

Section 6

Licensing of Sexually-Oriented Adult-Entertainment Establishments

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AN ORDINANCE OF THE TOWN OF HUMBOLDT
RELATING TO THE LICENSING OF
SEXUALLY-ORIENTED ADULT-ENTERTAINMENT ESTABLISHMENTS

THE TOWN BOARD OF THE TOWN OF HUMBOLDT DOES ORDAIN AS FOLLOWS:

An Ordinance is hereby created to read as follows:

SEXUALLY-ORIENTED ADULT-ENTERTAINMENT ESTABLISHMENT
LICENSE.

A. AUTHORITY. The Town Board of the Town of Humboldt acting pursuant to Wisconsin Statutes Sections 60.22 (3), 60.10 (2)(c), 61.34 (1), 60.23 (10) and 66.052 hereby undertakes to regulate sexually oriented adult-entertainment businesses as set forth herein below.

B. INTENT. It is the purpose of this section to regulate sexually-oriented adult-entertainment established business (hereinafter referred to as adult establishment) to promote the health, safety, morals and general welfare of the citizens of the Town of Humboldt, to aid in the alleviation and prevention of the adverse and deleterious effects of criminal activity and disruption of the public peace associated with such regulations, to prevent the serious health hazards associated with unsafe and unsanitary conditions known to exist in those establishments, and to alleviate the spread of sexually transmitted diseases and other contagious diseases in those establishments.

C. DEFINITIONS. For the purpose of this section:

1. Specified sexual activities is defined as:

- a. Human genitals in the state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse, or sodomy;
- c. Fondling or other erotic touching of human genitals, pubic region, buttock, or female breasts.

2. Specific anatomical areas is defined as:

- a. Less than completely and opaquely covered:
 - (1) human genitals, pubic region;
 - (2) buttock;
 - (3) female breasts below a point immediately above the top of the areola.

b. Human male genitals in a discernible turgid state, even if completely and opaquely covered.

3. Sexually-oriented adult-entertainment establishments. Includes bookstores, motion picture theaters, mini-motion picture theaters, bath houses, modeling studios, body painting studios, and cabarets; and are more specifically defined as:

a. Adult bookstore. An establishment having as a substantial or significant portion of its stock and trade books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined herein.

b. Adult motion picture theater. An enclosed building with a capacity of 50 or more persons at which a significant or substantial portion of the material presented is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein for observation by patrons therein.

c. Outdoor Adult motion picture theater. A parcel of land from which individuals may view a motion picture presented out of doors which presents material distinguish and characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or specified anatomical areas".

d. Adult mini-motion picture theater. An enclosed building with a capacity of less than 50 persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined herein, for observation by patrons therein.

e. Adult bath house. An establishment or business which provides the service of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner or a professional physical 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.

f. Adult Motel. A hotel, motel, lodging house, boarding house, or similar commercial establishment which:

(1) offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the

availability of this adult type of photographic reproductions; or

(2) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(3) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

g. Adult modeling studio. An establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially in the nude by means of photography, painting, sketching, drawing or otherwise.

h. Adult body painting studio. 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 body painting studio shall not be deemed to include a tattoo parlor.

I. Adult cabaret.

(1) An establishment or business which features male and/or female topless and/or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers.

(2) Any adult cabaret, as defined above, which features such entertainment on a periodic and infrequent basis is considered an adult-entertainment establishment only during those times when the adult entertainment is being presented or the entertainers are on the premises; and all provisions of this ordinance shall apply during those presentations. Further such periodic or infrequent of adult cabaret shall notify the Brown County Sheriff's Department at least 24 hours prior to the date on which such adult entertainment is to take place.

(3) Any periodic or infrequent adult establishment, as defined above, shall be licensed yearly in accordance with the licensing provision hereinafter set forth.

j. Adult novelty shop. An establishment or business having as a substantial or significant portion of its stock and trade in novelty or other items which are distinguished or characterized by their emphasis on, or designed for, specified sexual activities as defined herein or stimulating such activity.

