

TOWN OF EAU PLEINE, MARATHON COUNTY, WISCONSIN

ORDINANCE #00-1 PROHIBITING LIVE, NUDE, NON-OBSCENE, DANCING IN ESTABLISHMENTS LICENSED TO SELL ALCOHOL BEVERAGES AND CREATING AN EXCEPTION FROM SUCH PROHIBITION FOR THEATERS, CIVIC CENTERS, PERFORMING ARTS CENTERS AND DINNER THEATERS WHERE LIVE DANCE, BALLET, MUSIC AND DRAMATIC PERFORMANCES OF SERIOUS ARTISTIC MERIT ARE OFFERED ON A REGULAR BASIS.

WHEREAS, the Town Board of the Town of Eau Pleine has explicit authority under sec. 125.10(1), 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 Eau Pleine pursuant to village powers granted to it under sec. 60.10(2)(c), Stats., has authority under its general police powers set forth in sec. 61.34(1) to act for the good order of the Town and for the health, safety, welfare and morals of the public; and may carry out its powers by regulation and suppression; and

WHEREAS, the Town Board 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 an ordinance addressing the secondary effects of live, nude, non-obscene, dancing in bars and taverns; and

WHEREAS, bars and taverns featuring live, nude, non-obscene, 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 and general welfare of citizens; and

WHEREAS, the Town Board 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, nude, non-obscene, dancing occurs may and do generate secondary effects which the governing body believes are detrimental to the public health, safety, welfare and morals of the citizens of the Town of Eau Claire. Specific evidence of experiences of other communities, and specifically in Marathon County, Wisconsin, concerning the adverse secondary effects that such conduct has upon the community which has been brought to the attention of the Town Board prior to the enactment of this ordinance includes, but is not limited to the following:

(a) In July of 1990 a 14 year old Janesville runaway was caught prostituting for a pimp who had been working with two exotic dancers in a tavern in Wausau.

(b) In October of 1990 a Marathon County Health Officer sent an alert to area doctors linking possible syphilis cases to two exotic dancers who were performing in establishments selling alcoholic beverages in Marathon County.

(c) In July of 1990 five dancers at a Marathon County establishment selling alcoholic beverages were cited for being involved in prostitution.

(d) In October of 1990 an article appeared in the Wausau Daily Herald which is a newspaper of general circulation in Wausau and Marathon County that an exotic dancer in a Marathon County tavern reported that some of the dancers in those establishments likely were prostitutes and probably had AIDS.

(e) In June of 1992 a 15 year old Milwaukee runaway who was dancing nude in a Wausau area tavern told authorities that the tavern's customers touched her genitals while she danced. Police also discovered that dancers at the establishment received kickbacks for soliciting drinks from customers.

(f) In 1995 a citizen complained to the Chief of Police of the City of Wausau that he witnessed men touching the lower torso area of dancers at a Wausau area tavern.

(g) In 1996 it was reported the then owner of a local limousine service refused to transport men from



bars in Marathon County employing topless dancers because of the manner in which female drivers of the limousine service were being abused. It was reported that such abuse did not occur when transporting men from establishments not employing topless dancers.

(h) In the summer of 1997 it was reported that nude females were lap dancing at a Wausau area tavern and sexual activities were being carried out at two of the out-of-the way tables in the tavern.

(I) In December of 1997 a former employee of a Wausau area tavern that featured nude dancing testified at a Wausau Public Health and Safety Committee meeting that there was substantial prostitution, drugs and venereal disease outside of, but stemming from, the dancers at the place where he was employed.

(j) The Town Board has been provided with substantial information from the City of Merrill, Wisconsin, including a Memorandum from Merrill City Attorney James Godlewski dated October 20, 1997 containing an extensive outline of the secondary effects of nude, nonobscene dancing in bars and taverns in other communities and the attempts by the City of Merrill to regulate through its ordinances such conduct; and

