

Chapter 285

SEXUALLY ORIENTED BUSINESSES

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[HISTORY: Adopted by the Town Board of the Town of Port Washington 1-31-2005 by Ord. No. 2005-2. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning and subdivision — See Ch. 340.

§ 285-1. Purpose and findings.

- A. Purpose. It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals and general welfare of citizens of the Town of Port Washington and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town of Port Washington. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. It is neither 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 adult uses on the community presented in hearings and in reports made available to the Town, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *FW/PBS, Inc. V. City of Dallas*, 493 U.S. 215 (1990), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), City

of *Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000), *East of the River Enterprises II v. City of Hudson*, 2000 Wisc. App. Lexis 734 (Ct. App. Aug. I, 2000); *Ben's Bar, Inc. v. Town of Somerset*, __ F.3d __, 2003 WL 132541 (7th Cir. 2003), and on studies in other communities, including but not limited to Phoenix, Arizona; Houston, Texas; Minneapolis, Minnesota; St. Paul, Minnesota; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Dallas, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York; and St. Croix County, Wisconsin, and the Report of the Attorney General's Working Group on Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the United States Department of Health and Human Services, Centers for Disease Control and Prevention, the Town Board finds that:

- (1) Sexually oriented businesses lend themselves to ancillary and 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 chapter as adult theaters and adult cabarets, engage in higher incidences 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 semiprivate booths or cubicles for viewing films, videos, or live sex shows.
- (4) Offering and providing such space encourages such activities, which creates unhealthy conditions.
- (5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purposes 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, Non A, Non B, amebiasis, salmonella infections and shigella infections.
- (7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS (acquired immunodeficiency syndrome) caused by the HIV virus in the United States: 600 in 1982; 2,200 in 1983; 4,600 in 1984; 8,555 in 1985, and 253,448 through December 31, 1992.
- (8) The State of Wisconsin Division of Health indicated that on July 25, 1986, there were 96 cases of AIDS reported in the state, including 54 cases that resulted in death, and that a ten-fold increase in reported cases was expected between 1986 and 1991.

- (9) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November 1990.
- (10) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over a half million cases being reported in 1990.
- (11) In his report of October 22, 1986, the Surgeon General of the United States 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.
- (15) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented business are located.
- (16) Studies of the relationship between sexually oriented business and neighborhood property values have found a negative impact on both residential and commercial property values.
- (17) There is an increase in the potential for infiltration by organized crime for the purpose of unlawful conduct.
- (18) The consumption of alcoholic beverages on the premises of sexually oriented businesses exacerbated the deleterious secondary effects of such businesses on the community. In fact, the Supreme Court has gone so far as to assert that "[c]ommon sense indicates that any form of nudity coupled with alcohol begets undesirable behavior." *Ben's Bar*, 2003 WL 132541, *19 (citations omitted).
- (19) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect the substantial government concerns addressed in the above subsections.
- (20) 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 an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the Town. It is appropriate to require reasonable assurances that

the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

- (21) 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.
- (22) In the prevention of the spread of communicable diseases, it is desirable 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 conduct.
- (23) The general welfare, health, morals and safety of the citizens of the Town of Port Washington will be promoted by the enactment of this chapter.

§ 285-2. Definitions.

As used in this chapter, the following terms shall have the meaning indicated:

ADULT ARCADE — Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled or still- or motion-picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matters exhibiting specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE or ADULT VIDEO STORE —

- A. A commercial establishment that has as a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues, or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space, for the sale or rental, for any form of consideration, of any one or more of the following:
 - (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, compact discs, slides or other visual representations, which are characterized by their emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas; or
 - (2) Instruments, devices or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.
- B. 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 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 that depict or describe specified sexual

activities or specified anatomical areas. A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

- C. This definition shall expressly exclude films, motion pictures, videocassettes, slides or other similar photographic reproductions given an "R" rating by the Motion Picture Association of America.

ADULT CABARET —

- A. A nightclub, dance hall, bar, restaurant, or similar commercial establishment which regularly features:

- (1) Persons who appear seminude;
- (2) Live performances that are characterized by the exposure of specified sexual activities or specified anatomical areas; or
- (3) Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the exhibition or display of specified sexual activities or specified anatomical areas.

- B. This definition shall expressly exclude films, motion pictures, videocassettes, slides or other similar photographic reproductions given an "R" rating by the Motion Picture Association of America.

