



Legislation Text

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160839
SUBSTITUTE 1

THE CHAIR

A substitute ordinance relating to licensing requirements and regulations for adult establishments.

81-1.7 cr
85-4-4-d cr
108-5-2-m cr
121 cr

This ordinance establishes licensing requirements and regulations for adult establishments to promote the health, safety and general welfare of the residents and visitors of the city. An adult establishment is defined as any commercial venue that regularly offers live semi-nude conduct.

The ordinance requires an operator of an adult establishment to obtain an adult establishment license. The establishment shall meet applicable zoning requirements, including being located in an IL1 or IL2 zoning district.

In addition, this ordinance establishes the application procedure for an adult establishment license, the appeal process when an application is denied, and the grounds for nonrenewal, suspension or revocation of a license.

Whereas, The common council finds that adult establishments, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution, human trafficking, lewd and lascivious behavior, and indecent exposure; and

Whereas, There is convincing documented evidence that adult establishments, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

Whereas, The common council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of residents; protect the residents from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

Whereas, The city intends to regulate adult establishments through a narrowly-tailored ordinance designed to serve the substantial government interest in preventing the negative secondary effects of adult establishments; and

Whereas, The city's regulations shall be narrowly construed to accomplish this end; and

Whereas, The city recognizes its constitutional duty to interpret and construe its laws to comply with constitutional requirements as they are announced; and

Whereas, With the passage of any ordinance, the city and the common council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the U.S. and Wisconsin Constitutions, Wisconsin Statutes; and

Whereas, The common council finds evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Common Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and *Blue Canary Corp. v. City of Milwaukee*, 251 F.3d 1121 (7th Cir. 2001); *Blue Canary Corp. v. City of Milwaukee*, 270 F.3d 1156 (7th Cir. 2001); *Six Star Holdings LLC & Ferol LLC v. City of Milwaukee*, 932 F. Supp. 2d 941 (E.D. Wis. 2013); *aff'd*, 821 F.3d 795 (7th Cir. 2016); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Andy's Restaurant & Lounge, Inc. v. City of Gary*, 466 F.3d 550 (7th Cir. 2006); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Schultz v. City of Cumberland*, 26 F. Supp. 2d 1128 (W.D. Wisc. 1998), *aff'd in part, rev'd in part*, 228 F.3d 831 (7th Cir. 2000); *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *Berg v. Health & Hospital Corp.*, 865 F.2d 797 (7th Cir. 1989); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Annex Books, Inc. v. City of Indianapolis*, 926 F. Supp. 2d 1039 (S.D. Ind. 2013), *rev'd by* 740 F.3d 1136 (7th Cir. 2014); *Graff v. City of Chicago*, 9 F.3d 1309 (7th Cir. 1993); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (7th Cir. 1996); *Chulchian v. City of Indianapolis*, 633 F.2d 27 (7th Cir. 1980); *Tee & Bee, Inc. v. City of West Allis*, 936 F. Supp. 1479 (E.D. Wis. 1996); *Urmanski v. Town of Bradley*, 237 Wis. 2d 545 (Wis. Ct. App. 2000); *City News & Novelty, Inc. v. City of Waukesha*, 231 Wis. 2d 93 (Wis. Ct. App. 1999); *East of the River Enters. II, L.L.C. v. City of Hudson*, 238 Wis. 2d 842 (Wis. Ct. App. 2000); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); and

Whereas, Based upon reports concerning secondary effects occurring in and around adult establishments, including, but not limited to, "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" *Crime & Delinquency* (2012) (Louisville, KY); *Metropolis*,

Illinois - 2011-12; Manatee County, Florida - 2007; Hillsborough County, Florida - 2006; Clarksville, Indiana - 2009; El Paso, Texas - 2008; Memphis, Tennessee - 2006; New Albany, Indiana - 2009; Louisville, Kentucky - 2004; Fulton County, GA - 2001; Chattanooga, Tennessee - 1999-2003; Jackson County, Missouri - 2008; Ft. Worth, Texas - 2004; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003; Dallas, Texas - 1997; Houston, Texas - 1997, 1983; Phoenix, Arizona - 1995-98, 1979; Tucson, Arizona - 1990; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Oklahoma City, Oklahoma - 1986; New York, New York Times Square - 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas - 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA); and Strip Club-Trafficking Documents; and

Whereas, It is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the Wisconsin Constitution, but to enact legislation to further the content-neutral governmental interests of the city, to wit, the controlling of negative secondary effects of adult establishments; now, therefore

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1. Section 81-1.7 of the code is created to read:

81-1.7. Adult Establishment License. 1. Each adult establishment license shall be issued for a period of one year.

