

Adult Business Operation Ordinance
Madison County,
Illinois

Madison County, Illinois

ORDINANCE NO. 95-05

ENACTING AS AN ORDINANCE, A CODE ADOPTING RULES, REGULATIONS AND RESTRICTIONS TO OVERSEE AND CONTROL THE OPERATION OF ADULT BUSINESSES WITHIN THE UNINCORPORATED AREAS OF MADISON COUNTY.

WHEREAS, the Courts of Illinois as well as the United States Supreme Court have recognized that County's authority to adopt rules and regulations over the operation of adult entertainment businesses; and,

WHEREAS, the use of booths, rooms or cubicles in an Adult Business can, by reason of their design and intended use, facilitate the spread of sexually transmitted diseases (both fatal and non-fatal); and,

WHEREAS, the County has a substantial government interest in protecting the public health, safety and welfare of its citizens and all persons within the County, and of propounding standards to eliminate the possibility of infection by contagious sexually transmitted diseases; and,

WHEREAS, the regulation of adult entertainment businesses is necessary to prevent undesirable secondary effects on surrounding areas, including but not limited to a tendency to attract an undesirable quantity and quality of transients; to effect property values adversely, to cause an increase in crime, especially prostitution; to contribute to the blighting or down-grading of surrounding neighborhoods/areas; and to encourage residents and businesses to move elsewhere; and,

WHEREAS, this Ordinance is intended to prevent secondary effects of adult entertainment businesses, and is not intended to protect citizens from "offensive" speech or to suppress free expression protected by the First Amendment of the United States Constitution; and,

WHEREAS, the County has reviewed the effects of unregulated adult entertainment businesses in surrounding counties and municipalities, and has determined that the secondary effects of same are unacceptable; and,

WHEREAS, the County Board is desirous of adopting such rules, regulations and restrictions, and incorporating said ordinances into the general County Code.

NOW THEREFORE, be it ordained by the Madison County Board that the following shall constitute the Chapter on "Adult Business Regulations" of the Madison County Code.

The Clerk of this County is hereby authorized and ordered to publish a copy of said Ordinance in a newspaper of general circulation within the County. In addition, the Clerk

is also authorized and ordered to file a copy of said Ordinance in the Office of the County Clerk.

Said Code shall be deemed in full force and effect immediately upon publication of said Ordinance, and same shall be presumptive evidence in all courts and places of the ordinance and all provisions, sections, penalties and regulations therein contained and of the date of passage, and that the same is properly signed, attested, recorded and approved and that any public hearings and notices thereof as required by law have been given.

Respectfully submitted,

Land Use Committee

Legislative Committee

APPROVED AS TO FORM:

William R. Haine
State's Attorney
Madison County, Illinois

PASSED AND ADOPTED by the Madison County Board this 20th day of September, 1995.

NELSON HAGNAUER, CHAIRMAN
MADISON COUNTY BOARD

ATTEST:

DEBBIE SALTICH
MADISON COUNTY CLERK

ADULT BUSINESS REGULATIONS

DEFINITIONS.

For the purpose of this Ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning. All words and phrases used in this ordinance which are not defined herein shall have the meaning ascribed to such words and phrases in common usage.

ADULT BUSINESS. Any establishment having as a substantial or significant portion of its stock in trade or business activity in a use such as, but not limited to the following: Adults-Only Bookstores, Adults-Only Motion Picture Theaters, Adult Entertainment Centers, Massage Parlors, Rap Parlors, Adults-Only Cabarets or Adults-Only Saunas, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

ADULT ENTERTAINMENT BUSINESS. Synonymous with "Adult Business," as defined herein.

ADULT ENTERTAINMENT CENTER. An enclosed building or part of an enclosed building, which contains one or more coin-operated mechanisms which when activated permit a customer to view a live person nude or in such attire, costume or clothing as to expose to view the human male or female genitalia; pubic hair; buttocks; perineum; anal or pubic regions; or, female breast, at or below the areola thereof. In addition, the viewing of a live person, in the above-described manner, after paying of any admission or fee for the viewing of same activity.

ADULTS-ONLY. Any items or activities emphasizing, depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity.

ADULTS-ONLY BOOKSTORE. An adults-only establishment having as a substantial or significant portion of its stock in trade, books, magazines, films for sale or viewing on premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished or characterized by their principal emphasis on matters depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality, sadomasochistic activity. An establishment, having adults-only items as a substantial or significant portion of its stock, that sells or displays adults-only items for sale to patrons therein.

