

Village of Almena, WI
Tuesday, July 30, 2024

Chapter 95. Adult-Oriented Establishments

[HISTORY: Adopted by the Village Board of the Village of Almena 8-12-2003 (§ 12.21 of the former Village Code). Amendments noted where applicable.]

§ 95-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADULT ARCADE

Any place to which the public is permitted or invited wherein coin-operated, slug-operated, or any form of consideration, or electronically, electrically, or mechanically controlled still- or motion-picture machines, projectors, video or laser disc players, or other image-producing devices are 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 the depicting or describing of "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE

- A. Any commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:
 - (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."
- B. 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, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore, adult novelty store, 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 which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT CABARET

A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- A. Persons who appear in a state of nudity or seminude, topless dancers, strippers, male or female, impersonators or similar entertainers; or
- B. Live performances which are characterized by the exposure of "specified sexual activities, or "specified anatomical areas"; or
- C. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT ENTERTAINMENT

Any exhibition of any motion pictures, live performance, display or dance of any time, which has as its dominate theme, or any actual or simulated "specified sexual activities" or "specified anatomical areas," as defined below.

ADULT MINI MOTION-PICTURE THEATER

An enclosed building with a capacity of less than 50 persons used for presenting materials 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," as defined below, for observation by patrons therein.

ADULT MOTEL

A hotel, motel or similar commercial establishment which:

- A. 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 or description 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
- B. Offers a sleeping room for rent for a period of time that is less than 10 hours; or
- C. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

ADULT MOTION-PICTURE THEATER

An enclosed commercial establishment with a capacity of 50 or more persons 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," as defined below, for observation by patrons therein.

ADULT-ORIENTED ESTABLISHMENT

Any premises including, but not limited to, "adult arcades," "adult bookstores," "adult motion-picture theaters," "adult mini motion-picture theaters," "adult theaters," "adult motels" or "adult cabarets." It further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common area of the premises for the purposes of viewing adult-oriented motion pictures, or wherein an entertainer provides adult-oriented entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated, or maintained for a profit, direct or indirect. "Adult-oriented establishment" further includes, without being limited to, any "adult entertainment studio" or any premises that is physically arranged and used as such whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio, or any other of like import.

ADULT THEATER

A theater, concern, hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or seminude, or live performances which are characterized by the exposure of "specified sexual activities" or "specified anatomical areas," as defined below, for observation by patrons therein.

BOOTH, ROOM or CUBICLE

Such enclosures as are specifically offered to the public or members of an adult-oriented establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to be viewed within the enclosure; which shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, "booth," "room," or "cubicle" does not mean such enclosures that are private offices used by the owners, managers or persons employed on the

premises for attending to the tasks of their employment, which enclosures are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing entertainment for a fee, are not open to any persons other than employees; nor shall this definition apply to hotels, motels, or other similar establishments licensed by the State of Wisconsin pursuant to Ch. 50, Wis. Stats.

EMPLOYEE

A person who performs any service on the premises of a adult-oriented establishment 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 said person is paid a salary, wage or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

ESCORT

A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY

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.

ESTABLISHMENT

Means and includes any of the following:

- A. The opening or commencement of any adult-oriented establishment as a new business;
- B. The conversion of an existing business, whether or not an adult-oriented establishment, to any adult-oriented establishment;
- C. The additions of any adult-oriented establishment to any other existing adult-oriented establishment; or
- D. The relocation of any adult-oriented establishment.

LICENSEE

A person in whose name a license to operate an adult-oriented establishment has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in an adult-oriented establishment.

NUDE MODEL STUDIO

Any place where a person who appears seminude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration. "Nude model studio" shall not include a proprietary school licensed by the State of Wisconsin or a college, junior college or university supported entirely or in part by public taxation; 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 seminude person is available for viewing; and
- 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 seminude model is on the premises at any one time.

NUDITY or STATE OF NUDITY

The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernible turgid state.

OPERATOR

Any person, partnership, or corporation operating, conducting, maintaining, employed by or owning any adult-oriented establishment.

PERSON

An individual, proprietorship, partnership, corporation, association, or other legal entity.

PUBLIC INDECENCY

A person who knowingly or intentionally, in a public place engages in sexual intercourse; engages in deviate sexual conduct; appears in a state of nudity; or fondles the genitals of self or another person, commits public indecency, a misdemeanor.

PUBLIC PLACE

Any location frequented by the public, or where the public is present or like to be present, or where a person may reasonably be expected to be observed by members of the public. "Public places" include, but are not limited to: streets, sidewalks, parks, beaches, business and commercial establishments (whether for-profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by any religious social, fraternal or similar organizations. Premises used solely as a private residence whether permanent or temporary in nature shall not be deemed to be a "public place." "Public place" shall not include enclosed single-sex public restrooms, enclosed single-sex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctors' offices, portions of hospitals and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. "Public place" does not include a private facility which has been formed as a family oriented clothing-optional facility, properly licensed by the state.

