

**RESOLUTION #22-2009**

**ORDINANCE AMENDMENT #2-2009**

1 Ordinance Amendment offered by Supervisors of the Planning and Zoning Committee.

2  
3 Resolved by the Board of Supervisors of Oneida County, Wisconsin:  
4

5 **WHEREAS**, the Planning & Zoning Committee, having considered Ordinance  
6 Amendment #2-2009, (copy attached) which was filed January 29, 2009 to amend the  
7 Oneida County Zoning and Shoreland Protection Ordinance, and having given notice  
8 thereof as provided by law and having held a public hearing thereon February 18, 2009  
9 pursuant to Section 59.69(5), Wisconsin Statutes, and having been informed of the facts  
10 pertinent to the changes which are as follows:

11 **WHEREAS**, the Oneida County Board of Supervisors approved Resolution 19-  
12 2006 / Ordinance Amendment 29-2005 at their February 21<sup>st</sup>, 2006 Board meeting; and

13 **WHEREAS**, Resolution 19-2006 / Ordinance Amendment 29-2005 created 9.55  
14 Adult Oriented Business Ordinance; and

15 **WHEREAS**, the Oneida County Board of Supervisors requested the Planning  
16 and Zoning Committee to work with the owner of an Adult Oriented Business to make  
17 amendment to Section 9.55 Adult Oriented Business Ordinance; and

18 **WHEREAS**, the Planning and Zoning Committee directed staff and outside legal  
19 counsel to develop language as follows:

- 20 1) Allow expansion of the existing footprint of adult oriented business 100  
21 percent.  
22 2) Allow alcohol to be served on the premise  
23 3) Allow contact with the entertainers  
24 4) Clean-up language from the original adoption.

25 **WHEREAS**, all Towns were provided with written notice of said changes and no  
26 Town objected; and

27 **WHEREAS**, the Planning and Zoning Committee received no written comments  
28 for or against the proposal; and

29 **WHEREAS**, the Planning & Zoning Committee has carefully studied the  
30 proposed changes after listening to comments made at the public hearing, (two (2) in  
31 support, zero (0) against), and recommends approval; and  
32

33 **NOW THEREFORE, THE ONEIDA COUNTY BOARD OF SUPERVIORS DOES**  
34 **ORDAIN AS FOLLOWS:**  
35

36 Section 1: Any existing ordinances, codes, resolutions, or portion thereof in conflict  
37 with this ordinance shall be and are hereby repealed as far as any conflict exists.

38 Section 2: This ordinance shall take effect the day after passage and publication as  
39 required by law.

40 Section 3: If any claims, provisions, or portions of this ordinance are adjudged  
41 unconstitutional or invalid by a court of competent jurisdiction, the remainder of the  
42 ordinance shall not be affected thereby.

43 Section 4: Additions noted by underline; deletions noted by ~~striketrough~~.  
44 Chapter 9 of the Oneida County Zoning & Shoreland Protection Ordinance is amended  
45 as follows:

46 **9.55 ADULT ORIENTED BUSINESS ORDINANCE**

47  
48 A. PURPOSE AND INTENT

49 1. Purpose and Intent. It is the purpose of this ordinance to regulate the location of  
50 sexually oriented businesses in order to promote the health, safety, morals, and  
51 general welfare of the citizens of the County, and to establish reasonable and  
52 uniform regulations to prevent the deleterious location and concentration of  
53 sexually oriented businesses within the County. The provisions of this ordinance  
54 have neither the purpose nor effect of imposing a limitation or restriction on the  
55 content of any communicative materials, including sexually oriented materials.  
56 Similarly, it is neither the intent nor effect of this ordinance to restrict or deny  
57 access by adults to sexually oriented materials protected by the First  
58 Amendment, or to deny access by the distributors and exhibitors of sexually  
59 oriented entertainment to their intended market. Neither is it the intent nor effect  
60 of this ordinance to condone or legitimize the distribution of obscene material.

61  
62 B. DEFINITIONS

63 1. ADULT ARCADE means any place to which the public is permitted or invited  
64 wherein coin-operated, slug-operated, or for any form of consideration, or  
65 electronically, electrically, or mechanically controlled still or motion picture  
66 machines, projectors, video or laser disc players, or other image-producing  
67 devices are maintained to show images to five or fewer persons per machine at  
68 any one time, and where the images so displayed are distinguished or  
69 characterized by their emphasis on "specified sexual activities" or "specified  
70 anatomical areas."

71  
72 2. ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE  
73 means a commercial establishment which, as one of its principal purposes, offers  
74 for sale or rental for any form of consideration any one or more of the following:  
75 books, magazines, periodicals or other printed matter, or photographs, films,  
76 motion pictures, video cassettes or video reproductions, slides, streaming videos,  
77 DVDs, Blu-ray or other visual representations which are distinguished or  
78 characterized by their emphasis on the depiction or description of "specified  
79 sexual activities" or "specified anatomical areas."

