

Chapter 132

SEXUALLY ORIENTED BUSINESSES

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| § 132-1. Purpose and intent. | § 132-13. Nonconforming uses. |
| § 132-2. Definitions. | § 132-14. Additional regulations for adult motels. |
| § 132-3. Classification. | § 132-15. Regulations pertaining to exhibition of sexually explicit films or videos. |
| § 132-4. Permit and/or license required. | § 132-16. Exterior portions of sexually oriented businesses. |
| § 132-5. Issuance of permit and/or license. | § 132-17. Signage. |
| § 132-6. Fees. | § 132-18. Persons younger than 18 prohibited; attendant required. |
| § 132-7. Inspection. | § 132-19. Massages or baths administered by person of opposite sex. |
| § 132-8. Expiration of permit and/or license. | § 132-20. Exemptions. |
| § 132-9. Suspension of permit and/or license. | § 132-21. Notices. |
| § 132-10. Revocation of permit and/or license. | § 132-22. Injunction. |
| § 132-11. Transfer of permit and/or license. | |
| § 132-12. Locational restrictions. | |

[HISTORY: Adopted by the Board of Trustees of the Village of Wilson 8-25-2008 by L.L. No. 1-2008. Amendments noted where applicable.]

GENERAL REFERENCES

Zoning — See Ch. 170.

§ 132-1. Purpose and intent.

It is the purpose of this chapter to regulate sexually oriented businesses, to promote the health, safety, morals and general welfare of the citizens of the Village of Wilson; and to establish reasonable and uniform regulations to prevent the continued deleterious location and concentration of sexually oriented businesses within the Village of Wilson. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials.

§ 132-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

ADULT ARCADE — Any place to which the public is permitted or invited wherein coinoperated or slug-operated or electronically, electrically or mechanically controlled still or motion-picture machines, projectors or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time and where the images so displayed are distinguished or characterized by the depicting or describing specified sexual activities or specified anatomical areas.

ADULT BOOKSTORE or ADULT VIDEO STORE —

- A. A commercial establishment that is customarily not open to the public generally but excludes any minor by reason of age and, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:
- (1) Books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, CDs or DVDs, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or
 - (2) Instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.
- B. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing specified sexual activities or specified anatomical areas and still be categorized as an adult bookstore or adult video store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an adult bookstore or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe specified sexual activities or specified anatomical areas. A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

ADULT CABARET — A nightclub, bar, restaurant or similar commercial establishment (i.e., juice bar or other business that does not serve alcoholic beverages) that regularly features:

- A. Persons who appear in a state of seminudity;
- B. Live performances that are characterized by the exposure of specified anatomical area or by specified sexual activities;
- C. Films, motion pictures, video cassettes, CDs or DVDs, slides or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or
- D. Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

ADULT MOTEL — A hotel, motel or similar commercial establishment which:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
- B. Offers a sleeping room for rent for a period of time that is less than 10 hours; or
- C. Allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than 10 hours.

ADULT MOTION-PICTURE THEATER — A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, CDs or DVDs, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

ADULT THEATER — A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities.

DIRECTOR — The Niagara County Sheriff and such employee(s) of the Niagara County Sheriff's Department as he may designate to perform the duties of the director under this chapter or any other official of the Village of Wilson that the Board of Trustees may designate to perform said duties.

ESCORT — A person who, for consideration, agrees or offers to act as a companion, guide or date for another person or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY — A person or business association who furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

ESTABLISHMENT — Includes any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- C. The additions of any sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of any sexually oriented business.

NUDE MODEL STUDIO — Any place where a person, who appears in a state of nudity or displays specified anatomical areas, is provided to be observed, sketched, drawn, painted,

sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.

NUDITY or STATE OF NUDITY — The appearance of a human bare buttock, anus, male genitals, female genitals or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola or human male genitals in a discernibly turgid state even if completely and opaquely covered.

PERMITTEE AND/OR LICENSEE — A person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

PERSON — An individual, proprietorship, partnership, corporation, association or other legal entity.

SEMINUDE — A state of dress in which clothing covers no more than the human bare buttock, anus, male genitals, female genitals or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola or human male genitals in a discernibly turgid state even if completely and opaquely covered.

SEXUAL ENCOUNTER CENTER — A business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- A. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- B. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or seminude.

SEXUALLY ORIENTED BUSINESS — An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion-picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

SPECIFIED ANATOMICAL AREAS — The male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.

SPECIFIED SEXUAL ACTIVITIES — Includes any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;
- C. Masturbation, actual or simulated; or
- D. Excretory functions as part of or in connection with any of the activities set forth in Subsections A through C above.

SUBSTANTIAL ENLARGEMENT (OF A SEXUALLY ORIENTED BUSINESS) — The increase in floor areas occupied by the business by more than 25%, as the floor areas exist on date of enactment.

