

TOWN OF BYRON

FOND DU LAC COUNTY, WISCONSIN

ADULT-ORIENTED ESTABLISHMENTS ORDINANCE

IT IS HEREBY ORDAINED by the Town Board of the Town of Byron, Fond du Lac County, Wisconsin as follows:

FINDINGS AND PURPOSE

Several studies have documented the significant adverse secondary effects on surrounding communities caused by adult-oriented establishments. The Town Board has considered the following studies:

- Crime-Related Secondary Effects of Sexually-Oriented Businesses by Richard McCleary finding that criminal activity is higher near adult-oriented establishments.
- Report by Beaumont, Texas City Planning Department finding that criminal activity is higher at adult-oriented establishments.
- Report by Cleveland, Ohio Police Department showing higher rates of crime in areas near adult-oriented establishments.
- Report by Los Angeles, California Department of City Planning concluding that crime rates are higher in areas of concentrated adult-oriented establishments.
- Report by City of Toledo, Ohio finding that adult-oriented establishments account for a disproportionate amount of crime, particularly adult-oriented establishments featuring live entertainment.
- Report by City of Austin, Texas finding that crime rates are higher where adult-oriented businesses are concentrated.
- Report by Tucson, Arizona Police Department Investigative Services detailing the widespread presence of bodily fluids present in adult-oriented establishment viewing booths.
- Effects of Adult Entertainment Businesses on Residential Neighborhoods prepared by the El Paso Department of Planning Research & Development showing increased sexual dangers for children, pornography in the schools, exposure of minors to adult entertainment, declining property values, and public drunkenness associated with adult-oriented establishments.
- Letter from Thomas O'Loughlin, Chief of Milford Massachusetts Police, indicating the increased rates of crime when adult-oriented establishments locate near businesses serving alcohol.
- Do "Off-Site" Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence by Richard McCleary and Alan Weinstein concluding that adult-oriented establishments that sell products solely for off-site use cause significant crime-related secondary effects.
- Study of Calls for Service to Adult Entertainment Establishments which Serve Alcoholic Beverages by Fulton County Georgia Police Department explaining the increased risk of crime when adult-oriented establishments are permitted to serve alcoholic beverages.
- Rural Hot Spots: The Case of Adult Businesses by Richard McCleary explaining that although most studies regarding adult-oriented establishments are conducted in urban settings, the results can be translated to rural areas.
- Secondary Effects of Sexually-Oriented Businesses, Testimony on Missouri House Bill 1551 by Richard McCleary, explaining that limiting hours of operation for adult-oriented establishments reduces ambient crime risk.

The Town Board recognizes these negative secondary effects and also recognizes that the presence of alcohol in adult-oriented establishments causes further undesirable behavior.

The Town Board believes that the experiences and studies of other communities set forth above are relevant in addressing the secondary effects of adult-oriented establishments in the Town of Byron.

The regulations in this Ordinance are not aimed at the content of any speech. Rather, this Ordinance has the purpose and effect of controlling the negative secondary effects of adult-oriented establishments while avoiding regulation of content.

This Ordinance is not intended to prohibit adult-oriented establishments from operating in the Town of Byron. It is only intended to regulate their location and manner of operation while providing a reasonable opportunity for such establishments to exist. This Ordinance is also intended to regulate the proximity of adult-oriented establishments to certain sensitive land uses.

The Town Board concludes:

- (a) All adult-oriented establishments regulated by this Ordinance have adverse secondary impacts.
- (b) The adverse secondary impacts of adult-oriented establishments tend to diminish if such establishments are governed by content-neutral regulations.
- (c) The consumption of alcoholic beverages on the premises of an adult-oriented establishment exacerbates the negative secondary effects of such establishments.

DEFINITIONS

(a) "Adult-oriented establishment" shall include, but is not limited to, "adult bookstores," "adult motion picture theatres," "adult mini-motion picture establishments" or "adult cabarets," and further means any premises to which public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments or stalls separate from the common area of the premises for the purposes of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated, or maintained for profit, direct or indirect. "Adult-oriented establishment" also includes the physical location from which adult entertainment is broadcast.

(b) "Adult bookstore" means a retail establishment that has:

(1) As a substantial or significant portion of its business the sale or rental of, or a substantial or significant portion of its stock in trade for sale or rental of:

(i) Publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified anatomical areas or specified sexual activities, as defined in this section; and/or

(ii) Sexually-oriented devices, as defined in this section

(2) As used in this definition, publications include, by way of illustration, books, magazines, other periodicals, movies, videotapes, DVDs, and other products offered in photographic, electronic, magnetic, digital, or other imaging medium.