2. The fee for each new license shall be \$250.

3. The fee for each renewal license shall be \$225.
(See ch. 121.)

Part 2. Section 85-4-4-d of the code is created to read:

85-4. Hearing Procedure; Non-Renewal, Suspension or Revocation.

4. GROUNDS FOR NON-RENEWAL, SUSPENSION OR REVOCATION.

d. For an adult establishment license, grounds for non-renewal, suspension or revocation shall not include evidence of the activities identified in subds. c-3, 4, 9, 10, 13, 14, 16, 18, 19, or 21.

Part 3. Section 108-5-2-m of the code is created to read:

108-5. License Required.

2. EXEMPTION.

m. Activities regulated by ch. 121.

Part 4. Chapter 121 of the code is created to read:

CHAPTER 121 ADULT ESTABLISHMENTS

TABLE

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121-1. Purpose, Findings and Rationale.

1. PURPOSE. It is the purpose of this chapter to regulate adult establishments to promote the health, safety, and general welfare of the residents of the city, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult establishments within the city. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually-oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

2. FINDINGS AND RATIONALE. Based on evidence of the adverse secondary effects of adult uses presented in hearings, reports, legal findings, and case law made available to the common council as well as reports concerning secondary effects occurring in and around adult establishments, the common council finds:

a. Adult establishments, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, human trafficking, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation. Because alcohol consumption impairs judgment and lowers inhibitions, the risk of adverse secondary effects significantly increases.

b. Each of the negative secondary effects constitutes a harm which the city has a substantial government interest in preventing or abating. This substantial government interest in preventing secondary effects, which is the city's rationale for this chapter, exists independent of any comparative analysis between sexually-oriented and non-sexually-oriented businesses. Additionally, the city's interest in regulating adult establishments extends to preventing future secondary effects of either current or future adult establishments that may locate in the city.

The city finds that the cases and documentation relied on in this section are reasonably believed to be relevant to the secondary effects.

3. **RECORD OF FINDINGS.** The city adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult establishments, including the judicial opinions and reports related to such secondary effects.

121-5. **Definitions.** In this chapter:

1. **ADULT ESTABLISHMENT** means a tavern, restaurant, assembly hall or similar commercial establishment or venue that offers live semi-nude conduct.

2. **NUDE CONDUCT** means the showing of the genitals, pubic area, vulva, or anus with less than an opaque covering, or the showing of the female breast with less than an opaque covering of any part of the nipple and areola.

3. **SEMI-NUDE CONDUCT** means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition includes the lower portion of the female breast, but does not include any portion of the cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar apparel, provided the areola is not exposed in whole or in part.

4. **SPECIFIED SEXUAL ACTIVITY** means any of the following:

- a. Intercourse, oral copulation, masturbation, or sodomy.
- b. Excretory functions as a part of or in connection with any of the activities specified in par. a.
- c. Insertion of any object into the vagina, penis or anus.

121-10. **License Required.** 1. **GENERAL REQUIREMENT.** No person shall operate an adult establishment in the city without a valid adult establishment license issued under this chapter.

2. **APPLICATION.** An application for an adult establishment license shall be filed with the city clerk and contain the signature and information required by s. 85-12. In addition, the application shall contain:

- a. A statement of whether the applicant has had an adult establishment, alcohol beverage, or public entertainment premise license revoked within the previous 5 years under the code.
- b. A floor plan as provided in s. 90-5-1-c-1.

121-15. **Issuance of License.** 1. **INVESTIGATION.** a. Each applicant shall be fingerprinted as provided in s. 85-21.

b. Each application shall be referred to the chief of police, who shall cause an investigation to be made and report the findings to the city clerk within 14 days from the date of the filing of the applicant's fingerprints as provided in sub. a.

