

TITLE 5 BUSINESS LICENSES AND REGISTRATIONS

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5.1 ARTICLE 1 – INTOXICATING LIQUOR AND FERMENTED MALT BEVERAGES

5.1.1 State statutes adopted by reference.

The provisions of W.S.A. Ch. 125, relating to the sale of intoxicating liquor and fermented malt beverages, except provisions therein relating to penalties to be imposed, are hereby adopted by reference and made part of this chapter as if fully set forth herein. Any act required to be performed or prohibited by any statute incorporated herein by reference is required or prohibited by this chapter. Any future amendment, revisions or modifications of the statutes incorporated herein are intended to be made a part of this chapter in order to secure uniform statewide regulation of alcohol beverage control.

5.1.2 License required, compliance with state and village regulations.

- A. When required. No person, except as provided by §5-1 of this chapter, shall distribute, vend, sell, offer or keep for sale, at retail or wholesale, deal or traffic in or, for the purpose of evading any law or ordinance, give away any intoxicating liquor or fermented malt beverage or cause the same to be done without having procured a license or permit as provided in this chapter or without complying with all the provisions of this chapter and all statutes, ordinances and regulations of the state and village applicable thereto.
- B. Separate license required for each place of sale. A separate license shall be required for each stand, place, room or enclosure or for each suite of rooms or enclosures which are in direct connection or communication where intoxicating liquor or fermented malt beverages are kept, sold or offered for sale, and no license shall be issued to any person, firm, partnership, corporation or association for the purpose of possessing, selling or offering for sale any intoxicating liquor or fermented malt beverage in any dwelling house, flat or residential apartment.

5.1.3 License classes and fees.

There shall be the following classes and denominations of licenses which, when issued by the Village Clerk-Treasurer under the authority of the Village Board, upon completion of application, background check, payment of the fee listed in the Village of Fall Creek Schedule of Fees, and responsible server course when required by State Statute, shall permit the holder to sell, deal or traffic in intoxicating liquor or fermented malt beverages as provided in W.S.A. Ch. 125:

- A. Licenses issued by the direction of the Village Board:
 - (1) Class "A" (off premises consumption) fermented malt beverage license:
 - (2) Class "A" (off premises consumption) intoxicating liquor license.
 - (3) Class "B" (on or off premises consumption) fermented malt beverage license.
 - (4) Class "B" (on premises consumption) intoxicating liquor license.
 - (5) Reserve "Class B" intoxicating liquor license.
 - (6) Wholesaler's license.

- (7) Part-time or semiannual liquor licenses shall be issued pursuant to W.S.A. Ch 125.
- B. Licenses issued by the direction of the Village Clerk-Treasurer
- (1) Temporary "Class B" license (picnic license):
- (a) 15 day waiting period required before granting license.
- (b) Exceptions to waiting period: the Village Board may reduce the above waiting period, on a case-by-case basis, at their discretion.
- (2) Operator's license (commonly called a "bartender's license"):
- (a) Regular operator's license.
- (b) Provisional operator's license:
- i) License expires in 60 days or at the issuance of a regular operator's license.
- (c) Temporary operator's license:
- i) Applicants must be employed by or donating time to a nonprofit organization.
- ii) Applicants may hold two temporary licenses per year.
- iii) License shall be valid for one to 14 days, as specified.
- (3) Provisional retail license.
- C. If any application is denied, the applicant may request reconsideration of the application from the Village Board.
- (1) During the reconsideration, the applicant may present evidence and testimony as to why the license should be granted.
- (2) If the Village Board again denies the application, the applicant may then appeal to the Circuit Court.