(3) Any of the following shall be indicia that an establishment has as one of its principal business purposes the sale or rental of: (1) publications which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, and/or (2) sexually-oriented devices, as defined in this section:

(i) The business advertises the sale or rental of adult publications including but not limited to "x-rated" movies and/or sexually-oriented devices;

(ii) Access by persons under eighteen (18) years of age to the business establishment or portions of the business establishment is restricted;

(iii) Signs or notices are posted outside and/or inside the business establishment indicating that the material offered for sale or rental might be offensive;

(iv) The building or portion of the building containing the business establishment does not have windows or has windows that are screened or otherwise obstructed or are situated in a manner that restricts visual access from outside the building to materials displayed within for sale or rental

(v) The above factors shall be considered along with all other factors and available information

(4) Notwithstanding the foregoing, a general circulation video store that does not offer for sale any sexually-oriented devices shall not constitute an “adult bookstore” even though it offers for sale and/or rental videotapes or DVDs which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified anatomical areas or specified sexual activities, as defined in this section, so long as:

(i) Such described videotapes or DVDs are stocked and displayed in a room separate from the area of the business establishment where general circulation videotapes or DVDs are stocked and displayed;

(ii) Access by persons under eighteen (18) years of age to the room where such described videotapes or DVDs are stocked and displayed is restricted;

(iii) The square footage of the separate room where such described videotapes or DVDs are stocked and displayed is no more than ten (10) percent of the square footage of the area where general circulation videotapes or DVDs are stocked and displayed; and

(iv) The general circulation videotapes or DVDs portion of the business establishment offers a quantity and selection of new release general circulation videotapes or DVDs that is typical of a general circulation video store and offers a quantity and selection of other general circulation videotapes or DVDs that are organized and displayed in a manner that is typical of a general circulation video store.

(c) “Adult cabaret” means an establishment that regularly features dancers or other entertainers who provide live adult entertainment, including but not limited to floor shows, exotic dancing, male or female impersonators, or similar entertainment and engage in a private performance, act as private models, display or expose any specified anatomical area(s) to a patron or customer, or wear or display to a customer any covering, tape, pastie, or other device which simulates or gives the appearance of the display or exposure of any specified anatomical area.

(d) “Adult entertainment” means any exhibition of any motion picture, live performance, display or dance of any type, which is distinguished or characterized by an emphasis on any actual or simulated performance of “specified sexual activities” or exhibition and viewing of “specified anatomical areas,” as defined below, appearing unclothed, or the removal of articles of clothing to reveal “specified anatomical areas.”

(e) “Adult mini-motion picture theater” means a commercial establishment with one or more adult mini motion picture booths where:

(1) A substantial or significant portion of business is the presentation and viewing in viewing booths of still or motion pictures that are distinguished or characterized by their emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas,” as defined below, for observation by patrons therein; or

(2) A substantial or significant portion of the stock of still or motion pictures available for viewing or that are actually viewed in the viewing booths are distinguished or characterized by their emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas,” as defined below.

(3) Any of the following shall be indicia that a business establishment has as one of its principal business purposes the presentation and viewing in viewing booths still or motion pictures which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to “specified sexual activities” or “specified anatomical areas,” as defined below:

(i) Restricted access to the business establishment or portions thereof where viewing booths are located by persons under eighteen (18) years of age

(ii) Posted signs or notices outside and/or inside the business establishment indicating that the material offered for presentation and viewing in the viewing booths might be offensive

(iii) the above factors shall be considered along with other available information

(f) "Adult motion picture theatre" means an enclosed building in which a substantial or significant portion of business involves 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," for observation by patrons therein.

(g) "Sexually-oriented device" means any three (3) dimensional object designed and marketed for stimulation of the male or female human genitals, anus, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

(h) "Specified anatomical areas" means:

(1) Less than completely and opaquely covered:

(i) Human genitals, pubic region; or

(ii) Showing the areola or nipple of a female breast.

(2) Human male genitals in a discernible turgid state, even if opaquely covered

(i) "Specified sexual activities" means simulated or actual:

(1) Showing of human genitals in a state of sexual stimulation or arousal;

(2) Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, or cunnilingus;

(3) Fondling or erotic touching of human genitals, public region, or areola or nipple of a female breast;

(4) Excretory functions, as part of or in connection with any of the activities set forth in subsections 1 through 3 above

LICENSE

(a) Except as provided in subsection (e) below, from and after the effective date of this ordinance, no adult-oriented establishment shall be operated or maintained in the Town of Byron without first obtaining a license to operate issued by the Town Board.

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

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

(d) It shall be unlawful for any entertainer, employee or operator to knowingly work in or to knowingly perform any service directly related to the operation of any adult-oriented establishment which does not have a valid license pursuant to this ordinance.

(e) Nothing in this ordinance shall be construed as to permit material or performances prohibited by Wis. Stat. § 944.21.

APPLICATION FOR LICENSE

(a) Any person, partnership, or corporation desiring to secure a license shall make application to the Town Board.

