

**8.195 Adult Oriented Establishments**  
(as of December 19, 1995)

WHEREAS, it is a lawful purpose of the Common Council for the City of Waukesha to enact regulatory ordinances protecting and promoting the general welfare, health and safety of its citizens; and

WHEREAS, the City is empowered to enact such ordinances pursuant to the Constitution and Laws of the State of Wisconsin; and

WHEREAS, the Common Council, based on the experience of other cities including Seattle and Renton, Washington, and Detroit, Michigan, has previously determined as set forth in sec. 22.50 of the Waukesha Municipal Code that adult oriented establishments can contribute to the impairment of the character and quality of surrounding residential neighborhoods, and contribute to the decline and the value of surrounding properties; and

WHEREAS, further studies in other communities across the United States such as St. Paul, Minnesota; Indianapolis, Indiana; Austin, Texas and Phoenix, Arizona have documented that the secondary effects of adult oriented establishments affect property values, contribute to physical deterioration and blight, have a deleterious effect on both existing businesses around them and surrounding residential areas, including increased transiency, increased levels of criminal activities including prostitution, rape, assaults and other sex related crimes; and

WHEREAS, the Common Council believes that the experiences and studies of other communities set forth

herein are relevant in addressing the secondary effects adult oriented establishments can have upon areas surrounding such establishments in the City of Waukesha; and

WHEREAS, many adult oriented establishments install booths with doors in which patrons can view adult oriented movies or video tapes or films or view other forms of adult entertainment; and

WHEREAS, it is has been found in Milwaukee and Kenosha Counties, Wisconsin; Chattanooga, Tennessee; Newport News, Virginia; and Marion County, Indiana, to name a few locales, that the viewing booths in adult oriented establishment have been and are being used by patrons of said establishments for engaging in sexual acts, particularly between males, including but not limited to intercourse, sodomy, oral copulation and masturbation, resulting in unsafe and unsanitary conditions in said booths; and

WHEREAS, Acquired Immune Deficiency Syndrome (AIDS) is a sexually transmitted disease which destroys the body's immune system, is always fatal, and has no known cure; and

WHEREAS, when this ordinance was originally enacted in 1989, statistics from the State of Wisconsin had indicated that as of July 25, 1986, 96 cases of AIDS were reported in the State including 54 that resulted in death and that Wisconsin could expect a ten fold increase in reported cases between 1986 and 1991; and

WHEREAS, as of January 1, 1995, the State of Wisconsin Department of Health and Social Services, Division of Public Health is projecting between 900-1300 new cases of AIDS during 1995 and 1996.

WHEREAS, the viral agents responsible for AIDS and other sexually transmitted diseases have all been isolated at one time or another from semen; and

WHEREAS, the City of Waukesha desires to combat and curb the adverse secondary effects brought on by adult oriented establishments and to protect the health, safety, and welfare of its citizens from increased crime, and to preserve and stabilize the neighborhoods of the City of Waukesha, and to minimize the transmission of sexual diseases including AIDS; and

WHEREAS, although the provisions of this ordinance have neither the purpose or effect of imposing a limitation or restriction on the content of any communicative materials, the Common Council deems it to be in the interests of the City of Waukesha to provide for licensing and regulation of adult oriented establishments including, but not limited to, adult bookstores, adult motion picture establishments, adult motion picture theaters and adult cabarets to combat and curb the secondary effects of such establishments.

NOW, THEREFORE, the Common Council of the City of Waukesha do ordain as follows:

**ADULT ORIENTED ESTABLISHMENTS.**

**(1) DEFINITIONS:**

**Adult Bookstore.** An establishment which has a facility or facilities, including but not limited to booths, cubicles, rooms or stalls, for the presentation of "adult entertainment", as defined below, including adult oriented films, movies or live performances for observation by patrons therein; or an establishment having as a substantial or significant portion of its stock in trade, for sale, rent, trade, lease, inspection or viewing, books, films, video cassettes, magazines or other periodicals, which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specified anatomical areas or specified sexual activities as defined below.

