

Title IV – Chapter 2

Sexually Oriented Businesses

§ 2.01 Sexually Oriented Businesses

2.01 REGULATION OF SEXUALLY ORIENTED BUSINESSES

(1) Purpose and Findings.

- (a) Purpose. The purpose of this chapter is to regulate Sexually Oriented Businesses in order to promote the health, safety, morals and general welfare of the citizens of the Village. The provisions of this chapter have neither the purpose nor effect of regulating obscenity or imposing a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. Similarly, it is not 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.
- (b) Findings. Based on evidence concerning the adverse secondary effects of sexually oriented businesses on the community presented in hearings and in reports made available to the Board, and on findings incorporated in the cases 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 Theaters, Inc.*, 475 U.S. 41 (1986), *City of Newport v. Iacobucci*, 479 U.S. 92 (1986), *New York State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981), *Young v. American Mini Theatres*, 427 U.S. 50 (1976), *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003), *Ben's Bar v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003), *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000), *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997), *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986), *Hang On, Inc. v. City of Arlington*, 65 F.3d 11248 (5th Cir. 1995); *East of the River Enterprises II v. City of Hudson*, 2000 Wis. App. Lexis 734 (Ct. App. Aug. 1, 2000); *East of the River Enterprises II v. City of Hudson*, 2000 WI App 116; *Urmanski v. Town of Bradley*, 2000 WI App 141 (2000) and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland,

Ohio; Dallas, Texas; Newport News, Virginia; Islip, New York; New York, New York; St. Croix County, Wisconsin; and Beaumont, Texas, which evidence the Board reasonably believes is relevant to the potential problems caused by the adverse secondary effects of sexually oriented businesses, the 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. Certain employees of sexually oriented businesses defined in this section as adult theatres and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
3. 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, DVDs or live sex shows.
4. Offering and providing such space encourages such activities, which creates unhealthy conditions.
5. Persons frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
6. 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, and trichomoniasis.
7. Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States B 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985 and 253,448 in 1992, and 886,575 through 2002. HIV/AIDS Surveillance Report, United States Health and Human Services Department, Center for Disease Control, 2003.

8. As of December 30, 2002, there have been 5,386 reported cases of AIDS and 8,233 reported cases of HIV infection in the State of Wisconsin. Review of Wisconsin HIV Case Surveillance Data, Wisconsin Department of Health and Family Services, September 30, 2003.
9. Since 1981 and to the present, there have been an increasing cumulative number of Persons testing positive for the HIV antibody test in the State of Wisconsin.
10. In the United States each year, 3,000,000 people are infected with Chlamydia, 650,000 with Gonorrhea, 70,000 with Syphilis, 1,000,000 with herpes, 5,500,000 with Human Papillomavirus, 120,000 with Hepatitis B, and 5,000,000 with Trichomoniasis. Overall, the CDC estimates there are 15,000,000 new cases of sexually transmitted diseases each year. Tracking the Hidden Epidemics: Trends in STDs in the United States, United States Health and Human Services Department, Center for Disease Control, 2000.
11. The surgeon general of the United States in his report of October 22, 1986, has 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.
12. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
13. 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.
14. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult-oriented" films. [*Matney v. County of Kenosha*, 86 F.3d 692, 694 (7th Cir. 1996).]
15. The consumption of alcoholic beverages on the premises of sexually oriented businesses is an explosive combination, one that can beget undesirable behavior and exacerbate the

adverse secondary effects of such businesses on the community. [*Blue Canary v. City of Milwaukee*, 251 F.3d 1121 (7th Cir. 2001); *Ben's Bar v. Village of Somerset*, 316 F.3d 702, 726-28 (7th Cir. 2003).]

16. The findings noted in paragraphs number 1 through 15 raise substantial governmental concerns.
17. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect these substantial governmental concerns.
18. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the 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 public. 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.
19. Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
20. 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.
21. It is necessary to license entertainers in the adult entertainment industry to prevent the exploitation of minors, to ensure that each such entertainer is an adult and to ensure that such entertainers have not assumed a false name, which would make regulation of the entertainer difficult or impossible.

22. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this chapter is designed to prevent or who are likely to be witnesses to such activity.
23. Proximity between entertainers and patrons during adult entertainment performances can facilitate sexual contact, prostitution and related crimes.
24. 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.
25. The license fees required in this Ordinance are necessary as nominal fees imposed as necessary regulatory measures designed to help defray the substantial expenses incurred by the Village in regulating sexually oriented businesses.
26. The general welfare, health, morals and safety of the citizens of the Village will be promoted by the enactment of this chapter.
27. It is not the intent of this Ordinance to suppress or censor any expressive activities protected by the First Amendment of the United States Constitution or Article I, Section 3 of the Wisconsin Constitution, but rather to enact time, place and manner regulations which address the compelling interests of the Village in mitigating the secondary effects of sexually oriented businesses.

(2) Definitions.

- (a) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or 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 5 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."
- (b) ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE

1. Adult Bookstore, Adult Novelty Store, or Adult Video Store means a commercial establishment which has a significant or substantial portion of its stock-in-trade or a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale or rental for any form of consideration of any one or more of the following:
 - a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, DVDs, or video or digital 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 "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 one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas."
3. Video stores that sell and/or rent only video tapes, DVDs or other photographic or computer-generated reproductions, and associated equipment shall come within this definition if 20% or more of its stock-in-trade or revenues comes from the rental or sale of video tapes, DVDs, or other photographic reproductions or associated equipment which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas. ***[Very similar definition upheld in *Pleasureland Museum, Inc. v. Beutter*, 288 F.3d 988 (7th Cir. 2002).]***

- (c) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial Establishment which regularly features:
1. Persons appearing in: (i) a "State of Nudity;" or (ii) attire that is limited to that which fully and opaquely covers human male or female genitals, pubic area, vulva, anus, anal cleft and cleavage, and the entire nipple and areola of the female breast.
 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, DVDs, slides or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas." [***Schultz v. City of Cumberland, 228 F.3d 831, 849-50 (7th Cir. 2000); MDK, Inc., v. Village of Grafton, 345 F.Supp.2d 952 (E.D. Wis. 2004).***]
- (d) ADULT MOTEL means 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, DVDs, slides, or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas"; 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 sub rent the Room for a period of time that is less than 10 hours.
- (e) ADULT MOTION PICTURE THEATER means an enclosed "Establishment" with a capacity of 50 or more Persons where, for any form of consideration, films, motion pictures, video cassettes, DVDs, slides, or similar photographic reproductions are regularly featured which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas."

- (f) ADULT MINI-MOTION PICTURE THEATER means an enclosed "Establishment" with a capacity of less than 50 persons used for regularly featuring materials on a having as their dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Areas," for observation by patrons therein.
- (g) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial Establishment which regularly features persons who appear in a "State of Nudity" or live performances which are characterized by the exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities."
- (h) BOOTH, ROOM, OR CUBICLE means such enclosures as are specifically offered to the public or members of a Sexually Oriented Business 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, are not open to any persons other than Employees; nor shall this definition apply to hotels, motels, or other similar Establishments licensed by the State of Wisconsin pursuant to Ch. 50, Wis. Stats.
- (i) EMPLOYEE means a "Person" who performs any service on the premises of a Sexually Oriented Business on a full-time, part-time or contract basis, whether or not the "Person" is denominated an Employee, independent contractor, agent or otherwise and whether or not said "Person" is paid a salary, wage or other compensation by the operator of said business. Employee does not include a "Person" exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
- (j) ESCORT means 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 strip-tease for another "Person."

- (k) ESCORT AGENCY means 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. ***[FW/PBS, d/b/a Paris Adult Bookstore II v. City of Dallas, 493 U.S. 215 (1990) suggests that escort agencies are not protected by the First Amendment.]***
- (l) ESTABLISHMENT means and 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."
- (m) LICENSEE means 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; and in the case of an "Employee," a "Person" in whose name a license has been issued authorizing employment in a "Sexually Oriented Business."
- (n) NUDE MODEL STUDIO means any place where a "Person" who appears in a "State of 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 or 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 in a structure:
1. That has no sign visible from the exterior of the structure and no other advertising that indicates a 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 model is on the premises at any one time.
- (o) NUDITY or a STATE OF NUDITY means the showing of the human male or female genitals, pubic area, vulva, anus, 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 the entire nipple and areola, or the showing of the covered male genitals in a discernibly turgid state.
- (p) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (q) PUBLIC INDECENCY means a "Person" knowingly or intentionally, in a "Public Place:"
1. Engages in sexual intercourse;
 2. Engages in deviant sexual conduct;
 3. Appears in a "State of Nudity;" or
 4. Fondles the genitals of another person.
- (r) PUBLIC PLACE means any location frequented by the public, or where the public is present or like to be present, or where a person may reasonably be expected to be observed by members of the public. "Public Places" include, but are not limited to: streets, sidewalks, parks, beaches, business and commercial "Establishments" (whether for profit or not-for-profit and whether open to the public at large or where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets and meeting facilities utilized by religious, social, fraternal or similar organizations. Premises used solely as a private resident whether permanent or temporary in nature shall not be deemed to be a "Public Place." "Public Place" shall not include enclosed single sex public restrooms, enclosed single sex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctors offices, portions of hospitals and similar places in which "Nudity" or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. "Public Place" does not include a private facility

