

AMENDING CHAPTER 10 OF THE DANE COUNTY CODE OF ORDINANCES.
REGARDING THE ADULT ENTERTAINMENT OVERLAY DISTRICT

The County Board of Supervisors of the County of Dane does ordain as follows:

ARTICLE 1. Unless otherwise expressly stated herein, all references to section and chapter numbers are to those of the Dane County Code of Ordinances.

ARTICLE 2. Section 10.01(2n) is amended to read as follows:

(2n)(a) *Adult entertainment establishment* is any establishment which regularly features for monetary consideration performances or presentations which are distinguished or characterized by an emphasis on exposure to view of less than completely or opaquely covered human genitals, pubic area, anus, vulva, female breasts below a point immediately above the top of the areola ; or male genitals in a discernable turgid state, even if opaquely covered; or on acts of or acts which simulate the fondling of another person's genitals, pubic region, anus, or female breasts, sexual intercourse, masturbation, flagellation, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, cunnilingus, or any sexual conduct as defined by s. 944.21(2)(e), Wisconsin Statutes.

(b) The term *regularly features* as used in this subsection means giving special prominence at uniform, orderly intervals on a permanent basis, or always features.

ARTICLE 3. Section 10.151 is amended to read as follows:

10.151 AED ADULT ENTERTAINMENT OVERLAY DISTRICT. (1) *Statement of Purpose.* It is the purpose of this ordinance to establish reasonable and uniform regulations of the use of property for adult entertainment establishments in order to prevent the adverse secondary effects associated with these businesses and thereby promote the health, safety, morals, and general welfare of the citizens of Dane County. It is not the intent or effect of this ordinance to restrict or deny access by adults to sexually oriented entertainment protected by the First Amendment, or to deny access by the exhibitors of sexually oriented entertainment to their intended market.

(2) *Findings.* While the County Board recognizes that freedom of speech is among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights, based on evidence concerning the adverse secondary effects of adult entertainment establishments on the community presented in hearings and in reports made available to the Board, and on findings incorporated in the cases of *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Renton v. Playtime Theaters, Inc.*, 475 U.S. 41 (1986); *Thirteen Mile Rd. Inc. v. Warren*, 626 F. Supp. 803, (E.D. Mich. 1985); *Alexander v. Minneapolis*, 713 F. Supp. 1296 (DC Minn. 1989); *7250 Corp. v. Board of County Comrs.*, 799 P.2d 917 (Col. 1990); *Chicago v. Scandia Books, Inc.*, 102 Ill App. 3d 292 (1st Dist 1981); *Islip v. Caviglia*, 540 N.E.2d 215 (N.Y. 1989); *Dumas v. Dallas*, 648 F. Supp. 1061 (N.D. Tex. 1986); *International Eateries of America, Inc. v. Broward County*, 726 F. Supp. 1568 (S.D. Fla. 1989); *Walnut Properties, Inc. v. City Council of Long Beach*, 100 Cal. App. 3d 1018 (2d Dist. 1980); *S&G News, Inc. v. Southgate*, 638 F. Supp. 1060 (E.D. Mich. 1986); *U.S. Partners Financial Corp. v. Kansas City*, 707 F. Supp. 1090 (W.D. Mo. 1989); *City of Vallejo v. Adult Books*, 167 Cal App. 3d xxx (1st Dist. 1985); *County of Cook v. Renaissance Arcade & Bookstore*, 122 Ill 2d 123 (1988); *Derusso v. City of*

