

Chapter 186

Licensing & Regulation of Adult-Oriented Establishments

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[HISTORY: Adapted by the Village Board of the Village of Fall Creek on 9-13-2007. Amendments noted where applicable.]

§ 186-1. Purpose

WHEREAS, it is a lawful purpose of the Village Board of the Village of Fall Creek to enact regulatory ordinances protecting and promoting the general welfare, orderly conduct, health, and safety of its citizens; and

WHEREAS, the Village Board of the Village of Fall Creek believes that it is in the best interests of the health and safety of the citizens of the Village of Fall Creek to regulate and thereby diminish the dangerous secondary effects that accompany adult-oriented establishments; and

WHEREAS, these dangerous and negative secondary effects associated with adult-oriented businesses include, but are not limited to, increased criminal activity of both a sexual and violent nature; lowered property values, urban blight and a loss of pride in a community, and an increase in sexually transmitted diseases; and

WHEREAS, the Village Board of the Village of Fall Creek has knowledge of studies conducted by Phoenix, Arizona; Whittier, California; Adams County, Colorado; Indianapolis, Indiana; New York, New York; New Hanover County, North Carolina; Austin, Texas; Beaumont, Texas; Dallas, Texas; El Paso, Texas; and Newport News, Virginia, that indicate that adult-oriented establishments have either a strong or a direct correlation to increased crime; and

WHEREAS, a Land Use Study conducted by the City of Phoenix, Arizona, that concentrated on the link between adult-oriented establishments and their relation to increased crime found that the number of sex offenses was five hundred and six percent (506%) percent greater in neighborhoods where adult-oriented establishments were located, and which also concluded that the crimes of rape, lewd and lascivious behavior and child molestation were one hundred and thirty-two (132%) percent greater in neighborhoods in which adult-oriented establishments were located;

WHEREAS, the Village Board has knowledge of studies conducted by Garden Grove, CA, Los Angeles, CA, Indianapolis, IN, Minneapolis, MN, Las Vegas, NV, New York, NY, New

Hanover Co., NC, Oklahoma City, OK, Austin, TX, El Paso, TX, Newport News, VA and St. Croix Co., WI, that indicated a correlation between the location of adult-oriented establishments and decreased property values of the surrounding areas; and

WHEREAS, a study surveying 100 Oklahoma City Real Estate Appraisers concluded that a concentration of adult-oriented businesses may mean large losses in property values; and

WHEREAS, the Village Board has knowledge of studies conducted by Minneapolis, Minnesota; Ellicottville, New York; Islip, New York; New Hanover Co., North Carolina; Amarillo, Texas; and El Paso, Texas, which conclude that when adult-oriented establishments are allowed to concentrate in one area the negative secondary effects of adult-oriented establishments may be magnified; and

WHEREAS, the Ellicottville, New York, Village Board of Trustees found that isolation of adult-oriented establishments limits their negative secondary effects; and

WHEREAS, a report by the Islip, New York, Department of Planning found that the location of two adult-oriented establishments located near each other created a “dead zone” in an otherwise healthy business district; and

WHEREAS, a legislative report prepared by the Sexually Oriented Business Revision Committee for the Houston City Council concluded that due to criminal activity associated with adult-oriented establishments, licenses should be required of all adult-oriented establishment employees; and

WHEREAS, a report based on a memorandum from the Tucson Police Department Investigative Services to the City Prosecutor conducted by the city of Tucson, Arizona, dated May 1, 1990, concluded that police officers found a wide variety of illegal sexual conduct at all adult-oriented establishments and that virtually every establishment had employees arrested for prostitution or obscene sex shows and which found that one of the employees arrested for such acts was a 15 year old girl;

WHEREAS, a legislative report prepared by the Sexually Oriented Business Revision Committee for the Houston City Council concluded that the lack of clear lines of view, insufficient lighting and locked rooms decreases the ability of adult-oriented establishment owners, managers and employees from monitoring behavior and preventing lewd behavior on the part of customers, and that this is behavior which may lead to unsanitary conditions and the spread of communicable diseases; and

- (a) The purpose of this Ordinance shall be to license and regulate the operations and locations of adult-oriented establishments, as defined herein, within the limits of the Village of Fall Creek. As based upon the following recitation of issues involving such types of businesses, it is deemed to be in the best interests of the health, welfare and safety of the residents of the Village to adopt this ordinance, pursuant to the authority vested in the Village under § 61.34 (1), Wis. Stats.

