

KENOSHA COUNTY

BOARD OF SUPERVISORS

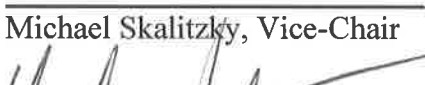
ORDINANCE NO.

Subject: Amendment of the Kenosha County General Zoning and Shoreland/Floodplain Zoning Ordinance Amending Section 12.22-6 Adult Establishments	
Original ☐ Corrected ☐ 2nd Correction ☐ Resubmitted ☐	
Date Submitted: March 17, 2020	Date Resubmitted:
Submitted By: PDEEC Committee	
Fiscal Note Attached ☐	Legal Note Attached ☐
Prepared By: Andy Buehler, Director Division of Planning and Development	Signature: 

THE KENOSHA COUNTY BOARD OF SUPERVISORS DOES HEREBY ORDAIN that the Municipal Code of Kenosha County Chapter 12.22-6, is amended as per the attachment marked Exhibit "A."

Approved by:

Planning, Development and Extension Education Committee

	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Excused</u>
 Erin Decker, Chair	☒	☐	☐	☐
 Michael Skalitzyk, Vice-Chair	☐	☐	☐	☒
 Mark Nordigian	☒	☐	☐	☐
 John Poole	☒	☐	☐	☐
 Zach Rodriguez	☒	☐	☐	☐

UPDATED KENOSHA ORDINANCE

DRAFT as of April 25 October 31 February 28 March 9, 202019

12.22-6 ADULT ESTABLISHMENTS

(a) ~~(a)~~ **Intent.**

1. ~~Mindful of the fact that it is t~~The intent of this Ordinance is regulate Adult Establishments and related activities to protect the health, safety, ~~and~~ morals, and general welfare of the citizens of Kenosha County, ~~and~~ to further preserve the quality of family life as well as ~~and to preserve~~ the rural and urban characteristics of its neighborhoods in Kenosha County, ~~and~~to prevent adverse and deleterious effects contributing to the blight and downgrading of neighborhoods, ~~and also to~~ mindful of avoid the the effects of adult entertainment upon minors and the violation of civil rights of many persons partaking in such entertainment, ~~mitigate and also mindful of the~~ criminal activity and disruption of public peace associated with such establishments, and also to and also mindful of prevent the unsanitary and unhealthful conditions associated with such establishments. The intent is to establish reasonable and uniform provisions to regulate Adult Establishments within Kenosha County. , it is the intent of this section to regulate the location and certain characteristics of such establishments. An adult establishment lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant of the adult establishment permit, if a sensitive land use is located within 1,000 feet of the adult establishment. It is not the intent or effect to restrict or deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Additionally, it is not the intent or effect to limit or restrict the lawful activities permitted under Wisconsin Statutes Chapter 125, "Alcohol Beverages" eh. 125, Wis. Stats., and eh. 8, Kenosha eCounty Code of Ordinances Chapter 8, "Licenses and Permits." By the enactment of this ordinance, the Kenosha County Board of Supervisors does not intend to give any explicit, implicit, or tacit approval or condone any activity relating to adult entertainment.
2. Kenosha County Board of Supervisors seeks to improve the effectiveness of existing and previously adopted regulations, including Sections 12.26-3 and 12.29-8(b)2, and subsequently 12.22-6, for the purposes of limiting the secondary effects of Adult Establishments and related activities. Where developments in the law have subsequently rendered prior regulations ineffective, the intent of this ordinance is to effectuate zoning regulations to accomplish the intent outlined in § (a)(1) above. [†]

[†]The following recitals were adopted as part of the Preamble to Ordinance 45 adopted by the Kenosha County Board on 3/16/04.

RECITALS

A. WHEREAS, the operation of adult establishments and certain activities that frequently occur in or around adult establishments tend to have adverse secondary effects on communities, including increasing criminal and other offensive activity, disrupting the peace and order of communities, depreciating the value of real property, harming the economic welfare of communities, encouraging or facilitating the spread of sexually transmitted diseases, and impairing the quality of life of the communities; and

B. WHEREAS, the adverse secondary effects of adult establishments are well documented in studies by other communities, including but not limited to studies by Phoenix, Arizona (1979); Tucson, Arizona (1990); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Adams County, Colorado (1998); Denver, Colorado (1998); Manatee County, Florida (1987); Indianapolis, Indiana (1984); Kansas City, Kansas (1998); Minneapolis, Minnesota (1980); St. Paul, Minnesota (1988); Las Vegas, Nevada (1978); Ellieottville, New York (1998); Islip, New York (1980); New York, New York (1994); Syracuse, New York (1999); New Hanover, North Carolina (1989); Cleveland, Ohio (1977); Oklahoma City, Oklahoma (1986); Amarillo, Texas (1977); Austin, Texas (1986); Beaumont, Texas (1982); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); Fort Worth, Texas (1986); Houston, Texas (1983 & 1997); Newport News, Virginia (1996); Bellevue, Washington (1988); Des Moines, Washington (1984); Seattle, Washington (1989); St. Croix County, Wisconsin (1993); and

