

Chapter 9.04
Offenses By or Against Public Officers and
Government

Sections:

- 9.04.010 False Fire Alarms Prohibited.**
- 9.04.020 Obedience to Officers.**
- 9.04.030 Personating Police Officers.**
- 9.04.040 Assisting Escape of Prisoner.**

9.04.010 False Fire Alarms Prohibited.

No person shall give or send or cause to be given or sent in any manner any alarm of fire which he knows to be false. (Prior code § 9.02[4])

9.04.020 Obedience to Officers.

No person shall, without reasonable excuse or justification, physically resist or engage in any conduct, which interferes with any officer of the village while such officer is performing official duties. (Prior code § 9.02[5])

9.04.030 Personating Police Officers.

No person shall personate a policeman or peace officer within the village of Oakfield. (Prior code § 9.02[7])

9.04.040 Assisting Escape of Prisoner.

No person shall intentionally aid any prisoner or person to escape from the lawful custody of a village police officer. (Prior code § 9.02[6])

Chapter 9.08
Offenses Against Public Peace and
Decency

Sections:

- 9.08.010 Disorderly Conduct Prohibited.**
- 9.08.012 Noise.**
- 9.08.015 Unlawful Use of Telephone.**
- 9.08.020 Gambling, Lotteries, Fraudulent Devices and Practices Prohibited.**
- 9.08.030 Obscenity.**
- 9.08.040 Adult-Oriented Establishments.**

9.08.010 Disorderly Conduct Prohibited.

No person shall within the village of Oakfield:

A. In any public or private place engage in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct which tends to cause or provoke a disturbance of public order; is subject to the provision of section 1.20.010

State law reference-Similar provisions, Wis. Stats. 947.01.

9.08.012 Noise.

Unnecessary noise. Whoever causes any unreasonably loud, disturbing and unnecessary noise or any noise of such character, intensity or duration as to be detrimental to the life or health of any individual or which is in the disturbance of public peace and welfare is hereby prohibited.

Prohibitions. The following acts among others are declared to be loud, disturbing and unnecessary noises and noises in violation of this section; but this enumeration shall not be deemed to be exclusive;

(1) *Horns and signal devices.* The sounding of any horn or signal device on any

automobile, motorcycle, bus or other vehicle, except as a danger signal or as brakes are being applied and declaration of the vehicle is intended; the creation by means of any signal device of any unreasonable, loud or harsh sound and the sounding of such device for any unnecessary or unreasonable period of time.

(2) *Unreasonable playing of radio, phonographs or musical instruments.* The playing of any radio, phonograph or any musical instrument in such manner or with such volume as to annoy or to disturb the quiet, comfort or repose of person in any office or hospital, or in any hotel or other type of residence, or of any persons in the vicinity.

(3) *Public address systems.* The use of a public address system to amplify sound of any nature in such manner or with such volume as to annoy or disturb the quiet, comfort or repose of persons in any office or hospital, or in any hotel or other type of residence, or of any person in the vicinity.

(4) *Unnecessary noises by animals, birds and fowl.* The keeping of any animal, bird or fowl which by causing frequent or long continued noise shall disturb the comfort or repose of any person in the vicinity.

Penalties. Each person found guilty of a violation of any of the provisions of this section shall be subject to the provisions of section 1.20.010.

9.08.015 Unlawful Use of Telephone.

Whoever does any of the following is subject to the provisions of section 1.20.010.

1. With intent to frighten, intimidate, threaten, abuse or harass, makes a telephone call and threatens to inflict injury or physical harm to any person or the property of any person.

2. With intent to frighten, intimidate, threaten or abuse, telephones another and uses any obscene, lewd or profane language or suggests any lewd or lascivious act.

3. Makes a telephone call, whether or not conversation ensues, without disclosing his/her identity and with intent to abuse or threaten any person at the called number.

4. With intent to harass or offend, telephones another and uses any obscene, lewd or profane language or suggest any lewd or lascivious act.

5. Makes or causes the telephone of another to repeatedly to ring, with intent to harass any person at the called number.

6. Makes repeated telephone calls, whether or not conversation ensues, with intent to solely to harass any person at the called number.

