

ORDINANCE

- Licensing and Regulation of Adult-Oriented Establishments -

THE TOWN BOARD OF THE TOWN OF CLEVELAND DOES HEREBY ORDAIN AS FOLLOWS:

That the following Ordinance, Title 4, Chapter 4, is hereby adopted by the Town Board on behalf of the Town of Cleveland to be codified in the Town Code of Ordinances:

CHAPTER 4

LICENSING AND REGULATION OF ADULT-ORIENTED ESTABLISHMENTS

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SEC. 4-4-1 PURPOSE.

It is a lawful purpose of the Town Board of the Town of Cleveland to enact regulatory ordinances protecting and promoting the general welfare, orderly conduct, health, and safety of its residents. The Town Board of the Town believes it is in the best interests of the health and safety of its residents to regulate and thereby diminish the dangerous secondary effects that accompany adult-oriented establishments. The dangerous and negative secondary effects associated with adult-oriented businesses include, but are not limited to, increased criminal activity of both a sexual and violent nature, lowered property values, urban blight and a loss of pride in a community, and an increase in sexually transmitted diseases.

The Town Board of the Town has knowledge of studies conducted by Phoenix, Arizona, Whittier, California, Adams County, Colorado, Indianapolis, Indiana, New York, New York, New Hanover

County, North Carolina, Austin, Texas, Beaumont, Texas, Dallas, Texas, El Paso, Texas, and Newport News, Virginia, indicating adult-oriented establishments have either a strong or a direct correlation to increased crime. A Land Use Study conducted by the City of Phoenix, Arizona, concentrating on the link between adult-oriented establishments and their relation to increased crime found that the number of sex offenses was five hundred and six percent (506%) greater in neighborhoods where adult-oriented establishments were located, and which also concluded that the crimes of rape, lewd and lascivious behavior, and child molestation were one hundred and thirty-two percent (132%) greater in neighborhoods where adult-oriented establishments were located.

The Town Board of the Town has knowledge of studies conducted by Garden Grove, California, Los Angeles, California, Indianapolis, Indiana, Minneapolis, Minnesota, Las Vegas, Nevada, New York, New York, New Hanover County, North Carolina, Oklahoma City, Oklahoma, Austin, Texas, El Paso, Texas, Newport News, Virginia, and St. Croix County, Wisconsin, indicating a correlation between the location of adult-oriented establishments and decreased property values of the surrounding areas. A study surveying 100 Oklahoma City real estate appraisers concluded that a concentration of adult-oriented businesses may mean large losses in property values.

The Town Board of the Town has knowledge of studies conducted by Minneapolis, Minnesota, Ellicottville, New York, Islip, New York, New Hanover County, North Carolina, Amarillo, Texas, and El Paso, Texas, concluding that when adult-oriented establishments are allowed to concentrate in one area, the negative secondary effects of adult-oriented establishments may be magnified. The Ellicottville, New York, Village Board of Trustees found that isolation of adult-oriented establishments limits their negative secondary effects. A report by the Islip, New York, Department of Planning found that two adult-oriented establishments located near each other created a dead zone in an otherwise healthy business district.

A legislative report prepared by the Sexually Oriented Business Revision Committee for the Houston City Council concluded that, due to criminal activity associated with adult-oriented establishments, licenses should be required of all adult-oriented establishment employees. The legislative report further concluded that the lack of clear lines of view, insufficient lighting, and locked rooms decreases the ability of adult-oriented establishment owners, managers, and employees to monitor behavior and prevent lewd behavior on the part of customers, and that this is behavior which may lead to unsanitary conditions and the spread of communicable diseases. A report based on a memorandum from the Tucson, Arizona Police Department Investigative Services to the City Prosecutor dated May 1, 1990 concluded that police officers found a wide variety of illegal sexual conduct at all adult-oriented establishments, that virtually every establishment had employees arrested for prostitution or obscene sex shows, and which found that one of the employees arrested for such acts was a 15 year old girl.