5.1.4 License restrictions.

In addition to the requirements imposed by the provisions of the Wisconsin statutes adopted by reference in §5-1 of this chapter, the following restrictions shall apply to the issuance of licenses or permits pursuant to this chapter:

- A. Requirements for licenses. Only those requirements listed in W.S.A. Ch. 125 and any amendment, revisions or modifications thereto are necessary.
- B. Effect of revocation of license. No license shall be issued for any premises if a license covering such premises has been revoked within six months prior to application. No license shall be issued to any person who has had a license issued pursuant to this chapter revoked within 12 months prior to application.
- C. Inspection of application and premises. The Village Clerk-Treasurer may notify the Eau Claire City/County Board of Health, Chief of Police and Building Inspector of all license and

permit applications, and these officials may inspect or cause to be inspected each application and premises to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto and the applicant's fitness for the trust to be imposed. These officials may furnish to the Village Board, in writing, the information derived from such an investigation. No license or permit provided for in this chapter may be issued without the approval of a majority of the Village Board, and no license may be renewed without a reinspection of the premises and report as herein required.

- D. Health and sanitation. No license shall be issued for any premises which do not conform to the sanitary, safety and health requirements of the Wisconsin Department of Commerce and the State Board of Health and to all such ordinances and regulations adopted by the Village.
- E. Tax delinquencies. No license shall be granted for operation on any premises upon which taxes or assessments or other financial claims of the village are delinquent or unpaid.

Location of premises. No retail Class "A" or Class "B" fermented malt beverage license or liquor license shall hereafter be issued for premises the entrance of which is less than 300 feet from the main entrance of any established public or parochial school, hospital or church. Such distance shall be measured by the shortest route along the highway from the closest point of the main entrance of such school, church or hospital to the main entrance to such premises.

5.1.5 Right of entry; inspections.

It shall be a condition of any license issued hereunder that the licensed premises may be entered and inspected at any reasonable hour by any police officer of the Village of Fall Creek without any warrant, and the application for a license hereunder shall be deemed a consent to this provision. Any refusal to permit such inspection shall automatically operate as a revocation of any license issued hereunder and shall be deemed a violation of this chapter.

5.1.6 Posting licenses and permits.

Licenses or permits issued under this chapter shall be posted and displayed as provided in W.S.A. s. 125.04(10), and any licensee or permittee who shall fail to post his license or permit as therein required shall be presumed to be operating without a license.

5.1.7 Regulation of licensed premises.

- A. Sale of beer to minors restricted. The provisions of W.S.A. s. 125.07 shall apply to the sale of fermented malt beverages to persons who have not attained the legal drinking age when not accompanied by a parent, guardian or adult spouse, except as provided in said statute.
- B. Safety and sanitation requirements. Each licensed premises shall be maintained and conducted in a sanitary manner and shall be a safe and proper place for the purpose for which is used.
- C. Improper exhibitions. It shall be unlawful for any person to perform or for any licensee or manager or agent of the licensee to permit any employee, entertainer or patron to

engage in any live act, demonstration, dance or exhibition on the licensed premises which:

- (1) Exposes his or her genitals, pubic hair, buttocks, perineum, anal region or pubic hair region.
- (2) Exposes any device, costume or covering which gives the appearance of or simulates genitals, pubic hair, buttocks, perineum, anal region or pubic hair region.
- (3) Exposes any portion of the female breast at or below the areola thereof; or
- (4) Engages in or simulates sexual intercourse and/or any sexual contact, including the touching of any portion of the female breast or the male and/or female genitals.

5.1.8 Cancellation for nonuse of license.

If a person holding a license issued under §5-3 fails to keep the licensed premises open to the public for 60 consecutive days or more per license year, his license may be revoked by the Village Board after a public hearing following the procedure for revocation in Ch. 125, Wis. Stats. If the licensee demonstrates to the satisfaction of the Village Board that, due to nonrecurring undue hardship or unusual circumstances beyond his control, he could not make use of the license for the minimum time prescribed by this section, the Board may grant an exemption under such circumstances and conditions as may be determined by the Board to be reasonable.