(b) An applicant for a license, interested directly in the ownership or operation of the business, shall furnish the following information under oath:

(1) The name (including all aliases) and date of birth of the applicant and any partner or limited partner in a partnership applicant; and any shareholder holding more than ten (10%) percent of the stock of a corporate applicant and each corporate officer and director.

(2) Written proof that any person required to be named under paragraph (b)(1) is at least eighteen (18) years of age

(3) A description of the activities to be conducted on the premises. If any booth, room or cubicle for private viewing of any adult entertainment is intended, a sketch or other adequate description of the premises is required.

(4) The address of the adult-oriented establishment to be operated by the applicant.

(5) Whether any person required to be named under paragraph (b)(1) is currently operating, or has previously operated, in this or any other County, City, or State under an adult-oriented establishment license or similar business license or permit; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.

(6) If the applicant is a corporation, the application shall also specify the name of the corporation, the date and state of incorporation, and the name and address of the registered agent.

(c) Within 45 days of receiving an application for a license, the Town Board shall notify the applicant whether the application has been denied or granted.

(d) Whenever an application is denied, the Town Board shall advise the applicant in writing of the reasons for such action. The applicant may request a review of the denial pursuant to Chapter 68 of the Wisconsin Statutes, as amended from time to time.

(e) Failure or refusal of the applicant to give any information relevant to the investigation of the application or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or the applicant's refusal to submit to or cooperate with any investigation required by this ordinance shall be grounds for denial of the application.

STANDARDS FOR ISSUANCE OF LICENSE

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

(1) If the applicant is an individual:

(i) The applicant shall be at least eighteen (18) years of age

(ii) The applicant shall not have been found to have previously violated this ordinance or any similar adult-oriented establishment ordinance within five (5) years immediately preceding the date of application

(iii) The applicant shall not have been convicted of any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of application, unless the person has been duly pardoned.

(2) If the applicant is a corporation:

(i) All officers, directors, shareholders, and agents required to be named under this ordinance are at least eighteen (18) years of age.

(ii) Neither the corporate applicant nor any officer, director, or shareholder required to be named under this ordinance shall have been found to have previously violated this ordinance or any similar adult-oriented establishment ordinance within five (5) years immediately preceding the date of application.

(iii) No officer, director, shareholder or agent required to be named under this ordinance, or the corporate applicant, shall have been convicted of any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of the application, unless the person or applicant has been duly pardoned.

(3) If the applicant is a partnership, joint venture, or any other type of organization where two (2) or more persons have a financial interest:

(i) All persons having a financial interest in the partnership, joint venture, or other type of organization shall be at least eighteen (18) years of age.

(ii) Neither the applicant nor any person having a financial interest in the organization shall have been found to have violated any provision of this ordinance or any similar adult-oriented establishment ordinance within five (5) years immediately preceding the date of application.

(iii) No applicant or person having a financial interest in the partnership, joint venture, or other type of organization shall have been convicted of any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of application, unless the person or applicant has been duly pardoned.

FEES

(a) A license fee shall be submitted with the application for the license in the amount specified by resolution.

DISPLAY OF LICENSE

(a) The license shall be displayed in a conspicuous, public place in the adult-oriented establishment

RENEWAL OF LICENSE

(a) Every license issued pursuant to this ordinance will terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year. Any operator desiring to renew a license shall make application to the Town Board. The application for renewal shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

(b) A license renewal fee in the amount specified by resolution shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty in an amount specified by resolution shall be assessed against the applicant who files for a renewal less than forty five (45) days before the license expires.

(c) If any law enforcement agency is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the Town Board.

REVOCATION, SUSPENSION, AND NON-RENEWAL OF LICENSE

(a) A license issued under this ordinance may be suspended or revoked for any of the following reasons:

(1) Discovery that false or misleading information or data was given on any application or material facts were omitted from any application

(2) The operator, entertainer, or any employee of the operator, violates any provision of this ordinance or any rule or regulation adopted by the Town Board pursuant to this ordinance; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee or customer, the penalty shall not exceed a

suspension of thirty (30) days if the Town Board shall find that the operator had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

(3) The operator becomes ineligible to obtain a license

(4) Any cost of fee required to be paid by this ordinance is not paid

(5) Any intoxicating liquor or fermented malt beverage, narcotic or controlled substance is served or consumed on the premises of the adult-oriented establishment

(6) Any operator, employee or entertainer sells, furnishes, gives, or displays, or causes to be sold, furnished, given, or displayed to any minor any adult-oriented entertainment or adult-oriented material.

(b) The transfer of a license or any interest in a license shall automatically and immediately revoke the license

(c) Any operator whose license is revoked and who seeks to obtain a new license under this ordinance must apply for a license or permit according to the new license application provisions set forth in this ordinance and must meet the standards for the issuance of a new license as set forth in this ordinance. No location or premises for which a license has been revoked shall be used as an adult-oriented establishment for six (6) months from the date of revocation.

