

CHAPTER 122: ADULT USE LICENSING AND REGULATION

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§ 122.01 PURPOSE.

The purpose of this chapter is to regulate adult uses, to protect the community from the many types of criminal activity frequently associated with such uses. The village recognizes that such regulations cannot in effect prohibit such uses. This chapter has balanced the competing interest of the community in reducing criminal activity and protecting property values versus the protected rights of the owners, operators, employees and patrons of adult uses.

(Ord. 1877, passed 10-21-2002)

§ 122.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULT BOOKSTORE. An establishment having as a substantial or significant portion of its sales or stock in trade, books, magazines, films for sale or for viewing on premises by use of motion picture devices or by coin operated means, and periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities, or specified anatomical areas; or an establishment with a segment or section devoted to the sale or display of such materials;

or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising, displays, actual sales, presence of video preview or coin operated booths, exclusion of minors from the establishment's premises or any other factors showing the establishment's primary purpose is to purvey such material.

ADULT ENTERTAINMENT CABARET. A public or private establishment which (i) features topless dancers, strippers, go-go dancers, male or female impersonators, lingerie or bathing suit fashion shows; (ii) not infrequently features entertainers who display specified anatomical areas; or (iii) features entertainers who by reason of their appearance or conduct perform in a manner which is designed primarily to appeal to the prurient interest of the patron or features entertainers who engage in, or are engaged in explicit simulation of, specified sexual activities.

ADULT MOTION PICTURE THEATER. A building or area used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

ADULT NOVELTY STORE. An establishment having a substantial or significant portion of its sales or stock in trade consisting of toys, devices, clothing novelties, lotions and other items distinguished or characterized by their emphasis on or use for specialized sexual activities or specified anatomical areas or an establishment that holds itself out to the public as a purveyor of such materials based upon its signage, advertising displays, actual sales, exclusion of minors from the establishment's premises or any other factors showing the establishment's primary purpose is to purvey such material.

ADULT USE. Adult bookstores, adult motion picture theaters, adult entertainment cabarets, and other similar uses.

EMPLOYEE. Employees, independent contractors or any other person who is retained by the licensee are subject to dismissal from working at the licensed premises.

SPECIFIED ANATOMICAL AREAS. For the purpose of this chapter, specified anatomical areas means:

- (1) Less than completely and opaquely covered:
 - (a) Human genitals;
 - (b) Pubic region;
 - (c) Buttock;
 - (d) Female breasts below a point immediately above the top of the areola; and

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED CRIMINAL ACTIVITY. Any of the following offenses:

(1) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a minor; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaged in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(2) For which (i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction which is the later date, if the conviction is of a misdemeanor offense; (ii) less than five years have elapsed since the date of conviction or the date of release from confinement for conviction whichever is the later date, if the conviction is a felony offense; or (iii) less than five years has elapsed since the date of the last conviction or the date of release from confinement from the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offense or combination of misdemeanor offense occurred within any 24-month period;

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

SPECIFIED SEXUAL ACTIVITIES. For the purpose of this chapter specified sexual activities means (i) human genitals in the state of sexual stimulation or arousal; (ii) acts of human masturbation, sexual intercourse or sodomy; and (iii) fondling or other erotic touching of human genitals, pubic region, buttock or female breast.
(Ord. 1877, passed 10-21-2002)

§ 122.03 LICENSE REQUIRED.

(A) It shall be unlawful for any person to operate an adult use without a valid adult use business license issued by the village pursuant to this chapter.

(B) An application for a license shall be made on a form provided by the village.

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

(D) If a person who wishes to operate an adult use is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate an adult use is other than an individual, each individual who has a 20% or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following section and each applicant shall be considered a licensee if the license is granted.

(E) The completed application for an adult use business license shall contain the following information:

(1) If the applicant is an individual, the individual shall state his/her legal name and any aliases and submit proof that he or she is 18 years of age;

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

(3) If a corporation, the corporation shall state its complete name, the date of 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 shareholders, and the name and address of the registered corporate agent.

(F) If the applicant intends to operate the adult use business under a name other than that of the applicant, he/she must state (i) the business' fictitious name and (ii) submit any required registration documents.

(G) Whether the applicant has been convicted of any specified criminal activity as defined in this chapter, and if so, the specified criminal activity involved, the date, place and jurisdiction of each.

(H) Whether the applicant has had a previous license under this chapter or similar ordinances from another city or county denied, suspended or revoked, including the name and location of the business which the permit was denied, suspended or revoked as well as the date of the denial, suspension or revocation. If the applicant has been a partner in a partnership or similar ordinance in another jurisdiction or an officer, director or principal stockholder of a corporation that is or was licensed under this chapter and a license has previously been denied, suspended or revoked, include the name and location of the business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(I) Whether the applicant holds any other licenses under this chapter or other similar ordinance from another city or county and if so the names and locations of such other licensed businesses.

(J) A sketch or diagram showing the configuration of the premises including a

statement of total floor area occupied by the business. This 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.

(Ord. 1877, passed 10-21-2002)

§ 122.04 ISSUANCE OF LICENSE.

