

1 **ADULT ENTERTAINMENT TAVERNS**

2
3 FINDINGS.

4
5 The First Amendment of the United States Constitution protects the rights of individuals
6 to present adult entertainment which includes nude dancing, nude entertainment or
7 material with themes or content of a sexual nature. The Town of Cross Plains may not,
8 and does not desire to, interfere with the right of individuals to present or to attend adult
9 entertainment.

10
11 Individuals in the Town of Cross Plains who do not choose to present or attend adult
12 entertainment also have constitutionally protected rights to privacy and security in their
13 property. The Town and properties. These concerns cannot and do not justify forbidding
14 the expression broader community have an interest in maintaining order and preventing
15 negative effects from any business which will generate substantial customer volume,
16 automobile traffic and impacts on neighboring of protected ideas or entertainment. But
17 these concerns do require that the Town exercise its police powers to assure that the
18 exercise of First Amendment rights is not conducted to the detriment of the rights of
19 others.

20
21 The Town of Cross Plains has several existing establishments which are zoned and
22 licensed for the service of alcoholic beverages. Those establishments were zoned and
23 licensed some time ago before the Town engaged in land use planning aimed at resolving
24 potential conflicts between land uses, and before the Town adopted ordinances related to
25 public peace and good order.

26
27 In order to assure that adult entertainment establishments may operate without adversely
28 impacting the community, and, therefore, to make it possible for individuals to exercise
29 their First Amendment rights, the Town of Cross Plains finds that it is necessary and
30 appropriate to adopt a licensing ordinance which allows the Town to assure that adult
31 entertainment establishments are operated in a fashion which does not cause unacceptable
32 impacts on the rights of others.

33
34 NOW, THEREFORE,

35
36 The Town Board of the Town of Cross Plains does hereby ordain as follows:

37
38 (1) Definitions. For the purpose of this section, the following words and phrases shall
39 mean:

- 40
41 (a) Adult Entertainment Taverns. An adult entertainment tavern is any establishment
42 licensed to sell fermented malt beverages or intoxicating liquor pursuant to
43 Chapter 125 of the Wisconsin Statutes which is used for adult entertainment.
44 (b) Adult Entertainment Establishment. An adult entertainment establishment is any
45 establishment, building, structure or place which is used for adult entertainment.

46 (c) Adult Entertainment shall mean presentations or distinguished or characterized
47 by an emphasis on exposure to view of human genitals, pubic area, buttocks or
48 anus; or a female’s vulva or breasts below the top of the areola ; or male genitals,
49 whether or not in a discernable turgid state, even if opaquely covered; or on acts
50 of or acts which simulate erotic touching, sexual intercourse, masturbation,
51 flagellation, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio,
52 cunnilingus, or the simulation of any sexual acts prohibited by Wis. Statutes.
53

54 (d) Booths, cubicles, rooms, compartments or stalls separate from the Town areas of
55 the premises shall mean any area separated, set off, divided, demarcated or
56 isolated by walls, screens, plants, structures, fixtures or equipment, from the
57 remaining bar room or rooms. The phrase “booths, cubicles, rooms,
58 compartments or stalls separate from the Town areas of the premises” does not
59 mean enclosures which are private offices used by the owners, managers, or
60 persons employed on the premises for attending to the tasks of their employment.
61

62 (e) Board. The Town Board of the Town of Cross Plains.
63

64 (f) Operator. Any person, partnership, corporation, or other entity operating,
65 managing, renting, conducting, maintaining or owning any adult entertainment
66 establishment, or adult entertainment tavern.
67

68 (2) License.
69

70 (a) Except as provided in Subdivision (d) below, from and after the effective date of
71 this ordinance, no adult entertainment tavern or adult entertainment establishment shall
72 be operated or maintained in the Town without first obtaining a license to operate issued
73 by the Town.
74

75 (b) A license may be issued only for one adult entertainment establishment or adult
76 entertainment tavern located at a fixed and certain place. Any person who desires to
77 operate more than one adult entertainment establishment or adult entertainment tavern
78 must have a license for each.
79

