

ORDINANCE NO. 2011-007AN ORDINANCE TO REPEAL AND RECREATE SECTION 12.08
OF THE TOWN OF DELAFIELD CODE OF ORDINANCES
REGULATING ADULT-ORIENTED ESTABLISHMENTS

WHEREAS, Section 12.08 of the Town of Delafield Code currently establishes regulations concerning Adult-Oriented Establishments for the Town of Delafield; and

WHEREAS, the Town Board of the Town of Delafield, having originally carefully considered the studies referred to in Section 12.08(1), and having further considered the decisions of the United States Court of Appeals in conjunction with its consideration of this Ordinance, has determined that amendment of Section 12.08 of the Town of Delafield Code to reflect the decisions of the United States Court of Appeals set forth in *Fantasy Ranch v. City of Arlington Texas* (459 F.3d 546 (5th Circuit, 2006), and *Andy's Restaurant & Lounge, Inc. v. City of Gary* (466 F.3d 550 (7th Cir., 2006) will ensure proper treatment of protected First Amendment speech and promote the health, safety, and welfare of the residents of the Town of Delafield;

NOW, THEREFORE, THE TOWN BOARD OF THE TOWN OF DELAFIELD DO ORDAIN AS FOLLOWS:

SECTION 1: Section 12.08 of the Town of Delafield Code, entitled "Adult-Oriented Establishments" is hereby repealed and recreated to read as follows:

12.08 ADULT-ORIENTED ESTABLISHMENTS. (Rep. & Rec. 00-515)

- (1) FINDINGS OF FACT. The Town Board finds that Adult-Oriented Establishments operating in the Town require special licensing by the Town in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the Town.

Based on a review of studies conducted in Phoenix AZ, Garden Grove CA, Los Angeles CA, Whittier CA, Indianapolis IN, Minneapolis MN, St. Paul MN, Cleveland OH, Oklahoma City OK, Amarillo TX, Austin TX, Beaumont TX, Houston TX, Seattle WA, and the findings incorporated in *City of Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986), *Coleman A. Young v. American Mini-Theaters, Inc.*, 427 U.S. 50 (1976), the Town finds that Adult-Oriented Establishments are frequently used for sexual liaisons of a casual nature and unlawful sexual activities including prostitution.

It has been documented that entertainers in Adult-Oriented Establishments offer to perform sexual acts for patrons, and that sexual contact occurs between patrons and other employees of Adult-Oriented Establishments.

There is convincing documented evidence that booths, rooms or cubicles in Adult-Oriented Establishments have been used by patrons for the purpose of engaging in Specified Sexual Activities or in high-risk sexual behavior and configuration of the interior of the premises is an important factor in combating such activities.

The State of Wisconsin Division of Health has published reports that have been considered by the Town relating to the subject of sexually-transmitted diseases and the concern over sexually-transmitted diseases is a legitimate concern of the Town in order to protect the health and well-being of its citizens.

The State of Wisconsin has seen a steady increase in several types of sexually transmitted diseases since 1986.

Researchers have found that contracting sexually transmitted diseases may increase a person's vulnerability to Human Immuno-Deficiency Virus (HIV), the virus that causes AIDS (Acquired Immune Deficiency Syndrome) and some types of cancer. AIDS is a sexually-transmitted disease which destroys the body's immune system.

The State of Wisconsin Division of Health reports that as of June 30, 1999, 4,217 cases of AIDS were reported in the State, including 2,507 that resulted in death and new cases of HIV infection have been reported in Wisconsin each year.

The Town is concerned with the protection of its minors from exposure to age-inappropriate, sexually explicit materials and offenses.

Licensing is a legitimate and reasonable means of accountability to ensure that the operators and employees of Adult-Oriented Establishments comply with reasonable regulations and to ensure that operators and employees do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

Information relating to pending charges and convictions of the applicants is desired to further the Town's interest in controlling the negative secondary effects of Adult-Oriented Establishments.

There is convincing documented evidence that Adult-Oriented Establishments, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values.

The Town Board has reviewed studies of the negative secondary effects of Adult-Oriented Establishments and has concluded that if unregulated, they present an increased risk of prostitution, high-risk sexual behavior and crime, deleterious effects upon existing businesses and surrounding residential areas, and decreased property values.

The Town Board finds that negative secondary effects associated with adult, sexually oriented establishments have been confirmed by the United States Supreme Court in its decisions in, for example, *City Of Renton v. Playtime Theatres, Inc.* (475 U.S. 41 (1986)) and by the United States Court of Appeals in its decisions in, for example, *Hang On, Inc. v. City of Arlington* (65 F.3d 1248 (5th Cir., 1995), *Fantasy Ranch v. City of Arlington Texas* (459 F.3d 546 (5th Circuit, 2006), and *Andy's Restaurant & Lounge, Inc. v. City of Gary* (466 F.3d 550 (7th Cir., 2006) and that such negative secondary effects include personal property crimes, prostitution, lewd behavior, assault, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. The Town Board finds that the decisions issued by the appellate courts constitute reliable sources of information that may be

reasonably relied upon by the Town Board. The Town Board finds that each of the foregoing negative secondary effects constitutes a harm that the Town has a substantial governmental interest in preventing and/or abating. The Town Board finds that continued regulation of adult-oriented establishments is necessary to limit the aforementioned negative secondary effects associated with adult sexually oriented establishments and thereby promote the health, safety, and welfare of the Town of Delafield; and

The Town Board desires to minimize and control these negative secondary effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods.

