

## **ORDINANCE NO. 02-04-08-01**

### **Adult-Oriented Business Ordinance**

**WHEREAS**, adult-oriented businesses require special supervision in order to protect and preserve the secondary effects of such businesses, such as the health, safety, and welfare of the patrons of such businesses as well as the citizens of this Village of Fontana-on-Geneva Lake; and

**WHEREAS**, adult-oriented businesses may potentially be used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

**WHEREAS**, it is a lawful purpose of the Village Board of the Village to enact regulations for the purpose of promoting health, safety and general welfare of its citizens; and

**WHEREAS**, it 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 businesses have been and are being used by patrons for engaging in sexual acts, resulting in unsafe and unsanitary conditions in said booths; and

**WHEREAS**, the concern over sexually-transmitted diseases is a legitimate health concern of the Village that demands reasonable regulation of adult-oriented businesses in order to protect the health and well-being of the Village; and

**WHEREAS**, Licensing is a legitimate means of accountability to ensure that operators of adult-oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

**WHEREAS**, adult-oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them; and

**WHEREAS**, it has been the experience of other municipalities including Seattle and Renton, Washington, and Detroit, Michigan, that adult-oriented businesses can contribute to the impairment of the character and quality of surrounding residential neighborhoods and can contribute to a decline in the value of surrounding properties; and

**WHEREAS**, adult-oriented businesses in proximity to residential areas, churches, parks and schools may lead to an increase in criminal activities in the surrounding areas and the Village desires to protect the youth of the community from the deleterious effects such businesses have on adjacent areas by restricting their close proximity to place of worship, schools and residential areas; and

**WHEREAS**, the Village Board intends to prevent these adverse effects and thereby protect the health, safety, and welfare of the Village residents; protect residents from increased crime; preserve the quality of life; preserve the property values and character of the surrounding neighborhoods and deter the spread of blight; and

**WHEREAS**, a reasonable regulation of the location of adult entertainment businesses will provide for the protection of the image of the community and its property values and protect the residents of the community from the adverse secondary effects of an adult-oriented business, while providing to those who desire to patronize adult-oriented businesses, such an opportunity within the surrounding area which are appropriate for a location of adult-oriented businesses; and

**WHEREAS**, the United States Supreme Court has approved efforts by local governments to regulate the location of adult-oriented businesses through licensing; and

**WHEREAS**, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of adult-oriented businesses as well as the health problems associated with such businesses;

**NOW, THEREFORE**, the Village Board of the Village of Fontana-on-Geneva Lake, Walworth County, Wisconsin, does ordain as follows:

## **SECTION 1.**

Article VII., Sections 19-335 through 19-349 of the Village Code of the Village of Fontana-on-Geneva Lake is created added to read as follows:

### **Sec. 19-335. 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-oriented business or adult-oriented establishment* shall include, but is not limited to, adult bookstores, adult motion picture theaters, adult mini-motion 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 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 bookstore* means an establishment having as its stock trade for sale, rent, lease, inspection, or viewing books, films, video cassettes, magazines, or other periodicals, which are



distinguished or characterized by their emphasis on matters depicting, describing, or relating to specific sexual activities or specified anatomical areas as defined below, and in conjunction therewith have facilities for the presentation of adult entertainment, as defined below, including adult-oriented films, movies or live performances, for observation by patrons therein.

*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.

*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.

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

*Adult entertainment* means any exhibition of any motion picture, live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated specified sexual activities, or specified anatomical areas, as defined below, or the removal of articles of clothing or appearing partially or totally nude.

*Operator* means any person, partnership, or corporation operating, conducting, maintaining, or owning any adult-orientated business.

*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; or (2) human male genitals in a discernible turgid state, even if opaquely covered.

*Specified sexual activities* means simulated or actual 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; or (3) fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts.

*Village Board* means the Village of Fontana-on-Geneva Lake Village Board of Trustees.

