

Chapter 70, ADULT USES

[HISTORY: Adopted by the Board of Trustees of the Village of Horseheads 12-11-1997 by L.L. No. 2-1997. Amendments noted where applicable.]

GENERAL REFERENCES

Signs -- See Ch. 204.

Zoning -- See Ch. 245.

§ 70-1. Purpose.

It is recognized that buildings and establishments operated as adult uses have serious objectionable operational characteristics. In order to promote the health, safety and general welfare of the residents of the Village of Horseheads, this chapter is intended to restrict adult uses to nonresidential and nonbusiness areas of the village. The Village Board hereby finds that the operational characteristics of adult uses increase the detrimental impact on a community when such uses are concentrated. Incidents of crime may increase, property values may diminish and retail trade may be harmed. This chapter is intended to protect and preserve the quality of neighborhoods and commercial districts and the quality of urban life. The provisions of this chapter 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 chapter 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 market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials. All possible options and alternatives to enactment of this chapter have been considered. It has been determined that the type of regulation imposed by this chapter is the least intrusive method.

§ 70-2. Definitions.

- A. General. Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.
- B. Specific terms. As used in this chapter, the following terms shall have the meanings indicated.

ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE

- (1) An establishment or business, whether retail or wholesale, having as a substantial or

significant portion of its stock-in-trade and/or as one of its principal business purposes offers for sale or rental for any form of consideration one or more of the following:

- (a) Instruments, devices or paraphernalia which are primarily intended, labeled, designed, advertised or promoted for use in connection with specified sexual activities, or for stimulation of human genital organs or for sadomasochistic use or abuse of a person or others; or
 - (b) Books, magazines, periodicals and other printed matter, photographs, films, motion pictures, video cassettes or video reproductions, slides, compact discs, computer software or other visual representations and viewing materials for sale or rental or viewing on premises or rental for viewing on or off premises, by use of motion-picture devices or any coin- or slug-operated means, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, or an establishment or business containing a segment or section devoted to the sale or display of such material.
- (2) A business may have other principal business purposes that do not involve the offering for sale or rental of instruments, devices or paraphernalia or the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore. Such other business purposes will not serve to exempt such business from being categorized as an adult bookstore, adult novelty store or adult video store, so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe specified anatomical areas or specified sexual activities.

ADULT ENTERTAINMENT CABARET -- A public or private establishment which may or may not be licensed to serve food and/or alcoholic beverages which regularly features persons who appear in a state of nudity, topless and/or bottomless dancers, strippers and/or films, motion pictures, videos, slides, compact discs or other photographic reproductions or other visual representations, including computer generated, which are distinguished or characterized by their emphasis on matter depicting, describing or related to specific sexual activities or specific anatomical areas.

ADULT ENTERTAINMENT ESTABLISHMENT -- A public or private establishment which regularly presents any of the following entertainments, exhibitions or services: topless and/or bottomless dancers, strippers, topless waitressing, busing or service, topless hair care or massages, service or entertainment where the servers or entertainment are wearing only pasties or G-strings or both, or other adult uses as defined herein.

ADULT MINI MOTION-PICTURE THEATER -- An enclosed building with a capacity of less

than 50 persons regularly used for presenting material 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.

ADULT MOTEL -- A hotel, motel or similar commercial establishment which:

- (1) Offers accommodations to the public for any form of consideration and provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, compact discs, computer software or other photographic reproductions or other visual representations which depict, describe or relate to specific sexual activities or specific anatomical areas and which has a sign visible from a public right-of-way which advertises the availability of this adult type of photographic reproductions; or
- (2) Offers a sleeping room for rent for a period of time of 10 hours or less; or
- (3) Allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is 10 hours or less.

ADULT MOTION-PICTURE THEATER -- A commercial establishment regularly used for presenting materials including films, motion pictures, videos, slides, compact discs, computer software or other photographic or visual reproductions or representations having as a dominant theme material 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.

ADULT THEATER -- A theater, concert hall, auditorium or similar establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specific anatomical areas or by specific sexual activities.

ADULT USE -- Any establishment or business regularly involved in the dissemination of material, performance of entertainments or exhibitions or provision of services distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities and/or specified anatomical areas, including but not limited to adult bookstores, adult entertainment cabarets, adult entertainment establishments, adult mini motion-picture theaters, adult motion-picture theaters, adult motels, adult theaters, escort agencies, nude model studios and sexual encounter centers.

