

**State of Wisconsin
Town of Flambeau
Rusk County**

Section 1 – Purpose

The purpose of this ordinance is to enact the Town of Flambeau Code of Ordinance relating to Chapter No. 8—Adult Entertainment Establishments, which has been prepared and authorized by the town board.

Section II – Authority

The Town Board of the Town of Flambeau, Rusk County, Wisconsin, has the specific authority under s 66.0103, Wis. Stats., to prepare and enact a partial code of some of its general ordinances by enacting an ordinance that incorporates the code by reference.

Section III – Adoption of Ordinance

This ordinance, adopted by a majority of the town board on a roll call vote with a quorum present and voting and proper notice having been given, provides the authority for the town to prepare and enact a partial code of some of its general ordinances by enacting an ordinance that incorporates the code by reference.

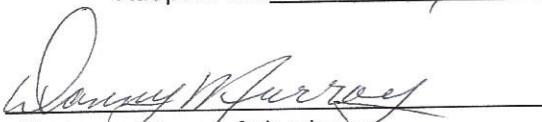
Section IV – Enactment and Incorporation of Code of Ordinances

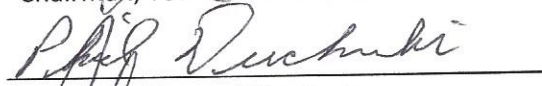
The partial code of ordinances entitled, Town of Flambeau Code of Ordinances relating to Adult Entertainment Establishments, having been placed on file and open to public inspection in the office of the town clerk for a period of 2 weeks commencing September 29, 2017, pursuant to s. 66.0103, Wis. Stats. is adopted as a partial code of ordinances in and for the Town of Flambeau, Rusk County, Wisconsin. The partial code is incorporated in this ordinance by reference.

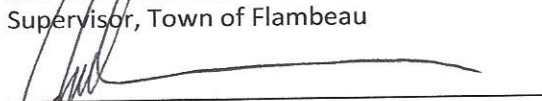
Section V – Effective Date

This ordinance is effective on publication or posting. The town clerk shall properly publish this ordinance as required under s. 60.80. Wis. Stats.

Adopted this 17 day of October 17, 2017.


Chairman, Town of Flambeau:


Supervisor, Town of Flambeau


Supervisor, Town of Flambeau

Attested to:


Clerk, Town of Flambeau

Town of Flambeau, Rusk County, Wisconsin

Code of Ordinances

Adult Entertainment Establishments

DIVISION 1. GENERALLY

Sec. 8-10. Supporting data.

Sec. 8-11. Findings.

Sec. 8-12. Purpose and intent.

Sec. 8-13. Definitions.

Sec. 8-14. Exemptions.

Sec. 8-15. Violations.

Sec. 8-10. Supporting Data.

- (a) In enacting these regulations, the town board relies on evidence concerning the adverse secondary effects of sexually oriented businesses on the community as reported in the cases of *City of Erie vs. Pap's A.M.*, 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); *Barnes vs. Glen Theatre, Inc.*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); *City of Renton vs. Playtime Theaters, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); *Young vs. American Mini Theaters*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); *Arcara vs. Cloud Books, Inc.*, 478 U.S. 697, 106 S.Ct. 3172, 92 L.Ed.2d 568 (1986); *California vs. LaRue*, 409 U.S. 109, 93 S.Ct. 390, 34 L.Ed.2d 342 (1972); *Jacobucci vs. City of Newport, Ky.*, 479 U.S. 92, 107 S.Ct. 383, 93 L.Ed.2d 334 (1986); *United States vs. O'Brien*, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968); *DLS, Inc. vs. City of Chattanooga*, 107 F.2d 403 (6th Cir. 1997); *Key, Inc. vs. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Hang on, Inc. vs. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *South Florida Free Beaches, Inc. vs. City of Miami*, 734 F.2d 608 (11th Cir. 1984); *East of the River Enterprises II vs. City of Hudson*, 618 N.W.2d 274 (Wis.App. 2000), *review denied* 619 N.W.2d 94 (Wis. 2000); and *Urmanski vs. Town of Bradley*, 613 N.W.2d 905 (Wis. App. 2000).
- (b) The board further relies upon studies conducted in numerous cities, such as Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas, among others.
- (c) The board further relies upon the findings reported in Regulation of Adult Entertainment Establishments in St. Croix County, Wisconsin, findings reported in the *Final Report of the Attorney General's Commission on Pornography* (1986), and the *Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses* (June 6, 1989, Minnesota) and statistics reported by the Centers for Disease Control and Prevention.