#### **Sec. 19-336. License**

(a) Except as provided in (d) below, from and after the effective date of this chapter, no adult-oriented business shall be operated or maintained in the Village of Fontana-on-Geneva Lake without first obtaining a license to operate, issued by said Village of Fontana-on-Geneva

Lake.

(b) A license may be issued only for one (1) adult-oriented business located at a fixed and certain place. Any person, partnership, or corporation which desires to operate more than one adult-oriented business must have a license for each such establishment.

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

(d) All adult-oriented businesses existing at the time of the passage of this chapter must submit an application for a license within ninety (90) days of the passage of this chapter. If an application is not received within said ninety (90) day period, then such existing adult-oriented business shall cease operations.

**Sec. 19-337. Application for license.**

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

(b) The application for a license shall be upon a form provided by the Village 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 of applicant for license and name and address of person to be contacted for further information concerning license application.
- (2) Written proof that the individual applying is at least eighteen (18) years of age.
- (3) The address of the adult-oriented business to be operated by the applicant.
- (4) Brief, but complete description of activities to be conducted on the premises. If any booth, room or cubicle for private viewing of any adult entertainment is intended, a sketch or other adequate description of the premises showing compliance with the requirements under Section 19-341.
- (5) If the applicant is a partnership, joint venture, or other type of organization where two (2) or more persons have a financial interest, the application shall state the names and addresses of all partners, joint venturers, or other persons having a financial interest in the partnership.



- (6) If the applicant is a corporation, limited liability company or other legal business entity, the date and state of incorporation or organization, the name and address of the registered agent, and the name and address of all shareholders owning more than five percent (5%) of said corporation and the names and addresses of all officers, directors or managers.
- (7) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of a recorded deed.
- (8) If the operator is not the fee owner of the tract of land, then the lease, purchase contract, purchase option contract, lease option contract, or other documents evidencing the legally-enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract of land for the establishment.

**Sec. 19-338. Issuance of license.**

(a) Within forty-five (45) days of receiving an application for a license, the Village Clerk shall notify the applicant whether the application is granted or denied.

(b) Whenever an application is denied, the Village Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held within then (10) days thereafter before the Village Board as hereinafter provided.

(c) 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 chapter shall constitute an admission by the applicant that he/she is ineligible for such license and shall be grounds for denial thereof by the Village of Fontana Village Board.

**Sec. 19-339. Standards for issuance of license.**

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

- (1) If the applicant is an individual:
  - a. The applicant shall be at least eighteen (18) years of age.
  - b. The applicant shall not have been found to have previously violated this chapter within five (5) 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 19-334(b) shall be at least eighteen (18) years of age.
  - b. No officer, director, or stockholder required to be named under shall have been found to have previously violated this chapter within five (5) 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 (2) or more persons have a financial interest then all personal having a financial interest in the partnership, joint venture, or other type of organization, and required to be named under Section 19-334(b), shall be at least eighteen (18) years of age.
- (4) No person having a financial interest in the partnership, joint venture, or other type of organization, and required to be named under Section 19-334(b) shall have been found to have violated any provision of this chapter within five (5) years immediately preceding the date of the application.
- (5) If any other law enforcement agency in such county is aware of any information bearing on the applicant's qualifications, that information shall be filed in writing with the Village Clerk.

**Sec. 19-340. Fees.**

The fee for an adult-oriented business license shall be set by the Village Board.

**Sec. 19-341. Display of license.**

The license shall be displayed in a conspicuous, public place in the adult-oriented business.

**Sec. 19-342. Renewal of license.**

(a) Every license pursuant to this chapter 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 Village 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 duplicate with and dated by the Village Clerk. A copy of the application for renewal shall be distributed promptly by the Village Clerk to the operator. The application for renewal shall be on a form provided by such Village



Clerk and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

(b) The license renewal fee shall be the same as set by the Village Board in Sec. 19-337 and shall be submitted with the application for renewal.

(c) If any other Village of Fontana agency is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the Village Clerk.

