

ORDINANCE NO. 2008-05

ORDINANCE REPEALING AND CREATING CHAPTER 10, ARTICLE II ADULT ENTERTAINMENT

The Town Board of the Town of Buchanan does hereby ordain as follows:

Chapter 10, Article II of the Municipal Code of the Town of Buchanan is hereby repealed and re-created to read:

Sec. 10-26. Licensing.

This ordinance is enacted pursuant to licensing powers granted the town, and is intended to be used in disciplinary proceedings.

Sec. 10-27. Authority.

- (a) The Town Board of the Town of Buchanan has explicit authority under Sec. 125.10(1), Wis. Stats., to adopt regulations governing the sale of alcohol beverages which are in addition to those set forth in Ch. 125, Wis. Stats.; and
- (b) The Town Board has authority under its general police powers set forth in Sec. 62.11(5), Wis. 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; and
- (c) The Town Board recognizes it lacks authority to regulate obscenity, and does not intend by adopting this Section to regulate obscenity, but the Town Board declares its intent to enact an ordinance addressing the secondary effects of live, totally nude, non-obscene, erotic dancing in bars and taverns; and
- (d) 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 real 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; and
- (e) The Town Board recognizes the U.S. Supreme Court has held that nude dancing is expressive conduct within the outer perimeters of the First Amendment to the United States Constitution and therefore entitled to some limited protection under the First Amendment, and the Town Board 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; and

(f) However, the Town Board is aware, based on the experiences of other communities, that bars and taverns in which live, totally nude, non-obscene, 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 Town of Buchanan; and

(g) 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; and,
- (4) The potential for infiltration by organized crime for the purpose of unlawful conduct; and

(h) The Town Board desires to minimize, prevent and control these adverse effects and thereby protect the health, safety and general welfare of the citizens of the Town of Buchanan; 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; and

(i) The Town Board has determined that enactment of an ordinance prohibiting live, totally nude, non-obscene, erotic dancing in bars and taverns licensed to serve alcoholic beverages promotes the goal of minimizing, preventing and controlling the above adverse effects and thereby protects the health, safety and general welfare of the citizens of the Town of Buchanan; protects the citizens from increased crime; preserves the quality of life; preserves property values and character of surrounding neighborhoods; and deters the spread of urban blight.

Sec. 10-28. Grounds for Suspension or Revocation.

The following shall constitute grounds for suspension or revocation of a license issued by this town under Chapter 125 of the Wisconsin Statutes:

- (a) Conviction of an offense, contrary to Wisconsin Statute 944.21, or any successor statute or later amended version.
- (b) Arrest or bringing, of charges, whether by complaint or citation, of a license holder pursuant to Wisconsin Statute 944.21, or an ordinance pursuant thereto.
- (c) A finding by the Town Board, whether or not court charges are filed, that the

operation of the licensed facility or activity is in conflict with Wisconsin Statute 944.21.

(d) A finding by the Town Board that any of the following conduct has occurred on premises which are licensed to sell intoxicating liquors and/or fermented malt beverages:

(1) The following acts or conduct on licensed premises are specified sexual activities:

- i. To display human genitals in a state of sexual stimulation or arousal.
- ii. To encourage or engage in acts or representation of acts of human masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation.
- iii. To encourage or permit any person to touch, caress, or fondle the breasts, buttocks, anus, or genitals of another person.
- iv. To employ any device, costume or covering which gives the appearance or simulates the areola, genitals, pubic hair, perineum, or anus.
- v. To perform excretory functions as part of or in connection with any activities set forth in i. through iv. above.

(2) Sexual Contact: Sexual contact means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desires of either party.

(3) Stimulation: The actual or simulated displaying of the pubic hair, anus, vulva, or genitals.

(4) Attire: The failure to comply with the following performance and costume requirements: no licensee, either personally or through his/her agent or employee, shall furnish entertainment or permit the performance of any act, stunt or dance by dancers, performers or entertainers whether such dancers, performers, or entertainers are employed by the licensee that does not meet the following wearing apparel standards when performing or when present upon the licensed premises.