C. WHEREAS, the adverse secondary effects of adult establishments are also reported in judicial opinions relating to adult establishments, including but not limited to *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (7th Cir. 1996); *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *United States v. Marren*, 890 F.2d 924 (7th Cir. 1989); *Tee & Bee, Inc. v. City of West Allis*, 936 F. Supp. 1479 (E.D. Wis. 1996); *Suburban Video, Inc. v. City of Delafield*, 694 F. Supp. 585 (E.D. Wis. 1988); *Urmanski v. Town of Bradley*, 273 Wis. 2d 545, 613 N.W.2d 905 (Wis. App. 2000); *Jake's Ltd., Inc. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *Deja Vu of Nashville, Inc. v. Nashville*, 274 F.3d 377 (6th Cir. 2001); *Artistic Entertainment, Inc. v. City of Warner Robbins*, 223 F.3d 1306 (11th Cir. 2000); *Wise Enterprises, Inc., et al. v. Unified Government of AthensClarke County, Georgia*, 217 F.3d 1360 (11th Cir. 2000); *Stringfellow's of New York, Ltd. v. City of New York*, 91 N.Y.2d 382, 694 N.E.2d 407, 671 N.Y.S.2d 406 (N.Y. 1998); *Colacureio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); *Ben Rich Trading, Inc. v. City of Vineland*, 126 F.3d 155 (3rd Cir. 1997); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *TK's Video, Inc. v. Denton County, Texas*, 24 F.3d 705 (5th Cir. 1994); *LLEH, Inc. v. Wichita County, Tex.*, 289 F.3d 358 (5th Cir. 2002); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986); *Mitchell v. Commission on Adult Entertainment Establishments of Delaware*, 10 F.3d 123 (3rd Cir. 1993); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); and

D. WHEREAS, based on the above studies and cases, as well as the experiences of the County, its residents and communities, the Kenosha County Board of Supervisors finds that:

~~Adult establishments can and do impair the character and quality of surrounding neighborhoods, the value of surrounding properties, the economic welfare of communities, and the quality of life of residents;~~

~~Adult establishments contribute to the physical deterioration and blight of neighborhoods;~~

~~Adult establishments contribute to increased levels of criminal activities in neighborhoods where such establishments are located, including prostitution, promotion of prostitution, rape, sexual assaults, other assaults, other sex-related crimes, robbery, dissemination of obscenity, sale, distribution or display of harmful material to a minor, sexual performance by a child, possession or distribution of child pornography, public lewdness, indecent exposure, indecency with a child, sexual molestation, molestation of a child, disorderly conduct, disturbances of the peace, drinking in public, drug use, drug dealing, littering, and other violations of the law;~~

~~The operation of adult establishments can impair property values and have other adverse secondary effects on property up to at least 1,000 feet from the adult establishments;~~

~~The impacts of adult establishments on the value of neighboring properties are greater on residential properties than nonresidential properties;~~

~~Adult retail establishments tend to have less significant secondary effects than adult entertainment establishments, and limited adult media stores, properly controlled, tend to have less significant secondary effects than other adult retail establishments.~~

~~Video viewing booths are often used by patrons of adult establishments for engaging in sexual acts, including masturbation, intercourse, sodomy, and oral copulation, resulting in unsafe and unsanitary conditions in the booths. Bodily fluids, including semen and urine, are often found in such booths. These fluids, and the activities that occur in video viewing booths, may spread communicable diseases, including, but not limited to, syphilis, gonorrhea, genital chlamydia trachomatis, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non-A, Non-B amebiasis, salmonella infections, and shigella infections;~~

~~Many adult entertainment establishments provide live entertainment in which physical contact between performers and customers, often sexual in nature, occurs and can occur, thus facilitating the transmission of various diseases and exposing performers to the risk of assaults and other unwelcome contact.~~

~~E. WHEREAS, the Kenosha County Board of Supervisors believes that the experiences, evidence and studies from other communities cited, set forth herein, and/or considered by the Board and the Planning, Development & Extension Education Committee in whole, part or summary, are relevant and important in understanding and addressing the secondary effects of adult establishments; and~~

~~F. WHEREAS, the secondary effects of adult establishments are detrimental to the public health, safety and general welfare of Kenosha County residents, businesses and visitors; and~~

