

Chapter 15

STANDARDS OF CONDUCT

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**15.01 Use of Intoxicants.**

**(1) DEFINITIONS.**

- (a) Alcohol Beverages has the meaning found in Wis. Stats. §125.02(1).
- (b) Fermented malt beverage has the meaning found in Wis. Stats. §125.02(6).
- (c) Intoxicating liquor has the meaning found in Wis. Stats. §125.02(8).
- (d) Underage person has the meaning found in Wis. Stats. §125.02(20m).

**(2) POSSESSION AND CONSUMPTION OF ALCOHOL BEVERAGES BY UNDERAGE PERSON.** It shall be unlawful for any underage person to consume or possess any alcoholic beverage or be under the influence of any alcoholic beverage within the corporate limits of the village.

**(3) PROCURING AND FURNISHING OF ALCOHOL TO UNDERAGE PERSON.** The village elects to adopt Wis. Stats. §125.07(1)(a)4 as it relates to procuring and/or furnishing liquor to minors.

**(4) POSSESSION OR DRINKING OF FERMENTED MALT BEVERAGES OR INTOXICATING LIQUOR ON PUBLIC WAYS.** (a) It shall be unlawful for any person to sell, serve or give away, or offer to

sell, serve or give away, any alcoholic beverage upon any public way, public street, sidewalk, boulevard, parkway, safety zone, alley, public parking lot, highway, cemetery drive or other public area within the village or on private property without the owner's consent, except at licensed premises.

(b) It shall be unlawful for any person to have in his possession any open can, bottle, or other container containing malt beverages or intoxicating liquor, or to drink from the same while on, or in any motor vehicle parked on any public way, public street, sidewalk, boulevard, parkway, safety zone, alley, public parking lot, private lot open to the public, highway, cemetery drive, or other public area within the village.

(c) Sections 3(a) and 3(b) shall not apply to municipal parks or to any street, sidewalk, alley, parking lot or public way which is officially designated by the village as a parade route, festival grounds, block party or street dance area.

(d) During hours when a licensed premise is required by statute or ordinance to be closed, it shall be unlawful for any person to consume any fermented malt beverage or intoxicating liquor or possess any open can, bottle or other container which contains fermented malt beverages or intoxicating liquor outside the premises of any tavern on any property contiguous or adjacent thereto if such licensed property is under the control of management of the tavern's license holder, agent or owner.

(e) It shall be unlawful for any person to sell, serve or give away, or to offer to sell, or have in their possession any alcoholic beverage in any village park during hours in which the park is officially closed.

(5) The most current publication of Chapter 125 Wisconsin Statutes is hereby adopted by reference and made part of this section so far as applicable.

### **15.02 Theft.**

(1) **Definitions.** In this section:

(a) *Merchant* has the meaning found in Wis. Stats §943.50(1)(a).

(b) *Value of merchandise* has the meaning found in Wis. Stats. §943.50(1)(b).

(2) **THEFT.** The village elects the provisions of Wis. Stats. §943.20(1)(a) as it relates to theft.

(3) **RETAIL THEFT.** The village elects the provisions of Wis. Stats. §943.50(1m), §943.50(3), and §943.50(3m) as it relates to retail theft.

(a) A merchant or merchant's adult employee is privileged to defend property as prescribed in Wis. Stats. §939.49.

(4) **FRAUD ON HOTEL OR RESTAURANT KEEPER OR TAXICAB OPERATOR.** The village elects the provisions of Wis. Stats. §943.21 as it relates to fraud on hotel or restaurant keeper or taxicab operator.

(5) **THEFT OF LIBRARY MATERIAL.** The village elects the provisions of Wis. Stats. §943.61 as it relates to theft of library materials.

### **15.03 Prohibiting Possession of Marijuana.**

(1) **DEFINITIONS.**

(a) *Marijuana* has the meaning given in Wis. Stats. §961.01(14).

(b) *Practitioner* has the meaning given in Wis. Stats. §961.01(19).

(2) No person within the corporate limits of the village shall possess marijuana unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice.

**15.04 Drug Paraphernalia.** The village elects the provisions of Wis. Stats. §961.571, §961.572, §961.573, §961.574 as they relate to drug paraphernalia with exception to the provisions therein relating to the penalties to be imposed.

**15.05 Distribution or Possession of Isobutyl Nitrite.** No person shall manufacture, possess, use, dispense, sell, or hold for sale any isobutyl nitrite, or any compound or mixture or preparation containing significant amounts of isobutyl nitrite.

**15.06 Issuance of Non-sufficient Fund Checks, Worthless Orders and Account- Closed Checks.** The village elects to adopt Wis. Stat. §943.24 as it relates to the issuance of worthless checks and other orders for payment.

(1) No person may issue any check or other order for the payment of money which, at the time of issuance, he or she intends shall not be paid.

(2) Any of the following is prima facie evidence that the person at the time he or she issued the check or other order for the payment of money, intended it should not be paid:

(a) Proof that, at the time of issuance, the person did not have an account with the drawee; or

(b) Proof that, at the time of issuance, the person did not have sufficient funds or credit with the drawee and that the person failed within five (5) days after receiving notice of nonpayment or dishonor to pay the check or other order; or

(c) Proof that, when presentment was made, within a reasonable time, the person did not have sufficient funds or credit with the drawee and the person failed with five (5) days after receiving notice of nonpayment or dishonor to pay the check or other order.

(3) This section does not apply to a post-dated check or to a check given for a past consideration, except a payroll check.

(4) In addition to the other penalties provided for violation of this section, the Court may order a violator to pay restitution under Section 800.093, Wis. Stats., as amended.

**15.07 Use and Distribution of Cigarettes and Tobacco Products.**

(1) **JUVENILE USE AND POSSESSION OF TOBACCO PRODUCTS.** The village elects to adopt the provisions of Wis. Stats. §254.92 regarding the purchase or possession of tobacco products by juveniles.