- (b) Based in part upon the foregoing and with the purpose to diminish the negative secondary effects of adult-oriented establishments, defined as including, but not being limited to, maintenance of property values, protection of the quality of neighborhoods and commercial districts, the quality of life and the health, safety and welfare of residents of the Village, of adult-establishments, the following regulations are adopted.

§ 186-2. Definitions.

ADULT-ORIENTED ESTABLISHMENTS -- shall include, but no be limited to, “adult bookstores,” “adult motion picture theaters,” “adult mini-motion picture theaters,” “adult bath houses,” “adult massage parlors,” “adult modeling studios,” “adult body painting studios,” “adult novelty shops” and “adult cabarets.” It further means any premises to which public patrons or members are invited or admitted and which are physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect.

ADULT BOOKSTORE -- an establishment having as a substantial or significant portion of its stock in trade, for sale, rent, lease, inspection or viewing books, films, video cassettes, magazines or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or related to “specific anatomical areas” or “specified sexual activities,” as defined below.

ADULT MOTION PICTURE THEATER -- an enclosed building with a capacity of (25) or more persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to “specified sexual activities,” or “specified anatomical areas,” as defined below, for observation by patrons therein.

ADULT MINI-MOTION PICTURE THEATER -- an enclosed building with a capacity less than (25) persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to “specified sexual activities,” or “specified anatomical areas,” as defined below, for observation by patrons therein.

ADULT BATH HOUSES -- an establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity for engaging in specified sexual activities as defined in this ordinance.

ADULT MASSAGE PARLORS -- an establishment or business with or without sleeping accommodations which provides services of massage and body manipulation, including exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, not operated by a medical practitioner or professional physical therapist licensed by the State of Wisconsin and which establishment provides for its patrons the opportunity to engage in “specified sexual activity” as defined in this ordinance.

ADULT MODELING STUDIOS -- an establishment or business which provides the service of modeling for the purpose of reproducing the human body wholly or partially nude by means of photography, painting, sketching, drawing or otherwise.

ADULT BODY PAINTING STUDIOS -- an establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly or partially nude. For purposes of this ordinance, the adult bodypainting studio shall not be deemed to include a tattoo parlor.

ADULT NOVELTY SHOP -- an establishment or business having as a substantial or significant portion of its stock in trade in novelty or other items including movies, tapes, video, books, and any device, which are distinguished or characterized by an emphasis on, or designed for, specified sexual activity as defined herein or stimulating such activity.

ADULT CABARET -- a cabaret which features dancers, strippers, male or female impersonators, or similar entertainers, performing or presenting material having as its dominant theme, or distinguished or characterized by an emphasis on any actual or simulated “specified sexual activities” or “specified anatomical areas” as defined below.

ENTERTAINER -- means a dancer, stripper, impersonator or similar performer referred to in the definition of “adult cabaret”.

ADULT ENTERTAINMENT -- means any exhibition of any motion pictures, live performers, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated “specified sexual activities,” or “specified anatomical areas,” as defined below.

YOUTH CENTER -- any center that provides, on a regular basis, recreational, vocational, academic or social services for persons younger than 21 years old for those persons and their families.

SENSITIVE AREAS -- an area which could be negatively affected by being in close proximity to an adult oriented establishment, including but not limited to child care facilities, schools, places of worship, libraries, community centers, and recreation areas.

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.

SPECIFIED ANATOMICAL AREAS -- means:

- (1) Less than completely and opaquely covered human genital, pubic region, perineum, buttocks, female breasts below the point immediately above the top of the areola;
- (2) Human male genitals in a discernible turgid state, even if opaquely covered.

OPERATORS -- any person, association, partnership or corporation operating, conducting, maintaining or owning any adult-oriented establishment.

RESIDENTIAL DWELLING -- a building, or any portion of a building which is used as a place of residence for one or more families as one or more habitable units with facilities which are used for or available for use for living, sleeping, cooking and eating.