- (b) **Findings.** Premised on evidence showing the adverse secondary effects of Adult Establishments on the community², this ordinance recognizes and seeks to reduce the following impacts of Adult Establishments while fully protecting the constitutional rights of citizens:

~~G. WHEREAS, requiring adult establishments to locate in the vicinity of state trunk highways enhances the ability of county law enforcement personnel to monitor the establishments, and deter and respond to criminal activity at such establishments; and~~

~~H. WHEREAS, the Kenosha County Board of Supervisors has previously adopted regulations to limit the secondary effects of adult establishments within the County, including Kenosha County Ordinance Sections 12.26-3 and 12.29-8(b)2; and~~

~~I. WHEREAS, developments in the law subsequent to the adoption of those regulations may have rendered those regulations ineffective; and~~

~~J. WHEREAS, on August 20, 2002, the Kenosha County Board adopted Ordinance No. 21, establishing a moratorium on the acceptance of applications or issuance of permits for adult establishments under Section 12.26-3 of the Kenosha County General Zoning and Shoreland/Floodplain Zoning Ordinance; and directing the Planning, Development & Extension Education Committee to review and recommend revisions to the regulations governing adult establishments; and~~

~~K. WHEREAS, the Planning, Development & Extension Education Committee has completed its review and made recommendations to the Kenosha County Board; and~~

~~L. WHEREAS, the Board has considered those recommendations and has determined that the techniques provided herein reduce the secondary effects of adult establishments while fully protecting the constitutional rights of citizens;~~

~~NOW, THEREFORE... (The ordinance as adopted by the Kenosha County Board appears above in the text of this ordinance.)~~

² The adverse secondary effects of adult establishments as presented in hearing(s) and in studies made available to the County by other communities and in findings incorporated in cases including but not limited to the following studies: Phoenix, Arizona (1979); Tucson, Arizona (1990); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Adams County, Colorado (1998); Denver, Colorado (1998); Manatee County, Florida (1987); Indianapolis, Indiana (1984); Kansas City, Kansas (1998); Minneapolis, Minnesota (1980); St. Paul, Minnesota (1988); Las Vegas, Nevada (1978); Ellicottville, New York (1998); Islip, New York (1980); New York, New York (1994); Syracuse, New York (1999); New Hanover, North Carolina (1989); Cleveland, Ohio (1977); Oklahoma City, Oklahoma (1986); Amarillo, Texas (1977); Austin, Texas (1986); Beaumont, Texas (1982); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); Fort Worth, Texas (1986); Houston, Texas (1983 & 1997); Newport News, Virginia (1996); Bellevue, Washington (1988); Des Moines, Washington (1984); Seattle, Washington (1989); St. Croix County, Wisconsin (1993), the following cases: *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); *Barnes v. Glen Theatre" Inc.*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (7th Cir. 1996); *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *United States v. Marren*, 890 F.2d 924 (7th Cir. 1989); *Tee & Bee, Inc. v. City of West Allis*, 936 F. Supp. 1479 (E.D. Wis.

1. Adult business establishments can and do impair the character and quality of surrounding neighborhoods, the value of surrounding properties, the economic welfare of communities, and the quality of life of residents.
2. Adult Establishments lend themselves to ancillary unlawful and unhealthy activities that are not presently effectively controlled by the operators of the establishments.
3. Adult Establishments contribute to the physical deterioration and blight of nearby neighborhoods, with greater adverse impacts on residential than on non-residential properties, and have other adverse secondary effects on property up to at least 1,0600 feet from the adult establishments.
4. Neighborhoods where adult business establishments are located have increased levels of criminal activities, especially sex-related crimes.
5. Prostitution, sexual assaults, and other criminal activity occur at Adult Establishments and persons frequent certain adult theaters or other Adult Establishments for the purpose of engaging in sex within the premises.
6. Video viewing booths are often used by patrons of adult business establishments for engaging in sexual acts, including masturbation, intercourse, sodomy, and oral copulation, resulting in unsafe and unsanitary conditions in the booths. Bodily fluids, including semen and urine, are often found in such booths. These fluids, prostitution, and other activities that occur in Adult Establishments may spread communicable diseases, including, but not limited to, syphilis, gonorrhea, genital chlamydia trachomatis, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections.

