

## ORDINANCE NO. 57

### ADULT REGULATED USE LICENSING ORDINANCE

#### THE VILLAGE OF MARTIN ORDAINS:

#### SECTION 1. INTENT AND FINDINGS

(1) In the development and execution of this article, it is recognized that there are some uses that, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances, thereby causing a deleterious effect upon the adjacent areas. These uses are referred to in this article as "adult regulated uses".

(2) The proximity of adult regulated uses to certain uses considered particularly susceptible to the negative impacts or the concentration of adult uses tends to erode the quality of life, adversely affect property values, disrupt business investment, encourages residents and businesses to move or avoid the community, increase crime and contribute a blighting effect on the surrounding area.

(3) This section describes the uses regulated and the specific standards needed to ensure that the secondary adverse effects of these uses will not contribute to the deterioration of the surrounding neighborhood. Such deleterious secondary effects of the uses so regulated have been recognized and documented in other communities in the form of studies and reports.

(4) It is the purpose of this article to regulate adult regulated uses to promote the health, safety, morals and general welfare of the citizens of the Village, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of adult regulated uses within the Village. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent or effect of this article to condone or legitimize the distribution of obscene material.

(5) The Village finds that adult regulated uses require specific licensing and police power regulations to protect the health, safety and welfare of the Village of Martin residents and visitors due to the negative peripheral impacts and negative secondary effects of adult regulated uses.

#### SECTION 2. DEFINITIONS

(1) For the purpose of this article, the following words and phrases shall mean:

(a) "Adult regulated use": They are as follows:

(i) "Adult arcade and mini motion picture theater". Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis on matter depicting, or describing or relating to specified sexual activities or specified anatomical areas.

(ii) "Adult bookstore, adult novelty store and adult video store". A commercial establishment which offers for sale or rental for any form of consideration, and which has as a substantial or significant portion of its stock in trade, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, slides, or other visual representations, recordings, other audio matter, and novelties devices which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. The adult bookstore, adult novelty store or adult video store may have other principal business purposes that do not involve the offering for sale or rental of materials which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore, adult novelty 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 a substantial or significant portion of its business includes the offering for sale or rental for consideration of the specified materials which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

(iii) "Adult booth". A small enclosed or partitioned area inside an adult regulated use which is:

a. Designed or used for the viewing of books, magazines, periodicals or other printed matter, photographs, films, motion pictures, videocassettes slides or other visual representations, recordings, and novelties or devices which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas by one or more persons; and

b. Accessible to any person, regardless of whether a fee is charged for access.

c. The term "adult booth" does not include a foyer through which any person can enter or exit the establishment, or a restroom.

(iv) "Adult cabaret". A nightclub, cafe, restaurant, lounge, bar or similar establishment (which may or may not include the service of food or beverages), where male or female impersonators, dancers, entertainers, waiters, waitresses or employees regularly provide live performances which are distinguished or characterized by their emphasis on specified

anatomical areas or specified sexual activities for observation by or entertainment of patrons, guests and/or members.

(v) "Adult model studio". Any place where a person who displays specified anatomical areas is regularly provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. Such an establishment includes but is not limited to the following activities and services: modeling studios, body painting studios, wrestling studios, individual theatrical studios, wrestling studios, individual theatrical performances or dance performances, barbershops or hair salons, carwashes and/or convenience stores. An adult personal service establishment shall not include a proprietary school licensed by the state or a college, junior college or university supported entirely or in part by public taxation, or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation, or in a structure:

a. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;

b. Where in order to participate in a class a student must enroll at least three days in advance of the class; and

c. Where no more than one nude or semi-nude model is on the premises at any one time.