80  
81 A commercial establishment may have other principal business purposes that do  
82 not involve the offering for sale or rental of material depicting or describing  
83 "specified sexual activities" or "specified anatomical areas" and still be  
84 categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT  
85 VIDEO STORE. Such other business purposes will not serve to exempt such  
86 commercial establishments from being categorized as an ADULT BOOKSTORE,  
87 ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one of its  
88 principal business purposes is the offering for sale or rental for consideration the

89 specified materials which are distinguished or characterized by their emphasis on  
90 "specified sexual activities" or "specified anatomical areas."  
91

92 This definition shall expressly exclude films, motion pictures, video cassettes,  
93 slides or other similar photographic reproductions given an "R" or "NC-17" rating  
94 by the Motion Picture Association of America.  
95

96 3. ADULT CABARET means a nightclub, bar, restaurant, or similar commercial  
97 establishment which regularly features:

98 (a) persons who appear in a state of nudity or semi-nude; or

99 (b) live performances which are distinguished or characterized by their  
100 emphasis on the exposure of "specified anatomical areas" or ~~by~~ "specified  
101 sexual activities"; or

102 (c) films, motion pictures, video cassettes, slides or other photographic  
103 reproductions which are distinguished or characterized by their emphasis  
104 on "specified sexual activities" or "specified anatomical areas." This  
105 definition shall expressly exclude films, motion pictures, video cassettes,  
106 slides or other similar photographic reproductions given an "R" or "NC-17"  
107 rating by the Motion Picture Association of America.  
108

109 4. ADULT MOTION PICTURE THEATER means a commercial establishment  
110 where, for any form of consideration, films, motion pictures, video cassettes,  
111 slides, or similar photographic reproductions are regularly shown which are  
112 distinguished or characterized by their emphasis on "specified sexual activities"  
113 or "specified anatomical areas." This definition shall expressly exclude films,  
114 motion pictures, video cassettes, slides or other similar photographic  
115 reproductions given an "R" or "NC-17" rating by the Motion Picture Association of  
116 America.  
117

118 5. ADULT THEATER means a theater, concert hall, auditorium, or similar  
119 commercial establishment which regularly features persons who appear in a  
120 state of nudity or semi-nude, or live performances which are characterized by  
121 their emphasis on the exposure of "specified anatomical areas" ~~or by~~ or  
122 "specified sexual activities."  
123

124 6. DISTINGUISHED or CHARACTERIZED BY means the dominant or principal  
125 theme of the object referenced. For instance, when the phrase refers to films  
126 "which are distinguished or characterized by an emphasis upon the exhibition or  
127 display of specified sexual activities or specified anatomical areas," the films so  
128 described are those whose dominant or principal character and theme are the  
129 exhibition or display of "specified sexual activities" or "specified anatomical  
130 areas."  
131

132 7. EMPLOYEE means a person who performs any service on the premises of a  
133 sexually oriented business on a full-time, part-time or contract basis, whether or  
134 not the person is denominated an employee, independent contractor, agent or

135 otherwise and whether or not said person is paid a salary, wage or other  
136 compensation by the operator of said business. Employee does not include a  
137 person exclusively on the premises for repair or maintenance of the premises or  
138 equipment on the premises, or for the delivery of goods to the premises.  
139

140 8. ESCORT means a person who, for consideration, agrees or offers to privately  
141 model lingerie or to privately perform a striptease for another person.  
142

143 9. ESCORT AGENCY means a person or business association who furnishes,  
144 offers to furnish, or advertises to furnish escorts as one of its primary business  
145 purposes for a fee, tip, or other consideration.  
146

147 10. ESTABLISHMENT means and includes any of the following:

148 (a) the opening or commencement of any sexually oriented business as a  
149 new business;

150 (b) the conversion of an existing business, whether or not a sexually oriented  
151 business, to any sexually oriented business;

152 (c) the additions of any sexually oriented business to any other existing  
153 sexually oriented business; or

154 (d) the relocation of any sexually oriented business.  
155

156 11. NUDITY or a STATE OF NUDITY means the showing of the human male or  
157 female genitals, pubic area, vulva, or anus, with less than a complete opaque  
158 covering, the showing of the female breast with less than a fully opaque  
159 covering of any part of the nipple or the areola, or the showing of the covered  
160 male genitals in a discernibly turgid state.  
161

162 12. PERMITTEE means a person in whose name a permit to operate a sexually  
163 oriented business has been issued, as well as the individual listed as an  
164 applicant on the application for a permit.  
165

