

CHAPTER 28: SEXUALLY ORIENTED BUSINESS REGULATION

28.01. Title/Purpose.

This chapter is entitled “Sexually Oriented Business Regulation.” The purpose of Chapter 28 is to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

28.02. Findings.

A. The United States Supreme Court and various federal and state courts have held that a local unit of government, such as the Town, may rely upon and incorporate by reference such findings and experiences into its own findings and legitimate concerns about the adverse and undesirable secondary effects both arising from and pertaining to sexually oriented businesses, public nudity, crime, prostitution, gambling, littering, and other adverse secondary impacts described in this chapter, and jointly and severally use such findings and determinations of the United States Supreme Court and previous rulings, including, but not limited to, *City of Erie v. Pap’s A.M.*, 529 U.S. 277 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986); *Lacobucci v. City of Newport*, 479 U.S. 92 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); *DLS, Inc. v. City of Chattanooga*, 107 F. 3d 403 (6th Cir. 1997); *Key, Inc. v. Kitsap County*, 793 F. 2d 1093 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington*, 65 F. 3d 1248 (5th Cir. 1995); and *South Florida Free Beaches, Inc. v. City of Miami*, 734 F. 2d 608 (11th Cir. 1984), as the basis for content neutral regulation of such establishments and the behavior therein without affecting the substance of verbal or nonverbal speech with the legitimate intent and goal of reducing or eliminating such negative secondary effects to as great a degree as possible.

B. The experiences, evidence, and studies from the other cities and communities cited herein and/or considered by the Town Board, in whole, part, or summary, are relevant and important in understanding and addressing the secondary effects that adult entertainment and sexually oriented establishments can and do have upon neighborhoods, persons, economies, the area surrounding such establishments, and the Town. The Town Board relies upon the findings, studies, evidence, and experiences of such other cities and communities and of previous applicable United States Supreme Court and other federal and state court holdings, and hereby adopts

and incorporates herein by reference such findings, studies, evidence, experiences, and court rulings and holdings as part of the Town Board's findings and basis for this chapter and its regulations.

C. Based upon evidence concerning the adverse secondary effects of adult uses on the community presented in hearings, the reports made available to the Town Board, the cases set forth above, and studies in other communities, including, but not limited to, Erie, Pennsylvania; Detroit, Michigan; Tucson, Arizona; Times Square, New York, New York; Dallas, Texas; El Paso, Texas; Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma Town, Oklahoma; and Cleveland, Ohio; and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (Minn. June 6, 1989), the Town Board finds:

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

(2) Sexually oriented businesses contribute to the decline in the value of surrounding neighborhoods and to the physical deterioration and blight of neighborhoods.

(3) Sexually oriented businesses have a deleterious effect on both existing businesses around them and surrounding residential areas, including increased transiency; increased levels of criminal activities, including prostitution, promotion of prostitution, rape, sexual assaults, other assaults, other sex related crimes; robbery; dissemination of obscenities; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession of child pornography; public lewdness; indecent exposure; indecency with a child; sexual molestation; molestation of a child; disorderly conduct; disturbances of the peace; drinking in public; littering; and other violations of the law.

(4) Sexually oriented businesses contribute to the decline in the value of surrounding properties, which in turn could, and often does, have a detrimental impact upon development, growth of nearby development, and tax incremental financing districts.

(5) Sexually oriented businesses tend to harm the economic welfare of the communities in which they are located.

(6) Sexually oriented businesses tend to negatively and adversely affect the quality of life in the communities in which they are located.

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

(8) Offering and providing such space encourages such activities, which creates unhealthy conditions. See, e.g., Final Report of Attorney General's Commission on Pornography (1986), at 377.

(9) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses. See, e.g., *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698-99 (1986).

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

(11) Since 1981 to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the HIV virus in the United States. See Statistics of Center for Disease Control at www.cdc.gov.

(12) As of December 31, 2003, there have been 8,328 reported cases of HIV infection in the State of Wisconsin.

(13) Since 1981 to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody in Wisconsin.

(14) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982, and 45,200 through November 1990. Between 2001 and 2002, the number of reported primary and secondary syphilis cases increased 12.4 percent. See, e.g., www.cdc.gov.

(15) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over 350,000 cases being reported in 2002. The Centers for Disease Control estimate that more than 700,000 people in the United States are infected each year, while only half are reported. See, e.g., www.cdc.gov.

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

(17) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See e.g., www.cdc.gov.

