

ORDINANCE NO. 2023-05

**VILLAGE OF YORKVILLE
RACINE COUNTY, WISCONSIN**

**AN ORDINANCE TO REPEAL AND RECREATE DIVISION 22 OF CHAPTER 55 OF THE
CODE OF ORDINANCES OF THE VILLAGE OF YORKVILLE, RACINE COUNTY,
WISCONSIN, RELATING TO ADULT ESTABLISHMENT USES**

WHEREAS, the Village of Yorkville Long-Range Planning/Ordinance Committee (“LRPC”) reviewed and discussed various studies and materials related to impacts of Adult Establishment Uses locating in a neighborhood, as well as this draft ordinance, on May 10, 2022, June 14, 2022, September 13, 2022, October 11, 2022, November 10, 2022, December 13, 2022, January 10, 2023, March 14, 2023, and April 11, 2023.

WHEREAS, the LRPC is comprised of residents of the Village as well as officials of the Village and is tasked with reviewing ordinances that impact the long term plans and growth in the Village.

WHEREAS, the Village Plan Commission reviewed and discussed various studies and materials related to the impacts of Adult Establishment Uses locating in a neighborhood as well as this draft ordinance on May 8, 2023, and June 12, 2023 and held a public hearing to receive public input on May 8, 2023 and June 12, 2023.

WHEREAS, the Village Board reviewed and discussed various studies and materials related to the impacts of Adult Establishment Uses locating in a neighborhood as well as this draft ordinance on May 8, 2023 and June 12, 2023 and attended the public hearing to receive public input on May 8, 2023, and June 12, 2023.

**THE VILLAGE BOARD OF THE VILLAGE OF YORKVILLE, RACINE COUNTY,
WISCONSIN, HEREBY DO ORDAIN AS FOLLOWS:**

1. That Division 22, Chapter 55 of the Code of Ordinances for the Village of Yorkville, be, and hereby is repealed and recreated to read as follows:

“DIVISION 22. - ADULT ESTABLISHMENT USES

Sec. 20-636. – Intent and Findings of fact.

(a) Intent:

- (1) The intent of this division is to regulate adult establishments and related activities to protect the health, safety, and general welfare of the citizens of Yorkville, to further preserve the quality of family life as well as the rural characteristics of the Village, to prevent adverse and deleterious effects contributing to the blight and downgrading of portions of the Village, to avoid the effects of adult entertainment upon minors and the violation of the civil rights of many persons partaking in such entertainment, mitigate criminal activity and disruption of public peace associated with adult

establishments, and also to prevent the unsanitary and unhealthful conditions associated with such establishments. This regulation will establish reasonable and uniform provisions to regulate adult establishments within the Village of Yorkville.

- (2) It is not the intent or effect to restrict or deny access by the distributors or exhibitors of sexually oriented entertainment to their intended market.
- (3) It is not the intent or effect to limit or restrict the lawful activities permitted under W.S.A. ch. 125, "Alcohol Beverages" and the Municipal Code of the Village of Yorkville. By the enactment of this division, the Yorkville Village Board does not intend to give any explicit, implicit, or tacit approval or condone any activity relating to adult entertainment.
- (4) The board intends to control the impact of the secondary effects enumerated in 20-636(b) in order to protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; and preserve the property values and character of surrounding neighborhoods and areas.
- (5) It is not the board's intent to suppress any speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of adult establishments while providing an outlet for First Amendment protected activities.
- (6) In order to minimize and control the secondary effects of adult establishments upon the Village, it is the board's intent to prevent the concentration of adult establishments within a certain distance of other specified locations which are incompatible with and would suffer from the secondary effects of adult establishments.