(vi) "Adult motel". A hotel, motel or similar commercial establishment which offers accommodations to the public for any form of consideration, and provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, and has a sign visible from the public right-of-way, which advertises the availability of this adult type of photographic reproductions, or offers a sleeping room for rent for a period of time that is less than ten hours, or allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

(vii) "Adult motion picture theater". A commercial establishment where, for any form of consideration, films, motion pictures, videos, slides or other photographic reproductions are regularly shown in which a substantial portion of the total presentation is devoted to the showing of material which is distinguished or characterized by its emphasis on the depiction, description or relation to specified sexual activities or specified anatomical areas for observation by or entertainment of patrons, guests and/or members.

(viii) "Adult outdoor motion picture theater". A commercial establishment having an open lot or part thereof with appurtenant facilities devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions for any form of consideration to persons in motor vehicles or in outdoor seats, and presenting material distinguished or characterized by its emphasis on matter depicting, describing

or relation to specified sexual activities or specified anatomical areas for observation by or entertainment of patrons, guests and/or members.

(ix) "Adult physical culture business". Any commercial establishment, club or business, by whatever name designated, which regularly offers or advertises or is equipped or arranged to provide massages, body rubs, alcohol rubs, physical stimulation, baths or other similar treatment by any person. An adult physical culture business may include but is not limited to establishments commonly known as massage parlors, health spas, sauna baths, Turkish bathhouses, and steam baths. The following uses shall not be included within the definition of an adult physical culture business:

a. Business which routinely provide such services by a licensed physician, a licensed chiropractor, a licensed osteopath, a licensed physical therapist, a licensed practical nurse practitioner, a professional massage therapist or any other similarly licensed medical professional;

b. Fitness and recreation centers;

c. Electrolysis treatment by a licensed operator of electrolysis equipment;

d. Continuing instruction in martial or performing arts, or in organized athletic activities;

e. Hospitals, nursing homes, medical clinics or medical offices;

f. Barbershops or beauty parlors and salons which offer massages to the scalp, the face, the neck or the shoulders only; and

g. Adult photography studios whose principal business does not include the taking of photographs or specified anatomical areas.

(x) "Adult theater". A commercial establishment which is a theater, concern halls, auditorium or similar commercial establishment, either indoor or outdoor in nature, which, for any form of consideration, regularly features live performances which are distinguished or characterized by their emphasis on specified sexual activities or by exposure of specified anatomical areas for observation by guests, patrons and/or members. An adult theater does not include a theater, concern hall, auditorium or similar establishment which, for any fee or consideration, regularly features live performances which are not distinguished or characterized by their emphasis on the depiction or description of specified sexual activities or specified anatomical areas in that any such depiction or description is only incidental to the primary purpose of the performance.

(xi) "Commercial establishment". Any business, location or place which conducts or allows to be conducted on its premises any activity for commercial gain.

(xii) "Employee". A person who performs any service on the premises of

an adult regulated use on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise, and whether or not the person is paid a salary, wage or other compensation by the operator of the adult regulated use. The term "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.

(xiii) "Establishment". The site or premises on which an adult regulated use is located, including the interior of the establishment or portions thereof, upon which certain activities or operations are being conducted for commercial gain.

(xiv) "Specified anatomical areas". A portion of the human body defined as follows:

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

(b) Human male genitals in a discernible turgid state, even if completely opaquely covered.

(xv) "Specified sexual activities". The explicit display of one or more of the following:

(a) Human genitals in a state of sexual stimulation or arousal.

(b) Acts of human masturbation, sexual intercourse or sodomy.

(c) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breast.

(xvi) "Adult entertainment". Means any exhibition of any motion pictures, live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated 'specified sexual activities' or 'specified anatomical areas' as defined above, or the removal of articles of clothing or appearing partially or totally nude.

### SECTION 3. LICENSE

(1) From and after the effective date of this Ordinance, no adult arcade and mini motion picture theater, adult bookstore, adult novelty store and adult video store, adult booth, adult cabaret, adult model studio, adult motel, adult motion picture theater, adult outdoor motion picture theater, adult physical culture business, adult theater hereinafter referred to as adult regulated uses, shall be operated or maintained in the Village without first obtaining a license to operate issued by the Village of Martin.