Sec. 8-11. Findings.

Based on the relevant data relied upon by the town board, the board finds that:

- (1) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods 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.
- (3) Sexually oriented businesses may contribute to an increased public health risk through the spread of sexually transmitted diseases.
- (4) Sexually oriented businesses may encourage, support and facilitate prohibited secondary sexual activities such as prostitution.
- (5) The consumption of alcohol beverages on the premises of sexually oriented businesses exacerbates the negative secondary effects of such businesses on the community.
- (6) There is an increase in the potential for infiltration by organized crime for the purposes of unlawful conduct.

Sec. 8-12. Purpose and intent.

- (a) It is the intent of this ordinance to regulate sexually oriented businesses and related activities in order to ameliorate the negative secondary effects associated with such businesses so as to promote the health, safety and general welfare of the citizens of the town.
- (b) It is not intended that the provisions of this article directly or indirectly impose limitations or restrictions on the content of any communicative materials, including sexually oriented materials, nor is it the intent of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment of the United States Constitution or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.
- (c) Further, it is not the intent of this article to condone or legitimize the distribution of obscene materials.

Sec. 8-13. Definitions.

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade means 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 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.

Adult bookstore or adult video store means an establishment that, as its substantial source of revenue, presents adult entertainment for observation by patrons therein or which, as part of its substantial course of conduct, offers for sale, rent, trade, lease, inspection or viewing books, films, videocassettes, magazines or other such media which are distinguished or characterized by their emphasis on matters depicting, describing or relating to specified anatomical areas or specified sexual activities; or instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities. Further:

- (1) A commercial establishment may have other principal business purposes that do not involve the offering for sale or for rent of material as defined above and still be categorized as an adult bookstore or adult video store. Such other business purpose will not serve to exempt these commercial establishments from being categorized as adult bookstores or adult video stores so long as one of the principal purposes is the offering for sale or rent for consideration the specified materials that depict or describe specified sexual activities or specified anatomical areas.

- (2) 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.

For purposes of this definition, the term "substantial" means 40 percent or more of a business stock in trade, display space, floor space or retail sales in any one month. Upon reasonable belief that an entity is in excess of the 40 percent threshold, that entity shall provide all necessary records, receipts and documentation to the town upon request. Failure to do so shall result in a presumption that the entity is operating in excess of the threshold.

Adult business means either:

- (1) Any business which is conducted exclusively for the patronage of adults and as to which minors are specifically excluded from patronage thereat either by law or by the operators of such business;
- (2) Any business other than those expressly specified in this article, where employees or patrons expose specified anatomical areas or engage in specified sexual activities; or
- (3) Any other business or establishment which offers its patrons services or entertainment characterized by an emphasis on matter depicting, describing, discussing or relating to specified sexual activities or specified anatomical areas.

Adult cabaret means a nightclub, dancehall, bar, restaurant or similar commercial establishment that regularly features persons who appear in a state of nudity or semi nudity, live performances that are characterized by specified sexual activities, or films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specified sexual activity or nudity or specified anatomical areas.

Adult dancing establishment means a business that features dancers displaying or exposing specified anatomical areas.

Adult entertainment means any exhibition of any motion picture, live performance, display or dance of any type which has as 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.

Adult establishment means an adult arcade, adult bookstore, adult cabaret, adult motion picture theater, adult theater, adult video store and further means any premises to which public patrons or members are invited or admitted that is substantially devoted to the purveyance, demonstration or display of specified sexual activities or specified anatomical areas.

Adult motion picture arcade means any place to which the public is licensed or invited wherein coin or slug means 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 or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by an emphasis on, depicting or describing specified sexual activities or specified anatomical areas.

Adult motion picture theater means a commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult theater means 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 specific sexual activities.

Employee means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time, contract 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, wages or other compensation by the operator of said business. The term "employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises nor does employee include a person exclusively on the premises as a patron or customer.