166 13. PERSON means an individual, proprietorship, partnership, corporation,  
167 association, or other legal entity.  
168

169 14. REGULARLY FEATURES or REGULARLY SHOWS means a consistent or  
170 substantial course of conduct, such that the films or performances exhibited  
171 constitute a substantial portion of the films or performances offered as part of  
172 the ongoing business of the sexually oriented business.  
173

174 15. SEMI-NUDE or in a SEMI-NUDE CONDITION means the showing of the human  
175 male or female genitals, pubic area, vulva, or anus, with not more than a  
176 complete opaque covering, or the showing of the female breast with not more  
177 than a complete opaque covering of the nipple or areola.  
178

179 16. SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore,  
180 adult novelty store, adult video store, adult cabaret, adult motion picture theater,

181 adult theater, or escort agency.

182  
183 17. SPECIFIED ANATOMICAL AREAS means:

- 184 (a) the human male genitals in a discernibly turgid state, even if completely  
185 and opaquely covered; or  
186 (b) less than completely and opaquely covered human genitals, pubic region,  
187 vulva, anus or the nipple and areola of the human female breast.  
188

189 18. SPECIFIED SEXUAL ACTIVITIES means any of the following:

- 190 (a) the fondling or other erotic touching of another person's human genitals,  
191 pubic region, buttocks, anus, or female breasts;  
192 (b) sex acts, normal or perverted, ~~actual or simulated~~, including but not limited  
193 to intercourse, oral copulation, masturbation, or sodomy; or  
194 (c) excretory functions as part of or in connection with any of the activities set  
195 forth in (a) through (b) above.  
196

197 19. TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business  
198 permit means and includes any of the following:

- 199 (a) the sale, lease, or sublease of the sexually oriented business;  
200 (b) the transfer of securities which constitute a controlling interest in the  
201 sexually oriented business, whether by sale, exchange, or similar means;  
202 or  
203 (c) the establishment of a trust, gift, or other similar legal device which  
204 transfers the ownership or control of the sexually oriented business,  
205 except for transfer by bequest or other operation of law upon the death of  
206 the person possessing the ownership or control.  
207

208 **Subsection C to remain unchanged.**

209  
210 D. PERMIT REQUIRED – SEXUALLY ORIENTED BUSINESS PERMIT REQUIRED  
211 (SO BP)  
212

213 1. A permit, under this ordinance section, shall be required for the establishment of  
214 a sexually oriented business and it shall be a violation of this ordinance section  
215 for any person to operate a sexually oriented business without a valid sexually  
216 oriented business permit issued by the County under this ordinance section and  
217 each day that the operation continues is to be considered a separate and distinct  
218 violation subject to civil forfeiture.

219 2. ~~Any sexually oriented business lawfully operating before February 26, 2006 shall~~  
220 ~~be deemed a legal pre-existing use and not subject to the permit requirements of~~  
221 ~~this ordinance section as long as the legal pre-existing use conforms to the~~  
222 ~~requirements of section 9.50 of the Oneida County Zoning & Shoreland~~  
223 ~~Protection Ordinance and that the establishment of a new sexually oriented~~  
224 ~~business does not occur on the premises or within the structure of that legal pre-~~  
225 ~~existing use.~~

226 2. a. Applicability

227 Any sexually oriented business as defined in section 9.55 of this  
228 ordinance lawfully operating before February 26, 2006 shall be deemed a  
229 legal pre-existing use, is not subject to the requirements of section 9.55,  
230 and may be continued although such use does not conform with the  
231 provisions of section 9.55, subject to the conditions of this subsection.  
232 Nothing in this subsection shall be construed as allowing the  
233 establishment of a new sexually oriented business on the premises or  
234 within the structure of a legal pre-existing use.

235 b. Burden of Proof

236 The property owner shall have the burden to prove that:

237 (1). The legal pre-existing use or structure was legally established  
238 and in existence at the time the applicable provision of this  
239 ordinance became effective.

240 (2). The use of the property prior to the effective date of the  
241 ordinance provision was so active and actual and was not merely  
242 casual and occasional, or incidental to the principal use, such that  
243 the property owner has acquired a "vested interest" in the  
244 continuance of such a use.

245 c. Legal Pre-Existing Uses and Structures

246 No structural alteration to, addition to, or repair of any building or structure  
247 with a legal pre-existing sexually oriented business use over the life of the  
248 building or structure, shall exceed 100 percent of its current building  
249 footprint at the time it became a legal pre-existing use unless it is  
250 permanently changed to conform to the requirements of this ordinance.

251 d. Permitting.

