

TOWN OF PLAINFIELD

ORDINANCE NO. 20-97

AN ORDINANCE FOR THE LICENSING  
OF ADULT ENTERTAINMENT

SECTION 1.

Definitions

Unless the particular provision of the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning, and application of words and phrases used in this Ordinance.

(a) "Adult bookstore" shall mean an establishment having as a preponderance 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.

(b) "Adult cabaret" shall mean a nightclub, bar, theater, restaurant or similar establishment which frequently features live performances by topless and/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 and/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.

(c) "Adult drive-in theater" shall mean an open 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 preponderance 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.

(d) "Adult entertainment business" shall mean 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 adult service establishment.

(e) "Adult live entertainment arcade" shall mean any building or structure which contains or is used for commercial entertainment where the patron directly or indirectly is

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.

(f) "Adult mini motion picture theater" shall mean an enclosed building with a capacity of more than five (5) but less than fifty (50) persons, used for presenting films, motion pictures, video cassettes, slides or similar photographic reproductions in which a preponderance 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 therein.

(g) "Adult motel" shall mean a hotel, motel or similar establishment offering public accommodations for any form of consideration which provides patrons, upon request, with closed-circuit television transmissions, 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.

(h) "Adult motion picture arcade" shall mean 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-reducing devices are maintained to show images to five (5) or fewer persons per machine at 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.

(i) "Adult motion picture theater" shall mean an enclosed building with a capacity of fifty (50) or more persons used for presenting films, motion pictures, video cassettes, slide or similar photographic reproductions in which a preponderance 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.

(j) "Adult service establishment" shall mean any building, premises, structure or other facility, or any part thereof, under common ownership or control which provides a preponderance of services involving specific sexual activities or display of specified anatomical areas.

(k) "Establishing an adult entertainment business" shall mean and include any of the following:

- (i) The opening or commencement of any such business as a new business;
- (ii) The conversion of an existing business, whether or not an adult entertainment business, to any of the adult entertainment businesses defined herein;

- (iii) The addition of any of the features of one or more of the adult entertainment businesses defined herein to an existing business;
- (iv) The addition of any of the adult entertainment businesses defined herein to any other existing adult entertainment business; or
- (v) The relocation of any such business.

(l) "Licensee" means the person, firm or corporation holding a license to operate an adult entertainment business issued pursuant to this Ordinance.

(m) "Operate" means to conduct or direct the affairs of a business.

(n) "Services involving specified sexual activities or display of specified anatomical areas", as used to define an "adult service establishment", shall mean and include any combination of two (2) or more of the following activities:

- (i) The sale or display of 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 characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas;
- (ii) The presentation of films, motion pictures, video cassettes, slides, or similar 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;
- (iii) The operation of coin or slug operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors or other image producing devices 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;
- (iv) Live performances by topless and/or bottomless dances, go-go dancers, exotic dancers, strippers, or similar entertainers, where such performances are distinguished or characterized by an emphasis on specified sexual activities or specified anatomical areas;

(o) "Specified anatomical areas" shall mean and include any of the following:

- (i) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus or female breasts below a point immediately above the top of the areolae; or
  - (ii) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- (p) "Specified sexual activities" shall mean and include any of the following:
- (i) Human genitals in a state of sexual stimulation or arousal;
  - (ii) Acts of human masturbation, sexual intercourse or sodomy;
  - (iii) Fondling or other erotic touchings of human genitals, pubic regions, buttocks or female breasts;
  - (iv) Flagellation or torture in the context of a sexual relationship;
  - (v) Masochism, erotic or sexually oriented torture, beating or the infliction of pain;
  - (vi) Erotic touching, fondling or other such contact with an animal by a human being; or
  - (vii) 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.
- (q) "Town" means the Town of Plainfield, Hendricks County, Indiana.

## SECTION 2.

### Adult Entertainment Business License Required

No person shall operate an adult entertainment business unless he or she has a valid license issued by the Town pursuant to the provisions of this Ordinance for each and every separate place of business operated by such person.

## SECTION 3.

### Application for Adult Entertainment Business License

Any person desiring to operate an adult entertainment business shall file a written application for a license with the Town Building Inspector on a form to be furnished by the Building Inspector. The applicant shall include with the application the application fee and license fee as hereinafter provided and shall, in addition, furnish the following:

1. The type of ownership of the business, i.e., whether individual, partnership, corporation or otherwise;
2. The name, style, and designation under which the business or practice is to be conducted;
3. The business address and all telephone numbers where the business is to be conducted;
4. A complete list of all the names and addresses of the Owner or Owners of the business; all employees of the business; and the name and residence address of the manager or other person principally in charge of the operation of the business;
5. The following information concerning the applicant, if an individual; and concerning each stockholder holding more than ten per cent (10%) of the stock of the corporation, each officer and each director, if the applicant is a corporation; and concerning the partners, including limited partners, if the applicant is a partnership; and concerning the manager or other person principally in charge of the operation of the business;
  - (i) Name, complete residence address and residence telephone numbers.
  - (ii) The two (2) previous addresses immediately prior to the present address of the applicant.
  - (iii) Written proof of age.
  - (iv) The adult entertainment business history or similar business history and experience, including but not limited to whether or not such person in previously operating in this or another town, city or state under license or permit has had such a license or permit denied, revoked or suspended and the reason therefore, and the business activities or occupations subsequent to such action of denial, suspension or revocation.
  - (v) All criminal convictions other than misdemeanor traffic violations, specifically identifying the jurisdiction in which convicted and the cause number of the case in which convicted.
6. Such other reasonable information regarding the applicant as shall be deemed necessary by the Town to discover the truth of the matters hereinbefore required to be set forth in the application.
7. Authorization for the Town, its agents and employees to seek information and conduct an investigation into the truth of the statements set forth in the application and the qualifications of the applicant for the permit.

8. Written declaration by the applicant, under penalty of perjury, that the foregoing information contained in the application is true and correct, said declaration being dated and signed by the applicant.

#### SECTION 4.

##### Approval by Building Inspector and Town Manager

Upon receiving the application for an adult entertainment business license the Building Inspector shall conduct an inspection of the business premises and make a determination that it is in compliance with the law and regulations regarding zoning, public health, safety and welfare.

Before any license shall issue under this article, the Building Inspector shall first sign his approval of the application and, upon approval of the Building Inspector, the Building Inspector shall then submit the application to the Town Manager of the Town of Plainfield for his approval.

#### SECTION 5.

##### Issuance or Denial of Adult Entertainment Business License

The Town, subject to approval of the application as provided herein, shall issue a license for the operation of an adult entertainment business within sixty (60) days of receipt of the application unless it is found that:

(a) The correct application fee and permit fee has not been tendered to the Town, and, if the case of a check or bank draft, honored with payment upon presentation;

(b) The operation, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the Town's building, zoning, and health regulations;

(c) The applicant, if an individual; or any of the stockholders holding more than ten percent (10%) of the stock of the corporation, any of the officers and directors, if the applicant is a corporation; or any of the partners, including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, have been convicted of any crime involving dishonesty, fraud, or deceit, unless such conviction occurred at least five (5) years prior to the date of the application;

(d) The applicant has knowingly made any false, misleading or fraudulent statement of fact in the license application or in any documents required by the Town in conjunction therewith;

(e) The applicant has had an adult entertainment business permit or license, or other similar permit or license denied, revoked, or suspended for any of the above causes by the Town or any other Town, City, state or local agency within five (5) years prior to the date of the application;

(f) The applicant, if an individual, or any of the officers and directors, if the applicant is a corporation; or any of the partners including limited partners, if the applicant is a partnership; and the manager or other person principally in charge of the operation of the business, is not over the age of eighteen (18) years.

## SECTION 6.

### Display of Licenses

The license to operate an adult entertainment business shall be displayed in the establishment in an open and conspicuous place on the premises of the business.

## SECTION 7.

### Application Fee

The application fee for an adult entertainment business shall be Two Hundred Fifty Dollars (\$250.00) for the first application for a new license and One Hundred Twenty-Five Dollars (\$125.00) for each consecutive year of renewal.

### License Fee

The license fee for an adult entertainment business shall be Seven Hundred Dollars (\$700.00) for the first year or any part thereof, and Three Hundred Fifty Dollars (\$350.00) for each consecutive year of renewal.

## SECTION 8.

### Inspection

An applicant or licensee shall permit representatives of the Plainfield Metropolitan Police Department, Plainfield Fire Department, Town of Plainfield and/or Indiana Health Department to inspect the premises of an adult entertainment business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

A person who operates an adult entertainment business or his agent or employee commits a violation of this ordinance if he refuses to permit such lawful inspection of the premises at any time it is occupied or open for business.

## SECTION 9.

### Expiration of Permit

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 3. Application for renewal should be made at least thirty (30) days before the expiration date, and when made thirty (30) days or more before the expiration date, the expiration of the license will not be affected.

When the Building Inspector denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial unless the Building Inspector later determines that the basis for denial of a renewal license has been corrected or abated, in which case the applicant may be granted a new license if at least ninety (90) days have elapsed since the date denial became final, and the former complies with Section 3, pays all applicable fees required by Section 3, and is issued a new license.

## SECTION 10.

### Revocation or Suspension of License

Any license issued under this Ordinance shall be subject to suspension or revocation by the Building Inspector.

### SUSPENSION

The Building Inspector shall suspend a license for a period not to exceed thirty (30) days if he determines that an operator or an employee of a licensed adult entertainment business has:

- (a) violated or is not in compliance with any section of this ordinance;
- (b) engaged in excessive use of alcoholic beverage while on the adult entertainment business premises;
- (c) allowed alcoholic beverages to be sold or consumed on the premises;
- (d) refused to allow an inspection of the adult entertainment business premises as authorized by this Ordinance;
- (e) knowingly permitted gambling by any person on the adult entertainment business premises.