(2) **RESTRICTIONS ON THE SALE OR GIFT OF CIGARETTES OR TOBACCO PRODUCTS.** The village elects to adopt the provisions of Wis. Stat. §134.66 regarding the sale or gift of cigarettes or tobacco products.

**15.08 Truancy.**

(1) **AUTHORITY.** Wis. Stats. §118.163(1m)(2) and (2m) authorizes the village to adopt a

municipal truancy code. (2) DEFINITIONS. For the purpose of this section:

- (a) *Truant* has the meaning given in Wis. Stat. §118.163(1)(d).
- (b) *Habitual Truant* has the meaning given in Wis. Stat. §118.16(1)(a).
- (c) *Acceptable Excuse* has the meaning given in Wis. Stat. §118.15(3).
- (d) *Dropout* has the meaning given in Wis. Stat. §118.153(1)(b).

(3) SCHOOL ATTENDANCE.

(a) *Requirements.* The school attendance requirements for the village shall be as set forth in Wis. Stat. §118.15 and except as provided in Wis. Stat. §118.15, any person having under their control a child who is between the ages of 6 and 18 years shall cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which a child becomes 18 years of age.

(b) *Exceptions.*

1. A person will not be found in violation of this section if such person has under their control a child who has been sanctioned under Wis. Stat. §49.26(1)(h).

2. A person will not be found in violation of this section if that person can prove that he or she is unable to comply with the provisions of this section because of the disobedience of the child. The child shall be referred to the court assigned to exercise jurisdiction under Wis. Stats. Chapter 938.

(c) *Penalties.* Except as set forth in the above 2 exceptions and further excepting a person who has been found guilty of a misdemeanor under Wis. Stats §948.45 for the circumstances at issue, whoever violates this section may be penalized as follows if evidence has been provided by the school attendance officer that the activities under Wis. Stat §118.16(5)(n):

- 1. For the first offense, by a forfeiture imposed of not more than \$500.00;
- 2. For the second or subsequent offense, by a forfeiture imposed of not more than \$1,000.00.
- 3. The court may require a person who is found guilty of violating this section to perform community service work.
- 4. The court may order any person who violates this section to participate in counseling at the person's own expense or to attend school with his or her child or both.

(4) PROHIBITION AGAINST TRUANT. Any person between the ages of 6 and 18 years who is attending school in the village, subject to the exceptions found under Wis. Stat. §118.15, is prohibited from being a truant as the term is defined in the section. Any law enforcement officer in the village is authorized to issue a citation to any person who is determined to be truant under the terms of this section.

(5) PROHIBITION AGAINST HABITUAL TRUANT. Any person between the ages of 6 and 18 years who is attending school in the village, subject to the exceptions found under Wis. Stat. §118.15 is prohibited from being a habitual truant as the term is defined in this section. Any law enforcement officer in the village is authorized to issue a citation to any such person who is determined to be a habitual truant under the terms of this section.

(6) PRECONDITIONS TO ISSUANCE OF HABITUAL TRUANCY CITATION

Prior to the issuance of any citation against a juvenile who is truant or a habitual truant or against a parent or guardian, the North Fond du Lac School District Attendance Officer shall provide

evidence to the police department that appropriate school personnel in the school or school district in which the child is enrolled have, within the school year during which the truancy occurred, taken the following actions:

1. Met with, or attempted to meet with, the child's parent or guardian and received no response or were refused.
2. Provided an opportunity for educational counseling to the child to determine whether a change in the child's curriculum would resolve the child's truancy and have considered curriculum modification under Wis. Stat. §118.15(1)(d).
3. Evaluated the child to determine whether learning problems are the cause of the truancy and, if so, taken steps to overcome the learning problems, except that the child need not be evaluated if tests administered to the child within the previous year indicate that the child is performing at their grade level.
4. Conducted an evaluation to determine whether social problems are the cause of the child's truancy and, if so, taken appropriate action or made appropriate referrals.

(a) Subsection 1 does not apply if a meeting as required under Wis. Stat. §118.16 is not held within ten (10) school days after the date that the notice under Wis. Stat. §118.16(2)(cg) is sent. Wis. Stat. §118.15 (2), (3), and (4) do not apply if the school attendance officer provides evidence that appropriate school personnel were unable to carry out the activity due to the child's absence from school.

(b) *Form of Citation.* Any citation issued shall be returnable to the Lakeside Municipal Court in the same manner as all other ordinance citations are returnable. The citation is to state on its face that it is a "**must appear**" citation.

**(7) FINDING AND DISPOSITION.**

(a) *Truancy.* Upon finding the child truant, the court shall impose one or more of the following dispositions:

1. An order for the person to attend school;
2. A forfeiture of not more than \$50 plus costs for the first violation, or a forfeiture of not more than \$100 plus costs for any second or subsequent violation committed within twelve (12) months of a previous violation, subject to Wis. Stat. §938.37, and subject to a maximum cumulative forfeiture of not more than \$500 for all violations committed during a school semester. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardians or both.

(b) *Habitual Truancy.* Upon finding the child habitually truant, the court shall impose one or more of the following dispositions:

1. Suspension of the person's operating privileges for not less than 30 days nor more than one year. The court shall immediately take possession of the suspended license and forward it to the Wisconsin Department of Transportation, together with a notice stating the reason for and the duration of the suspension.
2. Counseling, Service or Work Program. An order for the person to participate in counseling, a supervised work program or community service work as described under Wis. Stat. §938.34(5g). The costs of any such counseling, supervised work program or community service work may be assessed against the person, parents or guardian of the person or both.

3. In-house Restraint. An order for the person to remain at home except for the hours in which the person is attending religious worship or a school program, including travel time required to get to and from the school program or place of worship. The order may permit the person to leave the home if the child is accompanied by a parent or guardian.