(b) Findings of fact:

- (1) The board finds that adult establishments as defined in this division require special zoning in order to protect and preserve the health, safety, and welfare of Yorkville.
- (2) Based on its review of the following:
 - a. Report to the American Center for Law and Justice on the Secondary Impacts of Sexual Oriented Businesses;
 - b. The Affidavit of Richard McCleary for the case of *New Albany DVD LLC v. City of Albany*;
 - c. National Law Center Summaries of SOB Land Use Studies;
 - d. Workplace Perspectives on Erotic Dancing, a Minneapolis Minnesota Study;
 - e. The studies conducted in Newport News, Virginia, Garden Grove, California, Dallas, Texas, Houston Texas;

- f. The Effects of Sexually Oriented Businesses by Louis F. Cormus III, which summarized studies conducted in Phoenix, Arizona; Garden Grove California; Los Angeles, California; Whittier California; Indianapolis, Indiana; Minneapolis, Minnesota; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Houston, Texas; Seattle, Washington; New York City, New York (specifically, Times Square); Dallas, Texas; Environmental Research Group Report; Tucson, Arizona; Manatee County, Florida; State of Minnesota; New Hanover County, North Carolina; Town and Village of Ellicottville, New York; Islip, New York; New York City, New York; Oklahoma City, Oklahoma; Houston Texas; Newport News; and Des Moines, Washington;
 - g. The Police Memorandum dated May 1, 1990, to the Tucson, Arizona City Prosecutor;
 - h. Rural Hotspots: The Case of Adult Businesses by Dr. Richard McCleary;
 - i. The findings incorporated in City of Renton v. Playtime Theaters, Inc., 475 U.S. 41 (1986); Colman A. Young v. American Mini-Theaters, Inc., 427 U.S. 50 (1976), Association of Club Executives of Dallas, Inc., et al. v. City of Dallas, 22-CV-00177 (N.D. Tex. May 24, 2022).
- (3) The board finds that there is convincing evidence that the secondary effects of adult establishments include an increased risk of:
- a. Prostitution,
 - b. High-risk sexual behavior and sexually transmitted diseases,
 - c. Human Trafficking,
 - d. Crime, especially sex-related crimes, and
 - e. Other deleterious effects upon existing business and surrounding residential areas, and decreased property values.
- (4) Based on its review of "Playing for Keeps," 2002 Racine County Economic Development Study, the 2010 Racine County Economic Development Plan, Village 2050 Comprehensive Plan, and the Tax Incremental Financing District #1 Project Plan, board finds that U.S. Route 45, State Trunk Highway 20, County Trunk Highway C (A.K.A. Spring Street) and Highway 11 corridors as areas that are very important to the economic development of the Village and should be protected from the secondary effects of adult establishments for the benefit of the health, safety and welfare of the community. For purposes of this Article, "corridor" is meant to apply to properties directly abutting the named street or highway.

Sec. 20-637. - Uses.

- (a) *Principal Uses.* The First Amendment and other provisions of the United States Constitution, as interpreted by the United States Supreme Court and other courts, require that adult establishments, as defined in this division, are entitled to certain protections, including the opportunity to locate in the Village. Therefore, an adult establishment shall be an allowed principal use in the B-3 and B-5 zoning districts and shall be a prohibited use in any other zoning district. The adult establishment may locate in the specified districts only if an adult establishment license has been granted by the Village if all the requirements of this division and the applicable zoning district's regulations are met.
- (b) *Accessory uses.* Any accessory use authorized by the underlying zoning district may be an accessory use to an adult establishment. In no case shall an adult establishment be an accessory use to any principal use designed by any section of this chapter.

Sec. 20-638. - Regulations applicable to all adult establishments.