ADULT MOTEL — A hotel, motel or similar commercial establishment which:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction 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;
- B. Offers a sleeping room for rent for a period of time that is less than 10 hours; or
- C. Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas. This definition shall expressly exclude films, motion pictures, videocassettes, slides or other similar photographic reproductions given an "R" rating by the Motion Picture Association of America.

ADULT THEATER — A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or seminude, or live performances which are characterized by the exposure of specified sexual activities or specified anatomical areas.

BOARD — The Town Board for the Town of Port Washington, Ozaukee County, Wisconsin.

DIRECTLY — To require physical contact. For instance, when this chapter prohibits an employee from receiving a gratuity "directly" from a patron, it prohibits the direct touching of skin, other body parts or clothing.

DISTINGUISHED OR CHARACTERIZED BY — The dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of specified sexual activities or specified anatomical areas.

EMPLOYEE, EMPLOY and EMPLOYMENT — Describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

ESCORT — A person who, for consideration, and for another person, agrees or offers to privately model lingerie or to privately perform a striptease.

ESCORT AGENCY — A person or business association who or which furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

ESTABLISH or ESTABLISHMENT — Any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of any existing business, whether or not a sexually oriented business, to any sexually oriented business;
- C. The addition of any sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of any sexually oriented business.

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

NUDE, NUDITY or STATE OF NUDITY — The showing of the human male or female genitals, pubic area, vulva or anus with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or areola, or the showing of the covered male genitals in a discernibly turgid state.

OPERATE or CAUSE TO BE OPERATED — To cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be

operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

PERSON — An individual, proprietorship, partnership, corporation, association, or other legal entity.

PREMISES — The real property upon which the sexually oriented business is located, and all appurtenance thereto and buildings thereon, including but not limited to the sexually oriented business, the grounds, the private walkways and parking lots and/or parking garages adjacent thereto, under the ownership, control or supervision of the owner or operator of the business.

REGULARLY FEATURES or REGULARLY SHOWS — A consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as part of the ongoing business of the sexually oriented business.

SEMINUDE or SEMINUDE CONDITION — The showing of the human male or female genitals, pubic area, vulva or anus with no more than a complete opaque covering, or the showing of the female breast with no more than a complete opaque covering of any part of the nipple or areola.

SEXUAL ENCOUNTER CENTER — A business or commercial establishment that, as one of its principal business purposes, offers for any form of consideration a place where two or more persons may congregate, associate, or consort for the purpose of specified sexual activities. The definition of "sexual encounter center" or any sexually oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

SEXUALLY ORIENTED BUSINESS — An adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion-picture theater, adult theater, escort agency, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS —

- A. The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- B. Less than completely and opaquely covered human genitals, pubic region, buttocks or female breast(s) below a point immediately above the top of the areola.¹

SPECIFIED SEXUAL ACTIVITY —

- A. The fondling of another person's genitals, pubic region, anus, or female breasts;
- B. Actual sex acts, normal or perverted, including intercourse, oral copulation, masturbation, or sodomy; or

1. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- C. Excretory functions as part of, or in connection with, any of the activities set forth in Subsections A and B above.

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS — The increase in floor areas occupied by the business by more than 25%, as the floor areas exist on the date this chapter takes effect.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS — Includes any of the following:

- A. The sale, lease, or sublease of the business;
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- C. 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.

§ 285-3. Classification.

Sexually oriented businesses are classified as follows:

- A. Adult arcades.
- B. Adult bookstores or adult video stores.
- C. Adult cabarets.
- D. Adult motels.
- E. Adult motion-picture theaters.
- F. Adult theaters.
- G. Escort agencies.
- H. Sexual encounter centers.

§ 285-4. License required.

- A. Except as provided in Subsection D below, from and after the effective date of this chapter, no sexually oriented business shall be operated or maintained in the Town of Port Washington without first obtaining a license to operate issued by the Town of Port Washington.
- B. A license may be issued only for one sexually oriented business located at one fixed and certain place. Any person, partnership, or corporation who or which desires to operate more than one sexually oriented business must have a license for each.

- C. No licensee may transfer ownership or control of the sexually oriented business to any other person, partnership or corporation.
- D. All sexually oriented businesses existing at the time of the passage of this chapter must submit an application for a license within 60 days of the passage of this chapter.