ADULTS-ONLY CABARETS. An establishment or place primarily in the business of featuring topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

ADULTS-ONLY MOTION PICTURE THEATER. An enclosed building used regularly and routinely for presenting adults-only material distinguished or characterized by an emphasis on matter depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity, for observation by patron therein.

BOOTH. Any enclosure that is specifically offered to patrons of an Adult Business for the private viewing of any adults-only item or movie. Said definition does not include enclosures that are used as private offices by any operator, employee or agent for attending to the tasks of their employment and are not offered for use by the public.

CUBICLE. Synonymous with "booth," as defined herein.

DOOR. Full, complete, non-transparent closure device that obscures the view or activity taking place within the enclosure.

MASSAGE PARLOR. An establishment or place primarily in the business of providing massage services, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

NUDITY. The display of the human male or female genitalia; pubic hair; buttocks; perineum; anal or pubic regions; female breast, at or below the areola thereof, with no covering or with a less than fully opaque covering; or, male genitalia, in a discernible turgid state, with or without covering.

OBSCENE. Any material or performance is obscene if: (1) the average person, applying contemporary adult community standards, would find that, taken as a whole, it appeals to the prurient interest; and (2) the average person, applying contemporary adult community standards, would find that it depicts or describes, in a patently offensive way, ultimate sexual acts or sadomasochistic sexual acts, whether normal or perverted, actual or simulated, or masturbation, excretory functions or lewd exhibition of the genitals; and (3) taken as a whole, it lacks serious literary, artistic, political or scientific value. [Statutory Reference: 720 ILCS 5/11-20]

OPERATOR. Any person, (whether said persons be an individual, partner, corporation, joint stock company, fiduciary, officer, director, stockholder, employee, or manager), that conducts, maintains or owns any Adult Business.

PATRON. Any customer, patron or visitor to an Adult Business who is not employed by any operator of said establishment.

RAP PARLOR. An establishment or place primarily in the business of providing non-professional conversation or similar services for adults, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

ROOM. Synonymous with "booth," as defined herein.

SADOMASOCHISTIC ACTIVITY. Flagellation or torture by or upon a nude person; a person clad in undergarments, a mask or bizarre costume. In addition, the condition of being fettered, bound or otherwise physically restrained with the intent to stimulate or arouse sexually the initiator and or the recipient.

SAUNA. An establishment or place primarily in the business of providing a steam bath and or massage services, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated.

SELL. Includes to solicit or receive an order for, to keep or expose for sale and to keep with intent to sell.

SEXUAL CONDUCT. Ultimate sex acts (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity. In addition, physical contact, intended to stimulate or arouse sexually the initiator and or the recipient, with a person's unclothed genitalia, buttocks, perineum, anal or pubic regions, or female breast.

UNDERAGE. Any person under eighteen (18) years of age, the legally minimum age at which one can purchase or view adults-only items. [Statutory Reference: 720 ILCS 5/11-20]

WALL SIGN. Any flat sign which is placed against a building or other structure and attached thereto in such manner that only one side is visible.

SPECIAL USE PERMIT REQUIRED.

(A) No Adult Business may operate within the unincorporated territory of this County without first having obtained a special use permit. A separate special use permit must be acquired for each Adult Business. It shall likewise be unlawful for any such business to sell or offer for sale any adults-only items to violation of the terms and conditions of such special use permit.

(B) A special use permit issued by the County is required for and with respect to any building location and premises, within the unincorporated territory of this County, at or upon which an Adult Business is to be operated.

(C) All special use permit procedures and criteria are as noted in the Madison County Zoning Code, including but not limited to Sections 93.167, 93.168, 93.169, 93.170 and 93.17 1. However, for purposes of special use permits sought for Adult Businesses, Section 93.167(F) is clarified as specifying a thirty (30) day period within which to submit all additional information and Section 93.167(H) is clarified as specifying a sixty (60) day period within which the appeal will be heard.

(D) No special use permit shall be held in existence by the mere payment of fees. :

LOCATION RESTRICTIONS.

The use of property for an Adult Business can have potentially harmful secondary effects on surrounding areas, and may have a deleterious effect upon the use and enjoyment of adjoining properties.