4. Educational Program. An order for the person to attend an educational program as described in Wis. Stats. §938.34 (7d).

5. Revocation of Work Permit. An order for the Wisconsin Department of Workforce Development to revoke, under Wis. Stats. §103.72 a permit issued under Wis. Stats. §103.70 authorizing the employment of the person.

6. Teen Court Program. An order for the person to be placed in a teen court program as described in Wis. Stats. §938.342(1g)(f).

7. An order for the person to attend school.

8. A forfeiture of not more than \$500, subject to Wis. Stat. §938.37. All or part of the forfeiture plus costs may be assessed against the person, the parents or guardians or both.

9. An order placing the person under formal or informal supervision as described in Wis. Stats. §938.34(2).

10. An order for the person's parent, guardian or legal custodian to participate in counseling at the parent's, guardian's or legal custodian's own expense or to attend school with the person or both.

11. Any other reasonable conditions consistent with the section including a curfew, restrictions as to going to or remaining on specific premises and restrictions on associating with other children or adults.

*(c) Disposition.* Upon finding the child to be a dropout, the court shall impose one or more of the following dispositions: 1. The court may suspend the person's operating privileges until the person reaches the age of 18. The court shall immediately take possession of any suspended license and forward it to the Wisconsin Department of Transportation together with a notice stating the reason for and the duration of the suspension.

### **15.09 Contributing to Truancy.**

**(1) CONTRIBUTING TO TRUANCY.** Any person 18 years of age or older who, by act or omission, knowingly encourages or contributes to the truancy of a child is guilty of a violation of the section.

**(2) EXCEPTIONS.** This section does not apply to a person who has under his or her control a child who has been sanctioned under the provisions of Wis. Stat. §49.26(1)(h).

**(3)** An act or omission contributes to the truancy of a child if the natural and probable consequences of that act or omission would be to cause the child to be truant.

### **15.10 Parental Responsibility for Juvenile Misconduct.**

**(1) PURPOSE.** The purpose of this section is to reduce the incidents of misconduct by juveniles by requiring proper supervision on the part of custodial parents.

**(2) DEFINITIONS.** For purposes of this section, unless otherwise defined:

*(a) Child* means a person under the age of seventeen years.

(b) *Custodial parent* means a parent or legal guardian of a minor child who has custody of said child.

(c) *Custody* means either physical custody of a child under a court order under Wis. Stat. §767.23 or §767.24 or the custody of a child under a stipulation under Wis. Stat. §767.10 or actual physical custody of the child. Custody does not include legal custody, as defined under Wis. Stats. §48.02(12) by an agency or a person other than a child's birth or adoptive parent. In determining which parent has custody of a child for purposes of this section, the court shall consider which parent had responsibility for caring for and supervising the child at the time that the child's ordinance violations occurred.

(3) **PROHIBITED CONDUCT.** Every custodial parent has a duty to properly supervise his or her child. Any custodial parent whose child is convicted of a village municipal code violation twice in a six-month period or three or more times within a twelve-month period is guilty of failing to properly supervise said child. The six and twelve-month periods shall be measured from the date of the first violation.

(4) **DEFENSES.**

(a) The following shall be defenses to a violation of section 3:

1. Where the parent has made all reasonable and available efforts under the circumstances to prevent the juvenile misconduct;

2. Where the parent is not legally responsible for the supervision of the juvenile at the time the misconduct occurred; or

3. Where the parent has a physical or mental disability or incompetency rendering them incapable of supervising the juvenile at the time the misconduct occurred.

(b) It is not a defense where the parent assigns their parental responsibility to another, except pursuant to legal proceedings, which result in a court order effectuating the same.

(c) The parent has the burden of proving their defense by clear and satisfactory evidence.

**15.11 Unlawful Sheltering of Minors.** (1) No person shall, unless duly licensed under the Wisconsin Statutes, without having first obtained the permission of the parent or legal guardian of any minor or without first notifying the police department of the village of the existence of a minor described in subsection

(a) below, on premises owned or operated by or under the control of the person:

(a) By any means, conceal, shelter, or assist in the concealing or sheltering of any minor under the age of eighteen (18) while the minor is under the legal custody of the parents or legal guardian and while the minor is on report with any law enforcement agency as a "missing person", a "runaway", or a "wanted" person:

(b) Supply false information to or obstruct any police officer who, in the performance of his/her duty is attempting to locate or to take into custody any minor described in this section.

**15.12 Curfew.** No child under 18 years of age shall loaf, idle or remain and no parent or guardian shall knowingly permit his child or ward of such to loaf, idle or remain in or upon any of the streets, alleys or public places in the village between the hours of 11:00 p.m. and 6:00 a.m. unless such child is accompanied by a parent, guardian or some person of lawful age having legal

custody of such child. This section shall not be construed to prohibit such child from performing an errand or duty if directed by his parent or guardian of urgent necessity or from pursuing the duties of his employment in an expeditious and orderly manner or from going to or from business or amusement places or private homes.

### **15.13 Gambling, Lotteries, Fraudulent Devices, and Practices Prohibited**

(1) **GAMBLING PROHIBITED.** The provisions of Wis. Stats. Chapter 945, relating to gambling, commercial gambling, possession of gambling devices, except provisions therein relating to penalties imposed are hereby adopted by reference and made a part of this section as if fully set forth herein.

(2) **PROMOTING GAMBLING, PROFITING FROM GAMBLING.** No person shall promote gambling or profit from gambling anywhere in the village.

(3) **POSSESSION OF GAMBLING RECORDS.** No person shall knowingly possess any gambling record anywhere in the village. Knowingly means knowing that the record is a gambling record, whether or not the person knows the possession is a violation of the law. The following is an affirmative defense to a charge of violating this section.

