

CHAPTER 5

ADULT ORIENTED ESTABLISHMENTS

SECTION 5.1 GENERALLY

Sec. 5.1.1 Intent of article.

(a) *Purpose:* It is the purpose of this article to regulate adult-oriented businesses in order to promote the health, safety, morals and general welfare of citizens of the town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult-oriented businesses within the town. 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 neither the intent nor 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 nor effect of this article to condone or legitimize the distribution of obscene material.

(b) *Findings:* Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the town, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990), *Barnes v. Glen Theatre, Inc.* 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000), *East of the River Enterprises II v. City of Hudson*, 2000 Wisc. App. Lexis 734 (Ct. App. Aug. 1, 2000); *Ben's Bar, Inc. v. Village of Somerset*, F.3d, 2003 WL 132541 (7th Cir. 2003), and on studies in other communities including, but not limited to: Phoenix, Arizona; Houston, Texas; Minneapolis, Minnesota; St. Paul, Minnesota; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Dallas, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York; and St. Croix County, Wisconsin; and the Report of the Attorney General's Working Group of Adult-oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Preventions, the town board finds that:

(1) Adult-oriented businesses lend themselves to ancillary and unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of adult-oriented business, defined in this article as adult theaters and adult cabarets, engage in higher incidences of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at adult-oriented business, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(5) Persons frequent certain adult theaters, adult arcades, and other adult-oriented businesses for the purposes of engaging in sex within the premises of such adult-oriented businesses.

(6) At least 50 communicable diseases may be spread by activities occurring in adult-oriented businesses, including but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B, amebiasis, salmonella infections and shigella infections.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS (acquired immunodeficiency syndrome) caused by the HIV virus in the United States: 600 in 1982; 2,200 in 1983, 4,600 in 1984; 8,555 in 1985, and 253,448 through December 31, 1992.

(8) The State of Wisconsin Division of Health indicated that on July 25, 1986, there were 96 cases of AIDS reported in the state, including 54 cases that resulted in death and that a ten-fold increase in reported cases was expected between 1986 and 1991.

(9) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982, and 45,200 through November, 1990.

(10) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

(11) In his report of October 22, 1986, the Surgeon General of the United States has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components and from an infected mother to her newborn.

(12) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(13) Sanitary conditions in some adult-oriented businesses are unhealthy in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(14) Numerous studies and reports have determined that semen is found in the areas of adult-oriented businesses where persons view adult-oriented films.

(15) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where adult-oriented businesses are located.

(16) Studies of the relationship between adult-oriented business and neighborhood property values have found a negative impact on both residential and commercial property values.

(17) There is an increase in the potential for infiltration by organized crime for the purpose of unlawful conduct.

(18) The consumption of alcoholic beverages on the premises of adult-oriented businesses exacerbated the deleterious secondary effects of such businesses on the community. In fact, the Supreme Court has gone so far as to assert that "common sense indicates that any form of nudity coupled with alcohol begets undesirable behavior. *"Ben's Bar*, 2003 WL 132541, *19 (citations omitted).

(19) Adult-oriented businesses have operational characteristics which should be reasonably regulated in order to protect the substantial government concerns addressed in the above subsections.

(20) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the adult-oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that the adult-oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the adult-oriented business, fully in possession and control of the premises and activities occurring therein.

(21) The disclosure of certain information by those persons ultimately responsible for the day to day operation and maintenance of the adult-oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(22) In the prevention of the spread of communicable diseases, it is desirable to obtain a limited amount of information regarding certain employees who may engage in the conduct which this article is designed to prevent, or who are likely to be witnesses to such conduct.

(23) The general welfare, health, morals and safety of the citizens of the town will be promoted by the enactment of this article.

Sec. 5.1.2 Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade means any place to which the public is permitted or invited, wherein coin-operated or slug operated or electronically, electrically, or mechanically controlled or 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 upon matters exhibiting "specified sexual activities" or "specified anatomical areas".

Adult bookstore or *adult video store* means a commercial establishment that has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides or other visual representations, which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas"; or
- (2) Instruments, devices or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas". A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

This definition shall expressly exclude films, motion pictures, video cassettes, slides or other similar photographic reproductions given an "R" rating by the Motion Picture Association of America.

Adult cabaret means a nightclub, dance hall, bar, restaurant, or similar commercial establishment which regularly features:

- (1) Persons who appear semi-nude; or
- (2) Live performances that are characterized by the exposure of "specified sexual activities" or "specified anatomical areas"; or

(3) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas".

