

Town of Smelser Ordinance

AN ORDINANCE PROHIBITING LIVE, TOTALLY NUDE, NON-OBSCENE, EROTIC DANCING IN ESTABLISHMENTS LICENSED TO SEL ALCOHOL BEVERAGES AND CREATING AN EXCEPTION FROM SUCH PROHIBITING FOR THEATERS, CIVIC CENTERS, PERFORMING ARTS CENTERS, AND DINNER THEATERS WHERE LIVE DANCE, BALLOT, MUSIC AND DRAMATIC PERFORMANCES OF SERIOUS ARTISTIC MERIT ARE OFFERED ON A REGULAR BASIS.

WHEREAS, the Town Board of the Town of Smelser 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, Stats., and

WHEREAS, the Town Board of the Town of Smelser with village powers has authority under its general police powers set forth in sec. 60.22(3), 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

WHEREAS, the Town Board of the Town of Smelser recognizes it lacks authority to regulate obscenity in light of sec. 66.051(3), Stats., and does not intend by adopting this ordinance to regulate obscenity, since nudity in and of itself is not obscene, it declares its intent to enact and ordinance addressing the secondary effects of live, totally nude, non-obscene, erotic dancing in bars and taverns; and

WHEREAS, 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 ad general welfare of citizens; and

WHEREAS, the Town Board of the Town of Smelser 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 governing body 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

WHEREAS, however, the governing body 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 Smelser; and

WHEREAS, among these secondary effects are: (a) the potential increase in prostitution and other sex-related offenses, as well as other crimes and offenses, (b) the potential depreciation of property values in neighborhoods where bars and taverns featuring nude dancing exist, (c) health risks associated with the spread of sexually transmitted diseases, and (d) the potential for infiltration by organized crime for the purpose of unlawful conduct; and

WHEREAS, the governing body 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 Smelser; 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

WHEREAS, the governing body has determined that enactment of an ordinance prohibiting live, totally nude, non-obscene erotic dancing in bars and taverns licensed to serve alcohol beverages promotes the goal of minimizing, preventing and controlling the negative secondary effects associated with such activity,

NOW THEREFORE,

The Town Board of the Town of Smelser with village powers do ordain as follows:

SECTION 1. NUDE DANCING IN LICENSED ESTABLISHMENTS PROHIBITED.

It is unlawful for any person to perform or engage in, or for any licensee or manager or agent of the licensee to permit any person, employee, entertainer, or patron to perform or engage in any live act, demonstration, dance, or exhibition on the premises of a licensed establishment which:

Shows his or her genitals, pubic area, vulva, anus, anal clef or cleavage with less than a fully opaque covering; or

Shows any portion of the female breast below a point immediately above the top of the areola; or

Shows the covered male genitals in a discernibly turgid state.

SECTION 2. EXEMPTIONS.

The provisions of this ordinance do not apply to the following licensed establishments: theatres, performing arts centers, civic centers, and dinner theatres 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 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.

SECTION 3. DEFINITIONS.

For purposes of this ordinance, the term "licensed establishment" means any establishment licensed by the Town Board of the Town of Smelser to sell alcohol beverages pursuant to ch.125, Stats. 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 Smelser pursuant to Ch. 125, Stats.

SECTION 4. PENALTIES.

Any person, partnership, or corporation who violates any of the provisions of this ordinance shall be subject to a forfeiture of not less than \$50, and not more than \$300 per violation. A separate offense and violation shall be deemed committed on each day on which a violation occurs or continues. In addition, violation of this ordinance constitutes sufficient grounds for suspending, revoking or non-renewing an alcohol beverage license under sec. 125.12 Stats.

SECTION 5. SEVERABILITY.

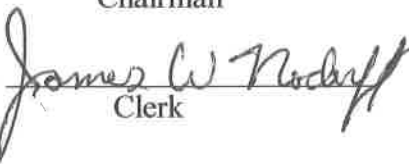
If any section of this ordinance is found to be unconstitutional or otherwise invalid, the validity of the remaining sections shall not be affected.

SECTION 6. EFFECTIVE DATE.

This Ordinance shall take effect upon passage and publication as required by law.

Dated Nov 29, 2004

Signed: 
Chairman

Attest: 
Clerk