80 (c) No license or interest in a license may be transferred to any person.
81

82 (d) All adult entertainment establishments or adult entertainment tavern existing at the
83 time of the passage of this ordinance must submit an application for a license within
84 thirty (30) days of the passage of this ordinance. If an application is not received within
85 such thirty-day period, then such existing adult entertainment establishment or adult
86 entertainment tavern shall cease operations.
87

88 (3) Application for License.
89

90 (a) Any person desiring to secure a license shall make application to the Town Clerk.
91 The application shall be filed in quadruplicate with and dated by the Town Clerk. A copy

92 of the application shall be distributed promptly by the Town Clerk to the Town
93 Chairperson, the Dane County Sheriff, the County Health Department, the County
94 Zoning Administrator, to the applicant, and to the entire Town Board.

95
96 (b) The application for a license shall be upon a form provided by the Town Clerk. An
97 applicant for a license interested directly in the ownership or operation of the business
98 shall furnish the following information under oath:

- 99
100 1. Name, address and business phone number, fax number and email.
101 2. Written proof that the individual is at least eighteen (18) years of age.
102 3. The address of the adult entertainment establishment or adult entertainment tavern
103 to be operated by the applicant.
104 4. If the applicant is a corporation, the application shall specify the name of the
105 corporation, the date and state of incorporation, the name and address of the
106 registered agent.
107 5. The names and contact phone numbers of individuals who may be contacted at
108 any time, 24 hours per day, to respond to concerns of an immediate nature about
109 operations at the Adult Entertainment Tavern which require an immediate
110 response.

111 (d) The Clerk shall review the application to determine whether it is complete and the
112 proper fee has been paid. If the application is complete and the fee has been paid, the
113 Clerk shall call a special Town Board meeting to be held within the seven (7) calendar
114 day period following submission of a complete application. Holidays shall be excluded
115 from the computation of the seven (7) day period.

116
117 (e) A license shall be issued automatically unless the Town Board, within seven days
118 after the date the application is referred to the Board by the Clerk, determines that there
119 are grounds upon which the license may be denied. The Town Board shall review the
120 application and determine whether the proposed Adult Entertainment Tavern meets the
121 requirements of this Ordinance.

122
123 (f) Whenever an application is denied or a license is not renewed, the Town Clerk shall
124 advise the applicant in writing of the reasons for such action. If the applicant requests a
125 hearing within ten (10) days of receipt of notification of denial, a public hearing shall be
126 held within ten (10) days thereafter before the Board. If a public hearing is requested, it
127 shall be held within ten (10) days thereafter before the Board.

128
129 (g) The Board shall make a determination on the suspension or revocation of the license
130 within ten (10) days of the scheduled public hearing and shall provide notification of the
131 determination in writing to the licensee within five (5) days of the determination. The
132 notification shall contain reasons for the suspension and/or revocation of the license.

133
134 (h) Judicial review by certiorari may be sought within thirty (30) days of a decision
135 issued pursuant to Ch. 68, Wis. Stats. If a licensee makes a timely appeal of the Board's
136 determination to suspend or revoke a license, no suspension or revocation shall be
137 effective until a final decision is rendered pursuant to Ch. 68, Wis. Stats.

138 (i) Failure or refusal of the applicant to provide any information requested in the course
139 of investigation of the application shall be grounds for administrative denial thereof by
140 the Town Clerk, provided that the applicant shall have been given written notice that
141 failure to provide specified information will result in denial of the application.

142

143 (4) Standards for Issuance of License. To receive a license to operate an adult
144 entertainment establishment or adult entertainment tavern, the applicant and the
145 proposed Adult Entertainment Tavern must meet the following standards:

146

147 (a) Standards related to the applicant. The applicant, in the case of a sole
148 proprietorship, all partners in the case of a partnership, and all shareholders in the case of
149 a corporation, must meet be at least eighteen (18) years of age.