(A) Within 90 days after receipt of a completed adult use business license application, the village shall approve or deny the issuance of a license to an applicant. The village shall approve the issuance of a license unless it determines by a preponderance of the evidence any one or more of the following:

- (1) The applicant is under 18 years of age;
- (2) The applicant is overdue in payment to the village of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business;
- (3) The applicant has failed to provide information reasonably necessary for the issuance of the license or has falsely answered a question or request for information on the application form.
- (4) The applicant has been denied a license by the village to operate an adult use business within the preceding 12 months or whose license to operate an adult use business has been revoked within the preceding 12 months.
- (5) The applicant has been convicted of a specified criminal activity defined in this chapter.
- (6) The premises to be used for the adult use business has not been approved by the Fire and Building Departments as being in compliance with applicable laws and chapters.
- (7) The license fee required by this chapter has not been paid.
- (8) The applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.

(B) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the adult use business. All licenses shall be posted in a conspicuous place at or near the entrance to the business so that they may be easily read at any time.

(C) No adult use business license shall be issued unless the premises at which the adult use will operate is in conformance with the restrictions set forth in the village zoning chapter.

(Ord. 1877, passed 10-21-2002)

§ 122.05 FEES.

Every application for an adult use business license (whether a new license or for renewal of an existing license) shall be accompanied by a \$250 non-refundable application and investigation fee.

(Ord. 1877, passed 10-21-2002)

§ 122.06 INSPECTION.

(A) An applicant or licensee shall permit representatives of the Police Department, Fire and Building Departments or other village or village designated departments or agencies to inspect the premises of the adult use for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

(B) A person who operates an adult use or his or her agent or employee violates this chapter if he or she refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

(Ord. 1877, passed 10-21-2002)

§ 122.07 EXPIRATION OF LICENSE.

(A) Each license shall expire on the January 1 after it was issued and may be renewed only by making application as provided in § 122.04. Application for renewal shall be made at least 30 days before the expiration date and when made less than 30 days from the expiration date, the expiration of the license will not be affected.

(B) If the village denies renewal of a license, the application 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 license has been corrected or abated, the applicant may be granted a license.

(Ord. 1877, passed 10-21-2002)

§ 122.08 SUSPENSION.

(A) The village may suspend a license for a period not to exceed 30 days if, after a hearing, it determines that a licensee or an employee of a licensee (i) violated or is not in compliance with any section of this chapter; (ii) refused to allow an inspection of the adult use business premises as authorized by this chapter; or (iii) knowingly permitted gambling by any person on the adult use business premises.

(B) If the licensee or an employee of the licensee has been found guilty in a court of law of a violation of this chapter, no hearing is necessary prior to suspension of the license.

(Ord. 1877, passed 10-21-2002)

§ 122.09 REVOCATION.

(A) The village shall revoke a license if a cause of suspension in § 122.08 above occurs and the license has been suspended within the preceding 12 months or if the licensee is convicted of any specified criminal activity.

(B) The village shall revoke a license if it determines, after a hearing 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 alcohol or controlled substances on the premises;

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

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

(5) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the premises;

(6) A licensee is delinquent in payment to the village, county, or state for any taxes or fees past due; or

(7) A licensee has knowingly or intentionally facilitated another commission of the offense of public indecency.

(C) If the village revokes a license, the revocation shall continue for one year and the licensee shall not be issued an adult use business license for one year from the date the revocation becomes effective. If subsequent to revocation, the village finds that the factual basis for the revocation did not occur, the applicant may be granted a license.

(D) After denial of an application, or denial of a renewal of an application, or suspension or a revocation of any license, the applicant or licensee may seek prompt judicial review of such action in any court of competent jurisdiction.

(Ord. 1877, passed 10-21-2002)

§ 122.10 TRANSFER OF LICENSE.

A licensee shall not transfer his/her license to another nor shall a licensee operate an adult use business under the authority of a license at any place other than the address on the license.

(Ord. 1877, passed 10-21-2002)

§ 122.11 BUSINESS RECORDS.

All adult uses shall file a verified report with the village showing the licensee's gross receipts and amounts paid to employees during the preceding calendar year. In addition, all adult uses shall maintain and retain for a period of two years the names, addresses and ages of all persons employed, including independent contractors, by the licensee.

(Ord. 1877, passed 10-21-2002)

§ 122.12 ADULT ENTERTAINMENT CABARETS - RESTRICTIONS.

All dancing and other performances shall occur on a stage intended for that purpose which is raised at least two feet from the level of the floor. No dancing or other performances shall occur closer than ten feet to any patron. In addition, no performer shall fondle, caress or otherwise touch any patron and no patron shall fondle, caress or otherwise touch any performer. No patron shall directly pay or give any gratuity to any performer and no performer shall solicit any pay or gratuity from any patron. Gratuities may be indirectly given to performers by placing the gratuity on the stage.

(Ord. 1877, passed 10-21-2002)

§ 122.13 VIDEO VIEWING BOOTHS - RESTRICTIONS.

No booths, stalls or partitioned portions of a room or individual rooms used for the viewing of motion pictures or other forms of entertainment shall have doors, curtains or portal partitions, but all such booths, stalls or partitioned portions of a room or individual rooms so used shall have at least one side open to an adjacent public room so that the area inside is visible to persons in the adjacent public room. All such described areas shall be lighted in such a manner that the person in the areas used for viewing motion pictures or other forms of entertainment are visible from the adjacent public rooms, but such lighting shall not be of such intensity as to prevent the viewing of the motion pictures or other offered entertainment.

(Ord. 1877, passed 10-21-2002)

§ 122.14 HOURS OF OPERATION.

No adult use shall be open prior to 10:00 a.m. or after 12:00 a.m.

(Ord. 1877, passed 10-21-2002)