AUDIENCE -- One or more persons who are permitted to view a performance, for any valuable consideration, in or from a public place.

BUSINESS -- Any commercial enterprise, association or arrangement for profit.

DISSEMINATION -- The transfer of possession, custody control or ownership of or the exhibition or presentation of any performance to a customer, member of the public or business

invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

ESCORT -- A person who, for consideration, agrees or offers to act as a companion, guide or date for any person or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY -- A person or business who or which furnishes, offers to furnish or advertises to furnish escorts as one of its primary businesses for a fee, tip or other consideration.

ESTABLISHMENT -- Means and includes any of the following:

- (1) The opening or commencement of any business as a new business;
- (2) The conversion of an existing business whether or not an adult use to any of the adult use businesses defined in this chapter;
- (3) The addition of any of the adult use businesses defined in this chapter to any other existing adult use business; or
- (4) The relocation of any adult use business.

NUDE MODEL STUDIO -- Any place where a person who appears in a state of nudity or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by other persons who pay money or any form of consideration.

NUDE, NUDITY or STATE OF NUDITY -- The appearance or less than complete and opaque covering of the anus, genitals, pubic region, buttocks, areola or nipple of the female breast, or any artificial depiction of same.

PERFORMANCE -- Any live or reproduced exhibition including but not limited to any play, motion-picture film, dance or appearance or other visual representation presented to or performed before an audience.

PERSON -- Any person, firm, partnership, corporation, association or legal representative, acting individually or jointly.

PUBLIC PARK OR RECREATION AREA -- Public land which has been designated for park or recreational activities including but not limited to a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball or tennis courts, athletic courts, pedestrian/bicycle paths, open space, wilderness area or similar public land within the village which is under the control, operation or management of the village, a religious institution, a school or other governmental entity.

RELIGIOUS INSTITUTION -- Any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities including education and instruction.

RESIDENTIAL DISTRICT OR USE -- A single-family dwelling, two-family dwelling, row dwelling, multifamily dwelling or mobile home park use or district as defined or designated in the Village of Horseheads Code.

SADOMASOCHISTIC ABUSE -- Flagellation or torture by or upon a person who is nude or clad in undergarments or in a sexually revealing or bizarre costume, or the condition of such person being fettered, bound or otherwise physically restrained in an apparent act of sexual stimulation or gratification.

SCHOOL -- Any public or private educational facility including but not limited to child day-care facilities, nursery school, preschool, kindergarten, elementary school, primary school, intermediate school, junior high school, middle school, high school, vocational school, secondary school, continuation school, special education school, junior college and university. School includes the school grounds but does not include the facilities used primarily for another purpose or incidentally as a school.

SEMINUDE -- A state of dress in which clothing covers no more than the genitals, pubic region and the female breast below a point immediately above the top of the areola, as well as portions of the body covered by supporting straps or devices.

SEXUAL CONDUCT

- (1) Masturbation.
- (2) Sexual intercourse, whether genital-genital, genital-oral, oral-anal or anal-genital.
- (3) Any erotic fondling or touching of any parts of the covered or uncovered genitals, buttocks, pubic area or breasts of the female.
- (4) Actual or simulated display or exhibition of the human pubic area or genitals, or any part thereof.
- (5) Sexual excitement as herein defined.
- (6) Sadoomasochistic abuse as herein defined.
- (7) The conduct described in Subsections (1) through (6) above, inclusive, is sexual conduct, whether or not it is engaged in alone or between members of the same sex or between members of the opposite sex or between humans and animals or between humans and inanimate objects.

SEXUAL ENCOUNTER CENTER -- A business or other commercial enterprise that as one of its primary business purposes offers for any form or consideration physical contact in the form of wrestling or tumbling or other similar activity between persons of the opposite sex; or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or seminude.

SPECIFIED ANATOMICAL AREAS

- (1) Less than the completely and opaquely covered human anus, genitals, pubic region, buttocks or female breast below a point immediately above the top of the areola, or any artificial depiction of the same.
- (2) Human male genitals in a discernibly turgid state even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES

- (1) Human genitals in a state of sexual stimulation or arousal.
- (2) Acts of human masturbation, oral copulation, sexual intercourse or sodomy, normal or perverted, actual or simulated.
- (3) Fondling or other erotic or intentional touching of human genitals, pubic region, buttock, anus or female breast, or artificial depiction of the same.
- (4) Excretory functions as part of or in connection with any of the activities set forth in Subsections (1), (2) and (3) above.