The Town Board of the Town recognizes that establishments licensed to serve alcohol are the most likely to conduct adult entertainment, as defined herein, and that this adult entertainment can lead to exploitation of human sexuality. Such exploitation takes the form of employing or permitting persons to perform adult entertainment as an inducement to patrons to purchase alcoholic beverages. The purpose of this Ordinance shall be to license and regulate the operations and locations of adult-oriented establishments, as defined herein, within the limits of the Town of Cleveland. This Ordinance has neither the purpose nor effect of imposing limitations or restrictions on the content of

any communicative materials, including sexually oriented materials. Similarly, it is neither the purpose nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. As based upon the following recitation of issues involving such types of businesses, it is deemed to be in the best interests of the health, welfare, and safety of the residents of the Town to adopt this Ordinance pursuant to the authority vested in the Town under Wis. Stat. '61.34.

Based in part upon the foregoing, and with the purpose of diminishing the negative secondary effects of adult-oriented establishments, defined as including, but not being limited to, maintenance of property values, protection of the quality of neighborhoods and commercial districts, the quality of life, and the health, safety, and welfare of residents of the Town, the following regulations are adopted.

SEC. 4-4-2 DEFINITIONS.

- (A) **Adult bath house.** An establishment or business which provides the services of baths of any kind, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity to engage in specified sexual activities as defined in this Ordinance.
- (B) **Adult Bookstore.** An establishment having as a substantial or significant portion of its stock in trade, for sale, rent, lease, inspection, or viewing books, films, video cassettes, magazines, or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to Aspecific anatomical areas@ or Aspecified sexual activities,@ as defined below.
- (C) **Adult body painting studio.** An establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly or partially nude. For purposes of this Ordinance, an adult body painting studio shall not include a tattoo parlor.
- (D) **Adult cabaret.** A cabaret which features dancers, strippers, male or female impersonators, or similar entertainers, performing or presenting material having as its dominant theme, or distinguished or characterized by, an emphasis on any actual or simulated Aspecified sexual activities@ or Aspecified anatomical areas@ as defined below.
- (E) **Adult entertainment.** Any exhibition of any motion picture, live performer, 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

Aspecified sexual activities,@ or Aspecified anatomical areas,@ as defined below.

- (F) **Adult massage parlor.** An establishment or business with or without sleeping accommodations which provides services of massage and body manipulation, including exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, not operated by a medical practitioner or professional physical therapist licensed by the State of Wisconsin and which establishment provides for its patrons the opportunity to engage in Aspecified sexual activity@ as defined in this Ordinance.
- (G) **Adult mini-motion picture theater.** An enclosed building with a capacity less than (25) persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing, or relating to Aspecified sexual activities,@ or Aspecified anatomical areas,@ as defined below, for observation by patrons therein.
- (H) **Adult modeling studio.** An establishment or business which provides the service of modeling for the purpose of reproducing the human body wholly or partially nude by means of photography, painting, sketching, drawing, or otherwise.
- (I) **Adult motion picture theater.** An enclosed building with a capacity of (25) or more persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing, or relating to Aspecified sexual activities,@ or Aspecified anatomical areas,@ as defined below, for observation by patrons therein.
- (J) **Adult novelty shop.** An establishment or business having as a substantial or significant portion of its stock in trade in novelty or other items including movies, tapes, videos, books, and any devices, which are distinguished or characterized by an emphasis on, or designed for, specified sexual activity as defined herein or stimulating such activity.
- (K) **Adult-oriented establishment.** Establishments including, but not limited to, Aadult bookstores,@ Aadult motion picture theaters,@ Aadult mini-motion picture theaters,@ Aadult bath houses,@ Aadult massage parlors,@ Aadult modeling studios,@ Aadult body painting studios,@ Aadult novelty shops@ and Aadult cabarets.@ It further means any premises to which public patrons or members are invited or admitted and which are physically arranged so as to provide booths, cubicles, rooms, compartments, or stalls separate from the common areas of the premises for the purpose of viewing adult oriented motion pictures, or wherein an entertainer provides adult entertainment to a

member of the public, patron or member, whether or not such adult entertainment is held, conducted, operated, or maintained for a profit, either direct or indirect.

