

13.07 REGULATION OF ADULT-ORIENTED ESTABLISHMENTS.

(1) AUTHORITY

The Village Board has the specific authority, powers, and duties pursuant to Chapter 61 of the Wisconsin Statutes, to regulate and control certain uses, activities, establishments and operations in the Village of Elkhart Lake.

(2) DEFINITIONS

(a) Adult Bookstore. An establishment that has a facility or facilities, including but not limited to, booths, cubicles, rooms or stalls for the presentation of "adult entertainment," including adult-oriented films, movies, or live performances for observation by patrons therein; or an establishment having a substantial or significant portion of its stock-in-trade for sale, rent, trade, lease, inspection, or viewing of books, films, video cassettes, 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. Any commercial premises, including any cabaret premises, to which any member of the public is invited or admitted and where an entertainer provides live adult entertainment to any member of the public. For the purposes of this Ordinance "Cabaret" means any room, place or space whatsoever in the Village in which any music, singing, dancing, or other similar entertainment is permitted in connection with any hotel, restaurant, cafe, club, tavern, eating place, directly selling, serving, or providing the public, with or without charge, food or beverages (whether or not alcoholic beverages). "Employee" means any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any Adult Cabaret.

(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 defined below.

(d) Adult Motion Picture Theater. An enclosed building 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 of the building.

(e) Adult-Oriented Establishment. Any premises including, without limitation, "adult bookstores," or "adult motion picture theaters." 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 entertainment to a

member of the public, a patron, or a member, whether or such adult entertainment is held, conducted, operated, or maintained for a profit, direct or indirect. "Adult-Oriented Establishment" further includes, without limitation, any premises 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 term of like import.

(f) **Booths/Cubicles/Rooms/Compartments/Stalls**. Enclosures that 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. This 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," "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

(g) 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 person other than employees, nor shall this definition apply to hotels, motels, or other similar establishments licensed by the State of Wisconsin pursuant to Wisconsin law.

(h) **Operators**. Any person, partnership, or corporation operating, conducting, maintaining or owning any adult-oriented establishment.

(i) **Specified Anatomical Areas**. Less than completely and opaquely-covered human genitals, pubic region, buttocks, female breasts below the point immediately above the top of the areola; or, human male genitals in a discernible turgid state, even if opaquely covered.

(j) **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; or

(3) fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts.

(3) **License**.

(a) Except as provided below, from and after the effective date of this

ordinance, no adult-oriented establishment shall be operated or maintained in the Village without first obtaining a license to operate issued by the Village Board. A license may be issued only for one adult-oriented establishment located at a fixed and certain location. Any person who desires to operate more than one adult-oriented establishment must have a license for each. No license or interest in a license may be transferred to any person. All adult-oriented establishments existing at the time of the passage of this ordinance must submit an application for a license within 90 days of the passage of this ordinance. A license fee of \$500.00 shall be submitted with the application for a license. If the application is denied, 1/2 of the fee shall be returned. A license renewal fee of \$250.00 shall be submitted with the application for renewal. A license must be renewed every year.

(b) Application for License. Any person desiring to secure a license shall make application to the Village Clerk. The applicant for a license shall furnish the following information under oath:

- (1) the name and address of the intended operator;
- (2) the name and address of the owner of the premises if different from the operator;
- (3) the name and address of the adult-oriented establishment to be operated by the applicant;
- (4) written proof that the individual is at least 18 years of age;
- (5) the address of the adult-oriented establishment to be operated by the applicant;
- (6) if the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agents, and the name and address of all shareholders owning more than 5% of the stock in such corporation and all officers and directors of the corporation;
- (7) if the establishment is in operation, the date on which the owner acquired the establishment for which the license is sought. The date on which the establishment began operations as an adult-oriented business at the location for which the license is sought;
- (8) if the establishment is a corporation, a certified copy of the Articles of Incorporation and a certified copy of a certificate of good standing disclosing that the corporation is authorized to transact business in the State of Wisconsin;

(9) proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of a recorded deed; and

(10) if the operator is not the fee owner of the tract of land, then the lease, purchase contract, purchase option contract, lease option contract, or other documents evidencing the legally-enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract of land for the establishment.

