOBs were associated with high crime rates and the depression of property values
- (ii) that organized crime was involved in the pornography trade [with one of the primary operators being located in Michigan],

(iii) that prostitution is a problem in certain areas near SOBs with neighborhood boys and girls being propositioned on the street by hookers and johns, and (iv) that residents in one area near an SOB found discarded, explicit pornographic literature in nearby streets, sidewalks and bushes.

7. Regarding the impacts of SOBs:

A. Distancing SOBs from areas frequented by minors is necessary to minimize or eliminate exposure of the minors to sexually explicit advertising and crime.

B. Placing an SOB in a primarily residential area would deter potential homeowners from purchasing in that area and would decrease the value of existing homes.

C. As the several negative effects of SOBs tend to decrease with distance and tend to increase when the businesses are congregated, a separation of the uses to avoid concentration is important to preserve property values, minimize crime, and to continue residential and commercial growth in the area.

8. Given the small and concentrated amount of commercial space in the Village of Edwardsburg and the Village's otherwise highly rural nature, it is impossible to provide that 5% of the zoned land in the area be potentially available for use by SOBs in that the total area of the Village is one square mile. The Commercial zones are typically surrounded by concentrated residential areas. The available areas are located on major highways in areas where other commercial, retail-type businesses exist, or are otherwise residential.

9. The Village of Edwardsburg has several churches which hold primary services on Sundays. The VC is aware of the decision in **Mitchell v Commission on Adult Entertainment Establishments**, 10 F.3d 123 (3d Cir. 1993), and believes that limiting the daily hours of operation of SOBs and eliminating Sunday hours in the Village of Edwardsburg is necessary to prevent the negative secondary effects of SOBs on the community at large, and that such limitations allow reasonable and sufficient avenues for the speech affected businesses may wish to engage in.

10. Certain SOBs, especially those SOBs providing private or semi-private booths or cubicles for viewing films, videos or live sex shows, have at times been sites of illicit, public sexual acts. Removal of doors, limitations on apertures, and requiring sufficient lighting on premises in said areas advances a substantial government interest in curbing unsanitary conditions and illegal, public sexual acts in said SOBs.

11. The Edwardsburg Village Council has a substantial interest in protecting the health, safety and welfare of minors who may view advertising or promotions which depict sexual acts or certain sexual anatomical areas, in shielding the public from such lurid advertising, and in protecting the value of properties near the site of the advertising. The Edwardsburg Village Council is aware of the case of **SJD, Inc. v. City of Houston**, 837 F. 2d 1268 (5th Cir. 1982), limiting the ability of SOBs to depict sexual acts and certain sexual

anatomical areas in their advertising and promotion is a narrowly-tailored method to control said negative effects.

12. The Edwardsburg Village Council, upon review the above law and facts, has passed a Resolution adopting as its own the above findings of fact and conclusions of law.

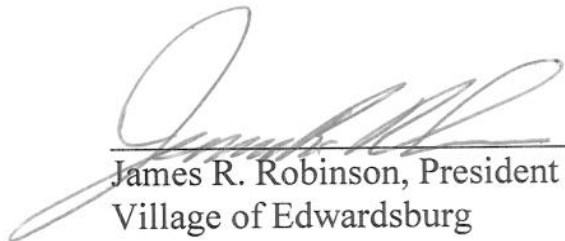
for any Ordinance or Ordinances hereafter made and adopted for the regulation of
SOB's.

BE IT FURTHER RESOLVED that, in the event of any challenge to any
subsequently adopted Ordinances, the attached findings may be relied upon by any
Court in construing the Findings and Legislative Purpose of such ordinances.

ADOPTED BY THE VILLAGE COUNCIL AS FOLLOWS:

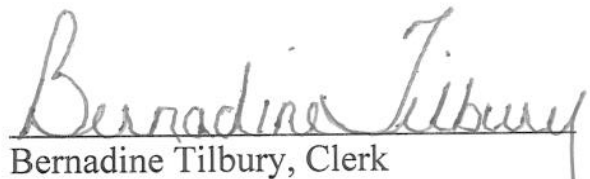
AYES: 4

NAYS: 0


James R. Robinson, President
Village of Edwardsburg

(*SEAL*)

ATTEST:


Bernadine Tilbury, Clerk

LEGISLATIVE FINDINGS

EDWARDSBURG VILLAGE COUNCIL

The Edwardsburg Village Council (VC) has reviewed existing methods of regulating uses relating to sexually oriented businesses through zoning.