- (a) *Location requirement:* No permit shall be granted where the public entrance of the proposed adult establishment is within one thousand (1,000) feet of a residential use, residential district, house of worship, school, day care center, playground, public park, recreation area, library, museum, U.S. Route 45, State Trunk Highway 20, County Trunk Highway C (A.K.A. Spring Street) and Highway 11, or immediately adjacent to a bar or tavern that serves alcoholic beverages. In the case of an area zoned residential, the distance shall be measured from the nearest point on the residential district zoning boundary line. From an area not zoned residential but used for residential purposes, the measurement shall be taken from the public entrance of the adult establishment to the nearest entrance of the building in residential use. From schools, houses of worship, day care centers, libraries, and museums, the distance shall be measured from the public entrance of the adult establishment to the main public entrance of the protected use. From playgrounds, public parks, recreation areas, and schools, houses of worship and day care centers with playgrounds or recreation areas, the distance shall be measured from the public entrance of the adult establishment to the nearest property line of the playground, public park, or recreation area. Along U.S. Route 45, State Trunk Highway 20, County Trunk Highway C (A.K.A. Spring Street) and Highway 11, this distance is measured from the outside highway right-of-way line, including frontage road(s).
- (b) *Hours of operation:* No adult establishment shall be open for business at any time between the hours of 2:00 a.m. and 12:00 noon.
- (c) *Animals:* No animals, except only for seeing-eye dogs required to assist the blind, shall be permitted at any time at or in any adult establishment or permitted premises.
- (d) *Restricted access:* No adult establishment patron shall be permitted at any time to enter into any of the non-public portions of any adult establishment, including specifically, but without limitation, any storage areas or dressing or other rooms provided for the benefit of adult establishment employees. This subsection shall not apply to persons delivering goods and materials, food and beverages, or performing maintenance or repairs to the permitted premises; provided, however, that any such persons shall remain in such non-public areas only for the purposes and to the extent and time necessary to perform their job duties.
- (e) *Exterior display:* No adult establishment shall be maintained or operated in any manner that causes, creates, or allows public viewing of any adult material, or any entertainment

depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," from any sidewalk, public or private right-of-way, or any property other than the lot on which the permitted premises is located. No portion of the exterior of an adult establishment shall utilize or contain any flashing lights, search lights, or spotlights, or any other similar lighting systems, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent specifically allowed by this division with regard to signs. This subsection shall apply to any advertisement, display, promotional material, decoration, or sign; to any performance or show; and to any window, door, or other opening.

- (f) *Sign limitations:* All signs for adult establishments shall be flat wall signs. The business may have only one (1) non-flashing business sign which may only indicate the name of the business and identify it as an adult establishment and which shall not be larger than four (4) feet by four (4) feet. Temporary signs shall not be permitted in connection with any adult establishment.
- (g) *Noise:* No loudspeakers or sound equipment audible beyond the adult establishment shall be used at any time.
- (h) *Manager's stations:* Each adult establishment shall have one (1) or more manager's stations. The interior of each adult establishment shall be configured in such a manner that there is a direct and substantially unobstructed view from at least one (1) manager's station to every part of each area, except restrooms, of the establishment to which any adult establishment patron is permitted access for any purpose. The cashier's or manager's station shall be located so that someone working there can quickly move to physically halt any attempted or accidental entry by a minor. An employee shall occupy the station at all times when patrons are in and on the premises.
- (i) *Adult booths prohibited:* Adult booths shall be prohibited in all adult establishments.
- (j) *No loitering policy:* The adult establishment shall clearly post and enforce a no loitering policy.
- (k) *Age limit restrictions:* The adult establishment shall clearly post and enforce age-limit restrictions. A one-square-foot sign shall be placed on each public entrance which shall state "Admittance to adults only" and may include other pertinent business information.
- (l) *Measuring disbursement distances:* The distances in this section shall be measured by following a straight line, without regard to intervening structures, from the public entrance (existing or proposed) of an adult establishment to the nearest point of the protected use as described below.
- (m) *Adequate parking:* One (1) parking space per one hundred fifty (150) square feet of total gross floor area shall be provided in a lighted area on the permitted premises of an adult establishment.
- (n) *Spacing requirement:* No more than one (1) adult establishment may be located on any one (1) parcel and the location of any one (1) adult establishment shall be at least one

thousand (1,000) feet from the establishment of any other adult establishment. This distance shall be measured from the public entrance of one (1) adult establishment to the public entrance of the other adult establishment.

- (o) *Display windows prohibited:* All points of access into structures containing adult establishments and all windows or other openings shall be located, constructed, covered, or screened in a manner which will prevent a view into the interior.
- (p) *Residential quarters not allowed:* No residential quarters shall be allowed on a premises with an adult establishment.
- (q) All live performers in an adult establishment shall perform only on a stage elevated no less than thirty-six (36) inches above floor level. There shall be a metal railing attached to the floor by bolts surrounding the stage which shall keep patrons at least forty-eight (48) inches from the stage. There shall also be a metal railing attached to the floor by bolts at the end of the stage.