1996); *Suburban Video, Inc. v. City of Delafield*, 694 F. Supp. 585 (E.D. Wis. 1988); *Urmanski v. Town of Bradley*, 273 Wis. 2d 545, 613 N.W.2d 905 (Wis. App. 2000); *Jake's Ltd., Inc. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *Deja Vu of Nashville, Inc. v. Nashville*, 274 F.3d 377 (6th Cir. 2001); *Artistic Entertainment, Inc. v. City of Warner Robbins*, 223 F.3d 1306 (11th Cir. 2000); *Wise Enterprises, Inc., et al. v. Unified Government of Athensclarke County, Georgia*, 217 F.3d 1360 (11th Cir. 2000); *Stringfellow's of New York, Ltd. v. City of New York*, 91 N.Y.2d 382, 694 N.E.2d 407, 671 N.Y.S.2d 406 (N.Y. 1998); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); *Ben Rich Trading, Inc. v. City of Vineland*, 126 F.3d 155 (3rd Cir. 1997); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Hang On, Inc. v. City of Arlington*, 65 F. 3d 1248 (5th Cir. 1995); *ILO Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *TK's Video, Inc. v. Denton County, Texas*, 24 F.3d 705 (5th Cir. 1994); *LLEH, Inc. v. Wichita County, Tex.*, 289 F.3d 358 (5th Cir. 2002); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986); *Mitchell v. Commission on Adult Entertainment Establishments of Delaware*, 10 F.3d 123 (3rd Cir. 1993); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986), and the following statistics from the U.S. Department of Health and Human Services and Centers for Disease Control and Prevention.

7. Adult establishments have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns including, but not limited to, the general welfare, health, morals, and safety of the citizens of the County.

(c) Definitions. For the purpose of this section:

1. **Adult Bath House.** An establishment or business which provides the services of baths of any kind, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner, professional physical therapist, or massage therapist licensed or registered by the State of Wisconsin, and which establishment provides to its patrons an opportunity to engage in "specified sexual activities" or to observe employees or independent contractors exhibiting "specified sexual activities" or "specified anatomical areas." **Bookstore:** An establishment having at least 25% of its:
- Retail floor space used for the display of adult products; or
 - Stock in trade consisting of adult products; or
 - Weekly revenue derived from adult products.

For ~~puposes~~ purposes of this definition, the phrase adult products means books, films, magazines, motion pictures, periodicals or other printed matter, or photographs, video cassettes, Compact Discs (CDs), DVDs, Blu-Ray Discs, slides, tapes records or other forms of visual or audio representations that are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. For purposes of this definition, the phrase adult products also means a device designed or marketed as useful primarily for the stimulation of human genital organs, or for sadomasochistic use or abuse. Such devices shall include, but are not limited to bather restraints, body piercing implements (excluding earrings or other decorative jewelry), chains, dildos, muzzles, non-medical enema kits, phallic shaped vibrators, racks, whips and other tools of sado-masochistic abuse.

2. **Adult Body Painting Studio.** An establishment or business wherein patrons are afforded an opportunity to paint images on the body of a person who is exhibiting "specified sexual activities" or "specified anatomical areas." For purposes of this ordinance, the adult body painting studio shall not be deemed to include a tattoo parlor. **Cabaret:** A night club, bar, theatre, restaurant or similar establishment that regularly features:
3. **Adult Cabaret.** An establishment or business which regularly or on a frequently recurring basis features live entertainment that is
- Live performances by bottomless and/or topless dancers, exotic dancers, go-go dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on the exhibiting of "specified anatomical areas" or "specified sexual activities" for observation by patrons therein, or which holds itself out or identifies itself to the public by its name, its

signs and/or its advertising as an establishment where such live entertainment is regularly or on a frequently recurring basis available, including, without limitation, by verbal or pictorial allusions to sexual stimulation or gratification or by references to "adult entertainment," "strippers," "showgirls," "exotic dancers," "gentleman's club," or similar terms; specified sexual activities or by exposure of specified anatomical areas;

- b. Films, motion pictures, slides, video cassettes, CDs, DVDs, Blu-Ray Discs, or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons; or
- c. Persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customer.

3. **Adult Drive-In Theatre:** An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of films, motion pictures, theatrical productions, and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

4.3. _____

4. **Adult Entertainment Establishment:** Is defined to include adult cabarets, adult modeling studios, and adult motion picture theaters. An ~~A~~adult ~~b~~Bookstore, ~~A~~Adult ~~C~~abaret, ~~A~~Adult ~~D~~rive-In Theatre, ~~A~~Adult ~~L~~ive Entertainment Arcade, ~~a~~Adult ~~m~~Mini ~~m~~Motion ~~p~~Pictures ~~t~~Theatre, ~~A~~Adult Motel, ~~a~~Adult ~~m~~Motion ~~p~~Picture ~~t~~Arcade~~theatre~~, ~~A~~adult ~~m~~Motion ~~P~~icture Theater~~arcade~~, or adult cabaret, adult drive-in theatre, adult live entertainment arcade or ~~A~~adult ~~S~~ervices ~~E~~establishment.

