

ORDINANCE NO. 982

AN ORDINANCE TO CREATE AND ENACT CHAPTER 10-14 OF THE REVISED ORDINANCES OF 1990 OF THE CITY OF WEST FARGO RELATING TO THE LICENSING OF LIVE ADULT ENTERTAINERS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF WET FARGO NORTH DAKOTA:

SECTION 1. Chapter 10-14 of the Revised Ordinances of 1990 of the City of West Fargo is hereby created and enacted to read as follows:

CHAPTER 10-14

LIVE ADULT ENTERTAINER LICENSE

- 10-1401: Background, Intent and Purpose.
- 10-1402: Definitions.
- 10-1403: Existing Escort Services, Live Adult Entertainers, and Live Adult Entertainment Businesses.
- 10-1404: Escorts Services, Live Adult Entertainers, and Live Adult Entertainment Businesses - License required.
- 10-1405: License Term.
- 10-1406: License Renewal.
- 10-1407: Exception.
- 10-1408: Application for Live Adult Entertainers License - Contents - Renewals - Required Fees.
- 10-1409: Investigation of License Applicants.
- 10-1410: Prohibited Activities of Live Adult Entertainers.
- 10-1411: Live Adult Entertainer Personal Identification Card.
- 10-1412: Unlawful Acts.
- 10-1413: Sale or Transfer.
- 10-1414: Violation - Penalty.

10-1401: BACKGROUND, INTENT AND PURPOSE.

1. In recent years, the West Fargo Police Department has observed an increase in individuals, businesses or agencies performing adult entertainment at residences, hotels and other locations within the City of West Fargo. Previously, these activities were normally confined to adult uses and establishments, which are regulated through the City zoning ordinances.

2. The West Fargo Police Department has also investigated numerous criminal incidents involving independent adult entertainers engaging in the activities described in paragraph 1 of this section.
3. The West Fargo Police Department has conducted numerous investigations where adult entertainers were victims of crime or engaged in criminal activity including, but not limited to, prostitution, theft, extortion and drug related crimes
4. The West Fargo Police Department has investigated activities involving "escort services" and adult entertainment services that exploit and utilize minors for prostitution activities.
5. Internet sites and other media have and are used to advertise adult entertainment and escort services to citizens of West Fargo.
6. The West Fargo Police Department has conducted numerous criminal investigations in which escort services and independent adult entertainment has been used as a cover for illegal activities, including prostitution.
7. Numerous State and Federal courts have recognized that nude dancing and other adult entertainment, if conducted by consenting adults and which does not involve a fee for sexual services, is a legitimate activity.
8. The West Fargo City Commission finds that the licensing of "escort services," "live adult entertainers," and "live adult entertainer services" (hereinafter "adult entertainment services") will provide a regulatory mechanism that will serve the following objectives and goals:
 - a. Individuals and business engaging in legitimate adult entertainment services will not be restricted or burdened;
 - b. Patrons utilizing adult entertainment services will be protected from criminal activities and will be able to identify legitimate adult entertainment service providers;

- c. Minors will be protected by a licensing system which strictly prohibits minors from engaging in or receiving adult entertainment services;
- d. Illegal prostitution will be discouraged.

10-1402: DEFINITIONS. For the purpose of this article, the following words and phrases shall have the meanings respectively prescribed to them by this section:

1. Adult Bookstore: An enclosed building having as a substantial or significant portion of its stock in trade, books, magazines, or other periodicals which are distinguished or characterized by their emphasis on matter depicting or describing specified sexual activities or specified anatomical areas, as set out in Section 4-429.6 of the West Fargo Municipal Code.
2. Adult Cinema: An enclosed building used on a regular basis for presenting pictorial materials or other visual images by way of direct or indirect projection, which materials are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons therein in return for the payment of a consideration, irrespective of the number of patrons who may be able to view the presentation at one time, as set out in Section 4-429.6 of the West Fargo Municipal Code.
3. Adult Live Performance Theater: An enclosed building used on a regular basis for presenting live performances by singers, musicians, dancers, comedians, models, or any similar type of entertainers, which live performances are distinguished or characterized by an emphasis on the depiction of specified sexual activities or specified anatomical areas, for observation by patrons, as set out in Section 4-429.6 of the West Fargo Municipal Code.
4. "Escort Services" and "Live Adult Entertainer" and "Live Adult Entertainer Services" shall be used interchangeably and shall mean any person who, for consideration paid by or for the person:
 - a. Dances, strips or otherwise performs where such performances are distinguished or characterized by an emphasis to arouse or excite the patrons' sexual desires; or