The VC began its investigation when members of the community responded to the location of live entertainment establishment which exhibited topless dancing by questioning whether such a business, or other sexually oriented businesses, could be regulated by the Edwardsburg Village Council. The Village of Edwardsburg residents challenged the VC to be proactive and address the issues relating to the location of sexually oriented businesses before another such business opened in the area. Members of the Edwardsburg Village Council were informed about the law and the problems associated with sexually oriented businesses by the Cass County Prosecutor, Victor Fitz, and by the Village Attorney, William L. LaBre, regarding the regulation of sexually oriented businesses which detailed the problems with the live entertainment business in the Village, and focused on controlling the negative secondary effects of these type of businesses through zoning and certain targeted police power ordinances. With VC support, an ordinance was drafted. The ordinance was reviewed in detail by the VC members. The members went over each word of the draft ordinance and working with the Edwardsburg Village Council's civil counsel regarding changes the ordinance and limitations imposed by statute and common law on the regulation of SOBs. The draft "amendment" was presented to the entire VC which scheduled a public hearing regarding the amendment's adoption, and posted notice to the public regarding the discussion. Members of the VC were provided with a set of materials relating to the regulation of SOBs to review. Those materials included the following:

1. Report of the (Minnesota) Attorney General's Working Group on the Regulation of Sexually Oriented Businesses.
2. Appendix containing 14 studies relating to land use and Sexually Oriented Businesses.
3. Survey of Pennsylvania Police Chiefs.
4. Land Use Study from Garden Grove, California.
5. Excerpts from Lansing, Michigan's IMPACT OF ADULT ENTERTAINMENT USES study of April, 1988.
6. SOB study from Amarillo, Texas.
7. SOB study from Indianapolis, Indiana.
8. SOB study from Austin, Texas.
9. Executive Summary from SOB study in New York, New York.
10. Report of the Ad Hoc Committee on Adult Business Regulation, Traverse City, Michigan.
11. Amendment from the Charter Edwardsburg Village Council of Garfield.
12. Model Text for Adult and Sexually-Oriented Business, Leelanau County Planning Commission.
13. MTA sample ordinance.
14. Boyne City's SOB ordinance.
15. City of St. Ignace's SOB ordinance.

16. Elmwood Edwardsburg Village Council's SOB ordinance.
 17. Sample ordinances from MML including Paw Paw and Mattawan, Michigan.
 18. City of Cadillac's SOB ordinance.
 19. American Family Law Center's proposed SOB ordinance.
 20. Present Edwardsburg Village Council Ordinance regarding public nudity.
 21. Michigan Administrative Rules R436.1407 and R436.1409.
 22. Odyssey of T.C. Inc. v Blair Edwardsburg Village Council
 23. Young v American Mini-Theatres, Inc.
 24. City of Renton v Playtime Theatres, Inc.
 25. FW/PBS, Inc. v City of Dallas
 26. Schad v Borough of Mount Ephram
 27. Keego Harbor Co. v City of Keego Harbor
 28. Kev, Inc. v Kitsap County
 29. S&G News v City of Southgate
 30. Berg v Health and Hospital Corporation of Marion County
 31. Zoning and Free Speech: A review of Adult Entertainment Caselaw
 32. Regulating Sex Businesses
 33. Article from April 3, 1996 Northern Express
 34. Article from August 27, 1996 Record Eagle
 35. Letter from State Rep. Michelle McManus to MaryAnn Atkinson of 11/20/96
- Additionally, individual members of the VC reviewed a Clark, Boardman, Callaghan volume by Jules B. Gerard titled "Local Regulation of Adult Businesses".

The above information, coupled with the testimony taken at the public hearing and the oral legal analysis of the amendment provided by the county prosecutor and village counsel establish the facts and rationale needed to support the proposed zoning ordinance amendment.

