

ORDINANCE NO. 04 - 43

**AN ORDINANCE ADOPTING ADULT
USE BUSINESS LICENSE FOR
THE VILLAGE OF EAST DUNDEE**

WHEREAS, the Village of East Dundee is a home rule unit of local government under and pursuant to Section 6 of Article VII of the Constitution of the State of Illinois, has the authority to exercise any power and perform any function pertaining to its government and affairs, including but not limited to the power to regulate for the protection of the public health, safety, morals, and welfare; and

WHEREAS, the President and Board of Trustees believe and hereby declare that it is in the best interest of the Village of East Dundee and its residents to amend the provisions of Title XI, **Business Regulation** of the Village Code of Ordinances to incorporate regulations governing the sale and distribution of certain articles and more perfectly clarifying the sale, rental or transfer of these items for any consideration as adult uses, as hereinafter set forth; and

WHEREAS, the corporate authorities of the Village of East Dundee have determined that it is desirable and in the public interest, health, safety, morals, and welfare of the residents of the Village of East Dundee to adopt the following regulations of adult uses in the Village of East Dundee.

WHEREAS, the Village recently held public hearings as to whether the sale of sexual devices or marital aids such as prostheses, vibrators, waxes, sexually exploitive lingerie and undergarments, and other items should be governed by specific regulations; and

WHEREAS, the Village has determined that the sale of the above-noted items constitutes an adult use; and

WHEREAS, the corporate authorities have determined that there is a place in the Village for adult uses and that place is not within any district other than the M-2 Limited Manufacturing District where the business can meet appropriate space and distance restrictions; and

WHEREAS, the regulation of adult use establishments is essential for the protection of public health, safety, and welfare.

NOW THEREFORE, be it ordained by the President and Board of Trustees of the Village of East Dundee, Cook and Kane Counties, Illinois as follows:

Section One. That Title XI, **Business Regulation** of the East Dundee Municipal Code of Ordinances, Section 117 be added as follows:

Section 117.01 **Required License.**

It shall be unlawful for any person to engage in the business of operating an adult use in the Village without first having obtained a license therefor from the Village Clerk.

Section 117.05 **Definitions.**

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- A. **Adult bookstore** means an establishment having, as a substantial portion of its stock in trade, books, magazines, films or videotapes for sale or viewing on the premises by use of motion picture devices or other coin-operated means, and other periodicals which are distinguished by their emphasis on matter depicting, describing or relating to specified Sexual Activities or Specified Anatomical Areas as such terms are defined in this section, or an establishment with a segment or section devoted to the sale or display of such material. Adult bookstores may

alternatively or in conjunction with the above stock in trade sell undergarments and other clothing designed for the display of Specified Anatomical Areas or for the enhancement of Specified Sexual Activities. Further, an adult bookstore may alternatively or in conjunction with the above stock in trade sell prosthetic devices, dolls, candles, vibrators and other objects for sexual gratification which take the form of Specified Anatomical Areas and for the purpose of enhancing Specified Sexual Activities.

- B. **Adult Entertainment Cabaret** means an establishment offering to its patrons, as entertainment, any exhibition or display or any theatrical or other live performances which include topless or go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers, or any persons singing, reading, posing, modeling, or serving food or beverages, where the exhibition, performance, display or dance is intended to sexually arouse the entertainer or the patrons, or where the attire of persons involved is such as to expose specified anatomical areas, as defined in this section.
- C. **Adult Motion Picture Theater** means an enclosed building, regardless of its seating capacity, which is used to present for public view on the premises, films, movies, previews, trailers or advertisements which are distinguished by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas, as defined in this section.
- D. **Adult Use** means and includes adult bookstores, adult entertainment cabarets, and adult motion picture theaters as defined in this section.
- E. **Specified Anatomical Areas** means:
- (1) Less than completely and opaquely covered human or animal genitals, pubic region, or pubic hair, buttocks; and female breasts below a point immediately above the top of the areola; and
 - (2) Genitals of humans or animals in a discernible turgid state, even if completely opaquely covered.

F. **Specified Sexual Activities** means:

- (1) Human or animal genitals in the state of sexual stimulation or arousal.
- (2) Acts or representations of acts of human or animal masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation.
- (3) Fondling or erotic touching of human or animal genitals, pubic region, buttock or female breast.
- (4) Excretory functions as part of or in connection with any activities set forth in subsections A through B of this definition.

