

ORDINANCE 2008-16

AN ORDINANCE BY THE PUBLIC SAFETY AND HEALTH COMMITTEE TO CREATE SECTION 17.34 OF THE CODE OF ORDINANCES FOR THE VILLAGE OF STURTEVANT, RACINE COUNTY, WISCONSIN RELATING TO ADULT ORIENTED ESTABLISHMENTS

The Village Board of the Village of Sturtevant, Racine County, Wisconsin, do ordain as follows:

1. That Section 17.34 of the Municipal Code of the Village of Sturtevant be, and hereby is, created to read as follows:

“17.34. ADULT ORIENTED ESTABLISHMENTS

(1) Findings.

- A. The board finds that adult oriented establishments as defined in this section require special zoning in order to protect and preserve the health, safety, and welfare of the village.
- B. Based on its review of certain reports and studies, which are available for inspection at the clerk’s office during normal business hours, the board finds that there is convincing evidence that the secondary effects of adult oriented establishments include an increased risk of prostitution, high-risk sexual behavior, crime, and other deleterious effects upon existing business and surrounding residential areas, including the risk of decreased property values.
- C. The board intends to control the impact of these secondary effects in order to protect the health, safety, and welfare of the citizenry, to protect the citizens from increased crime, to preserve the quality of life, and to preserve the property values and character of surrounding neighborhoods and areas.
- D. To minimize and control the secondary effects of adult oriented establishments, it is the board’s intent to prevent the location of adult oriented establishments within a certain distance from each other and also from other specified locations which are incompatible with and which would particularly suffer from the secondary effects of adult oriented establishments.
- E. Based on their prominence as gateways to the village and their central importance to the continued economic well-being and growth of the village, the board finds that the State Trunk Highway 20 and State Trunk Highway 11 corridors are two areas of vital importance to the village which must be protected from the secondary effects of adult oriented establishments for the benefit of the health, safety and welfare of the community.

F. It is not the board's intent to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of adult oriented establishments while providing an outlet for First Amendment protected activities.

(2) Definitions. As used in this section, the following words and phrases shall mean:

A. Adult bookstore. An establishment which has a facility or facilities, including but not limited to booths, cubicles, rooms, or stalls, for the presentation of "adult entertainment", as defined below, including adult oriented films, computer video, movies or live performances for observation by patrons therein; or an establishment having as a substantial or significant portion of its stock in trade, for sale, rent, trade, lease, inspection or viewing, books, films, video cassettes, DVDs, or magazines or other periodicals, which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specified anatomical areas or specified sexual activities as defined below.

B. Adult cabaret. A nightclub, bar, restaurant, or similar commercial establishment which features:

1. Live performances which are characterized or distinguished by the exposure of specified anatomical areas or the removal of articles of clothing; or,

2. Films, motion pictures, video cassettes, video reproductions, slides or other visual representations which are distinguished or characterized by depicting or describing specified anatomical areas or specified sexual activities.

C. Adult entertainment. 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 herein defined.

D. Adult mini-motion picture theater. An enclosed building with a capacity of less than 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 herein defined for observation by patrons therein.

E. Adult modeling studio. Any establishment or business where a person who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Adult modeling studios shall not include a proprietary school licensed by the State of Wisconsin or a college, technical college, or university; or in a structure:

1. that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
2. where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
3. where no more than one (1) nude or semi-nude model is on the premises at any one (1) time.

F. Adult motion picture theater. 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 below for observation by patrons therein.

G. Adult novelty shop. An establishment or business having as a substantial or significant portion of its stock and trade in novelty or other items which are distinguished or characterized by their emphasis on or design for specified sexual activity or stimulating such activity.

H. Adult oriented establishment. Any premises including, but not limited to, adult bookstores, adult motion picture theaters, adult mini-motion picture establishments, adult modeling studios, adult novelty shops, or adult cabarets. It 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 entertainment, 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 establishment further includes any establishment open to the public upon the premises of which is conducted an enterprise having as its dominant theme or which is distinguished or characterized by an emphasis on any actual or simulated specified sexual activities or specified anatomical areas as herein defined.

