Title 11 ▸ Chapter 7

Regulation of Lewd and Sexually Explicit Conduct

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Article A: Introduction

Sec. 11-7-1 In General.

(a) It is a lawful purpose of the Village Board to enact rules and regulations as are necessary for the preservation of health and to prevent the spread of AIDS and other communicable or sexually transmitted diseases in the Village of Elk Mound. It has been found by localities through the State of Wisconsin, particularly Milwaukee, Racine, Waukesha, Delafield, Kenosha and West Allis, as well as communities around the country, including Indianapolis, Indiana; Boston, Texas; Chattanooga, Tennessee; Newport News, Virginia; Marion County, Indiana; Detroit, Michigan; and Seattle, Washington; as well as other communities around the country, that sexually oriented adult entertainment establishments are predisposed to the creation of unsafe and unsanitary conditions; that operators and employees of such businesses tend to participate in sex-related offenses on the premises, creating substantial law enforcement problems, and that the operational characteristics of such businesses have a deleterious effect on surrounding areas, resulting in neighborhood blight and reduced property values, especially when such businesses are concentrated in one (1) area. Many of such establishments install movie viewing booths with doors in which patrons view videotapes, movies, films and other forms of entertainment characterized by their emphasis on depicting, describing or relating to specified sexual activities or specified anatomical areas, and that such booths have been and are being used by patrons to engage in sexual acts resulting in unsanitary, unhealthy and unsafe conditions in said booths and establishments. This Chapter is intended to establish standards in order to prevent the spread of AIDS and other communicable or sexually transmitted diseases, and to eliminate the deleterious effects described above in the Village of Elk Mound.

(b) The Village Board finds that there is an increasing likelihood of commercial exploitation of human sexuality by owners of premises holding "Class B" alcohol beverage licenses in the State of Wisconsin. Such exploitation takes place in the form of employing or permitting persons to perform or exhibit their nude or semi-nude bodies to other persons as an inducement to other persons to purchase alcohol beverages. The direct result of such exploitation is criminal activity, moral degradation and disturbance of the peace and good order of the community. In addition, this commercial exploitation of such nude and semi-nude acts is adverse to the public's interest in the quality of life, commercial activity and total community environment in the Village of Elk Mound.

Sec. 11-7-2 Definitions.

The following definitions are applicable in this Chapter:

(a) **Adult Bath House.** An establishment or business which provides the service of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a

medical practitioner or a professional physical therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity for engaging in specified sexual activities as defined in this Article.

(b) **Adult Body Painting Studio.** An establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly or partially nude. For purposes of this Chapter, an adult body painting studio shall not be deemed to include a tattoo parlor.

(c) **Adult Bookstore.** An establishment having as a substantial or significant portion of its stock and trade in books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined herein. This includes an establishment having as its stock in trade, for sale, rent, trade, lease, inspection or viewing books, films, video cassettes, motion pictures, magazines or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specific sexual activities or specified anatomical areas, and in conjunction therewith have facilities for the presentation of adult entertainment, including adult-oriented videotapes, films, motion pictures or other offered entertainment for observation by patrons therein.

(d) **Adult Cabaret.** A cabaret which features male or female impersonators or similar entertainers.

(e) **Adult Entertainment.** Any exhibition of any motion pictures, live performance, display or dance of any type, which has a significant or substantial portion of such performance or is distinguished or characterized by an emphasis on, any actual or simulated performance of specified sexual activities, or exhibition and viewing of specified anatomical areas, as defined herein, appearing unclothed, or the removal of articles of clothing to reveal specified anatomical areas.

(f) **Adult Mini-Motion Picture Theater.** An enclosed building with a capacity for less than fifty (50) patrons, including establishments that have coin operated video or motion picture booths, used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined herein for observation by patrons therein.

(g) **Adult Modeling Studio.** An establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially nude by means of photography, painting, sketching, drawing or otherwise.

(h) **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 depiction or description of specified sexual activities or specified anatomical areas; and which may have 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 ten (10) hours; or

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

(i) **Adult Motion Picture Theater.** An enclosed building with a capacity of fifty (50) or more persons at which a significant or substantial portion of the material presented is distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined herein for observation by patrons therein.

(j) **Adult Motion Picture Theater (Outdoor).** A parcel of land from which individuals may view a motion picture presented out of doors which presents material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activity or specified anatomical areas, as defined herein, for observation by patrons.

