

## 12.11 ADULT-ORIENTED ESTABLISHMENTS.

(1) INTENT. The village Board intends that the enforcement of this section shall be used primarily to combat the obscenity industry and shall never be used for harassment or censorship purposes against materials or performances having serious artistic, literary, political, educational or scientific value. The Village Board further intends that the enforcement of this section shall be consistent with the first amendment to the United States Constitution; Article I, Section 3 of the Wisconsin Constitution; and the compelling State interest in protection of the free flow of ideas.

(2) DEFINITIONS. The terms used herein shall be defined as follows:

(a) Adult-Oriented Establishment. This term includes, but is not limited to, adult entertainment stores, adult theaters, adult mini-theaters, adult cabarets and 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 purposes of viewing adult entertainment, whether or not such adult entertainment is held, conducted, operated or maintained for commercial gain.

(b) Adult Entertainment Store. 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.”

(c) Adult Theater. An enclosed building with a capacity of 50 or more 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.

(d) Adult Mini-Theater. An enclosed building with a capacity of less than 50 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.

(e) Adult Cabaret. An establishment which features topless dancers, strippers or similar entertainers.

(f) Adult Entertainment. 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 or articles or clothing or partial nude appearance.

(g) Operator. Any person, partnership, corporation or other organization operating, conducting, maintaining or owning any adult-oriented establishment.

(h) Specified Anatomical Areas. 1. Less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the top of the areola.

2. Human male genitals in a discernible turgid state, even if opaquely covered.

(i) Specified Sexual Activities. 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, sadomasochistic abuse, fellatio or cunnilingus.

3. Fondling or erotic touching of human genitals, pubic region buttocks or female breasts.

### 3. ADULT-ORIENTED ESTABLISHMENT LICENSE 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 for each adult-oriented establishment.

(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.

(c) Any adult-oriented establishment existing at the time of the passage of this section must submit an application for a license within 60 days of the passage of this section.

#### (4) APPLICATION FOR ADULT-ORIENTED ESTABLISHMENT LICENSE.

(a) Any person desiring to obtain an adult-oriented establishment license shall pay the required fee of \$150 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 Village Clerk on a form provided in the Clerk's office. The information provided to the Clerk shall be given under oath.

1. Corporation. 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 and the names and residence addresses of each of its officers, directors and each stockholder holding 5% 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 and the name and residence address of each of the partners, including limited partners, and 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 and residence

address 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 5 years.

(c) The application also shall set forth the proposed place of business of the adult-oriented establishment by business address, including suite number, and 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; each officer and director and all stockholders who own 5% or more of the stock or beneficial ownership if the applicant is a corporation; and each partner, including limited partners, if the applicant is a partnership:

1. The previous residence address, if any, for a period of 3 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.
4. The business, occupation or employment history for 3 years immediately preceding the date of application, including, but not limited to, whether such person previously operated under any permit or license in another municipality in this or another state and whether any such permit or license had ever been suspended or revoked.
5. All convictions in any state or Federal court within the past 5 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 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.

9. Such other information relating to the application as may be required by the Law Enforcement Committee.

(d) The application shall include the proposed hours of operation and a detailed floor plan.

(e) The Village Clerk shall notify the Legislative Committee, 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 5 business days of receipt of notice from the village Clerk.

(f) Within 30 days of receiving an application for license, the village Board shall grant, with conditions, or deny a license to the applicant. The Village Clerk shall notify the applicant whether the application is granted or denied.

(g) Whenever an application is denied, the Village Clerk shall advise the applicant, in writing, of the reasons for such action. If the applicant requests a hearing within 10 days of receipt of notification of denial, a public hearing shall be held within 10 days thereafter before the Village Board.

(h) 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 is ineligible for such license and shall be grounds for denial.

(5) STANDARDS FOR ISSUANCE OF AN ADULT-ORIENTED ESTABLISHMENT LICENSE. The village Board shall issue an adult-oriented establishment license if it finds that:

(a) The required fee has been paid.

(b) The application conforms in all respects to this section.

(c) The location of the adult-oriented establishment is not within 500 feet of any church or synagogue building, school building or park nor within 150 feet of any residential district.

(d) The applicant has not knowingly made a material misstatement in the application.

(e) The applicant has supplied all the information required under sub. (3) above and the information requested by the Village Board regarding the investigation of his application.

(f) The adult-oriented establishment, as proposed by the applicant, would comply with all applicable laws, including, but not limited to, chs. 14 and 17 of this Code.

(g) 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 3 years prior to the date of application.

(h) The applicant, if an individual; any of the stock- holders holding 5% 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 5 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 Chs. 944 or 948, Wis. Stats., as amended, or the laws of another state similar in nature to said Chs. 944 or 948, Wis. Stats., or other offense, subject to §111.335, Wis. Stats., as amended.

(i) The applicant, if a corporation, is licensed to do business and is in good standing in the State.

(j) All individual applicants; all stockholders holding 5% 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.

(6) DISPLAY OF ADULT-ORIENTED ESTABLISHMENT LICENSE. The adult-oriented establishment license shall be displayed in a conspicuous public place in the adult-oriented establishment.

(7) RESTRICTIONS ON CORPORATE LICENSES. Any corporation holding an adult-oriented establishment license under this section shall report to the Village Clerk, in writing, within 15 days of the event described herein, any of the following:

(a) Any change of officers of the corporation.

(b) Any change in the membership of the board of directors of the corporation.

(8) SALE OR TRANSFER. Upon the sale or transfer 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 license.

(9) RESPONSIBILITIES OF THE OPERATOR OF AN ADULT-ORIENTED ESTABLISHMENT. (a) Any act or omission of any employee constituting a violation of the provisions of this section 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 at all times.

(d) The operator shall maintain at least 10 foot candles of light in the public portions of the adult-oriented establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one foot candle of illumination in said aisles, as measured from the floor.

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

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

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

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

(10) PHYSICAL LAYOUT OF ADULT-ORIENTED ESTABLISHMENT. 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:

(a) 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.

(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 or cubicles and any nonpublic areas by a wall.

2. 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 same.

3. All walls shall be solid and without any openings, extended from the floor to a height of not less than 6 feet and be light colored, nonabsorbent, smooth textured and easily cleanable.

4. The floor must be light colored, nonabsorbent, smooth textured and easily cleanable.

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

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

(11) RENEWAL. (a) Every license issued pursuant to this section will terminate at the expiration of one year from 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 Village shall be filed with the Village Clerk's office on forms to be provided by the Clerk no later than 60 days prior to the expiration of the licenses. 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 Village in the same fashion as new applications. No license shall be renewed without a reinspection of the premises as required under sub. (3)(e) above.

(b) A license renewal fee of \$250 shall be submitted with the renewal application. In addition to the renewal fee, a late penalty of \$100 shall be assessed against any applicant who files for renewal less than 60 days before the license expires. If the application is denied, 1/2 of the total fees collected shall be returned.

(12) SUSPENSION OR REVOCATION. (a) Any adult-oriented establishment license may be suspended for not more than 90 days or revoked by the Village 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 section or any rules or regulations adopted by the Village Board pursuant to this section, provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of 30 days if the 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 section 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 Village Board.
8. There is any substantial change in the floor plan approved by the Village Board without the approval of the Board.

(b) An adult-oriented establishment license may be suspended or revoked after notice and hearing before the Village 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 Village Clerk's office. The notice shall state the grounds of the complaint against the licensee and shall designate the time and place where the hearing will be held.

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

(13) PENALTY. Any person violating this section shall, upon conviction, be subject to a forfeiture not to exceed \$500.