(a) The person possessing the record did not use it or intend to use it in connection with any gambling.

(4) **POSSESSION OF A GAMBLING DEVICE.** No person shall possess any gambling device, knowing the character of the device. No person shall, knowing the character of such device, manufacture, sell, transport, place, or conduct or negotiate a transaction concerning such device, knowing that the device is to be used in unlawful gambling.

(5) **EXCEPTIONS.** Nothing in this section shall be interpreted to prohibit any activity or any possession of any record or device relating to any gambling activity licensed or permitted by the State of Wisconsin.

**15.14 Indecent Conduct and Language Prohibited.** The village elects the provisions of Wis. Stats. §944.20(1) and (2) as they pertain to lewd and lascivious behavior.

### **15.15 Displaying Material Harmful To Minors.**

(1) **DEFINITIONS.**

(a) *Minor* means any unmarried person under the age of eighteen (18) years of age.

(b) *Harmful to Minors* means that quality of any description, or representation, in whatever form of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse when material or performance, taken as a whole, has the following characteristics:

1. The average adult person applying contemporary community standards would find that the material has a predominant tendency to appeal to a prurient interest in sex in minors; and
2. The average adult person applying contemporary community standards would find that the material depicts or describes nudity, sexual conduct, sexual excitement or sado-masochistic abuse in a manner that is patently offensive to prevailing standards in the adult community with respect to what is suitable for minors; and
3. The material lacks serious, or educational, literary, scientific, artistic, or political value for



minors.

(c) *Nudity* means the showing of the human male or female genitals, pubic area, or buttocks with less than a full opaque covering, the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple; or the depiction of covering male genitals in a discernable turgid state.

(d) *Sexual conduct* means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person be female, breast.

(e) *Sexual excitement* means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(f) *Sado-masochistic abuse* means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(g) *Material* means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, or description.

(h) *Knowingly* means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of both:

1. The character and content of any material which is reasonably susceptible to examination by the defendant, and
2. The age of the minor; however, an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(i) *Person* means any individual, partnership, association, corporation, or legal entity of any kind.

(j) *A reasonable bona fide attempt* means an attempt to ascertain the true age of the minor by requiring production of a driver's license, identification card or paper and not relying solely on the oral allegations or apparent age of the minor.

**(2) OFFENSES.** No person having custody, control or supervision of any commercial establishment shall knowingly: (a) Display material which is harmful to minors in such a way that minors, as a part of the invited general public, will be exposed to view such material provided, however, a person shall be deemed not to have "displayed" material harmful to minors if the material is kept behind devices commonly known as "blinder racks" so that the lower two-thirds of the material is not exposed to view.

(b) Sell, furnish, present, distribute, allow to view, or otherwise disseminate to a minor, with or without consideration, any material which is harmful to minors.

**(3) OFFENSES-MINORS.** Any person under 18 years of age who falsely states, either orally or in writing, that he is not under the age of 18 years, or who presents or offers to any person any evidence of age and identity which is false or not actually his own for the purpose of ordering, obtaining, viewing, or otherwise procuring or attempting to procure or view any harmful material, is guilty of a violation of this ordinance.

**(4) DEFENSES.** It shall be an affirmative defense to any prosecution under this ordinance that:

(a) The material involved was displayed, presented or disseminated to a minor at a recognized

and established school, church, museum, medical clinic, hospital, public library, governmental agency, quasi-governmental agency and persons acting in their capacity as employees or agents of such persons or organizations, and which institution displays, presents or disseminates such material or performance for a bona fide governmental, educational or scientific purpose.

**15.16 Regulation Of Sexually Oriented Businesses.** It is the purpose of this section to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the Village, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Village. The provisions of this section have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene materials.

**(1) DEFINITIONS.**

(a) *Adult Arcade* means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas”.

(b) *Adult Bookstore Or Adult Video Store* means a commercial establishment having a substantial or significant portion of its stock in trade for sale, rent, lease, inspection or viewing any one or more of the following: books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas”.

(c) *Adult Cabaret* means a nightclub, bar, restaurant, or similar commercial establishment that regularly or routinely features:

1. Persons who appear in a state of semi-nudity; or
2. Live performances that are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
3. films, motion pictures, video cassettes, slides, or other photographic reproduction which are distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas”; or
4. persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

(d) *Adult Motel* means a hotel, motel or similar commercial establishment that offers accommodation to the public for any form of consideration and provides patrons with closed-

circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas”, and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions.

(e) *Adult Motion Picture Theater* means a commercial establishment for adults where regularly or routinely, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown which have as their dominant theme, or which are distinguished or characterized by their emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas”.

(f) *Adult Theater* means a theater, concert hall, auditorium or similar commercial establishment for adults that regularly or routinely features persons who appear in a state of nudity or live performances which have as their dominant theme, or which are distinguished or characterized by their emphasis on matter depicting, describing or relating to “specified sexual activities” or by the exposure of “specified anatomical areas”.

(g) *Escort* means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(h) *Escort Agency* means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

(i) *Establishment* means and includes any of the following:

1. the opening or commencement of any sexually oriented business as a new business;
2. the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. the additions of any sexually oriented business to any other existing sexually oriented business; or
4. the relocation of any sexually oriented business.

(j) *Permittee and/or Licensee* means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

(k) *Nude Model Studio* means any place where a person who appears in a state of nudity or displays “specified anatomical areas” is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

(l) *Nudity Or A State Of Nudity* means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

(m) *Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(n) *Semi-Nude* means a state of dress in which clothing covers no more than the human bare

buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola or human male genitals in a discernibly turgid state even if completely and opaquely covered.