(k) **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 designed for, specified sexual activities or specified anatomical areas, as defined herein, or stimulating such activity.

(l) **Adult Oriented Establishment.** An establishment which includes, but is not limited to, adult bookstores, adult motion picture theaters, adult mini-motion theaters, adult bath houses, adult body painting studios, adult motels, adult novelty shops or adult cabarets, and 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 not such adult entertainment is held, conducted, operated or maintained for profit, direct or indirect. An adult oriented establishment further includes, without being limited to, any adult entertainment studio or any premises that is physically arranged and used as such whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other term of like import.

(m) **Booth, Room or Cubicle.** Such enclosures as are specifically offered to the public or members of an adult oriented establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to be viewed within the enclosure; which shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, booth, room, or cubicle does not mean such enclosures that are private offices used by the owners, managers or persons employed on the premises for attending to the tasks of their employment, which enclosures are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing entertainment for a fee, and are not open to any persons other then employees; nor shall this definition apply to hotels, motels or other similar establishments licensed by the State of Wisconsin pursuant to Chapter 50, Wis. Stats.

(n) **Church.** A building whether situated within the Village or not, in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

(o) **Customer.** Any person who:

(1) Is allowed to enter an adult oriented establishment in return for the payment of an admission fee or any other form of consideration or gratuity; or

(2) Enters an adult oriented business and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or

(3) Is a member of and on the premises of an adult oriented establishment operating as a private club.

(p) **Community.** The State of Wisconsin.

(q) **Day Care Center.** A facility licensed by the State of Wisconsin pursuant to Sec. 48.65, Wis. Stats., whether situated within the Village or not.

(r) **Door, Curtain or Portal Partition.** A nontransparent closure device which prevents activity taking place within a booth, room or cubicle from being seen or viewed from outside the booth, room or cubicle.

(s) **Employee.** Any and all persons, including independent contractors, who work in or at or render any services directly or indirectly related to the operation of an adult oriented establishment.

(t) **Entertainer.** Any person who provides entertainment within an adult oriented establishment as defined in this Chapter, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or independent contractor.

(u) **Harmful to Minors.** That quality of any description or representation, in whatever form, of nudity, specified sexual activities or specified anatomical areas, which taken as a whole appeals to the prurient interest in sex, which taken as a whole portrays sexual conduct in a patently offensive way, and which taken as a whole does not have serious literary, artistic, political or scientific value. Whether a work appeals to the prurient interest and whether it depicts or describes sexual conduct in a patently offensive way, and whether it has serious literary, artistic, political or scientific value are to be determined by applying contemporary community standards in the adult community as a whole with respect to what is suitable material for minors.

(v) **Knowingly.** Having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

(1) The character and content of any material described herein which is reasonably suspect under this Section; and

(2) The age of a minor, provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(w) **Knowledge of Minor's Age.** Means:

(1) Knowledge or information that the person is a minor; and

(2) Reason to know, or a belief or grounds for belief, which warrants further inspection or inquiry of the age of the minor.

(x) **Manager.** The operator or agent licensed under this Chapter who shall not be licensed as a massage technician.

(y) **Massage.** Any process or procedure consisting of rubbing, stroking, kneading or tapping, by physical or mechanical means, upon the external parts or tissues of the body of another for consideration.

(z) **Massage Establishment.** A place of business wherein private massage is practiced, used or made available as a principal use of the premises.

(aa) **Massage Room.** The area where private massage is performed.

(bb) **Massage Technician.** A person who practices, administers or uses massage for a consideration, and who holds a valid license under this Chapter.

(cc) **Minor.** Any person under the age of eighteen (18) years.

(dd) **Nudity.** The showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernible turgid state.

(ee) **Operator.** Any person operating, conducting, maintaining or owning any adult-oriented establishment or massage establishment.

(ff) **Patron.** Any person who receives a massage under such circumstances that it is reasonably expected that he or she will pay money or give any consideration therefor.

(gg) **Residential.** Pertaining to the use of land, whether situated within the Village or not, for premises such as homes, townhouses, duplexes, condominiums, apartments and mobile homes, which contain habitable rooms for non-transient occupancy and which are designed primarily for living, sleeping, cooking and eating therein. A premises which is designed primarily for living, sleeping, working and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes. Hotels, motels, boarding houses, nursing homes and hospitals shall not be considered to be residential.

