

ORDINANCE 2008-08

AN ORDINANCE TO CREATE SECTION 17.46 OF THE CODE OF ORDINANCES FOR THE VILLAGE OF STURTEVANT, RACINE COUNTY, WISCONSIN RELATING TO A TEMPORARY MORATORIUM ON ADULT ORIENTED ESTABLISHMENTS

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

1. That Section 17.46 of the Municipal Code of the Village of Sturtevant be, and hereby is, created to read as follows:

“17.46. ADULT ORIENTED ESTABLISHMENTS TEMPORARY MORATORIUM

(1) Findings.

A. The Village Board has reviewed certain studies which tend to indicate that adult oriented establishments (“AOEs”) can cause deleterious secondary effects on a community, including reduced neighboring property values, increased crime and increased public health hazards, if the location and operation of the AOEs is not properly regulated by the community; and,

B. The Village Board is also aware that any regulation of AOEs must be narrowly tailored so that the Constitutionally-protected speech in which the AOEs trade is not exceedingly or improperly burdened; and,

C. The Village Board believes that the Village’s present zoning of AOEs may not pass Constitutional muster and also fails to adequately address the secondary effects that AOEs may carry with them; and,

D. Therefore, the Village Board deems it both proper and appropriate that a temporary moratorium on any new AOEs locating or operating in the Village should be established, as provided herein, to allow the Village sufficient time to further study the issues raised by AOEs and to establish appropriate zoning restrictions that will properly protect both the AOE operators’ Constitutional rights and the interests of community at large.

(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. “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) Temporary Moratorium.

No new adult oriented establishment may locate or operate within the Village until January 1, 2009, or until such time as this Section is repealed following the adoption of an appropriate update of the Village's Code of Ordinances addressing the location and operation of AOE's, whichever occurs first."

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

Adopted by the Village Board of the Village of Sturtevant, Racine County, Wisconsin, this 20th day of May, 2008.

VILLAGE OF STURTEVANT

By: _____
Steve Jansen, President

Attest: _____
Mary Hanstad, Village Clerk