

3 **AN ORDINANCE AMENDING TITLE XI BUSINESS**
4 **REGULATIONS OF THE CITY OF FORT WAYNE**
5 **CODE OF ORDINANCES TO ADD A NEW**
6 **CHAPTER 122 LIVE SEX ACT BUSINESSES.**

7 **WHEREAS**, the Common Council of the City of Fort Wayne, Indiana finds that the
8 operation of a business for purposes of providing the opportunity to engage in, or the
9 opportunity to view, live sex acts is declared to be a public nuisance per se which should be
10 prohibited; and

11 **WHEREAS**, the Common Council finds that the operation of a live sex act
12 business may contribute to the spread of sexually transmitted diseases; and

13 **WHEREAS**, the Common Council relies on the findings discussed in *Mutschler v.*
14 *City of Phoenix*, 129 P.3d 71 (Ariz. Ct. App. 2006); *Fleck & Assocs. v. City of Phoenix*, 356
15 F. Supp. 2d 1034 (D. Ariz. 2005); and in *Recreational Developments of Phoenix, Inc. v.*
16 *City of Phoenix*, 220 F. Supp. 2d 1054 (D. Ariz. 2002); and

17 **WHEREAS**, the Common Council has considered, relies upon, and incorporates by
18 reference herein the factual record and supplement documenting public sex and unsanitary
19 conditions in sex clubs in the Phoenix, Arizona metropolitan area; and

20 **WHEREAS**, the Common Council has considered, relies upon, and incorporates by
21 reference herein the extensive record concerning the negative secondary effects of sexually
22 oriented businesses compiled in support of Fort Wayne Code of Ordinances Tile XI,
23 Chapter 121; and

24 **WHEREAS**, the operation of a live sex act business is inimical to the health, safety,
25 and general welfare of the inhabitants of Fort Wayne.
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1 **LIVE SEX ACT.** Any act whereby one or more persons engage in live conduct which
2 contains oral sexual contact or sexual intercourse.

3 **LIVE SEX ACT BUSINESS.** Any business in which one or more persons may view, or
4 may participate in, a live sex act for a consideration.

5 **OPERATE AND MAINTAIN.** To organize, design, perpetuate, or control. Operate and
6 maintain includes providing financial support by paying utilities, rent, maintenance costs or
7 advertising costs, supervising activities or work schedules, and directing or furthering the
8 aims of the enterprise.

9 **ORAL SEXUAL CONTACT.** Oral contact with the penis, vulva, or anus.

10 **SEXUAL INTERCOURSE.** Penetration into the penis, vulva, or anus by any part of the
11 body or by any object or manual masturbatory contact with the penis or vulva.

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14 **§ 122.02 PROHIBITION**

15 It shall be unlawful for any person to operate and maintain a live sex act business.

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17 **§ 122.03 NUISANCE**

18 Operation of a live sex act business is a public nuisance per se.

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21 **§ 122.04 ENFORCEMENT**

22 The City's legal counsel is hereby authorized to institute civil proceedings necessary for
23 the enforcement of this chapter to enjoin, prosecute, restrain, correct or abate violations
24 thereof and to seek judgment for fines under § 122.99 below. The City shall be entitled to

1 recover its attorney fees related to any such enforcement action brought under this
2 chapter. Such enforcement proceedings shall be brought in the name of the City,
3 provided, however, that nothing in this chapter and no action taken hereunder, shall be
4 held to exclude such criminal or administrative proceedings as may be authorized by any
5 other ordinance, or any of the laws in force in the City or to exempt anyone violating this
6 code or any part of the said laws from any penalty which may be incurred.

7 **§ 122.99 PENALTY**

8 A first violation of this chapter shall be punishable by a fine in the amount of two
9 thousand five hundred dollars (\$2,500.00). A second or subsequent violation of this
10 chapter shall be punishable by a fine in the amount of seven thousand five hundred
11 dollars (\$7,500.00). Each day that the violation continues is a separate violation.

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13 **SECTION 2.** That this Ordinance shall be in full force and effect from and after
14 its passage and any and all necessary approval by the Mayor.

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16 _____
17 Council Member

18 APPROVED AS TO FORM AND LEGALITY

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21 Carol Helton, City Attorney