which has been formed as a family-oriented clothing option facility, properly licensed by the state.

- (s) REGULARLY FEATURES or REGULARLY FEATURING means that the content or activities that are described as being “regularly featured” by a Sexually Oriented Business are the permanent focus of its business and are given special prominence by the business on a permanent basis. ***[Definition is taken from Schultz v. City of Cumberland, 228 F.3d 831, 850 (7th Cir. 2000).]***
- (t) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as on 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." ***[FW/PBS, d/b/a Paris Adult Bookstore II v. City of Dallas, 493 U.S. 215 (1990) suggests that sexual encounter centers are not protected by the First Amendment.]***
- (u) SEXUALLY ORIENTED BUSINESS means 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."
- (v) SPECIFIED ANATOMICAL AREAS means:
 - 1. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
 - 2. Less than fully and opaquely covered human genitals, pubic area, vulva, anus, anal cleft or cleavage or the female breast with less than a fully opaque covering of the entire nipple and areola.
- (w) SPECIFIED SEXUAL ACTIVITIES means any of the following:
 - 1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

2. Sex acts, normal or perverted, 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 1. through 2. above.

(x) 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 area exists on the date this chapter takes effect.

(y) 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.

(3) Classification of Regulated Uses.

(a) All Sexually Oriented Businesses are subject to the regulations in this chapter, and are classified as follows:

1. Adult Arcades;
2. Adult Bookstores, Adult Novelty Stores, or Adult Video Stores;
3. Adult Cabarets;
4. Adult Motels;
5. Adult Motion Picture Theaters, Adult Mini-Motion Picture Theater;
6. Adult Theaters;
7. Escort Agencies;

8. Nude Model Studios; and
9. Sexual Encounter Centers.

(4) Licenses Required.

(a) It is unlawful:

1. For any Person to operate a Sexually Oriented Business without a valid Sexually Oriented Business license issued by the Village pursuant to this section.
2. For any Person who operates a Sexually Oriented Business to permit a Person to be employed, work for or perform in the Sexually Oriented Business who is not licensed as a Sexually Oriented Business Employee by the Village pursuant to this chapter.
3. For any Person who is required under this ordinance to have a Sexually Oriented Business Employee License to be employed, to work for or to perform in a Sexually Oriented Business without having secured a Sexually Oriented Business Employee license pursuant to this section.
4. For any Person to Substantially Enlarge a Sexually Oriented Business without a valid Sexually Oriented Business license issued by the Village pursuant to this section. ***[Licensing in general is constitutional: Schultz v. City of Cumberland, 228 F.3d 831, 851-52 (7th Cir. 2000); Genusa v. City of Peoria, 619 F.2d 1203, 1215-16f (7th Cir. 1980); Tee & Bee v. City of West Allis, 936 F.Supp. 1479 (E.D. Wis. 1996).]***
 - a. A license may be issued only for one adult oriented Establishment located at a fixed and certain place. Any Person who desires to operate more than one adult oriented Establishment must have a license for each.
 - b. A Licensee shall not transfer his/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.
 - c. All sexually oriented businesses existing at the time of the passage of this section must submit an application

for a license within 45 days of the passage of this section.

- d. In the event of a Transfer of Ownership or Control of a Sexually Oriented Business, the new owner shall apply for a license under this chapter.

(5) Activities Not Subject to a License Requirement.