5.1.9 Revocation and suspension of licenses.

- A. Procedure. Except as hereinafter provided, the provisions of W.S.A. Ch. 125 shall be applicable to proceedings for the revocation or suspension of all licenses or permits granted under this chapter. Revocation or suspension proceedings may be instituted by the Village Board upon its own motion by adoption of a resolution.
- B. Suspension of licenses. The Village President or the Police Chief, upon obtaining reasonable information that any licensee has violated any provision of this chapter or any state or federal liquor or fermented malt beverage law or committed any felony, may suspend the license or permit of such person for a period not to exceed 10 days pending hearing by the Village Board pursuant to Subsection A.
- C. Automatic revocation. Any license or permit issued under the provisions of this chapter shall stand revoked without further proceedings upon the conviction of a licensee or permittee or his employee, agent or representative of a second offense under this chapter or W.S.A. Ch. 125 or any other state or federal liquor or fermented malt beverage law or any felony.
- D. Repossession of license or permit. Whenever any license or permit under this chapter shall be revoked or suspended by the Village Board, Village President, Police Chief or action of any court or Subsection C, it shall be the duty of the Clerk-Treasurer to notify the licensee or permittee of such suspension or revocation and to notify the Police Chief, who shall take physical possession of the license or permit wherever it may be found and file it in the Clerk-Treasurer's office.

5.1.10 Violations and penalties

The penalty for violation of any of the provisions of this article shall be a penalty as provided in the Village of Fall Creek Schedule of Fees, provided that no penalty imposed shall exceed the maximum allowed by W.S.A. Ch. 125. A separate offense shall be deemed committed on each day in which a violation occurs or continues.

5.2 ARTICLE 2 – CIGARETTES

5.2.1 License required.

No person shall in any manner directly or indirectly manufacture, sell, exchange, dispose of or give away or keep for sale any cigarettes or cigarette papers or wrappers without first obtaining a license therefor from the Village Clerk-Treasurer in the manner provided in W.S.A. s. 134.65. This section shall not apply to jobbers or manufacturers doing interstate business with customers outside Wisconsin.

5.2.2 Fee.

The fee for such cigarette license will be listed in the Village of Fall Creek Schedule of Fees.

5.2.3 License content, expiration and transfer.

All cigarette licenses shall be signed by the Village Clerk-Treasurer and indicate thereon the name of the licensee and the place where he is authorized to conduct the licensed business and shall expire on June 30 next succeeding the date of issue. Such a license shall not be transferable from one person to another nor from one premises to another.

5.2.4 Violations and penalties.

The penalty for violation of any provision of this article shall be listed in the Village of Fall Creek Schedule of Fees. A separate offense shall be deemed committed on each day upon which a violation occurs or continues. If any person shall be convicted of a second or subsequent violation of the provisions of this chapter and the court in its judgment shall determine that he was personally guilty of a failure to exercise due care to prevent violation, his license privileges shall terminate immediately, and he shall not be entitled to another license nor act as an agent or servant of another licensee for five years thereafter.

5.3 ARTICLE 3 – LICENSING & REGULATION OF ADULT-ORIENTED ESTABLISHMENTS

5.3.1 Purpose.

WHEREAS, it is a lawful purpose of the Village Board of the Village of Fall Creek to enact regulatory ordinances protecting and promoting the general welfare, orderly conduct, health, and safety of its citizens; and

WHEREAS, the Village Board of the Village of Fall Creek believes that it is in the best interests of the health and safety of the citizens of the Village of Fall Creek to regulate and thereby diminish the dangerous secondary effects that accompany adult-oriented establishments; and

WHEREAS, these dangerous and negative secondary effects associated with adult-oriented businesses include, but are not limited to, increased criminal activity of both a sexual and violent nature; lowered property values, urban blight and a loss of pride in a community, and an increase in sexually transmitted diseases; and

WHEREAS, the Village Board of the Village of Fall Creek has knowledge of studies conducted by Phoenix, Arizona; Whittier, California; Adams County, Colorado; Indianapolis, Indiana; New York, New York; New Hanover County, North Carolina; Austin, Texas; Beaumont, Texas; Dallas, Texas; El Paso, Texas; and Newport News, Virginia, that indicate that adult-oriented establishments have either a strong or a direct correlation to increased crime; and