(hh) **Sadomasochistic Abuse.** Flagellation or torture by a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(ii) **School.** A building, whether situated within the Village or not, where persons regularly assemble for the purpose of instruction or education, together with playgrounds, stadia and other structures or grounds used in conjunction therewith. The term is limited to:

(1) Public and private schools used for primary or secondary education in which any regular kindergarten or grades one (1) through twelve (12) classes are taught; and

(2) Special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or any of grades one (1) through twelve (12).

(jj) **Sexual Conduct.** The commission of any of the following: sexual intercourse, sodomy, bestiality, necrophilia, human excretion, masturbation, sadism, masochism, fellatio, cunnilingus or lewd exhibition of human genitals.

(kk) **Sexual Intercourse.** Physical sexual contact between individuals that involves the genitalia of at least one (1) person including, but not limited to, heterosexual intercourse, sodomy, fellatio, or cunnilingus.

(ll) **Specified Anatomical Areas.** Less than completely and opaquely covered:
- (1) Human genitals, pubic region;
- (2) Buttock; or
- (3) Female breast below a point immediately above the top of the areola.
- (4) Human male genitals in a discernible turgid state, even if completely and opaquely covered.

(mm) **Specified Sexual Activities.** Simulated or actual:
- (1) Showing of human genitals in a state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, cunnilingus;
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock, or female breasts.

(nn) **Substantial.** As used in various definitions, shall mean fifty percent (50%) or more of a business' stock in trade, display space, floor space or retail sales in any one (1) month during the license year.

(oo) **Waiting Area.** An area adjacent to the main entrance that is separate from any area where massages are given.

Sec. 11-7-3 Public Indecency Prohibited.

(a) Any person who, within the Village of Elk Mound municipal limits, knowingly or intentionally, in a public place, commits public indecency by doing one of the following:
- (1) Engaging in specified sexual activities;
- (2) Displaying specified anatomical areas; or
- (3) Appearing in a state of nudity.

(b) In addition to any other actions allowed by law or taken by the Village Board and/or Committee thereof, including the action of applicable license revocation or non-renewal, anyone who violates any of the provisions of this Section shall forfeit not less than Two Hundred Fifty Dollars ($250.00), and not more than Two Thousand Dollars ($2,000.00), for each offense, together with costs, and if such forfeiture and costs are not paid, such person so convicted shall be subject to such other penalties available by law.

Sec. 11-7-4 Exposing Minors to Harmful Materials.

(a) It shall be unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit

a minor for a monetary consideration to premises whereon there is exhibited a motion picture, show or other presentation which in whole or in part depicts nudity, or specified sexual activities and which is harmful to minors, unless such minor is accompanied by his parent or legal guardian.

(b) It shall be unlawful for any person knowingly to sell or loan for monetary consideration to a minor:

(1) Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts specified anatomical areas or shows specified sexual activities and which is harmful to others.

(2) Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any material enumerated in Subsection (b)(1) hereof, or explicit and detailed verbal descriptions or narrative accounts of specified sexual activities and which, taken as a whole is harmful to minors.

(c) It shall be unlawful for any person knowingly to admit a minor to any premises whereon there is exhibited nudity or specified sexual activities which is harmful to minors unless such minor is accompanied by his/her parent or legal guardian.

(d) Any person violating this Section shall be subject to the penalty provisions of Section 11-7-63.

Sec. 11-7-5 through Sec. 11-7-19 Reserved for Future Use.

Article B: Entertainment Featuring Live Sexually Explicit Performances

Sec. 11-7-20 Prohibitions Applicable to Premises Holding Alcohol Beverage Licenses.

(a) It shall be unlawful for any owner or operator of premises holding a Class "A," "Class A," Class "B," or "Class B," or "Class C" Alcohol Beverage license to permit any person to expose to public view on the licensed premises any specified anatomical area as defined in this Chapter, or to employ any device which is intended to give the appearance of or simulate such specified anatomical areas or publicly display or perform any specified sexual activities on the licensed premises.

(b) Any licensee who permits a violation of Subsection (a) above shall be subject to revocation of all alcohol beverage licenses issued by the Village to the licensee.

Sec. 11-7-21 Sexually Explicit Live Adult Entertainment.

(a) This Section applies only to premises offering live performances by persons appearing in a state displaying some portions of specified anatomical areas not covered by fully opaque coverings. Appearance in public in a state of nudity is prohibited by Section 11-7-3.

