

ONEIDA COUNTY PLANNING & ZONING
February 18, 2009 2:00 P.M.
PUBLIC HEARING – COMMITTEE ROOM #2
ONEIDA COUNTY COURTHOUSE
RHINELANDER, WI 54501

Members present: Scott Holewinski
Ted Cushing
Larry Greschner
Charles Wickman
Frank Greb

Department staff present: Karl Jennrich, Zoning Director
Kim Gauthier, Secretary

Other County Staff: Brian Desmond, Corporation Counsel

Guests present: (See Sign-In)

Call To Order:

Chair, Scott Holewinski called the meeting to order at 2:01 p.m., in Committee Room #2, 2nd Floor Oneida County Courthouse, Rhineland, Wisconsin in accordance with the Wisconsin Open Meeting Law. Mr. Holewinski noted the agenda was properly posted, the media notified and the courthouse is handicap accessible.

Approve the agenda

Motion by Frank Greb, second by Charles Wickman to approve the agenda. With all members present voting “aye”, the motion carried.

Scott Holewinski noted that agenda item number four is on the second to the last page and both items will be reviewed simultaneously.

Ordinance Amendment #2-2009, Section 9.55, Adult Oriented Business Ordinance, authored by the Planning and Zoning Committee to amend Section 9.55, Adult Oriented Business Ordinance of the Oneida County Zoning and Shoreland Protection Ordinance as follows:

Additions noted by underline; Deletions noted by ~~strikethrough~~.

9.55 ADULT ORIENTED BUSINESS ORDINANCE

A. PURPOSE AND INTENT

1. Purpose and Intent. It is the purpose of this ordinance to regulate the location of sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the County. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance 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

ordinance to condone or legitimize the distribution of obscene material.

B. DEFINITIONS

1. ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, 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 are distinguished or characterized by their emphasis on "specified sexual activities" or "specified anatomical areas."
2. ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration 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, streaming videos, DVDs, Blu-ray or other visual representations which are distinguished or characterized by their emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are distinguished or characterized by their emphasis on "specified sexual activities" or "specified anatomical areas."

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

3. ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:
 - (a) persons who appear in a state of nudity or semi-nude; or
 - (b) live performances which are distinguished or characterized by their emphasis on the exposure of "specified anatomical areas" or by "specified sexual activities"; or
 - (c) films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by their emphasis on "specified sexual activities" or "specified anatomical areas." This definition shall expressly exclude films, motion pictures, video cassettes, slides or other similar photographic reproductions given an "R" or "NC-17" rating by the Motion Picture Association of America.
4. ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are distinguished or characterized by their emphasis on "specified sexual activities" or "specified anatomical areas." This definition shall expressly exclude films, motion pictures, video cassettes, slides or other similar photographic reproductions given an "R" or "NC-17" rating by the Motion Picture

Association of America.

5. ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by their emphasis on the exposure of "specified anatomical areas" ~~or by~~ or "specified sexual activities."
6. DISTINGUISHED or CHARACTERIZED BY means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of "specified sexual activities" or "specified anatomical areas."
7. EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
8. ESCORT means a person who, for consideration, agrees or offers to privately model lingerie or to privately perform a striptease for another person.
9. 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.
10. ESTABLISHMENT means and includes any of the following:
 - (a) the opening or commencement of any sexually oriented business as a new business;
 - (b) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (c) the additions of any sexually oriented business to any other existing sexually oriented business; or
 - (d) the relocation of any sexually oriented business.
11. NUDITY or a STATE OF NUDITY means the showing of the human male or female genitals, pubic area, vulva, or anus, with less than a complete opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or the areola, or the showing of the covered male genitals in a discernibly turgid state.
12. PERMITTEE means a person in whose name a permit to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit.
13. PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

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14. REGULARLY FEATURES or REGULARLY SHOWS means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as part of the ongoing business of the sexually oriented business.
 15. SEMI-NUDE or in a SEMI-NUDE CONDITION means the showing of the human male or female genitals, pubic area, vulva, or anus, with not more than a complete opaque covering, or the showing of the female breast with not more than a complete opaque covering of the nipple or areola.
 16. SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, or escort agency.
 17. SPECIFIED ANATOMICAL AREAS means:
 - (a) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
 - (b) less than completely and opaquely covered human genitals, pubic region, vulva, anus or the nipple and areola of the human female breast.
 18. SPECIFIED SEXUAL ACTIVITIES means any of the following:
 - (a) the fondling or other erotic touching of another person's human genitals, pubic region, buttocks, anus, or female breasts;
 - (b) sex acts, normal or perverted, ~~actual or simulated~~, including but not limited to intercourse, oral copulation, masturbation, or sodomy; or
 - (c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.
 19. TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business permit means and includes any of the following:
 - (a) the sale, lease, or sublease of the sexually oriented business;
 - (b) the transfer of securities which constitute a controlling interest in the sexually oriented business, whether by sale, exchange, or similar means; or
 - (c) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the sexually oriented business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Subsection C to remain unchanged.