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 negative secondary effects associated with Adult-Oriented Establishments.

It is not the intent of the Town Board to condone or legitimize the promotion of obscene material, and the Town Board recognizes that the law prohibits the promotion of obscene materials. The Town Board expects and encourages law enforcement officials to enforce any applicable anti-obscenity laws against any such illegal activities in the Town.

Restricted hours of operation of Adult-Oriented Establishments will allow law enforcement personnel to concentrate on crime prevention during high crime hours and/or low staffing hours by relieving them of enforcement duties relative to prostitution, loitering, and criminal activity associated with Adult-Oriented Establishments.

Prohibition of alcohol beverages on the premises of Adult-Oriented Establishments will reduce the need for law enforcement resources to respond to alcohol related problems upon the premises will reduce high-risk sexual activity and will contribute to the reduction of secondary effects of Adult-Oriented Establishments.

- (2) **PURPOSE AND INTENT.** Based upon the findings stated above, it is the intended purpose of the Town to regulate Adult-Oriented Establishments to promote the health, safety, morals, and general welfare of the citizens of the Town and to establish reasonable and uniform regulations for the operation thereof so as to minimize the negative secondary effects of these establishments on the community. The provisions of this section have neither the purpose nor intent of imposing a limitation or restriction on the content of any communicative materials, including Adult-Oriented materials protected by the First Amendment to the Constitution of the United States. Similarly, it is not the intent or effect of this section to restrict or deny access by adults to Adult-Oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of Adult-Oriented entertainment to their intended market. The promotion of obscene materials, which is not protected by the First Amendment, is subject to criminal sanctions under the State's penal code. The Town Board intends that this section shall be construed and enforced in a manner consistent with the First Amendment to the United States Constitution, Article I, Section 3 of the Wisconsin Constitution, and the compelling State interest in protection of the free flow of ideas.

(3) DEFINITIONS. The following terms have the meanings indicated:

Adult Arcade means any place to which the public is permitted or invited, wherein coin, slug, electrically, electronically, or mechanically controlled and/or operated still or motion picture machines, projectors, computers, or other image producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis on depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas".

Adult Bathhouse means a commercial establishment which provides a bath as a service and which provides to its patrons an opportunity for engaging in "Specified Sexual Activities."

Adult Body Painting Studio means a commercial establishment wherein patrons are afforded an opportunity to be painted or to paint images on Specified Anatomical Areas. An Adult Body Painting Studio does not include a tattoo parlor.

Adult Bookstore, adult novelty store, or adult video store means any commercial establishment which has a significant or substantial portion of its stock in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale, rental or lease, for any form of consideration, any one or more of the following:

- (a) Books, magazines, periodicals or other printed matter; photographs, images, slides, or video captures; films, motion pictures, video cassettes, compact or digital video discs, video broadcasts, recordings or reproductions; cable/satellite transmission, subscriber programming, or other medium that allows an image to be displayed or transmitted; or any other visual representations, which are distinguished or characterized by their emphasis upon the exhibition or description of "Specified Sexual Activities" or "Specified Anatomical Areas";
- (b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user(s) or others.

Adult Cabaret means a nightclub, bar, juice bar, restaurant, restaurant bottle club, or similar commercial establishment which features:

- (a) Live performances which are characterized or distinguished by the exposure of "Specified Anatomical Areas" or the removal of articles of clothing;
- (b) Persons who appear in a state of total or partial nudity; or,
- (c) Films, motion pictures, video cassettes, compact or digital video discs, video recording or imaging reproductions, slides, cable/satellite transmission, subscriber programming, or other video broadcastings, displays, reproductions, any other physical medium or manner of imaging that allows an image to be displayed or transmitted, or any other visual representations which are distinguished or characterized

by their emphasis on depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas."

Adult Entertainment means any sale, rental, or exhibition, for any form of consideration, of any motion picture, live performance, display, recording, photographic reproduction, closed-circuit transmission, cable/satellite transmission, subscriber programming, or other physical medium or manner of imaging that allows an image to be displayed or transmitted, and/or any live performance, display, or dance of any type, which has as its dominant theme, or is distinguished or characterized by any one or more of the following:

- (a) "Specified Sexual Activities";
- (b) "Specified Anatomical Areas"; or
- (c) person(s) who appear in a state of partial or total nudity.

Adult Massage Parlor means a commercial establishment, with or without sleeping accommodations, which provides the service of massage or body manipulation, including exercise, heat and light treatment of the body, and any form or method of physiotherapy, which also provides its patrons with the opportunity to engage in "Specified Sexual Activities".

Adult Motel means a hotel, motel or other similar commercial establishment which:

- (a) offers accommodations to the public, for any form of consideration, and provides patrons with closed circuit television transmissions, cable/satellite transmission, subscriber programming, film, motion pictures, video cassettes, video reproductions, slides, or other physical medium that allows an image to be displayed or transmitted, visual reproductions characterized by depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas"; and, has a sign visible from the public right of way which advertises the availability of this type of adult entertainment; or
- (b) offers a sleeping room for rent for a period of time that is less than 10 hours; or
- (c) allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than 10 hours.

Adult Motion Picture Theater means a commercial establishment where films, motion pictures, video cassettes, compact or digital video discs, video recording or imaging reproductions, slides, cable/satellite transmission, subscriber programming, or other video broadcastings, displays, reproductions, any other physical medium or manner of imaging that allows an image to be displayed or transmitted, or any other visual representations which are distinguished or characterized by their emphasis on depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas are regularly shown for any form of consideration.

