

## ORDINANCE NO. 1034

### AN ORDINANCE OF THE CITY OF WILLISTON AMENDING CHAPTER 3 TO ADD ARTICLE XV, SECTIONS 3-151 – 3-154, GOVERNING ENTERTAINMENT AND LIVE PERFORMANCES UPON ALCOHOL BEVERAGE LICENSED PREMISES.

WHEREAS, the City of Williston desires to amend Chapter 3 by adding Article XV to provide for comprehensive regulation governing entertainment and live performances upon alcohol beverage licensed premises, as more particularly identified below.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WILLISTON, NORTH DAKOTA, THAT ARTICLE XV BE ADDED TO CHAPTER 3 AND SHALL CONSIST OF SECTIONS 3-151 – 3-154 TO THE WILLISTON CODE OF ORDINANCES AND SHALL READ AS FOLLOWS:

That section 3-151 be added, and as added be enacted as follows:

#### **Sec. 3-151. Purpose; Authority and Determinations.**

- (a) It is the purpose of this article to regulate alcohol beverage licensed premises in relation to adult entertainment establishments in order to promote the health, safety, and general welfare of the citizens of the City of Williston, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects and concentrations of adult entertainment establishments within the City of Williston. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including any sexually oriented materials. Further, it is neither the intent nor effect of this article to restrict or deny access by the distributors and exhibitors of sexually oriented entertainment protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither it is the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.
- (b) Whereas, the City of Williston has explicit authority under Section 40-05-01(29) of the North Dakota Century Code to adopt regulations governing the sale of alcohol beverages within city limits; and

Whereas, the City has general police powers set forth in Chapter 40-05 of the North Dakota Century Code to act for the good order of the City of Williston, for its commercial benefit, and for the health, safety and welfare of the public and may carry its powers out by regulation or suppression;

Whereas, by adopting this ordinance, the City does not intend to regulate obscenity, as nudity in and of itself is not obscene;

Whereas, the City declares its intent to address the secondary effects of live nude dancing, as defined in this chapter, in liquor licensed premises within City limits; and

Whereas, the liquor licensed establishments featuring live nude dancing have:

- (1) caused depreciation in surrounding property values near these establishments;
- (2) harmed the economic welfare of communities;
- (3) negatively affected the quality of life of communities, including the City of Williston;
- (4) increased criminal and other offensive activity in other communities facing these same issues;
- (5) increased criminal activity in our own community, as evidenced by the police reports and police call logs that were provided to City Commission members as they contemplated action on the secondary effects of nude dancing in liquor-licensed establishments; and
- (6) disrupted the peace and order of these communities, and our own community as police resources are diverted a disproportionate period of time to address recurring issues at these live nude dancing liquor licensed establishments.

These secondary effects are detrimental to the health, safety, and welfare of the citizens of the City of Williston.

Whereas, the City recognizes that the First Amendment to the United States Constitution is applicable to the States through the Fourteenth Amendment of the United States Constitution and further recognizes that the United States Supreme Court has held that nude dancing is expressive conduct entitled to limited protection under the First Amendment of the US Constitution; and

Whereas, the Commission further recognizes that freedom of speech and expression are amongst our most precious and highly protected rights and wishes to act consistently with protection of those rights as they enact these regulations; and

Whereas, however, the Commission is aware, based on the effects felt in our community and those experienced in other communities, that liquor licensed establishments featuring live nude dancing may and do generate secondary effects which the Commission believes are detrimental to the public health, safety, and welfare; and

Whereas, based on evidence concerning the adverse secondary effects of adult uses presented in hearings and in studies and local police reports made available to the board, and on findings incorporated in the cases of *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); *FW/PBS, Inc. V. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre, Inc.*, 501 US. 560 (1991); *Thomas v. Chicago Park District*, 122 S. Ct. 775 (2002); *California v. LaRue*, 409 U.S.109 (1972); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *McCrothers Corp. v. Mandan*, 2007 ND 28, 728 N.E. 2d 124 (2007); *City of Chicago v. Poo Bah Enterprises, Inc.*, 865 N.E. 2d 390 (Ill. 2006) and other cases; and reports of secondary effects occurring in and around adult entertainment establishments, including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo,

Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma County, Oklahoma; Cleveland, Ohio; Dallas, Texas; Tucson, Arizona; St. Croix County, Wisconsin; Bellevue, Washington; Newport News, Virginia; New York, New York; Phoenix, Arizona; and from summaries of several of the foregoing secondary effects report; the board finds:

- (1) Employees of unregulated sexually oriented businesses, especially live nude dancing establishments, are at risk of engaging in certain types of illicit and illegal sexual behavior at a higher incidence than employees of other establishments.
- (2) Sex acts, including masturbation and oral and anal sex, occur at unregulated sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films or videos or live nude dancing and/or sexually oriented shows.
- (3) Patrons frequent of these types of establishments with the purpose of soliciting and engaging in certain illicit and illegal sexual acts within the premises of the sexually oriented businesses. These acts and solicitation often occur over the exchange of money.
- (4) The Office of the Texas Attorney General presented a report to the Texas Legislature in March 2013 regarding the relationship between human trafficking and sexually oriented businesses. The increase in human trafficking in the Bakken region is something state and local officials are acutely aware of and taking steps to combat.
- (5) Research supports the finding that sexually oriented businesses that serve alcohol or that are located near liquor-serving businesses pose "larger and qualitatively different ambient public safety hazards" than other establishments. The Illinois Supreme Court, after reviewing available research, found that "Victims become more vulnerable because of alcohol's debilitating effects, thus creating an attractive situation for potential offenders." *City of Chicago v. Pooh Bah Enterprises, Inc. et al.* (Ill. 2006). Research found that patrons of sexually oriented businesses are reluctant to involve or contact law enforcement when victimized. Testimony of Dr. Richard McCleary, a professor at the University of California, Irvin, and Professor Lori Sexton to the Illinois State Senate Public Health Committee in March 2012 in support of SB 3348. Dr. McCleary is a nationally recognized expert on sexually oriented businesses. He's been studying secondary effects of sexually oriented businesses and the sexually oriented business industry since the 1980s. He and Professor Lori Sexton proffered written testimony in March 2012 to the Illinois State Legislature discussing the impact of alcohol, crime, and sexually oriented businesses when the legislature was contemplating creating a program to offer Grants to combat sexual assaults and sexual violence.

- (6) Between mid-2013 and June 2015 there were 200 incidents at the 2 strip clubs located within City limits that the Williston Police Department responded to.
- a. The following is a summary of the types of calls and incidents that the Williston Police Department responded to:
    1. The following criminal violations occurred: murder (2), fights/assaults, DUI, disorderly conduct, unruly and intoxicated patrons, hit and run calls, theft of property calls (including stolen vehicles), welfare checks, traffic violations, junk ordinance violations, minors admitted to the establishments, minors being served alcohol
    2. Of the fight/assault calls, almost all involved intoxicated individuals. For example, in September 2014, there was a fight between overly intoxicated individuals outside one of the strip clubs. One individual was pushed and struck his head. The head injury resulted in permanent brain damage.
    3. A review of the police reports of the incidences at the adult entertainment venues within City limits shows that over 90% of these incidences involved alcohol.
  - b. A review of the police reports of the incidences at the adult entertainment venues within City limits shows that over 90% of these incidences involved alcohol.
- (7) The Office of the Texas Attorney General presented a report to the Texas Legislature in March 2013 regarding the relationship between human trafficking and sexually oriented businesses. The increase in human trafficking in the Bakken region is something state and local officials are acutely aware of and taking steps to combat.
- (8) A limited study was done by The Freedom and Justice Center for Prostitution Resources: A program of the Volunteers of America of Minnesota. The Survey Data was analyzed on the Statistical Program for Social Sciences. 100% of the women involved in the study reported incidences of physical abuse in the strip club at which they were working. 100% of the women involved in the study reported sexual abuse in the strip club at which they were working. 100% of these incidences went unreported to law enforcement.
- (9) The City of St. Marys, Georgia published a Digest of Research: The Evidence of Relationships Between Adult-Oriented Businesses and Community Crime and Disorder.
- (10) Eric S. McCord and Richard Tewksbury of the Department of Justice Administration at the University of Louisville, KY published an article in Crime

& Delinquency addressing if sexually oriented businesses in communities is related to increased levels of crime. Their study revealed that "sexually oriented businesses are associated with much higher rates of all types of offenses in the immediate vicinity of the business and continue to have significant effects on crime levels as one moves further from the business." *Crime & Delinquency* 59(7), 1108-25 (2012).