D. LICENSE REQUIRED.

1. Except as provided in subsection (4) below, from and after the effective date of this ordinance, no adult establishment shall be operated or maintained in the Town of Humboldt without first obtaining a license to operate issued by the Town Board of the Town of Humboldt.

2. A license may be issued only for one adult establishment located at a fixed and certain place. Any person, partnership, limited liability company, limited liability partnership or corporation which desires to operate more than one adult establishment must have a license for each.

3. No license or interest in a license may be transferred to any person, partnership, limited liability company, limited liability partnership or corporation.

4. All adult establishment existing at the time of the passage of this ordinance must submit an application for a license within 90 days of the passage of this ordinance. If an application is not received within said 90-day period, then such existing adult establishment shall cease operations.

E. APPLICATION FOR LICENSE.

1. Any person, partnership or corporation desiring to secure a license shall make application to the Town Clerk. The application shall be filed with and dated by the Town Clerk. A copy of the application shall be distributed within ten (10) days of receipt thereof to the Brown County Sheriff's Department, the Health Department, the Building Inspector and the Planning Commission.

2. The application for a license shall be upon a form approved by the Town Board. An applicant for a license, which shall include all partners or limited partners of a partnership applicant, or all officers or directors of a corporate applicant, all members of a limited liability company and any other person who is interested directly in the ownership or operation of the business, shall furnish the following information under oath:

- a. Name and address, including all aliases.
- b. Written proof that the individual is at least eighteen (18) years of age.
- c. All residential addresses of the applicant for the past ten (10) years.
- d. The business, occupation, or employment of the applicant for the ten (10) years immediately preceding the date of application.
- e. Whether the applicant previously operated in this or any other state,

county, or city under an adult establishment license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reasons therefor, and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation.

f. All criminal convictions, whether federal or state, or town ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except minor traffic violations.

g. Fingerprints and two portrait photographs at least two inches by two inches of the applicant.

h. The address of the adult establishment to be operated by the applicant.

i. 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 agent, and all officers and directors of the corporation. If the applicant is a limited liability company, the application shall specify the name of the company, the date and state in which such company was formed, the name and address of the registered agent, and all members of the limited liability company.

F. STANDARDS FOR ISSUANCE OF LICENSE.

1. To receive a license to operate an adult establishment, an applicant must meet the following standards:

a. If applicant is an individual:

(1) The applicant shall be at least 18 years of age.

(2) Subject to Chapter 111, Wisconsin Statutes, the applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.

(3) The applicant shall not have been found to have previously violated this ordinance five years immediately preceding the date of the application.

b. If applicant is a corporation:

(1) All officers, directors, and others required to be named under (D)(2) shall be at least eighteen (18) years of age.

(2) Subject to Chapter 111 Wisconsin statutes, no officer, director, or other person required to be named under (D)(2) shall have been convicted of and/or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five years immediately preceding the date of the application.

(3) No officer, director, or other person required to be named under (D)(2) shall have been found to have previously violated this ordinance within five years immediately preceding the date of the application.

c. If the applicant is a partnership, joint venture, limited liability company or any other type of organization where two or more persons have a financial interest:

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

(2) No persons having a financial interest in the partnership, joint venture, or other type of organization shall, subject to Chapter 111 Wisconsin Statutes, have been convicted and/or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution, obscenity, or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application.

2. No license shall be issued unless the Brown County Sheriff's Department has investigated the applicant's qualifications to be licensed. The results of the investigation shall be filed in writing with the Town Clerk no later than 14 days after the date of the application.

3. The Health Department, Building Inspector and Planning Commission shall inspect the premises proposed to be licensed to verify compliance with their respective codes and shall report compliance findings to the Town Clerk within 14 days of the date of the application.

4. No license shall be issued unless the applicant provides proof of one of the following:

a. Ownership of a properly zoned building or parcel of real property upon which a building can be constructed. Proper zoning includes permissible non-conforming use status.

b. A lease on a building which is properly zoned to house the venture. Proper zoning includes permissible non-conforming use status.

c. An option to purchase property which is properly zoned for the venture. Proper zoning includes permissible non-conforming use status.

d. An option to lease property which is properly zoned for the venture. Proper zoning includes permissible non-conforming use status.