- (L) **Entertainer**. A dancer, stripper, impersonator, or similar performer referred to in Subsection (E).
- (M) **Operator**. Any person, joint venture, partnership, limited liability company, or corporation operating, conducting, maintaining, or owning any adult-oriented establishment.
- (N) **Residential dwelling**. A building or any portion thereof which is used as a place of residence for one or more families as one or more habitable units, with facilities which are used or available for use for living, sleeping, cooking, and eating.
- (O) **Sensitive Area**. An area which could be negatively affected by being in close proximity to an adult oriented establishment, including but not limited to, child care facilities, medical facilities, schools and other educational facilities, places of worship, libraries, community centers, and recreation areas.
- (P) **Specified anatomical areas**. Specified anatomical areas means:
 - (1) Less than completely and opaquely covered human genitals, pubic region, perineum, buttocks, female breasts below the point immediately above the top of the areola.
 - (2) Human male genitals in a discernible turgid state, even if opaquely covered.
- (Q) **Specified sexual activities**. Specified sexual activities means simulated or actual:
 - (1) Showing of human genitals in a state of sexual stimulation or arousal.
 - (2) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio, or cunnilingus.
 - (3) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.
- (R) **Youth center**. Any center that provides, on a regular basis, recreational, vocational, academic, or social services and/or programs for persons younger than 21 years old for those persons and their families.

SEC. 4-4-3 LICENSE.

- (A) Except as provided in Sec. 4-4-15 below, from and after the effective date of this Ordinance, no adult-oriented establishment shall be operated or maintained within the corporate limits of the Town of Cleveland without first obtaining a license to operate issued by the Town Clerk.
- (B) A license may only be issued for one (1) adult-oriented establishment located at a fixed and certain place. Any operator desiring to operate more than one adult-oriented establishment must have a license for each.
- (C) Any license granted under this Ordinance shall not be transferable. All license applications shall be original or for renewal.
- (D) No more than three (3) annual adult-oriented establishment licenses shall be issued within the Town of Cleveland at one (1) time, and no more than one (1) license shall be issued to any one (1) operator.

SEC. 4-4-4 APPLICATION FOR LICENSE.

- (A) Any operator desiring to secure a license shall make application to the Town Clerk. The application shall be filed in triplicate with, and dated by, the Town Clerk. A copy of the application shall be distributed promptly to the Chippewa County Sheriff's Department and the applicant.
- (B) The application for a license shall be on a form provided by the Town Clerk. An applicant shall furnish the following information under oath:
 - (1) Name and address;
 - (2) Written proof that the individual is at least eighteen (18) years of age;
 - (3) The exact nature of the adult-oriented use to be conducted and the address of the adult-oriented establishment to be operated by the applicant.
 - (4) If the applicant is a corporation, the date and state of incorporation, the name and address of the registered agent, the name and address of any shareholder(s) who individually or jointly owns or controls stock in said corporation, and all persons responsible for the management and operation of the adult-oriented establishment;
 - (5) If the applicant is a partnership, joint venture, limited liability company, or any other type of organization where two (2) or more

persons have a financial interest, the application shall specify the name of the entity, the name and address of any person having a financial interest in the partnership, joint venture, limited liability company, or other type of organization, and all persons responsible for the management and operation of the adult-oriented establishment.