WHEREAS, a Land Use Study conducted by the City of Phoenix, Arizona, that concentrated on the link between adult-oriented establishments and their relation to increased crime found that the number of sex offenses was five hundred and six percent (506%) percent greater in neighborhoods where adult-oriented establishments were located, and which also concluded that the crimes of rape, lewd and lascivious behavior and child molestation were one hundred and thirty-two (132%) percent greater in neighborhoods in which adult-oriented establishments were located;

WHEREAS, the Village Board has knowledge of studies conducted by Garden Grove, CA, Los Angeles, CA, Indianapolis, IN, Minneapolis, MN, Las Vegas, NV, New York, NY, New Hanover Co., NC, Oklahoma City, OK, Austin, TX, El Paso, TX, Newport News, VA and St. Croix Co., WI, that indicated a correlation between the location of adult-oriented establishments and decreased property values of the surrounding areas; and

WHEREAS, a study surveying 100 Oklahoma City Real Estate Appraisers concluded that a concentration of adult-oriented businesses may mean large losses in property values; and

WHEREAS, the Village Board has knowledge of studies conducted by Minneapolis, Minnesota; Ellicottville, New York; Islip, New York; New Hanover Co., North Carolina; Amarillo, Texas; and El Paso, Texas, which conclude that when adult-oriented establishments are allowed to concentrate in one area the negative secondary effects of adult-oriented establishments may be magnified; and

WHEREAS, the Ellicottville, New York, Village Board of Trustees found that isolation of adult-oriented establishments limits their negative secondary effects; and

WHEREAS, a report by the Islip, New York, Department of Planning found that the location of two adult-oriented establishments located near each other created a “dead zone” in an otherwise healthy business district; and

WHEREAS, a legislative report prepared by the Sexually Oriented Business Revision Committee for the Houston City Council concluded that due to criminal activity associated with adult-oriented establishments, licenses should be required of all adult-oriented establishment employees; and

WHEREAS, a report based on a memorandum from the Tucson Police Department Investigative Services to the City Prosecutor conducted by the city of Tucson, Arizona, dated May 1, 1990, concluded that police officers found a wide variety of illegal sexual conduct at all adult-oriented establishments and that virtually every establishment had employees arrested for prostitution or obscene sex shows and which found that one of the employees arrested for such acts was a 15 year old girl;

WHEREAS, a legislative report prepared by the Sexually Oriented Business Revision Committee for the Houston City Council concluded that the lack of clear lines of view, insufficient lighting and locked rooms decreases the ability of adult-oriented establishment owners, managers and employees from monitoring behavior and preventing lewd behavior on the part of customers, and that this is behavior which may lead to unsanitary conditions and the spread of communicable diseases; and

- A. The purpose of this Ordinance shall be to license and regulate the operations locations of adult-oriented establishments, as defined herein, within the limits of the Village of Fall Creek. As based upon the following recitation of issues involving such types of businesses, it is deemed to be in the best interests of the health, welfare and safety of the residents of the Village to adopt this ordinance, pursuant to the authority vested in the Village under § 61.34 (1), Wis. Stats.
- B. Based in part upon the foregoing and with the purpose to diminish the negative secondary effects of adult-oriented establishments, defined as including, but not being limited to, maintenance of property values, protection of the quality of neighborhoods and commercial districts, the quality of life and the health, safety and welfare of residents of the Village, of adult-establishments, the following regulations are adopted.

5.3.2 Definitions.

ADULT-ORIENTED ESTABLISHMENTS -- shall include, but no be limited to, “adult bookstores,” “adult motion picture theaters,” “adult mini-motion picture theaters,” “adult bath houses,” “adult massage parlors,” “adult modeling studios,” “adult body painting studios,” “adult novelty shops” and “adult cabarets.” It further means any premises to which public patrons or members are invited or admitted and which are physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purpose of viewing adult oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect.

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ADULT BOOKSTORE -- an establishment having as a substantial or significant portion of its stock in trade, for sale, rent, lease, inspection or viewing books, films, video cassettes, magazines or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or related to “specific anatomical areas” or “specified sexual activities,” as defined below.