Entertainer means any person who appears in a sexually oriented business in a state of nudity or semi nudity in a sexually oriented business or any person who engages in live performances that are characterized by specified sexual activities or the exposure of specified anatomical areas.

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.
- (4) The relocation of any sexually oriented business.
- (5) A sexually oriented business or premises on which the sexually oriented business is located.

Good moral character means the absence of participation in the following: tax evasion; fraud; dishonesty; deceit; providing false information in documents; prostitution; theft; burglary; child pornography; money laundering; bodily injury against persons or animals; illicit trafficking in controlled substances; possession of controlled substances; crimes against minors; crimes against the government or that jeopardize national security; bribery; perjury, witness tampering; gambling; failure to pay child support; failure to pay court ordered obligations; failure to appear as ordered by the court; domestic abuse temporary restraining orders/injunctions; obstruction of justice and forgery. The fact that an individual doesn't fall within any of the above categories doesn't preclude the town board from making a finding he/she is not a person of good moral character. The town board can rely on any other information to determine the individual is not of good moral character. It is up to the individual to prove to the town board that he/she is of good moral character.

Nude, nudity or state of nudity means the exposure of any specified anatomical areas as defined in this section.

Operator means the person on the premises who is responsible for the control and management of the sexually oriented business.

Places in sexually oriented businesses that are provided or set apart for nudity means enclosed single sex public restrooms, enclosed single sex functional shower, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations and similar places in which nudity or exposure of specified anatomical areas is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein. This term shall not be deemed to include places where a person's conduct of being nude is used for his or her profit or where being nude is used for the promotion of business or is otherwise commercially exploited.

Premises means 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.

Regularly means on a daily, weekly, monthly, semimonthly or bimonthly basis as part of the ongoing scheduled activities of the establishment.

Seminude or semi nudity means the exposure of the nipples or areolas of the female breast less than completely and opaquely covered.

Sexually oriented business means an adult bookstore, adult establishment, adult motion-picture theater, adult video store, adult cabaret or a business featuring adult entertainment, adult motion-picture theater, adult theater or other business classified as an adult establishment.

Specified anatomical areas.

- (1) The term "specified anatomical areas" means the human male genitals in a discernibly turgid state, even if fully and opaquely covered.

- (2) The term "specified anatomical areas" includes less than completely and opaquely covered human genitals, pubic region, buttocks, anus, anal cleft or cleavage; or less than completely and opaquely covered nipples or areolas of the human female breast.

Specified sexual activities shall include any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts, whether covered or uncovered.
- (2) Sex acts, actual or simulated, including intercourse, oral copulation, sodomy, masturbation, necrophilia, sadomasochistic abuse, fellatio or cunnilingus.
- (3) Showing human genitals in a state of sexual stimulation or arousal.
- (4) Excretory functions as part of or in connection with any of the activities set forth in this definition.

Sec. 8-14. Exemptions.

- (a) The provisions of this article do not apply to theaters, performing arts centers, civic centers and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic, social or political merit are offered on a regular basis and in which the predominant business or attraction is not the offering of entertainment which is intended for the sexual interests or titillation of customers and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or seminude performances. While expressive live nudity may occur within these establishments, this article 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.
- (b) The provisions of this article do not apply to places in sexually oriented businesses that are provided or set apart for nudity, provided that:
 - (1) Persons appearing nude in a place provided or set apart for nudity do so for the sole purpose of performing a lawful function that is customarily intended to be performed within such place provided or set apart for nudity; and
 - (2) Persons appearing nude in a place provided or set apart for nudity are not nude for the purpose of directly or indirectly obtaining money or other financial gain for such person or for another person or entity.

Sec. 8-15. Violations.

- (a) Violation of the use provisions of this article is declared to be a public nuisance per se which, in addition to any other remedy provided by law, may be abated by the town board or its designee by way of civil abatement procedures.
- (b) In addition, violation of this article constitutes sufficient grounds for suspending, revoking or nonrenewing an alcohol beverage license under Wis. Stats. § 125.12 and any license issued pursuant to this article.
- (c) In addition, violations of this article shall be punishable as provided in section 8-16.

Sec. 8-16. General penalty.