(4) This definition shall expressly exclude films, motion pictures, video cassettes, slides or other similar photographic reproductions given an "R" rating by the Motion Picture Association of America.

Adult entertainment means any exhibition of any motion picture, video cassette, 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, specified anatomical areas, the removal of articles of clothing or partial or total nude appearance.

Adult entertainment store means an establishment including in its stock in trade for sale, rent, lease, inspection or viewing books, films, video cassettes, novelties, magazines or other periodicals which have as their dominant theme or are distinguished or characterized by their emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult minitheater means an enclosed building with a capacity of less than 25 persons used for presenting adult entertainment having as its dominant theme or distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

Adult motel means a hotel, motel or similar commercial establishment, which:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, which are characterized by the depiction of "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
- (2) Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (3) 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.

Adult motion picture theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas". This definition shall expressly exclude films, motion pictures, video cassettes, slides or other similar photographic reproductions given an "R" rating by the Motion Picture Association of America.

Adult-oriented establishments means, but is not limited to, adult arcades, adult book-stores or adult video stores, adult motel, adult motion picture theater, escort agency, adult entertainment stores, adult theaters, adult minitheaters, adult cabarets and sexual encounter centers.

Board means the town board for the Town of Theresa, Dodge County, Wisconsin.

Directly means to require physical contact. For instance, when this article prohibits an employee to receive a gratuity "directly" from a patron, it prohibits the direct touching of skin, other body parts or clothing.

Distinguished or *characterized by* means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas", the films so described are those whose dominant or principal character and theme are the exhibition or display of "specified sexual activities" or "specified anatomical areas".

Employee, employ and employment describe and pertain to any person who performs any service on the premises of a adult-oriented business on a full-time, part-time, or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. Employee does not include a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises.

Escort means a person who, for consideration, and for another person, agrees or offers to privately model lingerie or to privately perform a striptease.

Escort agency means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

Establish or establishment means and includes any of the following:

- (1) The opening or commencement of any adult-oriented business as a new business;
- (2) The conversion of any existing business, whether or not a adult-oriented business, to any adult-oriented business;
- (3) The addition of any adult-oriented business to any other existing adult-oriented business; or
- (4) The relocation of any adult-oriented business.

Licensee means a person in whose name a license to operate a adult-oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

Operator means any person, partnership, corporation or other organization operating, conducting, maintaining or owning any adult-oriented establishment.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Premises means the real property upon which the adult-oriented business is located, and all appurtenance thereto and buildings thereon, including, but not limited to the adult-oriented business the grounds, the private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control or supervision of the owner or operator of the business.

Regularly features or *regularly shows* means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as part of the ongoing business of the adult-oriented business.

Semi-nude or *semi-nude condition* means the showing of the human male or female genitals, pubic area, vulva or anus, with not more than a complete opaque covering, or the showing of the female breast with not more than a complete opaque covering of any part of the nipple or areola.

Sexual encounter center means a business or commercial establishment that as one of its principal business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities". The definition of sexual encounter center or any adult-oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

Specified anatomical areas means:

- (1) Less than completely and opaquely covered human genitals, pubic region, vulva or anus and the nipple or areola of the female breast.
- (2) Human male genitals in a discernible turgid state, even if opaquely covered.

Specified sexual activities means:

- (1) Showing of human genitals in a state of sexual stimulation or arousal.
- (2) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus.
- (3) Fondling or erotic touching of another person's genitals, pubic region, anus or female breasts.

Substantial enlargement of an adult-oriented business means the increase in floor areas occupied by the business by more than 25 percent, as the floor areas exist on the date this article takes effect.

Transfer of ownership or *control of an adult-oriented business* means and includes any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Sec. 5.1.3 Responsibilities of the operator.

(a) 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.

(b) No employees of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult-oriented establishment or to allow any minor to view adult entertainment.

(c) The operator shall maintain the adult-oriented establishment in a clean and sanitary manner as determined by a public health official.

(d) The operator shall maintain at least 20 footcandles of light in the public portions of the adult-oriented establishment, including aisles, at all times.

(e) No alcohol beverage may be served or permitted on the premises at any time.

(f) No sexual activity of any kind shall be permitted on the premises.