1. physical contact in the form of wrestling or tumbling between persons of the opposite sex;  
or
2. activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(o) *Sexual Encounter Center* means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(p) *Sexually Oriented Businesses* means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(q) *Specified Anatomical Areas* means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

(r) *Specified Sexual Activities* means and includes any of the following: 1. the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

2. sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

3. masturbation, actual or simulated; or

4. excretory functions,

as part of or in connection with any of the activities set forth in 1 through 4 above.

(s) *Substantial Enlargement* of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas exists on October 1, 1997.

(t) *Transfer Of Ownership Or Control* of a sexually oriented business means and includes any of the following:

1. the sale, lease, or sublease of the business;

2. the transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or

3. the establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(2) CLASSIFICATION. Sexually oriented businesses are classified as follows: (a) adult arcades;

(b) adult bookstores or adult video stores;

(c) adult cabarets;

(d) adult motels;

(e) adult motion picture theaters;

(f) adult theaters;

(g) escort agencies;

(h) nude model studios; and

(i) sexual encounter centers.

(3) PERMITS AND/OR LICENSE REQUIRED.

(a) It shall be unlawful for a person to operate a sexually oriented business without a valid permit and/or license, issued by the village clerk.

(b) An application for a permit and/or license must be made on a form provided by the village clerk. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(c) The applicant must be qualified according to the provisions of this ordinance and the premises must be inspected and found to be in compliance with all village codes including fire, health, building and zoning codes.

(d) If a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a permit and/or license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a twenty (20%) percent or greater interest in the business must sign the application for a permit and/or license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, each individual having a twenty (20%) percent or greater interest in the corporation must sign the application for a permit and/or license as applicant.

(e) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him/her from the requirement of obtaining a sexually oriented business permit and/or license.

(f) Application for a permit, whether original or renewal, must be made to the clerk by the intended operator of the enterprise. The intended operator shall be required to give the following information on the application form:

1. The name, street address (and mailing address if different) and Wisconsin driver's license number of the intended operator; and the name and street address (and mailing address if different) of the owner(s);

2. The name under which the establishment is to be operated and a general description of the services to be provided;

3. The telephone number of the establishment;

4. The address, and legal description of the tract of land on which the establishment is to be located;

5. If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the permit is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the permit is sought; and

6. If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the permit). If the expected startup date is to be more than ten (10) days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.

7. A description which shall include the date and nature of the charge and the county and state of venue for each criminal and ordinance conviction (except minor traffic convictions) and each pending criminal and ordinance charge against the intended operator and each person

identified in subsection (3)(d).

(g) The application shall be accompanied by the following:

1. Payment of the application fee in full;
2. If the establishment is a Wisconsin corporation, a certified copy of the articles of incorporation, together with all amendments thereto;
3. If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
4. If the establishment is a limited partnership formed under the laws of Wisconsin, a certified copy of the certificate of limited partnership, together with all amendments thereto;
5. If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualified documents, together with all amendments thereto;
6. Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;
7. If the person identified as the fee owner(s) of the tract of land in item (6) are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the establishment for the purpose of the operation of the establishment;
8. A photocopy of the current motor vehicle driver's license, if any, of the intended operator(s);
9. Any of items (2) through (8), above shall not be required for a renewal application if the applicant states that the documents previously furnished the clerk with the original application or previous renewals thereof remain correct and current.

(h) The application shall contain a statement under oath that: 1. The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and

2. The applicant has read the provisions of this section.

(i) A separate application and permit shall be required for each sexually oriented business.

**(4) ISSUANCE OF PERMIT AND/OR LICENSE**

(a) The clerk shall approve the issuance of a permit and/or license to an applicant within thirty (30) days after receipt of an application unless he/she finds one or more of the following to be true: 1. An applicant is under eighteen (18) years of age.

2. An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has inaccurately answered a question or request for information on the application form.

3. Subject to Wis. Stat. §111.321, §111.322 and §111.335, the applicant, intended operator, or any of the persons identified in subsection (3)(d) hereof shall have been convicted of a crime, statutory violation or ordinance violation within the last five (5) years, the nature of which is directly related to the person's fitness to engage in a sexually oriented business.

4. The premises to be used for the sexually oriented business have not been approved by the building inspector and zoning administrator as being in compliance with applicable laws and

ordinances.

5. The permit and/or license fee required by this ordinance has not been paid.

6. An application of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.

(b) The permit and/or license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The permit and/or license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(c) The building inspector and zoning administrator shall complete his certification that the premises is in compliance or not in compliance within ten (10) days of receipt of the application by the clerk. Each certification shall be promptly delivered to the clerk.

(d) If the clerk determines that an applicant is not eligible for a permit and/or license, the applicant shall be given notice in writing of the reasons for the denial within forty-five (45) days of receipt of the application by the clerk, provided that the applicant may request, in writing, that such period be extended for an additional period of not more than ten (10) days at any time before the notice is issued in order to make modifications necessary to comply with this section.

(e) An applicant denied a permit and/or license by the clerk may appeal such decision by requesting administrative review of the decision as provided in Chapter 68 of the Wisconsin State Statutes as modified by Village Code, Chapter 23.

(5) FEES. The annual fee for a sexually oriented business permit and/or license shall be as set from time to time by resolution of the village board. This fee is to be used to pay for the cost of the administration and enforcement of this ordinance. The fee for partial license years shall be pro-rated on a monthly basis beginning with the first day of the month of issuance.

(6) INSPECTION. An applicant, or permittee and/or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Building and Zoning Department, or other Village or State departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(7) EXPIRATION OF PERMIT AND/OR LICENSE. (a) Each permit and/or license shall expire June 30 of each year and may be renewed only by making application as provided in Subsection (4) hereof. Application for renewal should be made at least sixty (60) days before the expiration date, and when made less than sixty (60) days before the expiration date, the expiration of the permit and/or license will not be affected. The license renewal fee shall be submitted with the application renewal. In addition to the renewal fee, a late penalty of \$100.00 shall be assessed against any applicant who files for renewal later than sixty (60) days before the license expires. If the applicant is denied, one-half (1/2) of the total fees collected shall be returned.