Sec. 20-639. - Required information and documents.

(a) *Demographics.*

(1) *Individuals.*

- a. Applicant's legal name, all of the applicant's aliases, and the applicant's age;
- b. Applicant's business address.

(2) *Corporations.*

- a. Applicant corporation's complete name and official business address;
- b. Legal names, all aliases, the ages, and business addresses of all of the directors, officers, and managers of the corporation and of every person owning or controlling more than twenty-five (25) percent of the voting shares of the corporation;
- c. Applicant corporation's date and place of incorporation and the objective for which it was formed;
- d. Proof that the corporation is a corporation in good standing and authorized to conduct business in the State of Wisconsin;
- e. Name of the registered corporate agent and the address of the registered office for service of process.

(3) Partnerships (general or limited), joint ventures, or any other type of organization where two (2) or more persons share in the profits and liabilities of the organization.

- a. Applicant organization's complete name and official business address;

- b. Legal name, all aliases, the ages, and business addresses of each partner (other than limited partners) or any other person entitled to share in the profits of the organization, whether or not any such person is also obligated to share in the liabilities of the organization.

(4) *Land trusts.*

- a. Applicant land trust's complete name;
 - b. Legal name, all aliases, and the business address of the trustee of the land trust;
 - c. Legal name, all aliases, the ages, and business addresses of each beneficiary of the land trust and the specific interest of each such beneficiary in the land trust;
 - d. The interest, if any, that the land trust holds in the permitted premises.
- (b) If a corporation or partnership is an interest holder that shall be disclosed pursuant to subsections (a)(2) and (3), then such interest holders shall disclose the information required in said subsections with respect to their interest holders.
 - (c) The general character and nature of the applicant's business.
 - (d) The length of time that the applicant has been in the business of the character specified in response to subsection (c) above.
 - (e) The location (including street address and legal description) and telephone number of the premises for which the adult establishment permit is sought.
 - (f) The specific name of the business that is to be operated under the adult establishment permit.
 - (g) The identity of each fee simple owner of the permitted premises.
 - (h) A diagram showing the internal and external configuration of the permitted premises, including all doors, windows, entrances, exits, the fixed structural internal features of the permitted premises, plus the interior rooms, walls, partitions, stages, performance areas, and restrooms.

A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, provided, however, that each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions to an accuracy of plus or minus six (6) inches and sufficient to show clearly the various interior dimensions of all areas of the permitted premises and to demonstrate compliance with the provisions of this division. The approval or use of the diagram required pursuant to this subsection shall not be deemed to be, and may not be

interpreted or construed to constitute, any other Village approval otherwise required pursuant to applicable Village ordinances and regulations.

- (i) The specific type(s) of adult establishment(s) that the applicant proposes to operate on the permitted premises.
- (j) A copy of each adult establishment's permit, liquor license, and gaming license currently held by the applicant, or any of the individuals identified in the application pursuant to subsection (a) or (b) above.
- (k) The name of the individual(s) who shall be the day-to-day, on-site manager(s) of the proposed adult establishment.
- (l) The application fee, site plan review fee, and zoning permit fee in the amount as adopted by resolution or in the annual Village budget.
- (m) Any other information the zoning administrator may reasonably require to apply the requirements of this division.
- (n) The zoning administrator reserves the right to require a survey from a surveyor licensed by the State of Wisconsin to determine the spacing requirements under this division.
- (o) A site plan, landscaping plan, zoning permit application, and letter of agent status, if necessary, as required by site plan review application requirements adopted by the planning and development department.

Sec. 20-640. - Incomplete applications returned.

Any application for an adult establishment that does not include all of the information and documents required pursuant to this division, as well as the required fees, shall be deemed to be incomplete and shall not be acted on by the zoning administrator who shall give the applicant a written notification and explanation of such action pursuant to this section.

Sec. 20-641. - Applicant cooperation required.