SPECIFIC FINDINGS OF FACT

- 1.) Edwardsburg is a primarily rural community with publicly owned land but with a developed and concentrated commercial zone located in an area which is being currently described and considered as a Development Corridor, and an industrial location South of and contiguous to the Village. In this developed area, large stores have opened in recent years, with more stores and shopping complexes expected to open in the coming years.
2. Economic growth in Edwardsburg and surrounding areas has been steady and primarily residential, and is expected to continue, given the growth experienced by the adjoining counties of St. Joseph and Elkhart, in the State of Indiana, where a significant portion of local residents work. Preserving and increasing the local tax base is an important consideration in planning for the future of the Edwardsburg.
3. Commercial zones within the Edwardsburg area, defined as the Village of Edwardsburg, Townships of Ontwa, Milton and Jefferson, Northern Elkhart County, Indian, the City of Elkhart, Indiana, and St. Joseph County, Indiana, are found primarily in those areas at or near M-62 and at or near U.S. 12, the major highways servicing the area. Many of the commercial areas in Edwardsburg are surrounded by residential uses and neighborhoods.

4. The Village of Edwardsburg has one sexually oriented business in place, to wit, "Escape Reality" which has been licensed by the State to serve alcohol and featured live performances by topless women. Criminal Prosecution, and a civil action for nuisance abatement under Chapter 38 of the Michigan Revised Judicature Act are currently pending, based on the said Sexually Oriented Business having expanded to include prostitution and dealing in controlled substances.

5. The Township of Ontwa is actively involved in drafting an ordinance relating to the regulation of sexually oriented businesses, and there is a desire on the part of the governing bodies in the township, the village, and the community at large to have a "uniform front" of regulation throughout the local area.

6. There is convincing documentary evidence in the form of studies from around the country finding that SOBs, due to their very nature, have serious objectionable operational characteristics, particularly when they are located nearby another SOB, thereby contributing to blight and the general downgrading of the quality of life in adjacent areas. Particularly noteworthy, but by no means exhaustive, are the following findings:

A. A study titled Social Impact of Adult Entertainment Facilities conducted in **Lansing, Michigan**, found that:

(i) There is a significant correlation between poor neighborhood housing conditions and the presence of an adult business;

(ii) There is a significant decrease in surrounding residential property values resulting from the existence of a nearby SOB;

(iii) There is a significant increase in the general crime rate in areas having two or more SOBs;

(iv) There is a reduction in the relative condition of housing in a neighborhood following the establishment of an SOB in that neighborhood;

(v) The number of residential structures used for rental housing increased over time following the introduction of an SOB in the surrounding area;

(vi) Those living nearby an SOB strongly favor regulating SOBs, while those frequenting SOBs [predominately white, married, middle-class males ages 26-35] do not favor the location of SOBs in their neighborhoods.

B. A study conducted in **Indianapolis, Indiana**:

found areas in the city having one or more SOBs had crime rates that were 23% higher than control areas without SOBs, and which were 46% higher than the average crime rate in

the city. Sex-related crimes increased over 20% in the SOB areas versus the control sites. Residential areas with SOBs suffered higher crime rates than commercial areas with SOBs, with sex-related crimes being four times more common in said residential areas than in the commercial districts.

Home values near SOBs were found to have relatively high values but increased only half as fast as the rate homes in the control areas increased, and at one-third the rate that homes in the city as a whole increased. The study found residential properties near SOBs placed on the market at amounts substantially lower than comparable homes in control "areas without SOBs. Real estate professionals noted that properties turned over more often in areas near SOBs than in the rest of the city, and a survey of real estate appraisers found that 59% of the appraisers felt a home located within one block of an SOB would suffer an immediate decrease in value from 1-20%. The decrease was felt to be even more pronounced in residential versus commercial areas of the city. Further, the appraisers felt the decrease in values dropped off significantly the further the property was from the SOB.

C. A study conducted in **Austin, Texas**, sex-related crimes in areas near an SOB were found to be from 177-482% higher than in control areas. Real estate appraisers in the city suggested that an SOB located within one block of a residential area decreases home values in the area, and that the location of an SOB is a sign that an area is decaying. The appraisers felt homebuyers might have a more difficult time securing financing in areas near an SOB. A study of the license plates of SOB patrons found that 44% were transient, or not from the city. Of the 81 patrons tracked, only three plates were registered as being located within one mile of the SOB.