(c) **Issuance of License.** The Village shall approve the issuance of a license to the applicant within 45 days after receipt of the application unless the Village finds one or more of the following to be true:

(1) the applicant is under 18 years of age;

(2) the applicant or the applicant's spouse is overdue in the payment of Village taxes, fines, or penalties assessed against the applicant or imposed upon the applicant in relation to an adult-oriented establishment;

(3) the applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application;

(4) the applicant is residing with a person who has been denied a license by the Village to operate an adult-oriented establishment within the preceding 12 months, or residing with a person whose license to operate an adult-oriented establishment has been revoked within the preceding 12 months;

(5) The premises to be used have not been approved by the Village's Building Inspector, the Village's Fire Department, or other Village authorities who are required to inspect the premises. The inspection shall be limited to confirmation that the premises comply with all applicable building and zoning codes and a determination by the Village that the premises have adequate on-site parking for the proposed business activity. The adequacy of the on-site parking shall be determined by reference to State building codes contained in the Wisconsin Administrative Code.

(6) the fee required by this ordinance has not been paid; or

(7) any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult-oriented establishment.

(d) **Hearing.** The Village Board, before revoking or suspending any license or permit, shall give the operator at least ten (10) days' written notice of the charges against him and the opportunity for a public hearing before the Village Board or

its designated committee as provided herein. The Board or its designated committee shall provide a written determination whether to revoke or suspend the license or permit within five (5) days of the public hearing. Any appeal from the determination of the Board or its designated committee shall be taken pursuant to Chapter 68 of the Wisconsin Statutes.

(e) **Transfer**. The transfer of a license or any interest therein, shall automatically and immediately revoke the license.

(f) **Inspection**. Any applicant or licensee shall permit representatives of the County Sheriff's Department, County Health Department, Village Fire Department, Building Inspector, or other Village or state departments or agencies to inspect the premises of an adult-oriented establishment for the purpose of ensuring compliance with this ordinance and all relevant local, state and federal laws.

(4) **PHYSICAL LAYOUT AND OPERATION**

(a) **Exterior**. It shall be unlawful for an owner or operator of an adult-oriented establishment:

(1) to allow the merchandise or activities of the establishment to be visible from a point outside the establishment;

(2) to allow the exterior portion of the adult-oriented establishment to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by this ordinance;

(3) to allow exterior portions of the establishment to be painted in a color other than a single color.

(b) **Signage**. The operator shall comply with the Village's Sign Ordinance. In addition, the display surfaces of the sign shall not contain any flashing lights or photographs, silhouettes, drawings, or pictorial representations of any manner, except for the name of the enterprise.

(c) **Booth/Room/Cubicle**. Any adult-oriented establishment having available for customers, patrons, or members, in a 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 isles 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 non-public areas by a wall;

(b) have at least one side totally open to a public lighted isle so that there is an unobstructed view at all times of anyone occupying the same;

(c) all walls shall be solid and without any openings, extended from floor to a height of not less than 6 feet and be light-colored, non-absorbent, smooth textured and easily cleanable;

(d) the floor must be light-colored, non-absorbent, smooth textured and easily cleanable;

(e) 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.

(3) only one individual shall occupy a booth, room, or cubicle at any time. No occupants 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) Responsibilities of the Operator. Every act or omission by an employee constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(e) Minors. It shall be unlawful to allow a person who is younger than 18 years of age to enter or be on the premises of an adult-oriented establishment at any time that the establishment is open for business. The operator must ensure that an attendant is stationed at each public entrance at all times during regular business hours. The attendant shall prohibit any person under the age of 18 from entering the establishment. It shall be presumed that an attendant knew a person was under the age of 18 unless such attendant asked for and was furnished either a valid operator's drivers license or a valid personal identification certificate issued by a State reflecting that the person is 18 years of age or older.