7. Makes a telephone call, whether or not conversation ensues, without disclosing his/her identity and with intent to harass any person at the called number.

8. Knowingly permits any telephone under his/her control to be used for any purpose by this section.

State law reference-Crimes against public peace, order and other interests generally, Wis. Stats. Ch. 947.

9.08.020 Gambling, lotteries, fraudulent devices and practices prohibited.

All forms of gambling, lotteries and fraudulent devices and practices are prohibited within the limits of the village. Any peace officer or policeman of the village is authorized to seize anything devised solely for gambling or found in actual use for gambling within the village and to dispose thereof after a judicial determination that said device was used solely for gambling or found in actual use for gambling. (Prior code § 9.03(1))

9.08.030 Obscenity.

No person shall use obscene language or engage in obscene conduct within the village. (Prior Code § 9.03 (3)).

9.08.040 Adult-oriented establishments.

A. Intent. The village board intends that the enforcement of this section shall be used primarily to combat the obscenity industry and shall never be used for harassment or censorship purposes against materials or performances having serious artistic, literary, political, educational or scientific value. The village board further intends that the enforcement of this section shall be consistent with the first amendment to the United States Constitution, Article I, Section 3 of the Wisconsin Constitution and the compelling state interest in protecting the free flow of ideas. The village board has authority under its general police powers set forth in Sec. 61.34(1), Stats., to act for the good order of the municipality and for the health, safety and welfare of the public; and may carry out its powers by regulation and suppression. The village board recognizes it lacks authority to regulate obscenity in light of Sec. 66.051(3), Stat., and does not intend by adopting the ordinance codified in this section to regulate obscenity, since nudity in

and of itself is not obscene, it declares its intent to enact an ordinance addressing the secondary effects of live, totally nude, nonobscene, erotic dancing in bars and taverns. Bars and taverns featuring live totally nude, non-obscene, erotic dancing have in other communities tended to further the increase of criminal and other offensive activity, to disrupt the peace and order of the communities, to depreciate the value of property, to harm the economic welfare of the communities and to negatively affect the quality of life of the communities, and such secondary effects are detrimental to the public health, safety and general welfare of citizens. The village board recognizes the U.S. Supreme Court has held that nude dancing is expressive conduct within the outer parameters of the First Amendment to the United States Constitution and therefore entitled to some limited protection under the First Amendment, and governing body further recognizes that freedom of speech is among our most precious and highly protected rights, and wishes to act consistently with full protection of those rights. The village board, as the governing body, is aware, based on the experiences of other communities, that bars and taverns in which live, totally nude, nonobscene, erotic dancing occurs may and do generate secondary effects which the governing body believes are detrimental to the public health, safety and welfare of the citizens of the village. Among these secondary effects are:

1. The potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses;
2. The potential depreciation of property values in neighborhoods where bars and taverns featuring nude dancing exist;
3. Health risks associated with the spread of sexually transmitted diseases;
4. The potential for infiltration by organized crime for the purpose of unlawful conduct.

The village board desires to minimize, prevent and control these adverse effects and thereby protect the health, safety and general welfare of the citizens of the Village of Oakfield and to protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight.

B. Definitions. The terms used in this section shall be defined as follows:

“Adult cabaret”, means an establishment which features topless dancers, strippers or similar entertainers.

“Adult entertainment” means any exhibition of any motion picture, video cassette, live performance display or dance of any type which has as its dominant theme or is distinguished or characterized by an emphasis on any actual or simulated “specified sexual activities,” “specified anatomical areas,” the removal of articles of clothing or partial or total nude appearance.

“Adult entertainment store” means an establishment including in its stock in trade for sale, rent, lease, inspection or viewing books, films, video cassettes, novelties, magazines or other periodicals which have as their dominant theme or are distinguished or characterized by their emphasis on matters depicting, describing or relating to “specific sexual activities” or “specified anatomical areas”.

“Adult mini-theater” means an enclosed building with a capacity of less than fifty (50) persons used for presenting adult entertainment having as its dominant theme or distinguished or characterized by an emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” for observation by patrons.

