

Chapter 18

BUSINESSES*

***Cross references**--Alcohol beverages, ch. 6; CATV, ch. 22; peddlers, solicitors and transient merchants, ch. 50; taxation, ch. 66; utilities, ch. 74; B-1 restricted business district, § 82-180 et seq.; B-2 local business district, § 82-190 et seq.; B-3 general business district, § 82-200 et seq.; M-1 limited industrial district, § 82-230 et seq.; M-2 general industrial district, § 82-240 et seq.

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ARTICLE I.
IN GENERAL

Secs. 18-1--18-30. Reserved.

ARTICLE II.
ADULT-ORIENTED ESTABLISHMENTS*

***Editors note--**The introductory language of Ordinance No. 95-3-A, adopted June 14, 1995, and codified in this article, provided as follows:

Whereas, it is a lawful purpose of the Town Board of the Town of Mukwonago, Wisconsin, to enact regulatory ordinances protecting and promoting the general welfare, health and safety of its citizens; and

Whereas, the town is empowered to enact such ordinances pursuant to the Constitution and laws of the State of Wisconsin; and

Whereas, the town board deems it necessary to provide for licensing and regulation of adult-oriented establishments including, but not limited to, adult bookstores, adult minimotion picture establishments, adult motion picture theaters and adult cabarets; and

Whereas, many adult-oriented establishments install booths with doors in which patrons can view adult-oriented movies or videotapes or film or view other forms of adult entertainment; and

Whereas, it is well known and has been found in Milwaukee and Kenosha Counties, Wisconsin; Chattanooga, Tennessee; Newport News, Virginia; and Marion County, Indiana, to name a few locals, that the viewing booths in adult-oriented establishments have been and are being used by patrons of such 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 such booths; and

Whereas, the State of Wisconsin Division of Health has reported a continued increase in the number of cases of Acquired Immune Deficiency Syndrome in the state; and

Whereas, AIDS is a sexually transmitted disease which destroys the body's immune system, is always fatal, and has no known cure; and

Whereas, the viral agents responsible for AIDS and other sexually transmitted

diseases have all been isolated at one time or another from semen.

Now, therefore, the Town Board for the Town of Mukwonago do ordain as follows:

Sec. 18-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult bookstore means an establishment having as its stock in trade, for sale, rent, lease, inspection or viewing books, films, videocassettes, 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 in this section, and in conjunction therewith have facilities for the presentation of adult entertainment, as defined in this section, including adult oriented films, movies or live performances for observation by patrons therein.

Adult cabaret means a cabaret which features topless dancers, strippers, male or female impersonators, or similar entertainers.

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 in this section, or the removal of articles of clothing or appearing partially or totally nude.

Adult motion picture theater means 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 in this section, for observation by patrons therein.

Adult-oriented establishment, shall include, but is not limited to, adult bookstores, adult motion picture theaters, adult minimotion picture establishments or adult cabarets, 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 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.

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

Specified anatomical areas means:

- (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 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, sado-masochistic abuse, fellatio or cunnilingus;
- (3) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

(Ord. No. 95-3-A, § I(1), 6-14-1995)

Cross reference--Definitions generally, § 1-2.

Sec. 18-32. Penalties and prosecution.

Any person who shall violate any provisions of this article or who shall fail to obtain a license or permit as required under this article shall be subject to a penalty of not less than \$250.00 nor more than \$500.00 for each day that the party is deemed to be in violation of this article together with the cost of prosecution. Each day that a violation occurs shall be considered a separate and distinct offense under the terms of this article. Failure to pay any penalty imposed by a court of law under this article shall subject the defendant to commitment to the county jail or other remedy as provided under law.

(Ord. No. 95-3-A, § I(13), 6-14-1995)

Sec. 18-33. Exclusions.

All private schools, and public schools, as defined in Wis. Stats. ch. 115, located within the town are exempt from obtaining a license under this article when instructing pupils in sex education as part of its curriculum.

(Ord. No. 95-3-A, § I(12), 6-14-1995)

Sec. 18-34. License.

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

(b) A license may be issued only for an adult-oriented establishment located at a fixed and certain place. Any person, partnership, or corporation which 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, partnership or corporation.