5. The Town Board shall conduct a public hearing concerning an application for licence under this ordinance at the next regularly scheduled Town Board meeting following the filing of an application for such license, provided however, such hearing may be adjourned as necessary to permit receipt of reports from the Health Department, Building Inspector, Sheriff's Department, or Planning Commission or as otherwise may be necessary to complete the Town Board Hearing.

G. FEES. A license fee of \$250.00 shall be submitted with the application for a license. Such fee shall be waived if the proposed adult establishment is operating under or has applied for an alcohol beverage license and has paid the alcohol beverage licensing fee thereunder.

H. DISPLAY OF LICENSE OR PERMIT. The license shall be displayed in a conspicuous public place in the adult establishment.

I. RENEWAL OF LICENSE OR PERMIT.

1. Every license issued pursuant to this ordinance will terminate on December 31 of the year it is issued, 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 Clerk. The application for renewal must be filed not later than 60 days before the license expires. The application for renewal shall be filed with and dated by the Town Clerk. A copy of the application for renewal shall be distributed by the Town Clerk to the Brown County Sheriff's Department. The application for renewal shall be upon a form provided by the Town Clerk and shall contain such information and data, given under oath or affirmation, as is required for an application for a new license.

2. A license renewal fee of \$250.00 shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of \$100.00 shall be assessed against the applicant who filed for a renewal less than 60 days before the license expires.

3. If the Brown County Sheriff's Department is aware of any information bearing on the operator's qualifications, that information shall be filed in writing with the Town Clerk.

4. The Town Board shall conduct a public hearing concerning renewal of any license at the next regularly scheduled Town Board meeting following the filing of an

application for renewal.

J. DENIAL OF APPLICATION.

1. Whenever an initial application is denied, the Town Board, within 14 days of the denial, advise the applicant in writing of the reasons for such action. If the applicant requests a further hearing within 10 days of receipt of notification of denial, a public hearing shall be held at the next regularly-scheduled meeting of the Town Board as hereinafter provided.

2. 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 thereof by the Town Board.

K. SUSPENSION, REVOCATION, OR NON-RENEWAL OF LICENSE.

1. The license granted herein may be revoked or suspended for up to six (6) months or non-renewed by the Town Board as follows:

a. If the applicant has made or recorded any statement required by this section knowing it to be false or fraudulent or intentionally deceptive;

b. For the violation of any provision of this section, except that for establishment license matters involving violations of other Town Ordinances, in which case license shall be revoked after the second conviction thereof in any license year;

c. After one conviction of any establishment personnel of an offense under Chapter 944 Wisconsin Statutes, or of an offense against the person or property of a patron of the property or of an offense involving substances in Sub. II of Chapter 161 Wisconsin Statutes, where there is shown the participation or knowledge of any other establishment personnel or of any individual within the business structure of the applicant.

2. Notice and Hearing. No license shall be revoked, suspended, or not renewed by the Town Board except upon due notice and hearing to determine whether grounds for such action exist. Such hearing shall be held before the Town Board. Notice of such hearing shall be in writing and shall state the grounds of the complaint against the licensee. The notice shall be served upon the licensee at least 15 days prior to the date of the hearing and shall state the time and place thereof. The licensee shall be entitled to be heard, to be represented by counsel, to cross-examine opposing witnesses, to present witnesses on his or her own behalf under subpoena by the Town Board if such is required,

and the hearing may be stenographically recorded at the licensee's option and expense. At the conclusion of such hearing, the Town Board shall make written findings of fact and conclusion of law and a decision as to what, if any action the Town Board will take. The Town Board shall provide the complainant and licensee with a copy of that document. The original document shall be filed with the Town Clerk.

Either the complainant or licensee may file an objection to the report and have the opportunity to present further arguments supporting the objection to the Town Board. The Town Board shall determine whether arguments shall be presented orally or in writing, or both. If the Town Board, after arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is no objection to a report determining suspension or revocation, the license shall be suspended or revoked as provided at Sub. (1) hereinabove. The Town Board shall decide the matter and shall prepare a written decision which shall be filed with the Town Clerk and a copy thereof delivered to the licensee and complainant within 20 days after its decision.