2. ISSUANCE. The city clerk shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The city clerk shall issue a license unless any of the following is true:

- a. The applicant is less than 18 years of age.
- b. The applicant has falsely answered a question or request for information on the application form.
- c. The license application fee required by this chapter has not been paid.
- d. The adult establishment is not in compliance with the requirements of the zoning code, ch. 295.
- e. The applicant has had an adult establishment license revoked under this chapter within the previous 5 years or had an alcohol beverage or public entertainment premise license revoked or non-renewed under ch. 85 of the code within the previous 5 years.
- f. Pending charges or a conviction for any of the following criminal offenses by the applicant or by any employee of the applicant, or criminal offenses from other jurisdictions that are substantially similar and carry a similar penalty:
 - f-1. s. 940.302, Wis. Stats., human trafficking.
 - f-2. s. 940.225, Wis. Stats., sexual assault.
 - f-3. s. 944.15, Wis. Stats., public fornication.
 - f-4. s. 944.17, Wis. Stats., sexual gratification.
 - f-5. s. 944.20, Wis. Stats., lewd and lascivious behavior.
 - f-6. s. 944.30, Wis. Stats., prostitution.
 - f-7. s. 944.31, Wis. Stats., patronizing prostitutes.
 - f-8. s. 944.32, Wis. Stats., soliciting prostitutes.
 - f-9. s. 944.33, Wis. Stats., pandering.
 - f-10. s. 944.34, Wis. Stats., keeping place of prostitution.
 - f-11. s. 948.02, Wis. Stats., sexual assault of a child.
 - f-12. s. 948.05, Wis. Stats., sexual exploitation of a child.
 - f-13. s. 948.051, Wis. Stats., trafficking of a child.
 - f-14. s. 948.055, Wis. Stats., causing a child to view or listen to sexual activity.
 - f-15. s. 948.06, Wis. Stats., incest with a child.

f-16. s. 948.07, Wis. Stats., child enticement.

f-17. s. 948.075, Wis. Stats., use of a computer to facilitate a child sex crime.

f-18. s. 948.08, Wis. Stats., soliciting a child for prostitution.

f-19. s. 948.10, Wis. Stats., exposing genitals, pubic area, or intimate parts.

f-20. s. 948.11, Wis. Stats., exposing a child to harmful material or harmful descriptions or narrations.

f-21. s. 948.12, Wis. Stats., possession of child pornography.

3. APPEAL PROCESS. An applicant may appeal the decision of the city clerk to the administrative review appeals board as provided in s. 320-11-6-c.

4. POSTING OF LICENSE. The posting of a license for an adult establishment shall be as provided in s. 85-25.

121-20. Fees. The initial license and annual renewal fees for an adult establishment license are set forth in s. 81-1.7.

121-25. Renewal, Non-Renewal, Suspension or Revocation of License. The procedures for renewal, non-renewal, suspension or revocation of an adult establishment license shall be as set forth in ch. 85.

121-30. Transfer of License. 1. TRANSFER. The transfer of a license for an adult establishment license shall be as provided in s. 85-19.

121-35. Hours of Operation. No person holding such license shall permit a patron to enter or remain on the licensed premises between the hours of 2 a.m. and 6 a.m. On January 1, premises operating under such licenses are not required to close. On Saturday and Sunday, no premises may remain open between 2:30 a.m. and 6 a.m., except that, on the Sunday that daylight saving time begins as specified in s. 175.095(2), Wis. Stats., no premises shall remain open between 3:30 a.m. and 6 a.m.

121-40. Prohibited Conduct. 1. UNDERAGE PERSONS. No operator of an adult establishment shall allow a person under the age of 18 years to be or remain on the premises of an adult establishment. This shall not apply to an establishment holding a center for the visual and performing arts license.

2. NUDE OR SEXUAL ACTIVITY. No nude conduct or specified sexual activity shall be permitted on the premises.

Part 4. Upon the effective date of this ordinance, the office of the city clerk shall issue, without charge, an adult entertainment license to each existing public entertainment premise licensee approved for adult entertainment.

APPROVED AS TO FORM

Date: _____

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney

Date: _____

LRB166667-21

Adam Wickersham: jo

6/5/2017