

ORDINANCE NO. 410

VILLAGE OF BELLEVUE, ILLINOIS

ORDINANCE AMENDING ZONING ORDINANCE

BE IT ORDAINED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF BELLEVUE, PEORIA COUNTY, ILLINOIS, AS FOLLOWS:

Section 1: Village of Bellevue Ordinance No. 341 shall be amended by adding thereto, immediately after Article 22 thereof, the following new Article:

ARTICLE 23: OBSCENITY AND ADULT BUSINESSES

23.1 OBSCENITY

A. It shall be unlawful to commit obscenity. For purposes of this Section 23.1, "person" means an individual, public or private corporation, government, partnership, unincorporated association, trustee or receiver. Any reference to the masculine shall include the feminine, and any reference to the singular shall include the plural.

B. Elements of the Offense: A person commits obscenity when, with knowledge of the nature or content thereof, or recklessly failing to exercise reasonable inspection which would have disclosed the nature or content thereof, he:

1. Sells, delivers, or provides, or offers or agrees to sell, deliver or provide any obscene writing, picture, record or other representation or embodiment of the obscene; or
2. Presents or directs an obscene play, dance or other performance or participates directly in that portion thereof which makes it obscene; or
3. Publishes, exhibits or otherwise makes available anything obscene; or
4. Performs an obscene act or otherwise presents an obscene exhibition of his body for gain; or
5. Creates, buys, procures or possesses obscene matter or material with intent to disseminate it in violation of this Section 23.1, or of the penal laws or regulations of any other jurisdiction; or
6. Advertises or otherwise promotes the sale of material represented or held out by him to be obscene, whether or not it is obscene.

C. "Obscene" Defined: Any material or performance is obscene if: (1) the average person, applying contemporary adult community standards, would find that, taken as a whole, it appeals to the prurient interest; and (2) the average person, applying contemporary adult community standards, would find that it depicts or describes, in a patently offensive way, ultimate sexual acts or sadomasochistic sexual acts, whether normal or perverted, actual or simulated, or masturbation, excretory functions or lewd exhibition of the genitals; and (3) taken as a whole, it lacks serious literary, artistic, political or scientific value.

D. Interpretation of Evidence: Obscenity shall be judged with reference to ordinary adults, except that it shall be judged with reference to children or other specially susceptible audiences if it appears from the character or the material or the circumstances of its dissemination to be specially designed for or directed to such an audience.

Where circumstances of production, presentation, sale, dissemination, distribution or publicity indicate that material is being commercially exploited for the sake of its prurient appeal, such evidence is probative with respect to the nature of the matter and can justify the conclusion that the matter is lacking in serious literary, artistic, political or scientific value.

In any prosecution for an offense under this Section 23.1, evidence shall be admissible to show:

1. The character of the audience for which the material was designed or to which it was directed;
2. What the predominant appeal of the material would be for ordinary adults or a special audience, and what effect, if any, it would probably have on the behavior of such people;
3. The artistic, literary, scientific, educational or other merits of the material, or absence thereof;
4. The degree, if any, of public acceptance of the material in this State;
5. Appeal to prurient interest, or absence thereof, in advertising or other promotion of the material;
6. Purpose of the author, creator, publisher or disseminator.

E. Prima Facie Evidence: The creation, purchase, procurement or possession of a mold, engraved plate or other embodiment of obscenity specially adapted for reproducing multiple copies, or the possession of more than three (3) copies of obscene material shall be prima facie evidence of an intent to disseminate.

F. Affirmative Defenses: It shall be an affirmative defense to obscenity that the dissemination:

1. Was not for gain and was made to personal associates other than children under eighteen (18) years of age;
2. Was to institutions or individuals having scientific or other special justification for possession of such material.

23.2 ADULT BUSINESSES

A. Definitions: For the purpose of this Ordinance, the following words and phrases shall have the meanings respectively prescribed to them.

1. **Adult Book Stores:** An establishment having as a substantial portion of its stock in trade books, magazines, films for sale or viewing on the premises by use of motion picture devices or any other coin-operated means, and other periodicals 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 with a segment or section devoted to the sale or display of such material.

2. **Adult Motion Picture Theater:** An enclosed building with a capacity of fifty (50) or more persons used regularly and routinely for presenting motion pictures 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.

3. **Adult Mini Motion Picture Theater:** An enclosed building with a capacity for less than fifty (50) persons 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.