TRANSFER OF OWNERSHIP OR CONTROL (OF A SEXUALLY ORIENTED BUSINESS) — Includes any of the following:

- A. The sale, lease or sublease of the business;
- B. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- C. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

§ 132-3. Classification.

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion-picture theaters;
- F. Adult theaters;
- G. Escort agencies;
- H. Nude model studios; and
- I. Sexual encounter centers.

§ 132-4. Permit and/or license required.

- A. It shall be unlawful for a person to operate a sexually oriented business without a valid permit and/or license issued by the director.
- B. An application for a permit and/or license must be made on a form provided by the Village of Wilson. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- C. The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the Health Department, Fire Department, building official and zoning officials.

- D. If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a permit and/or license as the applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten-percent or greater interest in the business must sign the application for a permit and/or license as the applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, each individual having a 10% or greater interest in the corporation must sign the application for a permit and/or license as the applicant.
- E. The fact that a person possesses other types of state or Village permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business permit and/or license.
- F. Applications for a permit, whether original or renewal, must be made to the director by the intended operator of the enterprise. Applications must be submitted by hand delivery to the office of the director or the director's designee during regular working hours. Application forms shall be supplied by the director. The intended operator shall be required to give the following information on the application form:
- (1) The name, street address (and mailing address, if different) and New York driver's license number of the intended operator; and the name and street address (and mailing address, if different) of the owner(s);
 - (2) The name under which the establishment is to be operated and a general description of the services to be provided;
 - (3) The telephone number of the establishment;
 - (4) The address and legal description of the tract of land on which the establishment is to be located;
 - (5) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the permit is sought and the date on which the establishment began operations as a sexually oriented business at the location for which the permit is sought; and
 - (6) If the establishment is not in operation, the expected start-up date (which shall be expressed in number of days from the date of issuance of the permit). If the expected start-up date is to be more than 10 days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.
- G. The application shall be accompanied by the following:
- (1) Payment of the application fee in full.
 - (2) If the establishment is a New York corporation, a certified copy of the articles of incorporation, together with all amendments thereto.

- (3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto.
 - (4) If the establishment is a limited partnership formed under the laws of New York, a certified copy of the certificate of limited partnership, together with all amendments thereto.
 - (5) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto.
 - (6) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed.
 - (7) If the persons identified as the fee owner(s) of the tract of land in Subsection G(6) are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the establishment for the purpose of the operation of the establishment.
 - (8) Any of the items in Subsection G(2) through (7) above shall not be required for a renewal application if the applicant states that the documents previously furnished the director with the original application or previous renewals thereof remain correct and current.
- H. The application shall contain a statement under oath that:
- (1) The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and
 - (2) The applicant has read the provisions of this chapter.
- I. A separate application and permit shall be required for each sexually oriented business.

§ 132-5. Issuance of permit and/or license.

- A. The director shall approve the issuance of a permit and/or license to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true:
- (1) An applicant is under 18 years of age.
 - (2) An applicant or an applicant's spouse is overdue in his payment to the Village of taxes, fines or penalties assessed against him or imposed upon him in relation to a sexually oriented business.
 - (3) An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has falsely answered a question or request for information on the application form.

- (4) An applicant is residing with a person who has been denied a permit and/or license by the Village to operate a sexually oriented business within the preceding 12 months or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.
 - (5) The premises to be used for the sexually oriented business have not been approved by the Health Department, Fire Department, building officials and zoning officials as being in compliance with applicable laws and ordinances.
 - (6) The permit and/or license fee required by this chapter has not been paid.
 - (7) An application of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.
- B. The permit and/or license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the sexually oriented business. The permit and/or license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
- C. The Health Department, Fire Department, building officials and zoning officials shall complete their certification that the premises is in compliance or not in compliance within 20 days of receipt of the application by the director. The certification shall be promptly presented to the director.
- D. In the event that the director determines that an applicant is not eligible for a permit, the applicant shall be given notice, in writing, of the reasons for the denial within 45 days of the receipt of its application by the director, provided that the applicant may request, in writing, that such period be extended for an additional period of not more than 10 days at any time before the notice is issued in order to make modifications necessary to comply with this chapter.
- E. An applicant may appeal the decision of the director regarding a denial to the Village of Wilson Board of Trustees by filing a written notice of appeal with the Village Clerk within 15 days after the applicant is given notice of the director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The director may submit a memorandum in response to the memorandum filed by the applicant on appeal to the Board of Trustees. After reviewing such memoranda, as well as the director's written decision, if any, and exhibits submitted to the director, the Board of Trustees shall vote to either uphold or overrule the director's decision. Such vote shall be taken within 21 calendar days after the date on which the Village Clerk receives the notice of appeal. However, all parties shall be required to comply with the director's decision during the pendency of the appeal.