“Adult oriented establishment” means and includes, but is not limited to, adult entertainment stores, adult theaters, adult mini-theaters, adult cabarets and any premises to which public patrons or members are

invited or admitted and which are physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purposes of viewing adult entertainment, whether or not such adult entertainment is held, conducted, operated or maintained for commercial gain.

“Adult theater” means an enclosed building with a capacity of fifty (50) or more persons as its dominant theme or distinguished having characterized by an emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” for observation by patrons.

“Operator” means any person, partnership, corporation or other organization operating, conducting, maintaining or owning any adult-oriented establishment.

“Specified anatomical areas” means less than completely and opaquely covered human genitals, pubic region, buttocks and female breast below a point immediately above the top of the areola.

“Specified sexual activities” means simulated or actual:

1. Showing of human genitals in a state of sexual stimulation or arousal;
2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sado-masochistic abuse, fellatio or cunnilingus;
3. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

C. Adult-Oriented Establishment License.

1. No person may engage in, conduct or carry on the operation or maintenance of an adult-oriented establishment without first obtaining a valid adult-oriented establishment’s license issued under this chapter.
2. A license may be issued only for one adult-orientated establishment located at a fixed and certain place. Any person desiring to operate more than one adult-oriented establishment

must have a license for each adult-oriented establishment.

3. Any adult-oriented establishment existing at the time of the passage of this section must submit an application for a license within sixty (60) days of the passage of the ordinance codified in this section.

D. Application for Adult-Oriented Establishment license shall pay the required fee of ten-thousand dollars (\$10,000.00) to defray the costs of administration and investigation of the application.

2. Any person desiring an adult-oriented establishment license shall file a written application with the village clerk on a form provided by the clerk's office. The information provided to the clerk shall be given under oath.

a. Corporations. If the applicant is a corporation, the name of the corporation shall be set forth exactly as set forth in its articles of incorporation, together with the date and state of incorporation, the names and residence addressed of each of its officers, directors and each stockholder holding five percent or more of the stock or beneficial ownership of the corporation. The application shall also be verified by an officer of the corporation.

b. Partnership. If the applicant is a partnership, the application shall set forth the name of the partnership, the name and residence address of each of the partners, including limited partners, and be verified by each partner. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply to the corporate partner.

c. Others. If the applicant is neither a corporation nor a partnership, the application shall set forth the true full name and residence address of the applicant and be verified by the applicant. The application shall also include any other name by which the applicant has been known during the previous five years.

3. The application also shall set forth the proposed place of business of the adult-orient-

ed establishment by business address, including suite number, and not by post office box, and shall contain a description of the nature and scope of the proposed business operation. In addition, the following information shall be furnished concerning the applicant if an individual; concerning each officer and director and all stockholders who own five percent or more of the stock or beneficial ownership if the applicant is a corporation; and concerning each partner, including limited partners, if the applicant is a partnership:

a. The previous residence address, if any, for a period of three years immediately prior to the date of application and the dates of such residence;

b. Written proof that the individual is at least eighteen (18) years of age;

c. A complete set of fingerprints;

d. The business, occupation or employment history for three years immediately preceding the date of application, including, but not limited to, whether such person previously operated under any permit or license in another municipality in this or another state and whether any such permit or license had ever been suspended or revoked;

e. All convictions in any state or federal court within the past five years, including municipal ordinance violations, exclusive of traffic violations, with a brief statement of the nature of the convictions and the jurisdiction in which the convictions occurred;

f. All pending criminal charges in any state or federal court, with a brief statement of the nature of the pending charges and the jurisdiction in which the charges are pending;

g. The names of persons who will have custody of the business records at the business location;

h. The name and address of the person who will be the agent for service of process;

i. The application shall include the proposed hours of operation and a detailed floor plan drawn to scale.

5. The village clerk shall notify the chief of police, the chief of the fire department, and the building inspector of any adult-oriented establishment license application and these officials shall inspect or cause to be inspected each such application and the premises to determine whether the applicant and the premises sought to be licensed comply with the regulations, ordinances and laws applicable thereto. These officials shall furnish to the safety committee, in writing, the information derived from such investigation and a statement as to whether the applicant and the premises meet the requirements of the department for whom the officer is certifying within five business days of receipt of notice from the village clerk. Upon receiving the information from said officials, the safety committee shall, within ten days file its written recommendation with the village board.