(2) A license may be issued only for one adult regulated use located at a fixed and certain

place. Any person, partnership, or corporation which desires to operate more than one adult regulated use must have a license for each.

(3) No license or interest in a license may be transferred to any person, partnership, or corporation.

(4) Excluded from this licensing requirement are all private schools and public schools located within the Village when instructing pupils in sex education as part of its curriculum.

#### SECTION 4. APPLICATION FOR LICENSE.

(1) Any person, partnership or corporation desiring to secure a license shall make application to the Village Clerk. The application shall be dated by the Village Clerk. A copy of the application shall be distributed promptly by the Village Clerk to the Village President and to the law enforcement agency serving the Village and to the applicant.

(2) The application for a license shall be upon a form provided by the Village Clerk. An applicant for a license, which shall include all partners or limited partners of a partnership applicant, and all officers and directors of a corporate applicant and all stockholders owning more than five percent of the stock of a corporate applicant, or any other person who is interested directly in the ownership or operation of the business, shall furnish the following information under oath:

(a) Name and address, including all aliases.

(b) Date of birth.

(c) Social Security number.

(d) Michigan vehicle operator's license number.

(e) Written proof that the individual is at least 18 years of age.

(f) All residential addresses of the applicant for the past three years.

(g) The applicant's height, weight, color of eyes and hair.

(h) The business, occupation or employment of the applicant for five years immediately preceding the date of application.

(i) Whether the applicant previously operated in this or any other county, city, village, township, or state under an adult regulated use license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.

(j) All criminal statute, whether federal or state, or local ordinance violations, convictions, forfeiture of bond or pleadings of nolo contendere on all criminal charges, except minor traffic violations.

(k) Fingerprints and two portrait photographs at least two inches by two inches of the applicant.

(l) The address of the adult regulated use to be operated by the applicant.

(m) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agent and the name and address of all shareholders owning more than five percent of the stock in said corporation and all officers and directors of the corporation.

(n) The address which applicant desires to receive notification under the article.

(3) Within 30 days of receiving an application for a license the Village Clerk shall notify the applicant whether the application is granted or denied.

(4) Whenever an application is denied, the Village Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten days of receipt of notification of denial, a public hearing shall be held within 30 days thereafter before the Village Council, as hereinafter provided.

(5) Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this Ordinance shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the Village Clerk.

## SECTION 5. STANDARDS FOR ISSUANCE OF LICENSE

(1) To receive a license to operate an adult regulated use, an applicant must meet the following standards:

(a) If the applicant is an individual:

i. The applicant shall be at least 18 years of age.

ii. The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.

iii. The applicant shall not have been found to have previously violated this

ordinance or a substantially similar ordinance within five years immediately preceding the date of the application.

(b) If the applicant is a corporation:

i. All officers, directors and stockholders required to be named under this Ordinance shall be at least 18 years of age.

ii. No officer, director or stockholder required to be named under this Ordinance shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.

iii. No officer, director, or stockholder required to be named under this Ordinance shall have been found to have previously violated this ordinance or a substantially similar ordinance within five years immediately preceding the date of the application.

(c) If the applicant is a partnership, joint venture, or any other type of organization where two or more persons have a financial interest:

i. All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least 18 years of age.

ii. No person having a financial interest in the partnership, joint venture or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.

iii. No person having a financial interest in the partnership, joint venture or other type of organization shall have been found to have violated any provision of this article or a substantially similar ordinance within five years immediately preceding the date of the application.

(2) No license shall be issued unless the law enforcement agency serving the Village of Martin has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the Village Clerk no later than 14 days after the date of the application.

(3) No license shall be issued to for an adult regulated use if said use's proposed address is within 1000 feet of any residentially zoned district and within 2,500 feet of any school, college, nursery school, child care facility, church and religious facility, or any public park.

## SECTION 6. FEES

(1) A license fee set by resolution shall be submitted with the application for a license. If the application is denied, one-half of the fee shall be returned.