I. Adult booths, cubicles, rooms, compartments or stalls. Enclosures as are specifically offered to the public or members of an adult oriented establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business adult entertainment to be viewed within the enclosure. This shall include, without limitation, such enclosures wherein the adult entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, booth, cubicle, room, compartment or stall does not mean such enclosures that are private offices used by the owners, managers or persons employed on the premises for attending to the tasks of their employment, which enclosures are not held out to the public or members of the establishment for hire

or for a fee or for the purpose of viewing adult entertainment for a fee, and are not open to any persons other than employees; nor shall this definition apply to hotels, motels or other similar establishments licensed by the State of Wisconsin pursuant to Chapter 50 of the Wisconsin Statutes.

J. Nudity. The appearance of the human bare anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or the nipple or areola of the female breast, with less than a fully opaque covering; or showing of the covered male genitals in a discernibly turgid state.

K. Operators. Any person, partnership, or corporation operating, conducting, maintaining or owning any adult oriented establishment.

L. Specified anatomical areas.

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 discernibly turgid state, even if opaquely covered.

M. Specified sexual activities. 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.

(3) Uses. An adult oriented establishment shall be an allowed principal use in the Business District and the Industrial District, within the restrictions contained in this section, and shall be a prohibited use in any other zoning district. The adult oriented establishment may locate in the specified districts only if an adult oriented establishment license has been granted by the village, pursuant to subsections (5) through (9) of this section, and if all other objective requirements of this section and the applicable zoning district's regulations are met.

(4) Regulations applicable to all adult oriented establishments.

A. Hours of operation. No adult oriented establishment shall be open for business at any time between the hours of 2:00 a.m. and 12:00 noon.

B. Animals. No animals, except only for seeing-eye dogs required to assist the blind, shall be permitted at any time at or in any adult oriented establishment or licensed premises.

C. Restricted access. No adult oriented establishment patron shall be permitted at any time to enter into any of the non-public portions of any adult oriented establishment, including specifically, but without limitation, any storage areas or dressing or other rooms provided for the benefit of adult oriented establishment employees. This subsection shall not apply to persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the licensed premises; provided, however, that any such persons shall remain in such non-public areas only for the purposes and to the extent and time necessary to perform their job duties.

D. Exterior display. No adult oriented establishment shall be maintained or operated in any manner that causes, creates, or allows public viewing of any adult material, or any entertainment depicting, describing, or relating to specified sexual activities or specified anatomical areas from any sidewalk, public or private right-of-way, or any property other than the lot on which the licensed premises is located. No portion of the exterior of an adult oriented establishment shall utilize or contain any flashing lights, search lights, or spotlights, or any other similar lighting systems, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent specifically allowed by this section with regard to signs. This subsection shall apply to any advertisement, display, promotional material, decoration, or sign; to any performance or show; and to any window, door, or other opening.

E. Sign limitations. All signs for adult oriented establishments shall be flat wall signs. The business may have only one (1) non-flashing business sign which may only indicate the name of the business and identify it as an adult oriented establishment and which shall not be larger than four (4) feet by four (4) feet. Temporary signs shall not be permitted in connection with any adult oriented establishment.

F. Noise. No loudspeakers or sound equipment audible beyond the adult oriented establishment shall be used at any time.

G. Manager's stations. Each adult oriented establishment shall have one (1) or more manager's stations. The interior of each adult oriented establishment shall be configured in such a manner that there is a direct and substantially unobstructed view from at least one (1) manager's station to every part of each area, except restrooms, of the adult oriented establishment to which any patron is permitted access for any purpose. The cashier's or manager's station shall be located so that someone working there can quickly move to physically halt any attempted or accidental entry by a minor. An employee shall occupy the station at all times when patrons are in and on the premises.