Adult-Oriented Establishment includes, but is not limited to, Adult Arcade, Adult Bathhouse, Adult Body Painting Studio, Adult Bookstore, Adult Cabaret, Adult

Massage Parlor, Adult Motel, Adult Motion Picture Theater, Adult Theater, and any commercial establishment presenting Adult Entertainment, whether or not such establishment is operated or maintained for a profit.

Adult Theater means an enclosed building such as, for example, a theater, concert hall, auditorium or other similar commercial establishment which is regularly used for presenting "Adult Entertainment."

Applicant means the individual or business entity that seeks to secure a license under this section of the Town municipal code.

Board means the Town Board for the Town of Delafield, Waukesha County, Wisconsin.

Distinguished or characterized by an emphasis upon means the dominant or principal theme of the object described by such phrase. For example, when used in conjunction with a reference to films, the films so described are those whose dominant or principal character and theme are the exhibition or description of Specified Anatomical Areas or Specified Sexual Activities.

Employee means any and all Persons, including but not limited to "Operators", "Entertainers", clerks, managers, janitors or other Persons who work in or at, or render any services directly related to the day-to-day operation of an Adult-Oriented Establishment. Employee, as used in this ordinance, specifically excludes any independent contractor(s) who are responsible for the improvement or repair of the physical premises or who provide supplies to the establishment, provided that such Person(s) are not also in the position of providing any other day-to-day services for the Adult-Oriented Establishment.

Entertainer means any Person who provides entertainment within an Adult-Oriented Establishment whether or not a fee is charged or accepted for the entertainment and whether or not the entertainment is provided by the Person as an Employee of the Adult-Oriented Establishment or as an independent contractor.

Operator means the Person who is designated on the license application to be the Person in charge of the daily operation of the premises and who is to be the Adult-Oriented Establishment's contact Person for the municipality.

Person means an individual, proprietorship, corporation, association, partnership, limited liability entity, or other legal entity.

Public Area includes all areas of an Adult-Oriented Establishment except: a public restroom to the extent it is used for its proper purpose, individual rooms rented in an Adult Motel, or areas to which patrons have no physical or visual access.

Specified Anatomical Areas means:

- (a) Less than completely and opaquely covered human genitals, pubic region or pubic hair,
- (b) any human buttock, or any portion of the female breast(s) that is situated below a point immediately above the top of the areola.

Specified Sexual Activities means and includes any of the following, simulated or

actual:

- (a) The fondling or other erotic touching of another or one's own human genitals, pubic region, perineum, buttocks, anus, or female breast(s);
- (b) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio, cunnilingus, analingus.
- (c) Showing of human genitals in a state of sexual stimulation or arousal.
- (d) Excretory functions as part of, or in connection with, any of the activities set forth in sections (a) through (b).

Transfer of Ownership or Control of an Adult-Oriented Establishment means and includes any of the following:

- (a) the sale, lease, or sublease of the business;
- (b) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or other means; or
- (c) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of the law upon the death of the Person possessing the ownership or control.

Youth-facility means any facility where minors gather for educational or recreational activities including but not limited to playgrounds, swimming pools, libraries, licensed child-care facilities, or youth clubs.

(4) LICENSING.

(a) LICENSES REQUIRED.

1. License Required for All Adult-Oriented Establishments . From and after the effective date of this section except as provided in paragraph (3) below, no Adult-Oriented Establishment shall be operated or maintained in the Town without first obtaining a license to operate issued by the Town. A license may be issued only for one Adult-Oriented Establishment located at a fixed and certain place. Any Person desiring to operate more than one Adult-Oriented Establishment must have a license for each.
2. License Required for All Employees of Adult-Oriented Establishments . In addition to the license required by the establishment, all Employees of an Adult-Oriented Establishment must also be licensed.
3. Licenses for Existing Adult-Oriented Establishments . All Adult-Oriented Establishments existing in the Town at the time of the passage of this section must submit an application for a license within 90 days of the effective date of this section. Any establishment that submits an application within the 90 day period shall be allowed to continue to operate until the license application is acted upon by the Town Board. Any establishment which fails to submit an application within the 90 day period, must cease operation upon expiration of the 90 day period unless and until a valid license is timely issued by the Town Board. The Town shall act upon any such license application in accordance with the provisions of this Section.

4. Licenses for Employees of Existing Adult-Oriented Establishments. All Employees already working in an Adult-Oriented Establishment existing at the time of the passage of this section must submit an application for a license within 90 days of the effective date of this section. Any Employee that submits an application within the 90 day period shall be allowed to continue his or her employment until the license application is acted upon by the Town Board. Any Employee who fails to submit an application within the 90 day period must cease employment upon expiration of the 90 day period unless and until a valid license is issued by the Town Board. The Town shall act upon any such license application in accordance with the provisions of this Section.
5. Change of Name Form. Any licensed Adult-Oriented Establishment which desires to change its name from that as listed on the original license application must file a change of name form with the Town Clerk and pay a \$10.00 fee at least 30 days prior to effectuating the name change.
6. Effect of Other Licenses. The fact that a Person possesses any other valid license or permit required by law, does not exempt that Person from the requirement of obtaining an Adult-Oriented Establishment license under this Section.
7. Non-transferability of Licenses. No license or interest in a license may be transferred to any Person. Any change in location for an Adult-Oriented Establishment shall require a new license application for that location.