252 An application with respect to the structural alteration of, addition to, or  
253 repair of a building or structure with a legal pre-existing sexually-oriented  
254 business use must be made on a form provided by the Planning and  
255 Zoning Department. Within 30 days after receipt of such a completed  
256 permit application, the Planning and Zoning Department or Administrator  
257 shall approve or deny the issuance of a permit to an applicant. The  
258 County shall approve the issuance of a permit to an applicant unless it is  
259 determined by a preponderance of the evidence that the proposed  
260 structural alteration of, addition to, or repair of the building or structure  
261 would be non-compliant with any applicable laws and ordinances other  
262 than section 9.55 of this ordinance. If any such application is denied, the  
263 Planning and Zoning Director shall, within 5 days of the denial, issue to  
264 the applicant written notification as to why the permit was denied. Judicial  
265 review of such a denial shall be available via Section 9.55(K) of this  
266 ordinance.

267 3. An application for a permit must be made on a form provided by the  
268 County.

269 4. All applicants must be qualified according to the provisions of this ordinance.  
270 The application may request and the applicant shall provide such information as  
271 to enable the County to determine whether the applicant meets the qualifications  
272 established in this ordinance.

- 273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318
5. A person who wishes to operate a sexually oriented business, must sign the application for a permit as an applicant. If a person other than an individual wishes to operate a sexually oriented business, all persons legally responsible for the operations of the sexually oriented business or who have power to control or direct its operations must sign the application for a permit as applicant. Such persons include, but are not limited to, general partners, corporate officers, corporate directors, and controlling shareholder(s). Each application must be qualified under the following section and each applicant shall be considered a permittee if a permit is granted.
  6. The completed application for a sexually oriented business permit shall contain the following information and shall be accompanied by the following documents:
    - a. If the applicant is:
      - (1) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age or older;
      - (2) a corporation, the corporation shall state its complete name, the date and state of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and controlling stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
      - (3) a partnership, joint venture, limited liability entity, or other type of business organization where two (2) or more persons have a financial interest, the entity shall state its complete name, the type of entity, and the names of persons having a financial interest in the entity.
    - b. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state 1) the fictitious name of the sexually oriented business's ~~fictitious name~~ and 2) submit the required registration documents.
    - c. The single classification of permit for which the applicant is filing.
    - d. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.
    - e. The applicant's mailing address or registered agent's mailing address.
    - f. A sketch or 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 it 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 (6) inches.
    - g. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 500 feet of the property to be certified; the property lines of any established religious institution/synagogue or school within 500 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
    - h. If an applicant wishes to operate a sexually oriented business, which shall exhibit on the premises, in a viewing room or booth of less than one hundred

319 fifty (150) square feet of floor space, films, video cassettes, other video  
320 reproductions, or live entertainment which ~~depict~~ are distinguished or  
321 characterized by their emphasis on the depiction of specified sexual activities  
322 or specified anatomical areas, then the applicant shall comply with the  
323 application requirements set forth in Section N.  
324

#### 325 E. ISSUANCE OF PERMIT

- 326
- 327 1. A permit granted pursuant to this section shall be subject to bi-annual renewal  
328 upon the written application of the applicant, using the standard adult business  
329 permit application provided by the Planning and Zoning Department and a finding  
330 by the County that the applicant has not committed any act during the existence  
331 of the previous permit, which would be grounds to deny the initial permit  
332 application as set forth in subsection (2) below. Sexually oriented business  
333 owners shall be required to seek a renewal permit every two years after the date  
334 of issuance of their sexually oriented business permit, and two years after each  
335 renewal permit is granted. A completed renewal application must be submitted  
336 to the Planning & Zoning Department no later than forty-five (45) days prior to the  
337 expiration of the permit in question. The renewal of the permit shall be subject to  
338 the payment of the fee as set forth in Section F, and follow the timeline set forth  
339 in subsection (2) below.
- 340 2. Within 30 days after receipt of a completed sexually oriented business  
341 application or renewal application the Planning and Zoning Department or  
342 ~~Administrator~~ shall approve or deny the issuance of a permit to an applicant. The  
343 County shall approve the issuance of a permit to an applicant unless it is  
344 determined by a preponderance of the evidence that one or more of the following  
345 findings is true:
- 346 a. An applicant is under eighteen (18) years of age.
  - 347 b. An applicant has failed to provide information reasonably necessary for  
348 issuance of the permit or has falsely answered a question or request for  
349 information on the application form.
  - 350 c. The premises to be used for the sexually oriented business have ~~not~~ been  
351 found by the health department, fire department, Planning and Zoning  
352 Department or appropriate building official as being non-compliant with  
353 applicable laws and ordinances.
  - 354 d. The permit fee required by this ordinance has not been paid.
  - 355 e. ~~The applicant will permit or cause the use or consumption of alcoholic~~  
356 ~~beverage on the premises.~~
  - 357 e.f. An applicant of the proposed establishment is otherwise in violation of, or is  
358 not in compliance with any of the provisions of this ordinance.
- 359 3. The permit, if granted, shall state on its face the name of the person or persons  
360 to whom it is granted, the expiration date, the address of the sexually oriented  
361 business and the classification for which the permit is issued pursuant to Section  
362 C. All permits shall be posted in a conspicuous place at or near the entrance to  
363 the sexually oriented business so that they may be easily read at any time.
- 364 4. The health department, fire department, Planning and Zoning Department or