(b) No person shall open premises to the public offering live performances by persons appearing in a state displaying some portions of specified anatomical areas not covered by fully opaque coverings, whether such persons are paid for such performance or not, unless the person opening the premises has obtained a license from the Village Clerk-Treasurer.

Sec. 11-7-22 Annual Adult Entertainment License.

(a) **Application.** Applications for an annual adult entertainment license shall be made to the Village Clerk-Treasurer. The Village Clerk-Treasurer shall notify the appropriate law enforcement authorities, Building Inspector, and Fire Inspector of the license application, publish a Class I notice of such application and have the license application submitted to the Village Board within thirty (30) days of application. Investigating officials shall submit written reports and recommendations to the Village Board. A public hearing shall be held on the application, preceded by a Class II notice. The Village Board may take any testimony regarding the granting or denial of such license.

(b) **Action.** The Village Board shall either approve, modify or reject the application; the reasons for the action taken shall be specified in the written record of the Village Board.

(c) **Probationary Period.** If license issuance is approved by a majority of the Village Board, an initial applicant shall be granted a probationary license by the Village Clerk-Treasurer. An annual license shall be granted if, upon the expiration of the six (6) month probationary period, no violations under this Article occur and the applicant corrects any deficiencies or problems that the applicant is directed to correct. If, however, for any reason, the application is denied by the Village Board, the Village Board shall specify the findings made that support that denial.

(d) **License Term.** The license granted under this Article shall expire on June 30th of each year and each license shall be subject to revocation as hereinafter provided.

(e) **Form of License.** The Village Clerk-Treasurer shall be responsible for, following Village Board action, issuing all licenses under this Section. All such licenses shall specify the nature of the holder and the license and the date for which it is applicable, as well as any conditions that may be imposed by the Village. All such licenses shall be open to public inspection and posted in public view on the premises for which issued.

(f) **Fee.** All such license applications shall be accompanied by a fee as prescribed in Section 1-3-1. If for any reason the license is denied, one-half (1/2) of the license fee shall be returned to the applicant. If the license is granted, the entire fee will be kept by the Village.

(g) **Number of Licenses Limited.** No more than three (3) annual adult entertainment licenses, issued under this Article, shall be issued to license holders within the Village of Elk Mound at one (1) time.

Sec. 11-7-23 Renewals.

The holder of an annual license granted under this Article shall submit an application for renewal at least sixty (60) days before the expiration of the license. Such license may be renewed pursuant to the provisions of Section 11-7-22 as that Section applies to notice being given by the Village Clerk-Treasurer and provisions for publication and action by the Village Board.

Sec. 11-7-24 Regulations.

Any license holder governed by this Article shall comply with the following regulations:

(a) No dancing shall be permitted by any performers under the auspices of the management, whether paid or not, within six (6) feet from any location from which patrons are directly served, while so entertaining the patrons.

(b) No dancer, performer, or any individual, who is performing, singing, or dancing, shall have either direct or indirect physical contact with any patron, in violation of Sec. 944.36, Wis. Stats.

(c) While dancing is in progress, the establishment shall be adequately illuminated so as to permit safe ingress and egress from the premises.
(d) Good order shall be maintained at all times. Without limitation due to enumeration, a lack of "good order" for purposes of this Article shall be deemed to include persistent loud noises to the annoyance or detriment of surrounding property owners, patrons urinating in public, profane language and/or fighting.
(e) The premises shall close and all patrons shall vacate the premises between midnight and 10:00 a.m. Sunday through Friday, and midnight to noon on Saturday.
(f) The license holder shall insure that building capacity limits as set by the Fire Department and/or Building Code are complied with at all times.
(g) The license holder shall comply with all applicable State Statutes and regulations and all county and Village ordinances.
(h) The management, license holder and employees shall obey all reasonable orders or directions of any law enforcement officer.
(i) The performance of any dance by performers under the auspices of the management shall be given only on a raised portion of the floor separated by a railing or other device from the patrons so as to deter patrons from participating in the dance.
(j) No license holder, personally or through an agent or employee, shall advertise, allow or produce nude entertainment or performances in violation of this Section or in violation of any Village Ordinance or State Statute.
(k) The license holder shall not permit any person to publicly perform specified sexual activities on the licensed premises.
(l) The licensee shall not permit any person to touch any performer's specified anatomical areas during a public performance.
(m) The use of simulated sexual organs during dances or performances is prohibited.
(n) No license holder shall permit any amateur dancing, entertainment, or performances on the license holder's premises in violation of this Section or any applicable State or Federal laws.