(f) Hours. An adult-oriented establishment may remain open for business no longer than the hours from between 10:00 a.m. to 12 midnight, seven days a week.
January 2003

(5) LOCATIONAL RESTRICTIONS. Adult-oriented establishments are permitted in any Business District provided that the establishment may not be operated

within 1,000 feet of:

- (a) a Church, Synagogue, or regular place of religious worship;
- (b) a public or private elementary or secondary school;
- (c) a boundary of any residential district;
- (d) a public park;
- (e) a licensed day-care center; or
- (f) another adult-oriented establishment.

(6) MEASUREMENT

For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects from the nearest portion of the building or structure used as part of the premises where an adult-oriented establishment is conducted, to the nearest property line of the premises of a Church, Synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, Residential District, or residential lot, or licensed day-care center. The distance between any two adult-oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which such business is located.

(7) STANDARDS OF CONDUCT AND OPERATION IN ADULT CABARETS

(a) **Standards of Conduct.** The following standards of conduct must be adhered to by employees of any Adult Cabaret while in any area in which members of the public are allowed to be present:

(1) No employee or entertainer shall be unclothed or in such less-than-opaque and complete attire, costume or clothing so as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, except upon a stage at least 18 inches above the immediate floor level and removed at least 6 feet from the nearest member of the public.

(2) No employee or entertainer mingling with members of the public shall be unclothed or in less-than-opaque and complete attire, costume or clothing as described in subsection 7.1 (a) above, nor shall any male employee or entertainer at any time appear with his genitals in a discernibly turgid state, even if completely and opaquely covered, or wear or use any device or covering which simulates the same.

(3) No employee or entertainer shall caress, fondle, or erotically touch any member of the public. No employee or entertainer shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or entertainer.

(4) No employee or entertainer mingling with members of the public shall conduct any dance, performance or exhibition in or about the nonstage area of the Adult Cabaret unless that dance, performance, or exhibition is performed at a distance of no less than 6 feet from any member of the public.

(5) No tip or gratuity offered to or accepted by an adult entertainer may be offered or accepted prior to any performance, dance or exhibition provided by the entertainer. No entertainer performing upon any stage area shall be permitted to accept any form of gratuity offered directly to the entertainer by any member of the public. Any gratuity offered to any entertainer performing upon any stage area must be placed into a receptacle provided for receipt of gratuities by the Adult Cabaret or provided through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainer conducting any performance, dance or exhibition in or about the nonstage area of the Adult Cabaret shall be placed into the hand of the adult entertainer or into a receptacle provided by the adult entertainer, and not upon the person or into the clothing of the adult entertainer.

(6) No member of the public shall be permitted at any time to enter into any of the nonpublic portions of the Adult Cabaret, which shall include but are not limited to the dressing rooms of the entertainers or other rooms provided for the benefit of employees, and the kitchen and storage areas; except that person, who in the ordinary course of business, deliver goods, materials, food or beverages, or perform maintenance or repairs to the premises or equipment on the premises may be permitted into nonpublic areas to the extent required to perform their job duties.

(b) Premise-Specifications. The following specifications shall apply to all Adult Cabarets located in the Village of Elkhart Lake:

(1) The performance area of the Adult Cabaret where adult entertainment is provided shall be a stage or platform at least 18 inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least 6 feet from all areas of the premises to which members of the public have access. A continuous railing at least 3 feet in height and located at least 6 feet from all points of the performance area shall separate the performance area and the patron seating areas. The stage and the entire interior portion of cubicles, rooms or stalls wherein adult entertainment is provided must be visible from the common areas of the premises.

Visibility shall not be blocked or obstructed by doors, curtains, drapes or any other obstruction whatsoever.