(b) LICENSE APPLICATION PROCEDURE FOR ADULT-ORIENTED ESTABLISHMENTS

1. Any Person desiring to secure an Adult-Oriented Establishment license shall file an application together with two additional copies of the application with the Town Clerk.
2. The application shall be on a form provided by the Town Clerk.
3. The following information shall be required of each Applicant, and must be provided under oath or affirmation:
 - A. Name, including any aliases, address, and phone number.
 - B. If the Applicant is a corporation, partnership, limited liability company or limited liability partnership, the application shall include the name of the business entity; the date of incorporation, registration or organization; the state in which the entity was incorporated, registered or organized; the name and address of the registered agent where applicable; the names and addresses of all officers and directors; operating or managing partners or general partners; members or managers, whichever is applicable for the particular form of business entity.
 - C. If the Applicant is an individual, written proof that the Applicant is at least 18 years of age and two copies of a recent photo.
 - D. If the Applicant is a business entity, a statement that no officer,

director, partner, general partner, owner or manager is less than 18 years of age.

- E. Name, address and phone number of the Adult-Oriented Establishment for which a license is being secured.
- F. Name and address of any other current or past Adult-Oriented Establishments operated by the Applicant whether in this State or any other State or District within the United States.
- G. For any current Adult-Oriented Establishments operated by the Applicant, the Applicant shall describe the status of any required license for the establishment.
- H. Nature and date of offense if the Applicant has charges pending or has been convicted of violating any of the terms of this ordinance or of any administrative regulation or ordinance in any other jurisdiction regulating Adult-Oriented Establishments.
- I. Nature and date of offense if the Applicant has charges pending or has been convicted of any of the following crimes in Wisconsin:

Prostitution (§ 944.30, Stats.)

Patronizing Prostitutes (§ 944.31, Stats.)

Soliciting Prostitutes (§ 944.32, Stats.)

Pandering (§ 944.33, Stats.)

Keeping a Place of Prostitution (§ 944.34, Stats.)

Sexual Assault (§940.225, Stats.)

Prostitution (§ 944.30, Stats.)

Sexual Gratification (§ 944.17, Stats.)

Lewd and Lascivious Behavior (§ 944.20, Stats.)

Obscene Material or Performance (§ 944.21, Stats.)

Sexual Assault of a Child (§ 948.02, Stats.)

Engaging in repeated acts of sexual assault of the same child.
(§ 948.025, Stats.)

Sexual Exploitation of a Child (§ 948.05, Stats.)

Causing a Child to view or listen to Sexual Activity. (§ 948.055,
Stats.)

Incest with a child. (§ 948.06, Stats.)

Child Enticement (§ 948.07, Stats.)

Soliciting a Child for Prostitution (§ 948.08, Stats.)

Exposing a child to harmful material (§ 948.11, Stats.)

Possession of Child Pornography (§ 948.12, Stats.)

Child Sex Offender Working with Children (§ 948.13, Stats.)

The Wisconsin Statute numbers listed above are for reference purposes only. In the event one or more of the crimes listed above are renumbered or categorized differently by an act of the legislature, the Applicant shall list those crimes for which the Applicant has been convicted that are similar in nature to those listed above.

- J. Nature and date of offense if the Applicant has charges pending or has been convicted of an offense under a statute analogous to those listed in I., above, in a state other than Wisconsin, or under an analogous ordinance of another municipal entity.
 - K. Name, address and phone number of an individual who is responsible for the day-to-day operation of the establishment, who will be deemed the Operator for purposes of this section, and who will be the contact Person for the municipality.
 - L. A statement that the Applicant is familiar, and in compliance, with the provisions of this section of the Town's municipal code.
 - M. When the Applicant is a business entity described in subsection 4(b)(3)(B), the information requested of an "Applicant" shall be construed to require the inclusion of all of the information required in this section for each of the officers and directors, partners and general partners, members, managers, and other owners, and managers of the business entity applying for the license. This provision shall not apply to any owner of any kind who holds stock or a beneficial ownership interest of less than 10.0 percent.
4. Each application shall be accompanied by:
- A. A building plan which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any building plan requirements in addition to those in this Section. Each application shall be accompanied by a sketch or diagram showing the floor plan of the interior of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a 1/4 inch scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
 - B. A written plan of operation which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any plan of operation requirements in addition to those in this Section.
 - C. A written site plan which meets all the requirements of this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any site plan requirements in addition to those in this Section.
 - D. For corporate or limited liability applicants, proof that the Applicant is in good standing and registered to do business in Wisconsin.

5. Each application shall be signed by the Applicant.
6. Each application shall be accompanied by payment of the license fee of \$500.00. Filing of the application does not occur until this fee has been paid.
7. The Town Clerk shall date the filing of the application on the face of the application.
8. Upon filing of the application, each Applicant shall place a sign at the proposed business location providing notification of the application. Each sign shall be at least 24 inches by 36 inches in size. The sign shall state "ADULT-ORIENTED ESTABLISHMENT LICENSE APPLICATION PENDING" AND "APPLICATION FILED ON (fill in the date)." The letters on the sign shall be no less than 1 and 2 inches high by 2 inches wide. The sign must be placed in a conspicuous location so that it is clearly visible to all passers by whether on the public road, highway, sidewalk or parking lot.
9. Upon receipt of the application, the Town Clerk shall immediately distribute a copy of the application to the Building Inspector, Town Police Department, and the Town Board.
10. The Town Police Department shall notify the Town Board in writing of any information bearing on the Applicant's qualifications, within 20 business days of the filing of the application.
11. The Building Inspector shall notify the Town Board in writing as to whether or not the Applicant's building plan, site plan, and plan of operation comply with this Section and the Zoning Code, if the Zoning Code for the zoning district imposes any requirements in addition to those in this section, within 20 business days of the filing of the application.
12. The Town Board shall within 45 days of the filing of the application with the Town Clerk, either grant the license or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance. If the Board fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.
13. If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day.
14. If the Town Board decides to deny the application for a license, the Board shall immediately notify the Applicant in writing of the reasons for denial. Such notice shall be sent to the Applicant within 5 days of the decision by certified mail, return receipt requested.
15. Any Applicant aggrieved by such a decision of the Town Board, shall be entitled to immediately appeal the Board's decision in circuit court. Such an appeal must be made within 30 days of the date of the written decision by the Board. The Town explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, and to provide the review procedures described in this Section.
16. Each license issued for an Adult-Oriented Establishment shall state on its