- b. Provides a service involving companionship where such companionship is distinguished or characterized by an emphasis to arouse or excite the patrons' sexual desires and where the fee for said service is based on the amount of time in companionship; or
 - c. Provides a service for a fee involving specified sexual activities or display of specified anatomical areas; or
 - d. Holds themselves out as an escort or adult entertainer by advertising such services.
5. "Live Adult Entertainment Business" means a corporate entity, business, sole proprietorship, or any other type of business or person who provides escort services or adult entertainer services, or who has employees that provide escort services or adult entertainer services, or who receives any type of fee or compensation for providing escort or adult entertainment at any location within the City of West Fargo.
6. "Nude" or "semi-nude" means a state of dress displaying specified anatomical areas.
7. "Specified anatomical area" means any of the following:
- a. Less than completely and opaquely covered: (1) human genitals, pubic region, or pubic hair (2) buttock and (3) female breast below a point immediately above the top of the areola; and
 - b. Human male genitals in a discernibly turgid state, even if completely opaquely covered.
8. "Specified sexual activities" means any of the following conditions:
- a. Human genitals in a state of sexual stimulation or arousal;
 - b. Acts or representations of acts of human masturbation, sexual intercourse or sodomy, bestiality, oral copulation or flagellation;

- c. Fondling or erotic touching of human genitals, pubic region, buttock or female breast;
- d. Excretory functions as part of or in connection with any activities set forth in a. through c. above.

10-1403: EXISTING ESCORT SERVICES, LIVE ADULT ENTERTAINERS AND LIVE ADULT ENTERTAINMENT BUSINESSES. The provisions of this article shall apply to any escort service, live adult entertainer or live adult entertainment businesses in existence at the time this article takes effect. All licenses required herein shall be applied for within thirty (30) days from the effective date of this ordinance.

10-1404: ESCORT SERVICES, LIVE ADULT ENTERTAINERS AND LIVE ADULT ENTERTAINMENT BUSINESS - LICENSE REQUIRED. It shall be unlawful for any person to engage in, conduct or carry on, in or upon any location, premises or real property located or situated within the City, the activities of an escort service, live adult entertainer or live adult entertainment business, unless there has been granted to such person, business or individual a valid license, pursuant to the provisions of this article. All individuals, persons or businesses intending to provide escort services, live adult entertainment and operate live adult entertainment businesses shall apply for a live Adult Entertainer's License prior to performing the activities of an escort, escort service, live adult entertainer or operating a live adult entertainment business within the City of West Fargo. Both the business owner and the individual actually performing the escort services or adult entertainment services shall obtain an Adult Entertainer License from the City.

10-1405: LICENSE TERM. The term of a live Adult Entertainer License shall be for a period of one year; provided, however, that all licenses shall be prorated on a quarterly basis and expire on December 31 of each year unless sooner suspended or revoked.

10-1406: LICENSE RENEWAL. An Adult Entertainer License, issued pursuant to the provisions of this article, which has not been suspended or revoked, may be renewed for a period of not to exceed one year on written application to the City Auditor made at least thirty (30) days prior to the expiration date of the current valid license. The application for renewal of a license shall contain all of the information required by Section 10-1408.