- H. Adult booths prohibited. Adult booths shall be prohibited in all adult oriented establishments.
- I. No loitering policy. The adult oriented establishment shall clearly post and strictly enforce a no loitering policy.
- J. Age limit restrictions. The adult oriented establishment shall clearly post and strictly enforce age-limit restrictions. A one-square-foot sign shall be placed on each public entrance which shall state “Admittance to adults only.”
- K. Measuring disbursement distances. The distances in this section shall be measured by following a straight line, without regard to intervening structures, from the public entrance (existing or proposed) of an adult oriented establishment to the nearest point of the protected use as described below.
- L. Adequate parking. One parking space per one hundred fifty square feet of total gross floor area shall be provided in a lighted area on the licensed premises of an adult oriented establishment.
- M. Disbursement requirement. No more than one adult oriented establishment may be located on any parcel, and the location of any adult oriented establishment shall be at least one thousand feet from any other adult oriented establishment. This distance shall be measured from the public entrances of each adult oriented establishment.
- N. Display windows prohibited. All points of access into structures containing adult oriented establishments and all windows or other openings shall be located, constructed, covered, or screened in a manner which will prevent a view into the interior.
- O. Location restrictions. No adult oriented establishment may locate within one thousand (1,000) feet of a residential use, residential district, house of worship, school, day care center, playground, public park, recreation area, library, museum, or the right-of-way of State Trunk Highway 20 or State Trunk Highway 11. In the case of an area zoned residential, the distance shall be measured from the nearest point on the residential district zoning boundary line. From an area not zoned residential but used for residential purposes, the measurement shall be taken from the public entrance of the adult oriented establishment to the nearest entrance of the building in residential use. From schools, houses of worship, day care centers, libraries, and museums, the distance shall be measured from the public entrance of the adult oriented establishment to the main public entrance of the protected use. From playgrounds, public parks, recreation areas, and schools, houses of worship and day care centers with playgrounds or recreation areas, the distance shall be measured from the public entrance of the adult oriented establishment to the nearest property line of the playground, public park, or recreation area. Along State Trunk Highway 20 or State Trunk Highway 11, this

distance is measured from the outside highway right-of-way line, including frontage road(s).

P. Residential quarters not allowed. No residential quarters shall be allowed on a premises with an adult oriented establishment.

(5) Adult oriented establishment licenses. Operators shall obtain an adult oriented establishment license from the village by providing the village with at least the following information regarding the proposed adult oriented establishment, on such forms as are provided by the Village (if any), and by paying the requisite fee (if any):

A. Applicant information.

1. *Individuals.* Applicant's legal name; all of the applicant's aliases, if any; the applicant's age and business address.

2. *Corporations or limited liability companies.* Applicant corporation's or LLC's complete name and official business address; legal names, all aliases, the ages, and business addresses of all of the directors, officers, managers and members of the corporation or LLC and of every person owning or controlling more than twenty-five (25) percent of the voting shares of the corporation or LLC; applicant corporation's or LLC's date and place of incorporation and the objective for which it was formed; proof that the corporation or LLC is in good standing and authorized to conduct business in the State of Wisconsin; name of the registered corporate or LLC agent; the address of the registered office for service of process.

3. *Partnerships (general or limited), joint ventures, or any other type of organization where two (2) or more persons share in the profits or liabilities of the organization.* Applicant organization's complete name and official business address; legal name, all aliases, the ages, and business addresses of each partner (other than limited partners) or any other person entitled to share in the profits of the organization, whether or not any such person is also obligated to share in the liabilities of the organization.

4. *Land trusts.* Applicant land trust's complete name; legal name, all aliases, and the business address of the trustee of the land trust; legal name, all aliases, the ages, and business addresses of each beneficiary of the land trust and the specific interest of each such beneficiary in the land trust; the interest, if any, that the land trust holds in the licensed premises.

B. If a corporation, LLC, or partnership is an interest holder that shall be disclosed pursuant to subsections (a)(2) and (3), then such interest holders shall

disclose the information required in said subsections with respect to their interest holders.

C. The general character and nature of the applicant's business.

D. The length of time that the applicant has been in the business of the character specified in response to subsection (c) above.

E. The location (including street address and legal description) and telephone number of the premises for which the adult oriented establishment permit is sought.

F. The specific name of the business that is to be operated under the adult oriented establishment permit.

G. The identity of each fee simple owner of the licensed premises.

H. A diagram showing the internal and external configuration of the licensed premises, including all doors, windows, entrances, exits, the fixed structural internal features of the licensed premises, plus the interior rooms, walls, partitions, stages, performance areas, and restrooms. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, provided, however, that each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions to an accuracy of plus or minus six (6) inches and sufficient to show clearly the various interior dimensions of all areas of the licensed premises and to demonstrate compliance with the provisions of this section. The approval or use of the diagram required pursuant to this subsection shall not be deemed to be, and may not be interpreted or construed to constitute, any other approval otherwise required.