ADULT MOTION PICTURE THEATER -- an enclosed building with a capacity of (25) or more persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to “specified sexual activities,” or “specified anatomical areas,” as defined below, for observation by patrons therein.

ADULT MINI-MOTION PICTURE THEATER -- an enclosed building with a capacity less than (25) persons used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to “specified sexual activities,” or “specified anatomical areas,” as defined below, for observation by patrons therein.

ADULT BATH HOUSES -- an establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, that is not operated by a medical practitioner, or a professional therapist licensed by the State of Wisconsin and which establishment provides to its patrons an opportunity for engaging in specified sexual activities as defined in this ordinance.

ADULT MASSAGE PARLORS -- an establishment or business with or without sleeping accommodations which provides services of massage and body manipulation, including exercises, heat and light treatments of the body, and all forms and methods of physiotherapy, not operated by a medical practitioner or professional physical therapist licensed by the State of Wisconsin and which establishment provides for its patrons the opportunity to engage in “specified sexual activity” as defined in this ordinance.

ADULT MODELING STUDIOS -- an establishment or business which provides the service of modeling for the purpose of reproducing the human body wholly or partially nude by means of photography, painting, sketching, drawing or otherwise.

ADULT BODY PAINTING STUDIOS -- an establishment or business wherein patrons are afforded an opportunity to paint images on a body which is wholly or partially nude. For purposes of this ordinance, the adult bodypainting studio shall not be deemed to include a tattoo parlor.

ADULT NOVELTY SHOP -- an establishment or business having as a substantial or significant portion of its stock in trade in novelty or other items including movies, tapes, video, books, and any device, which are distinguished or characterized by an emphasis on, or designed for, specified sexual activity as defined herein or stimulating such activity.

ADULT CABARET -- a cabaret which features dancers, strippers, male or female impersonators, or similar entertainers, performing or presenting material having as its dominant theme, or distinguished or characterized by an emphasis on any actual or simulated “specified sexual activities” or “specified anatomical areas” as defined below.

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ENTERTAINER -- means a dancer, stripper, impersonator or similar performer referred to in the definition of "adult cabaret".

ADULT ENTERTAINMENT -- means any exhibition of any motion pictures, live performers, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated "specified sexual activities," or "specified anatomical areas," as defined below.

YOUTH CENTER -- any center that provides, on a regular basis, recreational, vocational, academic or social services for persons younger than 21 years old for those persons and their families.

SENSITIVE AREAS -- an area which could be negatively affected by being in close proximity to an adult oriented establishment, including but not limited to childcare facilities, schools, places of worship, libraries, community centers, and recreation areas.

SPECIFIED SEXUAL ACTIVITIES -- simulated or actual:

- A. Showing human genitals in a state of sexual stimulation or arousal.
- B. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio, or cunnilingus.
- C. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

SPECIFIED ANATOMICAL AREAS -- means:

- A. Less than completely and opaquely covered human genital, pubic region, perineum, buttocks, female breasts below the point immediately above the top of the areola.
- B. Human male genitals in a discernible turgid state, even if opaquely covered.

OPERATORS -- any person, association, partnership or corporation operating, conducting, maintaining or owning any adult-oriented establishment.

RESIDENTIAL DWELLING -- a building, or any portion of a building which is used as a place of residence for one or more families as one or more habitable units with facilities which are used for or available for use for living, sleeping, cooking and eating.

PLACE OF WORSHIP -- a church, synagogue or other building used as a place of congregating by any recognized religious group, body or affiliation.

5.3.3 License.

- A. Except as provided in Sec. 186-5 below, from and after the effective date of this ordinance, no adult-oriented establishment shall be operated or maintained in the Village of Fall Creek without first obtaining a license to operate issued by the Village of Fall Creek.
- B. A license may be issued only for (1) adult-oriented establishment located at a fixed and certain place. Any person, partnership or corporation, which desires to operate more than one adult-oriented establishment, must have a license for each.
- C. No license or interest may be transferred to any person, partnership or corporation.