Such secondary effects can include, but not limited to, a tendency to attract an undesirable quantity and quality of transients, to effect property values adversely, to cause an increase in crime, especially prostitution, to contribute to the blighting or

down-grading of the surrounding neighborhood/area, and to encourage residents and businesses to move elsewhere.

As such, all Adult Business, excepting non-conforming uses as described below, must comply with the following location restrictions:

(A) All Adult Businesses shall be located within a "B-3" Highway Business District.

(B) No Adult Business shall be located within one thousand (1,000) feet of any residential zone, single or multiple family dwelling, church, school, licensed day-care facility or park. Said distance shall be measured from property line to property line.

(C) No more than two Adult Business shall be located within one thousand (1,000) feet, (excluding streets, alleys and public ways), of another Adult Business. Said distance shall be measured from property line to property line.

(D) Adult Businesses in violation of paragraphs (A), (B) and (C) shall be permitted as non-conforming uses where said Adult Businesses were established and operated continuously prior to the effective date of this Ordinance, provided that no such Adult Business may be enlarged or increased in size or may be discontinued in use for a period of more than one-hundred eighty (180) days.

PHYSICAL LAYOUT.

The use of booths, rooms or cubicles in an Adult Business can, by reason or their design and intended use, facilitate the spread

of sexually transmitted diseases (both fatal and non-fatal). insofar as the County has a substantial government interest in protecting the public health, safety and welfare of its citizens and all persons within the County, the following standards have been propounded to eliminate the possibility of infection by contagious sexually transmitted diseases.

(A) All booths, rooms or cubicles for the private viewing of any adults-only items or movies shall comply with the following standards:

1. They be totally accessible both to and From lighted aisles and public areas of the Adult Business;
2. The bottom surfaces of any doors must measure at least forty-two (42) inches from the floor surfaces;
3. No surfaces intended for seating may be located therein;
4. No doors may be fined with or obstructed by any lock mechanism or other control-type device;

5. They must be separated from adjacent booths, rooms or cubicles and any non-public areas by a solid wall without any opening and extending from the floor to a height of at least six (6) feet;

6. They must be lit by light bulbs of at least twenty-five (25) watts when the Adult Business is open for business;

7. All doors or openings must be sufficiently unobstructed such that an operator, employee or agent may determine the number of persons within any booth, room or cubicle;

(B) Only one person shall occupy a booth, room or cubicle at any time; and, at no time, shall the occupant therein engage in any type of sexual conduct resulting in the discharge of any bodily fluids while within a booth, room or cubicle;

(C) All wall and floor surfaces must be of a light-colored, non-absorbent, smooth texture that is easily cleaned;

(D) All public areas of an Adult Business must be lit by light bulbs of at least sixty (60) watts when the Adult Business is in open for business.

PROHIBITED CONDUCT.

The operator of any Adult Business shall neither participate in nor suffer or permit any of the following prohibited acts to occur on the premises:

(A) Sexual conduct, including but not limited to any demonstration, dance, performance or exhibition on the licensed premises by any employee, agent, entertainer or patron, where said person engages in any of the following conduct:

(1) Exposure of the genitalia pubic hair, buttocks, perineum, anal or pubic region; or,

(2) Exposure of any device, costume or covering which gives the appearance of or simulates the genitalia, pubic hair, buttocks, perineum, anal or pubic region; or,

(3) Exposure of any portion of the female breast at or below the areola thereof; or,

(4) Performance or simulated performance of ultimate sexual acts or explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity; or,

(5) Fondling of his or her own genitals or the genitalia of another person.

(B) Employment or use of the services of any person in or upon the premises of the Adult Business while such person is unclothed or in such attire, costume or clothing so as to result in conduct prohibited in paragraph (A) above.

(C) Admission of any underage patron into or upon the premises of the Adult Business.

(D) Patronage, frequenting or loitering of any underage person in any Adult Business.

(E) Allowance of any underage person to view, accept or otherwise possess any adults-only item on the licensed premises.

(F) Employment or use of the services of any underage person in or upon the premises of the Adult Business.

(G) Drunkenness, fighting, unlawful games, riotous or disorderly conduct whatsoever, in any premises kept or occupied as an Adult Business.

SALES VIOLATIONS.