- (a) This chapter shall not be construed to restrict or prohibit the following activities or products:
 1. plays, operas, musicals or other dramatic works that are not obscene;
 2. classes, seminars, or lectures which are held for a serious scientific or educational purpose and that are not obscene; and
 3. Exhibitions, performances, expressions or dances that are not obscene.
- (b) The provisions of this chapter are not intended to and do not prohibit the simulation of sex acts which are part of non-obscene expression.
- (c) Whether or not an activity is obscene shall be judged by consideration of the following factors:
 1. Whether the average Person, applying contemporary community standards, would find that the activity taken as a whole appeals to the prurient interest in sex; and
 2. Whether the activity depicts or describes sexual conduct in a patently offensive way, as measured against community standards; and
 3. Whether the activity taken as a whole lacks serious literary, artistic, political or scientific value.

(6) Application for a License.

- (a) An application for a license under this chapter must be made on a form provided by the Village.

- (b) All applicants must be qualified according to the provisions of this section. The application may request and the applicant shall provide such information necessary to enable the Village to determine whether the applicant meets the qualifications established in this section.
- (c) If a Person who wishes to operate a Sexually Oriented Business is an individual, the Person must sign the application for a license as applicant. If a Person who wishes to operate a Sexually Oriented Business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the Section (7).
- (d) The following information and shall be accompanied by the following documents:
 - 1. If the applicant is:
 - a. An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is at least 18 years of age;
 - b. A partnership, the partnership shall state its complete name, 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 principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process. ***[Information required was upheld by Schultz v. City of Cumberland, 228 F.3d 831, 851-52 (7th Cir. 2000) and Tee & Bee v. City of West Allis, 936 F.Supp. 1479 (E.D. Wis. 1996).]***
 - 2. If the applicant intends to operate the Sexually Oriented Business under a name other than that of the applicant, he or she must state the Sexually Oriented Business fictitious name and submit the required registration documents.

3. The classification of Sexually Oriented Business license for which the applicant is filing.
4. The location of the proposed Sexually Oriented Business, including a legal description of the property, street address, and telephone number(s), if any.
5. The applicants mailing address.
6. 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 6 inches.
7. 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, DVDs, other video or digital reproductions, or live entertainment which depict Specified Sexual Activities or Specified Anatomical Areas, then the applicant shall comply with the application requirements set forth in Section (11).

(e) Before any applicant may be issued a Sexually Oriented Business Employee license, the applicant shall submit on a form to be provided by the Village the following information:

1. The applicants name and/or any other name (including "stage" names) or aliases used by the individual;
2. Present business address and telephone number;
3. Proof that the individual is at least 18 years of age.

(7) Issuance of License.

(a) Upon the filing of an application for a Sexually Oriented Business Employee license, the Village shall issue a temporary license to the applicant. The application shall then be referred to the appropriate Village officials for an investigation to be made on such information as is contained on the application. The application process shall be completed within 45 days from the date the completed application is filed. After the investigation, the Village shall issue a license,

unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
2. The applicant is under the age of 18 years;
3. The Sexually Oriented Business Employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this chapter; or
4. The license fee required by this section has not been paid.

(b) Upon the filing of an application for a Sexually Oriented Business license, the Village shall issue a temporary license to the applicant. The application shall then be referred to the appropriate Village officials for an investigation to be made on such information as is contained on the application. The application process shall be completed within 45 days from the date the completed application is filed. After the investigation, the Village shall issue a license, 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 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.
3. The premises to be used for the Sexually Oriented Business have not been approved by the Village health, police, fire and building officials as being in compliance with applicable laws and ordinances.
4. The license fee required by this section has not been paid.
5. An applicant of the proposed Establishment is not in compliance with any of the provisions of this section.

(c) A license under this chapter, 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 regulated use for which the license is issued pursuant to Section (4). 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 Village health, police, fire and building officials shall complete their certification that the premises is in compliance or not in compliance with all applicable statutes and ordinances within 20 days of receipt of the application by the Village.
- (e) A Sexually Oriented Business license shall issue for only one classification as found in Section (3).
- (f) A Sexually Oriented Business license shall not be issued unless the owner ensures that no Specified Anatomical Areas and no Specified Sexual Activity are visible at any time from any Public Place that is not the Sexually Oriented Business in question.
- (g) Whenever an application is denied, the Village Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within 10 days of receipt of notification of denial, a public hearing noticed by a Class A notice shall be held within 15 days thereafter in conformity with sec. 68.11(2) and (3), Wis. Stats. A final determination stating the reasons therefore, together with a copy of any official recording or transcript of the hearing, shall be rendered within 20 days of the commencement of the hearing. Judicial review shall be governed by sec.68.13, Wis. Stats.