Sec. 11-7-25 Location.

(a) No establishment licensed under this Article shall permit any performance or entertainment governed by this Article to occur within one hundred (100) feet of any area zoned for residential, church, school, nursing home, public park, or day care center uses, or other establishment licensed under this Article. No establishment licensed under this Article shall be located within five hundred (500) feet of any other establishment licensed under this Article, or within five hundred (500) feet of any business holding an alcohol beverage license.
(b) For purposes of this Section, distances are to be measured in a straight line, without regard to intervening structures or objects, from the property line of the adult-oriented establishment to the nearest property line of another adult-oriented establishment, school, place of worship, residential district or business holding an alcohol beverage license.

Sec. 11-7-26 Penalty.

In addition to any other actions allowed by law or taken by the Village Board, including the action of license revocation or non-renewal, anyone who violates any of the provisions of this Article shall forfeit not less than Two Hundred Fifty Dollars ($250.00), but not more than One Thousand Dollars ($1,000.00), for each and every offense, together with the costs of prosecution. If such forfeiture and costs are not paid, such person so convicted shall be subject to any civil penalties or other penalties available by law.

Sec. 11-7-27 License Suspension, Revocation or Non–Renewal.

(a) **In General.** Any adult entertainment license granted herein may be revoked, suspended, or not be renewed by the Village Board as follows:
   (1) If the applicant has made or recorded any statement required by this Article knowing it to be false or fraudulent or intentionally deceptive.
   (2) For the violation of any provision of this Article, except for establishment license matters involving a violation of Building Codes, in such case the license shall be revoked after the second (2nd) conviction thereof in any license year.
   (3) After one (1) conviction of any establishment personnel of an offense under Ch. 944, Wis. Stats., or of an offense against the person or property of a patron of the property or of an offense involving substance scheduled in Subchapter II of Ch. 961, Wis. Stats., where there is shown the participation or knowledge of any other establishment personnel or of any individual within the business structure of the applicant.

(b) **Notice of Hearing.** No license shall be revoked, suspended, or not renewed by the Village Board except upon due notice and hearing to determine whether grounds for such action exist. Such hearing shall be held before the Village Board. Notice of such hearing shall be in writing and shall state the grounds of the complaint against the licensee. The notice shall be served upon the licensee at least fifteen (15) days prior to the date of the hearing and shall state the time and place thereof.

(c) **Hearing.** The licensee shall be entitled to be heard, to be represented by counsel, to cross-examine opposing witnesses, to present witnesses on his or her own behalf under subpoena by the Village Board if such is required, and the hearing may be stenographically recorded at the licensee's option and expense. At the conclusion of such hearing, the Village Board shall prepare findings of fact and conclusions of law as to what, if any, action the Village Board will take with respect to the license. The Board shall provide the complainant and licensee with a copy of the report.

Sec. 11-7-28 License Transfer.

Any license granted under the provisions of this Article shall be transferable in accordance with the procedure set forth in Section 11-7-49.

Sec. 11-7-29 through Sec. 11-7-39 Reserved for Future Use.

Article C: Adult Oriented Establishments

Sec. 11-7-40 Intent of Article.

It is the purpose of this Article to regulate adult oriented establishment businesses (hereinafter referred to as adult oriented establishments) to promote the health, safety, morals, and the general welfare of the citizens of the Village of Elk Mound, to aid in the alleviation and prevention of the adverse and deleterious effects of criminal activity and disruption of the public peace associated with such establishments, and to establish reasonable and uniform regulations to prevent the serious health hazards associated with unsafe and unsanitary conditions known to exist in those establishments and to alleviate the spread of sexually transmitted diseases and other contagious diseases in those establishments.

Sec. 11-7-41 Adult Oriented Establishment License Required.

(a) Except as provided in Subsection (d) below, no adult oriented establishment shall be operated or maintained within the corporate limits of the Village of Elk Mound without first obtaining a license to operate issued by the Village of Elk Mound.

(b) A license may be issued only for one (1) adult oriented establishment located at a fixed and certain place per filed application. Any person, partnership, or corporation which desires to operate more than one (1) adult oriented establishment must have a license for each.