(b) When the clerk denies renewal of a license, the applicant shall not be issued a permit and/or license for one year from the date of denial. If, subsequent to denial, the clerk finds that the basis for denial of the renewal permit and/or license has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date denial became final.

(8) REVOCATION OR SUSPENSIONS. (a) The village may revoke, suspend or refuse to renew any

license and/or permit to operate a sexually oriented business as provided in this subsection. 1. Any resident of the village may file a sworn written complaint with the Village Clerk alleging that a person holding a license and/or permit to operate a sexually oriented business has violated this Code. Upon the filing of the complaint, the Village Board, or a duly authorized committee of the Village Board, shall issue a Summons, signed by the Village Clerk and directed to an approved person for service. The Summons shall command the licensee or permittee complained of to appear before the village board or the designated committee on a date and place named in the summons, not less than three (3) days nor more than ten (10) days from the date of issuance, and show cause why his/her/its license or permit should not be revoked or suspended. The summons and a copy of the complaint shall be served on the licensee or permittee at least three (3) days before the date at which the licensee/permittee is commanded to appear. Service shall be in the manner provided under Wis. Stats. Chapter 801, for the service and civil actions in Circuit Court.

2. If the licensee or permittee does not appear as required by the summons, the allegations of the complaint shall be taken as true and if the village board or designated committee finds the allegations sufficient, the license or permit shall be revoked. The clerk shall give notice of the revocation to the person(s) whose license is revoked within three (3) days of such determination.

3. If the licensee or permittee appears as required by the summons and denies the complaint, both the complainant and the licensee may produce witnesses, cross-examine witnesses, and be represented by Counsel. The licensee or permittee shall be provided a written transcript of the hearing at his or her expense. If the hearing is held before the Village Board and the complaint is found to be true, the license shall be either suspended for not less than ten (10) days nor more than ninety (90) days, or revoked.

4. If the hearing is held before a committee of the board, the committee shall submit a report to the village board, including Findings of Fact, Conclusions of Law and a recommendation as to what action, if any, the village board should take with respect to the license or permit. The committee shall provide the complainant and the licensee or permittee with a copy of the report. Either the complainant or licensee may file an objection to the report and shall have the opportunity to present arguments supporting the objection to the village board. The village board shall determine whether the argument shall be presented orally or in writing or both. If the village board, after considering the committee's report and any arguments presented by the complainant or the licensee, finds the complaint to be true, or if there is not objection to a report recommending suspension or revocation, the license or permit shall be suspended or revoked as provided herein.

5. The village board shall give notice of each suspension or revocation within three (3) days of such determination to the person(s) whose license or permit is suspended or revoked.

6. If the village board finds the complaint untrue, the proceedings shall be dismissed without cost to the accused. If the village board finds the complaint to be malicious and without probable cause, the cost shall be paid by the complainant. The village board or the committee may require the complainant to provide security for such cost before issuing a summons.

7. When a license or permit is revoked, the revocation shall be recorded by the clerk and no other license issued under this section may be granted within thirty-six (36) months of the date of revocation to the person(s) whose license or permit was revoked. No part of the fee paid for any license so revoked may be refunded.



8. The clerk may refuse to renew a license for the causes provided in subsection 9 hereof. Prior to the time for the renewal of the license, the clerk shall notify the licensee or permittee in writing of his/her intention not to renew the license and provide the licensee or permittee with an opportunity for a hearing. The notice shall state the reasons for the intended action. The hearing shall be conducted as provided in subsection 8 hereof. If the hearing is held before a committee of the village board, the committee shall make a report and recommendation as provided under subsection 8 and the village board shall follow the procedure specified under that subsection in making its determination.

9. Grounds for revocation or suspension of a permit and/or license issued under this section shall include but shall not be limited to, the following:

a. a permittee and/or licensee gave false, inaccurate or misleading information in the material submitted during the application process;

b. a permittee and/or licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

c. a permittee and/or licensee or an employee has knowingly allowed prostitution on the premises;

d. a permittee and/or licensee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's and/or licensee's permit and/or license was suspended;

e. a permittee and/or licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the permitted and/or licensed premises;

f. the owner or operator of the permitted establishment knowingly allowed a person under eighteen (18) years of age to enter an establishment; or

g. there was a change of owner or operator for which a transfer application was not timely filed.

h. a permittee and/or licensee violated any of the provisions of Sections 5.11(15) Conditions of License, 5.11(16), Closing Hours, 5.11(17) Restrictions on Special Class "B" Fermented Malt Beverage Special Event License, and 5.11(18) Beer Garden License Required For Outdoor Consumption at Class "B" Premises, 15.15(2) Displaying Harmful Material to Minors, 15.14 Indecent Conduct, or 15.17 Banning Nude Dancing in Bars of this code.

i. Subject to Wis. Stat. §111.321, §111.322 and §111.335, the applicant, intended operator, or any of the persons identified in subsection (3)(d) hereof shall have been convicted of a crime, statutory violation or ordinance violation within the last five (5) years, the nature of which is directly related to the person's fitness to engage in a sexually oriented business.

(b) When a permit and/or license is revoked, the revocation shall continue for three (3) years, and the permittee and/or licensee shall not be issued a sexually oriented business permit and/or license for three (3) years from the date revocation became effective. If, subsequent to revocation, the clerk finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date the revocation became effective.

(c) After denial of an application, or denial of a renewal of an application, or suspension or

revocation of a permit and/or licensee, the applicant or licensee or permittee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

**(9) TRANSFER OF PERMIT AND/OR LICENSE.** A permittee and/or licensee shall not transfer his/her permit and/or license to another, nor shall a permittee and/or licensee operate a sexually oriented business under the authority of a permit and/or license at any place other than the address designated in the application.

