

City of Fort Wayne Common Council

DIGEST SHEET

Department of Planning Services

Title of Ordinance: Amendment to the Fort Wayne Zoning Ordinance
Case Number: ZORD-2019-0009
Bill Number: G-19-09-13
Council District: All districts

Introduction Date: September 24, 2019

Plan Commission
Public Hearing Date: September 9, 2019

Next Council Action: Ordinance will return to Council after recommendation by the Plan Commission

Synopsis of Ordinance: A proposal to amend the Fort Wayne Zoning Ordinance (Chapter 157), Sexually Oriented Business provisions, and definitions

Location: Within the planning jurisdiction of Fort Wayne

Applicant: The Fort Wayne Plan Commission

Related Petitions: A similar amendment was recently approved for the Allen County Zoning Ordinance

Effect of Passage: These amendments are proposed to updated sections of the zoning ordinance related to sexually oriented business uses by:

- 1) Reducing the distance between sexually oriented business uses from 1,000 feet to 300;
- 2) Clarifying several definitions related to entertainment type uses, where the current language is unclear;
- 3) Deleting specific adult/sexually oriented business use definitions; these definitions are now located in Chapter 121.02 of the Municipal code

Effect of Non-Passage: The City of Fort Wayne Zoning Ordinance sexually oriented business use provisions will continue to face potential legal challenges; the Fort Wayne provisions will not be aligned with the Allen County provisions, and the definition in the zoning ordinance will not be clear, or aligned with those in Municipal Code.

#ZORD-2019-0006

BILL NO. G-19-09-13

ORDINANCE NO.

AN ORDINANCE amending Chapter 157
of the City of Fort Wayne Municipal Code

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
INDIANA:

SECTION 1. That the current Chapter 157 (Zoning Ordinance), Section 157.217(B) is hereby
amended by amending note "(3)" in the "Notes" section for the list of C4 Intensive Commercial
Specific Permitted Uses, as follows:

C4 INTENSIVE COMMERCIAL SPECIFIC PERMITTED USES	
...	...
...	...
Notes:	
...	
(3) Subject to the standards in § 157.414	

SECTION 2. That the current Chapter 157 (Zoning Ordinance) Additional General Standards
subchapter is hereby amended by adopting a new § 157.414 Sexually Oriented Business
Location Standards, to read as follows:

§ 157.414 SEXUALLY ORIENTED BUSINESS LOCATION STANDARDS

(A) *Purpose.* It is the purpose of this ordinance to regulate sexually oriented businesses in
order to promote the health, safety, and general welfare of the citizens of the City, and to
establish reasonable and uniform regulations to prevent the deleterious secondary effects
of sexually oriented businesses within the City. The provisions of this ordinance have
neither the purpose nor effect of imposing a limitation or restriction on the content or
reasonable access to any communicative materials, including sexually oriented materials.
Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by
adults to sexually oriented materials protected by the First Amendment, or to deny access
by the distributors and exhibitors of sexually oriented entertainment to their intended
market. Neither is it the intent nor effect of this ordinance to condone or legitimize the
distribution of obscene material.