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

5.3.4 Application for License.

- A. Any person, partnership, or corporation desiring to secure a license shall make an application to the Village Clerk. The application shall be filed in triplicate with and dated by the Village Clerk. A copy of the application shall be distributed promptly to the Village of Fall Creek Police Department and the applicant.
- B. The application for a license shall be upon a form provided by the Village Clerk. An applicant for a license interested directly in the ownership or operation of the business shall furnish the following information under oath:
 - (1) Name and address.
 - (2) Written proof that the individual is at least eighteen (18) years of age.
 - (3) The exact nature of the adult-oriented use to be conducted and the address of the adult-oriented establishment to be operated by the applicant.
 - (4) If the applicant is a corporation, the date and state of the incorporation, the name and address of the registered agent and the name and address of any shareholder(s) who individually or jointly owns or controls more than ten (10%) percent of the stock in said corporation and all persons responsible for the management and operation of the adult-oriented establishment.
 - (5) If the applicant is a partnership or joint venture or any other type of organization where two (2) or more persons have a financial interest, the application shall specify the name of the entity, the name and address of any general partner(s) and all persons responsible for the management and operation of the adult-oriented establishment.
- C. Within sixty (60) days of receiving an application for a license, the Village Clerk shall notify the applicant whether the application is granted or denied or whether the application period is being extended for another sixty (60) day period.
- D. Whenever an application is denied, the Village Clerk shall advise the applicant in writing of the reasons for such action. If the applicant requests a hearing within ten (10) days of receipt of notification of denial, a public hearing shall be held before the Village Board.
- E. Failure or refusal of the application to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this ordinance shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial by the Village Clerk.

5.3.5 Standards for issuance of license.

- A. To receive a license to operate an adult-oriented establishment, an application must meet the following standards:
- (1) If the applicant is an individual:
 - (a) The applicant shall be at least eighteen (18) years of age.
 - (2) The applicant shall not have been found to have previously violated this ordinance or an ordinance of like terms in another jurisdiction or have been arrested or convicted for a violation for which licensure may be denied under §111.335, Wis. Stats., within five (5) years immediately preceding the date of the application.
 - (3) If the applicant is a corporation:
 - (a) All persons required to be named under Section 186-4 B. (4) shall be at least eighteen (18) years of age.
 - (b) No person required to be named under Section 186-4 B. (4) shall have been found to have previously violated this ordinance or an ordinance of like terms in another jurisdiction or have been arrested or convicted for a violation for which licensure may be denied under §111.335, Wis. Stats., within five (5) years immediately preceding the date of the application.
 - (4) If the applicant is a partnership, joint venture or any other type of organization where two (2) or more persons have a financial interest:
 - (a) All persons required to be named under Section 186-4 B. (5) shall be at least eighteen (18) years of age.
 - (b) No person required to be named under Section 186-4 B. (5) shall have been found to have previously violated this ordinance or an ordinance of like terms in another jurisdiction or have been arrested or convicted for a violation for which licensure may be denied under §111.335 Wis. Stats., within five (5) years immediately preceding the date of the application.

5.3.6 Fees.

The license fee will be listed in the Village of Fall Creek Schedule of Fees.

5.3.7 Display of License.

- A. The license shall be displayed in a conspicuous public place in the adult-oriented establishment.
- B. Licenses of employees or agents that work in said establishment that relate to this license or establishment shall be displayed with the adult-oriented establishment license.

5.3.8 Renewal of License.

- A. Every license issued pursuant to this ordinance will terminate at the expiration of one (1) year from the date of issuance or the following June 30, whichever is earlier, unless sooner revoked, and must be renewed before operation is allowed in the following fiscal

year. Any operator desiring to renew a license shall make an application to the Village Clerk. The application for renewal must be filed ninety (90) days before the license expires. The application for renewal shall be filed in triplicate and dated by the Village Clerk. A copy of the application for renewal shall be distributed promptly to the Village Clerk and to the Police Department. The Clerk shall require complete information and data, given under oath or affirmation, as is required for an application for a new license.