150

151 (b) Standards related to the facility. The applicant must demonstrate that the property
152 and the building can meet the following physical standards:

153

154 1. The property shall have at least one parking stall for every two patrons it is
155 capable of seating at its maximum safe fire limit.

156 2. The building shall have a determined safe fire limit for occupancy calculated by
157 the Fire Department based upon the square footage and physical characteristics of
158 the building. The occupancy limit shall be communicated to patrons and
159 employees by signs posted at the entrance and in the facility.

160 3. No area of the building may be made available for customers, patrons for the
161 private viewing of any adult entertainment.

162 4. All portions of the building except rest rooms and areas which are off limits to
163 patrons shall be accessible to and from aisles and public areas of the adult
164 entertainment tavern and shall be unobstructed by any door, lock or other control-
165 type devices.

166 5. The lighting level of each booth, room or cubicle shall be a minimum of ten (10)
167 foot candles at all times as measured from the floor.

168 6. There shall be a separate entrance for employees and entertainers which shall be
169 locked to prevent unauthorized access.

170 7. There shall be a video monitoring system by which the operator can continuously
171 monitor activities outside the building but on the property and any parking areas.

172 8. The tavern may not have flashing lights, neon signs other than signs provided by
173 manufacturers of alcoholic beverages, or decorative lighting other than
174 illumination of parking lots, walk ways and entrances.

175 9. The interior of the tavern shall be not be visible from the exterior, including at
176 times when entry doors are open.

177 10. The tavern shall place waste receptacles near the entrances to the tavern to
178 discourage carrying any litter out of the building.

179 11. The signage for the tavern may not include any depictions of nudity, and may
180 refer to the tavern only as an "adult entertainment tavern" or "gentleman's club."

181 12. The tavern shall be sound-insulated, and sound levels controlled to the levels
182 specified in this ordinance.

183 13. The operator shall, if requested by the Dane County Department of Public Health,
184 post a sign of reasonable size, providing information concerning sexually
185 transmitted diseases if the sign also includes information on how to obtain
186 counseling, treatment, diagnosis or services related to sexually transmitted
187 diseases.
188

189 (c) Standards related to operations of the adult entertainment tavern. The applicant must
190 demonstrate the following operational capabilities and resources:
191

192 1. The level of sound audible at the property line of the tavern may not exceed 70
193 decibels from 12 noon to 10 p.m. or 60 decibels from 10 p.m. to 12 noon.
194

195 (5) Prohibited activities.

- 196 1. No patron of the tavern may engage in any type of sexual activity, cause
197 any bodily discharge or litter while in the tavern or its parking areas.
- 198 2. The tavern may not sell condoms or sexual aids, either directly or through
199 vending machines.
- 200 3. Patrons of the tavern may not be in a motor vehicle which is located on the
201 premises of the tavern for more than one minute.
- 202 4. Patrons of the tavern may not be in a motor vehicle which is located on the
203 premises of the tavern with a employee of the tavern or an entertainer who
204 has performed or will perform at the tavern.
- 205 5. Patrons of the tavern may not be allowed to congregate at or near the
206 separate entrance for employees or entertainers.
- 207 6. Patrons may not remain on the premises of the building for more than
208 three minutes after exiting the building.
- 209 7. The tavern shall cease admitting patrons at such time as all off-street
210 parking is full.
211

212 (6) Fees. A license fee of five hundred dollars (\$500) for an adult entertainment tavern
213 license. If the application is denied, one half of the fee shall be returned.
214

215 (6) Display of License. The license shall be displayed in a conspicuous public place in the
216 adult entertainment establishment.
217

218 (7) Renewal of License.
219

220 (a) Every license issued pursuant to this ordinance shall terminate on June 30 of each
221 year, unless sooner revoked, and must be renewed before operation is allowed on July 1.
222 Any operator desiring to renew a license shall make application to the Town Clerk. The
223 application for renewal must be filed not later than sixty (60) days before the license
224 expires. The application for renewal shall be filed in quadruplicate with and dated by the
225 Town Clerk. A copy of the application for renewal shall be distributed promptly by the
226 Town Clerk to the County Sheriff, the Town Health Department and to the operator. The
227 application for renewal shall be upon a form provided by the Town Clerk and shall

228 contain such information and data given under oath or affirmation as is required for an
229 application for a new license.

