

UPDATED KENOSHA ORDINANCE
DRAFT as of February 28 March 9, 2020

12.22-6 ADULT ESTABLISHMENTS

(a) **Intent.**

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

- (b) **Findings.** Premised on evidence showing the adverse secondary effects of Adult Establishments on the community¹, this ordinance recognizes and seeks to reduce the following impacts of Adult Establishments while fully protecting the constitutional rights of citizens:

¹ The adverse secondary effects of adult establishments as presented in hearing(s) and in studies made available to the County by other communities and in findings incorporated in cases including but not limited to the following studies: Phoenix, Arizona (1979); Tucson, Arizona (1990); Garden Grove, California (1991); Los Angeles, California (1977); Whittier, California (1978); Adams County, Colorado (1998); Denver, Colorado (1998); Manatee County, Florida (1987); Indianapolis, Indiana (1984); Kansas City, Kansas (1998); Minneapolis, Minnesota (1980); St. Paul, Minnesota (1988); Las Vegas, Nevada (1978); Ellicottville, New York (1998); Islip, New York (1980); New York, New York (1994); Syracuse, New York (1999); New Hanover, North Carolina (1989); Cleveland, Ohio (1977); Oklahoma City, Oklahoma (1986); Amarillo, Texas (1977); Austin, Texas (1986); Beaumont, Texas (1982); Cleburne, Texas (1997); Dallas, Texas (1997); El Paso, Texas (1986); Fort Worth, Texas (1986); Houston, Texas (1983 & 1997); Newport News, Virginia (1996); Bellevue, Washington (1988); Des

1. Adult business establishments can and do impair the character and quality of surrounding neighborhoods, the value of surrounding properties, the economic welfare of communities, and the quality of life of residents.
2. Adult Establishments lend themselves to ancillary unlawful and unhealthy activities that are not presently effectively controlled by the operators of the establishments.
3. Adult Establishments contribute to the physical deterioration and blight of nearby neighborhoods, with greater adverse impacts on residential than on non-residential properties, and have other adverse secondary effects on property up to at least 600 feet from the adult establishments.
4. Neighborhoods where adult business establishments are located have increased levels of criminal activities, especially sex-related crimes.
5. Prostitution, sexual assaults, and other criminal activity occur at Adult Establishments and persons frequent certain adult theaters or other Adult Establishments for the purpose of engaging in sex within the premises.
6. Video viewing booths are often used by patrons of adult business establishments for engaging in sexual acts, including masturbation, intercourse, sodomy, and oral copulation, resulting in unsafe and unsanitary conditions in the booths. Bodily fluids, including semen and urine, are often found in such booths. These fluids, prostitution, and other activities that occur in Adult

Moines, Washington (1984); Seattle, Washington (1989); St. Croix County, Wisconsin (1993), the following cases: *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 122 S.Ct. 1728, 152 L.Ed.2d 670 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); *Barnes v. Glen Theatre" Inc.*, 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. SO, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Schultz v. City of Cumberland*, 228 F.3d 831(7th Cir. 2000); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441(7th Cir. 1996); *Matney v. County of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *United States v. Marren*, 890 F.2d 924 (7th Cir. 1989); *Tee & Bee, Inc. v. City of West Allis*, 936 F. Supp. 1479 (E.D. Wis. 1996); *Suburban Video, Inc. v. City of Delafield*, 694 F. Supp. 585 (E.D. Wis. 1988); *Urmanski v. Town of Bradley*, 273 Wis. 2d 545, 613 N.W.2d 905 (Wis. App. 2000); *Jake's Ltd., Inc. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *Deja Vu of Nashville, Inc. v. Nashville*, 274 F.3d 377 (6th Cir. 2001); *Artistic Entertainment, Inc. v. City of Warner Robbins*, 223 F.3d 1306 (11th Cir. 2000); *Wise Enterprises, Inc., et al. v. Unified Government of Athensclarke County, Georgia*, 217 F.3d 1360 (11th Cir. 2000); *Stringfellow's of New York, Ltd. v. City of New York*, 91N.Y.2d 382, 694 N.E.2d 407, 671 N.Y.S.2d 406 (N.Y. 1998); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998); *Ben Rich Trading, Inc. v. City of Vineland*, 126 F.3d 155 (3rd Cir. 1997); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Hang On, Inc. v. City of Arlington*, 65 F. 3d 1248 (5th Cir. 1995); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *TK's Video, Inc. v. Denton County, Texas*, 24 F.3d 705 (5th Cir. 1994); *LLEH, Inc. v. Wichita County, Tex.*, 289 F.3d 358 (5th Cir. 2002); *Star Satellite, Inc. v. City of Biloxi*, 779 F.2d 1074 (5th Cir. 1986); *Mitchell v. Commission on Adult Entertainment Establishments of Delaware*, 10 F.3d 123 (3rd Cir. 1993); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986), and the following statistics from the U.S. Department of Health and Human Services and Centers for Disease Control and Prevention.