**D. PERMIT REQUIRED – SEXUALLY ORIENTED BUSINESS PERMIT
REQUIRED (SO BP)**

1. A permit, under this ordinance section, shall be required for the establishment of a sexually oriented business and it shall be a violation of this ordinance section for any person to operate a sexually oriented business without a valid sexually oriented business permit issued by the County under this ordinance section and each day that the operation continues is to be considered a separate and distinct violation subject to civil forfeiture.
2. ~~Any sexually oriented business lawfully operating before February 26, 2006 shall be deemed a legal pre-existing use and not subject to the permit requirements of this~~

~~ordinance section as long as the legal pre-existing use conforms to the requirements of section 9.50 of the Oneida County Zoning & Shoreland Protection Ordinance and that the establishment of a new sexually oriented business does not occur on the premises or within the structure of that legal pre-existing use.~~

2. a. Applicability

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

b. Burden of Proof

The property owner shall have the burden to prove that:

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

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

c. Legal Pre-Existing Uses and Structures

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

d. Permitting.

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

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

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

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

E. ISSUANCE OF PERMIT

1. A permit granted pursuant to this section shall be subject to bi-annual renewal upon the written application of the applicant, using the standard adult business permit application provided by the Planning and Zoning Department and a finding by the County that the

applicant has not committed any act during the existence of the previous permit, which would be grounds to deny the initial permit application as set forth in subsection (2) below. Sexually oriented business owners shall be required to seek a renewal permit every two years after the date of issuance of their sexually oriented business permit, and two years after each renewal permit is granted. A completed renewal application must be submitted to the Planning & Zoning Department no later than forty-five (45) days prior to the expiration of the permit in question. The renewal of the permit shall be subject to the payment of the fee as set forth in Section F, and follow the timeline set forth in subsection (2) below.

2. Within 30 days after receipt of a completed sexually oriented business application or renewal application the Planning and Zoning Department ~~or Administrator~~ shall approve or deny the issuance of a permit to an applicant. The County shall approve the issuance of a permit to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
 - a. An applicant is under eighteen (18) years of age.
 - b. An applicant has failed to provide information reasonably necessary for issuance of the permit or has falsely answered a question or request for information on the application form.
 - c. The premises to be used for the sexually oriented business have ~~not~~ been found by the health department, fire department, Planning and Zoning Department or appropriate building official as being non-compliant with applicable laws and ordinances.
 - d. The permit fee required by this ordinance has not been paid.
 - e. ~~The applicant will permit or cause the use or consumption of alcoholic beverage on the premises.~~
 - e.f. An applicant of the proposed establishment is otherwise in violation of, or is not in compliance with any of the provisions of this ordinance.
3. The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the permit is issued pursuant to Section C. All permits shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.
4. The health department, fire department, Planning and Zoning Department or appropriate building official shall complete their certification that the premises is in compliance or not in compliance with applicable laws and ordinances within twenty (20) days of receipt of the completed application by the County. If such certification is not completed within 20 days, the premise shall be deemed to be in compliance for the purposes of issuing the permit.
5. A sexually oriented business permit shall issue for only one classification as found in Section C.
6. If any application is denied, the Planning and Zoning administrator shall, within ~~15~~ 30 days of the County's receipt of the completed application, issue to the applicant written notification as to why the permit was denied.

F. FEES.

1. Every application for a new sexually oriented business permit (~~whether for a new permit or for renewal of an existing permit~~) shall be accompanied by a \$250.00 non-refundable fee.
2. In addition to the application and investigation fee required above, every sexually oriented business that is granted a renewal permit (~~new or renewal~~) shall pay to the

County a bi-annual non-refundable permit renewal fee of ~~\$250.00~~ \$75.00 within thirty (30) days of permit issuance ~~or renewal~~.

