

ORDINANCE NO. _____

WHEREAS, the Town of New Haven has determined that public health, safety and welfare demand that standards be implemented and enforced pertaining to adult oriented establishments

NOW THEREFORE, the Town Board does hereby ordain as follows:

ADULT-ORIENTED ESTABLISHMENTS.

(1) Definitions. For the purpose of this ordinance, the following words and phrases shall mean:

(a) Adult-oriented establishment shall include, but is not limited to, adult bookstores, adult motion picture theaters, adult mini-motion picture establishments, adult cabaret, tattoo establishments or body piercing establishments, and further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas 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 establishments also includes Live Sex Act Businesses.

(b) Adult bookstore means an establishment having as its stock in trade, for sale, rent, or inspection books, films, video cassettes, magazines or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specific sexual activities or specified anatomical areas as defined below, and in conjunction herewith have facilities for the presentation of adult entertainment, as defined below, including adult-oriented films, movies or live performances, for observation by patrons therein.

(c) Adult motion picture theater means an enclosed building with a capacity of fifty (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.

(d) Adult mini-motion picture theater means an enclosed building with a capacity of less than fifty (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 defined below, for observation by patrons therein.

(e) Adult cabaret means a cabaret which features topless dancers, strippers, male or female impersonators, or similar individuals.

(f) Board means the Board of the enacting municipality

(g) Adult entertainment means any exhibition of any motion pictures, 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 defined below, or the removal of articles of clothing or appearing partially or totally nude. Adult entertainment establishments are those in which the predominant business or attraction is the offering to customers of activities or material which is intended to provide sexual stimulation or sexual gratification. Adult entertainment establishments are also those that are distinguished by an emphasis on, or the advertising or promotion of, employees or agents engaging in specified sexual activities or displaying specified anatomical areas.

(h) Operators means any person, partnership or corporation operating, conducting, maintaining or owning any adult oriented establishment.

(i) Specified Sexual Activities means 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, sadomasochistic abuse, fellatio or cunnilingus;
3. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

(j) Specified anatomical areas means:

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

(k) Tattoo establishment means the premises where a tattooist applies a tattoo to another person.

(l) Tattooist means a person who tattoos another person at that person's request.

(m) Tattoo, as a verb, means to insert pigment under the surface of the skin of a person, by pricking with a needle or otherwise, so as to produce an indelible mark or figure through the skin.

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(n) Live Sex Act means any act whereby one or more persons engage in live conduct which involves Specified Sexual Activities

(o) Live Sex Act Business means any business in which one or more persons may view, or may participate in, a live sex act for a consideration.

(p) Consideration means the payment of money or the exchange of any item of value for (1) the right to be taken to or enter the business premises or any portion thereof; or (2) the right to remain on the business premises, or any portion thereof; or (3) the right to purchase any item permitting the right to enter, or remain on, the business premises, or any portion thereof; or (4) the right to a membership permitting the right to enter, or remain on, the business premises, or any portion thereof.

(2) License

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

(b) A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain place.

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

(d) All adult-oriented establishments lawfully in operation when this ordinance is passed must submit an application for a license within ninety days of the passage of this ordinance. If an application is not received within said ninety day period, then such existing adult-oriented establishment shall cease operations.

(e) There shall be a limit of one (1) license issued and utilized at any one time in the Town. If and when the existing licensee retires that license or does not renew his or her license, said license shall be deemed revoked and be available for the next approved applicant/location.

(3) Application for License

(a) Any person, partnership or corporation desiring to secure a license shall make application to the Town Clerk. The application shall be filed in triplicate with and dated by the Town Clerk. A copy of the application shall be distributed by the Clerk to the local Police Department, the County Clerk and to the applicant.

(b) The application for a license shall be upon a form provided by the Town Clerk. An applicant for a license interested directly in the ownership or operation of the business shall furnish the following information under oath:

1. Name and address;
2. Written proof that the individual is at least eighteen (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 agent and the name and address of all shareholders owning more than five (5%) percent of the stock in said corporation and all officers and directors of the corporation.

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

(d) When an application is denied, the Town Clerk shall advise the applicant in writing of the reasons therefor. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held within ten (10) days thereafter before the Board, as hereinafter provided.

(e) Failure or refusal of the applicant to give any information relevant to the investigation of the application or his/her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his/her refusal to submit to or cooperate with any investigation required by this ordinance 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 Clerk.

(4) Standards for Issuance of License

(a) To receive a license to operate an adult-oriented establishment, an applicant must meet the following standards:

1. If the applicant is an individual:
 - (i) The applicant shall be at least eighteen years of age;
 - (ii) The applicant shall not have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application or have been convicted of a felony that is substantially related to the activity the applicant is requesting a license to engage in.