(18) Sanitary conditions in some sexually oriented businesses are unhealthy, in part because the activities conducted there are unhealthy, and in part because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities. See e.g., Final Report of Attorney General's Commission on Pornography (1986), at 377.

(19) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films. See e.g., Final Report of Attorney General's Commission on Pornography (1986), at 377.

(20) The findings noted in subsections 28.02.C.(1) through 28.02.C.(19), above, raise substantial governmental concerns.

(21) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

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

(23) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

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

(25) The fact that an applicant for a license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct, in contravention of this chapter.

(26) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to, and prevents conduct which leads to the transmission of, sexually transmitted diseases.

(27) The general welfare, health, morals, and safety of the citizens of the Town will be promoted by the enactment of this chapter.

(28) In light of Wis. Stat. § 66.0107(3), the Town Board recognizes that it lacks authority to regulate obscenity, and the Town Board does not intend by adopting this chapter to regulate obscenity, since nudity in and of itself is not obscene. The Town declares its intent to enact this chapter addressing the secondary effect of live, totally nude, not obscene, erotic dancing in bars, taverns, and other adult sexually oriented businesses.

(29) The Town Board recognizes that the U.S. Supreme Court has held nude dancing to be expressive conduct within the outer perimeters of the First Amendment to the United States Constitution, and is, therefore, entitled to some limited protection under the First Amendment. The Town Board further recognizes that freedom of speech is among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights.

(30) The Town Board determines that the enactment of this chapter legitimately promotes the valid goals and intent of minimizing, preventing, and controlling the negative and adverse secondary effects associated with sexually oriented businesses, and does so in a content neutral manner while preserving numerous other means of free expression.

(31) The United States Supreme Court, in *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 Sup. Ct. 925, 89 L. Ed. 2d 29 (1986), and *Young v. American Mini Theatres*, 427 U.S. 50, 96 Sup. Ct. 2440, 49 L. Ed. 2d 310 (1976), has approved efforts by local governments to regulate the location of sexually oriented businesses through land use planning and municipal regulation.

(32) Reasonable regulation of the location of sexually oriented businesses will provide for the protection of the image of the Town and its property values and will protect the residents of the Town from the adverse secondary effects of sexually oriented businesses while providing those who desire to patronize sexually oriented businesses such opportunities within the Town which are appropriate for the location of sexually oriented businesses.

(33) The Town Board provided opportunity for public comment in conjunction with and prior to the consideration and adoption of this chapter in order to hear testimony from the proponents and opponents of the proposed ordinance.

(34) Based upon the above findings and recitals, the Town Board hereby adopts this chapter in order to promote the general welfare, health, morals, and safety of the citizens of the Town.

28.03. Definitions.

As used in this chapter, the following terms have the meaning set forth herein:

A. “Adult arcade.” Any place to which the public is permitted or invited wherein, for any form of consideration, 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 (as hereinafter defined).

B. “Adult bookstore,” “adult novelty store,” or “adult video store.”

(1) A 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:

(a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, 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

(b) Instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities.

(2) 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 an 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 sales or rentals for consideration materials which are characterized by the depiction or description of specified sexual activities or specified anatomical areas generate 10 percent or more of income, account for 10 percent or more of inventory measured by purchase price, or occupy 10 percent or more of total floor space, whether displayed or stored.

C. “Adult cabaret.” A nightclub, bar, restaurant, or similar commercial establishment which regularly provides, employs, displays, permits, or allows:

(1) Persons who appear in a state of nudity or semi-nudity; or

(2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or

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

D. "Adult motel." A hotel, motel, or similar commercial establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the description or depiction of specified anatomical areas or specified sexual activities, and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

(2) Offers a sleeping room for rent for a period of time that is less than 10 hours; or

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

E. "Adult motion picture theater." A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the description or depiction of specified anatomical areas or specified sexual activities.

F. "Adult theater." A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

G. "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.

H. "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.

I. "Establishment." Includes any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

(2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(3) The additions of any sexually oriented business to any other existing sexually oriented business; or

(4) The relocation of any sexually oriented business.

J. "Licensee." A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

K. "Nude model studio." Any place where a person appears in a state of nudity or semi-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; 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 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 days in advance of the class; and

(3) Where no more than one nude or semi-nude model is on the premises at any one time.

L. "Nudity" or "state of nudity." The showing of the human male or female genitals, pubic area, vulva, anus, or 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 discernibly turgid state.

M. "Person." An individual, proprietorship, partnership, corporation, association, limited liability company, limited liability partnership, or other legal entity.

N. "Semi-nude" or "semi-nude 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 buttocks. 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.