- (C) Upon receipt of an application, the Town Clerk shall notify the Chippewa County Sheriff's Department of the license application. The Chippewa County Sheriff's Department shall submit a written report and recommendation to the Town Board. Within sixty (60) days of receiving an application for a license, the Town Board shall hold a public hearing on the application, preceded by a Class II Notice. The Town Board may take any testimony regarding the granting or denial of such license and shall either approve, modify, or reject the application, and the reasons for the action taken shall be specified in the written record of the Town Board.
- (D) Whenever an application is denied, the Town Clerk shall advise the applicant in writing of the reasons for such action within ten (10) days of the Town Board action.
- (E) Failure or refusal of the applicant to give any information relevant to the investigation of the application, 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.

SEC. 4-4-5 STANDARDS FOR ISSUANCE OF LICENSE.

- (A) To be eligible for a license to operate an adult-oriented establishment, an applicant must meet the following standards:
 - (1) If the applicant is an individual:
 - (a) The applicant shall be at least eighteen (18) years of age;
 - (b) The applicant shall not have been found to have previously violated this Ordinance or an ordinance of like terms in another jurisdiction or have been arrested or convicted for a violation for which licensure may be denied under Wis. Stat. ' 111.335 within five (5) years immediately preceding the date of the application.

- (2) If the applicant is a corporation:
 - (a) All persons required to be named under Section 4-4-4(B)(4) shall be at least eighteen (18) years of age.
 - (b) No person required to be named under Section 4-4-4(B)(4) shall have been found to have previously violated this Ordinance or an ordinance of like terms in another jurisdiction or have been arrested or convicted for a violation for which licensure may be denied under Wis. Stat. ' 111.335 within five (5) years immediately preceding the date of the application.
- (3) If the applicant is a partnership, joint venture, limited liability company, or any other type of organization where two (2) or more persons have a financial interest:
 - (a) All persons required to be named under Section 4-4-4(B)(5) shall be at least eighteen (18) years of age.
 - (b) No person required to be named under Section 4-4-4(B)(5) shall have been found to have previously violated this Ordinance or an ordinance of like terms in another jurisdiction or have been arrested or convicted for a violation for which licensure may be denied under Wis. Stat. ' 111.335 within five (5) years immediately preceding the date of the application.

SEC. 4-4-6 FEES.

A license application fee of \$500 shall be submitted with the application for a license. If the application is denied, one-half (2) of the fee shall be retained by the Town as an application processing charge.

SEC. 4-4-7 DISPLAY OF LICENSE.

The license shall be displayed in a conspicuous public place in the adult-oriented establishment. Licenses of employees or agents that work in said establishment that relate to this license or establishment shall be displayed with the adult-oriented establishment license.

SEC. 4-4-8 RENEWAL OF LICENSE.

- (A) Every license issued pursuant to this Ordinance will terminate upon the expiration of one (1) year from the date of issuance or the following June 30, whichever is earlier, unless sooner revoked, and must be renewed before operation is allowed. Any operator desiring to renew a license shall make application to the Town Clerk. The application for renewal must be filed ninety (90) days before the license expires. The renewal process shall be the same as the application process set forth in Section 4-4-4.
- (B) A license renewal fee of \$500 shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of \$200 shall be assessed against an applicant who does not file for a renewal at least ninety (90) days before the license expires. If the application renewal is denied, one-half (2) of the total fees collected shall be retained by the Town as an application processing charge.

SEC. 4-4-9 SUSPENSION OR REVOCATION OF LICENSE.

- (A) The Town Board may revoke a license for any of the following reasons:
 - (1) Discovery that false or misleading information or data was given on any application or material acts were omitted from any application.
 - (2) The operator or any employee of the operator violated any provision of this Ordinance or any rule or regulation adopted by the Town Board 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 ninety (90) days if the Town Board 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.
 - (3) The operator becomes ineligible to obtain a license.
 - (4) Any cost or fee required to be paid by this Ordinance is not paid.
- (B) The Town Board, before revoking or suspending any license or permit, shall give the operator at least ten (10) days written notice of the charges against the operator, and the opportunity for a public hearing before the Town Board.
- (C) The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

- (D) Any operator whose license is revoked shall not be eligible to receive a license for two (2) years from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for six (6) months from the date of revocation of the license.