(c) No license or interest in a license may be transferred to any person, partnership, or corporation except as set forth in Section 11-7-49.

(d) All adult oriented establishments existing at the time of the original passage of this Chapter must submit an application for a license within ninety (90) days of the passage of this Chapter. If an application is not received within said ninety (90) day period, then such existing adult oriented establishment shall cease operations.

Sec. 11-7-42 Application for License.

(a) **License Procedure.** Any person, partnership, or corporation desiring to secure an adult oriented establishment license shall make application to the Village Clerk-Treasurer. The application shall be filed in triplicate with and dated by the Village Clerk-Treasurer. A copy of the application shall be distributed within ten (10) days of receipt thereof to the Fire Inspector, Building Inspector, appropriate law enforcement authorities, and to the applicant. The procedures prescribed in Section 11-7-22(a) through (c) shall be applicable to adult entertainment licenses under this Article.

(b) **Required Information.** The application for a license shall be upon a form provided by the Village Clerk-Treasurer. An applicant for a license, which shall include all partners or

limited partners of a partnership applicant, all officers or directors of a corporate applicant, all members of any limited liability company applicant, and any other person who is interested directly in the ownership or operation of the business, shall furnish the following information under oath:

(1) Name, including all aliases, address and date of birth of applicant;
(2) Written proof that the individual is at least eighteen (18) years of age;
(3) All residential addresses of the applicant for the past ten (10) years;
(4) The business, occupation, or employment of the applicant for ten (10) years immediately preceding the date of application;
(5) The exact nature of the adult entertainment to be conducted;
(6) Whether the applicant previously operated in this or any other state, county or municipality under an adult oriented establishment license or similar business license; 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;
(7) All criminal convictions, whether federal or State, or municipal Ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except traffic offenses;
(8) Fingerprints and two (2) portrait photographs of at least two (2) inches by two (2) inches of the applicant;
(9) The address of the adult oriented establishment to be operated by the applicant;
(10) Proof of right to occupy under Section 11-7-44(d); and
(11) If the applicant is a corporation, the application shall specify the name of the corporation, the date and State of incorporation, and the name and address of the registered agent of the corporation.

(c) **Failure to Provide Information.** Failure or refusal of the applicant to provide any information for the investigation of the application, or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding said application, or refusal to submit to or cooperate with any investigation required by this Section, shall constitute an admission by the applicant of ineligibility for such license and shall be grounds for denial thereof.

Sec. 11-7-43 Standards for Issuance of a License.

(a) **General Requirements.** To receive a license to operate an adult establishment, an applicant must meet the following standards:

(1) If the applicant is an individual:
   a. The applicant shall be at least eighteen (18) years of age;
   b. Subject to Chapter 111, Wis. Stats., the applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude,

prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and

c. The applicant shall not have been found to have previously violated this Article within five (5) years immediately preceding the date of the application.

(2) If the applicant is a corporation:

a. All officers, directors, and others required to be named under Section 11-7-43(b) shall be at least eighteen (18) years of age;

b. Subject to Chapter 111, Wis. Stats., no officer, director, or other person required to be named under Section 11-7-43(b) shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and

c. No officer, director or other person required to be named under Section 11-7-43(b) shall have been found to have previously violated this Article within five (5) years immediately preceding the date of the application.

(3) If the applicant is a partnership, joint venture, limited liability company or any other type of organization where two (2) or more persons have a financial interest:

a. All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least eighteen (18) years of age;

b. Subject to Chapter 111, Wis. Stats., no person having a financial interest in the partnership, joint venture, or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and

c. No person having a financial interest in the partnership, joint venture or other type of organization shall have been found to have violated any provision of this Article within five (5) years immediately preceding the date of the application.

(b) **Investigation.** No license shall be issued unless law enforcement authorities have investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the Village Clerk-Treasurer no later than fourteen (14) days after the application.

(c) **Inspection.** The Building Inspector, Fire Inspector, and/or law enforcement authorities shall inspect the premises proposed to be licensed to verify compliance with their respective Codes, and shall report compliance findings to the Village Clerk-Treasurer within fourteen (14) days of the date of application.

(d) **Proof.** No license shall be issued unless the applicant provides proof of one (1) of the following:

(1) Ownership of a properly zoned building or parcel of real property upon which a building can be constructed. Proper zoning includes permissible non-conforming use status.

