

ORDINANCE NO: _____

AN ORDINANCE AMENDING CHAPTER 3 OF THE CODE OF THE CITY OF PEORIA PERTAINING TO LIQUOR LICENSE REGULATION

WHEREAS, the City of Peoria is a home rule unit of government pursuant to Article VII, Section 6 of the Constitution of the State of Illinois 1970, and may exercise any power and perform any function pertaining to its government and affairs including regulating and licensing the retail sale and service of alcoholic liquors; and

WHEREAS, it is in the best interest of the City of Peoria to amend Chapter 3 of the City of Peoria Code to add the definitions of “movie theater” and “movie theater auditorium”; and

WHEREAS, it is in the best interest of the City of Peoria to amend Chapter 3 of the City of Peoria Code to add subsection “16” to create a classification of “MT” to establish a movie theater liquor license; and

WHEREAS, many states and individual cities, including the cities of Chicago, Springfield, and Champaign, have authorized the granting of movie theater liquor licenses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS, as follows:

Section 1: Chapter 3 of the Code of the City of Peoria is hereby amended by deleting the following stricken words and by adding the following underlined words.

Sec. 3-1. Definitions.

Unless the context otherwise requires, the following terms, as used in this chapter, shall be construed according to the definitions given below:

Movie Theater means any building to which the public is invited and pays consideration for the purpose of viewing motion pictures.

Movie Theater Auditorium means that portion or those portions of a movie theater where patrons are seated for the actual viewing of motion pictures.

Sec. 3-52. - Classes.

(16) Class MT. Class “MT” licenses shall authorize the theater licensee to sell alcoholic liquor by the drink for consumption on the premises incidental to the operation of a movie theater. Alcoholic liquor may be consumed throughout the theater, including in the movie theater auditorium, but may not be taken off the premises. The annual fee for such license shall be \$2250.00.

Sec. 3-3. - Hours of Sale.

- (a) It shall be unlawful for any person to sell or offer for sale at retail any alcoholic liquor which is not consumed on the licensed premises in the city between the hours of 1:00 a.m. and 6:00 a.m. on any date except as provided in this chapter.
- (b) It shall be unlawful to keep open for business or to permit the public to patronize any premises where alcoholic liquors are sold at retail during the hours within which the sale of such liquor is prohibited; provided, however, that in the case of restaurants, clubs, hotels, package stores, ~~and~~ drugstores, and movie theaters, such establishments may be kept open during such hours, but no alcoholic liquor may be sold during such hours except as provided in this section.
- (c) Specific classes:
 - (1) All licensees having a subclass (1) supplemental license may keep their premises open and serve alcoholic liquor to the public for consumption upon such premises from 6:00 a.m. until 4:00 a.m. the following morning; provided, however, that on the Saturday preceding the second Sunday of March or the official beginning of the U.S. Daylight Saving Time of each year, hours shall be from 6:00 a.m. until 5:00 a.m. the following morning.
 - (2) All licenses having a subclass (1a) supplemental license may keep their premises open and serve alcoholic liquor to the public for consumption on the premises from 6:00 a.m. until 1:00 a.m. the following morning on Monday through Thursday, and from 6:00 a.m. until 2:00 a.m. the following morning on Friday, Saturday, Sunday, March 18th and Thanksgiving mornings.
 - (3) All licensees having a Class MT license for which the sale of alcoholic beverages is incidental to the operation of a movie theater shall prominently display a sign that shall read: No alcoholic liquors sold or served between the hours of 1:00 am and 6:00 am on any date except as provided in this chapter.
- (d) No alcoholic liquor may be sold or served other than during the hours provided in this chapter.
- (e) No person other than a licensee of a licensed premises or any of his employees while actually in the performance of their duties shall be permitted to enter or remain upon the premises, nor shall any person consume any alcoholic liquor upon such premises, nor shall any alcoholic liquor be exposed upon such premises in any open individual serving container (including but not limited to glasses or beer bottles) beyond 30 minutes after the prescribed closing time for such licensed premises.
- (f) In clubs and restaurants that remain open after their hours of permitted sale of alcoholic liquor, all cups, glasses, bottles or other containers of

alcoholic liquor shall be removed from areas open to customers no later than 30 minutes after their hours of permitted sale of alcoholic liquor. Later than 30 minutes after the hours of permitted sale of alcoholic liquor, no person, whether a member of the public or an on-duty or off-duty agent of the licensee, shall consume or be in possession of alcoholic liquor in an area open to customers.

- (g) The licensee shall be deemed to have committed a violation under this section if all cups, glasses, bottles or other containers of alcoholic liquor have not been removed from the customary public areas of the premises during the hours when the consumption of alcoholic liquor is prohibited as provided in this section. It shall be an affirmative defense to a violation of this section that a customer or other member of the public concealed such a container from view or otherwise caused a violation of this subsection by resisting reasonable efforts by an agent of the licensee to remove the container or containers in question.

Sec. 3-14.- Semi-nude conduct restricted in alcohol licensed premises.