face the name of the licensee, the name of the establishment, the street address of the establishment, the date of issue of the license and its expiration date.

(c) LICENSE PROCEDURES FOR EMPLOYEES IN ADULT-ORIENTED ESTABLISHMENTS.

1. Any individual desiring to secure an Employee license shall file an application together with two additional copies of the application with the Town Clerk.
2. The application shall be on a form provided by the Town Clerk.
3. The following information shall be required of each Applicant, and must be provided under oath or affirmation:
 - A. Name, including any aliases, and address. Pursuant to Sec. 19.35(1)(a)2.a., Wisconsin Statutes, the name and address of any entertainer shall be considered as exempt from disclosure under the public records law of the State of Wisconsin because of potential danger to the life and safety of such individuals from such disclosure.
 - B. Written proof that the individual is at least 18 years of age and two copies of a recent photo.
 - C. Nature and date of offense and date if the Applicant has charges pending or has been convicted of any violations of any of the terms of this ordinance or of any administrative regulation or ordinance in any other jurisdiction regulating Adult-Oriented Establishments.
 - D. Nature and date of offense if the Applicant has charges pending or has been convicted of any of the following crimes in Wisconsin:
 - Prostitution (§ 944.30, Stats.)
 - Patronizing Prostitutes (§ 944.31, Stats.)
 - Soliciting Prostitutes (§ 944.32, Stats.)
 - Pandering (§ 944.33, Stats.)
 - Keeping a Place of Prostitution (§ 944.34, Stats.)
 - Sexual Assault (§940.225, Stats.)
 - Sexual Gratification (§ 944.17, Stats.)
 - Lewd and Lascivious Behavior (§ 944.20, Stats.)
 - Obscene Material or Performance (§ 944.21, Stats.)
 - Sexual Assault of a Child (§ 948.02, Stats.)
 - Engaging in repeated acts of sexual assault of the same child. (§ 948.025, Stats.)
 - Sexual Exploitation of a Child (§ 948.05, Stats.)

Causing a Child to view or listen to Sexual Activity. (§ 948.055, Stats.)

Incest with a child. (§ 948.06, Stats.)

Child Enticement (§ 948.07, Stats.)

Soliciting a Child for Prostitution (§ 948.08, Stats.)

Exposing a child to harmful material (§ 948.11, Stats.)

Possession of Child Pornography (§ 948.12, Stats.)

Child Sex Offender Working with Children (§ 948.13, Stats.)

The statute numbers listed above are for reference purposes only. In the event one or more of the crimes listed above are renumbered or categorized differently by an act of the legislature, the Applicant shall list those crimes for which the Applicant has been convicted that are similar in nature to those listed above.

- E. Nature and date of offense if the Applicant has charges pending or has been convicted of an offense under a statute analogous to those listed in D., above, in a state other than Wisconsin, or under an analogous ordinance of another municipal entity.
 - F. A statement that the Applicant is familiar with the provisions of this Section and is in compliance with them.
 - G. A list of other similar or analogous Adult Entertainer or Employee licenses issued by any other municipalities, the name and state of the municipality and the status of the license.
4. Each application shall be signed by the Applicant.
 5. Each application shall be accompanied by payment of the license fee of \$50.00 Filing of the application does not occur until this fee has been paid.
 6. The Town Clerk shall date the filing of the application upon the face of the application.
 7. Upon receipt of the application, the Town Clerk shall immediately distribute a copy of the application to the Town Police Department and the Town Board.
 8. The Town Police Department shall notify the Town Board in writing of any information bearing on the Applicant's qualifications as required herein, within 20 business days of the filing of the application.
 9. The Town Board shall within 45 days of the filing of the application with the Town Clerk, either issue the license or deny the application after reviewing the application for compliance with the licensing standards found in this ordinance. If the Board fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.
 10. If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day.

11. If the Town Board decides to deny the application for a license, the Board shall notify the Applicant in writing of the reasons for denial. Such notice shall be sent to the Applicant within 5 days of the decision by certified mail, return receipt requested.

12. Any Applicant aggrieved by such a decision of the Town Board shall be entitled to immediately appeal the Board's decision in circuit court. Such an appeal must be made within 30 days of the receipt by the Applicant of the written decision of the Board. The Town explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, and to provide the review procedures described in this Section.

(d) PROCEDURES FOR ALTERATIONS OF LICENSED PREMISES. Following the granting of a license any licensee who wishes to alter any aspect of the licensed premises which was required to be described in the building plan, site plan or plan of operations required under this Section, shall be required to apply for a new license.

