

TOWN OF ASHFORD

ORDINANCE REGULATING ADULT-ORIENTED ESTABLISHMENTS

ORDINANCE NUMBER: 08-02

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SECTION 1.01.010 - PURPOSE

a) Adult-oriented establishments require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such establishments as well as the citizens of the Town.

b) The Town Board finds that adult-oriented establishments may be used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature.

c) It has been found in Milwaukee and Kenosha Counties, Wisconsin; Chattanooga, Tennessee; Newport News, Virginia; and Marion County, Indiana, to name a few locales, that the viewing booths in adult-oriented establishments have been and are being used by patrons for engaging in sexual acts, particularly between males, including but not limited to, intercourse, sodomy, oral copulation and masturbation, resulting in unsafe and unsanitary conditions in said booths.

d) Acquired Immune Deficiency Syndrome (AIDS) is a sexually-transmitted disease that destroys the body's immune system, and has no known cure. Statistics from the State of Wisconsin have indicated an increase in the number of AIDS cases in the state. The concern over sexually-transmitted diseases is a legitimate health concern of the Town that demands reasonable regulation of adult-oriented establishments in order to protect the health and well-being of the Town.

e) Licensing is a legitimate means of accountability to ensure that operators of adult-oriented establishments comply with reasonable regulations and to insure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

f) Adult-oriented establishments, because of their very nature, have a deleterious effect on both the existing establishments around them and the surrounding residential areas adjacent to them.

g) Adult-oriented establishments, due to their very nature, have serious objectionable operational characteristics, particularly when they are located in proximity to each other, thereby contributing to blight and downgrading the quality of life in the adjacent area.

h) The Town Board wants to prevent these adverse effects and thereby protect the health, safety, and welfare of Town residents; protect residents from increased crime; preserve the quality of life; preserve the property values and character of the surrounding neighborhoods; and deter the spread of blight.

i) It is not the intent of this Chapter to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of adult-oriented establishments as well as the health problems associated with such establishments.

j) It is not the intent of the Town Board to condone or legitimize the distribution of obscene materials, and the Board recognizes that state and federal laws prohibit the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the Town.

SECTION 1.01.020 - AUTHORITY

The Town Board has the specific authority, powers, and duties pursuant to adoption of its Village powers under Sec. 60.10, Wis. Stats., to regulate and control certain uses, activities, establishments and operations in the Town of Ashford.

SECTION 1.01.030 - DEFINITIONS

For purposes of this Chapter:

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

b) **Adult Entertainment.** Any exhibition of any motion picture, live performance, display, or dance of any type, which has as its dominant theme or is distinguished or

characterized by an emphasis on any actual or simulated specified sexual activities or specified anatomical areas as defined below.

c) **Adult Motion Picture Theater.** An enclosed building 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 of the building.

d) **Adult-Oriented Establishment.** Any premises including, without limitation, “adult bookstores,” or “adult motion picture theaters.” It further means any premises to which public patrons or members are invited or admitted and which are so physically arranged so as to provide booths, cubicles, rooms, compartments, or stalls separate from the common area of the premises for the purposes of viewing adult-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-Oriented Establishment” further includes, without limitation, any premises physically arranged and used as such whether advertised or represented as an adult entertainment studio, rap studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio, or any other term of like import.

e) **Adult Cabaret.** Any commercial premises, including any cabaret premises, to which any member of the public is invited or admitted and where an entertainer provides live adult entertainment to any member of the public. For the purposes of this Chapter, “cabaret” means any room, place or space whatsoever in the Town in which any music, singing, dancing, or other similar entertainment is permitted in connection with any hotel, restaurant, café, club, tavern, eating place, directly selling, serving, or providing the public, with or without charge, food or beverages (whether or not alcoholic beverages). “Employee” means any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any Adult Cabaret.

f) **Booths/Cubicles/Rooms/Compartments/Stalls.** Enclosures that are specifically offered to the public or members of an adult-oriented establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to be viewed within the enclosure. This shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee, but a fee is not charged for mere access to the enclosure. However, “booth,” “cubicle,” “room,” “compartment,” or “stall” does not mean such enclosures that are private offices used by the owners, managers, or persons employed on the premises for attending to the tasks of their employment, which enclosures are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing entertainment for a fee, are not open to any person other than employees, nor shall this definition apply to hotels, motels, or other similar establishments licensed by the State of Wisconsin pursuant to Wisconsin law.

g) **Operators.** Any person, partnership, or corporation operating, conducting, maintaining or owning any adult-oriented establishment.

h) **Specified Anatomical Areas.** Less than completely and opaquely-covered human genitals, pubic region, buttocks, female breasts below the point immediately above the top of the areola; or, human male genitals in a discernible turgid state, even if opaquely covered.

i) **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; or

3) Fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts.