(g) The operator shall ensure compliance of the adult-oriented establishment and its patrons with the provisions of this article.

(h) No person licensed as an adult-oriented establishment may, in any manner, advertise its establishment as licensed by the town board.

Sec. 5.1.4 Physical layout.

Any adult-oriented establishment 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:

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

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

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

- b. Each booth shall have at least one side totally open to a lighted public aisle so that there is an unobstructed view at all times of anyone occupying the booth.
- c. 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, nonabsorbent, smooth textured and easily cleanable.
- d. The floor must be light colored, nonabsorbent, smooth textured and easily cleanable.
- e. The lighting level of each booth, room or cubicle, when not in use, shall be a minimum of 20 footcandles at all times, as measured from the floor.

(3) Only one individual shall occupy a booth, room or cubicle at any time. No occupant shall engage in any type of sexual activity.

SECTION 5.2 LICENSE

Sec. 5.2.1 Required.

(a) No person may engage in, conduct or carry on the operation or maintenance of an adult-oriented establishment without first obtaining a valid adult-oriented establishment license issued under this article.

(b) A license may be issued only for one adult-oriented establishment located at a fixed and certain place. Any person desiring to operate more than one adult-oriented establishment must have a license for each adult-oriented establishment.

Sec. 5.2.2 Application.

(a) Any person desiring to obtain an adult-oriented establishment license shall pay the required fee set by the board from time to time, to defray the costs of administration and investigation of the application.

(b) Any person desiring an adult-oriented establishment license shall file a written application with the clerk on a form provided by the clerk's office. The information provided to the clerk shall be given under oath.

(1) *Corporations.* If the applicant is a corporation, the name of the corporation shall be set forth exactly as set forth in its articles of incorporation, together with the date and state of incorporation, the names, residence addresses and date of birth of each of its officers, directors and each stockholder holding five percent or more of the stock or beneficial ownership of the corporation. The application shall also be verified by an officer of the corporation.

(2) *Partnership.* If the applicant is a partnership, the application shall set forth the name of the partnership, the name, residence address and date of birth of each of the partners, including limited partners, and shall be verified by each partner. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate partner.

(3) *Others.* If the applicant is neither a corporation nor a partnership, the application shall set forth the true full name, residence address and date of birth of the applicant and be verified by the applicant. The application shall also include any other name by which the applicant has been known during the previous five years.

(c) The application also shall set forth the proposed place of business of the adult-oriented establishment by business address, including suite number, not by post office box, and shall contain a description of the nature and scope of the proposed business operation. In addition, the following information shall be furnished concerning the applicant if an individual; concerning each officer and director and all stockholders who own five percent or more of the stock or beneficial ownership if the applicant is a corporation; and concerning each partner, including limited partners, if the applicant is a partnership:

(1) The previous residence address, if any, for a period of seven years immediately prior to the date of application and the dates of such residence.

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

(3) A complete set of fingerprints submitted by the applicant through the county sheriff's department to the clerk.

(4) The business, occupation or employment history for seven years immediately preceding the date of application including, but not limited to, whether such person previously operated under any such permit or license in another municipality in this or another state and whether any permit or license had ever been suspended or revoked.

(5) All convictions in any state or federal court within the past seven years, including municipal ordinance violations, exclusive of traffic violations, with a brief statement of the nature of the convictions and the jurisdiction in which the convictions occurred.

(6) All pending criminal charges in any state or federal court, with a brief statement of the nature of the pending charges and the jurisdiction in which the charges are pending.

(7) The names, addresses and dates of birth of persons who will have custody of the business records at the business location.

(8) The name and address of the person who will be the agent for service of process.

(d) The application shall include the proposed hours of operation and a detailed floor plan and site plan. Plans shall include details of all signage, temporary or permanent, inside or outside the structure. Plans shall specify the nature, location and operation of all security systems and devices and security personnel requirements.

(e) The clerk shall notify the constable, the zoning administrator, chief of the fire department and the building inspector of any adult-oriented establishment license application, and these officials shall inspect or cause to be inspected each such application and the premises to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto. These officials shall furnish to the town board, in writing, the information derived from such investigation and a statement as to whether the applicant and the premises meet the requirements of this article within 15 business days of receipt of the application of the town.

(f) Upon receipt of reports from all agencies listed in subsection (e) of this section, or 30 days after the clerk's notification, the application shall be placed on the next town board meeting agenda for consideration. The town board shall grant, grant with conditions or deny a license to the applicant. The clerk shall notify the applicant whether the application is granted or denied.