D. A study conducted in **Amarillo, Texas**, found that street crimes in areas immediately surrounding SOBs were considerably more frequent than in the remainder of the city. Further, the study concluded that concentrations of SOBs have detrimental effects on surrounding residential and commercial uses. The study found that these detrimental effects were the result of:

- (i) noise, lighting, and traffic generated by pedestrian and vehicular traffic frequenting the SOBs;
- (ii) the possibility of an increase in street crimes in areas with high pedestrian traffic;
- (iii) the tendency of the public to avoid areas where SOBs are located, thus leading to the deterioration of surrounding commercial and residential activities; and

E. The **Minnesota Attorney General** issued a report finding, among other things,

- (i) that there was compelling evidence to conclude that SOBs were associated with high crime rates and the depression of property values
- (ii) that organized crime was involved in the pornography trade [with one of the primary operators being located in Michigan],

(iii) that prostitution is a problem in certain areas near SOB's with neighborhood boys and girls being propositioned on the street by hookers and johns, and (iv) that residents in one area near an SOB found discarded, explicit pornographic literature in nearby streets, sidewalks and bushes.

7. Regarding the impacts of SOB's:

A. Distancing SOB's from areas frequented by minors is necessary to minimize or eliminate exposure of the minors to sexually explicit advertising and crime.

B. Placing an SOB in a primarily residential area would deter potential homeowners from purchasing in that area and would decrease the value of existing homes.

C. As the several negative effects of SOB's tend to decrease with distance and tend to increase when the businesses are congregated, a separation of the uses to avoid concentration is important to preserve property values, minimize crime, and to continue residential and commercial growth in the area.

8. Given the small and concentrated amount of commercial space in the Village of Edwardsburg and the Village's otherwise highly rural nature, it is impossible to provide that 5% of the zoned land in the area be potentially available for use by SOB's in that the total area of the Village is one square mile. The Commercial zones are typically surrounded by concentrated residential areas. The available areas are located on major highways in areas where other commercial, retail-type businesses exist, or are otherwise residential.

9. The Village of Edwardsburg has several churches which hold primary services on Sundays. The VC is aware of the decision in **Mitchell v Commission on Adult Entertainment Establishments**, 10 F.3d 123 (3d Cir. 1993), and believes that limiting the daily hours of operation of SOB's and eliminating Sunday hours in the Village of Edwardsburg is necessary to prevent the negative secondary effects of SOB's on the community at large, and that such limitations allow reasonable and sufficient avenues for the speech affected businesses may wish to engage in.

10. Certain SOB's, especially those SOB's providing private or semi-private booths or cubicles for viewing films, videos or live sex shows, have at times been sites of illicit, public sexual acts. Removal of doors, limitations on apertures, and requiring sufficient lighting on premises in said areas advances a substantial government interest in curbing unsanitary conditions and illegal, public sexual acts in said SOB's.

11. The Edwardsburg Village Council has a substantial interest in protecting the health, safety and welfare of minors who may view advertising or promotions which depict sexual acts or certain sexual anatomical areas, in shielding the public from such lurid advertising, and in protecting the value of properties near the site of the advertising. The Edwardsburg Village Council is aware of the case of **SJD, Inc. v. City of Houston**, 837 F. 2d 1268 (5th Cir. 1982), limiting the ability of SOB's to depict sexual acts and certain sexual

anatomical areas in their advertising and promotion is a narrowly-tailored method to control said negative effects.

12. The Edwardsburg Village Council, upon review the above law and facts, has passed a Resolution adopting as its own the above findings of fact and conclusions of law.