§ 132-6. Fees.

The annual fee for a sexually oriented business permit and/or license is \$500. This fee is to be used to pay for the cost of the administration and enforcement of this chapter.

§ 132-7. Inspection.

An applicant or permittee and/or licensee shall permit representatives of the Niagara County Sheriff's Department, Health Department, Fire Department, Zoning Department or other Village or state departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

§ 132-8. Expiration of permit and/or license.

- A. Each permit and/or license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 132-5. Application for renewal should be made at least 30 days before the expiration date; and when made less than 30 days before the expiration date, the expiration of the permit and/or license will not be affected.
- B. When the director denies renewal of a license, the applicant shall not be issued a permit and/or license for one year from the date of denial. If, subsequent to denial, the director finds that the basis for denial of the renewal permit and/or license has been corrected or abated, the applicant may be granted a permit and/or license if at least 90 days have elapsed since the date denial became final.

§ 132-9. Suspension of permit and/or license.

The director shall suspend a permit and/or license for a period not to exceed 30 days if he determines that the permittee and/or licensee or an employee of a permittee and/or licensee has:

- A. Violated or is not in compliance with any section of this chapter.
- B. Become impaired or intoxicated through the use of alcoholic beverages while on the sexually oriented business premises.
- C. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.
- D. Knowingly permitted gambling by any person on the sexually oriented business premises.

§ 132-10. Revocation of permit and/or license.

- A. The director shall revoke a permit and/or license if a cause of suspension in § 132-9 occurs and the permit and/or license has been suspended within the preceding 12 months.
- B. The director shall also revoke a permit and/or license if he determines that:
 - (1) A permittee and/or licensee gave false or misleading information in the material submitted during the application process;

- (2) A permittee and/or licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;
 - (3) A permittee and/or licensee or an employee has knowingly allowed prostitution on the premises;
 - (4) A permittee and/or licensee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's and/or licensee's permit and/or license was suspended;
 - (5) A permittee and/or licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sexual conduct to occur in or on the permitted and/or licensed premises;
 - (6) A permittee and/or licensee is delinquent in payment to the Village or state for any taxes for fees past due;
 - (7) The owner or operator of the permitted establishment knowingly allowed a person under 18 years of age to enter an establishment.
 - (8) There was a change of owner or operator for which a transfer application was not timely filed.
- C. When the director revokes a permit and/or license, the revocation shall continue for one year, and the permittee and/or licensee shall not be issued a sexually oriented business permit and/or license for one year from the date revocation became effective. If, subsequent to revocation, the director finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit and/or license if at least 90 days have elapsed since the date the revocation became effective.
- D. After denial of an application by the director and the Board of Trustees or denial of a renewal of an application or suspension or revocation of a permit and/or license by the director, the applicant or licensee or permittee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

§ 132-11. Transfer of permit and/or license.

A permittee and/or licensee shall not transfer his permit and/or license to another, nor shall a permittee and/or licensee operate a sexually oriented business under the authority of a permit and/or license at any place other than the address designated in the application.

§ 132-12. Locational restrictions.

Sexually oriented businesses shall be permitted in any Industrial District, as defined in the Village of Wilson Zoning Ordinance,¹ provided that:

1. Editor's Note: See Ch. 170, Zoning.

- A. The sexually oriented business may not be operated within 1,000 feet of:
- (1) A church, synagogue or regular place of religious worship;
 - (2) A public or private elementary or secondary school;
 - (3) A boundary of any residential district;
 - (4) A public park;
 - (5) A licensed day-care center;
 - (6) Another sexually oriented business; or
 - (7) May not be located closer than 500 feet to the boundaries of a public highway.
- B. A sexually oriented business may not be operated in the same building, structure, or portion thereof containing another sexually oriented business.
- C. For the purpose of this chapter, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a church, synagogue, regular place of worship or public or private elementary or secondary school or to the nearest boundary of an affected public park, residential district or residential lot or licensed day-care center.
- D. For purposes of Subsection C of this section, the distance between any two sexually oriented business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.
- E. No such sexually oriented business shall be located closer than 500 feet from the boundary of any street, road or highway of the Village, the County of Niagara or the State of New York.

§ 132-13. Nonconforming uses.

- A. Any business lawfully operating on the effective date of this chapter that is in violation of the locational or structural configuration requirements of this chapter shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered, except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.
- B. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location subsequent to the grant or renewal of the sexually

oriented business permit and/or license of a church, synagogue or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park or residential district within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

§ 132-14. Additional regulations for adult motels.