**Adult Cabaret.** A cabaret which features topless dancers, strippers, male or female impersonators or similar entertainers.

**Adult Entertainment.** Any exhibition of any motion picture, live performance, display or dance of any type, which has as its dominant theme or is distinguished or characterized by an emphasis on any actual or simulated specified sexual activities or specified anatomical areas as herein defined.

**Adult Mini-Motion Picture Theater.** An enclosed building with a capacity of less than 50 persons used for presenting material having as its dominant theme or distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas as herein defined for observation by patrons therein.

**Adult Motion Picture Theater.** An enclosed building with a capacity of 50 or more persons used for presenting material having as its dominant theme or distinguished or characterized by an emphasis on matters depicting, describing or relating to specified sexual activities or specified anatomical areas as defined below for observation by patrons therein.

**Adult Oriented Establishment.** Any premises including, but not limited to, "adult bookstores", "adult motion picture theaters", "adult mini-motion picture establishments" or "adult cabarets." It further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments, or stalls separate from the common area of the premises for the purposes of viewing adult 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 a profit, direct or indirect. "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.

"Booths", "Cubicles", "Rooms", "Compartments" or "Stalls". Enclosures as are specifically offered to the public or members of an adult-oriented establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to

be viewed within the enclosure. This shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, "booth", "cubicle", "room", "compartment" or "stall" does not mean such enclosures that are private offices used by the owners, managers or persons employed on the premises for attending to the tasks of 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 Chapter 50 of the Wisconsin Statutes.

**Council.** The City Council for the City of Waukesha, Waukesha County, Wisconsin.

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

**Specified Anatomical Areas.**

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, and female breasts below the point immediately above the top of the areola.
2. Human male genitals in a discernible turgid state, even if opaquely covered.

**Specified Sexual Activities. Simulated or actual:**

1. Showing of human genitals in a state of sexual stimulation or arousal.

2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio or cunnilingus.

3. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

(2) LICENSE.

(a) Except as provided in subsection (d) below, from and after the effective date of this section, no adult oriented establishment shall be operated or maintained in the City without first obtaining a license to operate issued by the City.

(b) A license may be issued only for one adult oriented establishment located at a fixed and certain place. Any person who desires to operate more than one adult oriented establishment must have a license for each.

(c) No license or interest in a license may be transferred to any person.

(d) All adult oriented establishments existing at the time of the passage of this section must submit an application for a license within 60 days of the passage of this section.

(3) APPLICATION FOR LICENSE.

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

application shall be distributed promptly by the City Clerk to the City Police Department and to the applicant.

(b) The application for a license shall be upon a form provided by the City Clerk. An applicant for a license shall furnish the following information under oath:

1. Name and address.
2. Written proof that the individual is at least 18 years of age.
3. The address of the adult oriented establishment to be operated by the applicant.
4. If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agents and the name and address of all shareholders owning more than 5% of the stock in such corporation and all officers and directors of the corporation.

(c) Within 21 days of receiving an application for a license, the City Clerk shall notify the applicant whether the application is granted or denied.

(d) Whenever an application is denied, the City 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 shall be held within 10 days thereafter before the Council or its designated committee as hereinafter provided.

(e) Failure or refusal of the applicant to give any information relevant to the application or his refusal or failure to appear at any reasonable time and place for examination under oath regarding such application or his refusal to submit to or cooperate with regard to any information required by this section shall constitute an admission by the applicant that he is ineligible for such license and shall be grounds for denial thereof by the City Clerk.

(4) **STANDARDS FOR ISSUANCE OF LICENSE.** To receive a license to operate an adult oriented establishment, an applicant must meet the following standards:

(a) If the applicant is an individual:

1. The applicant must be at least 18 years of age.
2. The applicant shall not have been found to have previously violated this section within 5 years immediately preceding the date of the application.

(b) If the applicant is a corporation:

1. All officers, directors, and stockholders required to be named under par. (3)(b) shall be at least 18 years of age.
2. No officer, director, or stockholder required to be named under par. (3)(b) shall have been found to have previously violated this section within 5 years immediately preceding the date of the application.