Establishments may spread communicable diseases, including, but not limited to, syphilis, gonorrhea, genital chlamydia trachomatis, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections.

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

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

1. **Adult Bookstore:** An establishment having at least 25% of its:
 - a. Retail floor space used for the display of adult products; or
 - b. Stock in trade consisting of adult products; or
 - c. Weekly revenue derived from adult products.

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

2. **Adult Cabaret:** A night club, bar, theatre, restaurant or similar establishment that regularly features:
 - a. Live performances by bottomless and/or topless dancers, exotic dancers, go-go dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas;
 - b. Films, motion pictures, slides, video cassettes, CDs, DVDs, Blu-Ray Discs, or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons; or
 - c. Persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customer.

3. **Adult Drive-In Theatre:** An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of films, motion pictures, theatrical productions, and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a preponderance of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.
4. **Adult Establishment:** An Adult Bookstore, Adult Cabaret, Adult Drive-In Theatre, Adult Live Entertainment Arcade, Adult Mini Motion Pictures Theatre, Adult Motel, Adult Motion Picture Arcade, Adult Motion Picture Theater, or Adult Services Establishment.
5. **Adult Live Entertainment Arcade:** Any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is charged a fee to view from an enclosed, screened area, or booth a series of live dance routines or strip performances, or other gyrational choreography, which choreography, performances, or routines are distinguished or characterized by an emphasis on specified sexual activities or by exposure to specified anatomical areas.
6. **Adult Mini Motion Picture Theatre:** An enclosed building with a capacity of more than 5 but less than 50 persons, used for presenting films, motion pictures, slides, video cassettes, or similar photographic reproductions in which a preponderance of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.
7. **Adult Motel:** A hotel, motel or similar establishment offering public accommodations, for any form of consideration, that offers a sleeping room for rent for a period of time that is less than 10 hours or allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours, and that provides patrons, upon request, with closed-circuit television transmissions, films, motion pictures, slides, video cassettes, or other photographic reproductions that are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
8. **Adult Motion Picture Arcade:** Any place to which the public is permitted or invited wherein coin-or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to 5 or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

9. **Adult Motion Picture Theatre:** An enclosed building with a capacity of 50 or more persons used for presenting films, motion pictures, slides, video cassettes, CDs, DVDs, Blu-Ray Discs, or similar photographic reproductions in which a preponderance of the total presentation time is devoted to showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons therein.
10. **Adult Service Establishment:** Any building, premises, structure or other facility, or part thereof, under common ownership or control which provides a preponderance of services involving specified sexual activities, display of specified anatomical areas, or massage of specified anatomical areas, not performed or operated by a medical practitioner, professional physical therapist, or massage therapist licensed or registered by the State of Wisconsin .
11. **Enlargement (pertaining to Adult Establishment only):** An increase in the size of the building, structure or premises in which the Adult Establishment is conducted by either construction or use of an adjacent building or any portion thereof whether located on the same or an adjacent lot or parcel of land.
12. **Establishing an Adult Establishment:** Shall mean and include any of the following:
 - a. The opening or commencement of any such business as a new business;
 - b. The conversion of an existing business, whether or not an Adult Establishment, to any of the Adult Establishments defined herein;
 - c. The relocation of any such business.
13. **Nonconforming Adult Establishment:** Any building, structure of land lawfully occupied by an Adult Establishment or lawfully situated at the time of passage of Ordinance 45, adopted on March 16, 2004, or amendments to that ordinance, that does not conform after the passage of that ordinance or amendments thereto with the regulations of this chapter.
1. **Reconstruction (pertaining to Adult Establishment only):** The rebuilding or restoration of any nonconforming Adult Establishment that was damaged or partially destroyed by an exercise of the power of eminent domain, or by fire, flood, wind, explosion or other calamity or act of God, if the damage or destruction exceeds fifty percent (50%) of the assessed value of the structure or the facilities affected as of January 1 of the year in which damage occurred.
15. **Resumption (pertaining to Adult Establishment only):** Shall mean the reuse of reoccupation of a nonconforming Adult Establishment that has been discontinued for a period of 6 or more consecutive months.