(e) LICENSING STANDARDS FOR INITIAL LICENSES. The Town Board shall grant an initial license to an Applicant unless it finds one or more of the following to be true:

1. The Applicant is less than 18 years of age.
2. The Applicant has charges pending or has been convicted of violating a provision of this Section or an analogous ordinance of another municipality within the 5 years immediately preceding the date of application.
3. The Applicant has charges pending or has been convicted of a crime in any state or federal court where such crime is the same as or has substantially the same elements as the crimes specified in Subsections (4)(b)(3)(I) or (4)(c)(3)(D) of this Section; and if convicted, for which:
 - A. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense.
 - B. Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a felony offense;
 - C. Less than five years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses, or combination of misdemeanor offenses, occurring within any 24 month period.

The fact that an appeal has been taken from any of the above-mentioned convictions shall have no effect.

4. The Applicant provides false information on the application.
5. The Applicant fails to provide information, to post the required notice, or to

pay any fee required by this Section.

6. The Adult-Oriented Establishment does not submit plans which meet the requirements of Subsection (4)(b)(4).

(f) LICENSE EXPIRATION AND RENEWAL

1. Transfer of Ownership or Control of an Adult-Oriented Establishment shall result in automatic expiration of the existing license. Upon transfer of Ownership or Control, the procedures for a new license application must be followed. In order to ensure continuous operation, such procedures may also be commenced by a new Applicant prior to the expiration of the prior license.
2. Every license issued pursuant to this Section will terminate upon the expiration of one year from the date of issuance unless sooner revoked. Any licensee desiring to renew an initial license shall make application to the Town Clerk. The application procedures governing new licenses shall be followed by an Applicant for a renewal license except for those found in Subsection (4)(b)(8). The application fee for a renewal license shall be \$300.00 for an Adult-Oriented Establishment license and \$50.00 for an Employee license.
3. Any licensee desiring to renew an initial license shall file the application for renewal no later than 60 days before the license expires. Any licensee who fails to apply for a renewal license at least 60 days before the license expires shall pay the same fee as if the licensee were applying for an initial license.
4. An existing license shall be allowed to continue until such time as the Town Board acts upon the renewal license application. If the Board fails to act upon the license application within 45 days of the filing of the application with the Clerk, then the license shall be deemed granted.
5. The Town Board will not expedite the renewal procedure to ensure that a license will not expire when the expiration of the license is due to the licensee's untimely filing of a renewal application. Upon expiration of a license under these circumstances, the licensee is prohibited from operating or serving as an employee until the new license is granted.
6. A license may not be renewed if the Board, following the procedures found in this Section, finds that a violation of this Section has occurred or that the applicant is not qualified to hold the license.
7. If the license is granted by the Town Board, then the Town Clerk shall issue the license on the next business day.

(5) LOCATION OF ADULT-ORIENTED ESTABLISHMENTS. If all the requirements for a license as stated in this regulation are met, an Adult-Oriented Establishment shall only be allowed to locate in the zoning district(s) provided for by the Town and shall not be allowed to locate in any other district.

(6) OPERATION OF ADULT-ORIENTED ESTABLISHMENTS.

- (a) No Adult-Oriented Establishment is permitted to operate between the hours of 2 a.m. and 8 a.m. Further, no Adult-Oriented Establishment is permitted to operate between the hours of 8 a.m. and midnight on any Sunday or legal holiday as

defined in § 895.20, Wis. Stats.

- (b) No Operator or Employee of an Adult-Oriented Establishment shall permit to be performed, offer to perform, perform or allow patrons to perform any Specified Sexual Activity in the establishment or on the site. This provision does not apply to Adult Motels, to the extent that such Specified Sexual Activity is not prohibited by law.
- (c) No Operator or Employee of an Adult-Oriented Establishment shall allow any minor to enter into, loiter around or to frequent an Adult-Oriented Establishment or 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 10 foot candles of illumination in the Public Areas of the establishment with the following exceptions:
 - 1. In a booth, room, or cubicle, if a lesser level of illumination is necessary to enable a patron to view the Adult Entertainment but at no time shall there be less than .01 foot candle of illumination as measured 30" from the floor;
 - 2. In an aisle adjacent to a booth, room, or cubicle, if a lesser amount of illumination is necessary to allow the occupant to view the Adult Entertainment, but at no time shall there be less than one and 2 foot candle of illumination as measured 30" from the floor.
 - 3. Adult Theaters must maintain 5 foot candles of illumination in the auditorium during intermission and no less than .01 foot candles during a picture as provided for in Wis. Adm. Code Comm. § 73.07(6).
- (f) All Employees while engaged in the display or exposure of any Specified Anatomical Area, shall maintain a six-foot distance from any patron or other Employee.
- (g) No restroom shall be designed, operated or maintained so that a patron can view Adult Entertainment therein.
- (h) No operator or Employee shall, or shall knowingly allow another, to appear in a state of partial or total nudity on the premises of an Adult-Oriented Establishment, unless the person is an employee of the operator's establishment who, while in a state of partial or total nudity, is on a stage (on which no customer or patron is present) at least eighteen (18) inches above the floor, and such employee is either:
 - 1. At least six (6) feet from any customer or patron; or
 - 2. Physically separated from patrons by a wall or partition composed of solid glass or light-transmitting plastic or substantially equivalent material extending from the floor of the performance stage to at least five (5) feet above the level of the performance stage, but such that there are no openings in the wall or partition that would permit physical contact between customers or patrons and such employee.
- (i) No Employee, while in a state of partial or total nudity on the premises of an adult oriented establishment shall receive directly any pay or gratuity from any patron

or customer and no patron or customer shall pay or give any gratuity directly to any employee, while that employee is in a state of partial or complete nudity in an adult oriented establishment. Such gratuity or pay may be provided to such employee through a tip receptacle, located more than six (6) feet from the nearest point of the performance stage where such employee is in a state of partial or complete nudity, or may be paid to an employee that is not in a state of partial or complete nudity, as part of the customer's bill.