§ 285-5. Application for license.

- A. Any person, partnership or corporation desiring to secure a license shall submit an application to the Town Clerk.** The application shall be filed in triplicate and dated by the Town Clerk. A copy of the application shall be distributed promptly by the Town Clerk to the Ozaukee County Sheriff's Department and to the applicant.
- B.** If the Ozaukee County Sheriff's Department is aware of any information bearing on the applicant's qualifications, that information shall be filed in writing with the Town Clerk.
- C.** An application for a license must be made on a form provided by the Town of Port Washington. All applicants must be qualified according to the provisions of this chapter.
- D.** An application shall be considered complete if it includes the information required in this section.
- E.** 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. Written proof of age may be in the form of either a copy of a birth certificate and current photo, a current driver's license with picture, or other picture identification document issued by a governmental agency and demonstrating proof of age.
 - (3) The name, business location, business mailing address and phone number of the proposed sexually oriented business.
 - (4) A statement as to whether the licensee of the sexually oriented business intends to serve, sell, use or provide any intoxicating liquor, fermented malt beverage or any type of alcoholic beverage on the premises of the sexually oriented business.²
 - (5) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the names, addresses and ages of all shareholders of the corporation owning more than 5% of the stock in said corporation and all officers and directors of the corporation, and the name and address of the registered agents.
 - (6) If the applicant is a partnership, joint venture, or any other type of organization where two or more persons have a financial interest, the application shall state the names, addresses and ages of all persons having a financial interest in the partnership, joint venture or other type of organization.

2. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

- (⁷) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business, shall accompany the application for a sexually oriented business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- F. If the person who wishes to operate a sexually oriented business is an individual, he or she shall sign the application for a license as applicant. If the person who wishes to operate a sexually oriented business is other than an individual (such as a corporation or partnership), each officer, director, general partner, or other person identified in Subsection E(5) and (6) shall sign the application for a license as the applicant. Each applicant must be qualified under this section and each applicant shall be considered as a licensee if the license is granted.
- G. Within 21 days of receiving an application for a license, the Town Clerk shall notify the applicant whether the application is granted or denied.
- H. Whenever an application is denied, the Town 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, as hereinafter provided.
- I. Failure or refusal of the applicant to give any information relevant to the application or his or her refusal to submit to or cooperate with regard to any information required by this chapter shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the Town Board.

§ 285-6. Standards for issuance of license.

- A. The Town Board shall approve the issuance of a license unless one or more of the following is found to be true:
- (1) An applicant (including all individuals, officers, directors, shareholders, or persons with a financial interest in the organization) is less than 18 years of age.
 - (2) An applicant is delinquent in the payment owed to the Town of Port Washington of taxes, fees, fines or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business.
 - (3) An applicant has failed to provide information as required in § 285-5 for issuance of the license.
 - (4) The license application fee required by this chapter has not been paid.
 - (5) An applicant has falsely answered a question or request for information on the application form.

- (6) The proposed sexually oriented business is not in compliance with the location restrictions established or physical layout restrictions established for sexually oriented businesses in this chapter.
 - (7) The applicant states or the Town Board subsequently discovers that the applicant intends to serve, sell, use or provide any intoxicating liquor, fermented malt beverages, or any type of alcoholic beverages on the premises of the sexually oriented business?
- B. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the applicant, the expiration date, and the address of the sexually oriented business.

§ 285-7. License fee. ⁴

A license fee as set by the Town Board shall be submitted with the application for a license. If the application is denied, 1/2 of the fee shall be returned. The remainder shall be applied toward processing and administrative costs.

§ 285-8. Display of license.

The license shall be displayed in a conspicuous public place, at or near the entrance of the sexually oriented business, so that it may be easily read at any time.

§ 285-9. Renewal of license.

- A. Every license issued pursuant to this chapter will terminate at the expiration of one year from the date of issuance, unless sooner suspended or revoked. A license must be renewed before operation is allowed to continue. A license may be renewed only by making an application as provided for in § 285-5. 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 Town of Port Washington and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.
- B. A license renewal fee as set by the Town Board shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty in the amount as set by the Town Board 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 Ozaukee County Sheriff's Department is aware of any information bearing on an applicant's qualifications, that information shall be filed in writing with the Town Clerk.

3. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

4. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

5. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 285-10. Inspections.

- A. For the purposes of ensuring compliance with this chapter, an applicant, operator or licensee shall permit law enforcement officers and any other federal, state, county or Town agency, in the performance of any function connected with the enforcement of this chapter normally and regularly conducted by such agencies, to inspect, at any time the business is occupied or open for business, those portions of the premises of a sexually oriented business which patrons or customers are permitted to occupy.
- B. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

§ 285-11. Suspension of license.

- A. The Town Board shall issue a written intent to suspend a license for a period not to exceed 30 days if it determines that a licensee, operator or employee of a licensee has:
 - (1) Violated or is not in compliance with any section of this chapter; or
 - (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.
- B. The Town Board shall give the licensee 10 days' written notice of the charges against him and the opportunity for a public hearing before the Board, as hereinafter provided.

§ 285-12. Revocation of license.

- A. The Town Board shall revoke by written notice a license for a sexually oriented business if a cause for suspension in § 285-11 occurs and the license has been suspended within the preceding 12 months.
- B. The Town Board shall revoke by written notice a license if it determines that any of the following reasons exist:
 - (1) Discovery that false or misleading information or data was given on any application or material facts were omitted from the application.
 - (2) The licensee, operator or any employee of the licensee violates any provisions of this chapter or any rules or regulations adopted by the Board pursuant to this chapter; provided, however, that in the case of a first offense by a licensee where the conduct was solely that of an employee, the penalty shall not exceed a suspension of 30 days, if the Board shall find that the licensee 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 licensee becomes ineligible to obtain a license or permit.
 - (4) Any cost or fee required to be paid by this chapter is not paid.

- (5) Any intoxicating liquor, fermented malt beverage or other alcoholic beverage is served or consumed on the premises of the sexually oriented business.⁶
 - (6) A licensee has knowingly allowed possession, use or sale of controlled substances on the premises.
 - (7) A licensee has knowingly allowed prostitution on the premises.
 - (8) A licensee has knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended.
 - (9) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual act to occur in or on the licensed premises. This subsection will not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either in exchange for money or in a public place or within public view.
- C. The Town Board, before revoking any license, shall give the licensee at least 10 days' written notice of the charges against him and the opportunity for a public hearing as hereinafter provided.
- D. The transfer of ownership or control of a license shall automatically and immediately revoke the license.
- E. Any licensee whose license is revoked shall not be eligible to receive a license for one year from the date of revocation.

§ 285-13. Administrative review procedure.

Chapter 68, Wis. Stats., concerning municipal administrative procedure shall govern the administrative procedure and review concerning the granting, denial, renewal or nonrenewal of a permit or a license. A request for an initial determination shall be made by an aggrieved person pursuant to the provisions contained in § 68.08, Wis. Stats., to the Town Clerk. An administrative appeal pursuant to the provisions contained in § 68.10, Wis. Stats., may be made by an aggrieved person to the Zoning Board of Appeals and a hearing shall be held by the Zoning Board of Appeals pursuant to § 68.11, Wis. Stats. Any party to a proceeding resulting in a final determination may seek judicial review pursuant to the provisions contained in § 68.13, Wis. Stats.

§ 285-14. Transfer of license.

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

6. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

§ 285-15. Physical layout.

Any sexually oriented business having available for customers, patrons or members any booth, room or cubicle for the private viewing of any specified anatomical areas or specified sexual activity 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 sexually oriented business 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 nonpublic areas by a wall.
 - (2) Each booth shall have at least one side totally open to the public lighted aisle which may be secured when the booth is in use by a door which extends from a height of not less than two feet above the floor.
 - (3) All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet, and be light colored, nonabsorbent, smooth textured and easily cleanable.
 - (4) The floor must be light colored, nonabsorbent, smooth textured and easily cleanable.
 - (5) The lighting level of each booth, room, or cubicle when not in use shall be a minimum of five footcandles at all times, as measured from the floor.
- C. Occupants. Only one individual shall occupy a booth, room or cubicle at any time. No occupant 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.

§ 285-16. Location.