(2) A lease on a building which is properly zoned to house a venture. Proper zoning includes permissible non-conforming use status.
(3) An option to purchase property which is properly zoned for the venture.
(4) An option to lease property which is properly zoned for the venture. Proper zoning includes permissible non-conforming use status.

Sec. 11-7-44 License Fee.

A non-refundable adult oriented establishment license application fee as prescribed in Section 1-3-1 shall be submitted with the application for a license.

Sec. 11-7-45 Display of License or Permit.

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

Sec. 11-7-46 Renewal of License or Permit.

(a) Every license issued pursuant to this Article will terminate on June 30 of the year it is issued, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the Village Clerk-Treasurer. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the Village Clerk-Treasurer. A copy of the application for renewal shall be distributed by the Village Clerk-Treasurer to the Building Inspector, Fire Inspector, law enforcement authorities, and the applicant. The application for renewal shall be upon a form provided by the Village Clerk-Treasurer 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 as prescribed in Section 1-3-1 shall be submitted with the application for renewal.
(c) If authorities are aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the Village Clerk-Treasurer.

Sec. 11-7-47 Denial of Application.

(a) Whenever an initial application is denied, the Village Clerk-Treasurer shall, within fourteen (14) days of the denial, advise the applicant in writing of the reasons for such action. If

the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held at the next regularly scheduled meeting of the Village Board.

(b) Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this Article shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the Village Clerk-Treasurer.

Sec. 11-7-48 Transfer of License.

(a) A license is personal to the owner(s) and operator designated in the application, provided it may be transferred pursuant to this Section. A transfer application must be filed no less than ten (10) days before any change of the owner(s) or operators designated on the application. In the event that a transfer application is not timely filed, then the license shall be invalid for any purpose relating to the operation of the adult oriented business, and any transfer shall require the filing of an original application and be subject to the regulations applicable thereto.

(b) The Village Clerk-Treasurer shall prescribe a form on which license transfer applications shall be made. The form shall include a statement under oath that the original application remains correct as previously submitted in all respects except those that are amended by the transfer application. The transfer application shall contain a statement under oath that the individual signing the transfer application has personal knowledge of the information contained therein and that the information is true and correct and shall not be complete unless accompanied by a nonrefundable transfer fee of One Hundred Dollars ($100.00). Transfer applications shall be filed in the same place and at the same time as original applications, and the fee shall be payable in the same manner as for original applications.

(c) Transfer applications shall be reviewed, issued and subject to appeal in the same manner as original applications, and they shall be issued for the remaining term of the license to be transferred.

(d) Any transfer of an adult oriented establishment, other than as provided in this Section, from the licensed premises to any other premises shall cause such license to lapse and become void. A license which has lapsed and become void shall be subject to revocation under Section 11-7-54.

Sec. 11-7-49 Physical Layouts of Adult Oriented Establishments.

Any adult oriented establishment having available for customers, patrons or members any booth, room, or cubicle for the private viewing of any motion picture, videotape or compact disc in

which a significant or substantial portion of the material presented is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas 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, cubicles and any non-public areas by a wall.

(2) Have at least one (1) side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying same.

(3) All walls shall be solid and without any openings, extended from the floor to a height of not less than six (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 (10) foot candles at all times, as measured from the floor.

(c) **Occupants.** Only one (1) individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of specified sexual activity, cause any bodily discharge or litter while in the booth. No person shall alter, damage or deface any portion of any such booth, room or cubicle in such a manner that it no longer complies with the provisions of this Section.

Sec. 11-7-50 Responsibilities of Operators.

(a) An operator, licensed under this Article, shall maintain a register of all employees, showing the name and aliases used by the employee, home address, birth date, sex, telephone numbers, Social Security Number, and date of employment and termination. The above information on each employee shall be maintained in the register on the premises of a period of three (3) years following termination.

(b) The operator shall make the register of employees available immediately for inspection by law enforcement officers upon demand of a member of a law enforcement agency at all reasonable times.

(c) Every act or omission by an employee constituting a violation of the provisions of this Article shall be deemed the act or omission of the operator is 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.