(d) All adult-oriented establishments existing at the time of the passage of the ordinance from which this article is derived must submit an application for a license within 90 days of the passage of this ordinance. If an application is not received within such 90-day period, then such existing adult-oriented establishment shall cease operations.

(Ord. No. 95-3-A, § I(2), 6-14-1995)

Sec. 18-35. Application for license.

(a) Any person, partnership or corporation desiring to secure a license shall make application to the clerk. The application shall be filed in triplicate with and dated by the clerk. A copy of the application shall be distributed promptly by the clerk to the police department and to the applicant.

(b) The application for a license shall be upon a form provided by the 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 five percent 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 clerk shall notify the applicant whether the application is granted or denied.

(d) Whenever an application is denied, the clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten days of receipt of notification of denial, a public hearing shall be held within ten days thereafter before the town board, as provided in this article.

(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 article shall constitute an admission by the applicant that he is ineligible for such license and shall be grounds for denial thereof by the clerk.

(Ord. No. 95-3-A, § I(3), 6-14-1995)

Sec. 18-36. Standards for issuance of license.

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

- (1) If the applicant is an individual:
 - a. The applicant shall be at least 18 years of age.
 - b. The applicant shall not have been found to have previously violated this article within five years immediately preceding the date of the application.
- (2) If the applicant is a corporation:
 - a. All officers, directors and stockholders required to be named under section 18-35 shall be at least 18 years of age.
 - b. No officer, director, or stockholder required to be named under section 18-35 shall have been found to have previously violated this article within five years immediately preceding the date of the application.
- (3) If the applicant is a partnership, joint venture, or any other type of organization where two or more persons have a financial interest:
 - a. All persons having a financial interest in the partnership, joint venture or other type of organization shall be at least 18 years of age.
 - b. 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 article within five years immediately preceding the date of the application.

(Ord. No. 95-3-A, § I(4), 6-14-1995)

Sec. 18-37. Fees.

A license fee set by town board resolution from time to time shall be submitted with the application for a license. If the application under this article is denied, one-half of the fee shall be returned.

(Ord. No. 95-3-A, § I(5), 6-14-1995)

Sec. 18-38. Display of license.

The license under this article shall be displayed in a conspicuous public place in the adult-oriented establishment.

(Ord. No. 95-3-A, § I(6), 6-14-1995)

Sec. 18-39. Renewal of license or permit.

(a) Every license issued pursuant to this article will terminate at the expiration of one 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 clerk. The application for renewal must be filed not later than 60 days before the license expires. The application for renewal shall be filed in triplicate with and dated by the clerk. A copy of the application for renewal shall be distributed promptly by the clerk to the operator. The application or renewal shall be upon a form provided by the 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 set by town board resolution from time to time shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty set by town resolution from time to time shall be assessed against any applicant who files for a renewal less than 60 days before the license expires. If the application is denied, one-half of the total fees collected shall be returned.

(c) If the police department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the clerk.

(Ord. No. 95-3-A, § I(7), 6-14-1995)

Sec. 18-40. Revocation of license or permit.

(a) The town board shall revoke a license or permit issued under this article 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 article or any rule or regulation adopted by the town pursuant to this article; 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 town 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 or permit.
- (4) Any cost or fee required to be paid by this article 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 town 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 town board, as provided in this article.

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

(d) Any operator whose license under this article 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 months from the date of revocation of the license.

(Ord. No. 95-3-A, § I(8), 6-14-1995)

Sec. 18-41. 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:

- (1) *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.
- (2) *Construction.* Every booth, room or cubicle shall meet the following construction requirements:
 - a. Each booth, room or cubicle shall be separated from adjacent booths, rooms or cubicles and any nonpublic areas by a wall.
 - b. 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 booth, room or cubicle.

- c. 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.
- d. The floor must be light colored, nonabsorbent, smooth textured and easily cleanable.
- e. The lighting level of each booth, room or cubicle, when not in use shall be a minimum of ten footcandles at all times, as measured from the floor.

- (3) *Occupants.* Only one individual shall occupy a booth, room or cubicle at any time. No occupant of a booth, room or cubicle 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.

(Ord. No. 95-3-A, § I(9), 6-14-1995)

Sec. 18-42. Responsibilities of the operator.

(a) Every act or omission by an employee constituting a violation of the provisions of this article deemed the act of 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 article 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 employees 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.