10-1407: EXCEPTION. The license requirements of this chapter shall have no application and no effect upon and shall not be construed as applying to a person in the lawful business of:

1. An employment agency licensed under the laws of the State of North Dakota;
2. An adult bookstore or adult cinema provided no live escorts or adult entertainers are employed, contracted or otherwise allowed to perform on the premises.
3. Volunteers or models who pose nude or semi-nude for federal, state or locally recognized art courses and classes.
4. A licensed liquor premise which has a cabaret license issued by the City of West Fargo. Neither shall the performer be required to have a license to perform at a licensed cabaret premise.

10-1408: APPLICATION FOR LIVE ADULT ENTERTAINER LICENSE - CONTENTS - RENEWALS -REQUIRED FEES.

1. Any person, individual or business desiring to obtain a license, or renew an existing license, to operate as an escort service, live adult entertainer or live adult entertainment business, shall make application to the City Auditor. Upon submitting such application for a license, or renewal of a license, a non-refundable fee that has been established by the City's fee schedule shall be paid to the City Auditor.
2. Neither the filing of an application for a license or renewal thereof, nor payment of an application or renewal fee, shall authorize the conducting of escort services, live adult entertainer services or a live adult entertainment business until such license has been granted or renewed.
3. Each applicant for a live Adult Entertainer License, or renewal thereof, shall furnish the following information:
 - a. The full true name under which the business will be conducted;

- b. The full true name and any other names used by the applicant, date of birth, and social security number;
- c. The full true name of the person or persons providing the escort services or live adult entertainment;
- d. If the applicant is a business, the full true name of any and all employees who will provide escort services or live adult entertainment;
- e. The present residence and business address and telephone numbers of the applicant;
- f. A full and complete description of the activities that the applicant intends to undertake;
- g. Acceptable written proof that the applicant, manager or other person principally in charge of the operation of the business is at least eighteen (18) years of age;
- h. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation or charter, together with the state and date of incorporation, and the names, residence addresses, dates of birth and social security number of each of its current officers and directors. If the applicant is a partnership, the applicant shall set forth the names, residence addresses, dates of birth and social security number of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this subsection pertaining to corporations shall apply. The corporation or partnership applicant shall designate one of its officers or general partners to act as its responsible managing officer. Such designated person shall complete and sign all application forms required of an individual applicant under this article, but only one application fee shall be charged;
- i. A full and detailed description of the service to be provided and/or merchandise to be sold;

- j. A list of all jurisdictions in which the applicant has been licensed to perform escort services or live adult entertainment.
 - k. A list of any and all misdemeanor or felonies involving violence, drugs, or prostitution, and the jurisdiction in which they were committed.
 - l. Such other identification and/or information as the City Auditor may require in order to discover the truth of the matters required to be set forth in the application.
- 4. When any change occurs regarding the written information required by subsection 3 of this section to be included in the application, the applicant or license holder, as the case may be, shall give written notification of such change to the City Auditor within twenty-four (24) hours after such change.
 - 5. The City Auditor shall have a reasonable period of time in which to review the application.
 - 6. The City Auditor may deny the application if the applicant has been convicted of a misdemeanor or felony involving violence, drugs or prostitution within the last ten (10) years.
 - 7. The City Auditor may grant the license, or renewal thereof, only if he/she finds that all of the following requirements have been met:
 - a. The required fees have been paid;
 - b. The application and location conforms in all respects to the provisions of this article;
 - c. The applicant has not knowingly made a material misrepresentation of fact in the application;
 - d. The applicant has fully cooperated in the investigation of the application;
 - e. The applicant, manager or other person principally in charge of the operation of the business is at least eighteen (18) years of age.

- f. If the City Auditor does not find that all of the requirements set forth in subsections 7.a. through e. of this section have been met, the Auditor shall deny the application for the license or renewal thereof. In the event the application for the license or renewal thereof is denied by the City Auditor, written notice of such denial shall be given to the applicant, specifying the ground or grounds of such denial. Notice of denial of the application for the license, or renewal thereof, shall be deemed to have been served if it in fact is personally served on the applicant or when deposited in the United States mail with postage prepaid and addressed to the applicant at the residence address set forth in the application for the permit or renewal thereof. Any applicant whose application for an adult entertainment business license, or renewal thereof, has been denied by the City Auditor may appeal such denial to the City Commission within 30 days of the City Auditor mailing notice of this denial.