Time frame: February through April 2009

Vicki McClain aka "Mia"

1. Conspiracy to Prostitution/Keeping a house of -5 year felony
2. Prostitution/Keeping house of- 5 year felony
3. Attempted controlled substance-Delivery/Manufacture methamphetamine/ecstasy-5 year felony
4. Solicitation of a controlled substance-Possession of methamphetamine/ecstasy-5 year felony
5. Conspiracy to lewd and lascivious conduct-1 year misdemeanor
6. Conspiracy to disorderly person-1 year misdemeanor
7. Lewd and lascivious conduct-1 year misdemeanor
8. Lewd and lascivious conduct-1 year misdemeanor
9. Disorderly person-90 day misdemeanor
10. Disorderly person-90 day misdemeanor

Lauren Coombs aka "Whitney"

1. Conspiracy to Prostitution/Keeping a house of -5 year felony
2. Prostitution/Keeping house of-5 year felony
3. Conspiracy to lewd and lascivious conduct-1 year misdemeanor
4. Conspiracy to disorderly person-1 year misdemeanor
5. Lewd and lascivious conduct-1 year misdemeanor
6. Lewd and lascivious conduct-1 year misdemeanor
7. Lewd and lascivious conduct-1 year misdemeanor
8. Disorderly person-90 day misdemeanor
9. Disorderly person-90 day misdemeanor
10. Disorderly person-90 day misdemeanor

Melissa Goodman aka "Star"

1. Conspiracy to Controlled Substance-Deliver/Manufacture-Methamphetamine/ecstasy-20 year felony
2. Controlled Substance-Delivery/Manufacture-methamphetamine/ecstasy-20 year felony
3. Conspiracy to controlled substance-Delivery/Manufacture(Narcotic or cocaine) less than 50 grams-20 year felony
4. Controlled Substance-Delivery/Manufacture (Narcotic or cocaine) less than 50 grams-20 year felony
5. Controlled Substance-Delivery/Manufacture(Narcotic or cocaine) less than 50 grams-20 year felony
6. Conspiracy to Prostitution/Keeping house of-5 year felony
7. Prostitution/Keeping house of-5 year felony
8. Lewd and lascivious conduct-1 year misdemeanor
9. Lewd and lascivious conduct-1 year misdemeanor
10. Lewd and lascivious conduct-1 year misdemeanor
11. Lewd and lascivious conduct-1 year misdemeanor
12. Disorderly person-90 day misdemeanor
13. Disorderly person-90 day misdemeanor
14. Disorderly person-90 day misdemeanor
15. HIV failure to inform
16. HIV failure to inform
17. HIV failure to inform

Katie McCreary aka "Olivia"

1. Lewd and lascivious conduct-1 year misdemeanor
2. Lewd and lascivious conduct-1 year misdemeanor

Erin Dickerson aka "Hazel"

1. Conspiracy to prostitution/Keeping house of-5 year felony
2. Conspiracy to disorderly person-1 year misdemeanor
3. Conspiracy to lewd and lascivious conduct-1 year misdemeanor
4. Prostitution/Keeping house of-5year
5. Lewd and lascivious conduct-1 year misdemeanor
6. Lewd and lascivious conduct-1 year misdemeanor
7. Lewd and lascivious conduct-1 year misdemeanor
8. Lewd and lascivious conduct-1 year misdemeanor
9. Disorderly person-90 day misdemeanor
10. Disorderly person-90 day misdemeanor
11. Disorderly person-90 day misdemeanor
12. Disorderly person-90 day misdemeanor

Brent Hason (Manager)

1. Conspiracy to prostitution/Keeping house of-5 year felony
2. Prostitution/Keeping house of-5 year felony
3. Solicitation of a prostitution/Transporting Female-5 year felony

“Patience”

1. Conspiracy to Prostitution/Keeping a house of-5 year felony
2. Prostitution/Keeping house of-5 year felony
3. Solicitation of a controlled substance-Possession of Methamphetamine/ecstasy-5 year felony
4. Solicitation of a controlled substance-Possession of Methamphetamine/ecstasy-5 year felony
5. Attempted controlled substance-Delivery/Manufacture-Methamphetamine/ecstasy-5 year felony
6. Conspiracy to lewd and lascivious conduct-1 year misdemeanor
7. Lewd and lascivious conduct-1 year misdemeanor
8. Lewd and lascivious conduct-1 year misdemeanor
9. Conspiracy to disorderly person-1 year misdemeanor
10. Disorderly person-90 day misdemeanor

Misty Minnish “Nadia”

1. Lewd and lascivious conduct-1 year misdemeanor
2. Disorderly person-90 day misdemeanor