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

(e) The operator shall maintain at least ten 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 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 footcandle of illumination in such aisles, as measured from the floor.

(f) The operator shall ensure compliance of the establishment and its patrons with the provisions of this article. (Ord. No. 95-3-A, § I(10), 6-14-1995)

Sec. 18-43. Administrative review procedure.

The town ordinances and state law shall govern the administrative procedure and review regarding the granting, denial, renewal, nonrenewal, revocation or suspension of a license.

(Ord. No. 95-3-A, § I(11), 6-14-1995)

Secs. 18-44--18-70. Reserved.

ARTICLE III.

ALARM SYSTEMS*

***Editors note--**The introductory language of Ordinance No. 94-13, adopted Sept. 12, 1994, and codified in this article, provided as follows:

Whereas, the Town Board of the Town of Mukwonago recognizes that alarm systems serve a public service; and

Whereas, The Town Board of the Town of Mukwonago has determined that it is necessary to establish standards and regulations for all alarm systems in the Town of Mukwonago in order to prevent responses by the police or fire departments when an emergency situation does not exist due to carelessness, improper maintenance or any other cause which results in false alarms from privately owned, commercially owned, leased or contracted alarm systems; and

Whereas, these false alarms initiate police and fire personnel and vehicle responses which result in unnecessary expense to the town, increases the risk of damage to property or injury to persons and dilutes the police and fire protection available to other areas of the town; and

Whereas, the chief of police for the Town of Mukwonago has advised the Town Board of the Town of Mukwonago that the number of such false alarms has been increasing, and

Whereas, the Town Board of the Town of Mukwonago has determined that such false alarms constitute a public nuisance which must be abated and/or penalized.

Now, therefore, the Town Board of the Town of Mukwonago, Waukesha County, Wisconsin, DOES ORDAIN AS FOLLOWS:

Sec. 18-71. Purpose.

The purpose of this article is to establish regulations, standards and controls relating to the use of alarm devices and to prevent repeated false alarms which intentionally or otherwise create a hazard to the public.
(Ord. No. 94-13, § 1(A), 9-12-1994)

Sec. 18-72. Definitions.

The following words, terms and phrases when used in this article shall have the meaning subscribed to them in this section except where the context clearly indicates a different meaning:

Alarm system means a device which is used at establishments and residences and transmits a signal from the alarm system resulting in a response by the town police department and/or the town fire department, whether directly or indirectly.

False alarm means a signal from an alarm system resulting in a response by the town police department and/or town fire department when an emergency situation does not exist.
(Ord. No. 94-13, § 1(B), 9-12-1994)

Cross References: Definitions generally, § 1-2.

Sec. 18-73. Alarm requirements.

(a) Each false alarm requires a response by public safety personnel, involves unnecessary expense to the town, increases the risk of damage to property or injury to persons and dilutes the overall public safety protection to the town. Such false alarms constitute a public nuisance and must be abated. Persons shall pay to the town a fee for false alarms as may be set by the town board from time to time by separate resolution.

(b) This section is intended to impose a strict liability on the person whose premises is protected by an alarm system.
(Ord. No. 94-13, § 1(C), 9-12-1994) (Ord. 2009-2, § 1, 4-07-2009)

Sec. 18-74. Intentional false alarms.

No person shall intentionally cause the activation of an alarm device knowing that no crime or emergency exists.
(Ord. No. 94-13, § 1(D), 9-12-1994)

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Sec. 18-75. Penalties.

(a) Any person over the age of 17 years violating the provisions of this article shall be subject to a forfeiture of not less than \$10.00 nor more than \$500.00 plus allowable statutory costs per each offense. Failure to pay any forfeiture hereunder shall subject any violator over the age of 17 years to be sentenced to the county jail and/or revocation or suspension of driving privileges.

(b) Any person between the ages of 12 and 17 years shall be subject to a forfeiture of not less than \$10.00 nor more than \$500.00 plus allowable statutory costs per each offense, or referred to the proper authorities as provided in Wis. Stats. ch. 48. Failure to pay any forfeiture hereunder shall subject any violator to the provisions of Wis. Stats. § 48.17(2).

(c) Any person under the age of 12 years shall be referred to the proper authorities, as provided in Wis. Stats. ch. 48.
(Ord. No. 94-13, § 2, 9-12-1994)