- (a) *Generally.* Except where a penalty is provided elsewhere in this Code, any person who shall violate any of the provisions of this Code shall upon conviction of such violation, be subject to a penalty, in the amount required or permitted by state law, if applicable, or as follows:
 - (1) *First offense.* Any person who shall violate any provision of this Code shall, upon conviction thereof, forfeit up to \$5,000.00, together with the costs of prosecution and, in default of payment

of such forfeiture and costs of prosecution, shall be imprisoned in the county jail until such forfeiture and costs are paid, but not exceeding 90 days.

- (2) *Second offense.* Any person found guilty of violating any ordinance or part of an ordinance of this Code who shall previously have been convicted of a violation of the same ordinance within one year shall upon conviction thereof, forfeit up to \$10,000.00 for each such offense, together with costs of prosecution and in default of payment of such forfeiture and costs shall be imprisoned in the county jail until such forfeiture and costs of prosecution are paid, but not exceeding six months.
- (b) *Continued violations.* Each violation and each day a violation continues or occurs shall constitute a separate offense. Nothing in this Code shall preclude the town from maintaining any appropriate action to prevent or remove a violation of any provision of this Code.
- (c) *Other remedies.* The town shall have any and all other remedies afforded by state law or rule in addition to the forfeitures and costs of prosecution above.

State law reference— Statutory limitation of penalties for violation of county and municipal ordinances, Wis. Stats. § 66.0109; actions for violations of ordinances, appeals, Wis. Stats. § 66.0114; citations for certain ordinance violations, Wis. Stats. § 66.0113; town authority to prohibit certain conduct and provide forfeitures for violations, Wis. Stats. § 60.23.ecs. 1-16—1-20.

DIVISION 2. LICENSING

Sec. 8-21. License required.

Sec. 8-22. Prohibited licensees.

Sec. 8-23. Limitation on aggregate number of licenses.

Sec. 8-24. Applications for licenses; fees.

Sec. 8-25. Contents of application.

Sec. 8-26. Applicant to appear.

Sec. 8-27. Investigation.

Sec. 8-28. Grant of license; findings.

Sec. 8-29. Denial of license; appeal.

Sec. 8-30. Display of license.

Sec. 8-31. License renewal.

Sec. 8-32. Licenses nontransferable.

Sec. 8-33. Change of location or name.

Sec. 8-21. License required.

- (a) It shall be unlawful for any person, association, partnership or corporation to engage in, conduct or carry on, in or upon any premises within the town an adult entertainment establishment, as defined in this chapter, without a license. No license so issued shall condone or make legal an activity thereunder if the same is deemed illegal or unlawful under state or federal law.
- (b) It shall be unlawful for any person to operate an adult bookstore, adult motion picture theater, adult mini-motion picture theater, adult hotel or motel, adult motion picture theater, adult hotel or adult motion

picture arcade, cabaret, encounter center, escort bureau, massage parlor, modeling studio, adult business or adult dancing establishment unless such business shall have a currently valid license or shall have made proper application for renewal within the time required thereof under this chapter, which licensee shall not be under suspension or permanently or conditionally revoked.

Sec. 8-22. Prohibited licensees.

No license shall be issued under this article to or held by:

- (1) Any applicant or other interested persons who have not paid all required fees and taxes for a business at that location or property taxes. Interested persons include all persons who have an interest in the adult entertainment establishment for which the license is being applied for. Those having an interest in the adult entertainment establishment includes partners in a partnership, directors and officers of a corporation and, if a corporation, all shareholders holding more than five percent of the share of corporate stock outstanding.
- (2) Any applicant or other interested person who is not of good moral character.
- (3) Any corporation, any of whose officers, directors or stockholders holding over five percent of the outstanding issued share of capital stock are not of good moral character.
- (4) Any partnership or association, any of whose officers or members holding more than five percent interest therein are not of good moral character.
- (5) Any person employing, assisted by or financed in whole or in part by any person who is not of good moral character.
- (6) Any applicant or other interested persons who are not qualified to hold and conduct business according to federal, state or local laws.

Sec. 8-23. Limitation on aggregate number of licenses.