- B. A license renewal fee as listed in the Village of Fall Creek Schedule of Fees shall be submitted with the application for renewal.

5.3.9 Suspension or revocation of license.

- A. The Village Board may revoke a license for any of the following reasons:
 - (1) Discovery that false or misleading information or data was given on any application or material acts were omitted from any application.
 - (2) The operator or any employee of the operator violated any provision of this ordinance or any rule or regulation adopted by the Village Board pursuant to this ordinance; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of sixty (60) days if the Village Board shall find that the operation had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.
 - (3) The operator becomes ineligible to obtain a license.
 - (4) Any cost of fee required to be paid by this ordinance is not paid.
- B. The Village Board, before revoking or suspending any license or permit, shall give the operator at least ten (10) days' written notice of the charges against the operator, and the opportunity for a public hearing before the Village Board.
- C. The transfer of a license or any interest in a license shall automatically and immediately revoke the license.
- D. Any operator whose license is revoked shall not be eligible to receive a license for one (1) year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for six (6) months from the date of revocation of the license.

5.3.10 Physical layout of adult-oriented establishment.

Any adult-oriented establishment having available for customers, patrons, or any members a booth, room or cubicle for a private viewing of any adult entertainment must comply with the following requirements:

- A. Access. Each booth, room or cubicle shall be totally accessible to and from aisle and public areas of the adult-oriented establishment and shall be unobstructed by any door, lock or other control-type devices.
- B. Construction. Every booth, room or cubicle shall meet the following construction

requirements:

- (1) Each booth, room or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-public areas by a wall.
 - (2) Have at least one (1) side totally opened to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the room.
 - (3) All walls shall be solid and without any openings, extended from the floor to a height of not less than six (6) feet and be light colored, non-absorbent, smooth textured and easily cleanable.
 - (4) The floor must be light colored, non-absorbent, smooth textured and easily cleanable.
 - (5) The lighting level of each booth, room or cubicle, when not in use, shall be a minimum of ten (10) foot candles at all times, as measured from the floor.
- C. Occupants. Only one (1) individual shall occupy a booth, room or cubicle at any time. No occupant shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth.

5.3.11 Responsibilities of the operator.

- A. Every act or omission by an employee constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or cause the omission.
- B. Any act or omission of any employee that constitutes a violation of the provisions of this ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.
- C. No operator or employee of an adult-oriented establishment shall allow any minor to loiter nearby or to frequent an adult-oriented establishment or allow any minor to view adult entertainment as defined herein.
- D. The operator shall maintain the premises in a clean and sanitary manner at all times.
- E. The operator shall maintain at least ten (10) foot candles of light in the public portions of the establishment, including aisles, at all times, However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one (1) foot candle of illumination in said aisles, as measured from the floor.
- F. The operator shall insure compliance of the establishment and its patrons with the provisions of this ordinance.
- G. No operator shall suffer, allow or permit any employee or entertainer and no employee or

entertainer shall intentionally touch the clothed or unclothed body of any patron or customer at the establishment premises, at any point below the neck and above the knee of the person, excluding that part of the person's arm below the wrist, commonly referred to as the hand. It shall further be unlawful for any patron or customer in or upon the establishment premises, to touch any portion of the clothed or unclothed body of an operator, employee or entertainer below the neck and above the knee, excluding the part of the operator's employee's or performer's arm below the wrist, commonly referred to as the hand.

- H. Display of ordinance. This Ordinance shall be displayed on the exterior of every licensed premise with such ordinance to be clearly visible to patrons entering the premises from the outside and shall be posted within eight (8) feet of any exterior entryway. The ordinance shall also be placed in each room and any enclosed location or booth within an establishment licensed under this section. The Village Board may, by formal motion or resolution, authorize the posting of an abbreviated form of this ordinance, so as to notify patrons, employees and operators of the regulations stated in this section. The exterior signs shall be in block letters, written in black on a white background surface, and be no less than one inch in size. The interior signs shall be of a similar type and color with a minimum height of ½-inch each. Upon application of the owner, abbreviated versions of this ordinance may be posted or other amendments to this section may be approved, consistent with the intent of this ordinance in keeping affected persons apprised of the requirements of this ordinance.