An applicant for an adult establishment permit shall cooperate fully in the inspections and investigations conducted by Racine County and the Village of Yorkville. The applicant's failure or refusal to:

- (1) Give any information reasonably relevant to the investigation of the application;
- (2) Allow the permitted premises to be inspected;
- (3) Appear at any reasonable time and place, or
- (4) Otherwise cooperate with the investigation and inspection required by this division; shall constitute an admission by the applicant that the applicant is ineligible for an adult establishment permit and shall be grounds for denial of the permit by the zoning administrator.

Sec. 20-642. - Time for issuance or denial.

The zoning administrator shall, within thirty (30) days after submittal of a completed application, or within such other period of time as the Village and the applicant shall otherwise agree, either issue or deny an adult establishment permit pursuant to the provisions of this division.

Sec. 20-643. - Standards for issuance or denial of permit.

- (a) *Issuance:* The zoning administrator shall issue an adult establishment permit to an applicant if the zoning administrator finds and determines all of the following:
 - (1) All information and documents required by this division for issuance of an adult establishment permit have been properly provided.
 - (2) No person identified in the application may:
 - a. Have been denied an adult establishment permit within twelve (12) months immediately preceding the date of the application;
 - b. Be a person whose adult establishment permit has been revoked within twelve (12) months immediately preceding the date of the application; or
 - c. Be a person whose adult establishment permit is under suspension at the time of application.
 - (3) The adult establishment and the permitted premises comply with all requirements under this division and the applicant has obtained a license required for the adult establishment by the Village, if any.
 - (4) The applicant has signed the permit he or she has received indicating his or her acceptance of the conditions of the permit.
- (b) *Denial:* If the zoning administrator determines that the applicant has not met any one (1) or more of the conditions set forth in this section, then the zoning administrator shall deny issuance of the adult establishment permit and shall give the applicant a written notification and explanation of such denial.
- (c) *License deemed to be issued:* If the zoning administrator does not issue or deny the adult establishment permit within thirty (30) days after the properly completed application is submitted, then the adult establishment permit applied for shall be deemed to have been issued.

Sec. 20-644. - Enforcement.

- (a) A violation of any conditions or an adult establishment permit is a violation of this division.
- (b) Notwithstanding any other remedy, a violation of any conditions or an adult establishment permit shall be grounds for revocation of the adult establishment permit.

Sec. 20-645. - Continued conforming status.

An adult establishment lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant of the adult establishment permit, if a protected use is located within one thousand (1,000) feet of the adult establishment.

Sec. 20-646. Severability.

If any section, subsection, sentence, clause or phrase of this division is for any reason held to be invalid or unconstitutional by reason of any decision of any court of competent jurisdiction, such decision shall not affect the validity of any other section, subsection, sentence, clause or phrase or portion thereof. This ordinance shall take effect and be in force from and after its passage and publication, as provided by law.

Secs. 20-647—20-655. - Reserved.”

2. That this ordinance shall become effective upon adoption and publication as provided by law.

Adopted by the Village Board of the Village of Yorkville, Racine County, Wisconsin, this 12th day of June, 2023.

VILLAGE OF YORKVILLE

Ayes: 5

By: /s/ Douglas Nelson
Douglas Nelson, President

Nays: 0

Attest: /s/ Michael McKinney
Michael McKinney, Administrator/Clerk

Abstentions: 0

Absences: 0

**NOTICE OF PUBLIC HEARING
VILLAGE OF YORKVILLE**

PUBLIC NOTICE IS HEREBY GIVEN that the Village Board and Plan Commission of the Village of Yorkville, Racine County, Wisconsin, shall hold a joint public hearing at 6:00 p.m. on Monday, May 8, 2023, in the Yorkville Village Board Room, located in the Union Grove Municipal Center, 925 15th Avenue, Union Grove, Wisconsin, regarding proposed revisions to Chapters 14 and 55 of the Village of Yorkville's Municipal Code of Ordinances related to adult-oriented establishments. All interested parties will be heard.