PLACE OF WORSHIP -- a church, synagogue or other building used as a place of congregating by any recognized religious group, body or affiliation.

§186-3. License.

- A. Except as provided in Sec. 186-5 below, from and after the effective date of this ordinance, no adult-oriented establishment shall be operated or maintained in the Village of Fall Creek without first obtaining a license to operate issued by the Village of Fall Creek.
- B. A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain place. Any person, partnership or corporation, which desires to operate more than one adult-oriented establishment, must have a license for each.
- C. No license or interest may be transferred to any person, partnership or corporation.
- D. All adult-oriented establishments existing at the time of the passage of this ordinance must submit an application for a license within ninety (90) days of passage of this ordinance. If an application is not received within said ninety (90) day period, then such existing adult-oriented establishment shall cease operations.

§ 186-4. Application for license.

- A. Any person, partnership or corporation desiring to secure a license shall make application to the Village Clerk. The application shall be filed in triplicate with and dated by the Village Clerk. A copy of the application shall be distributed promptly to the Village of Fall Creek Police Department and the applicant.

- B. The application for a license shall be upon a form provided by the Village Clerk. An applicant for a license interested directly in the ownership or operation of the business shall furnish the following information under oath:
- (1) Name and address;
 - (2) Written proof that the individual is at least eighteen (18) years of age;
 - (3) The exact nature of the adult-oriented use to be conducted and the address of the adult-oriented establishment to be operated by the applicant.
 - (4) If the applicant is a corporation, the date and state of incorporation, the name and address of the registered agent and the name and address of any shareholder(s) who individually or jointly owns or controls more than ten (10%) percent of the stock in said corporation and all persons responsible for the management and operation of the adult-oriented establishment;
 - (5) If the applicant is a partnership or joint venture or any other type of organization where two (2) or more persons have a financial interest, the application shall specify the name of the entity, the name and address of any general partner(s) and all persons responsible for the management and operation of the adult-oriented establishment.
- C. Within sixty (60) days of receiving an application for a license, the Village Clerk shall notify the applicant whether the application is granted or denied or whether the application period is being extended for another sixty (60) day period.
- D. Whenever an application is denied, the Village Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held before the Village Board.
- E. Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this ordinance shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial by the Village Clerk.

§ 186-5. Standards for issuance of license.

- A. To receive a license to operate an adult-oriented establishment, an application must meet the following standards:
- (1) If the applicant is an individual:
 - (a) The applicant shall be at least eighteen (18) years of age;

- (b) The applicant shall not have been found to have previously violated this ordinance or an ordinance of like terms in another jurisdiction or have been arrested or convicted for a violation for which licensure may be denied under §111.335, Wis. Stats., within five (5) years immediately preceding the date of the application.
- (2) If the applicant is a corporation:
 - (a) All persons required to be named under Section 186-4 B. (4) shall be at least eighteen (18) years of age.
 - (b) No person required to be named under Section 186-4 B. (4) shall have been found to have previously violated this ordinance or an ordinance of like terms in another jurisdiction or have been arrested or convicted for a violation for which licensure may be denied under §111.335, Wis. Stats., within five (5) years immediately preceding the date of the application.
 - (3) If the applicant is a partnership, joint venture or any other type of organization where two (2) or more persons have a financial interest:
 - (a) All persons required to be named under Section 186-4 B. (5) shall be at least eighteen (18) years of age.
 - (b) No person required to be named under Section 186-4 B. (5) shall have been found to have previously violated this ordinance or an ordinance of like terms in another jurisdiction or have been arrested or convicted for a violation for which licensure may be denied under §111.335 Wis. Stats., within five (5) years immediately preceding the date of the application.

§ 186-6. Fees.

A license fee of one thousand dollars (\$1,000.00) shall be submitted with the application for a license. If the application is denied, one-half (½) of the fee shall be returned.

§ 186-7. Display of license.

- A. The license shall be displayed in a conspicuous public place in the adult-oriented establishment.
- B. Licences of employees or agents that work in said establishment that relate to this license or establishment shall be displayed with the adult-oriented establishment license.