5. **Adult Establishments:** Is defined to include adult entertainment establishments and adult retail establishments as defined herein. **Live Entertainment Arcade:** Any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed, screened area, or booth a series of live dance routines or strip performances, or other gyrational choreography, which choreography, performances, or routines are distinguished or characterized by an emphasis on specified sexual activities or by exposure to specified anatomical areas.

6. **Adult Massage Parlor:** An establishment or business with or without sleeping accommodations which provides the services of massage and body manipulation, including, without limitation, exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, not operated by a medical practitioner, professional physical therapist, or massage therapist licensed or registered by the State of Wisconsin

and which establishment provides to its patrons an opportunity to engage in "specified sexual activities" or to engage in any method of rubbing, pressing, striking, kneading, tapping, pounding, vibrating or stimulating a "specified anatomical area" with the hands or with any instruments, or the opportunity to observe employees or independent contractors exhibiting "specified sexual activities" or "specified anatomical areas."

Mini Motion Picture Theatre: An enclosed building with a capacity of more than 5 but less than 50 persons, used for presenting films, motion pictures, slides, video cassettes, or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.

7. **Adult Media.** Books, magazines, videotapes, movies, slides, CD-ROMs, posters, or other devices to display images; **Motel:** A hotel, motel or similar establishment offering public accommodations, for any form of consideration, that offers a sleeping room for rent for a period of time that is less than 10 hours or allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours, and that provides patrons, upon request, with closed-circuit television transmissions, films, motion pictures, slides, video cassettes, or other photographic ~~reproductions~~ reproductions that are distinguished or characterized by their an emphasis on matters depicting, describing or relating to "upon the depiction or description of specified sexual activities" or "specified anatomical areas".
8. **Adult Media Store.** An establishment or business that rents and/or sells adult media and that meets any of the following three tests: **Motion Picture Arcade:** Any place to which the public is permitted or invited wherein coin 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 5 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.
 - a 40 percent or more of the gross public floor area is devoted to adult media;
 - b 40 percent or more of the stock in trade consists of adult media;
 - c The store advertises or holds itself out in any forum as a sexually-oriented business
9. **Adult Modeling Studio.** An establishment or business which provides the services of live models modeling lingerie or transparent apparel to patrons or a business where a person who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Adult modeling studios shall not

- include a proprietary school licensed by the State of Wisconsin or a college, technical college, or university; or in a structure:
- a — that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
 - b — where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
 - e — where no more than one (1) nude or semi-nude model is on the premises at any one (1) time.
- Motion Picture Theatre:** An enclosed building with a capacity of 50 or more persons used for presenting films, motion pictures, slides, video cassettes, CDs, DVDs, Blu-Ray Discs, or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.
10. **Adult Motion Picture Theater:** An establishment or business located in an enclosed building and emphasizing or predominantly showing movies distinguished or characterized by an emphasis on "**Adult Service Establishment:** Any building, premises, structure or other facility, or part thereof, under common ownership or control which provides a preponderance of services involving **specified sexual activities,**" or "**display** of **specified anatomical areas,** or massage of specified anatomical areas, not performed or operated by a medical practitioner, professional physical therapist, or massage therapist licensed or registered by the State of Wisconsin." for observation by patrons therein.
11. **Enlargement (pertaining to Adult Establishment only):** An increase in the size of the building, structure or premises in which the Adult Establishment is conducted by either construction or use of an adjacent building or any portion thereof whether located on the same or an adjacent lot or parcel of land. **Adult Motion Picture Theater (Outdoor):** An establishment located on a parcel of land and emphasizing or predominantly showing movies out of doors for observation by patrons, which movies are distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".
12. **Establishing an Adult Establishment:** Shall mean and include **Adult Novelty Shop:** An establishment or business offering goods for sale or rent and that meets any of the following tests:
- a. The establishment offers for sale items from any two of the following categories: (a) adult media, (b) lingerie, or (c) leather goods, marketed or presented in a context to suggest their use for flagellation or torture of a person clothed or naked, or the binding or other physical restraint of a person clothed or naked.
 - b — More than 5 percent of its stock in trade consists of instruments, devices, or paraphernalia either designed as representation of human genital organs or

female breasts, or designed or marketed primarily for use to stimulate human genital organs.

- e. More than 5 percent of its gross public floor area is devoted to the display of instruments, devices, or paraphernalia either designed as representation of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs.

13. Adult Retail Establishments. "Adult Retail Establishments" is defined to include adult media stores, limited adult media stores, and adult novelty shops opening or commencement of any such business as a new business;

b. The conversion of an existing business, whether or not an Adult Establishment, to any of the Adult Establishments defined herein;

c. The relocation of any such business.