230

231 (b) A license renewal fee of four hundred dollars (\$400) shall be submitted with the
232 application for renewal. In addition to the renewal fee, a late penalty of one hundred
233 dollars (\$100) shall be assessed against the applicant who files for a renewal less than
234 sixty (60) days before the license expires. If the application is denied, one half of the total
235 fees collected shall be returned.

236

237 (c) If the Town Constable or Sheriff's Department, County Health Department, Zoning
238 Administrator or Clerk are aware of any information bearing on the operator's
239 qualifications, that information shall be filed in writing with the Town Clerk.

240

241 (8) Revocation of License.

242

243 (a) The Town Board shall revoke a license for any of the following reasons:

244

245 1. Discovery that false or misleading information or data was given on any application
246 or material facts were omitted from any application.

247

248 2. The operator or any employee of the operator violates any provision of this section
249 or any rule or regulation adopted by the Town Board pursuant to this chapter provided,
250 however, that in the case of a first offense by an operator where the conduct was solely
251 that of an employee, the penalty shall not exceed a suspension of thirty (30) days if the
252 Board shall find that the operator had no actual or constructive knowledge of such
253 violation and could not by the exercise of due diligence have had such actual or
254 constructive knowledge.

255

256 3. The operator becomes ineligible to obtain a license.

257

258 4. Any cost or fee required to be paid by this chapter is not paid.

259

260 5. Any intoxicating liquor or fermented malt beverage is served or consumed on any
261 premises of an adult entertainment establishment not licensed pursuant to Chapter 125 of
262 the Wisconsin Statutes.

263

264 (b) The Board, before revoking or suspending any license or permit, shall give the
265 operator at least ten (10) days written notice of the charges against the operator and the
266 opportunity for a public hearing before the Board. If a public hearing is requested, it
267 shall be held within ten (10) days thereafter before the Board. The Board shall make a
268 determination on the suspension or revocation of the license within twenty (20) days of
269 the scheduled public hearing and shall provide notification of the determination in writing
270 to the licensee within five (5) days of the determination. The notification shall contain
271 reasons for the suspension and/or revocation of the license. Appeal of the written
272 determination of the Board to revoke or suspend a license shall be by judicial review by
273 certiorari, which shall be sought within thirty (30) days of a decision. If a licensee makes

274 a timely appeal of the Board's determination to suspend or revoke a license, no
275 suspension or revocation shall be effective until a final decision is rendered.

276

277 (c) The transfer of a license or any interest in a license by the holder thereof shall
278 automatically and immediately revoke the license. If the holder of an adult
279 entertainment tavern license proposes to transfer the alcohol beverage license, the
280 proposed holder of the alcohol beverage license must obtain an adult entertainment
281 tavern license before continuing to provide adult entertainment. The term "transfer" as
282 used in this paragraph shall include sale of shares in a corporate license holder.

283

284 (d) Any operator whose license is revoked shall not be eligible to receive a license for
285 one year from the date of revocation. No location or premises for which a license has
286 been issued shall be used as an adult entertainment establishment or adult entertainment
287 tavern for one (1) year from the date of revocation of the license.

288

289 (10) Operator Responsibility. (a) Every act or omission by an employee constituting
290 a violation of the provisions of this ordinance shall be deemed the act or omission of the
291 operator if such act or omission occurs, either with the authorization, knowledge or
292 approval of the operator or as a result of the operator's negligent failure to supervise the
293 employee's conduct, and the operator shall be punishable for such act or omission in the
294 same manner as if the operator committed the act or caused the omission.

295 (b) Any act or omission of any employee constituting a violation of the provisions of
296 this ordinance shall be deemed the act or omission of the operator for purposes of
297 determining whether the operator's license shall be revoked, suspended or renewed.