- (j) No employee of an adult oriented establishment while on the premises shall, while in a state of partial or complete nudity, touch a customer or patron or the clothing of a customer or patron.
- (k) No customer or patron of an adult oriented establishment shall touch an Employee appearing in a state of partial or complete nudity or touch the clothing of the Employee while such Employee is on the premises.
- (l) Employees shall maintain a minimum distance of five feet from areas on the adult oriented establishment's premises being occupied by customers for a minimum of one hour after such Employee appears in a state of partial or complete nudity on the establishment's premises. This regulation is not intended to prohibit ingress or egress from the premises or the employee's use of a common restroom. It is, however, intended to control illicit sexual contact and reduce the incidents of prostitution occurring in any adult oriented establishment. Regulating a reasonable delay between the times entertainers appear in a state of partial or complete nudity and their commingling with customers is a narrowly tailored furtherance of this interest.
- (m) No Employee or patron in an Adult Cabaret shall be permitted to have physical contact with any Employee or patron on the premises.
- (n) The selling, serving, possession, or consumption of alcohol beverages is strictly prohibited at all times in all Adult-Oriented Establishments.
- (o) No Employee or Operator shall knowingly work in or about, or knowingly perform any service directly related to the operation of any unlicensed Adult-Oriented Establishment.
- (p) All Employees shall carry their license upon their person at all times while working in the Adult-Oriented Establishment and shall produce said license upon demand for inspection by any law enforcement authority. Entertainers are exempt from carrying their license upon their person while providing entertainment, but shall be readily able to produce said license upon demand for inspection by any law enforcement authority.
- (q) The license for the Adult-Oriented Establishment shall be displayed in a conspicuous public place in the Adult-Oriented Establishment.
- (r) No Employee, Operator, or owner may refuse any law enforcement official or building inspector entry into an Adult-Oriented Establishment for purposes of inspecting the Adult-Oriented Establishment for compliance with these operational standards or any other applicable statute(s), regulation(s), or ordinance(s) during business hours, or at other times at a reasonable hour, with reasonable notice.

- (s) The Operator shall be responsible for compliance with the provisions of this section by the Adult-Oriented Establishment, its Employees and patrons.
- (t) Every act or omission by any Employee constituting a violation of the provisions of this section 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, and the Operator shall be accountable for such act or omission in the same manner as if Operator committed the act or caused the omission.

(7) DESIGN AND LAYOUT.

- (a) EXTERNAL VISIBILITY. At no time should any Adult Entertainment inside the premises be visible to any persons who are outside the premises.
- (b) BOOTHS. Any Adult-Oriented Establishment having available for patrons any booth, room or cubicle for the private viewing of 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 non-Public Areas by a wall.
 - B. All walls shall be solid and without any openings, extended from the floor to a height of not less than 6' and be light colored.
 - C. 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.
 - D. Booths must be separated at least twelve (12) inches from the exterior walls of any other viewing booths by open space.
 - 3. Visibility. The interior of the booth, room or cubicle shall not be blocked or obscured by doors, curtains, partitions, drapes or any other obstruction whatsoever.
 - 4. Lighting. Lighting for booth, room or cubicle shall comply with the provisions of Section (6) (e) of this ordinance.
 - 5. Occupants. Only one individual shall be permitted to occupy a booth, room or cubicle at any time. No occupant of the booth, room or cubicle, shall be permitted to engage in any Specified Sexual Activity, cause any bodily discharge or litter while in the booth. No individual shall be permitted to damage or deface any portion of the booth.
 - 6. Exception. This subsection does not apply to the individual rooms located in Adult Motels.

(c) UNENCLOSED STAGE MARKING. A two-inch wide line shall be prominently and continuously displayed on the floor such that said line is clearly visible at all times, including in the dark, marking a distance of six feet (6') from each unenclosed stage on which an employee in a state of partial or total nudity may appear. For purposes of this provision, an "unenclosed stage" is a stage that is not physically separated from customers or patrons by a solid clear transparent unbreakable glass or Plexiglas wall with no openings that would permit physical contact with customers or patrons.

(d) REQUIRED SIGNAGE. A sign shall be continuously and conspicuously posted on the interior of the adult oriented establishments at each entrance where customers or patrons enter the premises and adjacent to each stage that states, in letters at least two inches high, "TOUCHING OR TIPPING AN EMPLOYEE WHO IS IN A STATE OF NUDITY IS A VIOLATION OF SECTION 12.08 OF THE TOWN OF DELAFIELD ORDINANCES, PUNISHABLE BY A FORFEITURE OF UP TO \$1,000.00. PATRONS SHALL REMAIN AT LEAST SIX FEET FROM ALL UNENCLOSED PERFORMANCE STAGES."

(8) EXCLUSIONS. The provisions of this Section relating to the licensing of Adult-Oriented Establishments shall not apply to:

(a) Any private or public school as defined in Ch. 115, Wis. Stats., located within the Town when instructing pupils in sex education as part of its curriculum.