(k) The Town Board further relies upon the findings and studies made in other localities as exemplified and discussed by Justice Rehnquist in California v. LaRue, 409 U.S. 109 (1972); Renton v. Playtime Theater, Inc., 475 U.S. 41 (1986); Barnes v. Glen Theatre, 115 L.Ed. 2d 504 (1991); Crownover v. Musick, 509 P. 2d 497 (Ca. 1973); Curtis v. City of Seattle, 639 P. 2d 1370 (Wash. 1982); Yauch v. State, 514 P. 2d 709 (Ariz. 1973); State v. Turner, 382 N.W. 2d 252 (Minn. Ct. App. 1986); Board of County Commissioners of Lee County v. Dexter Hous, 348 S. 2d 916 (Fla. App. 1977); Kev, Inc. v. Kitsap County, 793 F. 2d 1053 (9th Cir. 1986); Koppinger v. City of Fairmont, 248 N.W. 2d 708 (Minn. 1976); Chattanooga v. McCoy, 645 S.W. 2d 400 (Tenn. 1983); O'Day v. King County, 749 P. 2d 142 (Wash. 1988); and Grand Faloan Tavern, Inc. v. Wicker, 670 F. 2d 943 (11th Cir. 1982). The Board is also aware of and bases this ordinance on studies which have been conducted in numerous cities around the country which are outlined in a document entitled "Secondary Effects of Adult-Oriented

Entertainment Establishments", a copy of which is on file in the office of the Town Clerk. These studies are from Austin, Texas (which focused upon crime rates, property values and trade area characteristics); Amarillo, Texas (which published a report on zoning and other methods of regulating adult entertainment uses in Amarillo); Beaumont, Texas (which studied the Charlton-Pollard neighborhood to look into the effect of adult businesses on economic decline and crime); Indianapolis, Indiana, Division of Planning published a report in 1984 titled "Adult Entertainment Businesses in Indianapolis and Analysis" outlining the results of an investigation of the impact of adult business upon surrounding areas in terms of crime rate and real estate values); Los Angeles, California (the Department of City Planning in 1977 conducted a study and issued a report entitled "Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles"); Phoenix, Arizona which conducted a study investigating the incidence of crime by comparing three study areas containing adult businesses with three areas without any adult businesses); and St. Paul, Minnesota (City Planning Department conducted a study entitled "Effects on Surrounding Area of Adult Entertainment Businesses" which found there was a statistically significant correlation between diminished housing values and crime rates and the location of adult businesses.)

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 exists, (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, general welfare and morals of the citizens of the Town of Eau Pleine; 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, nude, non-obscene 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 Eau Pleine do ordain as follows:

SECTION 1: Ordinance 107 of the Town of Eau Pleine relating to nude dancing in licensed establishments is created to provide 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 cleft, cleavage or simulation thereof, with less than a fully opaque covering; or

Shows to the public view any portion of the female breast or simulation thereof, directly or laterally below 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: theaters, performing arts centers, civic centers, and dinner theaters 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 is not distinguished by an emphasis on, or the advertising or promotion of, employees engaging in nude 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 Eau Pleine to sell alcohol beverages pursuant to ch. 125, Stats. The term "licensee" shall mean 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 Eau Pleine 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 \$100.00 nor more than \$500.00 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.

TOWN BOARD, TOWN OF EAU PLEINE

By:

Edward Polege  
Edward Polege, Chairman

Raymond Carl  
Raymond Carl, Supervisor

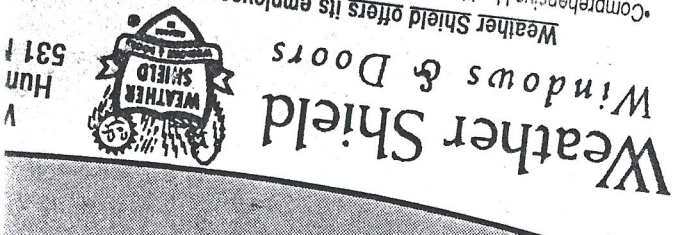
Mark Landwehr  
Mark Landwehr, Supervisor

ATTEST:

Eugene Makovec, Clerk  
Eugene Makovec, Town Clerk

ADOPTED: April 10, 2000  
APPROVED: April 10, 2000  
PUBLISHED: \_\_\_\_\_





By now most Wisconsin taxpayers  
received a  
tax rebate check?  
your state sales

## The Stratford Journal

Wednesday, January 19, 2000

### ORDINANCE BANNING NUDE DANCING IN BARS Ordinance No. 1

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

**WHEREAS**, the Town Board of the Town of Cleveland has explicit authority under §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, Wis. Stats., and

**WHEREAS**, the Town Board was granted the authority to exercise village powers under §60.22(3) Wis. 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 recognizes it lacks authority to regulate obscenity in light of §66.05(3), Wis. 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 an 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 and general welfare of citizens; and

**WHEREAS**, the Town Board 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 Cleveland; 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 exists, (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 Cleveland: 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 Cleveland does 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 or anus with less than a fully opaque covering; or

Shows the covered male genitals in a discernably turgid state.