§ 186-8. 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 or the following June 30, whichever is earlier, unless sooner revoked, and must be renewed before operation is allowed in the following fiscal year. Any operator desiring to renew a license shall make application to the Village Clerk. The application for renewal must be filed ninety (90) days before the license expires. The application for renewal shall be filed in triplicate and dated by the Village Clerk. A copy of the application for renewal shall be distributed promptly to the Village Clerk and to the Police Department. The Clerk shall require complete information and data, given under oath or affirmation, as is required for an application for a new license.
- B. A license renewal fee of one thousand dollars (\$1,000.00) shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of five hundred dollars (\$500.00) shall be assessed against an applicant who does not file for a renewal ninety (90) days before the license expires. If the application is denied, one-half (½) of the total fees collected shall be returned.

§ 186-9. Suspension or revocation of license.

- A. The Village Board may revoke a license for any of the following reasons:
 - (1) Discovery that false or misleading information or data was given on any application or material acts were omitted from any application.
 - (2) The operator or any employee of the operator violated any provision of this ordinance or any rule or regulation adopted by the Village 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, the penalty shall not exceed a suspension of sixty (60) days if the Village Board shall find that the operation 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.
- B. The Village Board before revoking or suspending any license or permit, shall give the operator at least ten (10) days' written notice of the charges against the operator, and the opportunity for a public hearing before the Village Board.
- C. The transfer of a license or any interest in a license shall automatically and immediately revoke the license.

- D. Any operator whose license is revoked shall not be eligible to receive a license for one (1) year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for six (6) months from the date of revocation of the license.

§ 186-10. Physical layout of adult-oriented establishment.

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

- A. Access. Each booth, room or cubicle shall be totally accessible to and from aisle and public areas of the adult-oriented establishment and shall be unobstructed by any door, lock or other control-type devices.
- B. Construction. Every booth, room or cubicle shall meet the following construction requirements:
- (1) Each booth, room or cubicle shall be separated from adjacent booths, a rooms or cubicles and any non-public areas by a wall.
 - (2) Have at least one (1) side totally open to a public lighted aisle so that there is an unobstructed view at all time of anyone occupying the room.
 - (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, when not in use, shall be a minimum of ten (10) foot candles at all times, as measured from the floor.
- C. Occupants. Only one (1) individual shall occupy a booth, room or cubicle at any time. No occupant shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individuals shall damage or deface any portion of the booth.

§ 186-11. Responsibilities of the operator.

- A. Every act or omission by an employee constituting a violation of the provisions of this ordinance 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 punishable for such act or omission in the same manner as if the operator committed the act or cause the omission.

- B. Any act or omission of any employee that constitutes a violation of the provisions of this ordinance 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.
- C. No operator or employee of an adult-oriented establishment shall allow any minor to loiter nearby or to frequent an adult-oriented establishment or allow any minor to view adult entertainment as defined herein.
- D. The operator shall maintain the premises in a clean and sanitary manner at all times.
- E. The operator shall maintain at least 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.
- F. The operator shall insure compliance of the establishment and its patrons with the provisions of this ordinance.
- G. No operator shall suffer, allow or permit any employee or entertainer and no employee or entertainer shall intentionally touch the clothed or unclothed body of any patron or customer at the establishment premises, at any point below the neck and above the knee of the person, excluding that part of the person's arm below the wrist, commonly referred to as the hand. It shall further be unlawful for any patron or customer in or upon the establishment premises, to touch any portion of the clothed or unclothed body of an operator, employee or entertainer below the neck and above the knee, excluding the part of the operator's employee's or performer's arm below the wrist, commonly referred to as the hand.
- H. Display of ordinance. This Ordinance shall be displayed on the exterior of every licensed premise with such ordinance to be clearly visible to patrons entering the premises from the outside and shall be posted within eight (8) feet of any exterior entryway. The ordinance shall also be placed in each room and any enclosed location or booth within an establishment licensed under this section. The Village Board may, by formal motion or resolution, authorize the posting of an abbreviated form of this ordinance, so as to notify patrons, employees and operators of the regulations stated in this section. The exterior signs shall be in block letters, written in black on a white background surface, and be no less than one inch in size. The interior signs shall be of a similar type and color with a minimum height of ½-inch each. Upon application of the owner, abbreviated versions of this ordinance may be posted or other amendments to this section may be approved, consistent with the intent of this ordinance in keeping affected persons apprised of the requirements of this ordinance.