**(10) LOCATIONAL RESTRICTIONS.** Sexually oriented businesses shall be permitted in the Industrial-1 district provided that:

(a) The sexually oriented business may not be operated within 500 feet of:

1. a church, synagogue or regular place of religious worship;
2. a public or private elementary or secondary school;
3. a boundary of any residential district;
4. a parcel used for residential purposes;
5. a public park;
6. a licensed day-care center;

(b) All buildings used for the operation of a sexually oriented business shall be set back 30 feet from the street right-of-way.

(c) The sexually oriented business may not be operated within 1,000 feet of another sexually oriented business.

(d) For the purpose of this section, 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 part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, parcel used for residential purposes, or licensed day care center.

(e) For purposes of subsection (c) above, the distance between any two sexually oriented business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

**(11) NON-CONFORMING USES.**

(a) Any business lawfully operating on the effective date of this ordinance that is in violation of the locational or structural configuration requirements of this ordinance shall be deemed a non-conforming use. The non-conforming use will be permitted to continue unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operating at a particular location is the conforming use and the later-established business(es) is non-conforming.

(b) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit and/or license, of a church, synagogue, regular place of religious worship, public or private elementary or secondary school, licensed day care center, public park, or residential

district within 500 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license, and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

**(12) ADDITIONAL REGULATIONS FOR ADULT MOTELS.**

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(b) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented permit and/or license, rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he/she rents or subrents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

**(13) REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.**

(a) A person who operated or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements: 1. Upon application for a sexually oriented business permit and/or license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The clerk may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. The application shall be sworn to be true and correct by the applicant.

3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Building Inspector or his designee.

4. It is the duty of the owners and operator of the premises to ensure that at least an employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager stations designated, then the

interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

6. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this section.

7. No viewing room may be occupied by more than one person at any time.

8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) foot-candle as measured at the floor level.

9. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

**(14) EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES.**

(a) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(b) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings or pictorial representations of any manner except to the extent permitted by the provisions of this section.

(c) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color.

This provision shall not apply to a sexually oriented business if the following conditions are met:

1. The establishment is a part of a commercial multi-unit center; and

2. The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(d) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

**(15) SIGNAGE.**

(a) Notwithstanding any other village ordinance, code or regulation to the contrary, it shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for sexually oriented business other than (1) primary sign and one (1) secondary sign, as provided herein.

(b) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

a. not contain any flashing lights;

b. be a flat plane, rectangular in shape;

c. not exceed the dimensions for signs allowed in the zoning district where the sexually oriented business is located.

(c) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

(d) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

(e) Secondary signs shall have only one (1) display surface. Such display surface shall: 1. be a flat plane, rectangular in shape;

2. not exceed twenty (20) square feet in area;

3. not exceed five (5) feet in height and four (4) feet in width; and

4. be affixed or attached to any wall or door of the enterprises.

(f) The provisions of subsections (b)1, (c), and (d) above shall also apply to secondary signs.

**(16) PERSONS YOUNGER THAN EIGHTEEN PROHIBITED FROM ENTRY; ATTENDANT REQUIRED.**

(a) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time that the sexually oriented business is open for business.

(b) It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at or near each public entrance to the sexually oriented business at all times during such sexually oriented businesses' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished: 1. A valid operator's, commercial operator's, or chauffeur's driver's license; or

2. valid personal identification certificate issued by the State of Wisconsin reflecting that such person is eighteen (18) years of age or older.

**(17) EXEMPTIONS.** It is a defense to prosecution under this ordinance that a person appearing in a state of nudity did so in a modeling class operated;

(a) by a proprietary school, licensed by the State of Wisconsin; a college, junior college, or university supported entirely or partly by taxation;

(b) by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

### **15.17 Banning Nude Dancing in Bars.**

**(1)** This section prohibits live, totally nude, non-obscene, erotic dancing in establishments licensed to sell alcoholic beverages and creating an exception from such prohibition for theaters, civic centers, performing arts centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis.

(a) The village board has explicit authority under Wis. Stats. §125.10(1) to adopt regulations governing the sale of alcoholic beverages which are in addition to those set forth in Wis. Stats. ch. 125.

(b) the village board has authority under its general police powers set forth in Wis. Stats. §61.34(1) to act in good order of the municipality and for the health, safety and welfare of the public; and may carry out its powers by regulation and suppression.

(c) The village board recognizes it lacks authority to regulate obscenity in light of Wis. Stats. §66.051(3), and does not intend by adopting this section to regulate obscenity, since nudity in and of itself is not obscene, it declares its intent to enact an ordinance addressing the secondary effects of live, totally nude, non-obscene, erotic dancing in bars and taverns.

(d) Bars and taverns featuring live totally nude, non-obscene, erotic dancing have in other communities tended to further the increase of criminal and other offensive activity, to disrupt the peace and order of the communities, to depreciate the value of real property, to harm the economic welfare of the communities and to negatively affect the quality of life of the communities, and such secondary effects are detrimental to the public health, safety and general welfare of citizens.

(e) The village board recognizes the U.S. Supreme Court has held that nude dancing is expressive conduct within the outer perimeters of the First Amendment to the United States Constitution and therefore entitled to some limited protection under the First Amendment, and the governing body further 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.

(f) The governing body is aware, based on the experiences of other communities, that bars and taverns in which live, totally nude, non-obscene, erotic dancing occurs may and do generate secondary effects which the governing body believes are detrimental to the public health, safety and welfare of the citizens of the Village of North Fond du Lac.