## SECTION 7. DISPLAY OF LICENSE OR PERMIT

(1) The license shall be displayed in a conspicuous public place in the adult regulated use establishment.

## SECTION 8. RENEWAL OF LICENSE OR PERMIT

(1) Every license issued pursuant to this article will terminate at the expiration of one year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the Village Clerk. The application for renewal must be filed not later than 60 days before the license expires. The application for renewal shall be filed in triplicate with and dated by the Village Clerk. A copy of the application for renewal shall be distributed promptly by the Village Clerk to the Village President, the law enforcement agency serving the Village of Martin, and to the business operator. The application for renewal shall be upon a form provided by the Village Clerk and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

(2) A license renewal fee set by resolution shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty set by resolution shall be assessed against the applicant who files for a renewal less than 60 days before the license expires. If the application is denied, one-half of the total fees collected shall be returned.

(3) If the law enforcement agency serving the Village of Martin is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the Village Clerk.

## SECTION 9. REVOCATION OR SUSPENSION OF LICENSE

(1) The Village Council can revoke or suspend a license or permit for any of the following reasons:

(a) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.

(b) The operator or any employee of the operator has violated any provision of this Ordinance or any rule or regulation adopted by the Village Council pursuant to this Ordinance; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of 30 days if the Village Council shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

(c) The operator becomes ineligible to obtain a license or permit or the operator is convicted of, or pleads nolo contendere to, any felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature.

(d) Any cost or fee required to be paid by this article is not paid.

(e) Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult regulated use.

(f) The operator fails to maintain a special use permit for the site as required by the zoning ordinance, or fails to comply with conditions of the special use permit.

(g) The Village Council, before revoking or suspending any license or permit, shall give the operator at least ten days written notice of the charges against him, and the opportunity for a public hearing before the Village Council, as hereinafter provided.

(2) Before the Village Council revokes or suspends a license issued herein the Village Council shall cause written notice to be sent by certified mail to the licensee or applicant affected, at the address stated in the license or application informing such person of the right to a hearing upon request.

(3) If the licensee does not request a hearing within 14 days of the date the notice was sent, the license may be forthwith revoked or suspended. If the licensee requests a hearing before the Village Council regarding said proposed revocation or suspension, said hearing shall be held within 21 days after the date of the written request.

(4) Any license issued by the Village may be immediately suspended by the Village President or duly appointed Village official if it is determined that the licensee has violated or someone at or upon the licensed location has violated the Village ordinance or state law and that continued operation under the license is contrary to the public health, safety, and welfare. A licensee shall have the right to a hearing before the Village Council on any license suspension by the Village President or duly appointed Village official and notice thereof shall be given in accordance with the notice provisions of this Section.

(5) Both the Village and the licensee shall be afforded a reasonable opportunity to present evidence on the issue at the hearing. Action taken by the Village Council shall be final and any fees hereunder shall not be refunded to the applicant or licensee.

(6) The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

(7) Any operator whose license is revoked shall not be eligible to receive a license for one year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult regulated use for six months from the date of revocation of the license.

#### SECTION 10. PHYSICAL LAYOUT OF ADULT ENTERTAINMENT ESTABLISHMENT.

(1) Any adult regulated use having available for customers, patrons or members, any

booth, room or cubicle for the private viewing of any adult entertainment must comply with the following requirements.

(a) "Access". Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult entertainment establishment, and shall be unobstructed by any door, lock or other control-type devices.

(b) "Construction". Every booth, room or cubicle shall meet with the following construction requirements:

i. Each booth, room or cubicle shall be separated from adjacent booths, rooms and cubicles and any non-public areas by a wall.

ii. Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same.

iii. All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light colored, non-absorbent, smooth textured and easily cleanable.

iv. The floor must be light colored, non-absorbent, smooth textured and easily cleanable.

v. The lighting level of each booth, room or cubicle, when not in use shall be a minimum of ten foot-candles at all times, as measured from the floor.