(8) License - Posting and Display.

- (a) Every Person required to have a Sexually Oriented Business Employee License shall post his or her license in his or her work area so that it is readily available for public inspection.
- (b) Every Person, corporation, partnership, or association licensed under this Ordinance shall display its license in a prominent place within the Establishment. In the case of Adult Cabarets, the name of the manager on duty shall be prominently posted during business hours. ***[Display provisions upheld in Genusa v. City of Peoria, 619 F.2d 1203, 1221 (7th Cir. 1980) and in Schultz v. City of Cumberland, 228 F.3d 831, 851-52 (7th Cir. 2000).]***

(9) Additional Regulations for Adult Cabarets.

- (a) Separation of Sexually Oriented Adult Entertainment Performance Area. The portion of the Adult Cabaret premises in which dancing or other types of performances involving Specified Sexual Activities or stripping, or where Employees are wearing attire that is limited to fully and opaquely covering of the human genitals, pubic area, vulva, anus, anal cleft or cleavage and the entire nipple and areola of the female breast, shall be a stage or platform (the "Performance Area") that is separated from all patron seating or viewing areas in the following ways:
1. Be at least twenty-four (24) inches in elevation and; ***[Two foot elevation requirement upheld in unpublished case, Peterson v. City of Cosmos, 2004 WL 86334 (D. Minn.). Provisions including both a 10-foot distance and 2 foot raised stage upheld without specifically commenting on 2 foot raise requirement in Colacurcio v. City of Kent, 163 F.3d 545, 557 (9th Cir. 1998), Kev v. Kitsap, 793 F.2d 1053 (9th Cir. 1986) and Jake's, LTD v. City of Coates, 284 F.3d 884 (8th Cir. 2002).]***
 2. Be separated by a distance of at least ten (10) feet, ***[Distance requirements generally upheld in G.M. Enterprises v. Town of St. Joseph's, 350 F.3d 631 (7th Cir. 2003), and a 10-foot separation requirement was specifically upheld in Colacurcio v. City of Kent, 163 F.3d 545, 557 (9th Cir. 1998) and Kev v. Kitsap, 793 F.2d 1053 (9th Cir. 1986).]*** and;
 3. Have a continuous railing at least three (3) feet in height, extending from the floor, and located at least ten (10) feet from all points of the sexually oriented adult entertainment performance area.
- (b) Physical Contact Prohibited. No Person, Employee, or customer may have any physical contact with any entertainer on the premises of any Sexually Oriented Business during any performance.
- (c) Lighting. Sufficient lighting shall be provided and equally distributed in and about the parts of the premises which are open to and used by patrons so that all objects are plainly visible at all times, and so that on any part of the premises which are open to and used by patrons a program, menu, or list printed in eight (8) point type will be readable. ***[Lighting in public aisles outside of booths ok'd– Matney v. County of Kenosha, 86 F.3d 692 (7th Cir. 1996).]***

- (d) Submittal of Plans. Building plans showing conformance with the requirements of this section shall be included with any application for a Sexually Oriented Business License for an Adult Cabaret.
- (e) Standards of Conduct for Employees. All Employees of a Sexually Oriented Business, must adhere to the following standards of conduct:
1. No Employee or holder of a Sexually Oriented Business Employee license shall appear in attire that is limited to full and opaque coverage of the human genitals, pubic area, vulva, anus, anal cleft or cleavage and the entire nipple and areola of the female breast on any part of the premises open to view of members of the public, except on a stage or platform that meets the requirements described above.
 2. No Employee holder of a Sexually Oriented Business Employee License shall allow, encourage or knowingly permit any Person upon the premises to touch, caress, or fondle the breasts, buttocks, anus, pubic area or genitals of any other Person.
 3. No Employee or holder of a Sexually Oriented Business Employee License of an Adult Cabaret shall be visible from any Public Place other than the Sexually Oriented Business in question during the actual or apparent hours of his or her employment or performance on the premises.
- (f) Manager on Premises. A manager, who shall be a licensed Employee and not an entertainer, shall be on duty at an Adult Cabaret business premises at all times, and shall verify that any Employee or holder of a Sexually Oriented Business Employee License who works or appears within the premises possess a current an valid entertainers license posted in the manner required by this ordinance.
- (g) Signs. Signs in letters at least 3/4 inches high shall be conspicuously displayed in the public area of the Establishment stating the following:

THIS ADULT CABARET IS REGULATED BY THE Village.