16. **Sensitive Land Use:** Any of the following:
- a. Property zoned or used for residential purposes
 - b. Property zoned or used for religious institutional purposes
 - c. An educational institution for students in twelfth grade or below d
A library or museum
 - d. A public or private park, recreation area, or playground f
A day care center
 - e. A historic district
 - f. A facility predominantly serving individuals with a "developmental disability," as that term is defined in sec. 51.01(5)(a) and (b), Wis. Stats., and subsequent amendments thereto.
 - g. A private youth development organization such as, but not limited to, YMCA, Junior Achievement, Boys Club of America and Campfire Girls.
17. **Specified Anatomical Areas:** Any of the following:
- a. Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or
 - b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
18. **Specified Activities:** Any of the following:
- a. Human genitals in a state of sexual stimulation or arousal;
 - b. Acts of human masturbation, sexual intercourse or sodomy;
 - c. Fondling or other erotic touching of human genitals, pubic regions, buttocks, or female breasts.
 - d. Flagellation or torture in the context of a sexual relationship;
 - e. Masochism, erotic or sexually oriented torture, beating or the infliction of pain;
 - f. Erotic touching, fondling or other such contact with an animal by a human being; or
 - g. Human excretion, urination, menstruation, vaginal or anal irrigation as a part of or in connection with any of the activities set forth in subsections 1 through 6 above.
- (d) **Principal Uses.** Adult Establishments are permitted by the underlying zoning in B-3 Highway Business Adult Establishment.
- (e) **Accessory Uses.** Any accessory use authorized by the underlying zoning district may be an accessory use to an adult establishment. In no case shall an adult establishment be an accessory use to any principal use designated by any section of this ordinance.
- (f) **Underlying District Standards.** Adult Establishments shall comply with the standards of the zoning districts in which they are located, including, but not limited to, standards relating to lot

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

(g) **General requirements and restrictions governing Adult Establishments.** Except as provided below, all Adult Establishment shall comply with the following requirements and restrictions:

1. Parking shall be provided in a lighted area, in conformity with applicable lighting and parking standards provided in sections 12.13 and 12.18.8-1.
2. No Adult Entertainment Establishment shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas, by display, decorations, sign, show window or other opening from any public view.
3. Signs advertising an Adult Establishment shall conform to section 12.14-5 of this ordinance and with the further exception that signs will not depict Specified Anatomical Areas or Specified Sexual Activities.
4. No Adult Establishment patron shall be permitted at any time to enter into any of the non-public portions of any Adult Establishment, including specifically, but without limitation, any storage areas or dressing or other rooms provided for the benefit of Adult Establishment employees. This subsection shall not apply to persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the permitted premises; provided, however, that any such persons shall remain in such non-public areas only for the purposes and to the extent and time necessary to perform their job duties.
5. Signs at least one (1) square foot in area stipulating that persons under the age of 18 are not permitted inside the establishment shall be posted at all public entrances to the establishment, and persons under the age of 18 shall not be permitted inside the establishment.
6. The cashier's or manager's station shall be located so that someone working there can quickly move to physically halt any attempted or accidental entry by a minor. An employee shall occupy the station at all times when patrons are in and on the premises.
7. The Adult Establishment shall clearly post and enforce a no loitering policy.
8. The owner and/or operator of the Adult Establishment shall agree to comply with all State, Federal and Local laws and ordinances, including obscenity, liquor, and cabaret laws. Solicitation for purposes of prostitution shall be strictly prohibited. Conduct in violation of sec. 944.21, Wis. Stats., or sec. 9.10.2 of the Kenosha County Code of Ordinances, including the exhibition of "obscene material" and "obscene

performances," as those terms are defined in sec. 944.21(2), Wis. Stats., and sec. 9.10.2 of the Kenosha County Code of Ordinances, shall be strictly prohibited.

9. The hours of operation of Adult Establishment shall be limited to the same hours of operation for bars and taverns within that community within which the Adult Establishment is located.
10. No residential quarters shall be allowed on premises with an Adult Establishment.

(h) **Location requirements and restrictions.**

1. The establishment, enlargement, reconstruction, resumption, or structural alteration of any Adult Establishment is prohibited if such business is within 1,000 feet of another Adult Establishment.
2. The establishment, enlargement, reconstruction, resumption, or structural alteration of any Adult Establishment is prohibited if such business is within 600 feet of any existing Sensitive Land Use within Kenosha County, Wisconsin.
3. No Adult Establishment shall be established, enlarged, reconstructed, resumed, or structurally altered unless the site or proposed site is located in a B-2 Community Business District or B-3 Highway Business Zoning District.
4. An Adult Establishment lawfully operating as a conforming use is not rendered a nonconforming use by the subsequent location of a sensitive land use is located within 600 feet of the Adult Establishment.
5. All Adult Establishments shall be located within 300 feet of a State Trunk Highway right-of-way (Maintained & Traveled) as indicated on the map of the official layout of the State Trunk Highway System of Kenosha County prepared by the State of Wisconsin, Department of Transportation in accordance with Wis. Stats. Section 84.02(12) and as currently on file with the Kenosha County Clerk and Kenosha County Highway Commissioner and as subsequently amended.
6. The distance between one Adult Establishment and another Adult Establishment shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of each such business. The distance between an Adult Establishment and any Sensitive Land Use shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior structural wall of the Adult Establishment to the nearest property line of the Sensitive Land Use.

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

1. Adult Cabarets

a. Adult cabarets shall comply with section 12.12-4(e) of this ordinance relating to noise.

b. All live performers in an adult cabaret shall perform only on a stage elevated no less than thirty-six(36) inches above floor level. There shall be a metal railing attached to the floor by bolts surrounding the stage which shall keep patrons at least forty-eight(48) inches from the stage. There shall also be a metal railing attached to the floor by bolts at the edge of the stage.

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