

Record of Ordinances

Ordinance No.: 2008-03

Passed: February 25, 2008

ORDINANCE TO REGULATE ADULT ENTERTAINMENT

WHEREAS, adult entertainment businesses require special supervision from public safety agencies of the Village of West Lafayette in order to protect the health, safety and welfare of the patrons of such businesses and the citizens of the Village; and

WHEREAS, adult entertainment businesses are known to often be the location of unlawful sexual activities; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the Village which demands reasonable regulation of adult entertainment businesses in order to protect the health and well being of the citizens; and

WHEREAS, adult entertainment businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding community, causing increased crime at the downgrading of property values; and

WHEREAS, it is recognized that adult entertainment businesses, due to their nature have serious objectionable operation characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and the downgrading of the quality of life in the community; and

WHEREAS, the Village Council desires to minimize and control these adverse affects and thereby protect the health, safety, and welfare of the citizens of the Village; protect such citizens from increased crime; preserve the quality of life of citizens and businesses in the Village; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and

WHEREAS, it is not the interest of this Ordinance to suppress any free speech activities protected by the First Amendment, but to enact a content-neutral ordinance which addresses the secondary effects of adult entertainment businesses and which is necessary to protect the health, safety, and welfare of the citizens of the Village of West Lafayette

SECTION I. Purpose and Findings

a. Purpose: it is the purpose of this Ordinance to regulate adult entertainment businesses in order to promote the health, safety, and general welfare of the citizens of West Lafayette. It is neither the intent nor the effect of this Ordinance to restrict or deny access by adults to entertainment protected by the First Amendment.

b. The general welfare, health and safety of the citizens of the Village will be promoted by the enactment of this Ordinance.

SECTION II. Definitions. Uses which intend to provide sexual stimulation or gratification, include but are not limited to, all of the following:

a. Adult Video Store: An establishment having a substantial or significant portion of its stock in trade, videos, movies, or other film material which are distinguished or characterized by their emphasis depicting, describing, or relating to sexual conduct or sexual contact as defined by the Ohio Revised Code, but not including PG13 or R rated movies.

b. Adult Motion Picture Theater: an enclosed building used for presenting material distinguished by an emphasis on matter depicting, describing, or relating to sexual conduct or sexual contact as defined in the Ohio Revised Code. This definition includes, but is not limited to, adult arcade, adult mini-motion picture theater, adult booth(s), and adult sit down or stand up theaters.

c. Adult Booth: an enclosed or partitioned area inside an adult oriented establishment which is: (I) designed or used for the viewing or listening of adult material by one (1) or more persons and (II) is accessible to any person, regardless of whether a fee is charged for access. The term "Adult Booth" includes, but is not limited to, a "peep show" booth or other booth used to view or listen to adult material (including, but not limited to, videotapes, audiotapes, films, CD-ROMS, DVDs or internet access).

d. Adult Dancing: Any dancing which exposes to view by patrons or spectators on the premises at any time the specified anatomical areas and/or specified sexual conduct or sexual contact.

e. Adult Dancing/Entertainment Establishments: An establishment, including but not limited to, a restaurant (eating and drinking establishments), lounge, dance hall, nightclub or other such place whose business includes the offering to customers of live entertainment wherein employees, agents, servants, independent contractors or other customers perform dance routines and/or display or expose specified anatomical areas offered as adult oriented entertainment for viewing by patrons or spectators on the premises and characterized by the emphasis on matter depicting, describing or relating to specified sexual conduct or sexual contact.

f. Adult Motel: A motel or similar establishment with the word “adult” or otherwise that advertises the presentation of adult material, offering public accommodations for any form or consideration which provides patrons with closed circuit television transmission, internet access, films, motion pictures, video cassettes, slides, CD-ROMs, DVDs or other photographic reproductions for the primary purpose of sexual gratification or as related to specified sexual conduct or sexual contact.

g. Sexual Encounter Center: An establishment whose primary or accessory business is the provision on premises where customers either congregate, associate or consort with employees, agents, servants, independent contractors or other customers who engage in specified sexual activities in the presence of such customers or who display specified anatomical areas in the presence of such customers with the intent of providing sexual stimulation or sexual gratification appealing to adult sexual interests.

h. Massage Parlor: An establishment providing massages by persons other than a licensed health care professional, including activities that rub, stroke, knead or tap the body with the hand or an instrument or both for the purpose of or engaging in sexual gratification or as related to specified sexual activities. This definition also includes those activities listed within “Sexual Encounter Center”. However, massages as used in the ordinance shall not apply to the activity of any person who is registered or licensed by the United States Government or any agency thereof or by the State of Ohio or any agency thereof, while such person so registered or licensed is performing the service for which the registration or license was issued and during the period of time said registration or license is in effect.