§ 186-12. Location.

- A. No adult-oriented establishment shall be located:
- (1) Within five hundred (500) feet of an existing adult-oriented establishment.
 - (2) Within five hundred (500) feet of any premises of a Licensee of a Class “B” Fermented Malt Beverage Retailer’s License or Retail “Class B” Liquor License.
 - (3) Within five hundred (500) feet of a “youth center” or “sensitive area” as defined by this ordinance.
 - (4) Upon any land except lands within the Village which are zoned for adult-oriented establishments, either as permitted or a conditional use of property.
 - (5) Within five hundred (500) feet of an area zoned residential or an existing residential dwelling.
 - (6) Within five hundred (500) feet of a place of worship.
- 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, sensitive area, or the premises of a Licensee of a “Class B” Fermented Malt Beverage Retailer’s License or Retail “Class B” Liquor License, or a residential dwelling.
- C. The Village Board may waive the above restrictions if it is found that an adjacent activity or use proposed is in the best interest of the city and that the safety and welfare of the community is protected. The waiver may be introduced by the Village Board, or by written request or petition.

§ 186-13. Hours of operation.

No adult-oriented establishment shall be open between the hours of 12:01 a.m. and 2:59 p.m.

§ 186-14. Registration of entertainers.

- A. Any person desiring to provide entertainment in the Village of Fall Creek as an entertainer at any facility governed under this ordinance, before engaging in any such entertainment shall register at the Police Department and pay a fee of twenty-five dollars (\$25.00). The individual shall provide full name and permanent address, date and place of birth, information concerning height, weight, hair and eye color, gender and race, two (2) forms of identification with at least one (1) form being photo identification confirming such information, and if requested, fingerprints, stage name and booking agent if any. Such registration shall be valid for one (1) year from date of

registration, or if employed by an establishment holding a liquor license, on June 30th following issuance.

- B. No person shall permit entertainment by an individual subject to this Section without prior registration as required in paragraph (a) above.

§ 186-15. Administration procedure and review.

Any person may request, in writing by a letter to the Village Clerk, review regarding the granting, denial, renewal, non-renewal, revocation or suspension of a license for an adult-oriented establishment.

§ 186-16. Exclusions.

All private schools and public schools as defined in Chapter 115, Wis. Stats., located within the Village of Fall Creek are exempt from obtaining a license hereunder when instructing pupils in professional nursing care or human growth and development as a part of its curriculum. All licensed medical care or professional nursing care facilities located within the Fall Creek, and agents of the Village of Fall Creek and all Town, County, state and federal departments and agencies are exempt from obtaining a license hereunder when engaged in the providing of medical care or human growth and development education.

§ 186-17. Penalties and prosecution.

- A. In addition to all other remedies available to the Village of Fall Creek in equity and under law, any person who shall violate any provision of this ordinance or who shall fail to obtain a license or permit as required hereunder, or who shall operate after his or her license is revoked, shall be subject to penalty, on a per diem or per occurrence basis as follows:
 - (1) Any person who operates an adult-oriented establishment who fails to obtain a license or permit as required under this ordinance, shall be subject to an initial fine of five thousand dollars (\$5,000.00) and additional fines of two-hundred fifty dollars (\$250.00) per day for each day that the person continues to operate an adult-oriented establishment without a license or permit in violation of this ordinance.
 - (2) Any person who operates an adult-oriented establishment after his or her license has been revoked, shall be subject to an initial fine of five thousand dollars (\$5,000.00) and additional fines of five hundred dollars (\$500.00) per day for each day the person continues to operate an adult-oriented establishment in violation of this ordinance.
 - (3) Any person with a valid license for an adult-oriented establishment who violates any provision of this ordinance shall be subject to a fine of one thousand dollars (\$1,000.00) per day for each day the person is in violation of this ordinance.

§ 186-18. Severability.

The several sections of this ordinance are declared to be severable. If any section, provision, phrase, word or any portion of this ordinance shall be declared by a decision of a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section, word, phrase, provisions or portion thereof directly specified in the decision, and not affect the validity of all other provision, words, sections or portions thereof of the ordinance which shall remain in full force and effect.