SEMINUDE or IN A SEMINUDE CONDITION

The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female rear of the body which lies between two imaginary lines running parallel to the ground when a person is standing, the first or top of such line drawn at the top of the cleavage of the buttocks and second or bottom line drawn at the lowest visible point of the cleavage or the lowest point of the curvature of the fleshy protuberance, whichever is lower, and between two imaginary lines on each side of the body, which lines are perpendicular to the ground and to the horizontal lines described above, and which perpendicular lines are drawn through the point at which each buttock meets the outer side of each leg. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.

SEXUAL ENCOUNTER CENTER

A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or seminudity.

SEXUALLY ORIENTED BUSINESS

An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion-picture theater, adult theater, escort agency nude model studio, or sexual encounter

center.

SPECIFIED ANATOMICAL AREAS

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

SPECIFIED CRIMINAL ACTIVITY

Any of the following offenses:

- A. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child;
- B. Possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries:

(1) For which:

- (a) Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
 - (b) Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
 - (c) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period.
- C. The fact that conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

SPECIFIED SEXUAL ACTIVITIES

The simulated or actual:

- A. Showing of human genitals in a state of sexual stimulation or arousal; Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio or cunnilingus;
- B. Fondling or erotic touching of human genitals, pubic region, buttocks, anus or female breasts.
- C. Excretory functions as part of or in connection with any of the activities set forth in Subsections **A** through **C** above.

SUBSTANTIAL ENLARGEMENT

Of an adult-oriented establishment, means the increase in floor areas occupied by the establishment by more than 25%, as the floor areas exist on May 15, 1997.

TRANSFER OF OWNERSHIP OR CONTROL

Of an adult-oriented establishments, means and includes any of the following:

- A. The sale, lease, or sublease of the business;
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

- C. 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.

§ 95-2. License required of adult-oriented establishments.

- 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 section.
- B. No person may be employed by an adult-oriented establishment without first obtaining a valid adult-oriented employee license issued under this section.
- C. No license or interest in a license may be transferred to any person, partnership or corporation.
- D. 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.

§ 95-3. Application for license.

- A. All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information as to enable the Village of Almena to determine whether the applicant meets the qualifications established in this chapter.
- B. Any person, partnership or corporation desiring to secure a license shall make application to the Village Clerk. The application shall be filed in triplicate with and dated by the Village Clerk.
- C. If a person who wishes to operate an adult-oriented establishment is an individual, the person must sign the application for a license as applicant, upon a form provided by the Village Clerk. If a person(s) who wishes to operate an adult-oriented establishment is other than an individual, each individual who has a 20% or greater interest in the establishment must sign the application for a license as applicant. Each applicant must be qualified under the following subsection, and each applicant shall be considered a licensee if a license is granted.
- D. An applicant for a license interested directly in the ownership or operation of the adult-oriented establishment shall furnish the following information under oath and provide documents as needed.
 - (1) If the applicant is an individual:
 - (a) His/her legal name and any aliases, permanent address, telephone number and temporary address if any;
 - (b) A recent photograph of the applicant(s);
 - (c) Date of birth, height, sex, weight, and color of hair and eyes;
 - (d) Written proof that the individual is at least 18 years of age;
 - (e) Shall not have been found to have previously violated this section within five years immediately preceding the date of application;
 - (f) Address (not a post office box) and telephone number of the adult-oriented establishment to be operated by the applicant.
 - (2) If the applicant is a partnership:
 - (a) Partnership shall state its complete name;
 - (b) Whether the partnership is general or limited;

- (c) Name of all the partners, their addresses and telephone numbers (including limited partners);
 - (d) Name and address (not a post office box) of the person who will be the agent for service of process;
 - (e) Copy of the partnership agreement;
 - (f) No partner shall have been found to have previously violated this section within five years immediately preceding the date of application;
 - (g) Written proof that all partners are at least 18 years of age;
 - (h) Address (not a post office box) and telephone number of the adult-oriented establishment to be operated by the partnership.
- (3) If the applicant is a corporation:
- (a) Shall state the complete name of the corporation;
 - (b) Date and state of incorporation;
 - (c) Name, address (not a post office box), and telephone number of the registered agent;
 - (d) Address of the registered office for service of process;
 - (e) Evidence that the corporation is in good standing under the laws of its state of incorporation;
 - (f) Names and addresses, (not a post office box), of all holders of stock in such corporation;
 - (g) Names, addresses, telephone numbers, and capacity of all officers, directors and principal stockholders in such corporation;
 - (h) Written proof that all officers, directors and stockholders are at least 18 years of age;
 - (i) No officer, director, or stockholder required to be named under Subsection **D(3)(g)** above shall have been found to have previously violated this section within five years immediately preceding the date of application;
 - (j) Address (not a post office box) and telephone number of the adult-oriented establishment to be operated by the corporation;
 - (k) If the applicant intends to operate the adult-oriented establishment under a name other than that of the applicant, he or she must state 1) the adult-oriented establishment's fictitious name and 2) submit the required registration documents;
 - (l) Whether the applicant, or a person residing with the applicant have been convicted in any state or federal court within the past five years, including municipal ordinance violations, exclusive of traffic violations, with a brief statement of the nature of the conviction(s), the date, place and jurisdiction of each;
 - (m) All pending criminal charges in any state or federal court with a brief statement of the nature of the pending charges and the date, place, and jurisdiction in which the charges are pending;
 - (n) Whether the applicant, or a person residing with the applicant, has had a previous license under this chapter or other similar adult-oriented establishment ordinance from another city or county denied, suspended or revoked, including the name and location of the adult-oriented establishment for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this chapter whose license has