4. **Adult Entertainment Cabaret:** A public or private establishment which is licensed to serve food and/or alcoholic beverages, which features topless dancers and/or waitresses, strippers, belly dancers, male or female impersonators or similar entertainers.

5. **Body Shop or Model Studio:** Any public or private establishment which describes itself as a body shop or model studio, or where for any form of consideration or gratuity, figure models who display "specified anatomical areas" are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons paying such consideration or gratuity or where for any form of consideration or gratuity, nude and seminude dancing, readings, counseling sessions, body painting and other activities that present materials distinguished or characterized by an emphasis on matter depicting, describing, or relating to the "specified sexual activities" or "specified anatomical areas" are provided for observation by or communication to persons paying such consideration or gratuity.

6. **Building Structure:** Any structure or group of structures housing two or more businesses which share a common entry, exit, wall or frontage wall, including but not limited to, shopping centers, shopping malls, shopping plazas or shopping squares.

7. **Massage Establishment:** Any establishment having a fixed place of business where any person, firm, association or corporation engages in, or carries on, or permits to be engaged in or carried on any of the activities mentioned in paragraph 10 of this Section 23.2.A.

8. Specified sexual activities are any of the following conditions:

- a. Human genitals in a state of sexual stimulation or arousal.
- b. Acts or representations of acts of human masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation.
- c. Fondling or erotic touching of human genitals, pubic region, buttock or female breast.
- d. Excretory functions as part of or in connection with any activities set forth in (a) through (c) above.

9. Specified anatomical areas are any of the following conditions:

- a. Less than completely and opaquely covered:
 - i. Human genitals, pubic region, or pubic hair;
 - ii. Buttock; and
 - iii. Female breast below a point immediately above the top of the areola; and
- b. Human male genitals in a discernibly turgid state, even if completely covered.

10. **Massage:** Any method of pressure on or friction against or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating of the external soft parts of the body with the hands or other parts of the human body or with the aid of any mechanical or electrical apparatus or appliance with or without such supplementary aids as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in this practice.

B. Adult Uses Enumerated: The following shall, but not by way of limitation, be considered adult uses for the purpose of this Section 23.2:

- 1. Adult book store;
- 2. Adult motion picture theater;
- 3. Adult mini motion picture theater;
- 4. Adult entertainment cabaret;
- 5. Message establishment;
- 6. Body shop or model studio.

C. Limitations on Adult Uses: Adult uses shall be permitted subject to the following restrictions:

- 1. An adult use shall not be allowed within one hundred (100) feet of another existing adult use.
- 2. An adult use shall not be located within one hundred (100) feet of any zoning district which is zoned for general residential district (R-1) or mobile home park district (R-2).
- 3. An adult use shall not be located within one thousand (1000) feet of a pre-existing school or place of worship.
- 4. An adult use shall not be located in a building structure which contains another business that sells or dispenses in some manner alcoholic beverages.
- 5. Any adult use doing business at the time this Ordinance takes effect shall have one (1) year from the effective date of this Ordinance to comply with the above provisions of Paragraph 1 through 4, inclusive, of this Section 23.2.C entitled Limitations on Adult Uses.

6. Any adult use doing business at the time this Ordinance takes effect shall have thirty (30) days from the effective date of this Ordinance to apply for the issuance of an adult use license.

D. **Measurements of Distances:** For the purposes of this Ordinance, measurements shall be made in a straight line, without regard to intervening structures or objects, from the property line of the adult use to the nearest property line of another adult use, school, place of worship, or district zoned for residential use.

E. **License Required; Filing of Application; Filing Fee:** It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the Village of Bellevue, the operation of an adult use as herein defined, without first having obtained a separate license for such adult use from the President of the Village of Bellevue.

Every applicant for a license to maintain, operate or conduct an adult use shall file an application in duplicate under oath with the President upon a form provided by the Village Clerk and pay a non-refundable filing fee of Fifty Dollars (\$50.00) to the Village President who shall issue a receipt which shall be attached to the application filed with the President.

Within ten (10) days after receiving the application, the President shall notify the applicant that his application is granted, denied or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the President shall advise the applicant in writing whether the application is granted or denied.

Whenever an application is denied or held for further investigation, the President shall advise the applicant in writing of the reasons for such action.

Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any inspection or investigation required by this Section 23.2.C shall constitute an admission by the applicant that he or she is ineligible for such permit and shall be grounds for denial thereof by the President.