Should there be a sufficient number of current licenses to meet the needs and desires of the inhabitants of the town, no new licenses shall issue. In determining the needs and desires of the inhabitants, the standard of review shall be that the market is virtually unrestrained as defined in *Young vs. American Mini Theaters, Inc.*, 427 U.S. 50, 70-71, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976).

Sec. 8-24. Applications for licenses; fees.

- (a) Any person, association, partnership or corporation desiring to obtain a license to operate, engage in, conduct or carry on any adult entertainment establishment shall make application to the town clerk or his designated representative. Only the owner/s of the association, partnership or corporation have the authority to make an application.
- (b) The application for licensure shall be made to the town clerk, on the form provided by the clerk, accompanied by a nonrefundable administrative fee and an annual license fee in the amount established by resolution of the town board. The purpose of the administrative fee is to defray, in part, the costs of investigation and report required by this chapter. In the event the application for license is denied, the annual license fee shall be refunded to the applicant.
- (c) The application for license does not authorize the engaging in, operation of, conduct of, or carrying on of any adult entertainment establishment.

Sec. 8-25. Contents of application.

Each application for an adult entertainment establishment license shall contain the following information:

- (1) The full, true name and any other names used by the applicant and also the full, true names of all "interested persons." Interested persons includes all persons who have an interest in the adult entertainment establishment for which the license is being applied for. Those having an interest in the adult entertainment establishment includes partners in a partnership, directors and officers of a corporation and, if a corporation, all shareholders holding more than five percent of the share of corporate stock outstanding.
- (2) The present address and telephone number of the applicant.
- (3) The previous addresses of applicant, if any, for a period of five years immediately prior to the date of the application and the dates of residence at each.
- (4) The applicant's height, weight, color of eyes and hair and date and place of birth.
- (5) Two photographs of the applicant at least two by two inches taken within the last six months.
- (6) Business, occupation or employment history of the applicant and all other interested persons for the five years immediately preceding the date of application.
- (7) Business or employment records of the applicant, partners in a partnership, directors and officers of a corporation and, if a corporation, all shareholders holding more than five percent of the share of corporate stock outstanding.
- (8) The business license history of the applicant, (and also of all other interested persons who have an interest in the association, partnership or corporation), and whether any of them, in previous operations in this or any other town, state or territory under license, has had the license for an adult entertainment business or similar type of business revoked or suspended, the reason therefore, and the business activity or occupation subsequent to the action of suspension or revocation. The applicant shall provide sufficient information so that the Town board can contact the other governmental agencies named. In addition the applicant and all other interested persons agree, (as part of the application), to sign a release so the Town board can obtain all information regarding the business license history of the applicant and all other interested persons. Failure of the applicant and all other interested parties to sign said release/s shall be grounds for denial of the license application by the Town board.
- (9) All convictions, including ordinance violations, exclusive of traffic violations of the applicant and all other interested persons, stating the jurisdiction, date and nature of any the convictions.
- (10) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the place and date of incorporation, and the names and addresses of each of its current officers and directors, and each stockholder holding more than five percent of the stock in the corporation. The applicant corporation shall designate one of its officers to act as its responsible managing officer. The designated person shall complete and sign all application forms required of an individual applicant under this chapter, but only one application fee shall be charged.
- (11) If the applicant is a partnership, the applicant shall set forth the name, residence address and dates of birth of the partners, including limited partners. If the applicant is a limited partnership, it shall furnish a copy of its certificate of limited partnership filed with the court clerk. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The applicant partnership shall designate one of its general partners to act as its responsible managing officer. The designated person shall complete and sign all application forms required of an individual applicant under this chapter, but only one application fee shall be charged.
- (12) The name and address of the owner and lesser of the real property upon which the business is to be conducted, and a copy of the lease or rental agreement.
- (13) The other identification and information as the local law enforcement agency/s may require in order to discover the truth of the matters herein specified as required to be set forth in the application.