(d) Any act or omission of any employee constituting a violation of the provisions of this Article 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.
(e) 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 sexually-explicit live adult entertainment or materials containing depictions of specified sexual activities or specified anatomical areas as defined herein.
(f) The operator shall maintain the premises in a clean and sanitary manner at all times.
(g) The operator shall ensure compliance of the establishment and its patrons with the provisions of this Article.
(h) The operator shall ensure there is conspicuously posted inside each booth, room or cubicle an un-mutilated and undefaced sign or poster supplied by the Village which contains information regarding sexually transmitted diseases and the telephone numbers from which additional information can be sought.
(i) The operator shall ensure there is conspicuously displayed at a place near the main entrance of the establishment, or portion thereof, any information, brochures, or pamphlets supplied by the Village pertaining to sexually transmitted diseases.
(j) The operator shall ensure there are posted regulations concerning booth occupancy on signs, with lettering at least one (1) inch high, that are placed in conspicuous areas of the establishment and in each of the booths, rooms or cubicles.
(k) The Village shall charge its reasonable costs for supplying such posters, brochures, pamphlets and other information required under this Article.

Sec. 11-7-51 Registration of Employees.

(a) All operators, employees, and independent contractors working in any adult oriented establishment hereunder shall, prior to beginning employment or contracted duties, register with the Village Clerk-Treasurer. Such registration shall include the following:
    (1) Name, address, birth date, any aliases used, telephone numbers, date of employment and name of employer; and
    (2) Photographs and fingerprinting.
(b) Upon registration, the Village will provide to each registered employee an identification card containing the employee's photograph identifying the employee as such, which shall be kept available for production upon request of all inspecting officers while on duty at such adult oriented establishment.
(c) All registrations hereunder are valid for a period of one (1) year.
(d) The registration fee as prescribed in Section 1-3-1 shall be paid per registration, which shall be paid to the Village to cover costs of the identification card.

Sec. 11-7-52 Exclusions.

All private schools and public schools, as defined in Chapter 115, Wis. Stats., located within the Village Clerk-Treasurer are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum.

Sec. 11-7-53 Penalty.

In addition to any other actions allowed by law or taken by the Village Board, including the action of license revocation, suspension or non-renewal, anyone who violates any of the provisions of this Article shall forfeit not less than Two Hundred Fifty Dollars ($250.00), but not more than One Thousand Dollars ($1,000.00), for each and every offense, together with the costs of prosecution. If such forfeiture and costs are not paid, such person so convicted shall be subject to any civil penalties or other penalties available by law.

Sec. 11-7-54 License Suspension, Revocation or Non-Renewal of Licenses.

(a) **In General.** Any license granted herein may be revoked, suspended, or not renewed by the Village Board as follows:

(1) If the applicant has made or recorded any statement required by this Section knowing it to be false or fraudulent or intentionally deceptive;

(2) For the violation of any provision of this Article, except for establishment license matters involving a violation of Building Codes, in such case the license shall be revoked after the second (2nd) conviction thereof in any license year;

(3) After one (1) conviction of any establishment personnel of an offense under Ch. 944, Wis. Stats., or of an offense against the person or property of a patron of the property or of an offense involving substance in Subsection II of Ch. 961, Wis. Stats., where there is shown the participation or knowledge of any other establishment personnel or of any individual within the business structure of the applicant.

(4) If the licensee, operator or employer becomes ineligible to obtain a license.

(5) If an operator employs an employee who does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without being registered with the Village Clerk-Treasurer.

(6) If any cost or fee required to be paid by this Section is not paid.

(7) If any intoxicating liquor or fermented malt beverage, narcotic or controlled substance is served or consumed on the premises of the adult oriented establishment.

(8) If any operator, employee or entertainer sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed to any minor any material depicting specified sexual activities or specified anatomical areas.

(b) **Notice of Hearing.** No license shall be revoked, suspended, or not renewed by the Village Board except upon due notice and hearing to determine whether grounds for such action exist. Such hearing shall be held before the Village Board. Notice of such hearing shall be in writing and shall state the grounds of the complaint against the licensee. The notice shall be served upon the licensee at least fifteen (15) days prior to the date of the hearing and shall state the time and place thereof.

(c) **Hearing.** The licensee shall be entitled to be heard, to be represented by counsel, to cross-examine opposing witnesses, to present witnesses on his or her own behalf under subpoena by the Village Board if such is required, on his or her own behalf under subpoena by the Village Board if such is required, and the hearing may be stenographically recorded at the licensee's option and expense. At the conclusion of such hearing, the Village Board shall prepare findings of fact and conclusions as to what, if any, action the Village Board will take with respect to the license. The Village Board shall provide the complainant and licensee with a copy of the report.