

ORDINANCE No. 2009 - 1

**AN ORDINANCE REGULATING  
SEXUALLY ORIENTED BUSINESSES**

The Town Board of the Town of Cady, St. Croix County, Wisconsin, do ordain as follows:

**SECTION I. ORDINANCE CREATED.**

Sections 11-7-1 through 11-7-9 of the Town of Cady Code of Ordinances are created to read as follows:

**Title 11 ► Chapter 7**

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**Sexually Oriented Businesses**

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**Sec. 11-7-1 Purpose.**

- (a) Sexually oriented businesses require special supervision from the public safety agencies of the Town of Cady, St. Croix County, Wisconsin in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as the citizens of the Town of Cady; and

- (b) The Town of Cady finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution, pandering, and sexual liaisons of a casual nature; and
- (c) The concern over sexually transmitted diseases is a legitimate health concern of the Town of Cady, which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the public; and
- (d) There is convincing documented evidence that sexually oriented businesses have a deleterious effect on both the existing businesses around them and the surrounding residential and farming areas adjacent to them, causing increased crime and the downgrading of property values, and diminished area economic development potential; and
- (e) The Town Board desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the public; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of blight; and
- (f) The Town Board has determined that locational and operational criteria will assist in the protection of the health, safety and general welfare of the people of the Town of Cady; and
- (g) It is not the intent of the Town Board to condone or legitimize the distribution of obscene material, and the Town Board recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state and county law enforcement officials to enforce state obscenity statutes against any such illegal activities in the Town of Cady.

## **Sec. 11-7-2 Statement of Findings and Intent.**

- (a) **Intent.**
  - (1) It is the intent of this Chapter to promote the health, safety and general welfare of the citizens of the Town of Cady and the general public, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town of Cady.
  - (2) The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not 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 Chapter to condone or legitimize the distribution of obscene materials.
- (b) **Findings.** Based on evidence concerning the adverse secondary effects of adult uses on communities stated above, and on findings incorporated in the

cases of *City of Erie v. Pap's A.M.*, 120 S.Ct 1382 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and *Barnes V. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. City of Newport, Ky.*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *Schultz v. City of Cumberland*, Case Nos. 98-4126 and 98-4209 (7th Cir., September 26, 2000) (2000 U.S. App. LEXIS 23773); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Key, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *East of the River Enterprises II v. City of Hudson*, 2000 Wisc. App. Lexis 734 (Ct. App. Aug. 1, 2000); and *Urmanski v. Town of Bradley*, 2000 WI App. 141, 613N.W.2d 905 (Ct. App. 2000), as well as studies conducted in other cities, including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the "Regulation of Adult Entertainment Establishments in St. Croix County, Wisconsin"; and the "Report of the Attorney General's Worship of Sexually Oriented Businesses" (June 6, 1989, State of Minnesota), the Town Board finds that:

- (1) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods and areas where sexually oriented businesses are located.
- (2) Studies of the relationship between sexually oriented businesses and neighborhood property values have found a negative impact on both residential and commercial property values, impacting economic development potential.
- (3) Sexually oriented businesses may contribute to an increased public health risk through the spread of sexually transmitted diseases.
- (4) There is an increase in the potential for infiltration by organized crime for the purpose of unlawful conduct.
- (5) The consumption of alcoholic beverages on the premises of a sexually oriented business exacerbates the deleterious secondary effects of such businesses on the community.

### **Sec. 11-7-3 Definitions.**

The following definitions are applicable in this Chapter:

- (a) **Adult Arcade.** Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are

distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

- (b) **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 Chapter.
- (c) **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 Chapter, an adult body painting studio shall not be deemed to include a tattoo parlor.
- (d) **Adult Bookstore or Adult Video Store.** A commercial establishment that, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
  - (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or
  - (2) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities".