13. Nonconforming Adult Establishment: Any building, structure or land lawfully occupied by an Adult Establishment or lawfully situated at the time of passage of Ordinance 45, adopted on March 16, 2004, or amendments to that ordinance, that does not conform after the passage of that ordinance or amendments thereto with the regulations of this chapter.

14. Gross Public Floor Area. The total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture arcades, service areas, behind-counter areas, storage areas visible from such other areas, restrooms (whether or not labeled "public"), areas used for cabaret or similar shows (including stage areas), plus aisles, hallways, and entryways serving such areas. Reconstruction (pertaining to a Adult eEntertainmenstablishmentt only): The rebuilding or restoration of any nonconforming Adult Establishment that was damaged or partially destroyed by an exercise of the power of eminent domain, or by fire, flood, wind, explosion or other calamity or act of God, if the damage or destruction exceeds fifty percent (50%) of the assessed value of the structure or the facilities affected as of January 1 of the year in which damage occurred. ~~of the structure or the facilities affected.~~

15. Limited Adult Media Store. An establishment that rents and/or sells adult media but is not an "adult media store" as defined in this Section, and that meets either of the following tests:

a. More than 10 percent but less than 40 percent of the gross public floor area is devoted to adult media

b. More than 10 percent but less than 40 percent of the stock-in-trade consists of adult media Resumption (pertaining to a Adult eEstablishmentntertainment only): Shall

mean the reuse or reoccupation of a nonconforming Adult Establishment that has been discontinued for a period of 6 or more consecutive months.

16. ~~"Sensitive land-use"~~ is defined to include any and all Land Use: Any of the following:

- a. Property zoned or used for residential purposes
- b. Property zoned or used for religious institutional purposes
- c. An educational institution for students in twelfth grade or below d
A library or museum
- ~~d.e~~ A public or private park, recreation area, or playground f
A day care center
- ~~ge.~~ A historic district
- ~~f.h~~ A facility predominantly serving individuals with a "developmental- disability,"
as that term is defined in sec. 51.01(5)(a) and (b), Wis. Stats., and subsequent
amendments thereto.
- ~~ig.~~ A private youth development organization such as, but not limited to, YMCA,
Junior Achievement, Boys Club of America and Campfire Girls.

17. ~~"Sex toy" means an instrument, device, or paraphernalia either designed as a
representation of human genital organs or female breast, or designed or marketed
primarily for use to stimulate human genital organs.~~Specified Anatomical Areas:
Any of the following:

- a. ~~Less than completely and opaquely covered human genitals, pubic region,
buttocks, anus or female breasts below a point immediately above the top
of the areolae; or~~
- ~~a. Human male genitals in a discernibly turgid state, even if completely and
opaquely covered.~~
- b.

18. ~~"Specified sexual activities" is defined as actual or simulated:~~Activities: Any of the
following:

- a. ~~Exhibition of Human~~ genitals in a state of sexual stimulation or arousal;
- b. Acts of human masturbation, sexual intercourse, ~~sodomy, bestiality, necrophilia,
sado-masochistic abuse, fellatio or cunnilingus or sodomy;~~
- c. Fondling or other erotic touching of human genitals, pubic ~~region, buttock
regions, buttocks,~~ or female breasts.

19. ~~"Specified anatomical areas" is defined as:~~

- a. ~~Less than completely and opaquely covered:~~
 - 1) ~~Human genitals, pubic region;~~
 - 2) ~~Buttock, anus, anal cleft;~~

3) — Female breast below a point immediately above the top of the areola; and b
— Human male genitals in a discernibly turgid state even if completely and opaquely covered.

20 — Video-viewing booth. Any booth, cubicle, stall, or compartment that is designed, constructed, or used to hold or seat patrons and is used for presenting adult media for observation by patrons therein. A video-viewing booth shall not mean a theater, movie house, playhouse, or a room or enclosure or portion thereof that contains 600 square feet or more.

d. — Flagellation or torture in the context of a sexual relationship;

e. — Masochism, erotic or sexually oriented torture, beating or the infliction of pain;

f. — Erotic touching, fondling or other such contact with an animal by a human being; or

h.g. — Human excretion, urination, menstruation, vaginal or anal irrigation as a part of or in connection with any of the activities set forth in subsections 1 through 6 above.