## REVOCATION

The Building Inspector shall revoke a license if a cause of suspension in the preceding paragraph occurs and the license has been suspended within the preceding twelve (12) months.

The Building Inspector shall revoke a license if he determines that:

- (a) a license holder or applicant for a license gave false or misleading information in the material submitted to the Town during the application process;
- (b) an operator or an employee has knowingly allowed possession, use or sale of controlled substances on the business premises;
- (c) an operator or an employee has knowingly allowed prostitution on the business premises;
- (d) an operator or employee has knowingly operated the adult entertainment business during a period or time when the license was suspended;
- (e) an operator or employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises.
- (f) a licensed business is delinquent in payment to the Town for any fees past due.

When the Building Inspector revokes a license, the revocation shall continue for one (1) year, and neither the business nor the operator shall be issued an adult entertainment license for one (1) year from the date revocation became effective unless a new license is granted after correction or abatement as provided hereafter. If, subsequent to revocation, the Building Inspector determines that the basis for the revocation has been corrected or abated, the applicant may be granted a new license if at least ninety (90) days have elapsed since the date the revocation became effective and the former licensee complies with Section 3, pays all applicable fees required by Section 3, and is issued a new license.

## SECTION 11.

### Appeals and Hearing

When an application for an adult entertainment business license is denied, or a license is suspended or revoked, the applicant or licensee may appeal such denial, suspension or revocation to the Plainfield Town Council by submitting a written request for a hearing to the attention of the Town Manager at the Plainfield Town Hall, 205 West Main

Street, Plainfield, Indiana within fifteen (15) days of receipt of the notice of the denial, suspension or revocation.

A hearing shall be scheduled by the Town Council within thirty (30) days of receipt by the Town of the request for a hearing as provided by this Section. The hearing provided for herein may be continued to a date later than originally scheduled upon motion by the applicant or licensee, or by agreement of the parties.

At the hearing provided for by this Section, the applicant or licensee is entitled to be represented by counsel; is entitled to call and cross-examine witnesses; and is entitled to present evidence and argument to the Council.

A decision by the Town Council after the hearing provided for by this Section to revoke a license may be appealed by the licensee to the Circuit or Superior Court of Hendricks County, Indiana. However, a licensee may not appeal any other decision by the Town Council and an applicant may not appeal a decision denying an application.

#### SECTION 12.

##### Transfer Prohibited

A licensee shall not transfer his license to another, nor shall a licensee operate an adult entertainment business under the authority of a license at any location other than at the address designated in the application.

#### SECTION 13.

##### Supervision

The licensee shall operate the business in such a manner that he does not violate, or permit others to violate, any applicable provisions of this ordinance. The violation of any provision of this Ordinance by any agent or employee of the licensee shall constitute a violation by the licensee.

#### SECTION 14.

##### Persons Under Age Eighteen Prohibited on the Premises

No person shall permit any person under the age of eighteen (18) years to come or remain on the premises of any adult entertainment business establishment unless such person is on the premises to make a delivery of purchased products or to conduct some other lawful business.

SECTION 15.

Penalties

Any person, firm or corporation violating any of the provisions of this ordinance shall be fined not less than two hundred fifty dollars (\$250.00) nor more than two thousand five hundred dollars (\$2,500.00) for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

SECTION 16.

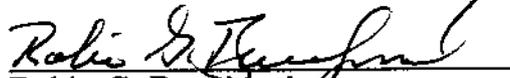
Validity

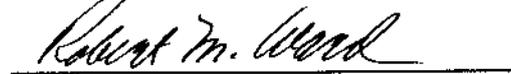
Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof, other than the part declared to be invalid.

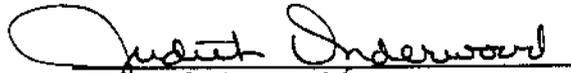
This Ordinance shall be in full force and effect from and after its passage and proper publication.

ADOPTED, PASSED and SIGNED, by the Town Council of the Town of Plainfield, Hendricks County, State of Indiana on the 22 day of December, 1997.

PLAINFIELD TOWN COUNCIL

  
Robin G. Brandgard

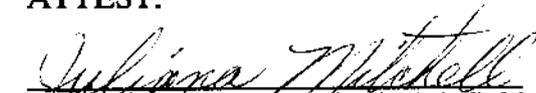
  
Robert M. Ward

  
Judith Underwood

  
John Himmelhofer

  
Dan P. Young

ATTEST:

  
Clerk Treasurer, Town of Plainfield

cld/wpf/plainfield.doc

PUBLISH: THE WEEKEND FLYER January 1, 1998  
January 8, 1998