**NOTE:** A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.
- (e) **Adult Cabaret.** A nightclub, dance hall, bar, restaurant, or similar commercial establishment that regularly features:
  - (1) Persons who appear in a state of nudity or semi-nudity; or
  - (2) Live performances that are characterized by "specified sexual activities"; or
  - (3) Films, motion pictures, videocassettes, slides, or other photographic or computer reproductions or depictions that are characterized by the depiction or description of "specified sexual activities" or "nudity".
- (f) **Adult Entertainment.** Any exhibition of any motion pictures, live performance, display or dance of any type, which has a significant or substantial portion of such performance or is distinguished or characterized by an emphasis on, any actual or simulated performance of specified sexual activities, or exhibition and viewing of specified anatomical areas, as defined herein, appearing unclothed, or the removal of articles of clothing to reveal specified anatomical areas.

- (g) **Adult Mini-Motion Picture Theater.** An enclosed building with a capacity for less than fifty (50) patrons, including establishments that have coin operated video or motion picture booths, 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.
- (h) **Adult Modeling Studio.** An establishment or business which provides the services of modeling for the purpose of reproducing the human body wholly or partially nude by means of photography, painting, sketching, drawing or otherwise.
- (i) **Adult Motel.** A hotel, motel, or similar commercial establishment which:
  - (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, 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 which may have 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 sub-rent the room for a period of time that is less than ten (10) hours.
- (j) **Adult Motion Picture Theater.** A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".
- (k) **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 or specified anatomical areas, as defined herein, or stimulating such activity.
- (l) **Adult Oriented Establishment ("Sexually Oriented Business").** An establishment which includes, but is not limited to, adult bookstores, adult motion picture theaters, adult mini-motion theaters, adult bath houses, adult body painting studios, adult motels, adult novelty shops or adult cabarets, and 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 profit, direct or indirect. An adult oriented establishment further includes, without being limited to, any adult entertainment studio or any premises that is 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.

- (m) **Adult Theater.** A theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are characterized by the "exposure of specified anatomical areas" or by "specified sexual activities."
- (n) **Booth, Room or Cubicle.** Such enclosures as 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; which 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, room, or cubicle 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, and are not open to any persons other than employees; nor shall this definition apply to hotels, motels or other similar establishments licensed by the State of Wisconsin pursuant to Chapter 50, Wis. Stats.
- (o) **Breast.** The female mammary gland.
- (p) **Buttocks.** The area at the rear of the human body referred to as the gluteus maximus, the fleshy part of the body at the back of the hips upon which a person sits.
- (q) **Church.** A building whether situated within the Town or not, in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.
- (r) **Customer.** Any person who:
  - (1) Is allowed to enter a sexually oriented establishment in return for the payment of an admission fee or any other form of consideration or gratuity; or
  - (2) Enters a sexually oriented business and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or
  - (3) Is a member of and on the premises of a sexually oriented establishment operating as a private club.
- (s) **Day Care Center.** A facility licensed by the State of Wisconsin pursuant to Sec. 48.65, Wis. Stats., whether situated within the Town of Cady or not.
- (t) **Employee.** A person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises

for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

- (u) **Entertainer.**
  - (1) Any person who appears in a state of nudity or semi-nudity in a sexually oriented business; or
  - (2) Any person who engages in live performances that are characterized by "specified sexual activities".
- (v) **Escort.** A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (w) **Escort Agency.** A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
- (x) **Establishment.** Includes any of the following:
  - (1) The opening or commencement of any sexually oriented business as a new business;
  - (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
  - (3) The additions of any sexually oriented business to any other existing sexually oriented business; or
  - (4) The relocation of any sexually oriented business; or
  - (5) A sexually oriented business or premises on which the sexually oriented business is located.
- (y) **Licensed Day Care Center.** A facility licensed by the State of Wisconsin, under Sec. 48.65, Wis. Stats., whether situated within the Town of Cady or not, that provides care, training, education, custody, treatment or supervision for more than four (4) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for profit or charges for the services it offers.
- (z) **Nudity or State of Nudity.** The appearance of the human bare anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or the nipple or areola of the female breast, with less than a fully opaque covering; or the showing of the covered male genitals in a discernibly turgid state.
- (aa) **Operator.** The person on the premises who is responsible for the control and management of the sexually oriented business.
- (bb) **Patron.** A customer on the premises of a sexually oriented business.
- (cc) **Person.** An individual, proprietorship, partnership, corporation, association, or other legal entity.
- (dd) **Premises.** The real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways,