- i. That portion of every costume to be worn by dancers, performers or entertainers covered by the provisions of this subsection and which relates to the anus, vulva or genitals shall be of nontransparent material.
- ii. The lower portion of the costume worn by a female dancer, performer or entertainer, or a female impersonator, shall encircle the body at the area of the sex organs and buttocks in a groin-string fashion at a minimum. This portion of the costume shall be of such dimensions and so conformed, fabricated and affixed to the body so as to completely cover the genitals including the outer and inner labia, vulva, and public hair area at all times. An animal fur piece or other device simulating the hair surrounding the pubic area shall not constitute compliance with the costume requirements of this ordinance.

- iii. The lower portion of the costume worn by a male dancer, performer, or entertainer shall encircle the area of the sex organs and the buttocks in a ground string fashion at a minimum. This portion of the costume shall be of such dimensions as so conformed; fabricated and affixed to the body so as to completely cover the genitals, including the penis, testicles, and public hair at all times. The display of the male genitals in the turgid state, whether covered or uncovered, shall constitute a violation of this ordinance.
- iv. No retail licensee for on-premises consumption shall suffer or permit any person to appear on licensed premises in such manner or attire as to expose to view any portion of the anus, genitals, pubic hair, or any simulation thereof.

(5) Disorderly Conduct by Patrons: Permitting any patron to participate in any act, stunt or dance that would constitute grounds for disciplinary proceedings under this ordinance.

(6) Further Physical Conduct: Entertainers have physical contact with customers during their act, or enticing customers into joining into same.

(7) Entertainer Conduct: Entertainers whose breasts and buttocks are exposed to view shall perform only upon a stage at least 18 inches above the immediate floor level.

(8) Showing Film or Other Video Medium: The showing of any act, stunt or dance that would constitute grounds for disciplinary proceedings under this ordinance on film or other video medium.

(e) Regardless of the basis for the hearing on an adult-oriented establishment's violation of this ordinance, the standard for disciplinary action shall be whether the Board finds, by a preponderance of the evidence, that the grounds have occurred.

Sec. 10-29. Disciplinary Guidelines.

Alcohol licensees are to be disciplined according to the guidelines of present Wisconsin Statute 125.12, or any other later amended or successor statute.

Sec. 10-30. Exemptions.

The provisions of this ordinance do not apply to the following licensed establishments; theaters, performing arts centers, civic centers, and dinner theaters where live dance, ballet, music and dramatic performances of serious artistic merit are offered on a regular basis and in which the predominant business or attraction is not the offering to customers of entertainment which is intended to provide sexual stimulation or sexual gratification to such customers and where the establishment is not distinguished by an emphasis on, or the advertising or promotion of, employees engaging in nude erotic dancing.

Sec. 10-31. Definitions.

For purposes of the ordinance, the term “licensed establishment” means any establishment licensed by the Town Board of the Town of Buchanan to sell alcohol beverages pursuant to Ch. 125, Wis. Stat. The term “licensee” means the holder of a retail “Class A”, “Class B”, Class “B”, Class “A”, or “Class C” license granted by the Town Board of the Town of Buchanan pursuant to Ch. 125, Wis. Stats.

Sec. 10-32. Penalties.

The penalty for each violation shall be determined by said Town Board taking into account the number of past and present violations proven, and the severity of the current offense.

- (a) Any person, partnership, or corporation who is found to have violated this ordinance shall be fined a definite sum not less than \$250.00 nor more than \$1,000.00. A conviction may constitute cause for suspension or revocation of license, or such lesser penalty as the Town Board may lawfully determine to be appropriate.
- (b) Each violation of this ordinance shall be considered a separate offense, and any violation continuing more than one day shall be considered a separate offense.

Sec. 10-33. Severability.

In the event any portion of this ordinance, which, in part, is intended to incorporate Wisconsin obscenity provisions, is found unconstitutional or invalid, the remaining portions shall remain in full force and effect.

Sec. 10-34. Effect.

This ordinance shall be effective upon passage and publication as provided by law.

Adopted this 15th day of January, 2008.

TOWN OF BUCHANAN:

Mark McAndrews
Town Chairman

ATTEST:

Angela Gorall
Town Administrator/Clerk