2. If the applicant is a corporation:

(i) All officers, directors and stockholders required to be named under Sec. (3)(b) shall be at least eighteen years of age.

(ii) No officer, director or stockholder required to be named under Section (3)(b) shall have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application or have been convicted of a felony that is substantially related to the activity the applicant is requesting a license to engage in.

3. If the applicant is a partnership, joint venture or any other type or organization where two or more persons have a financial interest:

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

(ii) 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 ordinance within five (5) years immediately preceding the date of the application or have been convicted of a felony that is substantially related to the activity the applicant is requesting a license to engage in.

(5) Fees A license fee of \$300 shall be submitted with the application for a license. If the application is denied, one-half (½) of the fee shall be returned.

(6) Display of License or Permit.

(a) 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 ordinance will terminate at the expiration of one (1) year from the 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 Town Clerk. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in triplicate with and dated by the Town Clerk. A copy of the application for renewal shall be distributed promptly by the Town Clerk to the County Clerk, the Local Police Department and to the operator. The application for renewal shall be upon a form provided by the Town 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 shall be assessed against the applicant who files for a renewal less than sixty (60) days before the license expires. If the application is denied, one-half (½) of the total fees collected shall be returned.

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

(8) Revocation of License.

(a) The Board shall revoke a license 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 or agent of the operator violates any provision of this ordinance or any rule or regulation adopted by the Board pursuant to this ordinance; 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 thirty (30) days if the Board 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.

4. An unpaid cost or fee required to be paid by this ordinance.

5. Any intoxicating beverage is served on the premises of the adult-oriented establishment without a valid license therefor.

(b) The Board, before revoking or suspending any license or permit, shall give the operator at least ten days' written notice of the charges against him, and the opportunity for a public hearing before the Board, as hereinafter provided.

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

(d) Any person or entity licensed as an operator whose license is revoked shall not be eligible to receive a license for one (1) 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 Location of Adult-Oriented Establishment.

(a) Every adult oriented establishment shall be at least 1750 feet from the closest private residence and area zoned residential and at least 1750 feet from any church, other place of religious worship, park, playground, school, playground or play field.

(10) Responsibilities of the Operator.

(a) Every act or omission by an employee or agent constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the 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 or agent constituting a violation of the provisions of this ordinance 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. If a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth or booths, room or cubicle adjoining an aisle, at no time shall there be less than 1 foot candle, as measured from the floor of illumination in said aisle. There shall be no closed booths or rooms which are not open and in the line of site of the rest of the establishment.

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

(11) Administrative Procedure and Review. The Adams County and Township Codes and Wisconsin Statutes shall govern the administrative procedure and review regarding the granting, denial, renewal, and non-renewal, revocation or suspension of a license.

(12) Exclusions. All private schools, and public schools as defined in Wis. Stat. Chap. 115, are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum.

(13) Penalties and Prosecution.

Any person who shall violate any provision of this ordinance or who shall fail to obtain a license or permit as required hereunder, or who shall operate after his license is revoked, shall be subject to penalty as follows:

(a) First Offense. Any person who shall violate any provision of this Code subject to a penalty shall, upon conviction thereof, forfeit not less than \$100 nor more than \$500 together with the cost of prosecution and a penalty assessment as provided by Wis. Stat. sec. 165.87, and in default of payment of such forfeiture and costs of prosecution shall be imprisoned in the County jail until such forfeiture and costs are paid, but not exceeding 90 days.

(b) Second Offense. Any person found guilty of violating any ordinance on ordinance of this Code who shall previously have been convicted of a violation of the same ordinance within one year shall, upon conviction thereof forfeit not less than \$200.00 nor more than \$600 for each such offense, together with the costs of prosecution, and a penalty assessment as provided by Wis. Stat. sec. 165.87, and in default of payment of such forfeiture and cost shall be imprisoned in the County jail until such forfeiture and costs or prosecution are paid, but not to exceed 6 months.

(c) Continued Violations. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in the Code shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.

(d) Execution Against Defendant's Property. Whenever any person fails to pay any forfeiture and costs of prosecution upon the order of the court for violation of any ordinance of the Town, the court may, in lieu of ordering imprisonment of the defendant, or after the defendant has been released from custody, issue an execution against the property of the defendant for such forfeiture and costs.

If any section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected.

This Ordinance shall take effect upon passage and publication as required by law.

Dated: _____

Signed: _____
Chairperson

Clerk

Date of First Reading 6/16/05
Date of Second Reading 9/15/05
Votes in Favor _____ Votes Against _____