- and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the owner or operator of the business.
- (ee) **Sexual Conduct.** The commission of any of the following: sexual intercourse, sodomy, bestiality, necrophilia, human excretion, masturbation, sadism, masochism, fellatio, cunnilingus or lewd exhibition of human genitals.
  - (ff) **Sexual Encounter Center.** A business or commercial enterprise that, as one if its principal business purposes, offers for any form of consideration:
    - (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
    - (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.
  - (gg) **Sexual Intercourse.** Physical sexual contact between individuals that involves the genitalia of at least one (1) person including, but not limited to, heterosexual intercourse, sodomy, fellatio, or cunnilingus.
  - (hh) **Sexually Oriented Business.** An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, or sexual encounter center. See also "Adult Oriented Establishment".
  - (ii) **Specified Anatomical Areas.** Less than completely and opaquely covered:
    - (1) Human male genitals in a discernible turgid state, even if completely and opaquely covered.
    - (2) Less than completely and opaquely covered human anus, anal cleft or cleavage, genitals, pubic region, or the nipple or areola of the female breast.
  - (jj) **Specified Sexual Activity** means:
    - (1) The fondling or other erotic touching of human genitals, pubic regions, buttocks, anus, or female breasts, whether covered or uncovered;
    - (2) Sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
    - (3) Masturbation, actual or simulated; or
    - (4) Excretory functions as part of or in connection with any of the activities set forth in Subsectionss (jj)(1) through (3) above.

#### **Sec. 11-7-4 Location Restrictions.**

- (a) Sexually oriented businesses shall not be permitted in any residential, agricultural, commercial, or highway commercial zoned district. A sexually oriented business may be located within an industrial zoned district.
- (b) The sexually oriented business may not be operated within (whether the following are located in or outside of the Town of Cady):
  - (1) Seven hundred fifty (750) feet of a church, chapel, synagogue, or regular place of religious worship. ✓



- (2) Seven hundred fifty (750) feet of a school; public or private preschool, elementary, middle or high school; or youth recreational center, or library;
- (3) Seven hundred fifty (750) feet of a licensed day care center, clinic or hospital;
- (4) Seven hundred fifty (750) feet of a public park;
- (5) Seven hundred fifty (750) feet of any property zoned residential.
- (c) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business.
- (d) 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 a part of the premises where a sexually oriented business is conducted, to the nearest property line or boundary of a property listed in Subsection (a) above.

### **Sec. 11-7-5 Regulation of Sexually Oriented Businesses.**

- (a) **State of Nudity.**
  - (1) It shall be a violation of this Chapter for any person to knowingly and intentionally appear in a state of nudity in a sexually oriented business.
  - (2) The license holder shall not permit any person to publicly perform specified sexual activities on the licensed premises.
  - (3) The use of simulated sexual organs during dances or performances is prohibited.
  - (4) No license holder shall permit any amateur dancing, entertainment, or performances on the license holder's premises in violation of this Chapter or any applicable state or federal laws.
- (b) **Consumption of Alcohol.** The sale, use or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.
- (c) **Physical Contact With Entertainers.** No person, employee or patron shall be permitted to have any physical contact with any entertainer on the premises during any performance. All performances shall only occur on a stage or table that is elevated at least eighteen (18) inches above the immediate floor level. To prevent actual physical contact between an entertainer and any other person, employee, or patron, all performances shall not be less than five (5) feet from any area occupied by any patron, persons, employees and patrons shall not have any physical contact with, and shall not be less than five (5) feet from any entertainer during the payment of a tip or gratuity.
- (d) **Underage Persons On Premises.** 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 a sexually oriented business at any time the sexually oriented business is open for business; this limitation includes being present on exterior areas, including parking lots.