SECTION 1.01.040 - LICENSE

a) **License.** Except as provided below, from and after the effective date of this Chapter, no adult-oriented establishment shall be operated or maintained in the Town without first obtaining a license to operate issued by the Board. A license may be issued only for one (1) adult-oriented establishment located at a fixed and certain location. Any person who desires to operate more than one (1) adult-oriented establishment must have a license for each. No license or interest in a license may be transferred to any person. All adult-oriented establishments existing at the time of the passage of this Chapter must submit an application for a license within ninety (90) days of the passage of this Chapter. A license fee in accordance with the Board's current fee schedule shall be submitted with the application for a license. If the application is denied, one-half (1/2) of the fee shall be returned. A license renewal fee in accordance with the Town Board's current fee schedule shall be submitted with the application for renewal. A license must be renewed every year.

b) **Application for License.** Any person desiring to secure a license shall make application to the Town Clerk. The applicant for a license shall furnish the following information under oath:

1) The name and address of the intended operator;

2) The name and address of the owner of the premises if different from the operator;

3) The name and address of the adult-oriented establishment to be operated by the applicant;

- 4) Written proof that the individual is at least eighteen (18) years of age;
- 5) The address of the adult-oriented establishment to be operated by the applicant;
- 6) If the applicant is a corporation, the application shall specify the name of the corporation, the date and state of incorporation, the name and address of the registered agents, and the name and address of all shareholders owning more than five percent (5%) of the stock in such corporation and all officers and directors of the corporation;
- 7) If the establishment is in operation, the date on which the owner acquired the establishment for which the license is sought. The date on which the establishment began operations as an adult-oriented business at the location for which the license is sought;
- 8) If the establishment is a corporation, a certified copy of the Articles of Incorporation and a certified copy of a certificate of good standing disclosing that the corporation is authorized to transact business in the State of Wisconsin;
- 9) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of a recorded deed; and
- 10) If the operator is not the fee owner of the tract of land, then the lease, purchase contract, purchase option contract, lease option contract, or other documents evidencing the legally-enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract of land for the establishment.

c) **Issuance of License.** The Town shall approve the issuance of a license to the applicant within forty-five (45) days after receipt of the application unless the Town finds one (1) or more of the following to be true:

- 1) The applicant is under eighteen (18) years of age;
- 2) The applicant or the applicant's spouse is overdue in the payment of Town taxes, fines, or penalties assessed against the applicant or imposed upon the applicant in relation to an adult-oriented establishment;
- 3) The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application;
- 4) The applicant is residing with a person who has been denied a license by the Town to operate an adult-oriented establishment within the preceding twelve (12)

months, or residing with a person whose license to operate an adult-oriented establishment has been revoked within the preceding twelve (12) months;

5) The premises to be used have not been approved by the Building Inspector, Fire Department, or any other local, state or federal official as being in compliance with applicable laws, regulations and ordinances;

6) The fee required by this Chapter has not been paid; or

7) Any intoxicating liquor or cereal malt beverage is served or consumed on the premises of the adult-oriented establishment.

d) **Hearing.** The Board, before revoking or suspending any license, shall give the operator at least ten (10) days written notice of the charges against him and the opportunity for a public hearing before the Town Board or its designated committee.

e) **Transfer.** The transfer of a license or any interest therein, shall automatically and immediately revoke the license.

f) **Inspection.** Any applicant or licensee shall permit representatives of the County Sheriff's Department, County Health Department, Town Fire Department, Building Inspector, or other Town or state departments or agencies to inspect the premises of an adult-oriented establishment for the purpose of ensuring compliance with this Chapter and all relevant state and federal laws.

SECTION 1.01.050 - PHYSICAL LAYOUT AND OPERATION

a) **Exterior.** It shall be unlawful for an owner or operator of an adult-oriented establishment:

1) To allow the merchandise or activities of the establishment to be visible from a point outside the establishment;

2) To allow the exterior portion of the adult-oriented establishment to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by this Chapter;

3) To allow exterior portions of the establishment to be painted in a color other than a single color.

b) **Signage.** The display surfaces of the sign shall not contain any flashing lights or photographs, silhouettes, drawings, or pictorial representations of any manner, except for the name of the enterprise.

c) **Booth/Room/Cubicle.** Any adult-oriented establishment having available for customers, patrons, or members, in a booth, room or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

1) 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) 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. Have at least one (1) side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the same;

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

d. The floor must be light-colored, non-absorbent, smooth textured and easily cleanable;

e. 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.