ENTERTAINERS ARE:

1. Not permitted to engage in any type of sexual conduct with patrons;
2. Not permitted to appear in a State of Nudity;
3. Not permitted to appear in attire that consists of only a full and opaque covering of human male or female genitals, pubic area, vulva, anus, anal cleft and cleavage, and the entire nipple and areola of the female breast, except on a designated stage or platform;
4. Not permitted to dance or model where patrons are congregated; and
5. Not allowed to have any physical contact with patrons during any performance.

(10) Additional Regulations for Adult Motels.

- (a) Evidence that a sleeping Room in a hotel, motel, or similar commercial Establishments has been rented and vacated 2 or more times in a period of time that is less than 10 hours creates a rebuttal presumption that the Establishment is an Adult Motel as that term is defined in this section.
- (b) A Person commits a violation of this chapter 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 Business license, he rents or sub rent a sleeping Room to a Person and, within 10 hours from the time the Room is rented, he rents or sub rents the same sleeping Room again.
- (c) For purposes of subsection (b) of this section, the terms "rent" or "sub rent" mean the act of permitting a Room to be occupied for any form of consideration.

(11) Regulations Pertaining to Exhibition of Sexually-Explicit Films, Video or Live Entertainment in View Rooms.

- (a) 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, Booth or cubicle of less than 150 square feet of floor space, a film, video cassette, DVD, live entertainment, or other video or digital reproduction which depicts Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements: **[open booth**

requirements, including no opening between booths, manager stations, types of materials to be used, generally, upheld in *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996) and *Pleasureland Museum, Inc. v. Beutter*, 288 F.3d 988 (7th Cir. 2002). *MATNEY* also upheld requirement that aisle outside of booth be lighted.]

1. Upon application for a Sexually Oriented Business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more managers 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 engineers or architects 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 6 inches. The Village 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.
2. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Village.
3. It is the duty of the Licensee of the premises to ensure that at least one licensed Employee is on duty and situated in each managers station at all times that any patron is present inside the premises.
4. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a managers station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video or digital reproduction equipment. If the premises has two (2) or more managers 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 managers stations. The view required in this subsection must be by direct line of sight from the manager's station.

5. It shall be the duty of the Licensee to ensure that the view area specified in subsection (4) 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 (1) of this Section.
6. No viewing Room may be occupied by more than one person at any time.
7. 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 5 foot-candles as measured at the floor level.
8. 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.
9. No Licensee shall allow openings of any kind to exist between viewing Rooms or Booths.
10. No person shall make or attempt to make an opening of any kind between viewing Booths or Rooms.
11. The Licensee shall cause all floor coverings in viewing Booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
12. 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.

- (b) A Person having a duty under Section (1) through (12) of Subsection (a) above commits an offense if he knowingly fails to fulfill that duty.

(12) Additional Regulations for 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.

(13) 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 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 knowingly allows another to appear in a State of 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.

(14) Additional Regulations Concerning Public Nudity.

- (a) It shall be a violation of this chapter for a Person who knowingly and intentionally, in a Sexually Oriented Business, appears in a State of Nudity.
- (b) It shall be a violation of this chapter for a Person who knowingly or intentionally in a Sexually Oriented Business appears attire that consists of only a full and opaque covering of human male or female genitals, pubic area, vulva, anus, anal cleft and cleavage, and the entire nipple and areola of the female breast unless the Person is an Employee who, while in such attire, shall be at least ten (10) feet from any patron or customer and on a stage at least twenty four (24) inches from the floor.
- (c) It shall be a violation of this chapter for an Employee, while in attire that consists of only a full and opaque covering of human male or female genitals, pubic area, vulva, anus, anal cleft and cleavage,

and the entire nipple and areola of the female breast to knowingly and intentionally touch a patron or customer or the clothing of a patron or customer.