(g) Whenever an application is denied, the 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 at the next regularly scheduled town board meeting for which adequate public notice may be provided.

(h) Failure or refusal of the applicant to give any information relevant to the application, or refusal to submit to or cooperate with regard to any information required by this article shall constitute an admission by the applicant that he is ineligible for such license and shall be grounds for denial.

Sec. 5.2.3 Standards for issuance.

The town board shall issue an adult-oriented establishment license if it finds that:

- (1) The required fee has been paid.
- (2) The application conforms in all respects to this article.
- (3) The location conforms with Section 5.2.9.
- (4) The applicant has not knowingly made a material misstatement in the application.

(5) The applicant has supplied all the information required under section 5.2.2 and the information requested by the various public agencies regarding the investigation of the application.

(6) The adult-oriented establishment, as proposed by the applicant, would comply with all applicable laws including, but not limited to, chapter 1, pertaining to the town's building regulations and chapter 25, pertaining to the zoning regulations.

(7) The applicant has not had an adult-oriented establishment license or permit or other similar license or permit revoked or suspended in this state or any other state within ten years prior to the date of application.

(8) The applicant, if an individual; any of the stockholders holding five percent or more of the stock or beneficial ownership of the corporation, and any officers, agents or directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership, does not, at the time of application, have pending any criminal charge for, or within ten years prior to the date of application has not been convicted of, any offense involving dishonesty, fraud, deceit, robbery, the use or threatened use of force or violence upon the person of another, or sexual immorality under Wis. Stats. ch. 944 or 948, as amended, or the laws of another state similar in nature to Wis. Stats. ch. 944 or 948, or other offenses, subject to Wis. Stats. § 111.335, as amended.

(9) The applicant, if a corporation, is licensed to do business and is in good standing in this state.

(10) All individual applicants; all stockholders holding five percent or more of the stock or beneficial ownership, directors and officers, if the applicant is a corporation; and all partners, including limited partners, if the applicant is a partnership, are at least 18 years of age.

Sec. 5.2.4 Display.

The adult-oriented establishment license shall be displayed in a conspicuous public place within five feet of the entrance of the adult-oriented establishment.

Sec. 5.2.5 Restrictions on corporate licenses.

Any corporation or partnership holding an adult-oriented establishment license under this article shall report to the clerk, in writing, within 15 days of the event described in this section, any of the following:

- (1) Any change of officers of the corporation.
- (2) Any change in the membership of the board of directors of the corporation.
- (3) Any change of address of any officer, director, stockholder holding more than five percent of the stock, agent for service of process, partner, limited partner or individual applicant.

Sec. 5.2.6 Sale or transfer.

Upon the sale or transfer of ownership or control of any interest in an adult-oriented establishment, the license shall be void. Any person desiring to continue to operate an adult-oriented establishment following sale or transfer shall apply for a new license.

Sec. 5.2.7 Renewal.

(a) 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. All applications for the renewal of adult-oriented establishment licenses issued by the town shall be filed with the clerk's office on a form to be provided by the clerk no later than 60 days prior to the expiration of the license. The renewal application shall contain such information and data, given under oath or affirmation, as is required for an application for a new license. Applications to renew licenses shall be processed by the town in the same fashion as new applications. No license shall be renewed without a reinspection of the premises as required under section 5.2.2(e).

(b) A license renewal fee of \$250.00 shall be submitted with the renewal application. In addition to the renewal fee, a late penalty of \$100.00 shall be assessed against any applicant who files for renewal less than 60 days before the license expires. If the application is denied, one-half of the total fees collected shall be returned.

Sec. 5.2.8 Suspension or revocation.

(a) Any adult-oriented establishment license may be suspended for not more than 90 days or revoked by the town board for any of the following reasons:

(1) Any of the grounds that would warrant the denial of the original application for the license.

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

(3) The operator or any employee of the operator violates any provision of this article or any rules or regulations adopted by the town board pursuant to this article; 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 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.

(4) The operator becomes ineligible to obtain a license or permit.

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

(6) Any intoxicating liquor or fermented malt beverage is served or consumed on the premises of the adult-oriented establishment.

(7) The establishment is operated outside of operation hours established by the town board.

(8) There is any substantial change in the floor plan, site plan and sign plan approved by the town board without the approval of the board.