O. "Sexual encounter center." A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(2) 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 semi-nudity.

P. "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, or any business or commercial enterprise offering for sale or rental material depicting or describing specified anatomical areas or specified sexual activities, which sales or rentals generate 10 percent or more of income, account for 10 percent or more of inventory measured by purchase price, or occupy 10 percent or more of total floor space, whether displayed or stored.

Q. "Specified anatomical areas":

(1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(2) Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

R. "Specified criminal activity." Any of the following offenses:

(1) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of material harmful to a minor; sexual performance by a child; 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; distribution of a controlled substance; or any similar

offenses to those described above under the criminal or penal code of other states or countries; 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 24-month period.

(2) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

S. "Specified sexual activities." Any of the following:

(1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or

(2) Sex acts, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(3) Excretory functions as part of or in connection with any of the activities set forth in subsections 28.03.S.(1) and 28.03.S.(2), above.

T. "Substantial enlargement" of a sexually oriented business means the increase in floor areas occupied by the business by more than 25 percent, as the floor areas exist on the date this chapter takes effect.

U. "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:

(1) The sale, lease, or sublease of the business;

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

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

28.04. Classifications of Sexually Oriented Businesses.

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores, adult novelty stores, or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;
- F. Adult theaters;
- G. Escort agencies;
- H. Nude model studios; and
- I. Sexual encounter centers.

28.05. License Required.

A. No person may operate a sexually oriented business without a valid sexually oriented business license issued by the Town pursuant to this chapter.

B. A sexually oriented business license may be issued for only one sexually oriented business establishment located at a fixed and certain place. Any person who desires to operate more than one sexually oriented business establishment must have a separate license for each location and sexually oriented business.

(1) No license or interest in a license may be transferred from person to person or from place to place.

(2) No license under this chapter may be issued for any property or business not zoned for sexually oriented business.

(3) All sexually oriented businesses existing at the time of the passage of this chapter shall submit an application for a license within 60 days of the passage of this chapter.

(4) An application for a license must be made on a form provided by the Town Clerk.

C. All applicants must be qualified according to the provisions of this chapter. The application may request, and the applicant shall provide, such information (including fingerprints) so as to enable the Town to determine whether the applicant meets the qualifications established in this chapter.

D. All questions on each application must be completed truthfully and in full before the application will be considered. No license under this chapter may be issued unless the application is complete on its face with all questions answered truthfully and in full and required information provided. An incomplete application shall be rejected and not processed by the Town Clerk.

E. A person who wishes to operate a sexually oriented business must sign the application for a license as applicant. If a person other than an individual wishes to operate a sexually oriented business, all persons legally responsible for the operation of the sexually oriented business or who have power to control or direct its operations must sign the application for a license as applicant. Such persons include, but are not limited to, general partners, corporate officers, corporate directors, controlling shareholder(s), managing member(s), majority members, and managing partner(s). Each application must be qualified under subsection 28.05.F., below.

F. The original completed application for a sexually oriented business license shall contain the following information, and shall be accompanied by the following documents:

(1) If the applicant is:

(a) An individual, the individual shall state his or her legal name and any aliases, and submit proof that he or she is 18 years of age;

(b) A partnership, the partnership shall state its complete name and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

(c) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors, and controlling stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

(d) A limited liability company, the company shall state its complete name, the date of its organization, evidence that the company is

in good standing under the laws of its state of organization, the names and capacity of the managing member(s), the controlling member(s), and the name of the registered agent and the address of the registered office for service of process.

(2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must:

- (a) State the sexually oriented business's fictitious name; and
- (b) Submit applicable registration documents.

(3) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity, as defined in this chapter, and if so, the specified criminal activity involved in and the date, place, and jurisdiction of each conviction.

(4) Whether the applicant, or a person residing with the applicant, has had a previous license under this chapter, or other similar sexually oriented business ordinance from another municipality or county, denied, suspended, or revoked, including the name and location of the sexually oriented business 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 limited partnership, an officer, director, or principal stockholder of a corporation, or a managing member or majority member of a limited liability company that is licensed under this or a similar ordinance whose license has previously been denied, suspended, or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended, or revoked as well as the date of denial, suspension, or revocation.

(5) Whether the applicant, or a person residing with the applicant, holds any other licenses under this chapter or other similar sexually oriented business ordinance from another municipality or county, and if so, the names and locations of such other licensed businesses.

(6) The single classification of license for which the applicant is filing.

(7) The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

(8) The applicant's mailing address and residential address.