(g) Among these secondary effects are:

1. The potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses.

2. The potential depreciation of property values in neighborhoods where bars and taverns featuring nude dancing exist.

3. Health risks associated with the spread of sexually transmitted diseases.

4. The potential for infiltration by organized crime for the purpose of unlawful conduct.

(h) The village board desires to minimize, prevent and control these adverse effects and thereby protect the health, safety and general welfare of the citizens of the village; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight.

(i) The governing body has determined that enactment of an ordinance prohibiting live, totally nude, non-obscene dancing in bars and taverns licensed to serve alcohol beverages promotes the goal of minimizing, preventing and controlling the negative secondary effects associated with such activity.

(2) **Nude Dancing in Licensed Establishments Prohibited.** It is unlawful for any person to perform or engage in, or for any licensee or manager or agent of the licensee to permit any person, employee, entertainer or patron to perform or engage in any live act, demonstration, dance or exhibition on the premises of a licensed establishment which:

- (a) Shows his or her genitals, pubic area, vulva, anus, anal clef or cleavage with less than a fully opaque covering.

- (b) Shows any portion of the female breast below a point immediately above the top of the

areola.

(c) Shows the covered male genitals in a discernibly turgid state.

(3) Exemptions. The provisions of this ordinance do not apply to the following licensed establishments: theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and where the establishment is not distinguished by an emphasis on, or the advertising or promotion of, employees engaging in nude erotic dancing.

(4) Definitions. For purposes of this section:

(a) the term “licensed establishment” means any establishment licensed by the board to sell alcoholic beverages pursuant to Wis. Stats. ch. 125, Stats.

(b) The term “licensee” means the holder of a retail “Class A”, “Class B”, Class “B”, Class “A”, or “Class C” license granted by the board pursuant to Wis. Stats. ch. 125.

(5) Penalties. Any person, partnership or corporation who violates any of the provisions of this section shall be subject to a forfeiture under section 15.25. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this section constitutes sufficient grounds for suspending, revoking or non-renewing an alcohol beverage license under Wis. Stats. §125.12.

**15.18 Regulation of Smoking on School Property**

(1) DEFINITIONS.

(a) *Educational Facility* is defined in State Statute

101.123 (1) (a) and means any building used principally for educational purposes in which a school is located or a course of instruction or training program is offered that has been approved or licensed by a State agency or Board.

(b) *School Property* means any property owned by a public school district and contiguous with a school building, school parking lot or school athletic facility.

(2) REGULATION OF SMOKING. No person may smoke in an educational facility or upon school property in the immediate vicinity of a school building, parking lot or athletic facility except those areas designated as smoking areas by the School District.

(3) PENALTIES. Any person who willfully violates this ordinance after being advised by an employee of the School District or any volunteer associated with the School District or any police officer that smoking is prohibited shall forfeit not more than \$50.

**15.19 Regulation of Smoking in Places of Employment and Public Places**

**15.19 (1) STATE STATUTES ADOPTED.**

The provisions of Chapter 101.123 of the Wisconsin Statutes as amended by 2009 Wisconsin Act 12 relating to the prohibition of smoking in various enclosed places are hereby adopted and made part of this Code by reference, in order to protect the health and comfort of the public. Penalties for violation shall be as provided in Section 15.19(2).

**15.19 (2) PENALTIES.**

A violation of the provisions of Section 15.19 of the Municipal Code relating to the prohibition of smoking in various enclosed places shall be \$100 to \$250, except that the forfeiture for a “person in charge” cannot exceed \$100 per day. As prescribed by state statutes, a warning notice shall be issued to the “person in charge” for the first violation.

### **15.20 Social Host**

(1) DEFINITIONS. For purposes of this chapter, the following terms have the following meanings:

(a) *Alcohol* means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, whiskey, rum, brandy, gin or any other distilled spirits including dilutions and mixtures thereof from whatever source or by whatever process produced.

(b) *Alcoholic beverage* means alcohol, spirits, liquor, wine, beer and every liquid or solid containing alcohol, spirits, wine or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed or combined with other substances.

(c) *Event or gathering* means any group of three or more persons who have assembled or gathered together for a social occasion or other activity.

(d) *Host or allow* means to aid, conduct, entertain, organize, supervise, control or permit a gathering or event.

(e) *In control* means the power to direct, manage, oversee and/or restrict the affairs, business or assets of a person or entity.

(f) *Parent* means any person having legal custody of a juvenile:

1. As natural, adoptive parent or step-parent;
2. As a legal guardian; or
3. As a person to whom legal custody has been given by order of the court.

(g) *Present* means being at hand or in attendance.

(h) *Residence, premises, or public or private property* means any home, yard, farm, field, land, apartment, condominium, hotel or motel room or other dwelling unit, or a hall or meeting room, park or any other place of assembly, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for a party or other social function, and whether owned, leased, rented or used with or without permission or compensation.

(i) *Underage person* is any individual under 21 **years** of age.

(2) PROHIBITED ACTS. It is unlawful for any person(s) to: host or allow an event or gathering at any residence, premises or on any other private or public property where alcohol or alcoholic beverages are present when the person knows that an underage person will or does (i) consume any alcohol or alcoholic beverage; or (ii) possess any alcohol or alcoholic beverage with the intent to consume it; and the person fails to take reasonable steps to prevent possession or consumption by the underage person(s).

(a) A person is responsible for violating subsection (3) of this section if the person intentionally aids, advises, hires, counsels or conspires with or otherwise procures another to commit the prohibited act.

(b) A person who hosts an event or gathering does not have to be present at the event or gathering to be responsible.

(3) EXCEPTIONS. This chapter does not apply to conduct solely between an underage person and his or her parents while the parent is present and in control of the underage person.

(a) This chapter does not apply to legally protected religious observances.

(b) This chapter does not apply to situations where underage persons are lawfully in possession of alcohol or alcoholic beverages during the course and scope of employment.

**15.25 Penalty.** The penalty for a violation of



this ordinance is a forfeiture not to exceed \$1000.