(B) *Findings and Rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *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*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 889 F.3d 432 (7th Cir. 2018); *BBL, Inc. v. City of Angola*, 2014 WL 26093 (N.D. Ind. Jan. 2, 2014), *aff'd*, *BBL, Inc. v. City of Angola*, 809 F.3d 317 (7th Cir. 2015); *HH-Indianapolis, LLC v. Consol. City of Indianapolis/Marion County*, 265 F. Supp. 3d 873 (S.D. Ind. 2017); *1407, LLC v. City of Fort Wayne*, 2019 WL 341239 (N.D. Ind. 2019); *Uniontown Retail #36, LLC v. Bd. of Comm'rs of Jackson County*, 950 N.E.2d 332 (Ind. Ct. App. 2011); *Plaza Group Properties, LLC v. Spencer CityPlan Comm'n*, 911 N.E.2d 1264 (Ind. Ct. App. 2009); *Plaza Group Properties, LLC v. Spencer CityPlan Comm'n*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Foxxxy Ladyz Adult World, Inc. v. Village of Dix*, 779 F.3d 706 (7th Cir. 2015); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Andy's Restaurant & Lounge, Inc. v. City of Gary*, 466 F.3d 550 (7th Cir. 2006); *Blue Canary Corp. v. City of Milwaukee*, 270 F.3d 1156 (7th Cir. 2001); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000); *Matney v. City of Kenosha*, 86 F.3d 692 (7th Cir. 1996); *Berg v. Health & Hospital Corp.*, 865 F.2d 797 (7th Cir. 1989); *DiMa Corp. v. Town of Hallie*, 185 F.3d 823 (7th Cir. 1999); *Graff v. City of Chicago*, 9 F.3d 1309 (7th Cir. 1993); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (7th Cir. 1996); *Chulchian v. City of Indianapolis*, 633 F.2d 27 (7th Cir. 1980); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Metro Pony, LLC v. City of Metropolis*, 2012 WL 1389656 (S.D. Ill. Apr. 20, 2012); *Entm't Prods., Inc. v. Shelby County*, 721 F.3d 729 (6th Cir. 2013); *Lund v. City of Fall River*, 714 F.3d 65 (1st Cir. 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d

1 1186 (9th Cir. 2004); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir.
2 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007);
3 *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Williams v. Morgan*,
4 478 F.3d 1316 (11th Cir. 2007); *Jacksonville Property Rights Ass'n, Inc. v. City of*
5 *Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *H&A Land Corp. v. City of Kennedale*, 480
6 F.3d 336 (5th Cir. 2007); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995);
7 *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Richland Bookmart,*
8 *Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales,*
9 *Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc.*
10 *v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75
11 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App.
12 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No. 01-
13 01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v.*
14 *City of San Diego*, 505 F.3d 996 (9th Cir. 2007); *U.S. v. Baston*, 818 F.3d 651 (11th Cir.
15 2016); *Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995);
16 *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010); *Gammoh v. City of La Habra*,
17 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No.
18 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel.*
19 *Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order
20 (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v.*
21 *City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D.
22 Tex. May 26, 2005);

23 and based upon reports concerning secondary effects occurring in and around sexually
24 oriented businesses, including, but not limited to, "Correlates of Current Transactional
25 Sex among a Sample of Female Exotic Dancers in Baltimore, MD," *Journal of Urban*
26 *Health* (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased
27 Levels of Crime?" *Crime & Delinquency* (2012) (Louisville, KY); *Metropolis, Illinois –*
28 *2011-12*; *Manatee County, Florida – 2007*; *Hillsborough County, Florida – 2006*;
29 *Clarksville, Indiana – 2009*; *El Paso, Texas – 2008*; *Memphis, Tennessee – 2006*; *New*
30 *Albany, Indiana – 2009*; *Louisville, Kentucky – 2004*; *Fulton County, GA – 2001*;
Chattanooga, Tennessee – 1999-2003; *Jackson County, Missouri – 2008*; *Ft. Worth,*
Texas – 2004; *Kennedale, Texas – 2005*; *Greensboro, North Carolina – 2003*; *Dallas,*
Texas – 1997; *Houston, Texas – 1997, 1983*; *Phoenix, Arizona – 1995-98, 1979*; *Tucson,*
Arizona – 1990; *Spokane, Washington – 2001*; *St. Cloud, Minnesota – 1994*; *Austin,*
Texas – 1986; *Indianapolis, Indiana – 1984*; *Garden Grove, California – 1991*; *Los*
Angeles, California – 1977; *Whittier, California – 1978*; *Oklahoma City, Oklahoma – 1986*;
New York, New York Times Square – 1994; the Report of the Attorney General's Working