5.3.12 Location.

- A. No adult-oriented establishment shall be located:
- (1) Within five hundred (500) feet of an existing adult-oriented establishment.
 - (2) Within five hundred (500) feet of any premises of a Licensee of a Class "B" Fermented Malt Beverage Retailer's License or Retail "Class B" Liquor License.
 - (3) Within five hundred (500) feet of a "youth center" or "sensitive area" as defined by this ordinance.
 - (4) Upon any land except lands within the Village which are zoned for adult-oriented establishments, either as permitted or a conditional use of property.
 - (5) Within five hundred (500) feet of an area zoned residential or an existing residential dwelling.
 - (6) Within five hundred (500) feet of a place of worship.
- B. For purposes of this section, distances are to be measured in a straight line, without regard to intervening structures or objects, from the property line of the adult-oriented establishment to the nearest property line of another adult-oriented establishment, sensitive area, or the premises of a Licensee of a "Class B" Fermented Malt Beverage Retailer's License or Retail "Class B" Liquor License, or a residential dwelling.
- C. The Village Board may waive the above restrictions if it is found that an adjacent activity

or use proposed is in the best interest of the city and that the safety and welfare of the community is protected. The waiver may be introduced by the Village Board, or by written request or petition.

5.3.13 Hours of operation.

No adult-oriented establishment shall be open between the hours of 12:01 a.m. and 2:59 p.m.

5.3.14 Registrations of entertainers.

- A. Any person desiring to provide entertainment in the Village of Fall Creek as an entertainer at any facility governed under this ordinance, before engaging in any such entertainment shall register at the Police Department and pay a fee of twenty-five dollars (\$25.00). The individual shall provide full name and permanent address, date and place of birth, information concerning height, weight, hair and eye color, gender and race, two (2) forms of identification with at least one (1) form being photo identification confirming such information, and if requested, fingerprints, stage name and booking agent if any. Such registration shall be valid for one (1) year from the date of registration, or if employed by an establishment holding a liquor license, on June 30th following issuance.
- B. No person shall permit entertainment by an individual subject to this Section without prior registration as required in paragraph (a) above.

5.3.15 Administration procedure and review.

Any person may request, in writing by letter to the Village Clerk, review regarding the granting, denial, renewal, non-renewal, revocation or suspension of a license for an adult-oriented establishment.

5.3.16 Exclusions.

All private schools and public schools as defined in Chapter 115, Wis. Stats., located within the Village of Fall Creek are exempt from obtaining a license hereunder when instructing pupils in professional nursing care or human growth and development as a part of its curriculum. All licensed medical care or professional nursing care facilities located within the Village of Fall Creek, and agents of the Village of Fall Creek and all Town, County, state and federal departments and agencies are exempt from obtaining a license hereunder when engaged in the providing of medical care or human growth and development education.

5.3.17 Penalties and prosecution.

- A. In addition to all other remedies available to the Village of Fall Creek in equity and under law, any person who shall violate any provision of this ordinance or who shall fail to obtain a license or permit as required hereunder, or who shall operate after his or her license is revoked, shall be subject to penalty, on a per diem or per occurrence basis as follows:
- B. Any person who operates an adult-oriented establishment contrary to this article, shall be subject to an initial fine as listed in the Village of Fall Creek Schedule of Fees per day for each day that the person continues to operate an adult-oriented establishment in violation of this article.

5.3.18 Severability.

The several sections of this ordinance are declared to be severable. If any section, provision, phrase, word or any portion of this ordinance shall be declared by a decision of a court of competent jurisdiction to be invalid, unlawful or unenforceable, such decision shall apply only to the specific section, word, phrase, provisions or portion thereof directly specified in the decision, and not affect the validity of all other provision, words, sections or portions thereof of the ordinance which shall remain in full force and effect.