- (14) The age, date of birth, and social security number of the applicant, and also the same information for all other interested persons.
- (15) Fingerprints of the applicant.
- (16) If the applicant is a person doing business under a trade name, a copy of the properly recorded trade name. If the applicant is a corporation, a copy of the authority to do business in Wisconsin, including articles of incorporation, trade name affidavit, and last annual report.
- (17) At least three character references from individuals who are in no way related to the applicant or are individual shareholders, officers or directors of a corporation and who are not or will not benefit financially in any way from the application if the license is granted and who have not been convicted of any misdemeanor or felony or a municipal code violation involving moral turpitude in the past five years. The full names, dates of birth and addresses of the three character references must be provided.
- (18) The address of the premises to be licensed.
- (19) Whether the premises is owned or rented and if the applicant has a right to legal possession of the premises. A copy of the documents giving the legal right of possession to the applicant must be provided.
- (20) A certified plat by a registered surveyor or engineer, licensed by the state, showing the location of the proposed premises in relation to the neighborhood, its proximity to any church, school, public park, governmental building or site, or other business hereunder regulated.
- (21) Each application for an adult entertainment establishment license shall be verified and acknowledged under oath to be true and correct by the following applicants:
 - a. If the applicant is an individual, by the individual;
 - b. If the applicant is a partnership, by the manager or general partner;
 - c. If the applicant is a corporation, by the president of the corporation;
 - d. If the applicant is any other organization or association, by the chief administrative official.

Sec. 8-26. Applicant to appear.

The applicant, if an individual, or designated responsible managing officer, if a partnership or corporation, shall personally appear before the Town board and produce proof that a nonrefundable application fee, established by resolution of the Town board, has been paid and shall present the application containing the aforementioned and described information.

Sec. 8-27. Investigation.

The town shall have 45 days to investigate the application and the background of the applicant.

Sec. 8-28. Grant of license; findings.

Upon completion of the investigation, the town board may grant the license if it finds:

- (1) The required annual license fee has been paid.
- (2) The application conforms in all respects to the provisions of this article.
- (3) The applicant has not knowingly made a material misrepresentation in the application.
- (4) The applicant has fully cooperated in the investigation of his/her application.

- (5) The applicant, if an individual, or any of the stockholders of the corporation, any officers or directors, if the applicant is a corporation, or any of the partners, including limited partners, if the applicant is a partnership, has not been convicted in a court of competent jurisdiction of an offense involving conduct or convicted of an attempt to commit any of the above-mentioned offenses, or convicted in any state or federal court of any offense which if committed or attempted in this state or country would have been punishable as one or more of the above-mentioned offenses, or any crime involving dishonesty, fraud, deceit, or moral turpitude.
- (6) The applicant and/or other interested persons have not had an adult entertainment establishment license or other similar license denied or revoked for cause by this town or any other town located in or out of this state prior to the date of application.
- (7) The building, structure, equipment, or location of the business, as proposed by the applicant, would comply with all applicable laws, including, but not limited to, health, zoning, distance, fire and safety requirements and standards.
- (8) The applicant is at least 18 years of age.
- (9) The applicant, his employee, agent, partner, director, officer, stockholder or manager or other interested persons have not within five years of the date of the application knowingly allowed or licensed any of the specified sexual activities as defined herein to be committed or allowed in or upon the premises where the adult entertainment establishment is to be located or to be used as a place in which solicitation for the specified sexual activities as defined herein openly occur.
- (10) On the date the business for which a license is required herein commences, and thereafter, there will be a responsible person on the premises to act as manager at all times during which the business is open.
- (11) The proposed premises is not located too close to any church, school, library, government building or site, or any other business restricted hereunder. The town board has the sole discretion to determine what they deem is "too close."
- (12) The grant of the license will not cause a violation of this or any other regulation of the Town or any state or federal law.
- (13) Any other inquiry/provision deemed necessary or desirable by the Town to ensure the health, safety, and welfare of the citizens of the Town or the preservation of its neighborhoods.

Sec. 8-29. Denial of license; appeal.

If the Town, following investigation of the applicant and other interested persons, deems that the applicant does not fulfill the requirements as set forth in this article, it shall notify the town clerk and, within 45 days of the date of application, provide copies of the investigation report to the clerk. The clerk shall, within ten days thereafter, notify the applicant by certified mail of the denial. Any applicant who is denied a license may appeal the denial to the Town board chairperson and Town board.

Sec. 8-30. Display of license.

An adult entertainment establishment licensee shall conspicuously display all licenses required by this article.

Sec. 8-31. License renewal.