(A) No operator, agent or employee shall knowingly sell, deliver or provide, or offer or agree to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene. [Statutory Reference: 720 ILCS 5/11-20]

(B) No operator, agent or employee shall sell, deliver or provide, or offer or agree to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene after recklessly failing to exercise reasonable inspection which would have disclosed the nature or content thereof. [Statutory Reference: 720 ILCS 5/11-20]

(C) No operator, agent or employee shall create, buy, procure or possess obscene matter or material with intent to disseminate it in violation of this Ordinance or State statute. [Statutory Reference: 720 ILCS 5/11-20]

(D) No operator, agent or employee shall advertise or otherwise promote the sale of material represented or held out by him to be obscene, whether or not it is obscene. [Statutory Reference: 720 ILCS 5/11-20]

(E) No operator, agent or employee shall knowingly sell, deliver or provide, or offer or agree to sell, deliver or provide any child pornography, as defined by State statute. [Statutory Reference: 720 ILCS 5/11-20.1]

(F) No operator, agent or employee shall create, buy, procure or possess any child pornography with intent to disseminate it in violation of this Ordinance or State statute. [Statutory Reference: 720 ILCS 5/11 -20.1]

(G) No operator, agent or employee shall advertise or otherwise promote the sale of material represented or held out by him to be child pornography, whether or not it is child pornography. [Statutory Reference: 720 ILCS 5/11-20.1]

(H) No person, after purchasing or otherwise obtaining an adults-only item shall sell, deliver or allow any underage person to view an adults-only item.

(I) If an operator, agent or employee believes or has reason to believe that a sale, delivery or viewing of any adults-only item is prohibited because the prospective recipient is underage, said operator, agent or employee shall, (before making or allowing such sale, gift, delivery or viewing), demand presentation of some form of positive identification containing proof of age, issued by a public officer in the performance of his official duties.

(J) An operator, agent or employee may refuse to sell, deliver or allow any person to view any adults-only item, where said person is unable to produce adequate written evidence of identity and age by production of a document issued by the federal, State, or County government, or subdivision or agency thereof, including but not limited to the following documents:

- (1) a motor vehicle operator's license;
- (2) a registration certificate issued under the Federal Selective Act; or
- (3) an identification card issued to a member of the Armed Forces.

(K) Proof that the operator, employee or agent, demanded, examined and reasonably relied upon such written evidence listed in paragraph (J) above in any transaction forbidden by this Ordinance is competent evidence that may be offered as an affirmative defense to a violation of this Ordinance.

In order to reasonably rely upon written evidence regarding a patron's identity and age, an operator, agent or employee shall use the prudent judgment of a reasonable and informed person, and shall scrutinize said written evidence of age and identity by doing the following:

- (1) determine if the physical description and photograph (if any) on the document presented matches that of the presenting person;
- (2) determine whether the plastic seal on the identification card is intact or broken; and,
- (3) in the case of an Illinois Driver's License, determine whether the seventh and eighth digits in the driver's license number (excluding the beginning initial) match the stated date of birth located elsewhere on the driver's license.

If from the foregoing, a reasonable person would or should doubt the authenticity of the identification card, then the person offering the identification must not be sold, delivered or allowed to view any adults-only items.

(L) No operator, agent or employee shall give away or otherwise make available any adults-only item or viewing of any adults-only item for the purpose of evading any provision of this Ordinance, when the sale or viewing of said adults-only item is prohibited shall constitute unlawful selling.

(M) Offers or agreements to sell, deliver, provide or allow the viewing of any adults-only item at or within any premises when the sale or viewing of said adults-only item is prohibited shall constitute unlawful selling.

(N) The use of any other shift or device to evade any provision of this Ordinance is prohibited and shall constitute unlawful selling.

HOURS OF OPERATION.

The unlimited operation of an Adult Business can, by reason of their intended use, facilitate secondary effects including but not limited to prostitution, disorderly conduct, performance of sexual acts or conduct in public, traffic congestion and parking problems. Insofar as the County has a substantial government interest in preserving character and preventing deterioration of its neighborhood and minimizing the disruptive effect of such Adult Businesses on neighborhoods, the following limitations on operation times have been propounded:

(A) No operator, employee or agent of an Adult Business shall sell, deliver or allow any person to view any adults-only item between the hours of 10:00 p.m. and 10:00 a.m. on Mondays through Saturdays, nor on Sundays or recognized federal holidays. The time referred to shall be either Central Standard Time or Daylight Savings Time, whichever is in effect at the time in this State.

(B) No operator, employee or agent of an Adult Business shall permit any person to remain on the premises during the hours specified herein and all patrons shall vacate the licensed premises during the hours specified herein.