(9) A recent photograph of the applicant.

(10) The applicant's driver's license number.

(11) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(12) A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 5,280 feet of the property to be certified; the property lines of any of the facilities, premises, or lines listed in Section 28.13, below, within 2,640 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time the application is submitted.

(13) If an applicant wishes to operate a sexually oriented business, 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 describing or depicting specified anatomical areas or specified sexual activities, then the applicant shall comply with the application requirements set forth in Section 28.15, below.

(14) Payment of fees set forth in Section 28.07, below.

G. Every applicant has an affirmative duty to supplement its application with new information received or occurring subsequent to the date the application was originally submitted, including all renewals.

28.06. Issuance of License.

A. A license granted pursuant to this section shall be subject to annual renewal upon the written renewal application of the applicant and a finding by the Town that the applicant has not been convicted of any specified criminal activity, as defined in this chapter, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 28.07, below.

B. Within 30 days after receipt of a completed sexually oriented business application, the Town shall approve or deny the issuance of a license to an applicant. The Town shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) An applicant is under 18 years of age.

(2) An applicant, or a person with whom applicant is residing, is overdue in payment to the Town of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to any business.

(3) An 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 form.

(4) An applicant, or a person with whom the applicant is residing, has been denied a license by the Town to operate a sexually oriented business within the preceding 12 months or whose license to operate a sexually oriented business has been revoked within the preceding 12 months.

(5) An applicant, or a person with whom the applicant is residing, has been convicted of a specified criminal activity defined in this chapter.

(6) The premises to be used for the sexually oriented business have not been approved by the fire department and the building official as being in compliance with applicable laws and ordinances.

(7) The license fee required by this chapter has not been paid.

(8) The applicant is in violation of or is not in compliance with any of the provisions of this chapter.

C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the classification for which the license is issued, pursuant to Section 28.04, above. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

D. The fire department and the building official shall complete their certification that the premises is in compliance or not in compliance within 20 days of receipt of the application by the Town.

E. A sexually oriented business license shall issue for only one classification, as found in Section 28.04, above.

F. Failure or refusal of an applicant to appear at a reasonable time and place for examination under oath regarding its application shall constitute an admission and acknowledgment by the applicant that it is ineligible for such license and shall be grounds for the administrative denial of the application by the Town Clerk.

G. The issuance of a license under this chapter is a privilege, not a right.

H. Upon expiration, revocation, suspension, or nonrenewal of a license issued under this chapter the license shall revert to the Town.

28.07. Fees.

A. Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$2,500.00 nonrefundable application and investigation fee.

B. In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the Town an annual nonrefundable license fee of \$2,500.00 within 30 days of license issuance or renewal.

C. All license applications shall be submitted to the Town Clerk. All license fee payments shall be submitted to the Town Treasurer. No license fee shall be prorated.

28.08. Inspection.

An applicant or licensee shall permit representatives of the Walworth County Sheriff's Department, the Town Fire Department, the Walworth County Land Use & Resource Management Department, Zoning Division, and all other Town departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law at any time it is occupied or open for business. The Town building official shall annually inspect the premises of sexually oriented businesses to insure compliance with ordinances and state law.

28.09. Expiration of License.

A. Each license shall expire one year from the date of issuance, and may be renewed only by making application as provided above. Application for renewal shall be made at least 30 days before the expiration date, and, when made less than 30 days before the expiration date, the expiration of the license will not be affected.

B. When the Town denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Town finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

28.10. Suspension.

The Town shall suspend a license for a period not to exceed 30 days if it determines that a licensee has:

- A. Violated or is not in compliance with any section of this chapter; or
- B. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

28.11. Revocation.

A. The Town shall revoke a license if a cause of suspension above occurs, and the license has been suspended within the preceding 12 months.

B. The Town shall revoke a license if it determines that:

(1) A licensee gave false or misleading information in the material submitted during the application process;

(2) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) A licensee has knowingly allowed prostitution on the premises;

(4) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or

(6) A licensee is delinquent in payment to the Town, county, or state for any taxes or fees.

C. When the Town revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented business license for one year from the date the revocation became effective. If, subsequent to revocation, the Town finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective.

D. After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek review of such administrative action as set forth in Wis. Stat. ch. 68, as amended or renumbered from time to time.