(c) "Occupants". Only one individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

## SECTION 11. RESPONSIBILITIES OF THE OPERATOR

(1) The operator shall maintain a register of all employees, showing the name and aliases used by the employee, home address, age, date of birth, sex, height, weight, color of hair and eyes, phone numbers, social security numbers, date of employment and termination, and duties of each employee. The above information on each employee shall be maintained in the register on the premises for a period of three years following termination.

(2) Daily hours of operation of any adult entertainment establishment shall be limited to the period of time from 8:00 a.m. to 2:00 a.m.

(3) The operator shall make the register of employees available immediately for inspection by police upon demand of a member of the law enforcement agency serving the Village of Martin at all reasonable times.

(4) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any areas where they can be viewed from a public sidewalk or street adjacent to the establishment.

(5) Any individual viewing booths, entertainment rooms, or similar cubicles designed or used for individuals to view specified anatomical areas or to view specified sexual activities shall not be completely enclosed from the common areas, hallways, or other areas of the adult regulated use.

(6) No employee or patron under 18 years of age shall be allowed on the premises of an adult regulated use.

(7) No intoxicating liquor or cereal malt beverage shall be served or consumed on the premises of an adult regulated use.

(8) The operator shall maintain the premises in a clean and sanitary manner at all times.

(9) Every act or omission by an employee constituting a violation of the provisions of this article shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(10) Any act or omission of any employee constituting a violation of the provisions of this article shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

(11) No employee of an adult regulated use shall allow any minor to loiter around or to frequent an adult regulated use or to allow any minor to view adult entertainment as defined herein.

(12) The operator shall maintain at least ten foot-candles of light in the public portions of the establishment, including aisles, at all times measured from the floor. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one foot-candle of illumination in said aisles, as measured from the floor.

(13) The operator shall insure compliance of the establishment and its patrons with the provisions of this article.

## SECTION 12. PENALTY

(1) Any person convicted under this article shall be subject to a maximum penalty of 90 days in jail, or an equal amount of time of community service, or any combination thereof not

exceeding 90 days, plus \$100.00 fine, plus actual costs of prosecution, plus mandatory restitution to victims.

(2) In addition to the penalty provided in subsection (a) of this section, any condition caused or permitted to exist in violation of the provisions of this Code, or any ordinance, shall be deemed a new and separate offense for each day that such condition continues to exist.

#### SECTION 13. PUBLICATION

This Ordinance shall be published in a paper that has general circulation for the Village of Martin and County of Allegan, qualified under state law to publish legal notices, within one week after its adoption and the same shall be recorded in the Village of Martin's Book of Ordinances, and such recording authenticated by the signatures of the Village President and Village Clerk.

#### SECTION 14. INVALIDITY

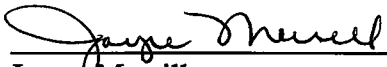
If any section, part of section, sentence, clause or phrase of this Ordinance shall be held to be unconstitutional or invalid, the remaining provisions hereof shall nevertheless remain in full force and effective.

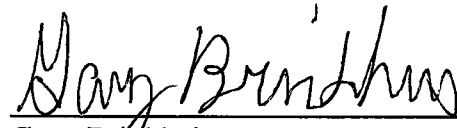
#### SECTION 15. EFFECTIVE DATE

This Ordinance shall be effective after publication and shall take effect on December 1, 2008.

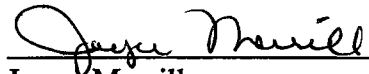
Adopted on November 10, 2008.

ATTEST:

  
\_\_\_\_\_  
Joyce Merrill  
Village Clerk

  
\_\_\_\_\_  
Gary Brinkhuis  
Village President

I hereby certify that the foregoing ordinance was, on November 17, 2008, published in the Penasee Globe, a newspaper circulated in the Village of Martin.