6. Upon receiving a recommendation of the safety committee, within thirty (30) days of receiving an application for a license, the village board shall grant with conditions or deny a license to the applicant. The Village clerk shall notify the applicant whether the application is granted or denied.

7. Whenever an application is denied, the village clerk shall advise the applicant, in writing, of the reasons for such action. If the applicant requests a hearing within ten days of receipt of notification of denial, a public hearing shall be held within ten days thereafter before the village board.

8. Failure or refusal of the applicant to give any information relevant to the application, failure or refusal to appear at any reasonable time and place for examination under oath regarding said application or refusal to submit to or cooperate with regard to any information required by this section shall constitute an admission by the applicant that he or she is

ineligible for such license and shall be grounds for denial.

E. Standards for Issuance of an Adult-Oriented Establishment License. The Village board shall issue an adult-oriented establishment license if, upon recommendation by the safety committee, it finds that:

1. The required fee has been paid;
2. The application conforms in all respects to this section;
3. The location of the adult-oriented establishment shall not be within one-thousand (1,000) feet of any church or synagogue building, school building or school property, child care or day care centers, public park or public recreational facility, government administration offices, any establishment licensed to sell alcohol nor within five-hundred (500) feet of in any residentially zoned district area or residential use;
4. The applicant has not knowingly made a material misstatement in the application;
5. The applicant has supplied all the information required under subsection (E)(3) of this section and the information requested by the protection of persons and property committee regarding the investigation of his or her application;
6. The adult-oriented establishment, as proposed by the applicant, would comply with all applicable laws, including, but not limited to, the village's building and zoning codes;
7. The applicant has not had an adult-oriented establishment license or permit or other similar license or permit revoked or suspended in this state or any other state within three years prior to the date of application;
8. The applicant, if an individual; any of the stockholders holding five percent or more of the stock or beneficial ownership of the corporation, and any officers, agents or directors, if the applicant is a corporation; or any of the partners, including limited partners,

if the applicant is a partnership, does not, at the time of application, have pending any criminal charge for, or within five years prior to the date of application has not been convicted of, any offense involving dishonesty, fraud, deceit, robbery, the use or threatened use of force or violence upon the person of another, or sexual immorality under Chapters 944 or 948, Wis. Stats. or other offenses, subject to 111.335, Wis. Stats., a amended;

9. The applicant, if a corporation, is licensed to do business and is in good standing in the state of Wisconsin;

10. All individual applicants; all stockholders holding five percent or more of the stock or beneficial ownership, directors and officers, if the applicant is a corporation; and all partners, including limited partners, if the applicant is a partnership, are at least eighteen (18) years of age.

F. Display of Adult-Oriented Establishment License. The adult-Oriented Establishment license shall be displayed in a conspicuous public place in the adult-oriented establishment.

G. Restrictions on Corporate-Licenses. Any corporation holding an adult-oriented establishment license under this section shall report to the village clerk, in writing, within fifteen (15) days of the event described herein, any of the following:

1. Any change of officers of the corporation;
2. Any change in the membership of the board of directors of the corporation.

H. Sale or Transfer. Upon the sale for transfer of any interest in an adult-oriented establishment, the license shall be void. Any person desiring to continue to operate an adult oriented establishment following sale or transfer shall apply for a license.

I. Responsibilities of the Operator of an Adult-Oriented Establishment.

1. Any act or omission of any employee constituting a violation of the provisions of this section shall be deemed the act or

omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended or renewed.

2. No employees of an adult-oriented establishment shall allow any minor to loiter around or to frequent an adult oriented establishment or to allow any minor to view adult entertainment.

3. The operator shall maintain the adult-oriented establishment in a clean and sanitary manner at all times

4. The operator shall maintain at least ten footcandles of light in the public portions of the adult-oriented establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment on a booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be maintained in such aisles, provided, however, at no time shall there be less than one foot-candle of illumination in said aisles, as measured from the floor.