SEC. 4-4-10 PHYSICAL LAYOUT OF ADULT-ORIENTED ESTABLISHMENT.

Any adult-oriented establishment having available for customers, patrons, or members a booth, room, or cubicle for a private viewing of any adult entertainment must comply with the following requirements:

(A) Each booth, room, or cubicle shall be totally accessible to any and all public areas of the adult-oriented establishment and shall be unobstructed by any door, lock, or other control-type devices.

(B) Every booth, room, or cubicle shall meet the following construction requirements:

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

(2) Have at least one (1) side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth, room, or cubicle.

(3) All walls shall be solid and without any openings, extended from the floor to a height of not less than seven (7) feet and be light colored, non-absorbent, smooth textured, and easily cleanable.

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

(5) The lighting level of each booth, room, or cubicle, when not in use, shall be a minimum of ten (10) foot candles at all times, as measured from the floor.

(C) Only one (1) individual shall occupy a booth, room, or cubicle at any time. No occupant shall engage in any type of sexual activity, cause any bodily discharge, or litter while in the booth, room, or cubicle. No individuals shall damage or deface any portion of the booth, room, or cubicle.

SEC. 4-4-11 RESPONSIBILITIES OF OPERATOR.

- (A) Every act or omission by an employee constituting a violation of this Ordinance shall be deemed an 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 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.
- (B) Any act or omission of any employee that constitutes a violation of this Ordinance 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.
- (C) No operator or employee of an adult-oriented establishment shall allow any minor to loiter nearby, frequent an adult-oriented establishment, or allow any minor to view adult entertainment as defined herein.
- (D) No operator or employee of an adult-oriented establishment shall allow any alcoholic beverages to be sold, served, possessed, or consumed in, at, or upon the adult-oriented establishment.
- (E) The operator shall maintain the premises in a clean and sanitary manner at all times.
- (F) The operator shall maintain at least ten (10) foot candles of light in the public portions of the establishment, including aisles, at all times.
- (G) The operator shall ensure compliance of the establishment and its patrons with the provisions of this Ordinance.
- (H) No operator shall suffer, allow, or permit any employee or entertainer to touch, and no employee or entertainer shall intentionally touch, the clothed or unclothed body of any patron or customer at the establishment premises, at any point below the neck and above the knee of the person, excluding that part of the person=s arm below the wrist, commonly referred to as the hand. It shall further be unlawful for any patron or customer to touch any portion of the clothed or unclothed body of an operator, employee, or entertainer below the neck and above the knee, excluding the part of the operator=s employee=s or performer=s arm below the wrist, commonly referred to as the hand.
- (I) This Ordinance shall be displayed on the exterior of every licensed premise with such Ordinance to be clearly visible to patrons entering the premises from the outside and shall be posted within eight (8) feet of any exterior entryway. The Ordinance shall also be placed in each booth, room, and

cubicle and any enclosed location within an establishment licensed under this Ordinance. The Town Board may, by formal motion or resolution, authorize the posting of an abbreviated form of this Ordinance, so as to notify patrons, employees, and operators of the regulations stated in this Ordinance. The exterior signs shall be in block letters, written in black on a white background surface, and with type no less than one-half (1/2) inch in size. The interior signs shall be of a similar type and color with type no less than one-half (1/2) inch in size. Upon application of the operator, abbreviated versions of this Ordinance may be posted or other amendments may be approved, consistent with the intent of this Ordinance in keeping affected persons apprised of the requirements of this Ordinance.

SEC. 4-4-12 LOCATION.