3) Only one (1) individual shall occupy a booth, room, or cubicle at any time. No occupants shall engage in any type of sexual activity, cause any bodily discharge, or litter while in the booth. No individual shall damage or deface any portion of the booth.

d) **Responsibilities of the Operator.** Every act or omission by an employee constituting a violation of the provisions of this Chapter 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 caused the omission.

e) **Minors.** It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of an adult-oriented establishment at any time that the establishment is open for business. The operator must ensure that an attendant is stationed at each public entrance at all times during regular business hours. The attendant shall prohibit any person under the age of eighteen (18) from entering the

establishment. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished either a valid operator's drivers license or a valid personal identification certificate issued by a State reflecting that the person is eighteen (18) years of age or older.

f) **Hours.** An adult-oriented establishment may remain open for business no longer than the hours from between 10:00 a.m. to 12 midnight, seven (7) days a week.

SECTION 1.01.060 - LOCATIONAL RESTRICTIONS.

Adult-oriented establishments are permitted in any Business District provided that the establishment may not be operated within one thousand (1,000) feet of:

- a) A church, synagogue, or regular place of religious worship;
- b) A public or private elementary or secondary school;
- c) A boundary of any residential district;
- d) A public park;
- e) A licensed day-care center; or
- f) Another adult-oriented establishment.

SECTION 1.01.070 - STANDARDS OF CONDUCT AND OPERATION IN ADULT CABARETS

a) **Standards of Conduct.** The following standards of conduct must be adhered to by employees of any Adult Cabaret while in any area in which members of the public are allowed to be present:

- 1) No employee or entertainer shall be unclothed or in such less-than-opaque and complete attire, costume or clothing so as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, except upon a stage at least eighteen (18) inches above the immediate floor level and removed at least six (6) feet from the nearest member of the public.
- 2) No employee or entertainer mingling with members of the public shall be unclothed or in less-than-opaque and complete attire, costume or clothing as described in subsection 1.01.070(a) above, nor shall any male employee or entertainer at any time appear with his genitals in a discernibly turgid state, even if completely and opaquely covered, or wear or use any device or covering which simulates the same.

3) No employee or entertainer shall caress, fondle, or erotically touch any member of the public. No employee or entertainer shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or entertainer.

4) No employee or entertainer mingling with members of the public shall conduct any dance, performance or exhibition in or about the nonstage area of the Adult Cabaret unless that dance, performance, or exhibition is performed at a distance of no less than six (6) feet from any member of the public.

5) No tip or gratuity offered to or accepted by an adult entertainer may be offered or accepted prior to any performance, dance or exhibition provided by the entertainer. No entertainer performing upon any stage area shall be permitted to accept any form of gratuity offered directly to the entertainer by any member of the public. Any gratuity offered to any entertainer performing upon any stage area must be placed into a receptacle provided for receipt of gratuities by the Adult Cabaret or provided through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainer conducting any performance, dance or exhibition in or about the nonstage area of the Adult Cabaret shall be placed into the hand of the adult entertainer or into a receptacle provided by the adult entertainer, and not upon the person or into the clothing of the adult entertainer.

6) No member of the public shall be permitted at any time to enter into any of the nonpublic portions of the Adult Cabaret, which shall include but are not limited to the dressing rooms of the entertainers or other rooms provided for the benefit of employees, and the kitchen and storage areas; except that person, who in the ordinary course of business, deliver goods, materials, food or beverages, or perform maintenance or repairs to the premises or equipment on the premises may be permitted into nonpublic areas to the extent required to perform their job duties.

b) Premise-Specifications. The following specifications shall apply to all Adult Cabarets located in the Town of Ashford:

1) The performance area of the Adult Cabaret where adult entertainment is provided shall be a stage or platform at least eighteen (18) inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least six (6) feet from all areas of the premises to which members of the public have access. A continuous railing at least three (3) feet in height and located at least six (6) feet from all points of the performance area shall separate the performance area and the patron seating areas. The stage and the entire interior portion of cubicles, rooms or stalls wherein adult entertainment is provided must be visible from the common areas of the premises. Visibility shall not be blocked or obstructed by doors, curtains, drapes or any other obstruction whatsoever.

