

ORDINANCE NO: 2000-03

AN ORDINANCE ADDRESSING SEXUALLY ORIENTED
ADULT ENTERTAINMENT BUSINESSES AND PROVIDING FOR FEES,
LICENSES AND PERMITS

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF LOOGOOTEE,
INDIANA, THAT:

SECTION I - Definitions

As used in this Article, the following words, phrases and terms shall have the following meaning, unless the context clearly indicates that a different meaning is intended:

ADULT BOOKSTORE. An establishment having as a substantial amount of its stock in trade or its dollar volume in trade, books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

ADULT CABARET. A nightclub, bar, theater, restaurant or similar establishment which features live performances by topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas or which regularly feature films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas for observation by patrons.

ADULT DRIVE-IN THEATER. A lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions, and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats in which a substantial amount of the total presentation time is devoted to the showing of materials distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas for observation by patrons.

ADULT ENTERTAINMENT BUSINESS. An adult bookstore, adult motion picture theater, adult mini motion picture theater, adult motion picture arcade, adult cabaret, adult drive-in theater, adult live entertainment arcade or other non-specified businesses which, as a substantial part of their business activities, sell or provide depictions of or provide activities which are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas.

ADULT LIVE ENTERTAINMENT ARCADE. Any building or structure which contains or is used for commercial entertainment where the patrons directly or indirectly are charged a fee to view from an enclosed or screened area or booth, a series of live dance routines, strip performances or other gyrational choreography, which performances are distinguished or characterized by an emphasis on specified sexual activities or by exposure of specified anatomical areas.

ADULT MINI MOTION PICTURE THEATER. An enclosed building with a capacity of more than five (5) but less than fifty (50) persons, used for presenting films, motions pictures, video cassettes, slides or similar photographic reproductions in which a substantial part or portion

of the total presentation time is devoted to the showing of materials which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons herein.

ADULT MOTION PICTURE ARCADE. Any place to which the public is permitted or invited, wherein coin- 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 (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on depicting or describing specified sexual activities or specified anatomical areas.

ADULT MOTION PICTURE THEATER. An enclosed building with a capacity of fifty (50) or more persons used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a substantial portion of the total presentation time is devoted to showing of materials which are 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.

SPECIFIED ANATOMICAL AREAS shall mean any of the following:

- (a) less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the aureole; or
- (b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES shall mean any of the following:

- (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 regions, buttocks or female breasts;
- (d) flagellation or torture in the context of a sexual relationship;
- (e) masochism, erotic or sexually oriented torture, beating or the infliction of pain;
- (f) erotic touching, fondling or other such contact with an animal by a human being; or
- (g) human excretion, urination, menstruation, vaginal or anal irrigation as part of or in connection with any of the activities set forth in "a" through "f" above.

SUBSTANTIAL AMOUNT or SUBSTANTIAL PORTION shall mean thirty percent (30%) or more of the inventory, receipts or projection or performance time is devoted to or derived from the activities regulated herein.

SECTION II - License Required

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 City of Loogootee, the operation of an adult entertainment business as herein defined, without first having obtained a separate license for such adult entertainment business from the Loogootee Chief of Police.

Every applicant for a license to maintain, operate, or conduct an adult entertainment business shall file an application in duplicate under oath with the Loogootee Chief of Police upon a form provided by the City and pay a filing fee of Five Hundred Dollars (\$500.00) to the Loogootee Clerk-Treasurer, who shall issue a receipt which shall be attached to the application filed with the Loogootee Chief of Police.

The Clerk-Treasurer shall attach a copy of this Ordinance to each permit issued, so that this Ordinance is incorporated by reference therein.

If a permit is not issued, the Clerk-Treasurer may refund that portion of the filing fee not used to reimburse the City for background investigation costs, but in no event will more than Four Hundred Dollars (\$400.00) be refunded.

SECTION III - Information Required

(a) The application for a license to operate an adult entertainment business shall set forth the exact nature of the entertainment to be offered, the proposed place of business and facilities therefore, and the name and address of each applicant.

(b) The application shall be filed by the individual or individuals who will operate the adult entertainment business. If the entity seeking the license is not an individual, the following information must be provided for each officer or director of the entity, as well as the individual employed by such entity as manager or a similar position.

(c) In addition to the foregoing, any applicant for such a license shall furnish the following information:

- (1) Written proof that the applicant is at least eighteen (18) years of age;
- (2) Two (2) portrait photographs of the applicant at least two (2) inches by two (2) inches;
- (3) Fingerprints;
- (4) Business, occupation, or employment for the three (3) years immediately preceding the date of application;
- (5) A copy of the Indiana liquor license and a copy of the liquor license application, if any;
- (6) Previous adult entertainment business or liquor establishment business history;
- (7) Any criminal convictions, except minor traffic violations; and
- (8) A copy of the birth certificate for each individual who will be performing as an entertainer in the adult cabaret or adult live entertainment arcade, within five (5) days of the individual's commencement of work.

SECTION IV - License Displayed

The license shall be displayed in a prominent location at the establishment during business hours and shall be subject to examination or inspection by the general public and any other person at all times.

