

1 **10.301. AED (Adult Entertainment) Overlay Zoning District**

2 **(1) Statement of Purpose.**

3 It is the purpose of this district to establish reasonable and uniform regulations of the
4 use of property for adult entertainment establishments in order to prevent the adverse
5 secondary effects associated with these businesses and thereby promote the health,
6 safety, morals, and general welfare of the citizens of Dane County. It is not the intent or
7 effect of this ordinance to restrict or deny access by adults to sexually oriented
8 entertainment protected by the First Amendment, or to deny access by the exhibitors of
9 sexually oriented entertainment to their intended market.

10 **(2) Findings.**

11 While the County Board recognizes that freedom of speech is among our most precious
12 and highly protected rights, and wishes to act consistently with full protection of those
13 rights, based on evidence concerning the adverse secondary effects of adult
14 entertainment establishments on the community presented in hearings and in reports
15 made available to the Board, and on findings incorporated in the cases of City of Los
16 Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); Renton v. Playtime Theaters, Inc.,
17 475 U.S. 41 (1986); Thirteen Mile Rd. Inc. v. Warren, 626 F. Supp. 803, (E.D. Mich. 1985);
18 Alexander v. Minneapolis, 713 F. Supp. 1296 (DC Minn. 1989); 7250 Corp. v. Board of
19 County Comrs., 799 P.2d 917 (Col. 1990); Chicago v. Scandia Books, Inc., 102 Ill App. 3d
20 292 (1st Dist. 1981); Islip v. Caviglia, 540 N.E.2d 215 (N.Y. 1989); Dumas v. Dallas, 648 F.
21 Supp. 1061 (N.D. Tex. 1986); International Eateries of America, Inc. v. Broward County,
22 726 F. Supp. 1568 (S.D. Fla. 1989); Walnut Properties, Inc. v. City Council of Long
23 Beach, 100 Cal. App. 3d 1018 (2d Dist. 1980); S&GNews, Inc. v. Southgate, 638 F. Supp.
24 1060 (E.D. Mich. 1986); U.S. Partners Financial Corp. v. Kansas City, 707 F. Supp. 1090
25 (W.D. Mo. 1989); City of Vallejo v. Adult Books, 167 Cal. App. 3d xxx (1st Dist. 1985);
26 County of Cook v. Renaissance Arcade & Bookstore, 122 Ill 2d 123 (1988); Derusso v. City
27 of Albany, NY, 205 F. Supp. 2d 16 (N.D. N.Y. 2002); Mom N Pops, Inc. v. City of Charlotte,
28 979 F. Supp. 372 (W.D. N.C. 1997); Venture I, Inc. v. Orange County, Tex., 947 F. Supp.
29 271 (E.D. Tex. 1996); Community Visual Communications, Inc. v. City of San Antonio, 148
30 F. Supp. 2d 764 (W.D. Tex. 2000); Bronco's Entertainment, Ltd. v. Charter Tp. Of Van
31 Buren, 421 F.3d 440 (6th Cir. 2005); Brandywine, Inc. v. City of Richmond, Kentucky, 359
32 F.3d 830 (6th Cir. 2004); Holmberg v. City of Ramsey, 12 F.3d 1413 (8th Cir. 1994);
33 Woosterv. Entertainment One, Inc., 158 Ohio App. 3d 161 (2004); Grand Brittain, Inc. v.
34 City of Amarillo, Tex., 27 F.3d 1068 (5th Cir. 1994); Tollis, Inc. v. City of County of San
35 Diego, 505 F.3d 935 (9th Cir. 2007); as well as finding from papers, articles, studies and
36 information from other communities including, but not limited to, Fort Worth & Dallas,

37 Texas; Palm Beach County, Florida; Garden Grove, California; Austin, Texas; Phoenix,
38 Arizona; Indianapolis, Indiana; and Los Angeles, California, the County of Dane, relying
39 upon the experience of other local governments in this state and throughout the
40 country, finds as follows:

- 41 (a) That adult entertainment establishments may have an adverse secondary effect on
42 the surrounding community because the sexual nature of the business may,
43 regardless of the intentions of the proprietors, attract persons seeking prostitution
44 or unlawful drugs, or who are inclined to be disorderly or disruptive;
- 45 (b) Adult entertainment establishments are an intense commercial use which create a
46 large volume of foot and automobile traffic in the vicinity of the establishment,
47 which may require police and other municipal services which may not be readily
48 available in towns, and which may conflict with the preservation of farmland by
49 encouraging scattered commercial development;
- 50 (c) Adult entertainment establishments have their peak activity at hours and days
51 which are incompatible with residential uses, and have a larger customer volume
52 than other entertainment establishments;
- 53 (d) Because of the potential for negative impacts on property values, the peace and
54 good order of the community and the welfare of individuals affected by adult
55 entertainment establishments, it is necessary to minimize the secondary effects of
56 adult entertainment;
- 57 (e) It is the intent of this section to protect the health, safety and welfare of the
58 citizens of Dane County and to further preserve the quality of life and to preserve
59 the urban and rural characteristics of its neighborhoods. The intent of the Adult
60 Entertainment Overlay District is to regulate the location of such establishments.

61 (3) Nothing in this section shall be construed to permit the regulation of any activities
62 conducted in adult entertainment establishments which are entitled to protection under
63 the First Amendment of the United States Constitution, including:

- 64 (a) plays, operas, musicals or other dramatic works that are not obscene;
- 65 (b) classes, seminars, or lectures which are held for a serious scientific or educational
66 purpose and that are not obscene.
- 67 (c) rental or sale of video cassettes, DVD videodiscs, or other electronic media for
68 private viewing off the premises.

69 (4) Whether or not an activity is obscene shall be judged by consideration of the following
70 factors:

- 71 1. whether the average person, applying contemporary community standards,
72 would find that the activity taken as a whole appeals to prurient interest in sex;
- 73 2. whether the activity depicts or describes sexual conduct in a patently offensive
74 way, as measured against community standards; and
- 75 3. whether the activity taken as a whole lacks serious literary, artistic, political or
76 scientific value.

77 (5) The overlay district shall apply only to lands zoned M-1 Industrial.

78 (6) An adult entertainment establishment shall be a permitted use within the overlay
79 district.

80 (7) Standards for siting of adult entertainment establishments. Adult entertainment
81 establishments shall meet all of the following requirements:

82 (a) Location of any particular adult entertainment establishment must be not less than
83 1,000 feet from any church, synagogue, temple, mosque or any other place of
84 worship, any residentially zoned district, park, school, playground, day care center,
85 public library and any other adult book store or adult entertainment establishment.

86 1. Measurement shall be made in a straight line, without regard to intervening
87 structures or objects, from the nearest portion of the building or structure used
88 as the part of the premises where adult entertainment is conducted, to the
89 nearest property line of the premises of a use listed in sub (a). Presence of a City,
90 County or other municipal boundary shall not affect the calculation and
91 application of the distance requirements of sub (a).

92 (b) There shall be no display windows on the premises;

93 (c) The business may have only one (1) non-flashing business sign, and which shall be
94 not larger than 4 feet by 4 feet;

95 (d) A one square foot sign shall be placed on each public entrance which shall state
96 "Admittance to adults only" and may include other pertinent business information;

97 (e) The owner and operator of an adult entertainment establishment shall agree to
98 comply with all Federal, State and Local laws and ordinances, including those
99 regulating obscenity and alcoholic beverages, and shall further insure that minors
100 are not allowed on the premises. Solicitation for purposes of prostitution shall be
101 strictly prohibited; and

102 (f) There shall be no areas in the adult entertainment establishment in which
103 entertainment is provided which are not fully visible from the main area of the
104 establishment. No entertainment may occur in areas of the establishment which
105 are set off by doors, curtains, screens, barriers, café or saloon doors or other
106 obstructions.

107 (8) The provisions of this ordinance shall be severable. The County Board finds that it would
108 have enacted all the provisions of this ordinance on the basis of any one of the findings
109 in section (1).

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