**Sec. 19-343. Revocation of license.**

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

- (1) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application.
- (2) The operator or any employee of the operator violates any provision of this chapter or any rule or regulation adopted by the Village Board pursuant to this chapter; 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 Village 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 knowledge.
- (3) The operator becomes ineligible to obtain a license.
- (4) Any cost or fee required to be paid by this chapter is not paid.
- (5) Any intoxicating liquor or cereal or malt beverage is served or consumed on the premises of the adult-oriented business.

(b) The Village Board, before revoking or suspending any license, shall give the operator at least ten (10) days written notice of the charges against him/her, and the opportunity for a public hearing before such Village 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 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 business for six months (6) months from the date of revocation of the license.

**Sec. 19-344. Physical layout of adult-oriented business.**

Any adult-oriented business having available for customers, patrons, or members, any booth, room, or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

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

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

- (1) Every booth, room, or cubicle shall be separated from adjacent booths, rooms and cubicles any non-public areas by a wall.
- (2) Every booth, room, or cubicle shall 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 such booth, room, or cubicle.
- (3) All walls shall be solid and without any openings, extended from the floor to a height of not less than six (6) feet and be light colored, non-absorbent, smooth textured, and easily cleaned.
- (4) The floor must be light colored, non-absorbent, smooth textured and easily cleaned.
- (5) The lighting level of each booth, room, or cubicle, when not in use shall be a minimum of ten (10) foot candles at all times, as measured from the floor.

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

**Sec. 9-345. Distance requirements for adult-oriented businesses.**

Distances provided hereafter shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed adult-oriented business is or is to be located, to the nearest point of the property or the zoning district boundary line from which the proposed adult-oriented business is or is to be separated.



- (a) Adult-oriented businesses shall be prohibited in or within one thousand (1,000) feet of the borders of a residential district including mixed use residential districts (VCP, Village Center Preservation District).
- (b) Adult-oriented businesses shall be prohibited within one thousand (1,000) feet of any church, synagogue, mosque, temple or other place of religious assembly.
- (c) Adult-oriented businesses shall be prohibited within one thousand (1,000) feet of any public or private school offering general education for students between the years of kindergarten through twelfth grade.
- (d) Adult-oriented businesses shall be prohibited within one thousand (1,000) feet of any day care facility or family day care home.
- (e) Adult-oriented businesses shall be prohibited within one thousand (1,000) feet of any public park or playground.
- (f) Adult-oriented businesses shall be prohibited from locating within one thousand (1,000) feet of any other adult-oriented business.
- (g) Adult-oriented businesses shall be prohibited from locating within one thousand (1,000) feet of any existing establishment selling alcoholic beverages for consumption on premises.

**Sec. 9-346. Responsibilities of operator.**

(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 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, 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 chapter shall be deemed the act or omission of the operator for the purposes of determining whether the operator's license shall be revoked, suspended, or renewed.

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

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

(e) The operator shall maintain at least 10-foot candles of light in the public portions

of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one (1) foot candle of illumination in said aisles, as measured from the floor.

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

**Sec. 19-347. Exclusions.**

As defined in Chapter 115 of the Wisconsin Statutes, all public and private schools located within the Village of Fontana, Walworth County, Wisconsin, are exempt from obtaining a license hereunder when instructing pupils in sex education as a part of the curriculum.

**Sec. 19-348. Severability.**

If any provision of this chapter is deemed invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the other provisions of this chapter.

**Sec. 19-349. Enforcement.**

Personnel of the Village of Fontana shall have the authority to enter any adult-oriented business to inspect the premises and enforce this chapter.


**SECTION 2. EFFECTIVE DATE**

This ordinance shall be in full force and effect upon and from its passage, approval and publication as required by law.

**PASSED AND ADOPTED** by the Village Board of the Village of Fontana-on-Geneva Lake, Walworth County, Wisconsin this 4<sup>th</sup> day of February, 2008.

VILLAGE BOARD OF THE VILLAGE  
OF FONTANA-ON-GENEVA LAKE

By:   
\_\_\_\_\_  
Ron Pollitt, Village President

Attest:   
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Dennis Martin, Village Clerk