- (e) **Duties of Operators.** It shall be duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years of age from entering the sexually oriented business. 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 a valid:
  - (1) Operator's, commercial operator's or chauffeur's driver's license; or
  - (2) Personal identification card issued by the state of residence of the individual seeking entry reflecting that such person is eighteen (18) years of age; or
  - (3) Passport or official identity card issued by the government of the nation of which the individual seeking entry is a citizen.
- (f) **Ordinance Violations.** No person shall cause another to commit a violation of this Chapter, or other related local or county ordinance or state statutes, nor shall any person permit such violation to occur on any premises under his/her control, tenancy, management or ownership.
- (g) **Hours of Operation.** No sexually oriented business regulated by this Chapter may remain open between the hours of 2:00 a.m. and 8:00 a.m., except on Saturday and Sunday, when the closing hours shall be between 2:30 a.m. and 8:00 a.m.
- (h) **Signs Posted.** All premises governed by this Chapter shall be required to post a minimum of three (3) signs provided by the Town of Cady that are visible to patrons, which state:

"By Town of Cady Ordinance: The use or consumption of alcoholic beverages on these premises is prohibited. No person shall be permitted to have any physical contact with any entertainer. No person shall be less than five (5) feet from any entertainer, including during the payment of tips. Violators may be subject to a fine of not less than Two Hundred Fifty Dollars (\$250.00) and not more than One Thousand Dollars (\$1,000.00) per violation. Each incident is a separate violation."

- (i) **Doors and Interior Premises.**
  - (1) Each entryway to a sexually oriented business featuring live entertainment shall through use of a vestibule, screening, or double doors, and with window coverings, eliminate any direct line of sight from the exterior of the building to any entertainer on the premises. There shall be no interior entrance to or exit from a sexually oriented business from or into an adjoining premise which is not a sexually oriented business. The interior premises of a sexually oriented business shall not be visible by any means from another premise,

whether adjoining or separate, which is not a sexually oriented business.

- (2) While a performance is in progress, the establishment shall be adequately illuminated so as to permit safe ingress and egress from the premises.
- (3) The license holder shall insure that building capacity limits as set by the Fire Department and/or Zoning or Building Codes are complied with at all times.

(j) **Responsibilities of Owners.**

- (1) An operator shall maintain a register of all employees, showing the name and aliases used by the employee, home address, birth date, sex, telephone numbers, and date of employment and termination, and dates of employment and termination and business addresses of prior two (2) jobs. The above information on each employee shall be maintained in the register on the premises of a period of three (3) years following termination.
- (2) The operator shall make the register of employees available immediately for inspection by law enforcement officers upon demand of a member of a law enforcement agency at all reasonable times.
- (3) 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.

- (k) **Presence of Minors.** No employee of a sexually oriented business shall allow any minor to loiter around or to frequent a sexually oriented business or to allow any minor to view sexually-explicit live adult entertainment or materials containing depictions of specified sexual activities or specified anatomical areas as defined herein.

**Sec. 11-7-6 Exemptions.**

The provisions of this Chapter do not apply to the following establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of a serious artistic merit are offered on a regular basis; and which the predominant business or attraction is not the offering of entertainment which is intended for the sexual interest or titillation of customers; and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or semi-nude performances. While expressive live nudity may occur within these establishments, this Chapter seeks only to minimize and prevent the secondary effects of sexually oriented businesses on the community. Negative secondary effects have not been associated with these establishments.