1 Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of
2 Minnesota); Dallas, Texas – 2007; "Rural Hotspots: The Case of Adult Businesses," 19
3 Criminal Justice Policy Review 153 (2008); "Stripclubs According to Strippers: Exposing
4 Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice
5 Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented
6 Businesses: An Insider's View," by David Sherman, presented to the Michigan House
7 Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and
8 Articles; Indianapolis / Marion City Board of Zoning Appeals Documents; Law
9 Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and
10 Sandy Springs, GA); and Strip Club-Trafficking Documents, the City finds:

- 11 (1) Sexually oriented businesses, as a category of commercial uses, are associated
12 with a wide variety of adverse secondary effects including, but not limited to,
13 personal and property crimes, human trafficking, prostitution, potential spread of
14 disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking,
15 negative impacts on surrounding properties, urban blight, litter, and sexual assault
16 and exploitation.
- 17 (2) Sexually oriented businesses should be separated from sensitive land uses to
18 minimize the impact of their secondary effects upon such uses.
- 19 (3) Each of the foregoing negative secondary effects constitutes a harm which the City
20 has a substantial government interest in preventing and/or abating. The City's
21 interest in regulating sexually oriented businesses extends to preventing future
22 secondary effects of either current or future sexually oriented businesses that may
23 locate in the City. The City finds that the cases and documentation relied on in this
24 ordinance are reasonably believed to be relevant to said secondary effects.

25 The City hereby adopts and incorporates herein its stated findings and legislative record
26 related to the adverse secondary effects of sexually oriented businesses, including the
27 judicial opinions and reports related to such secondary effects.

- 28 (1) It shall be unlawful to establish, operate, or cause to be operated a sexually
29 oriented business within the planning jurisdiction of Fort Wayne that is within:
 - 30 (a) 500 feet of any existing Allen City or Fort Wayne A or R district; or
 - (b) 300 feet of any existing sexually oriented business; or
 - (c) 750 feet of any existing or pending religious institution or school.
- (2) For the purpose of this section, measurements shall be made in a straight line from
the closest part of any structure occupied by the sexually oriented business to the
closest property line of uses outlined in subsection (B)(1), above.

SECTION 3. That the current Chapter 157 (Zoning Ordinance) Section 157.506 (Definitions) is hereby amended by amending the following defined terms to read as follows:

Bar

An eating/drinking establishment providing or dispensing by the drink for on-site consumption fermented malt beverages, and/or malt, special malt, vinous or spirituous liquors, and in which the sale of food products such as sandwiches and light snacks is secondary. A bar/tavern may include the provision of live entertainment and/or dancing; however, a bar/tavern shall not include any sexually oriented business use.

Dance Hall

An enclosed structure used for dancing or similar social gatherings. Any use that falls under the definition of sexually oriented business shall not be included under this definition.

Entertainment Facility

A facility that offers indoor or outdoor entertainment uses, including performing arts theaters, cinemas, concert venues, or circus/festivals, but does not include any sexually oriented business use.

Nightclub

An establishment dispensing liquor and meals in which music, dancing, or entertainment is provided. Any establishment that meets the definition of sexually oriented business is not included under this definition.

Sexually Oriented Business

An establishment that meets the definition of "sexually oriented business" as defined in Chapter 121.02 of the Municipal Code of the City of Fort Wayne, which definition is incorporated herein by reference.

SECTION 4. That the current Chapter 157 (Zoning Ordinance) Section 157.506 (Definitions) is hereby amended by deleting the following defined terms:

Adult Bookstore, Adult Novelty Store, Adult Video Store

Adult Cabaret

Adult Entertainment Establishment

Adult Motion Picture Theater

Adult Night Club

Nude or Semi-Nude Model Studio
Nude or State of Nudity
Semi-Nude or State of Semi-Nudity
Sexual Encounter Establishment
Specified Anatomical Areas
Specified Sexual Activities

SECTION 5. That this Ordinance, after its passage by the Common Council, shall be in full force and effect as of its approval by the Mayor.

Council Member

APPROVED AS TO FORM AND LEGALITY:

Carol T. Helton, City Attorney