#### SECTION 2. EXEMPTIONS.

The provisions of this ordinance do not apply to the following licensed establishments; theaters, performing arts centers, civic centers, and dinner theaters 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 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 Cleveland to sell alcohol beverages pursuant to Ch. 125, Wis. 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 Cleveland pursuant to Ch. 125, Wis. 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 \$500.00 and not more than \$1,000.00 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 §125.12, Wis. 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 the 14th day of December, 1999.

**TOWN OF CLEVELAND**

Signed: Joe Kaiser, Town Chairperson

Attest: Phyllis Schnelle, Town Clerk



EP4253 CTH E  
Stratford, WI 54484  
March 16, 2001

Dear Mr. McGeady:

Dom Gordon asked that we send a copy of the town ordinance that you helped draft. Again, thank you for your advice when Attorney Weber of Wausau was putting it together.

We do not now, nor have we ever, had an SOB in our town so it has never been challenged.

A couple of weeks ago our Town Chairman, Ed Polege, told me how happy he is that we have an ordinance in place. All the Town Board members feel the same way.

Yours truly,

*Eugene Makovec*

Eugene Makovec, Clerk  
Town of Eau Pleine  
Marathon County, Wisconsin



**KELLEY, WEBER, PIETZ & SLATER, S.C.**

**ATTORNEYS AT LAW**

530 JACKSON STREET

**WAUSAU, WISCONSIN 54403-5589**

TELEPHONE

(715) 845-9211

January 20, 2000

RICHARD J. WEBER  
COLIN D. PIETZ  
JERRY W. SLATER\*  
SHANE J. VANDERWAAL  
PATRICK H. FINLAN  
PETER C. GUNTHER

\*ALSO ADMITTED IN NEW YORK

JOHN W. KELLEY  
OF COUNSEL

NEW YORK TIE LINE  
(212) 690-7830

FAX  
(715) 842-9317

E-MAIL  
Kwpslaw@kwpslaw.com

Mr. Eugene Makovec  
EP4253 County Highway E  
Stratford, WI 54484

RE: Ordinance #99-1/Nude Dancing, etc.

Dear Mr. Makovec:

Following my meeting with you and Ed Polege on Wednesday of this week, I reviewed the Morality in Media information that you provided to me and then made revisions in the Eau Pleine ordinance consistent with what I believe to be the recommendations of Attorney Paul J. McGeady.

I have not placed in the ordinance a restriction that these taverns must be located a minimum distance of 1,000 feet from a residence or other similar establishment because I believe that restriction ought to be part of your zoning code and not part of this particular ordinance. I have also not included a provision that these dancers must keep a distance of six feet from the patrons for the reason that we are passing an ordinance which would prohibit these types of dances altogether. Thus the provision that they remain six feet from the patrons would seem to be inconsistent with the ordinance. Furthermore if a person is clothed in the manner required by the ordinance, it would be difficult, in my opinion, to require those persons to stay at least six feet away from the tavern patrons.

I am attaching the original and three copies of the revised ordinance. As you can see I have eliminated the word "erotic" where it appeared in the original draft; I have added examples of secondary effects which you provided to me and which were contained in the article by Dom Gordon, and I have also included the information received from the City Attorney of the City of Merrill concerning these issues. Finally I have changed the language in the first two sentences at the top of page three of the original ordinance by removing the word "covering" and inserting the word "clothing" and then changing the next sentence in the manner suggested by Attorney McGeady on page 12 of his memo.

Mr. Eugene Makovec  
January 20, 2000  
Page 2

Should there be any other revisions, changes, questions or comments, please feel free to give me a call at your convenience.

Very truly yours,



Richard J. Weber

RJW/gh  
Enclosures



**KELLEY, WEBER, PIETZ & SLATER, S.C.**

**ATTORNEYS AT LAW**

530 JACKSON STREET

**WAUSAU, WISCONSIN 54403-5589**

TELEPHONE

(715) 845-9211

RICHARD J. WEBER  
COLIN D. PIETZ  
JERRY W. SLATER\*  
SHANE J. VANDERWAAL  
PATRICK H. FINLAN  
PETER C. GUNTHER

\*ALSO ADMITTED IN NEW YORK

JOHN W. KELLEY  
OF COUNSEL

NEW YORK TIE LINE  
(212) 690-7830

FAX  
(715) 842-9317

E-MAIL  
Kwpslaw@kwpslaw.com

March 6, 2000

Mr. Eugene Makovec  
EP4253 County Highway E  
Stratford, WI 54484

RE: Ordinance #00-1/Nude Dancing, etc.