3. All permit applications and fees shall be submitted to the Planning and Zoning Department of Oneida County.

Subsection G & H to remain unchanged.

I. SUSPENSION.

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

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

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

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

J. REVOCATION.

1. The County shall revoke a permit if a cause of suspension in Section I occurs and the permit has been suspended within the preceding twelve (12) months.
2. The County shall also revoke a permit if it determines that:
 - a. a permittee gave false or misleading information in the material submitted during the application process or omits material facts;
 - b. a permittee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - c. a permittee has knowingly allowed prostitution on the premises;
 - d. a permittee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended;
 - e. a permittee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the permitted premises; or
 - f. a permittee is delinquent in payment to the Town, County, or State for any fees past due required under this ordinance.
 - ~~g. The permittee, operator or any employee of the permittee, violates any provisions of this ordinance or any rules or regulation adopted by the Board pursuant to this ordinance; provided, however, that in the case of a first offense by a licensee where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days, if the Planning and Zoning Committee shall find that the licensee had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.~~
 - g.h. The permittee has become ineligible to obtain a permit.
 - ~~i. The permittee has caused or permitted the sale, use or consumption of alcoholic beverages on the premises.~~
3. When the County revokes a permit, the revocation shall continue for one (1) year, and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date the revocation became effective. If, subsequent to revocation, the County finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit if at least ninety (90) days have elapsed since the date the revocation became effective.
- ~~4. If any permit is revoked, the Planning and Zoning administrator shall, within 15 days, issue to the permit holder written notification of why the permit was revoked.~~

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

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

the Committee.

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

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

Subsection K&L to remain unchanged.

M. LOCATION OF SEXUALLY ORIENTED BUSINESSES.

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

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

3. A person commits a violation of this ordinance if that person causes or permits the ~~operation, establishment, substantial enlargement,~~ or transfer of ownership or control of

a sexually oriented business within 500 feet of another sexually oriented business. Each day that the operation continues is to be considered a separate and distinct violation subject to civil forfeiture.

- ~~4. A person commits a violation of this ordinance if that person causes or permits the sale, use or consumption of alcoholic beverages on the premises of a sexually oriented business permitted under this ordinance. Each day the violation occurs is to be considered a separate violation subject to civil forfeiture.~~
- 4.5. A person commits a violation of this ordinance if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business. Each day that the operation continues is to be considered a separate and distinct violation subject to civil forfeiture.
- 5.6. For the purpose of subsection 2 of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection 2. Presence of a county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.
- 6.7. For purposes of subsection 3 of this Section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.
- 7.8. Any sexually oriented business lawfully operating on February 26, 2006, that is in violation of subsection 1 through ~~7~~ 6 of this Section shall be deemed a legal pre-existing use. The legal pre-existing use will be permitted to continue ~~within the parameters of section 9.50 of the Oneida County Zoning and Shoreland Protection Ordinance~~ so long as the establishment of a new sexually oriented business does not occur on the premises or within the structure as defined in § B(10) hereof and as provisions of Section D(2) are satisfied.
- 8.9. A sexually oriented business lawfully operating with a permit issued under this ordinance sections is not in violation of this ordinance by the location, subsequent to the grant or renewal of the sexually oriented business permit, of a use listed in subsection 2 and 3 of this Section within 500 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit, and does not apply when an application for a permit is submitted after a permit has expired or been revoked.

Subsection N & O to remain unchanged.

~~P. ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY.~~

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

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- ~~3. It shall be a violation of this ordinance for an employee, while semi-nude in a sexually oriented business, to directly solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business. Each solicitation is to be considered a separate and distinct violation subject to civil forfeiture.~~
 - ~~4. It shall be a violation of this ordinance for an employee, while semi-nude, to touch a customer or the clothing of a customer.~~

Subsection ~~Q~~ P and ~~R~~ Q to remain unchanged.

R. RESPONSIBILITIES OF THE PERMITTEE

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

S. EXCEPTIONS.

The provisions of this ordinance do not apply to the following 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 of entertainment which is intended for sexual interests or titillation of customers; and where the establishment is not distinguished by an emphasis on or the advertising or promotion of nude or semi-nude performances. While expressive live nudity may occur within these establishments, this ordinance seeks only to minimize and prevent the secondary effects of sexually oriented businesses on the community. Negative secondary effects have not been associated with the establishments referenced in this section.