  
\_\_\_\_\_  
Joyce Merrill  
Village Clerk

Dated: November 17, 2008

**VILLAGE OF MARTIN  
ALLEGAN COUNTY, MICHIGAN  
NOTICE OF ADOPTION OF ORDINANCE NO. 57**

To: The Residents and Property Owners of the Village of Martin, Allegan County, Michigan, and Any Other Interested Persons:

**PLEASE TAKE NOTICE** that at a regular meeting of the Village Board of Trustees held on November 10, 2008, the Board adopted Ordinance No. 57, an Ordinance to Regulate and License Adults Use Activities.

**ORDINANCE NO. 57: ADULT REGULATED USE LICENSING ORDINANCE**

**SECTION 1. INTENT AND FINDINGS.**

There are some uses that, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances, thereby causing a deleterious effect upon the adjacent areas. These uses are referred to in this article as "adult regulated uses." The proximity of adult regulated uses to certain uses considered particularly susceptible to the negative impacts or the concentration of adult uses tends to erode the quality of life, adversely affect property values, disrupt business investment. It is the purpose of this Ordinance to regulate adult regulated uses to promote the health, safety, morals and general welfare of the citizens of the Village, and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of adult regulated uses within the Village. The Village finds that adult regulated uses require specific licensing and police power regulations to protect the health, safety and welfare of the Village of Martin residents and visitors due to the negative peripheral impacts and negative secondary effects of adult regulated uses.

**SECTION 2. DEFINITIONS.**

This Section defines the terms used in this Ordinance and what comes under the larger term of "Adult regulated use." They are as follows: "Adult arcade and mini motion picture theater;" "Adult bookstore, adult novelty store, and adult video store;" "Adult booth;" "Adult cabaret;" "Adult model studio;" "Adult motel;" "Adult motion picture theater;" "Adult outdoor motion picture theater;" "Adult physical culture business;" "Adult theater." Further defined terms are "employee," "establishment;" "Specified anatomical areas;" "Specified sexual activities;" and "Adult entertainment."

**SECTION 3. LICENSE.**

From and after the effective date of this Ordinance, no adult arcade and mini motion picture theater, adult bookstore, adult novelty store and adult video store, adult booth, adult cabaret, adult model studio, adult motel, adult motion picture theater, adult outdoor motion picture theater, adult physical culture business, adult theater hereinafter referred to as adult regulated uses, shall be operated or maintained in the Village without first obtaining a license to operate issued by the Village of Martin.

**SECTION 4. APPLICATION FOR LICENSE.**

Any person, partnership or corporation desiring to secure a license shall make application to the Village Clerk. The application shall be dated by the Village Clerk. A copy of the application shall be distributed promptly by the Village Clerk to the Village President and to the law enforcement agency serving the Village and to the applicant. The applicant shall provide: Name and address, including all aliases; Date of birth; Social Security number; Michigan vehicle operator's license number; Written proof that the individual is at least 18 years of age; All residential addresses of the applicant for the past three years; The applicant's height, weight, color of eyes and hair; The business, occupation or employment of the applicant for five years immediately preceding the date of application; Whether the applicant previously operated in this or any other country, city, village, township, or state under an adult regulated use license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation; All criminal statute, whether federal or state, or local ordinance violations, convictions, forfeiture of bond or pleadings of nolo contendere on all criminal charges, except minor traffic violations; Fingerprints and two portrait photographs at least two inches by two inches of the applicant; The address of the adult regulated use to be operated by the applicant. Within 30 days of receiving an application for a license the Village Clerk shall notify the applicant whether the application is granted or denied.

**SECTION 5. STANDARDS FOR ISSUANCE OF LICENSE.**

To receive a license to operate an adult regulated use, an applicant must meet the following standards: If the applicant is an individual; The applicant shall be at least 18 years of age; The applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application; The applicant shall not have been found to have previously violated this ordinance or a substantially similar ordinance within five years immediately preceding the date of the application. No license shall be issued unless the law enforcement agency serving the Village of Martin has investigated the applicant's qualifications to be licensed. No license shall be issued to for an adult regulated use if said use's proposed address is within 100 feet of any residentially zoned district and within 2,500 feet of any school, college, nursery school, child care facility, church and religious facility, or any public park.