Licenses for adult entertainment establishments may be renewed on a year-to-year basis provided that the licensees continue to meet the requirements set out in this article. The renewal fee for the adult entertainment establishment licenses shall be established by resolution of the town board.

Sec. 8-32. Licenses nontransferable.

- (a) No adult entertainment establishment license may be sold, transferred, leased, or assigned by a licensee, or by operation of law, to any other person. Any sale, transfer or assignment, or attempted sale, transfer, lease or assignment, shall be deemed to constitute a voluntary surrender of the license and the license shall thereafter be null and void except as otherwise provided in this section.
- (b) As an exception to subsection (a) of this section, if the licensee is a partnership and one or more of the partners should die, one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partners without effecting a surrender or termination of the license, and in that case the license, upon notification to the town, shall be placed in the name of the surviving partners.
- (c) An adult entertainment establishment license issued to a corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred or assigned after the issuance of a license, or any stock authorized but not issued at the time of the granting of a license is thereafter issued and sold, transferred or assigned.

Sec. 8-33. Change of location or name.

- (a) No adult entertainment establishment shall move from the location specified on its license until a change of location fee, established by resolution of the town board, has been deposited with the town, and approval has been obtained from the town clerk. Such approval shall not be given unless all requirements and regulations, as contained in the town's codes, have been met.
- (b) No licensee shall operate, conduct, manage, engage in or carry on an adult entertainment establishment under any name other than his/her name and the name of the business as specified in his/her license and at the location specified for that name.
- (c) Any application for any extension or expansion of a building or other place of business where an adult entertainment establishment is located shall require inspection and shall comply with the provisions and regulations of this article.

DIVISION 3. APPEALS

Sec. 8-40. Notice of appeal.

Sec. 8-41. Discretion of town board regarding appeal procedure.

Sec. 8-42. Notice of hearing.

Sec. 8-43. Conduct of hearing before town board.

Sec. 8-44. Conduct of hearing before hearing officer.

Sec. 8-45. Rules of evidence inapplicable.

Sec. 8-46. Report of hearing officer: notice of hearing.

Sec. 8-47. Review of report by town board: determination.

Sec. 8-40. Notice of appeal.

The licensee shall, within ten days after he has been notified of an adverse determination, submit a notice of appeal to the town clerk. The notice of appeal shall be addressed to the town board and shall specify the subject matter of the appeal, the date of any original and amended application or requests, the

date of the adverse decision (or receipt of notice thereof), the basis of the appeal, the action requested of the town board, and the name of the applicant and all other interested persons. The clerk shall place the appeal on the agenda of the next regular town board meeting occurring not less than five no more than 30 days after receipt of the application for the town board action.

Sec. 8-41. Discretion of town board regarding appeal procedure.

When an appeal is placed on the town board agenda, the town board may take either of the following actions:

- (1) Set a hearing date and instruct the town clerk to give the notice of hearing as may be required by law.
- (2) Appoint a hearing officer and fix the time and place for hearing. The hearing officer may or may not be a town employee, and may be appointed for an extended period of time. If a hearing officer is appointed, the hearing shall be conducted in accordance with the procedures set out in this article.

Sec. 8-42. Notice of hearing.

The clerk shall be responsible for the publication of notice of the hearing as may be required by law.

Sec. 8-43. Conduct of hearing before town board.

Whenever the town clerk has scheduled an appeal before the town board, at the time and date set therefore, the town board shall receive all relevant testimony and evidence from the licensee, from interested parties, from town employees and staff and from witnesses the hearing officer deems relevant. The town board may sustain, overrule or modify the action complained of. The action of the town board shall be final.

Sec. 8-44. Conduct of hearing before hearing officer.

The hearing officer, appointed pursuant to the procedure set out in this article, may receive and rule on admissibility of evidence, hear testimony under oath and call witnesses as he/she may deem advisable with respect to the conduct of the hearing.

Sec. 8-45. Rules of evidence inapplicable.

The town board and the hearing officer shall not be bound by the traditional rules of evidence in hearings conducted under this article. Rules of evidence as applied in an administrative hearing shall apply.

Sec. 8-46. Report of hearing officer; notice of hearing.