T. INJUNCTION.

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

U. SEVERABILITY.

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

V. CONFLICTING ORDINANCES REPEALED.

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

W. EFFECTIVE DATE.

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

Karl Jennrich, Zoning Director read the notice of public hearing into the record. Mr. Jennrich offered proof of publication from the Rhinelander Daily News, published on February 3, 2009 and February 10, 2009, along with the Lakeland Times, Tomahawk Leader and Vilas County News Review the week of February 2, 2009. The notice was posted on the Oneida County courthouse bulletin board January 29, 2009. The certified and first class mailing list was read into the record. Mr. Jennrich noted the notice recipient list was part of the record and available for review.

Mr. Jennrich indicated there was no correspondence received.

Mr. Jennrich noted amendment #2-2009 will modify the Adult Oriented Business language as indicated in the notice of public hearing. Mr. Jennrich indicated some changes were "house cleaning" changes.

Mr. Jennrich noted these changes were also made after changes to Section 9.50, the next agenda item.

Ordinance Amendment #4-2009, Section 9.50, Legal Pre-existing Structures and Uses in Non-Shoreland Areas and Section 9.99, Shoreland Uses and Structures, authored by the Planning and Zoning Committee to amend Section 9.50, Legal Pre-existing Structures and Uses in Non-Shoreland Areas and Section 9.99, Shoreland Uses and Structures of the Oneida County Zoning and Shoreland Protection Ordinance as follows:

PART B

9.50 LEGAL PRE –EXISTING STRUCTURES AND USES IN NON-SHORELAND AREAS (#25-2004)

Subsection A & B to remain unchanged

C. Legal Pre-Existing Uses

1. ~~No expansion:~~ A legal pre-existing use of a structure or premise ~~Shall not be~~ may be expanded or enlarged upon issuance of an administrative review permit. ~~No such use shall be expanded within a structure which, on the date the use became legal pre-existing, was only partially devoted to such use.~~ No structural alteration, addition or repair to any building or structure with a legal pre-existing use, over the life of the building or structure shall exceed 100 percent of its building footprint at the time it became legal pre-existing unless it is permanently changed to conform to the requirements of this ordinance and provided that the requirements of Section 9.50 and 9.99 are met.

The remainder of Subsection to remain unchanged

PART C

9.99 SHORELAND USES AND STRUCTURES

Section A & B to remain unchanged

C. Legal Pre-Existing Uses

A legal pre-existing use of a structure or premises shall not be may be expanded or enlarged upon issuance of an administrative review permit. ~~No such use shall be expanded within a structure which, on the date the use became legal pre-existing, was only partially devoted to such use.~~ No structural alteration, addition or repair to any building or structure with a legal pre-existing use, over the life of the building or structure shall exceed 100 percent of its building footprint at the time it became legal pre-existing unless it is permanently changed to conform to the requirements of this ordinance and provided that the requirements of Section 9.50 and 9.99 are met.

The remainder of Subsection to remain unchanged.

Mr. Jennrich indicated there was no correspondence for this agenda item either. Mr. Jennrich noted the publication is the same for the above agenda item also. Mr. Jennrich read ordinance amendment #4-2009 and made note of the changes.

Mr. Wickman asked where the proposed language/ changes came from.

Brian Desmond indicated there was a model ordinance involved along with outside legal counsel aide.

Mr. Holewinski asked if there was any public comment for or against the issue at hand.

Don DelPonte, owner of Weasels, commented that he is for the changes made and this is what he had requested from the beginning. Mr. DelPonte thanked the committee for their work on the amendment.

Todd McEldowney, Attorney representing Mr. DelPonte, thanked the committee and all who were involved in making the ordinance changes. Mr. McEldowney commented that this is in keeping with what the county promised three years ago and this is a protected first amendment class business. Mr. McEldowney commented that he has no concern that this is a presidential situation, as it is clear under the law that this is allowed in legal pre-existing use. Mr. McEldowney commented that this business should be treated as legal pre-existing. The expansion was approved years ago and acted on in delay because of the owner's health problem.

No other public comment. Therefore, public comment was closed.

Motion by Ted Cushing, second by Frank Greb to approve ordinance amendment #2-2009 and #4-2009 and bring back to the committee for approval and forward onto the county board. With all members present voting "aye", the motion carried.

Adjourn

2:18 p.m. Motion made by Ted Cushing, second by Frank Greb to adjourn the public hearing. With all members present voting “aye”, the motion carried.

Scott Holewinski, Chair

Karl Jennrich, Zoning Director