Section 117.10 Application; Standards for Issuance.

- (A) Application for an adult use license shall be made in writing and shall state the following:
- (1) The name, address, telephone number and age of the applicant and the registered agent of the applicant if the applicant is a corporation.
 - (2) The location of the adult use business.
 - (3) The exact nature of the adult use to be conducted and of the proposed place of business and the facilities related thereto.
 - (4) A statement by the applicant that he is familiar with the provisions of this article and is in compliance with them.
 - (5) A statement of whether the business will be conducted by a manager and, if so, the name, address, telephone number, and age of each such manager.
 - (6) A statement that no manager or principal operating the business has been convicted of any offense of prostitution, soliciting for prostitution, or obscenity or public indecency as defined in the Illinois Compiled Statutes within the last two years, and that the applicant has not had any license for an adult use in any other community revoked within the last two years.
- (B) Within 15 days after receipt of an application for an adult use license, the Village shall investigate the information contained in the application and shall determine the following:

- (1) That the premises designated by the applicant as the location of the business are in full compliance with all applicable ordinances of the village, including zoning ordinances.
 - (2) That the premises and each manager and employee comply with the provisions of Section 117.10(A) as such provisions apply to them.
 - (3) That the applicant, each manager and each employee are over 21 years of age.
 - (4) That no manager or principal operator of the business has been convicted of any offense of prostitution, solicitation for prostitution, or obscenity or public indecency, as defined in the Illinois Compiled Statutes within the last two years, and that the applicant has not had any license for an adult use revoked within the last two years.
- (C) If the investigation shows the compliance of the applicant for an adult use license, the premises upon which the business is to be conducted, and each manager and employee, if applicable, with each of the requirements established in subsections (A) and (B) of this section, and with the conditions and regulations set forth in Section 117.15 within 15 days after completion of such investigation, the village clerk shall issue a license, and upon payment by the applicant of the license fee required under this article, the license shall be issued.
- (D) If the investigation shows that the applicant for an adult use license, the premises on which the business is to be conducted, or the managers and employees, if applicable, do not comply with each of the requirements established in subsection (A) of this section, and with the conditions and regulations set forth in Section 117.15 within 15 days after completion of such investigation, the village clerk shall notify the applicant in writing that the license has been denied. Such denial shall be the final administrative action of the village with respect to the license application, and shall be subject to the immediate appeal by the applicant to the circuit court.

**Section 117.15 Conditions & Regulations Governing Operation;
 Violation; Penalty.**

(A) The following regulations shall govern and control the business of operating an adult use in the Village:

- (1) No person under 21 years of age shall be allowed on the licensed premises.
- (2) At all times during the hours of operation there shall be present a manager or other employee of the licensee who shall be not less than 21 years of age.
- (3) Upon a change of any manager conducting business for the licensee, the licensee shall, within ten regular business days, give the village clerk written notice of such change by actual delivery or by registered or certified mail. The licensee shall, thereafter, as promptly as practicable, but in any event within five regular business days, provide the information concerning the new manager which is required in Section 117.10.
- (4) No adult use shall be located on premises for which a license to sell alcoholic liquor has been issued, and no alcoholic liquor shall be permitted on such premises.
- (5) No adult use shall be permitted unless the premises on which such business is located complies with the requirements of the zoning ordinance.
- (6) No licensee or manager under the provisions of this article shall knowingly permit any person to remain in or upon licensed premises who commits any act of public indecency or obscenity as defined in the Illinois Compiled Statutes.
- (7) No licensee or manager under the provisions of this article shall permit any act of prostitution, solicitation for prostitution or patronization of a prostitute on the licensed premises.
- (8) No sign shall be posted on the licensed premises which depicts, displays or refers to specified anatomical areas or specified sexual activities, as defined in this article.

(B) In addition to the requirements established in Section 117.15(A), the following regulations shall govern and control the operation of an adult bookstore which offers any films or videotapes for viewing on premises by use of motion picture devices or other such operations means:

- (1) All viewing areas, which shall be defined as the area where a patron or customer would ordinarily be positioned while

watching a film or viewing device, shall be visible from a continuous main aisle or public room and shall not be obscured by any curtain, door, wall or other enclosure.