10-1409: INVESTIGATION OF LICENSE APPLICANTS. The Police Department shall investigate all applications for a live Adult Entertainer License. The Police shall conduct a criminal background check as part of the investigation to determine if there were any violations including violence, drugs, or prostitution. In the event a national criminal investigation is required, the applicant shall be responsible for additional fees incurred in such and, upon request, provide additional information required to complete such process. All applicants are required to complete an informal consent authorizing the disclosure of all criminal history record information. Upon completion of said investigation, Police Department shall report to the City Auditor in writing its findings and recommendation.

10-1410: PROHIBITED ACTIVITIES OF LIVE ADULT ENTERTAINERS.

1. No live adult entertainment business shall employ or be operated by any person under the age of eighteen (18) years of age.
2. No person providing escort services or a live adult entertainer shall be under the age of eighteen (18) years of age.

3. No live adult entertainment business shall display or furnish any merchandise or services to any person who is under eighteen (18) years of age, except that escort services may be provided at the special instance and request of a parent, guardian or other person in lawful custody of the person upon whose behalf the escort service is engaged.

10-1411: LIVE ADULT ENTERTAINER PERSONAL IDENTIFICATION CARD. All individuals providing escort services or live adult entertainers, or employees of a business providing escort services, or employees of a live adult entertainment business engaging in live adult entertainment shall be issued a personal identification card by the City. The individual or employee shall at all times while engaged in escort services or live adult entertainment carry such card upon his or her person when engaging in escort services or live adult entertainment and shall immediately produce the same for inspection upon request.

10-1412: UNLAWFUL ACTS. It shall be unlawful for:

1. The holder of a live Adult Entertainer License to provide escort services, offer to provide escort services or perform any live adult entertainer services for any person under eighteen (18) years of age;
2. Any person licensed as a live adult entertainer to place his or her hands upon or touch with any part of his or her body or fondle in any manner a sexual or genital part of any other person while performing escort services or adult entertainer services;
3. The holder of a live Adult Entertainer License to provide escort services, offer to escort, engage in adult entertainment, or offer to perform adult entertainment for another person without first having a valid Adult Entertainer License.

10-1413: SALE OR TRANSFER.

1. Upon the sale or transfer of any interest in any escort service or live adult entertainment business, the establishment's Adult Entertainer License shall immediately become null and void. A new application shall be made by any person, firm or entity desiring to own or operate the adult entertainment business. A fee of twenty-five dollars (\$25) shall be payable for each

such application. Any application involving the sale or other transfer of any interest in an existing adult entertainment business, as well as any license which may thereafter be granted, shall be subject to the provisions of this chapter.

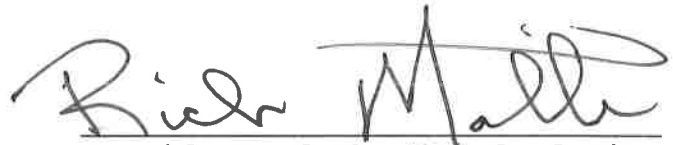
2. Individuals having an Adult Entertainer License shall not sell, transfer or assign any interest in said license.

10-1414: VIOLATION - PENALTY. Any person violating any provision of this chapter shall, upon conviction, be penalized in accordance with the provisions of Section 1-0211 of the West Fargo Municipal Code.

SECTION 2. This ordinance shall be in full force and effect from and after the date of its final passage and publication.

PASSED by the City Commission of the City of West Fargo this 6th day of June, 2016.

APPROVED BY:



President of the Board of City Commissioners

ATTEST:


City Auditor

Date of First Reading: December 2, 2013

Date of Second Reading: June 6, 2016

Date of Publication: June 13, 2016