

## CHAPTER 17

### Adult Oriented Establishments

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#### **SEC. 7-17-1 FINDINGS.**

Based on evidence concerning the adverse secondary effects of adult oriented establishments on the community, as set forth in reports made available to the Town Board, and on the holdings and findings in *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986), *Young v. American Mini Theatres*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991), *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 122 S.Ct.1728, 152 L.Ed.2d 670 (2002), *Schultz v. City of Cumberland*, 228 F.3d 831 (7<sup>th</sup> Cir. 2000), *Pleasureland Museum, Inc. v. Beutter*, 288 F.3d 988 (7<sup>th</sup> Cir. 2002), and *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7<sup>th</sup> Cir. 2003), as well as studies and summaries of studies conducted in and compiled by other municipalities, including Los Angeles, CA, Phoenix, AZ, Beaumont, TX, Tucson, AZ, and St. Croix County, WI, the Town Board finds that:

- (a) Crime statistics show that all types of crimes, especially sex-related crimes, occur with greater frequency in neighborhoods where adult oriented establishments are located.
- (b) Adult oriented establishments may contribute to an increased public health risk through the spread of sexually transmitted diseases, and such increased risk is a significant and legitimate matter of concern to the Town.

- (c) Studies on the relationship between adult oriented establishments and neighboring property values have consistently found a negative effect on both residential and commercial property values.
- (d) There is an increased potential for the infiltration of organized crime into the community via the operation of adult oriented establishments for the purpose of perpetrating unlawful conduct.
- (e) The consumption of alcoholic beverages on the premises of an adult oriented establishment exacerbates the harmful secondary effects that such businesses have on the community.
- (f) Given this well-documented correlation between adult oriented establishments and the harmful secondary effects itemized above, the Town Board has determined that the locational criteria imposed by County zoning are not alone adequate to protect the health, safety and general welfare of Town residents, so the Town Board deems it necessary to regulate, to the extent allowed by law, the operation of adult oriented establishments within the Town of Caledonia. By this ordinance, it is not the Town Board’s intent to suppress the constitutionally protected speech occurring within adult oriented establishments, nor does the Town Board anticipate that the limited regulations contained herein will have the effect of “chilling” the expression of such speech within the Town. To the contrary, the Town Board’s purpose in adopting this ordinance is limited to minimizing the occurrence and impact of the harmful secondary effects associated with adult oriented establishments and ensuring that the protected speech occurring therein is expressed in a safe, healthy, and lawful environment.

**SEC. 7-17-2 DEFINITIONS.**

For the purpose of this Chapter, the following words and phrases shall have the following definitions:

- (a) **Adult Bookstore.** An establishment which has a facility or facilities, including but not limited to booths, cubicles, rooms, or stalls, for the presentation of “adult entertainment”, as defined below, including adult oriented films, computer video, movies or live performances for observation by patrons therein; or an establishment having as a substantial or significant portion of its stock in trade, for sale, rent, trade, lease, inspection or viewing, books, films, video cassettes, DVDs, or magazines or other periodicals, which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specified anatomical areas or specified sexual activities as defined below.
- (b) **Adult Cabaret.** A nightclub, bar, restaurant, or similar commercial establishment which features:
  - (1) Live performances which are characterized or distinguished by the exposure of specified anatomical areas or the removal of articles of clothing; or,
  - (2) Films, motion pictures, video cassettes, video reproductions, slides or other visual representations which are distinguished or characterized by depicting or describing specified anatomical areas or specified sexual activities.
- (c) **Adult Entertainment.** Any exhibition of any motion picture, live performance, display, or dance of any type, which has as its dominant theme or is distinguished or characterized by an emphasis on any actual or simulated specified sexual activities or specified anatomical areas as herein defined.

- (d) **Adult Mini-Motion Picture Theater.** An enclosed building with a capacity of less than 50 persons used for presenting material 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 herein defined for observation by patrons therein.
- (e) **Adult Modeling Studio.** Any establishment or business where a person 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. Adult modeling studios shall not include a proprietary school licensed by the State of Wisconsin or a college, technical college, or university; or in a structure:
- (1) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
  - (2) where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
  - (3) where no more than one (1) nude or semi-nude model is on the premises at any one (1) time.
- (f) **Adult Motion Picture Theater.** An enclosed building with a capacity of 50 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 specified sexual activities or specified anatomical areas as defined below for observation by patrons therein.
- (g) **Adult Novelty Shop.** An establishment or business having as a substantial or significant portion of its stock and trade in novelty or other items which are distinguished or characterized by their emphasis on or design for specified sexual activity or stimulating such activity.
- (h) **Adult Oriented Establishment.** Any premises including, but not limited to, “adult bookstores,” “adult motion picture theaters,” “adult mini-motion picture establishments,” “adult modeling studios,” “adult novelty shops,” 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 entertainment, or wherein an entertainer provides adult 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 any establishment open to the public upon the premises of which is conducted an enterprise having as its dominant theme or which is distinguished or characterized by an emphasis on any actual or simulated specified sexual activities or specified anatomical areas as herein defined.
- (i) **“Booths”, “Cubicles”, “Rooms”, “Compartments” or “Stalls”.** 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 adult entertainment to be viewed within the enclosure. This shall include, without limitation, such enclosures wherein the adult entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, “booth”, “cubicle”, “room”, “compartment” or “stall” 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 adult entertainment for a fee, and 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 Chapter 50 of the Wisconsin Statutes.