## **Sec. 11-7-7 Sexually Oriented Business License.**

### **(a) Requirement.**

- (1) **License Required.** Except as provided in Subsection (a)(3) below, no sexually oriented business shall be operated or maintained within the corporate limits of the Town of Cady without first obtaining a license to operate issued by the Town of Cady.
- (2) **One License Per Premises.** A license may be issued only for one (1) sexually oriented business located at a fixed and certain place per filed application. Any person, partnership, or corporation which desires to operate more than one (1) sexually oriented business must have a license for each.
- (3) **Existing Businesses.** Any sexually oriented business existing at the time of the original passage of this Chapter must submit an application for a license within ninety (90) days of the passage of this Chapter. If an application is not received within said ninety (90) day period, then such existing sexually oriented business is in violation of this Chapter and shall cease operations.

### **(b) Application for License.**

- (1) **License Procedure.** Any person, partnership, or corporation desiring to secure a sexually oriented business license shall make application to the Town Clerk, and be dated by the Town Clerk. A copy of the application shall be distributed within ten (10) days of receipt thereof to the Chairperson, Fire Inspector, Building Inspector, pertinent law enforcement authority and to the applicant.
- (2) **Required Information.** The application for a sexually oriented business license shall be upon a form provided by the Town Clerk. An applicant for a license, which shall include all partners or limited partners of a partnership applicant, all officers or directors of a corporate applicant, all members of any limited liability company applicant, 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, including all aliases, address and date of birth of applicant;
  - 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 ten (10) years immediately preceding the date of application;
  - e. The exact nature of the adult entertainment to be conducted;
  - f. Whether the applicant previously operated in this or any other state, county or municipality under a sexually oriented business license or similar business license; whether the applicant has ever had such a license revoked or suspended, the reason therefor, and

- the business entity or trade name under which the applicant operated that was subject to the suspension or revocation;
- g. All criminal convictions, whether federal or State, or municipal Ordinance violation convictions, forfeiture of bond and pleadings of nolo contendere on all charges, except traffic offenses;
  - h. Two (2) portrait photographs of at least two (2) inches by two (2) inches of the applicant;
  - i. The address of the sexually oriented establishment to be operated by the applicant;
  - j. Proof of right to occupy under Subsection (c)(4) below; and
  - k. If the applicant is a corporation, the application shall specify the name of the corporation, the date and State of incorporation, and the name and address of the registered agent of the corporation.

(3) ***Failure to Provide Information.*** Failure or refusal of the applicant to provide any information for the investigation of the application, or the applicant's refusal or failure to appear at any reasonable time and place for examination under oath regarding said application, or refusal to submit to or cooperate with any investigation required by this Section, shall constitute an admission by the applicant of ineligibility for such license and shall be grounds for denial thereof.

(c) **Standards for Issuance of a License.**

(1) ***General Requirements.*** To receive a license to operate a sexually oriented business, an applicant must meet the following standards:

- a. If the applicant is an individual:
  - 1. The applicant shall be at least eighteen (18) years of age;
  - 2. Subject to Chapter 111, Wis. Stats., the applicant shall not have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
  - 3. The applicant shall not have been found to have previously violated this Chapter within five (5) years immediately preceding the date of the application.
- b. If the applicant is a corporation:
  - 1. All officers, directors, and others required to be named under this Section shall be at least eighteen (18) years of age;
  - 2. Subject to Chapter 111, Wis. Stats., no officer, director, or other person required to be named under this Section shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
  - 3. No officer, director or other person required to be named under this Section shall have been found to have previously violated this Chapter within five (5) 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 (2) 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 eighteen (18) years of age;
  - 2. Subject to Chapter 111, Wis. Stats., no person having a financial interest in the partnership, joint venture, or other type of organization shall have been convicted of or pleaded nolo contendere to a felony or any crime involving moral turpitude, prostitution or other crime of a sexual nature in any jurisdiction within five (5) years immediately preceding the date of the application; and
  - 3. No person having a financial interest in the partnership, joint venture or other type of organization shall have been found to have violated any provision of this Chapter within five (5) years immediately preceding the date of the application.
- (2) **Investigation.** No sexually oriented business license shall be issued unless a designated law enforcement agency has investigated the applicant's qualifications to be licensed. The results of that investigation shall be filed in writing with the Town Clerk no later than twenty-one (21) days after the application.
- (3) **Inspection.** The Building Inspector, Fire Inspector, and/or law enforcement authorities 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 twenty-one (21) days of the date of application.
- (4) **Proof of right to Premises.** No sexually oriented business license shall be issued unless the applicant provides proof of one (1) 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 a venture. Proper zoning includes permissible non-conforming use status.
  - c. An option to purchase property which is properly zoned for the venture.
  - d. An option to lease property which is properly zoned for the venture. Proper zoning includes permissible non-conforming use status.
- (d) **License Application Fee.** A non-refundable sexually oriented business license application fee of Four Hundred Dollars (\$400.00) shall be submitted with the application for a license.
- (e) **Renewal of License or Permit.**
  - (1) **Renewal Application.** Every license issued pursuant to this Section will terminate on June 30 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 sixty (60) days before the license expires. A copy of the application for renewal shall be distributed by the Town Clerk to the Building Inspector, Fire Inspector, pertinent law enforcement authority, and the applicant. 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) **Renewal Fee.** A sexually oriented business license renewal fee of Three Hundred Dollars (\$300.00) shall be submitted with the application for each renewal.
  - (3) **Investigation.** Law enforcement authorities may be requested to provide any information bearing on the operator's qualifications, that information to be filed in writing with the Town Clerk.
- (f) **Denial of Application.**
- (1) **Reasons for Denial.** Whenever an initial application is denied, the Town Clerk shall, within fourteen (14) days of the denial, 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 at the next regularly scheduled meeting of the Town Board.
  - (2) **Failure to Provide Required Information.** 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 Chapter 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 Clerk.
- (g) **Transfer of License.**
- (1) **Application.**
    - a. A sexually oriented business license is personal to the owner(s) and operator designated in the application, provided it may be transferred pursuant to this Section. A transfer application must be filed no less than ten (10) days before any change of the owner(s) or operators designated on the application. In the event that a transfer application is not timely filed, then the license shall be invalid for any purpose relating to the operation of the adult oriented business, and any transfer shall require the filing of an original application and be subject to the regulations applicable thereto.
    - b. The Town Clerk shall prescribe a form on which license transfer applications shall be made. The form shall include a statement under oath that the original application remains correct as

previously submitted in all respects except those that are amended by the transfer application. The transfer application shall contain a statement under oath that the individual signing the transfer application has personal knowledge of the information contained therein and that the information is true and correct and shall not be complete unless accompanied by a nonrefundable transfer fee of One Hundred Dollars (\$100.00). Transfer applications shall be filed in the same place and at the same time as original applications, and the fee shall be payable in the same manner as for original applications.