365 appropriate building official shall complete their certification that the premises is  
366 in compliance or not in compliance with applicable laws and ordinances within  
367 twenty (20) days of receipt of the completed application by the County. If such  
368 certification is not completed within 20 days, the premise shall be deemed to be  
369 in compliance for the purposes of issuing the permit.

- 370 5. A sexually oriented business permit shall issue for only one classification as  
371 found in Section C.
- 372 6. If any application is denied, the Planning and Zoning administrator shall, within  
373 ~~45~~ 30 days of the County's receipt of the completed application, issue to the  
374 applicant written notification as to why the permit was denied.

375  
376 F. FEES.

- 377  
378 1. Every application for a new sexually oriented business permit (~~whether for a new~~  
379 ~~permit or for renewal of an existing permit~~) shall be accompanied by a \$250.00  
380 non-refundable fee.
- 381 2. In addition to the application and investigation fee required above, every sexually  
382 oriented business that is granted a renewal permit (~~new or renewal~~) shall pay to  
383 the County a bi-annual non-refundable permit renewal fee of ~~\$250.00~~ \$75.00  
384 within thirty (30) days of permit issuance ~~or renewal~~.
- 385 3. All permit applications and fees shall be submitted to the Planning and Zoning  
386 Department of Oneida County.

387  
388 **Subsection G & H to remain unchanged.**

389  
390 I. SUSPENSION.

- 391  
392 1. The County shall suspend a permit for a period not to exceed thirty (30) days if it  
393 determines that a permittee or an employee of a permittee has:  
394 a. violated or is not in compliance with any section of this ordinance; or  
395 b. refused to allow an inspection of the sexually oriented business premises as  
396 authorized by this chapter.
- 397  
398 2. If the Planning and Zoning Department determines that facts exist  
399 warranting the suspension of a permit under this Ordinance, the  
400 Department shall notify the permittee, in writing and by personal delivery  
401 or certified mail, of the Department's intent to suspend the permit, including the  
402 grounds for such a suspension. Within five (5) business days of receipt of such  
403 notice, the permittee may provide to the Department, in writing, a response that  
404 shall include a statement of reasons why the permit should not be suspended.

405  
406 If the permittee provides no such written response to the Department within the time  
407 specified above, the Department shall notify the permittee in writing and by personal  
408 delivery or certified mail, that the permit has been suspended and the reasons for said  
409 suspension. Such notice shall include a statement advising the permittee of the right to  
410 challenge the suspension in a court of competent jurisdiction pursuant to Section K of

411 this Ordinance. If the permittee provides a timely written response, the Department  
412 shall, within three (3) business days of its receipt of said response, place on the agenda  
413 for a meeting of the Planning and Zoning Committee a hearing to consider the  
414 suspension of the permit and notify the permittee in writing of the date and time of the  
415 hearing before the Committee.

416  
417 A hearing pursuant to that described above shall be conducted within fourteen (14) days  
418 of the Department's receipt of a permittee's written response to a notice of intent to  
419 suspend. At said hearing, the Department shall present such evidence and witnesses  
420 as it believes warrant a suspension of the permit. At said hearing, the permittee shall  
421 have the opportunity to be represented by counsel, to present evidence and witnesses  
422 on his or her behalf, and to cross-examine witnesses presented by the Department. At  
423 said hearing, the Planning and Zoning Committee shall determine if sufficient grounds  
424 exist to warrant the suspension of the permit. If the Committee determines that such  
425 grounds exist and determines to suspend the permit, the Committee shall provide notice  
426 to the permittee, in writing and by personal delivery or by certified mail, of the fact of the  
427 suspension and the grounds for the suspension. Such notice shall include a statement  
428 advising the permittee of the right to challenge the suspension in a court of competent  
429 jurisdiction pursuant to Section K of this Ordinance.

430  
431 All notifications to the permittee described herein shall be directed to the most current  
432 business address of the permittee on file with the Department.