- (a) *Purpose.* It is the purpose of this ordinance to regulate nude conduct in liquor establishments that are unlicensed as an adult business in accordance with Chapter 18, Article III, section 18-50, et seq., of the Code of the City of Peoria, 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 nude conduct in liquor establishments not licensed as an adult business. The provisions of this ordinance have neither the effect of imposing a limitation or restriction on content or reasonable access to the message intended to be conveyed by erotic dancers or performers. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to semi-nude conduct protected by the First Amendment. This ordinance does not apply to theaters, performing art centers, civic centers and dinner theaters and other similar businesses that have a liquor license where live dance, ballet, music, and dramatic performances of serious artistic, literary, scientific or political merit are offered on a regular basis and in which the predominant business or attraction is not the offering of entertainment which is intended for the sexual interests or titillation of customers.
- (b) *Findings.* Based on the evidence of the adverse secondary effects of nude conduct, along with the consumption of alcohol in liquor establishments, presented in hearings and reports made available to the city, and on findings incorporated in the cases of *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991); *California v. La Rue*, 409 U.S. 109 (1972); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003) (and cases cited therein); *Wise Enterprises, Inc. v. Unified Gov't. of Athens-Clarke County, Georgia*, 217 F.3d 1360 (11th Cir. 2000); *Bzaps, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *Sammy's of Mobile, Ltd. V. City of Mobile*,

140 F.3d 993 (11th Cir. 1998); *Artistic Entm't, Inc. v. City of Warner Robins*, 223 F.3d 1306 (11th Cir. 2000); *Gary v. City of Warner Robins, Georgia*, 311 F.3d 1334 (11th Cir. 2002); *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd. of California*, 99 Cal. App.4th 880 (Cal. Ct. App. 2002); *New York State Liquor Auth. v. Ballanca*, 452 U.S. 714 (1981); *Giovanni v. Bason*, 303 F.3d 507 (4th Cir. 2002); *City of Chicago v. Pooh Bah Enterprises, Inc., et al.*, Nos. 1-01-0592, 1-01-1392 (2nd Dist. Sept. 28, 2004) (Rule 23 opinion) and other cases; and on reports of secondary effects occurring in and around, inter alia, bars that feature topless, bottomless or nude conduct, including, but not limited to, Minneapolis, Minnesota - 1980; Town and Village of Ellicottville, New York - 1998 ; City of New York - 1994, City of Garden Grove -1991; and Beaumont, Texas - 1982; Report to: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses - 1996, the City finds:

- (1) Semi/nude conduct, coupled with the consumption of alcohol, is associated with a variety of adverse secondary effects including, but not limited to, lewdness, public indecency, sexual harassment, violence, public intoxication, disorderly conduct, and the sexual exploitation of nude conduct.
 - (2) Liquor establishments are located throughout the city in both residential and commercial areas. The location of liquor establishments in residential and commercial areas has a negative impact on surrounding properties and liquor establishments that provide bottomless, topless, or otherwise semi-nude conduct decreases further the value of surrounding properties, both residential and commercial alike.
 - (3) Each of the foregoing negative secondary effects constitute a harm which the city has a substantial government interest in preventing and/or abating.
 - (4) It is consistent with the health, safety, and general welfare of the city to restrict the nude conduct that occurs in liquor establishments that do not have an adult use license.
- (c) *Prohibited conduct.* It shall be unlawful for any Class A, B, C, or G licensed establishment or premises, not licensed as an adult business, to knowingly offer or allow any person to engage in any of the following conduct:
- (1) Acts of intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sex act prohibited by law.
 - (2) Actual display of pubic hair, anus, vulva, genitals, buttocks or the female breast below a horizontal line across the top of the areola. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of

the human female breast, exhibited by a dress, blouse, shirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

- (d) Nothing in this section shall be construed to prevent a licensee holding a Class MT license from showing any film or video feed having been classified with a rating of not greater than “R” by the Motion Picture Association of America (MPAA) or similar commercial film industry organization, or which would otherwise meet such ratings standards based on its content.

Sec. 3-36.- Restrictions on Class MT (movie theater) licenses.

- (a) **Sales.** Sales of alcoholic liquor shall be limited to contracted theater rentals, theater production/box office events and regularly scheduled motion pictures or films.
- (b) **Times.** Under no circumstances may alcoholic liquor be served more than one (1) hour prior to a scheduled event, rental or the advertised time of the first motion picture or film showing on any day. No alcoholic beverages can be served after the conclusion of the last movie of the day.
- (c) **Bar.** Sales shall be made from service bars containing alcoholic liquor, mixes and related preparation materials. Such service bars shall not have seats or stools for patrons at which to sit.
- (d) **Food.** Food service must be available during all times alcoholic liquor is available on the premises.
- (e) **Single-Serving.** Alcoholic liquor shall be served only in single-servings, no bottles, pitchers, buckets, etc.
- (f) **Container.** All alcoholic beverages must be served in a container that is a different color, size and design than those in which nonalcoholic beverages are served.
- (g) **Two-Drink Maximum.** The theater cannot serve or deliver more than two alcoholic drinks to a customer at a time and a patron cannot have more than two alcoholic beverages in their possession at one time.

Section 2: This Ordinance will be in full force and effect thirty (30) days after it is passed.

PASSED BY THE CITY COUNCIL OF THE CITY OF PEORIA, ILLINOIS this
____ day of _____, 2020.

APPROVED:

Mayor

ATTEST:

City Clerk

EXAMINED AND APPROVED:

Corporation Counsel