- (2) There shall be no aperture whatsoever in any wall or partition between viewing areas.
- (3) Each viewing area shall be lighted at a minimum level of 10 foot candles in all parts thereof.

(C) In addition to the requirements established in Section (A) of this section, the following regulations shall govern and control the operation of an adult entertainment cabaret:

- (1) All performers shall be at least 21 years of age.
- (2) All performances, exhibitions or displays shall take place on a platform raised at least two feet from the level of the floor, and located at least 10 feet from any patron.
- (3) No performer shall fondle or caress any patron or other performer and no patron shall fondle or caress any performer.
- (4) No patron shall be permitted to pay or give any gratuity to any performer, and no performer shall solicit any pay or gratuity from any patron.

(D) It shall be unlawful for any person licensed to engage in the business of operating an adult use within the village to fail to comply with the conditions and regulations set forth in subsections 117.10 and 117.15 of this section as they are applicable to the licensed business, or to suffer or permit noncompliance with such conditions and regulations on or within the licensed premises. In this regard, any act or omission of an employee shall be deemed the act or omission of the owner if such act or omission occurred either with the authorization, knowledge or approval of the owner or as a result of the owner's negligent failure to supervise the employee's conduct. All conduct occurring while on the premises shall be presumed to be the responsibility of the owner.

(E) Any person convicted of a violation of this section shall be subject to a fine pursuant to Section 10.99 of this Code.

Section 117.20 Suspension or Revocation.

Nothing in the terms of this article shall preclude the right of the President to suspend or revoke the license of the licensee, as follows:

- (A) The President may temporarily suspend any license issued under the terms of this article when he has reason to believe that the continued operation of a particular licensed premises will immediately threaten the welfare of the community or create an imminent danger of violation of applicable law. In such case, he may, upon the issuance of a written order stating the reason for such determination, and without notice or hearing, order the licensed premises closed for not more than seven (7) days; provided, that the licensee shall be given an opportunity to be heard in a public hearing during the 7-day period, and further provided that if such licensee shall also be engaged in the conduct of other business on the licensed premises, such order shall not be applicable to such other businesses.

- (B) The President may suspend or revoke any license issued under the terms of this article upon 10 days notice to the licensee of the time and place of a public hearing, and a public hearing at which the licensee may appear and present evidence, if the President determines upon such hearing that the licensee has failed or refused to comply with the terms of this article, has failed or refused to comply with other law applicable to the business of operating an adult use, has knowingly permitted the failure of any manager or employee on the premises to comply with the terms of this article or with other law applicable to the business of operating an adult use, has knowingly furnished false or misleading information on any application required for any license under this section or has suffered or caused another to furnish or withhold such information on his behalf, or has been convicted by a court of competent jurisdiction of a violation of any provision of this section.

Section 117.25 Alcoholic Beverages.

No premises shall be licensed if such premises are to be operated as an adult use as defined in this section or if the activity proposed to be conducted thereon includes any adult entertainment as defined in this Section 117.

Section Three. Severability. If any section, paragraph or provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this ordinance.

Section Four. Repeal. All ordinances, resolutions, motions or parts thereof in conflict herewith shall be and the same are hereby repealed.

Section Five. Publication. This ordinance shall be in full force and effect forthwith upon its adoption, approval and publication in pamphlet form as provided by law.

Adopted this 20th day of December, 2004, pursuant to a roll call vote as follows:

AYES: Ruffalo, Bartels, VanOstenbridge, Scarpelli, President Ahrens.
NAYES: None.
ABSENT: Zaeske, Schock

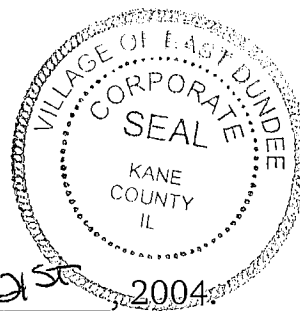
Approved by me this 20th day of December, 2004.

Roger Ahrens
ROGER AHRENS, President

Published in pamphlet form this 21st day of December, 2004, under the authority of the President and Board of Trustees.

ATTEST:

Jane E. Theis
JANE THEIS, Village Clerk



Recorded in the Village Records on December 21st 2004.

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