- (11) Offering and providing unregulated space encourages unsafe and unsanitary acts, which create public health issues and possibly even health code violations.
- (12) The National Health Research and Development Program of Health Canada published a Final Report on Erotic/Exotic Dancing: HIV-Related Risk Factors detailing the sexual health issues that exist in live nude dancing establishments.
- (13) Numerous communicable diseases may be spread by activities occurring in adult entertainment establishments.
- (14) According to the best scientific evidence, sexually transmitted diseases and infections are principally transmitted through sexual acts. Sex acts at adult entertainment establishments is a real concern.
- (15) According to the Kaiser Family Foundation, 1.1 million people are living with HIV in the US. 76% diagnosed are male and 24% female. 84% of new HIV infections of women occur through heterosexual sex. The majority of all new infections across all races and genders resulted from sexual contact. In 2010 there were 47,500 new HIV infections in the US.
- (16) According to the CDC, there were 1.4 million reported cases of Chlamydia in the US in 2013.
- (17) There were over 333,000 reported cases of Gonorrhea in the US in 2013 according to the CDC.
- (18) Sanitary conditions in some adult oriented businesses are unhealthy, in part, because of the activities conducted there are conducted in an unhealthy fashion, and, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain their facilities.
- (19) Numerous studies and reports have shown that semen is found in the areas of adult entertainment establishments where persons view adult oriented films and live nude shows, like the live nude shows that take place at the adult establishments in Williston; and

Whereas, the Commission finds that the consumption of alcoholic beverages exacerbates these negative secondary effects; and

Whereas, the Commission desires to minimize, prevent and control these negative secondary effects and thereby protect the health, safety, and welfare of its citizens; and

Whereas, the Commission is also aware that Courts in North Dakota and in the United States Eighth Circuit Court of Appeals have found that there is no constitutionally protected right to consume or sell alcohol while watching or offering live nude dancing; and

Whereas, the Commission has received and contemplated studies regarding the secondary effects of nude dancing in communities, judicial opinions, ordinances from other communities, and City of Williston police reports and police call logs while determining a course of action; and

Whereas, the Commission has determined that an ordinance prohibiting live nude dancing in liquor licensed establishments promotes the substantial goal of minimizing, preventing, and controlling the negative secondary effects associated with such activity; and

Whereas, the Commission has also determined that an ordinance prohibiting live nude dancing in liquor licensed establishments is the least restrictive means of regulating such negative secondary effects, staying mindful of not infringing on any more protected speech than is necessary to achieve its lawful interest in regulating the adverse secondary effects of live nude dancing that are exacerbated by the sale and consumption of alcohol in such establishments that offer live nude dancing;

That section 3-152 be added, and as added be enacted as follows:

**Sec. 3-152. Entertainment and live performances upon the licensed premises.**

(a) Definitions for the purposes of this title:

- (1) "Entertainment" means all forms and types of performing or entertaining for patrons on licensed premises without regard to whether such entertainment is provided by means of live performances or manually operated or electronic systems designed for stereophonic playback of prerecorded signals; provided, however, that entertainment shall not be deemed to include the use of any television, radio or coin-operated music machine subject to the restrictions of this section.
- (2) "Live performances" means any person who for consideration, monetary or otherwise, performs in person on a licensed premises as a singer, musician, dancer, comedian, model, or any other type of entertainer.
- (3) "Adult Cabaret" means any commercial premise or private club to which any member of the public or club member is invited or admitted, and where an entertainer provides live entertainment or activity as defined in adult entertainment.
- (4) "Adult entertainment" means:

- a. Any exhibition, performance or dance of any type conducted in any premises where such exhibition, performance, or dance involves a person who performs in such clothing or sheds clothing to a point where the area below the top to the bottom of the areola of a female breast or any portion of pubic area, anus, buttocks, vulva or genitals are covered by opaque material, or wearing any device or covering exposed to view which simulates the appearance of any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genital, or human male genitals in a discernibly turgid state, even if completely and opaquely covered; and/or
- b. Any exhibition, performance, or dance which includes any of the following:
  - i. the performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law; and/or
  - ii. the actual or simulated touching, caressing, or fondling of the breast, buttock, anus, or genitals; and/or
  - iii. the actual or simulated display of the pubic hair, anus, vulva, or genitals or the nipples of the female; and/or
  - iv. appearances, entertainment or performances of any type consisting of or containing any nude performer or topless female dancer; and/or
- c. Any exhibition, performance or dance which is intended to sexually stimulate any member of the public and which is conducted on a regular basis or as a substantial part of the premises activity. This includes, but is not limited to, any such exhibition, performance or dance performed for, arranged with, or engaged in with fewer than all members of the public on the premises at that time, which separate consideration paid, either directly or indirectly, for such performance, exhibition or dance and which is commonly referred to as table dancing, couch dancing, taxi dancing, lap dancing, private dancing, or straddle dancing

(b) No alcohol beverage licensee under this chapter shall permit adult entertainment or an adult cabaret on the licensee's premises. The licensing procedure for cabarets shall be governed by the provisions of Chapter 9 of the Williston Code of Ordinances.

(c) No entertainment on a alcoholic beverage licensed premises shall contain:

- (1) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts prohibited by law;
- (2) The actual or simulated touching, caressing, or fondling of the breast, buttocks, anus or genitals;
- (3) The actual or simulated displaying of the pubic hair, anus, vulva or genitals, or the nipples of a female;
- (4) Appearances, entertainment or performances of any type consisting of or containing any nude performance or nude dancer, or topless female dancer.
  - a. "Nude performer" or "nude dancer" means any person or performs or appears in attire such that any portion of the pubic area, anus, vulva, or genitals is exposed to view or not covered with an opaque material.
  - b. "Topless female performer" or "topless female dancer" means any female who performs or appears in attire such that any portion of her breasts below the top of the areola is exposed to view or not covered with an opaque material.

These restrictions apply to all alcoholic beverage licensed premises whether or not they have a cabaret license.

- (d) No entertainment on a licensed premises shall be provided by means of television or video cassettes or digital streaming if the content of that entertainment depicts the acts prohibited in this section.
- (e) A licensee shall have the duty and responsibility to make available for inspection by a member of the police department an identification card, such as a driver's license, containing a photograph and the age of all entertainers or performers on the licensed premises. The licensee shall not permit a person to make a live performance on the licensed premises if the licensee is not able to obtain the required identification from the performer.
- (f) If any licensee, or any agent, servant or employee shall violate any provision of this section, the license of such premises may be revoked for cause in accordance with the procedures established pursuant to the provisions of this title.

This ordinance shall be in full force and effect upon its final passage and approval.

That section 3-153 be added, and as added be enacted as follows:

**Sec. 3-153. Application of prohibited entertainment and live performances to extraterritorial jurisdiction.**

Section 3-152 and any related licensing and zoning ordinances shall apply to all territory within the corporate limits of the City and, as permitted by state law to such outlying



contiguous territory without the corporate limits within which the City may exercise its police and zoning jurisdiction, as defined by law.

This ordinance shall be in full force and effect upon its final passage and approval.

That section 3-154 be added, and as added be enacted as follows:

**Sec. 3-154. Penalty for violation of Chapter.**

Any person, firm, or corporation violating the terms of this chapter is guilty of a Class B misdemeanor and shall, upon conviction, be subject to the penalties as described under state law for Class B misdemeanors.

Such a penalty should be in addition to the authority of the Board to suspend or revoke an alcoholic beverage license pursuant to the provisions of this Title.

This ordinance shall be in full force and effect upon its final passage and approval.

Commissioner Cymbaluk moved the adoption of the foregoing Ordinance. The motion was seconded by Commissioner Bekkedahl. On roll call vote of the Commissioners vote "AYE": Piesik, Cymbaluk, Bekkedahl and Klug, and the following Commissioners vote "Nay": None. Absent and not voting: Brostuen.

WHEREUPON, the Motion was passed and the ordinance declared adopted this 26<sup>th</sup> day of January, 2016.



**Howard Klug, President**  
Board of City Commissioners

ATTEST:



**John Kautzman, City Auditor**

First Reading: January 12, 2016  
Second Reading: January 26, 2016  
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