I. The specific type(s) of adult oriented establishment(s) that the applicant proposes to operate on the licensed premises.

J. A copy of each adult oriented establishment permit, liquor license, and gaming license currently held by the applicant, or any of the individuals identified in the application pursuant to subsection (a) or (b) above.

K. The name of the individual(s) who shall be the day-to-day, on-site manager(s) of the proposed adult oriented establishment.

L. The application fee, site plan review fee, and zoning permit fee in the amount as set periodically by resolution of the Village board.

M. Any other information the village may reasonably require to apply the requirements of this section.

N. The village reserves the right to require a survey from a surveyor licensed by the State of Wisconsin to determine the spacing requirements under this section, with the cost of such survey being borne by the applicant.

O. A site plan, landscaping plan, zoning permit application, and letter of agent status, if necessary, as required by site plan review application requirements adopted by the village.

(6) Incomplete adult oriented establishment license applications returned. Any application for an adult oriented establishment license that does not include all of the information and documents required pursuant to this section, as well as the required fees, shall be deemed to be incomplete and shall not be acted on by the village, which shall give the applicant a written notification and explanation of such action pursuant to this section.

(7) Adult oriented establishment applicant cooperation required. An applicant for an adult oriented establishment license shall cooperate fully in the inspections and investigations conducted by Village. The applicant's failure or refusal to give any information reasonably relevant to the investigation of the application, to allow the licensed premises to be inspected, to appear at any reasonable time and place for review purposes, or to otherwise cooperate with the investigation and inspection required by this section shall constitute an admission by the applicant that the applicant is ineligible for an adult oriented establishment license and shall be grounds for denial of the permit by the village.

(8) Time for issuance or denial of adult oriented establishment licenses. The village board shall, within thirty days after submittal of a completed application, or within such other period of time as the village and the applicant shall otherwise agree, either issue or deny an adult oriented establishment license pursuant to the provisions of this section.

(9) Standards for issuance or denial of adult oriented establishment licenses.

A. Issuance. The village shall issue an adult oriented establishment license to an applicant if the village board finds and determines all of the following:

1. All information and documents required by this section for issuance of an adult oriented establishment license has been properly provided.

2. No person identified in the application has been denied an adult oriented establishment license within the twelve (12) months immediately preceding the date of the application, or has had an adult oriented establishment license revoked within the twelve (12) months immediately

preceding the date of the application, or possesses an adult oriented establishment license that is under suspension at the time of application.

3. The adult oriented establishment and the operator comply with all requirements of this section.

4. The applicant has signed the permit he or she has received indicating his or her acceptance of the conditions of the permit.

B. Denial. If the zoning administrator determines that the applicant has not met any one (1) or more of the conditions set forth in this section, then the zoning administrator shall deny issuance of the adult oriented establishment permit and shall give the applicant a written notification and explanation of such denial.

C. License deemed to be issued. If the zoning administrator does not issue or deny the adult oriented establishment permit within thirty (30) days after the properly completed application is submitted, then the adult oriented establishment permit applied for shall be deemed to have been issued.

(10) Enforcement. A violation of any restrictions imposed by this section or by an adult oriented establishment license is a violation of this section, and notwithstanding any other remedy, a violation of any conditions or an adult oriented establishment license shall be grounds for revocation of the adult oriented establishment license.

(11) Continued conforming status. Any adult oriented establishment lawfully operating as a conforming use as of the effective date of this ordinance is not rendered a nonconforming use hereby.”

2. That this ordinance shall take effect upon adoption and publication as provided by law.

3. That upon the effective date of this ordinance, Section 17.46, “Adult Oriented Establishments Temporary Moratorium,” shall be, and hereby is, repealed.

Adopted by the Village Board of the Village of Sturtevant, Racine County, Wisconsin, this 5th day of August, 2008.

VILLAGE OF STURTEVANT

By: _____
Steve Jansen, President

Attest: _____
Mary Hanstad, Village Clerk