L. **PHYSICAL LAYOUT OF ADULT ESTABLISHMENTS.** Any adult establishment having available for customers, patrons or members any booth, room or cubicle for the private viewing of any sexually-oriented 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 establishments 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, cubicles, and any non-public areas by a wall.

b. 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 same.

c. All walls shall be solid and without any openings, extended from the floor to a height of not less than six 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 10 foot candles at all times, as measured from the floor.

3. Occupants. Only one individual shall occupy a booth, room or cubicle at any time. No occupant of same 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.

M. RESPONSIBILITIES OF THE OPERATOR.

1. The operator shall maintain a register of all employees, showing the name and aliases used by the employee, home address, birth date, sex, telephone numbers, Social Security Number, and date of employment and termination. The above information on each employee shall be maintained in the register on the premises for a period of three years following termination.

2. The operator shall make the register of employees available immediately for inspection upon demand of a member of the Brown County Sheriff's Department at all reasonable times.

3. 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.

4. Any act of omission of any employee constituting a violation of the provision 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.

5. No employee of an adult-entertainment establishment shall allow any minor to loiter around or to frequent an adult-entertainment establishment or allow any minor to view sexually-oriented adult entertainment as defined herein.

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

7. The operator shall maintain at least 10 foot candles of light in the public portion 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 foot candle of illumination in said aisles, as measured from the floor.

8. The operator shall ensure compliance of the establishment and its patrons with the provisions of this ordinance.

9. The operator shall ensure that it is conspicuously posted inside each booth, stall, partitioned portion of a room or individual room an unmutated and undefaced sign or poster supplied by the Health Department which contains information regarding sexually transmitted diseases and the telephone numbers from which additional information can be sought.

10. The operator shall ensure there are conspicuously displayed at a place near the main entrance of the establishment, or portion thereof, any information, brochures, or pamphlets supplied by the Health Department pertaining to sexually transmitted diseases.

11. The operator shall ensure there is posted regulations, concerning booth occupancy, on signs with lettering at least one inch high, that are placed in conspicuous areas of the establishment and in each of the viewing enclosures.

12. The Health Department shall charge its reasonable costs for supplying such posters, brochures, pamphlets, and other information supplied under this Section.

N. REGISTRATION OF EMPLOYEES.

1. All operators, employees, and independent contractors working in any adult establishment hereunder shall, prior to beginning employment or contracted duties, register with the Brown County Sheriff's Department. Such registration shall include the following:

a. Name, address, birth date, any aliases used, telephone numbers, date of employment, and name of employer.

b. Photographs and fingerprinting.

2. Upon registration, the Brown County Sheriff's Department will provide to each registered employee an identification card containing the employee's photograph identifying the employee as such, which shall be kept available for production upon request of all Town inspecting officers while on duty at such adult establishment.

3. All registrations hereunder are valid for a period of one year.

4. The registration fee shall be \$5.00 per registration, which shall be paid to the Sheriff's Department to cover the cost of the identification card.

O. EXCLUSIONS. All private schools and public schools, as defined in

Chapter 115 Wisconsin Statutes, located within the Town of Humboldt are exempt from obtaining a license hereunder when instructing pupils in sex education as part of its curriculum.

P. PENALTIES AND PROSECUTION.

1. Any person, partnership or corporation who is found to have violated this ordinance shall be fined a definite sum not exceeding \$1,000.00 and shall result in the revocation of any license.

2. Each violation of this ordinance shall be considered a separate offense, and any violation continuing more than one day shall be considered a separate offense.

Q. SEVERABILITY. 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 provision of same.

All ordinances, or parts of ordinances, in conflict herewith are hereby repealed. This ordinance shall henceforth become part of the Municipal Code of the Town of Humboldt, Wisconsin.

This ordinance shall take effect on the date following its passage.

Dated this _____ day of _____, 1996.

APPROVED:

Town Chairman

Town Supervisor

Town Supervisor

ATTEST:

Town Clerk