Albany, NY, 205 F. Supp.2d 16 (N.D. N.Y. 2002); *Mom N Pops, Inc v. City of Charlotte*, 979 F. Supp. 372 (W.D. N.C. 1997); *Venture I, Inc. v. Orange County, Tex.*, 947 F. Supp. 271 (E.D. Tex 1996); *Community Visual Communications, Inc. v. City of San Antonio*, 148 F. Supp.2d 764 (W.D. Tex. 2000); *Bronco's Entertainment, Ltd. v. Charter Tp. of Van Buren*, 421 F.3d 440 (6th Cir. 2005); *Brandywine, Inc. v. City of Richmond, Kentucky*, 359 F.3d 830 (6th Cir. 2004); *Holmberg v. City of Ramsey*, 12 F.3d 1413 (8th Cir 1994); *Wooster v. Entertainment One, Inc.*, 158 Ohio App. 3d 161 (2004); *Grand Brittain, Inc. v. City of Amarillo, Tex*, 27 F.3d 1068 (5th Cir 1994); *Tollis, Inc. v. City of County of San Diego*, 505 F.3d 935 (9th Cir 2007); as well as findings from papers, articles, studies and information from other communities including, but not limited to, Fort Worth & Dallas, Texas; Palm Beach County, Florida; Garden Grove, California; Austin, Texas; Phoenix, Arizona; Indianapolis, Indiana; and Los Angeles, California, the County of Dane, relying upon the experience of other local governments in this state and throughout the country, finds as follows:

(a) That adult entertainment establishments may have an adverse secondary effect on the surrounding community because the sexual nature of the business may, regardless of the intentions of the proprietors, attract persons seeking prostitution or unlawful drugs, or who are inclined to be disorderly or disruptive;

(b) Adult entertainment establishments are an intense commercial use which create a large volume of foot and automobile traffic in the vicinity of the establishment, which may require police and other municipal services which may not be readily available in towns, and which may conflict with the preservation of farmland by encouraging scattered commercial development;

(c) Adult entertainment establishments have their peak activity at hours and days which are incompatible with residential uses, and have a larger customer volume than other entertainment establishments;

(d) Because of the potential for negative impacts on property values, the peace and good order of the community and the welfare of individuals affected by adult entertainment establishments, it is necessary to minimize the secondary effects of adult entertainment;

(e) It is the intent of this section to protect the health, safety and welfare of the citizens of Dane County and to further preserve the quality of life and to preserve the urban and rural characteristics of its neighborhoods. The intent of the Adult Entertainment Overlay District is to regulate the location of such establishments; and

(f)1. Nothing in this section shall be construed to permit the regulation of any activities conducted in adult entertainment establishments which are entitled to protection under the First Amendment of the United States Constitution, including:

a. plays, operas, musicals or other dramatic works that are not obscene;

b. classes, seminars, or lectures which are held for a serious scientific or educational purpose and that are not obscene.

c. rental or sale of video cassettes, DVD videodiscs, or other electronic media for private viewing off the premises.

2. Whether or not an activity is obscene shall be judged by consideration of the following factors:

a. whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to prurient interest in sex;

b. whether the activity depicts or describes sexual conduct in a patently offensive way, as measured against community standards; and

c. whether the activity taken as a whole lacks serious literary, artistic, political or scientific value.

(2) The overlay district shall apply only to all lands zoned M-1 Industrial.

(3) An adult entertainment establishment shall be a permitted use within the overlay district.

(4) *Standards for siting of adult entertainment establishments.* Adult entertainment establishments shall meet all of the following requirements:

(a) Location of any particular adult entertainment establishment must be not less than 1,000 feet from any church, synagogue, temple, mosque or any other place of worship, any residentially zoned district, park, school, playground, day care center, public library and any other adult book store or adult entertainment establishment.

1. Measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where adult entertainment is conducted, to the nearest property line of the premises of a use listed in sub (a). Presence of a City, County or other municipal boundary shall not affect the calculation and application of the distance requirements of sub (a).

(b) There shall be no display windows on the premises;

(c) The business may have only one (1) non-flashing business sign and which shall be not larger than 4 feet by 4 feet;

(d) A one square foot sign shall be placed on each public entrance which shall state "Admittance to adults only" and may include other pertinent business information;

(e) The owner and operator of an adult entertainment establishment shall agree to comply with all Federal, State and Local laws and ordinances, including those regulating obscenity and alcoholic beverages, and shall further insure that minors are not allowed on the premises. Solicitation for purposes of prostitution shall be strictly prohibited; and

(f) There shall be no areas in the adult entertainment establishment in which entertainment is provided which are not fully visible from the main area of the establishment. No entertainment may occur in areas of the establishment which are set off by doors, curtains, screens, barriers, café or saloon doors or other obstructions.

(5) The provisions of this ordinance shall be severable. The County Board finds that it would have enacted all the provisions of this ordinance on the basis of any one of the findings in section (1).