A. No sexually oriented business shall be located:

- (1) Within 1,000 feet of an existing sexually oriented business;
- (2) Within 1,000 feet of any residential dwelling, included but not limited to houses, apartments, condominiums, or flats;
- (3) Within 1,000 feet of any preexisting place of worship, including but not limited to any church, synagogue, mosque, temple or building which is primarily used for religious worship and related religious activities;
- (4) Within 1,000 feet of any public or private educational facility, including but not limited to any child day-care establishments, nursery schools, preschools, kindergartens, elementary schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special

education schools, junior colleges and universities; "school" includes the school grounds but does not include facilities used primarily for another purpose and only incidentally at a school;

- (5) Within 1,000 feet from any public park or recreational area which has been designated for park or recreational activities, including but not limited to a park, a playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the Town which is under the control, operation or management of the Town and recreational authorities; or
- (6) Within 1,000 feet of any premises that in any manner sells or disperses alcohol or is licensed pursuant to the alcoholic beverage control regulations of the state.⁷

B. For the purposes of this section, distances are to be measured in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a use listed in Subsection A. The presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

§ 285-17. Responsibilities of licensee.

- A. Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the licensee if such act or omission occurs either with the authorization, knowledge, or approval of the licensee or as a result of the licensee's negligent failure to supervise the employee's conduct, and the licensee shall be punishable for such act or omission in the same manner as if the licensee committed the act or caused the omission.
- B. Any act or omission of any employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the licensee for the purposes of determining whether the licensee's license shall be revoked, suspended or renewed.
- C. No employee of a sexually oriented business shall allow any minor to loiter around or to frequent a sexually oriented business. It shall be the duty of the licensee of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during the regular business hours of such sexually oriented business and to prevent any person under the age of 18 years of age from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of 18 unless such attendant asked for and was furnished:
 - (1) A valid operator's, commercial operator's or chauffeur's driver's license; or
 - (2) A personal identification card issued by the State of Wisconsin reflecting that such person is 18 years of age or older.

7. Editor's Note: Ch. 125, Wis. Stats.

- D. The licensee shall maintain the premises in a clean and sanitary manner at all times.
- E. The licensee shall maintain at least five footcandles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles is necessary to enable a patron to view any activity in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisle; provided, however, that at no time shall there be less than one footcandle of illumination of said aisles, as measured from the floor.
- F. The licensee shall ensure compliance of the sexually oriented business and its patrons with the provisions of this chapter.
- G. The licensee shall ensure that no alcoholic beverages are sold, used or consumed on the premises of a sexually oriented business.

§ 285-18. 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.

§ 285-19. Prohibited acts.

- A. It shall be prohibited in a sexually oriented business for a person to appear in a state of nudity or engage in specified sexual activities.
- B. It shall be prohibited in a sexually oriented business to appear in a seminude condition, unless the person **is** an employee **who, while seminude, is at least five feet from** any patron or customer and on a stage at least two feet from the floor.
- C. It shall be prohibited for an employee, while seminude in a sexually oriented business, to receive directly any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to any employee, while that employee is seminude in a sexually oriented business.
- D. It shall be prohibited in a sexually oriented business to serve, sell, use, provide or consume any intoxicating liquor, fermented malt beverage or any other alcoholic beverage.s

§ 285-20. Underage persons on premises.

It shall be prohibited for a person under the age of 18 years to be on the premises of a sexually oriented business.

8. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. 1).

§ 285-21. Hours of operation.

- A. No sexually oriented business shall be open between the hours of 2:00 a.m. and 8:00 a.m. on weekdays or between the hours of 2:00 a.m. and 12:00 noon on Sundays.
- B. All sexually oriented businesses shall be open to inspection at all reasonable times by the Ozaukee County Sheriffs Department and the Building Inspector.⁹

§ 285-22. Exceptions.

The provisions of this chapter do not apply to the following establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering of entertainment which is intended for sexual interest or titillation of customers and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or seminude performances. While expressive live nudity may occur within these establishments, this chapter seeks only to minimize and prevent the secondary effects of sexually oriented businesses on the community. Negative secondary effects have not been associated with the establishments referenced in this section.

§ 285-23. Right of entry.

The Ozaukee County Sheriffs Department shall have the authority to enter any sexually oriented business within the Town at all reasonable times to inspect the premises and enforce this chapter.

§ 285-24. Violations and penalties.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this chapter is subject to a suit for injunction as well as municipal prosecution. Such violation shall be punishable by a fine of \$500 plus court costs. Each day a sexually oriented business so operates is a separate offense or violation.

9. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).