28.12. Transfer of License.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

28.13. Location of Sexually Oriented Business.

A. No license shall be issued to a sexually oriented business that operates within 2,640 feet of:

(1) A church, synagogue, mosque, temple, or building used primarily for religious worship and related religious activities;

(2) A public or private educational facility, including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

(3) A boundary of a residential district, as defined in the zoning code;

(4) A public park or recreational area which has been designated for park or recreational activities, including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the Town which is under the control, operation, or management of the Town park and recreation authorities;

(5) The property line of a lot devoted to a residential use as defined in the zoning code;

(6) A public or private homeless shelter providing service to children or families, or facility primarily serving homeless families or children;

(7) An entertainment business oriented primarily towards children or family entertainment; or

(8) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the state of Wisconsin.

B. No license shall be issued for the operation of a sexually oriented business within 5,280 feet of another sexually oriented business.

C. No more than one sexually oriented business shall operate in the same building, structure, or portion thereof. A sexually oriented business may not increase its floor area in any building, structure, or portion thereof containing another sexually oriented business.

D. For purposes of subsection 28.13.A., above, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection 28.13.A. Presence of a municipal, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

E. For purposes of subsection 28.13.B., above, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

F. Ownership or control of a sexually oriented business operating on the effective date of this chapter that is in violation of this section may be transferred, and such transferee will be licensed and the license renewed if the transferee is otherwise qualified for the issuance of a license under this chapter. The sexually oriented business shall not be increased, enlarged, extended, or altered, except that the use may be changed to comply with this chapter.

G. A sexually oriented business lawfully operating does not violate this chapter by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in subsection 28.13.A., above, within 2,640 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

28.14. Additional Regulations for Adult Motels.

A. Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the establishment is an adult motel, as that term is defined in this chapter.

B. A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he or she rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, he or she rents or subrents the same sleeping room again.

C. For purposes of this section, above, the terms “rent” or “subrent” mean the act of permitting a room to be occupied for any form of consideration.

28.15. Regulations Pertaining to Exhibition of Sexually Explicit Films, Videos, or Live Entertainment in Viewing Rooms.

A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises, in a viewing room of less than 150 square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

A. The application for a sexually oriented business license shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager’s stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager’s station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer’s or architect’s blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Town may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

B. The application shall be sworn to be true and correct by the applicant.

C. No alteration in the configuration or location of a manager’s station may be made without the prior approval of the Town Clerk.

D. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager’s station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager’s stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager’s stations. The view required in this subsection must be by direct line of sight from the manager’s station.

E. It shall be the duty of the licensee to ensure that the view area specified in subsection 28.15.A.4., above, remains unobstructed by any doors,

curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection 28.15.A.1., above.

F. No viewing room may be occupied by more than one person at any time.

G. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five-foot candles as measured at the floor level.

H. It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

I. No licensee shall allow openings of any kind to exist between viewing rooms or booths.

J. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

K. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

L. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

M. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within 48 inches of the floor.

28.16. Additional Regulations Concerning Escort Agencies.

A. An escort agency shall not employ any person under the age of 18 years.

B. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

28.17. Additional Regulations for Nude Model Studios.

A. A nude model studio shall not employ any person under the age of 18 years.

B. A person under the age of 18 years commits an offense if the person appears in a state of nudity or semi-nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or visible to any other person.

C. A person commits an offense if the person appears in a state of nudity or semi-nudity, or knowingly allows another to appear in a state of nudity or semi-nudity, in an area of a nude model studio premises which can be viewed from the public right-of-way.

D. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

28.18. Additional Regulations Concerning Public Nudity.

No person, with or without consideration, may perform or engage in, and no licensee may permit any person to perform or engage in, any act of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, or cunnilingus upon the premises or property of a sexually oriented business.

28.19. Prohibition Against Children in a Sexually Oriented Business.

No person may allow or permit a person under the age of 18 years on or to loiter near the premises of a sexually oriented business.

28.20. Hours of Operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 2:00 a.m. and 6:00 a.m. Monday through Friday and 2:30 a.m. and 6:00 a.m. Saturday and Sunday.

28.21. Prohibitions.

A. No person may violate any provision of this chapter.

B. No person may cause, facilitate, or combine with any person to violate any provision of this chapter.

28.22. Complaints.

A. Any person may file charges against an operator or a licensee for violations of this chapter. Such charges shall be in writing and shall be signed and dated by the complainant, who shall legibly provide his or her full name, address, and telephone number, and, with reasonable particularity, describe the violation(s). A failure by a complainant to provide any of this information renders the complaint insufficient. A

determination whether the filed written charges satisfy these requirements shall be made by the Town Clerk before proceeding further. No action shall be pursued by the Town upon an anonymous complaint unless independently verified by the Town or law enforcement authorities, in which event the complaint may be signed, dated, and filed by the Town Clerk.