#### 433 434 J. REVOCATION.

- 435  
436 1. The County shall revoke a permit if a cause of suspension in Section I occurs  
437 and the permit has been suspended within the preceding twelve (12) months.
- 438 2. The County shall also revoke a permit if it determines that:
- 439 a. a permittee gave false or misleading information in the material submitted  
440 during the application process or omits material facts;
- 441 b. a permittee has knowingly allowed possession, use, or sale of controlled  
442 substances on the premises;
- 443 c. a permittee has knowingly allowed prostitution on the premises;
- 444 d. a permittee knowingly operated the sexually oriented business during a  
445 period of time when the permittee's permit was suspended;
- 446 e. a permittee has knowingly allowed any act of sexual intercourse, sodomy,  
447 oral copulation, masturbation, or other sex act to occur in or on the permitted  
448 premises; or
- 449 f. a permittee is delinquent in payment to the Town, County, or State for any  
450 fees past due required under this ordinance.
- 451 ~~g. The permittee, operator or any employee of the permittee, violates any~~  
452 ~~provisions of this ordinance or any rules or regulation adopted by the Board~~  
453 ~~pursuant to this ordinance; provided, however, that in the case of a first~~  
454 ~~offense by a licensee where the conduct was solely that of an employee, the~~  
455 ~~penalty shall not exceed a suspension of thirty (30) days, if the Planning and~~  
456 ~~Zoning Committee shall find that the licensee had no actual or constructive~~

457 knowledge of such violation and could not by the exercise of due diligence  
458 have had such actual or constructive knowledge.

459 g.h. The permittee has become ineligible to obtain a permit.

460 i. ~~The permittee has caused or permitted the sale, use or consumption of~~  
461 ~~alcoholic beverages on the premises.~~

462 3. When the County revokes a permit, the revocation shall continue for one (1) year,  
463 and the permittee shall not be issued a sexually oriented business permit for one  
464 (1) year from the date the revocation became effective. If, subsequent to  
465 revocation, the County finds that the basis for the revocation has been corrected  
466 or abated, the applicant may be granted a permit if at least ninety (90) days have  
467 elapsed since the date the revocation became effective.

468 4. ~~If any permit is revoked, the Planning and Zoning administrator shall, within 15~~  
469 ~~days, issue to the permit holder written notification of why the permit was~~  
470 ~~revoked.~~

471  
472 If the Planning and Zoning Department determines that facts exist warranting the  
473 revocation of a permit under this Ordinance, the Department shall notify the  
474 permittee, in writing and by personal delivery or certified mail, of the  
475 Department's intent to revoke the permit, including the grounds for such a  
476 revocation. Within five (5) business days of receipt of such notice, the permittee  
477 may provide to the Department, in writing, a response that shall include a  
478 statement of reasons why the permit should not be revoked.

479  
480 If the permittee provides no such written response to the Department within the  
481 time specified above, the Department shall notify the permittee, in writing and by  
482 personal delivery or certified mail, that the permit has been revoked and the  
483 reasons for said revocation. Such notice shall include a statement advising the  
484 permittee of the right to challenge the revocation in a court of competent  
485 jurisdiction pursuant to Section K of this Ordinance. If the permittee provides a  
486 timely written response, the Department shall, within three business (3) days of  
487 its receipt of said response, place on the agenda for a meeting of the Planning  
488 and Zoning Committee a hearing to consider the revocation of the permit and  
489 notify the permittee in writing of the date and time of the hearing before the  
490 Committee.

491  
492 A hearing pursuant to that described above shall be conducted within fourteen  
493 (14) days of the Department's receipt of a permittee's written response to a notice  
494 of intent to revoke. At said hearing, the Department shall present such evidence  
495 and witnesses as it believes warrants a revocation of the permit. At said hearing,  
496 the permittee shall have the opportunity to be represented by counsel, to present  
497 evidence and witnesses on his or her behalf, and to cross-examine witnesses  
498 presented by the Department. At said hearing, the Planning and Zoning  
499 Committee shall determine if sufficient grounds exist to warrant the revocation of  
500 the permit. If the Committee determines that such grounds exist and determines  
501 to revoke the permit, the Committee shall provide notice to the permittee, in  
502 writing and by personal delivery or by certified mail, of the fact of the revocation

503 and the grounds for the revocation. Such notice shall include a statement  
504 advising the permittee of the right to challenge the revocation in a court of  
505 competent jurisdiction pursuant to Section K of this Ordinance.

507 All notifications to the permittee described herein shall be directed to the most  
508 current business address of the permittee on file with the Department.

