

## Chapter 52

### ADULT USES

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[HISTORY: Adopted by the Board of Trustees of the Village of Alden 11-23-1981 as L.L. No. 6-1981 (Ch. 4 of the 1966 Code). Amendments noted where applicable.]

#### GENERAL REFERENCES

Peace and good order -- See Ch. 147.

Zoning -- See Ch. 210.

Fees -- See Ch. A220.

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#### § 52-1. Purpose.

It is recognized that there are some uses which, because of their very nature, have serious objectionable operational characteristics. Such activities are deleterious to the health, welfare and well-being of the residents of the Village of Alden and adversely and seriously endanger the adjacent areas thereto. It is recognized that special regulation is necessary in order to prevent proliferation of such uses and to ensure that those effects will not adversely influence the surrounding neighborhoods.

#### § 52-2. Definitions.

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

ADULT BOOKSTORE -- A person, establishment or business, whether retail or wholesale, having more than a minimal portion of its stock-in-trade, recordings, books, magazines, periodicals, films, videotapes/cassettes or other viewing materials for sale or viewing on or off the premises, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or anatomical areas; or a person, establishment or

business containing a segment or section devoted to the sale or display of such material.

**ADULT MOTION-PICTURE THEATER** -- An enclosed or unenclosed building, structure or portion thereof used for presenting materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or anatomical areas for observation by patrons.

**ADULT USES** -- Any person, establishment or business involved in the viewing or dissemination of material distinguished or characterized by an emphasis on matter depicting, describing or relating to a specific sexual activity or anatomical area.

**ANATOMICAL AREAS:**

- A. Less than the completely and opaquely covered genitals, pubic region or female breasts below a point immediately above the top of the areola.
- B. Human male genitals in a discernably turgid state, even if completely and opaquely covered.

**BUSINESS** -- Any commercial enterprise, association or arrangement for profit.

**DISSEMINATION** -- The transfer of possession, custody, control or ownership of or the exhibition or presentation of any performance to a customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities or anatomical areas.

**MINIMAL PORTION** -- Ten percent (10%) of gross sales for any calendar year.

**PERSON** -- Any individual, firm, partnership, corporation, club, association or legal representative, acting individually or jointly.

**SEXUAL ACTIVITIES:**

- A. Human genitals in a state of sexual stimulation or arousal.
- B. Acts of human masturbation, sexual intercourse or sodomy.
- C. Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts.

**SUBSTANTIAL CONNECTION:**

- A. In a sole proprietorship, an individual who owns, operates, controls or conducts, directly or indirectly, any premises, building or location upon which any adult use takes place.
- B. In a partnership, limited or general, an individual who shares in the ownership or control of any of the assets of the partnership business.
- C. In a corporation, an individual who is an officer, director or holder, either directly, indirectly or beneficially, of more than twenty percent (20%) of any class of stock.

**§ 52-3. Restrictions.**

In addition to other requirements of this chapter and the Code of the Village of Alden, adult uses shall be permitted, subject to the following restrictions:

- A. No adult use shall be allowed within three hundred (300) feet of another existing adult use.
- B. No adult use shall be located within four hundred (400) feet of the boundaries of any district that is zoned for residential use.
- C. No adult use shall be located within one thousand (1,000) feet of a preexisting school or place of worship.
- D. No adult use may be located in any zoning district except that which is zoned as industrial.
- E. Signs. Only one (1) sign shall be permitted, visible from the exterior of a building which is occupied by a regulated use, and such sign shall be no larger than two hundred (200) square feet, nor shall such sign consist of any material other than plain lettering. No sign shall have any photographic or artistic representation whatsoever thereon.
- F. Exposure of materials to public view. No regulated use shall expose or cause to be exposed to public view, visible from the outside of the premises, any of the materials regulated by this chapter.

**§ 52-4. Certificate of registration. [Amended 1-23-2003 by L.L. No. 2-2003]**

No person, firm, association, club, corporation or other entity shall lease, rent, maintain, operate, use or allow to be operated or used any business or establishment, any part of which contains an adult use, without first complying with the provisions of this section.

- A. In addition to all other required licenses and permits, no form of adult use shall be permitted to operate until a certificate of registration is obtained from the Village Clerk's office. Application for a certificate of registration will contain:
- (1) The name and address of the person, business or establishment, subject to the provisions of this section.
  - (2) The address of the premises so regulated.
  - (3) The name and address of the owner(s) of the premises and the name and address of the beneficial owner(s), if the property is in a land trust.
  - (4) The name, business address, home address, business telephone number, and home telephone phone number of all persons having any connection with the business or establishment, subject to the provisions of this section.
  - (5) The criminal record, convictions and/or pleas of guilty to any violation of any Federal, State, and/or local criminal and/or penal law and/or code for all persons listed herein.
  - (6) The exact nature of the adult use.
  - (7) If the premises or the building in which the business containing the adult use is located is leased or rented, a copy of said lease.
- B. If there occurs any change in the information required for the certificate of registration, the Village Clerk shall be notified of any such changes, and a new, amended application shall be filed within ten (10) days of such change.
- C. The processing fee for each such certificate of registration or amendment thereto shall be established by resolution of the Board of Trustees.<sup>1</sup>
- D. Certificates of registration shall, unless revoked, be valid for one (1) year from the date of issuance.

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<sup>1</sup> Editor's Note: See Ch. A220, Fees.

- E. All fees are nonrefundable.
- F. No certificate of registration issued under the provisions of this section shall be transferable or assignable to any other person without the written permission of the Board of Trustees, nor shall any certificate of registration be transferable for use at any other premises, building or location other than that so stated and set forth in the certificate of registration.
- G. All certificates of registration must be prominently and conspicuously displayed on the premises, building or location for which it is issued by the owner, manager or agent of the adult use.
- H. Any intentional or knowingly made false statement or any statement which a registrant or applicant should reasonably have known to be false, which is provided in the certificate of registration or any document or information supplied therewith, shall be grounds for rejection, suspension or revocation of the certificate.
- I. Periodic inspections by authorized police agencies or departments shall be made. Such inspections shall be reasonable as to the time and the manner of the same.

**§ 52-5. Applicability.**

This chapter shall apply to any person, firm, corporation, club, association or other entity which actually engages in the conduct of a regulated use under this chapter and shall further and equally apply to the owner of any building, structure or premises upon which such regulated use is conducted. Any violation of this chapter shall subject both the person, firm, club, association, corporation or entity conducting such regulated use and the owner of the premises upon which such regulated use is conducted to the penalties provided herein.

**§ 52-6. Revocation; hearing.**

- A. The Board of Trustees reserves the power to revoke, without notice, any certificate of registration issued under the provisions of this chapter at any time in cases in which such certificates were procured by fraud or false representation of facts or for the violation of or failure to comply with any provision of this chapter by any registrant or his or her servants, agents or employees. In case of such revocation, no portion of any fee for such certificate shall be refunded.

- B. After any such revocation, the registrant, upon request, shall be entitled to a hearing before the Board of Trustees not less than ten (10) days after such revocation nor more than thirty (30) days afterwards. All such requests must be in writing and given to the Village Clerk, who will set a date for the hearing, giving the registrant ten (10) days' notice thereof.

**§ 52-7. Penalties for offenses.**

- A. Any person violating any of the provisions of this chapter shall, upon conviction thereof, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding two hundred fifty dollars (\$250.00) or by imprisonment for a term not exceeding fifteen (15) days, or by both such fine and imprisonment. **[Amended 3-6-1995 by L.L. No. 3-1995]**
- B. The continuation of an offense under this chapter shall constitute, for each day the offense continues, a separate and distinct violation hereunder.