- (j) **Nudity.** The appearance of the human bare anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or the nipple or areola of the female breast, with less than a fully opaque covering; or showing of the covered male genitals in a discernibly turgid state.
- (k) **Operators.** Any person, partnership, or corporation operating, conducting, maintaining or owning any adult oriented establishment.
- (l) **Specified Anatomical Areas.**
  - (1) Less than completely and opaquely covered human genitals, pubic region, buttocks, and female breasts below the point immediately above the top of the areola.
  - (2) Human male genitals in a discernibly turgid state, even if opaquely covered.
- (m) **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, sado-masochistic abuse, fellatio or cunnilingus.
  - (3) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.
- (n) **Town Board.** The Town Board of the Town of Caledonia, Racine County, Wisconsin.

### SEC. 7-17-3 LICENSE.

- (a) Except as provided in subsection (d) below, from and after the effective date of this Chapter, no adult oriented establishment shall be operated or maintained in the Town without first obtaining a license to operate issued by the Town.
- (b) A license may be issued only for one adult oriented establishment located at a fixed and certain place. Any person who desires to operate more than one adult oriented establishment must have a license for each.
- (c) No license or interest in a license may be transferred to any person.
- (d) All adult oriented establishments existing at the time of the passage of this Chapter must submit an application for a license within 60 days of the passage of this Chapter.
- (e) Notwithstanding Section 7-17-4, an adult oriented establishment license shall not be granted to a premises in which the Town Board has determined that said premises operated as an adult oriented establishment without a license within one year prior to the date of application. This prohibition applies to a premises for a period of one (1) year following the Town Board's determination.

### SEC. 7-17-4 APPLICATION FOR LICENSE.

- (a) Any person desiring to secure a license shall make application to the Town Clerk. The application shall be filed in triplicate and dated by the Town Clerk. A copy of the

application shall be distributed promptly by the Town Clerk to the Town Police Chief and to the applicant.

- (b) The application for a license shall be upon a form provided by the Town Clerk. An applicant for a license shall furnish the following information under oath:
  - (1) Name (including all aliases) and address.
  - (2) Written proof that the individual is at least 18 years of age.
  - (3) The name (if known) and address of the adult oriented establishment to be operated by the applicant and the exact nature of the adult use to be conducted.
  - (4) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name (including all aliases) and address of the registered agents, and the name and address of all shareholders owning more than 15% of the stock in such corporation and all officers and directors of the corporation. Within 20 days of any change in registered agents, notice of such change shall be provided to the Town Clerk by the licensee.
  - (5) If the applicant is a partnership, the names (including all aliases) and addresses of all partners. If the applicant is a limited liability company, the names (including all aliases) of all members.
  - (6) Whether the applicant or any person required to be named is currently operating, or has previously operated, in this or any other county or state, under an adult oriented establishment license or similar business license or permit; and whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.
- (c) Within 30 days of receiving an application for a new license or an application to renew a license, the Town Clerk shall notify the applicant whether the application is granted or denied. Any application for a license that does not include all of the information and documents required under this Chapter, or the appropriate application fee required by this Chapter, shall be deemed to be incomplete and shall be returned to the applicant without any action thereon being taken by the Town.
- (d) Whenever an application is denied, or a license is not renewed, the Town Clerk shall advise the applicant in writing of the reasons for such action. If the Town Board denies the license, the decision may be reviewed under Title 4, Chapter 1 of this Town Code.
- (e) Refusal of the applicant to give any information relevant to the application or his refusal or failure to appear at any reasonable time and place for examination under oath regarding such application or his refusal to submit to or cooperate with regard to any information required by this Chapter shall constitute an admission by the applicant that he is ineligible for such license and shall be grounds for denial thereof by the Town Clerk.

**SEC. 7-17-5 STANDARDS FOR ISSUANCE OF LICENSE.**

To receive a license to operate an adult oriented establishment, an applicant must meet the following standards:

- (a) If the applicant is an individual:
  - (1) The applicant must be at least 18 years of age.

- (2) The applicant shall not have been found to have previously violated this Chapter within 5 years immediately preceding the date of the application.
- (b) If the applicant is a corporation:
  - (1) All officers, directors, and stockholders required to be named under Section 7-17-4(b)(4) shall be at least 18 years of age.
  - (2) No officer, director, or stockholder required to be named under Section 7-17-4(b)(4) shall have been found to have previously violated this Chapter within 5 years immediately preceding the date of the application.
- (c) If the applicant is a partnership, limited liability company, joint venture or any other type of organization where two or more persons have a financial interest:
  - (1) All persons having a financial interest in the partnership, limited liability company, joint venture or other type of organization shall be at least 18 years of age.
  - (2) No person having a financial interest in the partnership, limited liability company, joint venture or other type of organization shall have been found to have violated any provision of this Chapter within 5 years immediately preceding the date of the application.