- (a) If a hearing officer has been appointed to hear the appeal, the hearing officer shall, within a reasonable time not to exceed 30 days from the date the hearing is terminated, submit a written report to the town board.
- (b) The report shall contain a brief summary of the evidence considered and state findings, conclusions and recommendation.
- (c) All reports shall be filed with the town clerk, and shall be considered public records. A copy of the report shall be forwarded by certified mail to the licensee the same day as it is filed with the town clerk, with additional copies furnished to the town board and the chief of police.

- (d) The town clerk shall place the hearing officer's report on the agenda of the next regular town board meeting occurring not less than ten days after the report is filed and shall notify the licensee of the date of the meeting at least ten days prior to the meeting unless the licensee stipulates to a shorter notice period.

Sec. 8-47. Review of report by town board; determination.

The town board may adopt or reject the hearing officer's decision in its entirety or may modify the proposed recommendation. If the town board does not adopt the hearing officer's recommendation, it may:

- (1) Refer the matter to the same or another hearing officer for a completely new hearing, or for the taking of additional evidence on specific points; in either of the cases, the hearing officer shall proceed as provided in this article.
- (2) Decide the case upon a review of the entire record before the hearing officer with or without taking additional evidence.

DIVISION 4. REGULATIONS

Sec. 8-60. Physical contact prohibited.

Sec. 8-61. Alcohol beverages prohibited.

Sec. 8-62. Proximity to an establishment selling alcohol prohibited.

Sec. 8-63. Minors on premises prohibited; identification required.

Sec. 8-64. Liability for acts of others.

Sec. 8-65. Hours of operation.

Sec. 8-66. Signs required.

Sec. 8-67. Entryway doors.

Sec. 8-68. Cleaning of licensed premises.

Sec. 8-60. Physical contact prohibited.

- (a) No person, employee, entertainer or patron shall be permitted to have any physical contact with any entertainer on the premises of a sexually oriented business during any performance.
- (b) To prevent actual physical contact between the entertainer and any other person, employee or patron, all performances shall only occur on a stage or on a table that is elevated at least 18 inches above the immediate floor level and shall not be less than five feet from any area occupied by any patron.
- (c) Patrons shall not have any physical contact with and shall not be less than five feet from any entertainer during any performance, including, but not limited to, during the payment of a tip or gratuity.

Sec. 8-61. Alcohol beverages prohibited.

The sale, use or consumption of alcohol beverages on the premises of a sexually oriented business is prohibited.

Sec. 8-62. Proximity to an establishment selling alcohol prohibited.

An adult entertainment establishment shall not be located within 5,280 feet of any business that sells alcoholic beverages.

Sec. 8-63. Minors on premises prohibited; identification required.

- (a) It shall be unlawful to allow a person who is younger than 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.
- (b) It shall be the 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 regular business hours. It shall be presumed that an attendant knew a person was under the age of 18 unless such attendant asked for and was furnished a valid operator's, commercial operator's, or chauffeur's driver's license or a personal identification card issued by this state reflecting that such person is 18 years of age or older.

Sec. 8-64. Liability for acts of others.

No person shall cause another to commit a violation of this article nor shall any person permit such a violation to occur on any premises under his control, tenancy, management or ownership.

Sec. 8-65. Hours of operation.

No sexually oriented business regulated by this article may remain open between the hours of 2:00 a.m. and 8:00 a.m., Monday through Friday, or between the hours of 2:30 a.m. and 8:00 a.m. on Saturdays and Sundays.

Sec. 8-66. Signs required.

All premises governed by this article shall be required to post signs stating: "By Order of the Town of Hubbard 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 feet from any entertainer, including during the payment of tips. Violators may be subject to penalties as provided in the town Code."

Sec. 8-67. Entryway doors.

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 public street area to any entertainer on the premises.

Sec. 8-68. Cleaning of licensed premises.

Each licensed premises shall be maintained in a clean and sanitary condition and shall be cleaned at least once daily and more frequently when necessary. This activity shall be supervised by the person in charge of the licensed premises. There shall be provided adequate facilities, equipment and supplies on the licensed premises to meet this requirement, and adequate ventilation and illumination shall be provided to license thorough, complete cleaning of the entire licensed premises. Trash and garbage shall not be allowed to accumulate or to become a nuisance on or in the immediate vicinity of the licensed premises but shall be disposed of daily or as often as collections license.