509  
510 **Subsection K&L to remain unchanged.**

511  
512 **M. LOCATION OF SEXUALLY ORIENTED BUSINESSES.**

- 513  
514 1. A person commits a violation of this ordinance if that person operates or causes  
515 to be operated a sexually oriented business in any zoning district other than  
516 District 10 General Use, as defined and described in the Oneida County Zoning  
517 and Shorelands Protection Ordinance. A sexually oriented business shall be  
518 considered a permitted use in District 10 – General Use Zoning District. Each  
519 day that the operation continues is consider considered a separate and distinct  
520 violation subject to civil forfeiture.
- 521 2. A person commits a violation of this ordinance if the person operates or causes  
522 to be operated a sexually oriented business within 500 feet of:
- 523 a. A church, synagogue, mosque, temple or building which is used primarily for  
524 religious worship and related religious activities;
  - 525 b. A public or private educational facility including but not limited to child day  
526 care facilities, nursery schools, preschools, kindergartens, elementary  
527 schools, private schools, intermediate schools, junior high schools, middle  
528 schools, high schools, vocational schools, secondary schools, continuation  
529 schools, special education schools, junior colleges, and universities; school  
530 includes the school grounds, but does not include facilities used primarily for  
531 another purpose and only incidentally as a school;
  - 532 c. A boundary of a single family residential district, multi-family residential  
533 district, rural residential district or residential retail district as defined in the  
534 Oneida County Zoning & Shoreland Protection Ordinance;
  - 535 d. An entertainment business which has a primary emphasis on children or  
536 family entertainment.

537  
538 Each day that the operation continues is to be considered a separate and distinct  
539 violation subject to civil forfeiture.

- 540  
541 3. A person commits a violation of this ordinance if that person causes or permits  
542 the operation, establishment, ~~substantial enlargement,~~ or transfer of ownership or  
543 control of a sexually oriented business within 500 feet of another sexually  
544 oriented business. Each day that the operation continues is to be considered a  
545 separate and distinct violation subject to civil forfeiture.
- 546 ~~4. A person commits a violation of this ordinance if that person causes or permits~~  
547 ~~the sale, use or consumption of alcoholic beverages on the premises of a~~  
548 ~~sexually oriented business permitted under this ordinance. Each day the~~

549 ~~violation occurs is to be considered a separate violation subject to civil forfeiture.~~  
550 4.5. A person commits a violation of this ordinance if that person causes or permits  
551 the operation, establishment, or maintenance of more than one sexually oriented  
552 business in the same building, structure, or portion thereof. ~~or the increase of~~  
553 ~~floor area of any sexually oriented business in any building, structure, or portion~~  
554 ~~thereof containing another sexually oriented business.~~ Each day that the  
555 operation continues is to be considered a separate and distinct violation subject  
556 to civil forfeiture.  
557 5.6. For the purpose of subsection 2 of this Section, measurement shall be made in a  
558 straight line, without regard to the intervening structures or objects, from the  
559 nearest portion of the building or structure used as the part of the premises  
560 where a sexually oriented business is conducted, to the nearest property line of  
561 the premises of a use listed in subsection 2. Presence of a county or other  
562 political subdivision boundary shall be irrelevant for purposes of calculating and  
563 applying the distance requirements of this Section.  
564 6.7. For purposes of subsection 3 of this Section, the distance between any two  
565 sexually oriented businesses shall be measured in a straight line, without regard  
566 to the intervening structures or objects or political boundaries, from the closest  
567 exterior wall of the structure in which each business is located.  
568 7.8. Any sexually oriented business lawfully operating on February 26, 2006, that is in  
569 violation of subsection 1 through ~~7~~ 6 of this Section shall be deemed a legal pre-  
570 existing use. The legal pre-existing use will be permitted to continue ~~within the~~  
571 ~~parameters of section 9.50 of the Oneida County Zoning and Shoreland~~  
572 ~~Protection Ordinance so long as the establishment of a new sexually oriented~~  
573 ~~business does not occur on the premises or within the structure as defined in §~~  
574 ~~B(10) hereof and as provisions of Section D(2) are satisfied.~~  
575 8.9. A sexually oriented business lawfully operating with a permit issued under this  
576 ordinance sections is not in violation of this ordinance by the location,  
577 subsequent to the grant or renewal of the sexually oriented business permit, of a  
578 use listed in subsection 2 and 3 of this Section within 500 feet of the sexually  
579 oriented business. This provision applies only to the renewal of a valid permit,  
580 and does not apply when an application for a permit is submitted after a permit  
581 has expired or been revoked.