**SECTION 6. FEES.**

A license fee set by resolution shall be submitted with the application

for a license. If the application is denied, one-half of the fee shall be returned.

**SECTION 7. DISPLAY OF LICENSE OR PERMIT.**

The license shall be displayed in a conspicuous public place in the adult regulated use establishment.

**SECTION 8. RENEWAL OF LICENSE OR PERMIT.**

Every license issued pursuant to this article will terminate at the expiration of one year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year.

**SECTION 9. REVOCATION OR SUSPENSION OF LICENSE.**

The Village Council can revoke or suspend a license or permit for any of the following reasons: Discovery that false or misleading information or data was given on any application or material facts were omitted from any application; The operator or any employee of the operator has violated any provision of this Ordinance or any rule or regulation adopted by the Village Council pursuant to this Ordinance; The operator becomes ineligible to obtain a license or permit or the operator is convicted of, or pleads nolo contendere to, any felony or any crime involving moral turpitude, prostitution, obscenity or other crime of a sexual nature; any cost or fee required to be paid by this article is not paid; Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult regulated use; The operator fails to maintain a special use permit for the site as required by the zoning ordinance, or fails to comply with conditions of the special use permit.

**SECTION 10. PHYSICAL LAYOUT OF ADULT ENTERTAINMENT ESTABLISHMENT.**

Any adult regulated use having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any adult entertainment must comply with the following requirements: "Access." Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult entertainment establishment, and shall be unobstructed by any door, lock or other control-type devices; "Construction." Every booth, room or cubicle shall meet certain construction requirements; Only one individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth.

**SECTION 11. RESPONSIBILITIES OF THE OPERATOR.**

The operator shall maintain a register of all employees, showing the name and aliases used by the employee, home address, age, date of birth, sex, height, weight, color of hair and eyes, phone numbers, social security numbers, date of employment and termination, and duties of each employee. The above information on each employee shall be maintained in the register on the premises for a period of three years following termination. Daily hours of operation of any adult entertainment establishment shall be limited to the period of time from 8:00 a.m. to 2:00 a.m. No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas or any areas where they can be viewed from a public sidewalk or street adjacent to the establishment. Any individual viewing booths, entertainment rooms, or similar cubicles designed or used for individuals to view specified anatomical areas or to view specified sexual activities shall not be completely enclosed from the common areas, hallways, or other areas of the adult regulated use; No employee or patron under 18 years of age shall be allowed on the premises of an adult regulated use; No intoxicating liquor or cereal malt beverage shall be served or consumed on the premises of an adult regulated use; No employee of an adult regulated use shall allow any minor to loiter around or to frequent an adult regulated use or to allow any minor to view adult entertainment as defined herein.

**SECTION 12. PENALTY.**

Any persons convicted under this article shall be subject to a maximum penalty of 90 days in jail, or an equal amount of time of community service, or any combination thereof not exceeding 90 days, plus \$100.00 fine, plus actual costs of prosecution, plus mandatory restitution to victims.

**SECTION 13. PUBLICATION.**

A summary of this Ordinance shall be published in a paper that has general circulation for the Village of Martin and County of Allegan.

**SECTION 14. INVALIDITY.**

If any section, part of section, sentence, clause or phrase of this Ordinance shall be held to be unconstitutional or invalid, the remaining provisions hereof shall nevertheless remain in full force and effective.

**SECTION 15. EFFECTIVE DATE.**

This Ordinance shall be effective after publication and shall take effect on December 1, 2008.

**PLEASE TAKE FURTHER NOTICE** that the full text of this Ordinance may be examined or obtained at the Village of Martin Office or by requesting same from the Village Clerk, Joyce Merrill at (269) 672-7777.

**VILLAGE OF MARTIN**  
Joyce Merrill, Clerk  
P.O. Box 234  
1586 S. Main Street  
Martin, MI 49070

*Penasee Globe Nov. 17, 2008*