(ed) **Principal Uses.** ~~Adult Establishments are permitted by Where the underlying zoning is B-2 Community Business District, or and B-3 Highway Business Adult Establishment.~~

1 — Where the underlying zoning is B-2 Community Business District, Limited Adult Media Stores

2 — Where the underlying zoning is B-3 Highway Business District, a — Limited Adult Media Stores

b — Adult Cabarets

c — Adult Media Stores

d — Adult Modeling Studios

e — Adult Motion Picture Theaters f Adult Novelty Shops

(de) **Prohibited Uses**

1 — Adult Bath Houses

2 — Adult Body Painting Studios

3 — Adult Massage Parlors

4 — Adult Motion Picture Theaters (Outdoor)

(e) — **Accessory Uses.** Any accessory use authorized by the underlying zoning district may be an accessory use to an adult establishment. In no case shall an adult establishment be an accessory use to any principal use designated by any section of this ordinance.

(fe) **Underlying District Standards.** Adult Establishments shall comply with the standards of the zoning districts in which they are located, including, but not limited to, standards relating to lot

area and width, building height and area, yard requirements and sanitary sewer systems., and with the use-specific standards applicable to that use category and use.

(gfg) **General requirements and restrictions governing Aadult Eestablishments.** Except as provided below, all Aadult Eestablishments shall comply with the following requirements and restrictions:

1. ~~Intoxicating beverages shall not be sold or served.~~
2. — Parking shall be provided in a lighted area, in conformity with applicable lighting and parking standards provided ~~elsewhere in this Ordinance~~ in sections 12.13 and 12.18.8-1.
- 2.3 No ~~aAdult eEntertainment Eestablishment~~ shall be ~~maintained or operated in any manner that causes, creates, or allows public viewing of any adult media, or any live entertainment that is distinguished or characterized by an emphasis on "conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities" or "specified anatomical areas", by display, decorations, sign, show window or other -opening from any -sidewalk, public or private right-of-way, or any property other than the lot on which the adult establishment is located~~ public view.
- 3.4 Signs advertising ~~an Adult Establishment Aadult Eestablishments~~ shall conform ~~with to~~ section 12.14-5 of this ordinance and with the further exception that signs will not depict ~~the human body or any part thereof, and provided further that there shall be no flashing or traveling lights located outside the building~~ Specified Anatomical Areas or Specified Sexual Activities.
- 4.5 No Aadult Eestablishment-patron shall be permitted at any time to enter into any of the non-public portions of any Aadult Eestablishment, including specifically, but without limitation, any storage areas ~~or -or~~ dressing or other rooms provided for the benefit of Aadult Eestablishment-employees. -This subsection shall not apply to persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the permitted premises; provided, however, that any such persons shall remain in such non-public areas only for the purposes and to the extent and time necessary to perform their job duties.
- 5.6 ~~Other than limited adult media stores, signs~~ Signs at least one (1) square ~~feet~~ foot in area stipulating that persons under the age of 18 are not permitted inside the establishment; shall be posted at all public entrances to the establishment, and persons under the age of 18 shall not be permitted inside the establishment.
- 6.7 The cashier's or manager's station shall be located so that someone working there can quickly move to physically halt any attempted or accidental entry by a minor. An employee shall occupy the station at all times when patrons are in and on the premises.

~~7.8~~ The ~~A~~adult ~~E~~establishment shall clearly post and enforce a no loitering policy.

~~8.9~~ The owner and/or operator of the ~~A~~adult ~~E~~establishment shall agree to comply with all State, Federal and Local laws and ordinances, including obscenity, liquor, and cabaret laws. Solicitation for purposes of prostitution shall be strictly prohibited. Conduct in violation of sec. 944.21, Wis. Stats., or sec. 9.10.2 of the Kenosha County Code of Ordinances, including the exhibition of "obscene material" and "obscene performances," as those terms are defined in sec. 944.21(2), Wis. Stats., and sec. 9.10.2 of the Kenosha County Code of Ordinances, shall be strictly prohibited.

~~10~~ No video viewing booth(s) shall be established, operated or used in any adult establishment.

~~9.11~~ The hours of operation of ~~A~~adult ~~E~~establishment ~~s~~ shall be limited to the same hours of operation for bars and taverns within that community within which the ~~A~~adult ~~E~~establishment is located.

~~12.10~~ No residential quarters shall be allowed on a premises with an ~~A~~adult ~~E~~establishment.

(hgh) Location requirements and restrictions.

~~1.~~ ~~1~~ No more than one adult establishment may be established on any one parcel. The establishment, enlargement, reconstruction, resumption, or structural alteration of any Adult Establishment is prohibited if such business is within 1,000 feet of another Adult Establishment.

~~1~~

~~2.~~ No adult establishment may be established within 1000 feet of any other adult establishment. The establishment, enlargement, reconstruction, resumption, or structural alteration of any Adult Establishment is prohibited if such business is within ~~1,000~~ 1,0600 feet of any existing Sensitive Land Use within Kenosha County, Wisconsin.