previously been denied, suspended or revoked, including the name and location of the adult-oriented establishment for which the permit was denied, suspended or revoked as well as the date of the denial, suspension and revocation;

- (o) Whether the applicant holds any other licenses under this chapter or other similar adult-oriented establishment ordinance from another city, city or county and, if so, the names and locations of such other licensed establishment;
 - (p) The name(s) of person(s) who will have custody of the business records at the business location;
 - (q) The single classification of license for which the applicant is filing;
 - (r) If an applicant wishes to operate an adult-oriented establishment, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than 150 square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict "specified sexual activities" or "specified anatomical areas," then the applicant shall comply with the application requirements set forth herein.
- (4) The application shall include the proposed hours of operation and a detailed floor plan.
- (5) The Village Clerk shall notify the Chief of Police, the 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 Village Board, in writing, the information derived from such investigation and a statement as to whether the applicant and the premises meet the requirements of the department for whom the officer is certifying within 15 business days of receipt of notice from the Village Clerk.
- (6) Before any applicant may be issued an adult-oriented establishment employee license, the applicant shall submit on a form to be provided by the Village Clerk, the following information:
- (a) The applicant's name or any other name (including "stage" names) or aliases used by the individual;
 - (b) Age, date, and place of birth;
 - (c) Height, weight, sex, hair and eye color;
 - (d) Present residence address and telephone number;
 - (e) Present business address and telephone number;
 - (f) Proof that the applicant is at least 18 years of age.
- (7) Attached to the application form for an adult-oriented establishment employee license as provided above shall be the following:
- (a) A color photograph of the applicant clearly showing the applicant's face. Any fees for the photographs shall be paid by the applicant.
 - (b) A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate in this or any other county, city, city, town, state or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

- (c) A statement whether the applicant has been convicted of a specified criminal activity as defined in this chapter and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
- (8) The Village Clerk shall notify the Chief of Police of any adult-oriented establishment employee license application and the Chief shall inspect each application to determine whether the applicant sought to be licensed complies with the regulations, ordinances, and laws applicable thereto. The Chief shall furnish to the Village Board, in writing, the information derived from such investigation and a statement as to whether the applicant meets the requirements within 15 business days of receipt of the notice from the Clerk.
- (9) Within 30 days of receiving the information from the Chief of Police, the Fire Chief, and the Building Inspector, the Village Board shall deny, grant with conditions, or grant a license to the applicant. The Village Clerk shall notify the applicant whether the application is granted or denied.
- (10) Whenever an application is denied, the Village Clerk shall advise the applicant, in writing, of the reason(s) for such action. If the applicant requests a hearing within 10 business days of receipt of notification of denial, a public hearing shall be held within 10 business days thereafter before the Village Board.
- (11) Failure or refusal of the applicant to give any information relevant to the application, failure or refusal to appear at any reasonable time and place for examination under oath regarding said application or refusal to submit to or cooperate with regard to any information required by this section shall constitute an admission by the applicant that he/she is ineligible for such license and shall be grounds for denial.

§ 95-4. Violations and penalties.

- A. Any person, as defined in this chapter, who shall violate this chapter shall forfeit not less than \$250 nor more than \$500 for a first offense, not less than \$500 nor more than \$1,000 for a second offense, and not less than \$1,000 nor more than \$5,000 for each subsequent offense, plus statutory costs in each case.
- B. In default of payment, a defendant shall be sentenced to serve not less than one day in the county jail for each \$25 of forfeiture and costs not paid.
- C. Each day that a person violates this chapter shall be a separate offense.
- D. Nothing herein shall be construed to prevent the Village from pursuing other remedies available to it under Wisconsin law.

§ 95-5. Severability.

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

§ 95-6. When effective.

This chapter shall take effect and be in force from and after the date of passage and publication, or its posting, as permitted by § 61.50(1), Wis. Stats. If posted, it shall take effect the day after the proof of posting is filed.