582  
583 **Subsection N & O to remain unchanged.**

584  
585 **~~P. ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY.~~**

586  
587 1. ~~It shall be a violation of this ordinance for a person to knowingly and or~~  
588 ~~intentionally, in a sexually oriented business, appear in a state of nudity. Each~~  
589 ~~appearance is to be considered a separate and distinct violation subject to civil~~  
590 ~~forfeiture.~~  
591 2. ~~It shall be a violation of this ordinance for a person to knowingly or intentionally in~~  
592 ~~a sexually oriented business appear in a semi-nude condition unless the person~~  
593 ~~is an employee who, while semi-nude, shall be at least five (5) feet from any~~  
594 ~~patron or customer and on a stage at least two (2) feet from the floor. Each~~

- 595 ~~appearance or disregard of the distance requirements is to be considered a~~  
596 ~~separate and distinct violation subject to civil forfeiture.~~  
597 3. ~~It shall be a violation of this ordinance for an employee, while semi-nude in a~~  
598 ~~sexually oriented business, to directly solicit any pay or gratuity from any patron~~  
599 ~~or customer or for any patron or customer to pay or give any gratuity to any~~  
600 ~~employee, while said employee is semi-nude in a sexually oriented business.~~  
601 ~~Each solicitation is to be considered a separate and distinct violation subject to~~  
602 ~~civil forfeiture.~~  
603 4. ~~It shall be a violation of this ordinance for an employee, while semi-nude, to~~  
604 ~~touch a customer or the clothing of a customer.~~  
605

606 Subsection Q P and R Q to remain unchanged.

#### 607 R. RESPONSIBILITIES OF THE PERMITTEE

- 608 1. Any act or omission of an employee constituting the violation of the provisions of  
609 this Ordinance shall be deemed the act or omission of the permittee for the  
610 purposes of determining whether the permittee's license shall be revoked,  
611 suspended or renewed.  
612

#### 613 S. EXCEPTIONS.

614 The provisions of this ordinance do not apply to the following establishments:  
615 theaters, performing arts centers, civic centers, and dinner theaters where live  
616 dance, ballet, music and dramatic performances of serious artistic merit are offered  
617 on a regular basis; and in which the predominant business or attraction is not the  
618 offering of entertainment which is intended for sexual interests or titillation of  
619 customers; and where the establishment is not distinguished by an emphasis on or  
620 the advertising or promotion of nude or semi-nude performances. While expressive  
621 live nudity may occur within these establishments, this ordinance seeks only to  
622 minimize and prevent the secondary effects of sexually oriented businesses on the  
623 community. Negative secondary effects have not been associated with the  
624 establishments referenced in this section.  
625

#### 626 T. INJUNCTION.

627 A person who operates or causes to be operated a sexually oriented business  
628 without a valid permit or ~~in violation of Section J otherwise in violation~~ of this  
629 ordinance is subject to a suit for injunction as well as prosecution for criminal  
630 violations. Such violations shall be punishable by a fine of \$25.00 to \$250.00 for  
631 each violation. Each day a sexually oriented business so operates is a separate  
632 offense or violation.  
633

#### 634 U. SEVERABILITY.

635 If any section, subsection, or clause of this ordinance shall be deemed to be  
636 unconstitutional or otherwise invalid, the validity of the remaining sections,  
637  
638  
639  
640

641 subsections, and clauses shall not be affected.

642

643 V. CONFLICTING ORDINANCES REPEALED.

644

645 All ordinances or parts of ordinances in conflict with the provisions of this ordinance  
646 are hereby repealed.

647

648 W. EFFECTIVE DATE.

649

650 This ordinance shall be enforced from and after February 26, 2006.

651

652 The County Clerk shall, within seven (7) days after adoption of Ordinance Amendment  
653 #2-2009 by the Oneida County Board of Supervisors, cause a certified copy thereof to  
654 be transmitted by mail to all Town Clerks and the Wisconsin Department of Natural  
655 Resources.

656

657 Approved by the Planning and Zoning Committee this 4th day of March, 2009.

658

659 Vote Required: Majority = \_\_\_\_\_ 2/3 Majority = \_\_\_\_\_ 3/4 Majority = \_\_\_\_\_

660

661 The County Board has the legal authority to adopt: Yes \_\_\_\_\_ No \_\_\_\_\_ as reviewed by the  
662 Corporation Counsel, \_\_\_\_\_, Date: \_\_\_\_\_

663

664

665 Offered and passage moved by:

666

\_\_\_\_\_  
Supervisor

667

668

\_\_\_\_\_  
Supervisor

669

670

671

\_\_\_\_\_  
Supervisor

672

673

674

\_\_\_\_\_  
Supervisor

675

676

677

\_\_\_\_\_  
Supervisor

678

679

680 Seconded by: \_\_\_\_\_

681

682

683 \_\_\_\_\_ Ayes

684

685 \_\_\_\_\_ Nays

686

687 \_\_\_\_\_ Absent

688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702

\_\_\_\_\_ Abstain

\_\_\_\_\_ Adopted

by the County Board of Supervisors this            day of            2009.

\_\_\_\_\_ Defeated

---

Robert Brusio, Clerk

Andrew P. Smith, County Board Chair

P&Z.ordinance.amendment