F. **Contents of Application for License:** An applicant for a license shall furnish the following information under oath:

1. Name and address.
2. Written proof that the individual is at least eighteen (18) years of age.
3. The exact nature of the adult use to be conducted and the proposed place of business and facilities thereto.
4. A statement by the applicant that he or she is familiar with the provisions of this article and is in compliance with them.

G. **Issuance of Adult Use License:** The President shall issue a license to maintain, operate or conduct an adult use unless he finds:

1. That the applicant is under the age of eighteen (18) years or under any legal disability.

2. That the applicant, at the time of application for renewal of any license issued under this Ordinance, would not be eligible for such license upon a first application.

3. The operation as proposed by the applicant, if permitted, would not have complied with all zoning restrictions of the Village of Bellevue.

4. The operation as proposed would be in violation of any provision of this Ordinance.

Every adult use license issued pursuant to this Ordinance will terminate at the expiration of one (1) year from the date of its issuance, unless sooner revoked.

H. Suspension or Revocation of License for Adult Use: Any license issued for an adult use may be revoked or suspended by the President if the President shall find:

1. That the licensee has violated any of the provisions of this Section 23.2.

2. The licensee has knowingly furnished false or misleading information or withheld relevant information on any application for any license or permit required by this Ordinance or knowingly caused or suffered another to furnish or withhold such information on his or her behalf.

3. That the licensee has violated any of the provisions of Section 23.1.

The licensee shall be responsible for the acts of his agents, servants and employees 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 President shall find that the licensee had not actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge.

The President, before revoking or suspending any license, shall give the licensee at least ten (10) days' written notice of the charges against him or her and the opportunity for a public hearing before the President at which time the licensee may present evidence bearing upon the question. In such cases, the charges shall be specific and in writing.

I. Automatic Suspension:

1. In the event a person under the age of eighteen (18) years is on the premises of an establishment operating as an adult use under this Ordinance, and views any "specified sexual activities" or "specified anatomical areas" as defined in this Ordinance, then the license issued pursuant to this Ordinance shall be suspended for a period of three (3) months.

2. The President, before suspending any license, shall give at least ten (10) days' written notice of the charge. The licensee may within five (5) days of receipt of said notice request a public hearing before the President at which time the licensee may present evidence bearing upon the question. The notice required hereunder may be delivered personally to the licensee or be posted on the premises of the establishment being used as an adult use.

J. Exterior Display: No adult use shall be conducted in any manner that permits the observation of any material depicting, describing or relating to "specified

sexual activities" or "specified anatomical areas" by display, decoration, sign, show window or other opening from any public way or from any property not licensed as an adult use.

K. Display of License and Permit: Every licensee shall display a valid license in a conspicuous place within the adult use business so that same may be readily seen by persons entering the premises.

L. Employment of Persons Under Age of Eighteen Prohibited: It shall be unlawful for any adult use licensee or his manager or employee to employ in any capacity within the adult business any person who is not at least eighteen (18) years of age.

M. Illegal Activities on Premises: No licensee or any officer, associate, member, representative, agent or employee of such licensee shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the licensed premises which is prohibited by any ordinance of the Village of Bellevue or law of the State of Illinois or of the United States.

23.3 SEVERABILITY CLAUSE: If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance, or any part thereof, or application thereof to any person, firm, corporation, public agency or circumstance is for any reason held to be unconstitutional or invalid or ineffective by any Court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. It is hereby declared to be the legislative intent of the Board of Trustees that this Ordinance would have been adopted had such unconstitutional or invalid provision, clause, sentence, paragraph, section or part thereof not then been included.

23.4 VIOLATION AND PENALTY: Any person who shall violate any of the provisions of this Ordinance shall be guilty of a misdemeanor. A person who is convicted shall be punished by a fine of not less than One Hundred Dollars (\$100.00) or more than Five Hundred Dollars (\$500.00) or by imprisonment for a period not to exceed six (6) months or by both such fine and imprisonment.

23.5 REPEAL OF CONFLICTING ORDINANCES: Any other provisions of ordinances or resolutions of the Village of Bellevue contrary to those in this Ordinance are hereby expressly revoked and shall be considered to be superseded by the provisions of this Ordinance.

Section 2: This ordinance shall be effective as of the date of its passage.

PASSED AND APPROVED THIS 25th DAY OF APRIL, 1994.

AYES: 6
NAYS: 0
ABSENT: 0

VILLAGE OF BELLEVUE

By: _____
Larry N. Howard, President

Attest: _____
Carol S. Howard, Clerk

S1894-231.A