**SEC. 17-17-6 FEES.**

A license fee of \$1,000 shall be submitted with the application for a license. If the application is denied, 1/2 of the fee shall be returned.

**SEC. 7-17-7 DISPLAY OF LICENSE OR PERMIT.**

The license shall be displayed in a conspicuous public place in the adult-oriented establishment.

**SEC. 7-17-8 RENEWAL OF LICENSE OR PERMIT.**

- (a) Every license issued pursuant to this Chapter will terminate at the expiration of one year from date of issuance, unless sooner revoked, and must be renewed before operation is allowed to continue. Any operator desiring to renew a license shall make application to the Town Clerk. The application for renewal must be filed not later than 60 days before the license expires. The application for renewal shall be upon a form provided by the Town Clerk and shall contain such information and data given under oath or affirmation as is required for an application for a new license.
- (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 \$100 shall be assessed against any applicant who files for a renewal less than 60 days before the license expires. If the application is denied, 1/2 of the total fees collected shall be returned.
- (c) Any law enforcement agencies with any information bearing on the operator's qualifications may file that information with the Town Clerk.
- (d) The building inspector shall inspect the establishment prior to the renewal of a license to determine compliance with the provisions of this ordinance.

**SEC. 17-17-9 REVOCATION OF LICENSE.**

- (a) The Town Board may revoke, suspend, or refuse to renew a license for any of the following reasons:
  - (1) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.
  - (2) The operator or any employee of the operator violates any provision of this Chapter, the Racine County Zoning Code, or any rules or regulations adopted by the Town Board pursuant to this Chapter 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 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 or permit.
  - (4) Any cost or fee required to be paid by this Chapter is not paid.
- (b) The Town Board, before revoking or suspending any license or permit, shall give the operator at least 10 days written notice of the charges and an opportunity for a public hearing in accordance with Title 4, Chapter 1 of this Town Code. If the operator does not file a timely request for a public hearing, the allegations set forth in the charges shall be taken as true, and if the Town Board finds the charges sufficient the license shall be revoked or suspended. If the operator files a written request for a hearing with the Town Clerk within 10 days of receipt of the charges, a public hearing shall be held in accordance with Chapter 24 of this Town Code.
- (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 reapply for 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 six (6) months from the date of revocation of the license. For purposes of this subsection a revocation of a license takes effect when the licensed premises ceases operations as an adult oriented establishment.

**SEC. 7-17-10 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) **Access.** 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) **Construction.** 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 non-public areas by a wall.

- (2) Have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying 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, 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 foot candles at all times, as measured from the floor.
- (c) **Occupants.** Only one individual shall occupy a booth, room or cubicle at any time. No occupants of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.
- (d) **Inspections.** The Building Inspector shall conduct monthly inspections of the premises to insure compliance with the provisions of this subsection.

#### **SEC. 7-17-11 REGULATION OF ADULT ORIENTED ESTABLISHMENTS.**

- (a) It shall be a violation of the provisions of this Chapter for an operator to authorize or knowingly permit any employee action that is in violation of this Chapter. Any violation by an operator of this Chapter shall be separate and distinct from the employee's violation, and both the employee's and the operator's violations shall be punishable as set forth herein.
- (b) Any act or omission of any employee constituting a violation of the provisions of this Chapter 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 employee 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 as defined herein.
- (d) The operator must ensure that at least one employee is on duty and situated such that he or she has an unobstructed view into each occupied booth, room or cubicle at all times that such booth, room or cubicle is occupied.
- (e) The operator shall maintain the premises in a clean and sanitary manner at all times.
- (f) The operator shall maintain at least 10 foot candles of light in the public portions of the 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.
- (g) The operator shall insure compliance of the establishment and its patrons with the provisions of this Chapter.
- (h) It shall be a violation of this Chapter for any person to knowingly or intentionally appear in a state of nudity in an adult oriented establishment.
- (i) The sale, use, or consumption of alcohol on the premises of an adult oriented establishment is prohibited.

**SEC. 7-17-12 HOURS OF OPERATION.**

- (a) No adult oriented establishment shall be open between the hours of midnight and 11:00 a.m., Monday through Saturday, or anytime on Sundays.
- (b) All adult oriented establishments shall be open to inspection at all reasonable times by the Police Department, the Racine County Sheriff's Department, the Building Inspectors, and the local health officer.

**SEC. 7-17-13 PENALTIES AND PROSECUTION.**

Any person who shall violate any provisions of this Chapter or who shall fail to obtain a license or permit as required hereunder shall be subject to penalty as provided in Section 1-1-6 of this Town Code for each offense.

**SEC. 7-17-14 EXEMPTIONS.**

The provisions of this ordinance do not apply to the following establishments: theatres, performing arts centers, civic centers, and dinner theatres 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 the 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 establishments on the community, and the Town Board is not aware of any negative secondary effects that have been associated with these establishments. The provisions of this ordinance also do not apply to any medical or therapeutic treatment facilities that are owned and operated by medical professionals licensed to practice within this State.

**SEC. 7-17-15 SEVERABILITY.**

If any section, subsection, or clause of this Chapter shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.