~~3.~~ No adult retail establishment may be established within 1000 feet of any "sensitive land-use." Adult Establishment shall be established, enlarged, reconstructed, resumed, or structurally altered unless the site or proposed site is located in a B-2 Community Business District or B-3 Highway Business Zoning District.

~~4.~~ No adult entertainment establishment may be established within 1000 feet of any "sensitive land-use." An Adult Establishment lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of a sensitive land use is located within ~~1,000~~ 1,0600 feet of the Adult Establishment.

- 5 All ~~Adult Establishments~~ adult entertainment establishments shall be located within 300 feet of a State Trunk Highway right-of-way (Maintained & Traveled) as indicated on the map of the official layout of the State Trunk Highway System of Kenosha County prepared by the State of Wisconsin, Department of Transportation in accordance with Wis. Stats. Section 84.02(12) State Statutes ~~Wis. Stats.~~ and as currently on file with the Kenosha County Clerk and Kenosha County Highway Commissioner and as subsequently amended.

~~Commissioner and as subsequently amended and shall not be located within 1,000 feet of the right-of-way of the intersection of another State Trunk Highway or any Federal or County Trunk Highway, or any other road.~~

- 66 ~~For these purposes, The distance between one Adult Establishment and another Adult Establishment shall be measured in a straight line from the closest point of the structure or portion of the structure occupied or proposed for occupancy by the adult establishment to the nearest lot line of the other parcels of property to which these location requirements apply.~~

- 7 ~~The location requirements and restrictions specified in subsections 12. 22-6(g) 1 through 6 do not apply to limited adult media stores.~~

(i) ~~Requirements Applicable to Limited Adult Media Stores Only. Adult media in a limited adult media store shall be kept in a separate room or section of the shop; which room or section shall:~~

- 1 ~~not be open to any person under the age of 18; and~~
- 2 ~~be physically and visually separated from the rest of the store by an opaque wall of durable material, reaching from the floor to at least eight feet high or to the ceiling, whichever is less; and~~
- 3 ~~be located so that the entrance to it is as far as reasonably practicable from media or other inventory in the store likely to be of particular interest to children; and~~
- 4 ~~have access controlled by electronic or other means to provide assurance that persons under age 18 will not easily gain admission and that the general public will not accidentally enter such room or section, or provide continuous video or window surveillance of the room by store personnel; and~~
- 5 ~~provide signage at the entrance stipulating that persons under the age of 18 are not permitted inside, without regard to intervening~~ interviewing ~~structures or objects, from the closest exterior structural wall of each such business. The distance between an Adult Establishment and any Sensitive Land Use shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of the Adult Establishment to the nearest property line of the Sensitive Land Use.~~

(ih) **Additional Restrictions and Requirements Applicable to ~~Adult Entertainment~~ Adult Establishments** ~~Establishments~~. Adult ~~entertainment e~~Establishments shall comply with certain additional restrictions and requirements as set forth below:

1. ~~It is unlawful for any person to perform or engage in or for any licensee or manager or agent of an adult entertainment establishment to permit any person, employee, entertainer or patron to perform or engage in any live act, demonstration, dance or exhibition on the premises of an adult entertainment establishment, which:~~
 - a. ~~Shows his/her genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering.~~
 - b. ~~Shows the female breast with less than a fully opaque covering of any part of the nipple and areola.~~
 - c. ~~Shows the human male genitals in a discernibly turgid state, even if fully and opaquely covered.~~

2. **Adult Cabarets**

- a. Adult cabarets shall comply with section 12.12-4(e) of this ordinance relating to noise.
- b. All live performers in an adult cabaret shall perform only on a stage elevated no less than ~~twenty-four~~ thirty-six (~~24~~36) inches above floor level. There shall be a metal railing attached to the floor by bolts surrounding the stage which shall keep patrons at least ~~thirty-six~~ forty-eight (~~36~~48) inches from the stage. There shall also be a metal railing attached to the floor by bolts at the edge of the stage. The stage shall be in a room or other enclosure of no less than 600 square feet.

~~23~~ **Adult modeling studios:**

~~a. All models or other live performers in an adult modeling studio shall perform only on a stage elevated no less than 24 inches above floor level. There shall be a railing attached to the floor surrounding the stage which shall keep patrons at least 36 inches from the stage. The stage shall be in a room or other enclosed space of no less than 600 square feet.~~

4. **Adult motion picture theaters:**

- a. ~~Adult motion picture theaters shall show movies only in a room or other enclosed space of no less than 600 square feet.~~

- (jjk) **Severability.** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof. This ordinance shall take effect and be in force from and after its passage and publication, as provided by law.

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