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

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

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

(5) FEES. A license fee of \$250 shall be submitted with the application for a license. If the application is denied, 1/2 of the fee shall be returned.

(6) DISPLAY OF LICENSE OR PERMIT. The license shall be displayed in a conspicuous public place in the adult-oriented establishment.

(7) RENEWAL OF LICENSE OR PERMIT.

(a) Every license issued pursuant to this section will terminate at the expiration of one year from date of issuance, 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 City Clerk. The application for renewal must be filed not later than 60 days before the license expires. The application for renewal shall be upon a form provided by the City Clerk and shall contain such information and data given under oath or affirmation as is required for an application for a new license.

(b) A license renewal fee of \$250 shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of \$100 shall be assessed against any applicant who files for a renewal less than 60 days before the license expires. If the application is denied, 1/2 of the total fees collected shall be returned.

(c) If the City Police Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the City Clerk.

(d) The building inspector shall inspect the establishment prior to the renewal of a license to determine compliance with the provisions of this ordinance.

(8) REVOCATION OF LICENSE.

(a) The Council shall revoke a license or permit for any of the following reasons:

1. Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.

2. The operator or any employee of the operator violates any provision of this section or any rules or regulation adopted by the Council pursuant to this section provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of 30 days if the Council shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of

due diligence have had such actual or constructive knowledge.

3. The operator becomes ineligible to obtain a license or permit.

4. Any cost or fee required to be paid by this Section is not paid.

5. Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult oriented establishment.

(b) The Council, before revoking or suspending any license or permit, all give the operator at least 10 days written notice of the charges against him and the opportunity for a public hearing before the Council or its designated committee as hereinafter provided.

(c) The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

(d) Any operator whose license is revoked shall not be eligible to receive a license for one year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult oriented establishment for six (6) months from the date of revocation of the license.

(9) PHYSICAL LAYOUT OF ADULT ORIENTED ESTABLISHMENT. Any adult oriented establishment having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

(a) Access. Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult oriented establishment and shall be unobstructed by any door, lock or other control-type devices.

(b) Construction. Every booth, room or cubicle shall meet the following construction requirements:

1. Each booth, room or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-public areas by a wall.

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

3. All walls shall be solid and without any openings, extended from the floor to a height of not less than 6 feet and be light colored, non-absorbent, smooth textured and easily cleanable.

4. The floor must be light colored, non-absorbent, smooth textured and easily cleanable.

5. The lighting level of each booth, room or cubicle, when not in use shall be a minimum of ten foot candles at all times, as measured from the floor.

(c) Occupants. Only one individual shall occupy a booth, room or cubicle at any time. No occupants of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

(d) Inspections. (Cr. #5-95) The Building Inspector shall conduct monthly inspections of the premises to insure compliance with the provisions of this subsection.

(10) RESPONSIBILITIES OF THE OPERATOR.

(a) Every act or omission by an employee constituting a violation of the provisions of this Section shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(b) Any act or omission of any employee constituting a violation of the provisions of this section shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

(c) No employee of an adult oriented establishment shall allow any minor to loiter around or to frequent an adult oriented establishment or to allow any minor to view adult entertainment as defined herein.

(d) The operator shall maintain the premises in a clean and sanitary manner at all times.

(e) The operator shall maintain at least 10 foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to

view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one foot candle of illumination in said aisles, as measured from the floor.

(f) The operator shall insure compliance of the establishment and its patrons with the provisions of this section.

(11) ADMINISTRATIVE REVIEW PROCEDURE. The City ordinances and State law shall govern the administrative procedure and review regarding the granting, denial, renewal, nonrenewal, revocation or suspension of a license.

(12) PENALTIES AND PROSECUTION. Any person who shall violate any provisions of this Section or who shall fail to obtain a license or permit as required hereunder shall be subject to penalty as provided in § 25.05 of this Municipal Code.

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