- (15) Prohibition against Children in a Sexually Oriented Business. A Person commits a violation of this chapter if the Person knowingly allows a person under the age of 18 years on the premises of a Sexually Oriented Business.
- (16) Prohibition Against Indecency. A Person commits a violation of this chapter if the Person knowingly or intentionally commits a Public Indecency.
- (17) Prohibition of Alcohol In a Sexually Oriented Business. A Person commits a violation of this chapter if the Person knowingly allows or otherwise participates in the sale, use or consumption of alcoholic beverages on the premises of a Sexually Oriented Business. [***Ben's Bar v. Village of Somerset*, 316 F.3d 702, 726-28 (7th Cir. 2003)**]
- (18) Hours of Operation. Sexually Oriented Businesses, except for an Adult Motel, must remain closed at all times between the hours of 12:00 a.m. (midnight) and 10:00 a.m. Monday through Saturday. No Sunday open hours are permitted for Sexually Oriented Businesses except for an Adult Motel. [***Schultz v. City of Cumberland*, 228 F.3d 831, 846 (7th Cir. 2000).**]
- (19) 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 \$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 Village an annual nonrefundable license fee of \$500.00 within 30 days of license issuance or renewal.
 - (c) Every application for a Sexually Oriented Business Employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual \$35.00 nonrefundable application, investigation and license fee.
 - (d) All license applications and fees shall be submitted to the Village of Poynette Clerk. [***In Tee & Bee v. City of West Allis*, 936 F.Supp. 1479 (E.D. Wis. 1996)**, the court upheld a licensing fee that was

\$500, but ½ was to be returned if the license was denied. It also upheld a \$50 employee fee, with ½ to be returned if the license was denied. \$250/25 is a more conservative approach and should be used unless the municipality can show that a larger amount is needed.]

(20) Inspection.

- (a) An applicant or Licensee shall permit representatives of the Village to inspect all portions of a premises of a Sexually Oriented Business in which patrons or customers are permitted for any reason for the purpose of insuring compliance with the law, at any time it is occupied or open for business. **[See *Annex Books, Inc. v. City of Indianapolis*, 333 F.Supp. 773, 788-89 (S.D. Ind. 2004)]**
- (b) A Person who operates a Sexually Oriented Business or his agent or Employee commits a violation of this chapter if he refuses to permit such lawful inspection of the premises.

(21) 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 in Section (6). Application for renewal shall be made at least 45 days before the expiration date, and when made less than 45 days before the expiration date, the expiration of the license will not be affected.
- (b) When the Village 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 Village 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.

(22) Suspension.

- (a) The Village shall suspend a license for a period not to exceed 30 days if it determines that a Licensee or an Employee of a Licensee has:
 - 1. Violated or is not in compliance with this chapter;
 - 2. Refused to allow an inspection of the Sexually Oriented Business premises as authorized by this chapter.

(23) Revocation.

- (a) The Village shall revoke a license if a cause of suspension in Section (22) occurs and the license has been suspended within the preceding 12 months.
- (b) The Village 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 Licensees 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 Village, County, or State for any taxes or fees past due.
- (c) When the Village 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 Village 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) An existing business can remain open pending the review of license denials and failures to renew, and all businesses can remain open pending review of suspensions and revocations.

(24) Exceptions.

- (a) It is a defense to prosecution under Section (14) that a Person appearing in a State of Nudity did so in a modeling class operated:

1. By a proprietary school, licensed by the State of Wisconsin; a college, junior college, or university supported entirely or partly by taxation;
2. By 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
3. In a structure:
 - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude Person is available for viewing; and
 - b. Where, in order to participate in a class a student must enroll at least 3 days in advance of the class; and
 - c. Where no more than one nude model is on the premises at any one time.

(25) Penalties.

- (a) A Person who operates or causes to be operated a Sexually Oriented Business without a valid license or in violation of any provisions of this chapter is subject to a suit for injunction as well as prosecution for violations of this ordinance. Such violations shall be subject to a forfeiture as provided in Sec. 25.04 and 25.05 of this Code, plus costs. Each day a violation continues constitutes a separate offense or violation.
- (b) The remedies found in this chapter are not exclusive, and the Village may seek any other legal or equitable relief, including but not limited to enjoining any acts or practices which constitute or will constitute a violation of any business license ordinances or other regulations herein adopted.

(26) Appeals, Administrative Review, and Judicial Review. The Village of Poynette Code and State law shall govern the administrative procedure and review regarding the granting, denial, renewal, non-renewal, revocation and suspension of a license. After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, as provided for in this section, the applicant or Licensee may seek prompt judicial review of such administrative action in any court of

competent jurisdiction. The administrative action shall be promptly reviewed by the court.

- (27) Severability. If any portion of this chapter, or its application to any Person or circumstances, is held invalid, the validity of the chapter as a whole, or any other portion thereof, and its application to other Persons or circumstances, shall not be affected.