SUBSTANTIAL CONNECTION

- (1) In a sole proprietorship, an individual who owns, operates, controls or conducts, directly or indirectly, any premises, building or location upon which any adult use takes place.
- (2) In a partnership, limited or general, an individual who shares in any potential profits or losses of the business or who shares in the ownership of any of the assets of the partnership business.
- (3) In a corporation, an individual who is an officer, director or a holder, either directly, indirectly or beneficially, of more than 20% of any class of stock.
- (4) Any person who furnishes more than 20% of the capital financing or assets of such business, whether in case, goods or services.

§ 70-3. Restrictions.

In addition to the requirements of the New York State Uniform Fire Prevention and Building Code and the Village of Horseheads Code and any rules and/or regulations promulgated thereunder, adult uses shall be permitted subject to the following restrictions:

- A. No adult use shall be allowed within 750 feet of the nearest property line of another existing adult use.
- B. No adult use shall be located within 1,000 feet of the boundaries of any zoning district which is zoned for residential use or zoned as a planned unit development (PUD).
- C. No adult use shall be located in any zoning district except those districts zoned for manufacturing (M-1).
- D. No adult use shall be conducted in any manner that permits the observation of any instruments, devices or paraphernalia which is primarily intended, labeled, designed, advertised or promoted for use in connection with specified sexual activities or material depicting, describing or relating to specified sexual activities or specified anatomical areas from any public way or from any property not registered as an adult use. This provision shall apply to any display, decoration, sign, show window, screen or other opening.
- E. No more than one of the adult uses defined herein shall be located on any one lot or parcel of land, unless such lot or parcel is sufficiently large as to permit all distance limitations provided herein to be satisfied.
- F. No adult use shall be located within 1,000 feet of the nearest property line of any preexisting public, private or parochial school, church, convent, monastery, synagogue or other places of worship, nor any park, library, playground or playing field, recreation area, boys' club, girls' club or similar youth organization.
- G. An adult use may not be operated in the same building, structure or portion thereof containing another adult use.
- H. For the purpose of this chapter, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest exterior wall of the building or structure used as part of the premises where the adult use is conducted to the nearest property line of another existing adult use, a school, church, convent, monastery, synagogue or other place of worship, or park, library, playground, playing field, recreation area, residential district or residential lot, or exterior wall of a building or structure used as part of the premises in which another adult use is located.

§ 70-4. Registration.

- A. No person, firm, corporation or other entity shall lease, rent, maintain, operate, use or allow

to be operated or used any business or establishment, any part thereof which contains an adult use, without first complying with the provisions of this section as set forth below.

- B. In addition to any and all other necessary licenses and permits, no form of adult use shall be allowed to operate nor allowed to continue to operate until a certificate of registration is filed with the Village Clerk containing:
- (1) The address of the premises.
 - (2) The legal name, aliases and address of the owner(s) of the premises and the legal name, aliases and address of the beneficial owner(s) if the property is in a land trust.
 - (3) The name of the business or the establishment subject to the provisions of this chapter.
 - (4) The legal name, aliases, business and home address and business or home phone numbers of all owners of the business or establishment subject to the provisions of this chapter.
 - (5) The legal names, aliases, business and home addresses and business or home phone numbers of all those persons having a substantial connection with the business or establishment subject to the provisions of this chapter.
 - (6) The date of the initiation of the adult use.
 - (7) The exact nature of the adult use.
 - (8) If the premises or the building in which the business containing the adult use is leased, a copy of the lease.
- C. If there occurs any change in the information required for the certificate of registration, the Village Clerk shall be notified no less than 30 days before such change, and a new or amended certificate filed within 30 days after receipt of such notification.
- D. The processing fee for each certificate of registration or amendment thereto shall be \$1,000 payable to the Village Clerk. Each certificate of registration or amendment thereto shall expire on December 31 of each year. Each certificate of registration may be renewed only by filing a complete certificate of registration as provided in this chapter and paying the processing fee therefor at least 30 days before the expiration of the then-existing certificate of registration.
- E. No certificate or registration issued under the provisions of this section shall be transferable to any person other than the registrant, nor shall a certificate of registration be transferable for use at any premises, building or location other than that stated in the certificate of registration.