LOCATION

(a) No adult-oriented establishment shall be located:

(1) Within 1000 feet of a residence.

(2) Within 500 feet of an existing adult-oriented establishment.

(3) Within 1000 feet of any pre-existing school, church, or day care center.

(4) Within 500 feet of any pre-existing establishment licensed to sell or dispense fermented malt beverages or intoxicating liquor.

(b) For purposes of this section, distances are to be measured in a straight line, without regard to intervening structures or objects, from the property line of the adult-oriented establishment, to the nearest property line of another adult-oriented establishment, school, place of worship, or residential district or establishment selling or dispensing fermented malt beverages or intoxicating liquor.

HOURS OF OPERATION

(a) No adult-oriented establishment shall be open between the hours of 2 a.m. and 8 a.m., Monday through Friday, or between the hours of 2:30 a.m. and 8 a.m. on Saturdays and Sundays

PHYSICAL LAYOUT OF ADULT-ORIENTED ESTABLISHMENT

(a) 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. Each booth, room, or cubicle shall be viewable from the public area of the adult-oriented establishment.

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

(1) Each booth, room, or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-public areas by a wall

(2) Each booth, room, or cubicle shall have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth, room, or cubicle

(3) All walls shall be solid and without any openings, extended from the floor to a height of not less than six (6) feet and be light colored, non-absorbent, smooth textured, and easily cleanable

(4) The floor must be light colored, non-absorbent, smooth textured, and easily cleanable

(5) The lighting level of each booth, room, or cubicle shall be a minimum of ten (10) foot candles at all times, as measured from the floor

(c) Only one individual shall occupy a booth, room, or cubicle at any time. No occupant of a booth, room, or cubicle shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth, room, or cubicle. No individual shall damage or deface any portion of the booth, room, or cubicle.

ALCOHOLIC BEVERAGES

(a) The sale, use, or consumption of any alcoholic beverages, fermented malt beverages, or intoxicating liquors on the premises of an adult-oriented establishment is prohibited.

RESPONSIBILITIES OF THE OPERATOR

(a) If an employee commits an act or omission constituting a violation of this chapter, either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission. Any such act shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, or renewed.

(b) No employee of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult-oriented establishment or to allow any minor to view adult entertainment.

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

(d) The operator shall maintain at least ten (10) foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room, or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one (1) foot candle of illumination in said aisles, as measured from the floor.

(e) The operator shall insure compliance of the establishment and its patrons with the provisions of this ordinance.

ADMINISTRATIVE PROCEDURE AND REVIEW

(a) Chapter 68 of the Wisconsin Statutes, as amended from time to time, shall govern the review regarding the granting, denial, renewal, non-renewal, revocation, or suspension of a license under this chapter. If an owner appeals the non-renewal, revocation, or suspension of a license, that owner will be granted a temporary license applicable while the appeal is pending.

EXCLUSIONS

(a) All public and private schools, as defined in Chapter 115 of the Wisconsin Statutes, are exempt from obtaining a license hereunder when instructing pupils in sex education as part of the curriculum.

(b) Licensed medical care facilities are exempt from obtaining a permit when engaged in the providing of medical care or sex education

PENALTIES AND PROSECUTION

(a) Any person, partnership, or corporation found to have violated this chapter shall have any license obtained hereunder revoked.

(b) In addition to the revocation of a permit issued under this ordinance, any person who shall violate any provision of this ordinance or who shall fail to obtain a permit as required hereunder shall upon conviction of such violation, be subject to a penalty of a civil forfeiture of not less than fifty (\$50.00) dollars nor more than five hundred (\$500.00) dollars, together with the costs of prosecution. Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this ordinance shall preclude the Town from maintaining any appropriate action to prevent or remove a violation of any provision of this ordinance.

SEVERABILITY

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

ENFORCEMENT

(a) Personnel of the Fond du Lac County Sheriff's Department shall have the authority to enter any adult-oriented establishment to inspect the premises and enforce this ordinance. Such inspections shall be limited to public areas and may only be conducted during business hours.

DISCONTINUATION OF OPERATION

(a) Any discontinuation in the operation of an adult-oriented establishment for a period of twelve (12) months or more shall cause the license to lapse and become void. A license holder whose license has lapsed in this manner shall thereafter be subject to the procedures applicable to the issuance of new licenses.

EFFECTIVE DATE

(a) This ordinance shall take effect and be in force upon its passage and publication as required by law.

Adopted this _____ day of _____, 2011.

TOWN OF BYRON

By: _____

Bob Simon, Town Board Chairperson

Attest:

Kay Oestreich, Town Clerk