(2) Sufficient lighting shall be provided and equally distributed throughout the public areas of the premises so that all objects are plainly visible at all times. A minimum lighting level of 30 lux horizontal, measured at 30 inches from the floor and on 10-foot centers is hereby established for all areas of the Adult Cabaret where members of the public are admitted.

(3) A sign at least 2 feet by 2 feet, with letters at least 1 inch high shall be conspicuously displayed in the public area(s) of the premises stating the following:

THIS ADULT CABARET IS REGULATED BY THE VILLAGE OF ELKHART LAKE. ENTERTAINERS ARE:

(a). NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT.

(b). NOT PERMITTED TO APPEAR SEMI-NUDE OR NUDE, EXCEPT ON STAGE.

(c). NOT PERMITTED TO ACCEPT TIPS OR GRATUITIES IN ADVANCE OF THEIR PERFORMANCE.

(d). NOT PERMITTED TO ACCEPT TIPS DIRECTLY FROM PATRONS WHILE PERFORMING UPON ANY STAGE AREA.

(c) **Inspections.** In order to insure compliance with this Ordinance all areas of Adult Cabarets that are open to members of the public shall be open to inspection by Village agents and employees or law enforcement officers during the hours when the premises are open for business. The purpose of such inspections shall be to determine if the premises are operated in accordance with the requirements of this Ordinance. It is hereby expressly declared that unannounced inspections are necessary to assure compliance with this Ordinance.

(d) **Performances Not Prohibited.** This Ordinance shall not be construed to prohibit:

- (1) Plays, operas, musicals, or other dramatic works that are not obscene;
- (2) Classes, seminars and lectures that are held for serious scientific or educational purposes and which are not obscene; or

- (3) Exhibitions, performances, expressions or dances that are not obscene.

(e) **Determination of Obscenity.** Whether or not activity is obscene shall be judged by consideration of the following factors:

- (1) Whether the average person, applying contemporary community standards would find that the activity taken as a whole appeals to the prurient interest in sex; and
- (2) Whether the activity depicts or describes in a patently offensive way, as measured against community standards, sexual conduct as described in this Ordinance; and
- (3) Whether the activity taken as a whole lacks serious literary, artistic, political, or scientific value.

(8) NON-CONFORMING USES

Any business lawfully operating on the effective date of this ordinance that is in violation of the locational or structural configuration requirements of this ordinance shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period of not to exceed 2 years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. The non-conforming use is required to submit an application for a permit and otherwise comply with the requirements of this ordinance.

(9) MISCELLANEOUS

(a) **Penalties.** Any person who fails to comply with any provisions of this ordinance shall be subject to a forfeiture of not less than \$500.00 or more than \$1,000.00 and the costs of prosecution, including reasonable attorneys' fees, for each violation. Each day that a violation exists or continues shall constitute a separate offense.

(b) **Other Remedies.** In addition to other remedies the Village reserves the right to institute appropriate action or proceedings to prevent, restrain, correct, or abate a violation of this ordinance or to prevent any illegal act, conduct, business, or use in or about the subject premises.

(c) **Interpretation.** The provisions of this ordinance are considered minimum requirements. Where the provisions of this ordinance impose greater restrictions than any statute or other regulation, the provisions of this ordinance shall apply. Where the provisions of any statute or other regulation impose greater restrictions, the provisions of the statute or regulation shall prevail.

(d) **Severability.** If any provision of this ordinance is declared invalid by

a Court of competent jurisdiction, such decision shall not affect the validity of this ordinance in its entirety, or any part thereof, other than that so declared to be invalid. The balance of the ordinance not found invalid shall be enforced.

(e) **Rules of Construction**. In the construction of this ordinance references to the male gender include the female and references to the singular include the plural. References to "person" or "persons" extends to natural persons, firms, corporations, partnerships, limited liability companies or other entities.