5. No alcohol beverage may be served or permitted on the premises.

6. No sexual activity of any kind shall be permitted on the premises.

7. The operator shall insure compliance of the adult-oriented establishment and its patrons with the provisions of this section.

8. No person licensed as an adult-oriented establishment may, in any manner, advertise its establishment as licensed by the village.

J. Physical Layout of Adult-Oriented Establishment. Any adult-oriented establishment having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

1. Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult-oriented establishment and shall be unobstructed by any door, lock or other control-type devices.

2. Every booth, room or cubicle shall meet the following construction requirements:

a. Each booth, room or cubicle shall be separated from adjacent booths, rooms or cubicles and any nonpublic areas by a wall.

b. Each booth shall have at least one side totally open to a lighted public aisle so that there is an unobstructed view at all times of anyone occupying the same.

c. All walls shall be solid and without any openings, extended from the floor to a height of not less than six feet and be light colored, nonabsorbent, smooth textured and easily cleanable.

d. The floor must be light colored, nonabsorbent, smooth textured and easily cleanable.

e. The lighting level of each booth, room or cubicle, when not in use, shall be a minimum of ten footcandles at all times, as measured from the floor. Only one individual shall occupy a booth, room or cubicle at any time. No occupant shall engage in any type of sexual activity.

K. Renewal.

1. Every license issued pursuant to this section will terminate at the expiration of one year from date of issuance unless sooner revoked and must be renewed before operation is allowed in the following year. All applications for the renewal of adult-oriented establishment licenses issued by the village shall be filed with the village clerk's office on a form to be provided by the clerk no later than sixty (60) days prior to the expiration of the license. Applications to renew licensed shall be processed by the village in the same fashion as new applications. No license shall be renewed without a re-inspection of the premises as required in this section.

2. A license renewal fee of ten-thousand dollars (\$10,000.00) shall be submitted with the renewal application. In addition to the renewal fee, a late penalty of five-hundred dollars (\$500.00) shall be assessed against any applicant who files for renewal less than

sixty (60) days before the license expires. If the application is denied, one-half of the total fees collected shall be returned.

L. Suspension or Revocation.

1. Any adult-oriented establishment license may be suspended for not more than ninety (90) days or revoked by the village board for any of the following reasons:

a. Any of the grounds that would warrant the denial of the original application for the license;

b. Discovery that false or misleading information or data was given on any application or material facts were omitted from any application; The operator or any employee of the operator violates any provision of this section or any rules or regulations adopted by the village board pursuant to this section; provided, however, that in the case of a first offense by an operator where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days if the village board shall find that the operator had no actual or constructive knowledge of such violation and could not, by the exercise of due diligence, have had such actual or constructive knowledge;

d. The operator becomes ineligible to obtain a license or permit;

e. Any cost or fee required to be paid by this section is not paid;

f. Any intoxicating liquor or fermented malt beverage is served or consumed on the premises of the adult oriented establishment;

g. The establishment is operated outside of operation hours established by the village board;

h. There is any substantial change in the floor plan approved by the village board without the approval of the board.

2. An adult-oriented establishment license may be suspended or revoked after notice and hearing before the village board to determine if grounds for such suspension or revocation exist. Notice of the hearing shall be in writing and may be served by certified mail addressed

to the licensee at the current address of the licensee on file with the village clerk's office. The notice shall be served at least ten days prior to the date of hearing. The notice shall state the grounds of the complaint against the license and shall designate the time and place where the hearing will be held.

3. Any operator whose license is revoked shall not be eligible to receive a license for one year from the date of revocation. No location or premises for which a license has been issued shall be used as an adult-oriented establishment for six months from the date of revocation of the license.

M. Penalty. Any person who shall violate any provision of this section or who shall fail to obtain a license or permit as required hereunder, or who shall operate after his license is revoked, shall be subject to a forfeiture of one-thousand dollars (\$1,000.000). Each day of such violation shall constitute a separate violation.

N. Effective date. The ordinance codified in this section shall take effect and be in force from and after its passage and publication. (Ord. dated June 9, 1999)