A copy of the proposed ordinance will be available for public inspection prior to the public hearing, beginning on Thursday, April 20, 2023, and for at least two weeks thereafter during regular office hours, at the Village of Yorkville Administrator/Clerk's office, 925 15th Avenue, Union Grove, Wisconsin 53182, weekdays from 8:00 a.m. to 4:30 p.m., before consideration and possible adoption by the Village Board. If you have any questions, please contact the Village Administrator/Clerk at (262) 878-2123; the e-mail for the Administrator/Clerk is michael@villageofyorkville.com.

Dated these 20th and 27th days of April, 2023.

Michael McKinney
Administrator/Clerk

Affidavit of Printing State of Wisconsin

County of Racine

City of Union Grove

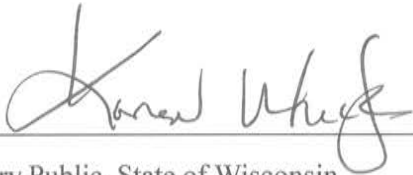
Southern Lakes Newspapers, LLC, certifies that it is the publisher of the Westline Report; that such paper is a secular newspaper of general circulation in said county; that it is printed and published in the village/city, county and state aforesaid. It hereby further certifies that a notice, of which the attached notice is a true copy, has been legally published in said newspaper 2 time(s) for 2 consecutive weeks(s); That the first publication was on the 20th day of April, 2023; The last publication was on the 27th day of April, 2023.

Signed _____

By Denelle Janssen, for Southern Lakes Newspapers, LLC

Subscribed and sworn to before me this

27 day of April 2023



Notary Public, State of Wisconsin

My commission expires 4/20/24

KAREN WHITTINGTON
Notary Public
State of Wisconsin

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Michael McKinney
Administrator/Clerk

(Published in Westline Report
April 20 & 27, 2023
WNAXLP - 436245)

Village of Yorkville
Notice of Newly Enacted Ordinances

Please take notice that, on Monday, June 12, 2023, the Village Board of the Village of Yorkville adopted the following ordinances:

- Ordinance 2023-03, entitled "An Ordinance creating Article VIII of Chapter 38 of the Code of Ordinances of the Village of Yorkville, Racine County, Wisconsin, relating to the adoption of an official map".
- Ordinance 2023-05, entitled "An Ordinance repealing and recreating Division 22 of Chapter 55 of the Code of Ordinances of the Village of Yorkville, Racine County, Wisconsin, relating to adult establishment uses"
- Ordinance 2023-06, entitled "An Ordinance repealing and recreating Article XX of Chapter 14 of the Code of Ordinances of the Village of Yorkville, Racine County, Wisconsin, relating to the licensure of adult oriented entertainment establishments"
- Ordinance 2023-08, entitled "An Ordinance amending Section 54-219 of the Code of Ordinances of the Village of Yorkville, Racine County, Wisconsin, relating to sewer service connection charges".

These ordinances take effect upon publication of this notice. The full text of these ordinances may be obtained from the Village of Yorkville Administrator/Clerk's office, 925 15th Avenue, Union Grove, Wisconsin 53182, or through the Village's website at www.villageofyorkville.com. The phone number for the Administrator/Clerk is (262) 878-2123.

Michael McKinney
Administrator/Clerk

Affidavit of Printing State of Wisconsin

County of Racine

City of Union Grove

Southern Lakes Newspapers, LLC, certifies that it is the publisher of the Westine Report; that such paper is a secular newspaper of general circulation in said county; that it is printed and published in the village/city, county and state aforesaid. It hereby further certifies that a notice, of which the attached notice is a true copy, has been legally published in said newspaper 1 time(s) for 1 consecutive week(s); That the first publication was on the 15th day of June, 2023; The last publication was on the 15th day of June, 2023.

Signed Heidi Schulz
By Heidi Schulz, for Southern Lakes Newspapers, LLC

Subscribed and sworn to before me this

15th day of June, 2023.

Karen Whittington
Notary Public, State of Wisconsin

My commission expires 1/20/26

KAREN WHITTINGTON
Notary Public
State of Wisconsin

NOTICE OF NEWLY ENACTED ORDINANCES Village of Yorkville

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Michael McKinney
Administrator/Clerk

(Published in Westine Report
June 15, 2023
WNAXLP - 439506)