2) Sufficient lighting shall be provided and equally distributed throughout the public areas of the premises so that all objects are plainly visible at all times. A minimum lighting level of 30 lux horizontal, measured at thirty (30) inches from the floor and on 10-foot centers is hereby established for all areas of the Adult Cabaret where members of the public are admitted.

3) A sign at least two (2) feet by two (2) feet, with letters at least one (1) inch high shall be conspicuously displayed in the public area(s) of the premises stating the following:

THIS ADULT CABARET IS REGULATED BY THE TOWN OF ASHFORD.

ENTERTAINERS ARE:

A. NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT.

B. NOT PERMITTED TO APPEAR SEMI-NUDE OR NUDE, EXCEPT ON STAGE.

C. NOT PERMITTED TO ACCEPT TIPS OR GRATUITIES IN ADVANCE OF THEIR PERFORMANCE.

D. NOT PERMITTED TO ACCEPT TIPS DIRECTLY FROM PATRONS WHILE PERFORMING UPON ANY STAGE AREA.

c) **Inspections.** In order to insure compliance with this Chapter all areas of Adult Cabarets that are open to members of the public shall be open to inspection by Town agents and employees or law enforcement officers during the hours when the premises are open for business. The purpose of such inspections shall be to determine if the premises are operated in accordance with the requirements of this Chapter. It is hereby expressly declared that unannounced inspections are necessary to assure compliance with this Chapter.

d) **Performances Not Prohibited.** This Chapter shall not be construed to prohibit:

1) Plays, operas, musicals, or other dramatic works that are not obscene;

2) Classes, seminars and lectures that are held for serious scientific or educational purposes and which are not obscene; or

3) Exhibitions, performances, expressions or dances that are not obscene.

e) **Determination of Obscenity.** Whether or not activity is obscene shall be judged by consideration of the following factors:

1) Whether the average person, applying contemporary community standards would find that the activity taken as a whole appeals to the prurient interest in sex; and

2) Whether the activity depicts or describes in a patently offensive way, as measured against community standards, sexual conduct as described in this Chapter; and

3) Whether the activity taken as a whole lacks serious literary, artistic, political, or scientific value.

f) **Effective Date.** This Chapter shall take effect upon adoption and publication by the Town's official newspaper and shall apply to all existing or new Adult Cabarets located within the Town.

SECTION 1.01.080 - MEASUREMENT

For the purpose of this Chapter, measurement shall be made in a straight line, without regard to intervening structures or objects from the nearest portion of the building or structure used as part of the premises where an adult-oriented establishment is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, Residential District, or residential lot, or licensed day-care center. The distance between any two (2) adult oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which such business is located.

SECTION 1.01.090 - NONCONFORMING USES

Any business lawfully operating on the effective date of this Chapter that is in violation of the locational or structural configuration requirements of this Chapter shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period of not to exceed two (2) years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. The nonconforming use is required to submit an application for a permit and otherwise comply with the requirements of this Chapter.

SECTION 1.01.100 - MISCELLANEOUS

a) **Penalties.** Any person who fails to comply with any provisions of this Chapter shall be subject to a forfeiture of not less than One Hundred Dollars (\$100.00) or more than One Thousand Dollars (\$1,000.00) and the costs of prosecution, including reasonable attorneys' fees, for each violation. Each day that a violation exists or continues shall constitute a separate offense.

b) **Other Remedies.** In addition to other remedies the Town reserves the right to institute appropriate action or proceedings to prevent, restrain, correct, or abate a violation of this Chapter or to prevent any illegal act, conduct, business, or use in or about the subject premises.

c) **Interpretation.** The provisions of this Chapter are considered minimum requirements. Where the provisions of this Chapter impose greater restrictions than any statute or other regulation, the provisions of this Chapter shall apply. Where the provisions of any statute or other regulation impose greater restrictions, the provisions of the statute or regulation shall prevail.

d) **Severability.** If any provision of this Chapter is declared invalid by a Court of competent jurisdiction, such decision shall not affect the validity of this Chapter in its entirety, or any part thereof, other than that so declared to be invalid. The balance of the Chapter not found invalid shall be enforced.

f) **Rules of Construction.** In the construction of this Chapter references to the male gender include the female and references to the singular include the plural. References to “person” or “persons” extends to natural persons, firms, corporations, partnerships, limited liability companies or other entities.

SECTION 1.01.110 – EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication as required by law.

Adopted this 1st day of December, 2008.

**Signed: Joe Koch
Chairperson, Town of Ashford**

**Attest: Tracy Flasch
Clerk, Town of Ashford**

Published this 13TH, 20TH day of November, 2008.