Dear Mr. Makovec:

Attached are an original and three copies of another revision of the ordinance which I revised and sent to you by letter dated January 20th.

I have addressed the concerns expressed by Attorney Paul J. McGeady in his correspondence to Dom Gordon of February 1, 2000, the best I can. Items 1, 2, 3, 8 and 9 are wording changes which have been addressed in this revision. The most troublesome and perhaps significant change came about because of the comments contained in Items 4, 5, 6 and 7 of McGeady's comments. I have attempted to accommodate his suggestions by leaving subparagraphs (a) through (j) in the ordinance and then adding subsection (k). I have selected a number of cases which were cited in the "Memorandum of Law in Support of Legislation Prohibiting Public Nudity, Including Public Nude Dancing" which was prepared by the National Family Legal Foundation. Several of these same cases appear in the article entitled "A Review of Municipal Controls on Lap Dancing" compiled by the Director and staff of the National Obscenity Law Center. I did not cite the latter document in the ordinance. A number of the citations and references in that article are confusing, and I felt it better to go with the cases and the other references and studies described in the ordinance.

As I mentioned to you, the ordinance will have to be passed at a regular meeting of the Town Board and then published once in the legal notices section of a newspaper of general circulation in the Town of Eau Claire. An Affidavit of Publication should be obtained from the newspaper following the publication. The Affidavit should be attached to the original signed ordinance and then placed on file with the Town Clerk.

# AFFIDAVIT OF PUBLICATION

STATE OF WISCONSIN

County of Wood

Kay Franklin

Being duly sworn, says that they are an agent of the MARSHFIELD NEWS-HERALD, which is a public Newspaper of general circulation, printed in the English Language, and published at the City of Marshfield, in said county and state; that an advertisement or notice of

Ordinance # 00-1

Town of Eau Claire

of which the printed one hereto attached is a true copy, was published in said newspaper 1 times, once in each week for 15<sup>th</sup> successive weeks; that the first publication of said notice therein was on the 15<sup>th</sup> day of April '00 and the last publication of said notice therein was on the        day of        that the said printed copy was taken from the paper in which it was published.

Kay Franklin

Subscribed and sworn to before me this

17<sup>th</sup> day of April 2000

Monica Roberts

Commission Expires 6-1-2003

Publisher's Fees

one Insertion, \$53.67

Affidavit, 1.00

Total, \$53.67

Eau Claire to Marshfield, Wisconsin  
TOWN OF EAU CLAIRE,  
MARATHON COUNTY,  
WISCONSIN  
ORDINANCE #00-1 PRO-  
HIBITING LIVE NUDE,  
NON-OBSCENE DANCING  
IN ESTABLISHMENTS LI-  
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HOL BEVERAGES AND  
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TION FROM SUCH PRO-  
HIBITION FOR THEATERS,  
CIVIC CENTERS, PER-  
FORMING ARTS CENTERS  
AND DINNER THEATERS  
WHERE LIVE DANCE,  
BALLET, MUSIC AND  
DRAMATIC PERFORMAN-  
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WHEREAS, the Town  
Board of the Town of Eau  
Claire has explicit authority  
under sec. 125.10(1), Stats.,  
to adopt regulations govern-  
ing the sale of alcohol bever-  
ages which are in addition to  
those set forth in ch. 125,  
Stats.; and  
WHEREAS, the Town  
Board of the Town of Eau  
Claire pursuant to Village  
powers granted to it under  
sec. 80.10(2)(c), Stats., has  
authority under its general  
police powers set forth in  
sec. 81.34(1) to act for the  
good order of the Town and  
for the health, safety,  
welfare and morals of the  
public; and may carry out its  
powers by regulation and  
suppression; and  
WHEREAS, the Town  
Board recognizes it lacks  
authority to regulate  
obscenity in light of sec.  
86.051(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  
an ordinance addressing the  
secondary effects of live,  
nude, non-obscene dancing  
in bars and taverns; and  
WHEREAS, bars and tav-  
erns featuring live, nude,  
non-obscene dancing have