- A. Evidence that a sleeping room in a hotel, motel or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than 10 hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.
- B. It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented permit and/or license, rents or sublets a sleeping room to a person and, within 10 hours from the time the room is rented, he rents or sublets the same sleeping room again.
- C. For purposes of Subsection B of this section, the terms "rent" or "sublet" mean the act of permitting a room to be occupied for any form of consideration.

§ 132-15. Regulations pertaining to exhibition of sexually explicit films or videos.

A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space a film, video cassette, CD or DVD, or other video reproduction that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- A. Upon application for a sexually oriented permit and/or license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- B. The application shall be sworn to be true and correct by the applicant.

- C. No alteration in the configuration or location of a manager's station may be made without the prior approval of the director or his designee.
- D. It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- E. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding rest rooms. Rest rooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- F. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in Subsection E remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection A of this section.
- G. No viewing room may be occupied by more than one person at any time.
- H. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle as measured at the floor level.
- I. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

§ 132-16. Exterior portions of sexually oriented businesses.

- A. It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.
- B. It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights or any words, lettering, photographs, silhouettes, drawings or pictorial representations of any manner except to the extent permitted by the provisions of this chapter.
- C. It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

- (1) The establishment is a part of a commercial multiunit center; and
 - (2) The exterior portions of each individual unit in the commercial multiunit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way as to be a component of the overall architectural style or pattern of the commercial multiunit center.
- D. Nothing in this chapter shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

§ 132-17. Signage.

- A. Notwithstanding any other Village ordinance, code or regulation to the contrary, it shall be unlawful for the owner or operator of any sexually oriented business or any other person to erect, construct or maintain any sign for the sexually oriented business other than the one primary sign and one secondary sign as provided herein.
- B. Primary signs shall have no more than two display surfaces. Each such display surface shall:
- (1) Not contain any flashing lights;
 - (2) Be a flat plane, rectangular in shape;
 - (3) Not exceed in area its fractional portion of the permissible total signage, as defined in the Village of Wilson Zoning Ordinance,² when taken in conjunction with the signage contained in the primary sign as a whole (i.e., each side of said sign's surface area), together with the area of any secondary sign as defined below; and
 - (4) Not exceed four feet in height or six feet in length.
- C. Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner and may contain only the name of the enterprise.
- D. Each letter forming a word on a primary sign shall be of solid color, block design and each such letter shall be the same print type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
- E. Secondary signs shall have only one display surface. Such display surface shall:
- (1) Be a flat plane, rectangular in shape;
 - (2) Not exceed in area the permissible total signage, as defined in Article XVII of the Village of Wilson Zoning Ordinance, when taken in conjunction with the signage contained in any primary sign as defined hereinabove;
 - (3) Not exceed four feet in height and four feet in width; and
 - (4) Be affixed or attached to any wall or door of the enterprise.

2. Editor's Note: See Ch. 170, Zoning.

F. The provisions of Subsections B(1), C and D shall also apply to secondary signs.

§ 132-18. Persons younger than 18 prohibited; attendant required.

- A. It shall be unlawful to allow a person who is younger than 18 years of age to enter or be on the premises of a sexually oriented business at any time that the sexually oriented business is open for business.
- B. It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented businesses' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of 18 years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of 18 unless such attendant asked for and was furnished:
- (1) A valid operator's, commercial operator's or chauffeur's driver's license; or
 - (2) A valid personal identification certificate issued by the State of New York reflecting that such a person is 18 years of age or older.

§ 132-19. Massages or baths administered by person of opposite sex.

It shall be unlawful for any establishment, regardless of whether it is a public or private facility, to operate as a massage salon, massage parlor or any similar type business without a valid state permit or license. Furthermore, it shall be unlawful for any such business, licensed or otherwise, to permit physical contact with the recipient of such services by a person of the opposite sex, where said recipient and/or the proprietor/masseuse is in a state of nudity or seminude state (as defined hereinabove) while receiving such services.

§ 132-20. Exemptions.

It is a defense to prosecution under this chapter that a person appearing in a state of nudity did so in a modeling class operated:

- A. By a proprietary school, licensed by the State of New York, or a college, junior college or university supported entirely or partly by taxation;
- B. By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

§ 132-21. Notices.

- A. Any notice required or permitted to be given by the director or any other Village office, division, department or other agency under this chapter to any applicant, operator or owner of an establishment may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit or transfer application that

has been received by the director or any notice of address change that has been received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the director or his designee shall cause it to be posted at the principal entrance to the establishment.

- B. Any notice required or permitted to be given to the director by any person under this chapter shall not be deemed given until and unless it is received in the office of the director.
- C. It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the director, in writing, of any change of residence or mailing address.

§ 132-22. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid permit and/or license or otherwise violates this chapter is subject to a suit for injunction as well as prosecution for criminal violations.