(b) An adult-oriented establishment license may be suspended or revoked after notice and hearing before the town board to determine if grounds for such suspension or revocation exist. Notice of the hearing shall be in writing and may be served by certified mail addressed to the licensee at the current address of the licensee on file with the clerk's office. The notice shall be served at least ten days prior to the date of hearing. The notice shall state the grounds of the complaint against the licensee and shall designate the date, hour and the place where the hearing will be held.

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

(d) Any operator whose license is revoked a second time shall be ineligible to receive a license for ten years from the date of revocation. No location or premises for which a license has been revoked shall be used as an adult-oriented establishment for five years from the date of the second revocation of the license.

Sec. 5.2.9 Location.

- (a) No adult-oriented business shall be located:
- (1) Within 2,000 feet of an existing adult-oriented business;
 - (2) Within 2,000 feet of any residential dwelling, including but not limited to houses, apartments, condominiums, or flats.
 - (3) Within 2,000 feet of any pre-existing place of worship, including but not limited to any church, synagogue, mosque, temple or building which is primarily used for religious worship and related religious activities;
 - (4) Within 2,000 feet of any public or private educational facility, including but not limited to any child day care establishments, nursery schools, preschools, kindergartens, elementary schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities. "School" includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally at a school.
 - (5) Within 2,000 feet from any public park or recreational area which has been designated for park or recreational activities, including but not limited to a park, a playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the town which is under the control, operation or management of the town and recreational authorities; or
 - (6) Within 2,000 feet of any premise that in any manner sells or disperses alcohol or is licensed pursuant to the alcoholic beverage control regulations of the state.

(b) For the purposes of this section, distances are to be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a adult-oriented business is conducted, to the nearest property line of the premises of a use listed in subsection (a). The presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

Sec. 5.2.10 Additional regulations concerning adult-oriented businesses.

- (a) It shall be prohibited in an adult-oriented business for a person to appear in a state of nudity or engage in specified sexual activities.
- (b) It shall be prohibited in an adult-oriented business, to appear in a semi-nude condition, unless the person is an employee, who, while semi-nude, is at least five feet from any patron or customer and on a stage at least two feet from the floor.
- (c) It shall be prohibited for an employee, while semi-nude in an adult-oriented business, to receive directly any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to any employee, while that employee is semi-nude in a adult-oriented business.

(d) It shall be prohibited in an adult-oriented business to serve, sell, use, provide or consume any intoxicating liquor, cereal malt beverage or any other alcoholic beverage.

Sec. 5.2.11 Hours of operation.

(a) No adult-oriented business shall be open between the hours of 2:00 a.m. and 8:00 a.m. on weekdays or between the hours of 2:00 a.m. and 12:00 noon on Sundays.

(b) All adult-oriented businesses shall be open to inspection at all reasonable times by the Dodge County Sheriff's Department and the town building inspector.

Sec. 5.2.12 Exclusions.

The provisions of this article do not apply to the following establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis; and in which the predominant business or attraction is not the offering of entertainment which is intended for sexual interests or titillation of customers; and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or semi-nude performances. While expressive live nudity may occur within these establishments, this ordinance seeks only to minimize and prevent the secondary effects of adult-oriented businesses on the community. Negative secondary effects have not been associated with the establishments referenced in this section.

Sec. 5.2.13 Penalties and prosecutions.

A person who operates or causes to be operated an adult-oriented business without a valid license or in violation of this article is subject to a suit for injunction as well as municipal prosecution. Such violation shall be punishable by a fine of \$500.00 plus court costs. Each day an adult-oriented business so operates is a separate offense or violation.

Sec. 5.2.14 Administrative review procedure.

Chapter 68 of the Wisconsin Statutes concerning municipal administrative procedure shall govern the administrative procedure and review concerning the granting, denial, renewal or non-renewal of a permit or a license. A request for an initial determination shall be made by an aggrieved person pursuant to the provisions contained in Wis. Stat., § 68.08 to the town clerk. An administrative appeal pursuant to the provision contained in Wis. Stat., § 68.10 may be made by an aggrieved person to the board of appeals and a hearing shall be held by the board of appeals pursuant to Wis. Stat., § 68.11. Any party to a proceeding resulting in a final determination may seek judicial review pursuant to the provisions contained in Wis. Stat. § 68.13.

Adopted _____, 2007.