- (A) No adult-oriented establishment shall be located:
 - (1) Within one thousand (1000) feet of an existing adult-oriented establishment.
 - (2) Within one thousand (1000) feet of any premises of a Licensee of a Class AB@ Fermented Malt Beverage Retailer=s License or Retail AClass B@ Liquor License.
 - (3) Within one thousand (1000) feet of a Ayouth center@ or Asensitive area@ as defined by this Ordinance.
 - (4) Within one thousand (1000) feet of an existing residential dwelling, whether situated within or outside of the Town limits.
- (B) For purposes of this Ordinance, distances are to be measured in a straight line, without regard to intervening structures or objects, from the property line of the adult-oriented establishment to the nearest property line of another adult-oriented establishment, sensitive area, premises of a Licensee of a AClass B@ Fermented Malt Beverage Retailer=s License or Retail AClass B@ Liquor License, or lot or parcel on which a residential dwelling is situated.

SEC. 4-4-13 HOURS OF OPERATION.

No adult-oriented establishment shall be open between the hours of 12:00 A.M. and 8:00 AM.

SEC. 4-4-14 REGISTRATION OF ENTERTAINERS.

- (A) Any person desiring to provide entertainment in the Town as an entertainer at any facility governed under this Ordinance, before engaging in any such

entertainment, shall register with the Town Clerk and pay a registration fee of \$50. The individual shall provide: a full name and permanent address, date and place of birth, information concerning height, weight, hair and eye color, gender, and race; two (2) forms of identification with at least one (1) form being photo identification confirming such information; and if requested, fingerprints, stage name, and booking agent, if any. Such registration shall be valid for one (1) year from date of registration.

- (B) No operator shall permit entertainment by an individual subject to this Ordinance without prior registration as required in paragraph (A) above.

SEC. 4-4-15 EXCLUSIONS.

All private schools and public schools as defined in Chapter 115, Wis. Stats., located within the Town are exempt from obtaining a license hereunder when instructing pupils in professional nursing care or human growth and development as a part of curriculum. All licensed medical care or professional nursing care facilities located within the Town, and agents of the Town, county, state, and federal governments are exempt from obtaining a license hereunder when engaged in providing medical care or human growth and development education.

SEC. 4-4-16 PENALTIES AND PROSECUTION.

- (A) In addition to all other remedies available to the Town in equity and under law, any person who shall violate any provision of this Ordinance or who shall fail to obtain a license or permit as required hereunder, or who shall operate after his or her license is suspended or revoked, shall be subject to penalty, on a per diem or per occurrence basis as follows:
 - (1) Any person who operates an adult-oriented establishment and fails to obtain a license or permit as required under this Ordinance, shall be subject to an initial fine of \$500.00, together with the costs of prosecution, and additional fines of \$250 per day, together with the costs of prosecution, for each day that the person continues to operate an adult-oriented establishment without a license or permit in violation of this Ordinance.
 - (2) Any person who operates an adult-oriented establishment after his or her license has been suspended or revoked shall be subject to an initial fine of \$500, together with the costs of prosecution, and additional fines of \$250 per day, together with the costs of prosecution, for each day the person continues to operate an adult-oriented establishment in violation of this Ordinance.

- (3) Any person with a valid license for an adult-oriented establishment who violates any provision of this Ordinance shall be subject to a fine of \$500, together with the costs of prosecution, per day for each day the person is in violation of this Ordinance.

SEC. 4-4-17 SEVERABILITY.

The several sections of this Ordinance are declared to be severable. If any section, provision, phrase, word or any portion of this Ordinance shall be declared by a decision of a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such decision shall apply only as to the specific section, word, phrase, provision, or portion thereof directly specified in the decision, and not affect the validity of all other provisions, words, sections, or portions thereof of the Ordinance which shall remain in full force and effect.

This Ordinance shall take effect upon its adoption and publication as required by law.

Dated this 8th day of October, 2007.

TOWN OF CLEVELAND

By:
Charles Carrell, Chairperson

ATTEST: Charles J. Carrell

By:
Linda Laird, Town Clerk

Linda Laird

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