- (2) **Review.** Transfer applications shall be reviewed, issued and subject to appeal in the same manner as original applications, and they shall be issued for the remaining term of the sexually oriented business license to be transferred.
  - (3) **Improper Transfer.** Any transfer of a sexually oriented business, other than as provided in this Section, from the licensed premises to any other premises shall cause such license to lapse and become void. A sexually oriented business license which has lapsed and become void shall be subject to revocation under Subsection (i) below.
- (h) **Physical Layouts of Licensed Premises.** Licensees under this Section shall at all times comply with the requirements of this Chapter, including, but not limited to, Section 11-7-5. In addition, any sexually oriented business having available for customers, patrons or members any booth, room, or cubicle for the private viewing of any motion picture, videotape or compact disc in 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 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 sexually oriented business 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 (1) 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 (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) **Occupants.** Only one (1) individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of specified sexual activity, cause any bodily discharge or litter while in the booth. No person shall alter, damage or deface any portion of any such booth, room or cubicle in such a manner that it no longer complies with the provisions of this Section.
- (i) **License Suspension, Revocation or Non-Renewal of Licenses.**
- (1) **In General.** Any sexually oriented business license granted herein may be revoked, suspended, or not 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 Chapter, except for matters involving a violation of Zoning Fire Safety or Building Codes, in such case the license shall be revoked after the second (2nd) violation thereof in any license year;
  - c. After one (1) conviction of any establishment personnel of an offense under Ch. 944, Wis. Stats., or of an offense against the person or property of a patron of the property or of an offense involving substance in Subsection II of Ch. 961, Wis. Stats., where there is shown the participation or knowledge of any other establishment personnel or of any individual within the business structure of the applicant.
  - d. If the licensee, operator or employer becomes ineligible to obtain a license.
  - e. If an operator employs an employee who is not properly registered under this Chapter does not have a permit or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without being registered with the Town Clerk.
  - f. If any cost or fee required to be paid by this Chapter is not paid.
  - g. If any intoxicating liquor or fermented malt beverage, narcotic or controlled substance is served or consumed on the premises of the sexually oriented business.
  - h. If any operator, employee or entertainer sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed to any minor any material depicting specified sexual activities or specified anatomical areas.
- (j) **Notice of Hearing.** No sexually oriented business 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 fifteen (15) days prior to the date of the hearing and shall state the time and place thereof.

- (k) **Hearing.** 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, 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 prepare findings of fact and conclusions as to what, if any, action the Town Board will take with respect to the sexually oriented license. The Town Board shall provide the complainant and licensee with a copy of the report.

### **Sec. 11-7-8 Exposing Minors to Harmful Sexually-Oriented Materials or Performances.**

- (a) It shall be unlawful for any person knowingly to exhibit for a monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show or other presentation which in whole or in part depicts nudity, or specified sexual activities and which is harmful to minors, unless such minor is accompanied by his/her parent or legal guardian.
- (b) It shall be unlawful for any person at a sexually oriented business knowingly to sell or loan for monetary consideration to a minor:
- (1) Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts specified anatomical areas or shows specified sexual activities and which is harmful to others.
  - (2) Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any material enumerated in Subsection (b)(1) hereof, or explicit and detailed verbal descriptions or narrative accounts of specified sexual activities and which, taken as a whole is harmful to minors.
- (c) It shall be unlawful for any person knowingly to admit a minor to any premises whereon there is exhibited nudity or specified sexual activities which is harmful to minors unless such minor is accompanied by his/her parent or legal guardian.
- (d) Any person violating this Section shall be subject to the penalty provisions of Section 11-7-9 of the Town of Cady Code of Ordinances.

### **Sec. 11-7-9 Penalty.**

In addition to any other actions allowed by law or taken by the Town Board, including the action of license revocation or non-renewal, anyone who violates any of the provisions of this Chapter shall forfeit not less than Two Hundred Fifty

Dollars (\$250.00), but not more than One Thousand Dollars (\$1,000.00), for each and every offense, together with the costs of prosecution. If such forfeiture and costs are not paid, such person so convicted shall be subject to any civil penalties or other penalties available by law. Each violating incident or day in violation shall be a separate offense.

**SECTION II. SEVERABILITY.**

If any provision of this Ordinance is invalid or unconstitutional or if the application of this Ordinance to any person or circumstance is invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provisions or applications.

**SECTION III. EFFECTIVE DATE.**

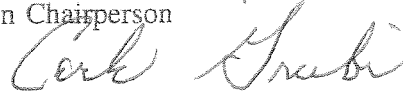
This Ordinance shall take effect upon passage and publication as provided by law.

ADOPTED this 07 day of July, 2009.

TOWN OF CADY, WISCONSIN



Town Chairperson



Town Clerk

Published: \_\_\_\_\_