298 (c) No employee of an adult tavern shall allow any minor to loiter around or to
299 frequent an adult entertainment establishment or to allow any minor to view any activity
300 allowed in an adult entertainment tavern.

301 (d) The operator shall maintain the premises in a clean and sanitary condition at all
302 times. The operator shall submit a fixed cleaning and sanitizing schedule to the Health
303 Department for approval, and once approved, adhere to that schedule.

304 (e) The operator shall maintain at least ten (10) foot candles of light in the public
305 portions of the establishment, including aisles, at all times. However, if a lesser level of
306 illumination in the aisles shall be necessary to enable a patron to view any activity in a
307 booth, room or cubicle adjoining an aisle, a lesser amount of illumination may be
308 maintained in such aisles provided, however, at no time shall be there be less than one (1)
309 foot candle of illumination in such aisles as measured from the floor.

310 (f) Security personnel, protocols and resources which are shown to be sufficient to keep
311 order in the tavern and the surrounding property.

312 (g) The applicant must have sufficient personnel that the individuals licensed to serve
313 alcoholic beverages will not be required to leave the bar at any time in order to handle
314 security problems or other situation

315 (h) The operator shall insure compliance of the establishment and its patrons with the
316 provisions of this ordinance.

317 (11) Patron Responsibility.

318 (a) No person shall at any time engage in sexual activities, including but not limited to
319 intercourse, fellatio, masturbation, cunnilingus, manual manipulation of the genitals of

320 another, or use of a vibrator or insertion of an object into the anus, vagina or glans of
321 another person, or cause any bodily discharge or litter associated with sexual activity
322 while in the tavern or the property or parking area associated with the tavern.

323 (c) No person shall remove, destroy, or deface any signs or posters, or destroy or
324 deface any information, brochures, or pamphlets, whether supplied by the Health
325 Department or posted by the operator.

326 (d) No person shall damage or deface any portion of the building.

327 (12) Administrative Procedure and Review. This Municipal Code and the Wisconsin
328 Statutes shall govern the administrative procedure and review regarding the granting,
329 denial, renewal, nonrenewal, revocation or suspension of a license.

330 (13) Exclusions. All private and public schools, as defined in Ch. 115, Wis. Stats.,
331 hospitals, medical clinics and public health facilities, located within the Town of Cross
332 Plains, are exempt from obtaining a license hereunder when instructing pupils or
333 patients/clients in sex education, prenatal, family planning, or child birth classes as part
334 of their curriculum or services.

335 (14) Enforcement. It shall be the duty of the Health Department, the Building
336 Inspection Unit and the Sheriff's Department to administer and enforce the provisions of
337 this ordinance. The operator shall afford the Town building inspector reasonable access
338 to the premises to inspect the same and verify that the Tavern meets the requirements of
339 this ordinance.

340 (15) Penalty.

341 (a) In addition to the revocation, suspension or nonrenewal of any license issued under
342 this ordinance, any person found to be in violation of any provision of this ordinance
343 shall be subject to a forfeiture of not less than one hundred dollars (\$100) nor more than
344 three hundred dollars (\$300) and in the case of an operator shall result in the suspension
345 or revocation of any license up to one (1) year.

346 (b) Each violation of this ordinance shall be considered a separate offense, and any
347 violation continuing more than one day shall be considered a separate offense.

348 (16) Severability. If any provision of this ordinance is deemed invalid or
349 unconstitutional by a court of competent jurisdiction, such invalidity or
350 unconstitutionality shall not affect the other provisions of the same. The Town Board
351 directs that all ambiguities in this ordinance be construed in favor of permitting the
352 maximum degree of expression of protect First Amendment activity which is consistent
353 with maintenance of public order, health and safety.

354 February 12, 2005

355

356 Harold Krantz, Chairperson

Robert Bowman, Supervisor

357 Vera Riley, Supervisor

358

359 I hereby certify that the above ordinance was adopted by the Town Board of the
360 Town of Cross Plains on February 12, 2005.

361

362 Publish: 2/17/05

Anne Herger, Deputy Clerk