SIGNS.

The unregulated use of signs can result in secondary effects that create dangers to the public in periods of high winds or inclement weather, defeat the sign's informational or advertising functions as competitors escalate sign size and expense to attract patrons, reduce the ability of the public to interpret the intended message safely and quickly, and destroy the aesthetic quality of the community. Insofar as the County has a substantial government interest in these matters, all signs advertising or promoting the sale of adults-only items must meet the following restrictions:

(A) All signs must be flat wall signs.

(B) The amount of allowable sign area shall be as stated in the Sign Regulations section of the Madison County Zoning Code.

(C) No merchandise or depictions of adults-only items shall be displayed in window areas or any other area that may be viewed from a public street, alley, public way or sidewalk located in front of the building.

(D) A one square foot sign may be placed on the door to state the hours of operation and adults-only admittance.

(E) All provisions of the Sign Regulation section of the Madison County Zoning Code shall control except as clearly contradicted by this paragraph. In the event that the provisions conflict, this paragraph shall prevail.

PUBLIC HEALTH STANDARDS.

(A) All premises operated as an Adult Business shall be kept in clean and sanitary condition and shall be kept in full compliance with regulations issued by the County Health Department or the Illinois Department of Public Health.

(B) Any Adult Business shall keep and maintain the premises equipped with running hot and cold water, shall provide separate and adequate toilet facilities for both males and females, and shall comply with all health, sanitary, zoning and inspection requirements of the Madison County Code and the State of Illinois.

INSPECTIONS.

Any Adult Business shall permit representatives of the police department, health department (County or State), fire department, zoning department or building department to inspect the premises of an Adult Business for the purpose of insuring compliance with this Ordinance and with State statutes, at any time the Adult Business is open for business.

AMORTIZATION PERIOD.

Adult Businesses in violation of any restriction or regulation contained herein, excepting any location restrictions, must come into full compliance within six (6) months from the effective date of this Ordinance.

VICARIOUS LIABILITY.

(A) Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Ordinance, by any employee or agent of any operator, shall be

deemed and held to be the act of said operator if such act or omission either with the authorization, knowledge or approval of the operator.

(B) Every act or omission of whatsoever nature constituting a violation of any of the provisions of this Ordinance, by any employee or agent of any operator, shall be deemed and held to be the act of said operator if such act or omission occurs as a result of the operator's negligent failure to supervise the conduct of the employee or agent.

(C) Such an offense shall be punishable in the same manner as if said act or omission had been done or omitted by the operator personally.

PENALTY.

(A) In the event that an operator, agent or employee of an Adult Business is guilty of violating any provision of this Ordinance, said person may be subject to a fine not to exceed five hundred (\$500) dollars per violation.

(B) Any person violating the provisions of this Ordinance shall be subject to an offense for each and every day on which such violation continues, and each day that the offense continues shall be regarded as constituting a separate offense.

(C) Any prosecution for violations of this Ordinance does not prohibit the County from pursuing injunctive relief or the State Attorney's Office from pursuing criminal charges.

SEVERABILITY

If any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

ADDITION OF SPECIAL USE

The use of property for an Adult Business in a "B-3 " Highway Business District may be desired by a property owner, but could have a potentially harmful influence on other uses in this district. An Adult Business, because of its nature, may have a deleterious effect upon the use and enjoyment of adjacent properties.

As such, a special use permit is necessary to insure that these adverse effects will not contribute to the blighting or down-grading of the surrounding neighborhood areas. Thus, in accordance with Section 93.060 of the Madison County Zoning Ordinance, Adult Business will be added as a special use in the "B-3" Highway Business District.

"Adult Business" is defined as "an establishment having as a substantial or significant portion of its stock in trade or business activity in a use such as, but not limited to, the following: Adults-Only Bookstores, Adults-Only Motion Picture Theaters, Adult

Entertainment Centers, Massage Parlors, Rap Parlors, Adults-Only Cabarets or Adults-Only Saunas, where explicit sexual conduct is depicted and or sexual activity is explicitly or implicitly encouraged or tolerated."

For the purpose of this section, "Adults-Only" and other regulated uses are defined as "items or activities emphasizing, depicting, describing or relating to nudity, explicit sexual conduct (whether auto-erotic, heterosexual, homosexual or otherwise), bestiality or sadomasochistic activity."

Approved this 6th day of September, 1995.