SECTION V - Advertising

No adult entertainment business shall be conducted in any manner that permits, from the outside of the establishment, the observation of any activities or materials depicting, describing or relating to topless or bottomless dancers, go-go dancers, exotic dancers, strippers, or similar entertainers or form of entertainment.

No adult entertainment business shall advertise said business on the outside of such premise by means of materials which are 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.

No outside loud speakers may be utilized, nor may the music or entertainment be conducted at sound levels such that the content of the lyrics or commentary is discernible outside or beyond the premises.

SECTION VI - Limitation on Location

No adult entertainment business lot shall be located closer than one thousand feet (1,000') of another such adult entertainment business lot, or closer than one thousand feet (1,000') to any existing church lot, school lot, day care facility lot, public park, or residential lot within the City of Loogootee, Indiana.

SECTION VII - Additional Restrictions on Certain Activities

(a) If an adult arcade or adult motion picture arcade provides booths or enclosed areas for viewing the entertainment, the booth or enclosed area must be of transparent glass or plastic, or have a glass or plastic door that forms one entire side of the booth or enclosure, that allows continuous unobstructed monitoring of all areas of the booth or enclosure;

(b) Any adult entertainment business which provides for live entertainment shall prohibit the touching of any specified anatomical areas of such entertainers by the patrons of the establishment. This shall be accomplished by, among other things, physical barriers, the size of the stage, or whatever additional measures are necessary to ensure the separation of entertainers from patrons.

SECTION VIII - Revocation or Suspension of Adult Entertainment Business License

Any adult entertainment business license may be revoked or suspended by the Loogootee Chief of Police if the Chief finds that:

(a) the licensee has violated any of the provisions of this Ordinance regulating adult entertainment business;

(b) the licensee violates, or has violated within the last ten (10) years any state statute pertaining to obscenity, public indecency, sex crimes, as defined in Section X below, or allowing minors to perform as employees, or the licensee knowingly or under circumstances where the licensee should have known of the offending conduct, employs individuals who violate or have violated any such state statute;

(c) 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.

(d) the licensee knowingly or under circumstances where the licensee should have known of the offending conduct, permitted any violation of applicable state or municipal law to occur on the licensed premises.

The notice of revocation will be sent by certified mail to the licensee at the address on the permit at least ten (10) days in advance of the revocation date.

SECTION IX - Appeal; Hearing

(a) When an application for an adult entertainment business permit is denied, or a permit is revoked, the applicant or licensee may within fourteen (14) days of notice thereof, request a hearing before the Loogootee Board of Public Works and Safety, by written application to the Mayor's office at 401 John F. Kennedy Avenue, Loogootee, Indiana 47553;

(b) A hearing shall be scheduled for the next public meeting of the Board of Public Works and Safety. The applicant or licensee may present evidence and argument and cross-examine witnesses and may be represented by counsel.

SECTION X - Issuance of License for an Adult Entertainment Business

(a) The Chief of Police shall issue a permit for an adult entertainment business within thirty (30) days following receipt of application if all requirements of this Ordinance for an adult entertainment business are met, and may issue such a license unless he finds that:

(1) The operations as proposed by the applicant if permitted would not comply with all applicable ordinances;

(2) The applicant and any other person who will be directly engaged in the management and operation of an adult entertainment business has been convicted of a felony, or an offense involving sexual misconduct with children, or any obscenity, keeping or residing in a house of ill fame, solicitation of a lewd or unlawful act, prostitution, or pandering or other sex crimes as defined by IC 35-42-4-1 et seq., or comparable statutes in other states;

(b) If the Chief of Police fails to issue the permit within the time provided, the application is deemed denied.

(c) If the Chief of Police denies issuance of a license for an adult entertainment business, the applicant may appeal the denial as described above.

SECTION XI - Existing Adult Entertainment Businesses Shall Comply

Existing adult entertainment businesses shall have ninety (90) days from passage and publication of this ordinance to comply with the requirements of this Ordinance.

SECTION XII - Penalties

Violations of this Ordinance shall be punishable by a fine not exceeding \$2,500.00, in addition to any other remedies which the City may have, and the City Attorney is authorized to prosecute any such violations, or seek mandatory injunctive relief to prohibit or discontinue such violations, in his discretion.

SECTION XIII

This Ordinance shall be in full force and effect following its passage, approval, and publication according to the laws of the State of Indiana.

PASSED AND ADOPTED by the Common Council of the City of Loogootee, Indiana, this 12th day of June, 2000, by a vote of 5 to 0 with 0 abstaining.

ATTEST:

Bettye F. Norris
Bettye F. Norris, City Clerk-Treasurer

Brian T. Ader
Brian T. Ader, Presiding Officer

Presented by me to the Mayor of the City of Loogootee, Indiana, on the 12th day of June, 2000, at the hour of 7:00 P.M.

Bettye F. Norris
Bettye F. Norris, City Clerk-Treasurer

This Ordinance approved and signed by me on the 12th day of June, 2000, at the hour of 7:00 P.M.

Brian T. Ader
Brian T. Ader, Mayor