i. Specified Anatomical Areas including, but not limited too, less than completely and opaquely covered: (I) human genitals or pubic region; (II) the cleavage of the human buttock; (III) any portion of the human female breasts below a horizontal line across the top of the areola at its highest point, the entire lower half of the human female breast, not including cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other wearing apparel provided that the areola is not exposed in whole or in part; and (IV) human male genitals in a discernable turgid state, even if completely and opaquely covered.

j. Specified Sexual Activities including, but not limited to, human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region or pubic hair, buttocks or human breast(s), flagellation or torture on the context of a sexual relationship; masochism, erotic or sexually oriented torture, beating or the infliction of pain, erotic touching, fondling or other

such contact with an animal by a human being; excretory functions as part of or in connection with any of the activities listed herein.

k. Adult Paraphernalia Store: an establishment having a substantial or significant portion of its stock devices, objects, tools, or toys which are distinguished or characterized by their association with sexual activity, including sexual conduct or sexual contact as defined by the Ohio Revised Code.

SECTION III. Permitted Districts: Adult entertainment businesses which includes but are not limited to uses described herein at Section II are permitted with a special permit from the Village Council in the amount of One Thousand and 00/100 (\$1,000.00) Dollars in B and M Zoning Districts and no other districts, subject to the following regulations:

a. No lot occupied, by an adult entertainment business use shall be located within a one thousand (1,000) foot radius from a residential zoning district or a building containing residences.

b. No lot occupied, or to be occupied, by an adult entertainment business use shall be within a one thousand (1,000) foot radius from the grounds of a school, place of worship, public library or public park.

c. No lot occupied, or to be occupied, by an adult entertainment business use shall be located within a one thousand (1,000) foot radius of any other adult entertainment business use as defined.

d. Method of measurement of distances: The distances required by this section shall be measured from the closest property line occupied, or to be occupied, but an adult oriented use to the closest property line occupied by a protected use, zoning district or another adult oriented use. For the purpose of this ordinance, the term "protected use" includes, but is not limited to, residential zoning districts, building containing residences, grounds of a school, place of worship, public library or public park.

e. Prohibition of physical contact: While on the premises of an adult entertainment business, no employee, agent, servant, independent contractor or other customer shall be permitted to have physical contact with any other adult entertainment employee, other employee, patron or spectator while the employee, agent, servant, independent contractor or other customer is entertaining, dancing or otherwise involved in the display of or exhibition of specified anatomical areas or specified sexual conduct or sexual contact.

f. Exterior Display: No adult entertainment business shall be conducted in any manner that permits the observation of any material depicting or relating to specified anatomical areas or specified sexual conduct or sexual

contact from any public or private way, parking area or adjacent properties. This provision shall apply to any display, signage, show window or opening.

g. Sign Requirements: Sign content shall identify the name of the establishment only and shall contain no advertisement in addition to the identification of the use. Only one (1) identification sign, to be mounted on the building wall face, shall be allowed for an adult entertainment business use. All other signs whether on the exterior of the building or visible from the exterior of the building are prohibited. No adult oriented use shall have any flashing lights visible from the exterior of the use. Furthermore, no sign shall rotate or contain reflective or florescent elements.

h. Non-conforming Use: Any adult entertainment business use in existence as of the effective date of this ordinance, which is in violation hereof, shall be deemed a non-conforming use. Such non conforming uses shall no in any manner be enlarged, altered, or rebuilt, and will not be permitted to reopen if the business has ceased its usage for a period of two years or more.

SECTION IV. Unconstitutionality or unenforceability: In the event any section or part of a section of this ordinance is determined to be unconstitutional or unenforceable then all the Sections which are constitutional and enforceable will remain in full force and effect.

NOW THEREFORE BE IT ORDAINED by the Council of the Village of West Lafayette, State of Ohio as follows:

SECTION V. That this Ordinance shall be and is hereby declared to be an emergency measure necessary to preserve the health, welfare, and safety of the citizens of the Village of West Lafayette, Ohio, and shall take effect immediately upon passage by Council.

PASSED IN COUNCIL THIS 25th day of February, 2008

Jack L. Patterson, Mayor

Lisa Derr, Fiscal Officer

APPROVED AS TO FORM:

William M. Owens, Solicitor for the Village of West Lafayette, Ohio