(b) Any business operated by or employing a licensed psychologist, licensed physical therapist, licensed masseuse, licensed vocational nurse, registered nurse, licensed athletic trainer, licensed cosmetologist, or licensed barber provided such business and licensed individual are only engaged in performing the normal and customary functions authorized under the license held;

(c) Any business operated by, or employing a licensed physician or licensed chiropractor while engaged in licensed activities;

(d) Any retail establishment whose principal business is the offering of wearing apparel for sale to customers and that does not exhibit merchandise on live model(s); or

(e) A class that satisfies all of the following requirements:

1. The class is conducted or sponsored by a school licensed by the State of Wisconsin, a college, junior college or university supported entirely or partly by taxation, or a private college or university that maintains or operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;
2. The class is, at all times, situated in a structure that has no sign or other advertising visible from the exterior of the structure indicating a nude or partially nude person is available for viewing;
3. In order to participate in such class, a student must enroll at least three (3) days in advance of the class; and
4. No more than one (1) nude or partially nude model is on, depicted, or displayed at any one time.

(9) ENFORCEMENT.

(a) LICENSE NON-RENEWAL, SUSPENSION OR REVOCATION

1. CAUSES FOR LICENSE NON-RENEWAL, SUSPENSION OR REVOCATION. The Town Board may refuse to renew, suspend or revoke a license for any violations of this Section or if the applicant is not qualified to hold the license.
2. LICENSE NON-RENEWAL, SUSPENSION AND REVOCATION PROCEDURES.
 - A. In order to commence the procedure for a license non-renewal, suspension or revocation, the Town shall notify the licensee in writing by certified mail, return receipt requested, of the alleged violation or cause and the intent of the Town to seek a non-renewal, suspension or revocation of the license.
 - B. The licensee shall be entitled to a public hearing before the Town Board regarding the license non-renewal, suspension or revocation, upon written request to the Town Clerk within 10 days of receipt of the notification required in sub. A.
 - C. Any public hearing requested pursuant to sub. B., shall take place within 10 days of the filing of such written request.
 - D. At the hearing both the Town and the aggrieved party may be represented by an attorney, present evidence, call and examine witnesses, cross-examine witnesses of the other party, and make opening and closing statements. Such witnesses shall be sworn. The Town Chairperson shall be the presiding officer at the hearing.
 - E. Attorneys may issue subpoenas to compel attendance of witnesses or the production of evidence. Subpoenas issued must be in substantially the same form as provide in '805.07(4), Wis. Stats., and must be served in the manner provided in § 805.07(5), Wis. Stats. Copies of the subpoenas must be served on the opposing party.
 - F. The Board shall cause the proceedings to be recorded by a stenographer, the expense thereof to be paid by the Town. Costs for copies of any transcripts or transcription of a recording shall be paid by the party requesting the transcript or transcription. All exhibits shall be marked and preserved.
 - G. Within 10 days of the completion of any hearing the Town Board shall determine if cause for non-renewal, suspension or revocation exists. If no public hearing is requested, the Town Board shall make a determination within 20 days of the notification date.
 - H. The Town Board shall issue its determination in writing and provide it within 5 days to the licensee by certified mail, return

receipt requested.

- I. If a license period expires while a non-renewal, suspension or revocation procedure is pending, then the non-renewal, suspension or revocation of any license shall be stayed pending the issuance of a determination by the Town Board. The non-renewal, suspension or revocation of a license shall become effective thirty days following the issuance of a decision by the Town Board, if judicial review is not commenced as provided in this Section.
- J. If judicial review of such determination by the Town Board is timely commenced, then license non-renewal, suspension or revocation shall not become effective until judgment is entered.
- K. Any Person aggrieved by such a decision of the Town Board shall be entitled to immediately appeal the Board's decision in circuit court. Such an appeal must be made within 30 days of the licensee's receipt of the written decision by the Board. The Town explicitly elects not to be governed by Chapter 68, Wisconsin Statutes, and to provide the review procedures described in this Section.
- L. Any Person whose license is non-renewed, suspended or revoked shall not be eligible to receive a license for a period of five years from the effective date of the suspension or revocation.

(b) VIOLATIONS.

- 1. **PENALTIES.** Any Person who violates this Section will be subject to a monetary forfeiture in the amount of \$500.00 plus the costs of prosecution for each violation. Each day that each violation exists shall constitute a separate violation and be punishable as such.
- 2. **INJUNCTION.** Compliance with the provisions of this Section may also be enforced by an injunction properly issued by a court of competent jurisdiction upon the request of the Town.
- 3. **NON-EXCLUSIVITY.** The imposition of any penalty under this Section or the seeking of an injunction shall not impair the right of the Town to seek a non-renewal, suspension or revocation of a license as provided in this Section.

12.10 PENALTY.

In addition to the suspension, revocation or renewal of any license issued under this chapter, any person found to be in violation of any provision of this chapter shall be subject to a penalty as provided in § 25.04 of this General Code.


SECTION 2: The several sections of this ordinance are declared to be severable. If any section or portion thereof shall be declared by a court of competent jurisdiction to be invalid, unlawful, or unenforceable, such decision shall apply only to the specific section or portion thereof directly specified in the decision, and shall not affect the validity of any

other provisions, sections or portions thereof of this ordinance. The remainder of the ordinance shall remain in full force and effect. Any other ordinances having terms in conflict with the provisions of this ordinance are hereby repealed as to those terms that conflict.


SECTION 3: This ordinance shall take effect and be in full force the day after its posting.

Passed and approved this 11th day of October, 2011.

Town of Delafield

By: 
Paul Kanter, Town Chairman

ATTEST:


Mary Elsner, Town Clerk