- F. The owner, manager or agent of any adult use shall cause a copy of the certificate of registration issued under the provisions of this section to be prominently displayed on the premises, building or location for which it is issued.
- G. Any knowingly false statement or any statement which the registrant or applicant should reasonably have known to be false which is provided in the certificate of registration or any document or information supplied therewith shall be grounds for rejection, suspension or revocation of the certificate of registration.
- H. It is a violation of this chapter for the owner or person in control of any property to establish or operate thereon or to permit any person to establish or operate thereon an adult use without having in force a current certificate of registration complying with this section.
- I. The owners of the business or establishment subject to the provisions of this chapter shall permit representatives of the Village Police Department, Fire Department, Zoning, Building and Code Enforcement Department or other village departments or agencies to inspect the premises of an adult use for the purpose of ensuring compliance with this chapter and all federal, state and local laws, rules, regulations, ordinances and codes. Such inspection may occur at any time the business is occupied or open for business. It shall be a violation of this chapter, and a person who operates an adult use, regardless of whether or not a certificate of registration has been issued for such business under this chapter, or his agent or employee commits a violation if such person refuses to permit any such lawful inspection of the premises at any time that it is occupied or open for business.

§ 70-5. Defense.

- A. It is a defense to prosecution under this chapter if a person appearing in a state of nudity did so in a modeling class operated:
 - (1) By a proprietary school licensed by the State of New York or a college, junior college or university supported entirely or partially by taxation;
 - (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partially by taxation;
 - (3) In a structure:
 - (a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing.
 - (b) Where in order to participate in a class a student must enroll at least three days in

advance of the class.

- (c) Where no more than one nude model is on the premises at any one time.
- B. It is a defense to prosecution for a violation of this chapter that an employee of an adult use, regardless of whether or not a certificate of registration has been issued for said business under this chapter, exposes any specified anatomical area during the employee's bona fide use of a restroom or during the employee's bona fide use of a dressing room which is accessible only to employees.

§ 70-6. Prohibitions regarding minors and adult uses.

A person violates this chapter if such person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for said business under this chapter, and knowingly or with reasonable cause to know permits, suffers or allows:

- A. Admittance of a person under 18 years of age to the business premises unless accompanied by a parent or guardian;
- B. A person under 18 years of age to remain at the business premises unless accompanied by a parent or guardian;
- C. A person under 18 years of age to purchase goods or services at the business premises without the specific consent of a parent or guardian; or
- D. A person who is under 18 years of age to work at the business premises as an employee.

§ 70-7. Advertising and lighting.

- A. It shall be a violation of this chapter if a person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for such business under this chapter, and advertises the presentation of any activity prohibited by any applicable federal, state or local statute, law, rule or regulation.
- B. It shall be a violation of this chapter if a person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for such use under this chapter, and displays or otherwise exhibits the materials and/or performances at such adult use in any advertising which is visible outside the premises. This prohibition shall not extend to advertising of the existence or location of such adult use.
- C. It is a violation of this chapter if the owner and/or person in control of any property registered as an adult use allows, causes or permits any portion of the interior premises to be

visible from outside the premises.

- D. All off-street parking areas and premises entries of the adult use will be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the business for personal safety of patrons and employees, and to reduce the incidents of vandalism and criminal conduct.

§ 70-8. Hours of operation.

- A. It shall be a violation of this chapter if a person operates or causes to be operated an adult use, regardless of whether or not a certificate of registration has been issued for such business under this chapter, and allows such business to remain open for business or to permit any employee to engage in any solicited performance, make a sale, solicit a sale, provide a service or solicit a service between the hours of 1:00 a.m. and 9:00 a.m. local time of any particular day.
- B. It shall be a violation of this chapter if a person, working as an employee of an adult use business, regardless of whether or not a certificate of registration has been issued for such business under this chapter, engages in a performance, solicits a performance, makes a sale, solicits a sale, provides a service or solicits a service between the hours of 1:00 a.m. and 9:00 a.m. local time of any particular day.

§ 70-9. Immunity from prosecution.

The village and all other departments and agencies of the village including its officers, employees, etc., charged with enforcement of state and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable good faith trespass upon an adult use business while acting within the scope of authority conferred by this chapter or any other state or federal law, rule or regulation.

§ 70-10. Penalties for offenses.

Any person, firm or corporation which shall violate any of the provisions of this chapter shall upon conviction thereof be subject to a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or both, except as otherwise provided herein. Each day and/or time that any violation of this chapter shall continue shall constitute a separate offense.