B. Upon receipt of such charges, the Town Clerk shall provide copies to the Town Board and Town Attorney, and shall provide written notice of such charges to the licensee. Notice provided to the operator or its agent, or to any officer, director, partner, or member, shall be sufficient.

C. The licensee may, in writing, and within 10 days of receipt of notice of the violation(s), request a hearing before the Town Board concerning the charge. If the operator fails to timely request such a hearing, the charge shall be deemed proven and true in any proceeding before the Town Board concerning the license issued under this chapter, and if the Town Board finds the charges sufficient, the license shall be revoked, suspended, or not renewed.

D. If the operator timely requests a hearing on the charge as set forth above, a public hearing before the Town Board shall be held within 15 days after receipt of the written request by the Town Clerk.

E. The Town Clerk shall provide not less than 10 days prior written notice of the hearing date, time, and place to the operator, the complainant who filed the charges, the Town Board, and the Town Attorney.

F. The Town Clerk shall prepare and provide the proper legal notices of the public meeting, the closed session deliberations by the Town Board, and the reconvening into open session to determine the sufficiency of the charge and applicable penalty. The Town Clerk shall also arrange for and provide that the hearing be recorded in some customary manner

G. All parties may appear at the hearing, be represented by legal counsel, present evidence and witnesses in their respective behalf, cross-examine witnesses, and make opening and closing arguments. The length of opening and closing arguments by a party shall not exceed 15 minutes.

H. The filed written charges shall form the basis of the complaint against the operator, who must respond to the allegations set forth therein. The burden of proof is on the complainant to demonstrate that it is more likely than not that the violation(s) occurred.

I. The refusal or failure by an operator to appear at the hearing shall be sufficient grounds to find the charges proven and true for all purposes.

J. The hearing shall be open to the public and recorded. The hearing is a quasi-judicial process and a quorum of the Town Board is necessary to conduct the hearing. The hearing may be continued from time to time upon mutual agreement of the parties or upon a majority vote of the Town Board members attending and voting. At the conclusion of the hearing, the Town Board may convene into closed session to deliberate upon the record and then reconvene into open session to make their determination. A majority vote of all Town Board members voting shall be necessary to carry any motion or to make any determination. For all voting purposes, an abstention or pass is not a vote. Decisions of the Town Board can be conditioned or made contingent. The Town Board must determine if the charges are proven. If so found, then the Town Board shall decide what, if any, appropriate penalty or remedy should be imposed concerning the license for the proven violations. Imposition by the Town Board of the Town's costs and expenses arising from such proceeding against an operator found to be in violation of this chapter are discretionary. If imposed, such costs and expenses must be paid in full by the operator to the Town Clerk within 10 days of the conclusion of the hearing.

K. Either party may request and obtain a copy of the hearing in written form upon payment of the estimated transcribing fee in advance and is obligated to pay the actual cost thereof upon completion. As an alternative to providing such written transcript, the Town Clerk may provide a true and accurate complete copy of the audio tape of the hearing.

L. The Town Board shall reduce its decision to writing within 20 days of the end of the hearing and provide true and correct copies of the decision to the operator, complainant, and Town attorney and shall briefly set forth the reasons for its decision in such written notice.

M. Appeal from the Town Board's determination and judicial review shall be governed by Wis. Stat. ch. 68, as from time to time amended or renumbered.

N. If the operator makes a timely appeal, no suspension, revocation, nonrenewal, or other condition affecting the license shall take effect until the final determination is rendered by the circuit court or as otherwise agreed by the Town and the operator.

28.23. Violations, Penalties, and Other Relief.

A. Any person who violates any of the provisions of this chapter shall forfeit and pay to the Town a penalty of not less than \$200.00, and not more than \$5,000.00, together with the costs of prosecution, for each offense.

B. Each incident and each day during which such violation continues shall be deemed a separate offense.

C. In default of the payment of such forfeiture, such persons shall be subject to the remedies vested in the court for such nonpayment.

D. In addition to, and not in lieu, of the penalties and remedies set forth in this chapter, the Town Board may conduct a hearing to revoke, suspend, not renew, and/or not issue a license under this chapter and/or an alcohol license, as applicable.

28.24. 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.

28.25. Conflicting Ordinances Repealed.

All ordinances or parts of ordinances in conflict with the provisions of this chapter are hereby repealed.

28.26. Effective Date.

This chapter and the above provisions shall be effective and enforced upon adoption and publication as provided by law.