

ORDINANCE NO. 29

AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF ADAIR COUNTY, IOWA, BY ADDING A NEW ORDINANCE ENTITLED "SEXUALLY ORIENTED BUSINESSES"

BE IT ORDAINED BY THE BOARD OF SUPERVISORS, OF ADAIR COUNTY, IOWA:

**Section 1 ORDINANCE:** That the Code of Ordinances of Adair County, Iowa, be and the same is hereby amended by adding thereto an Ordinance entitled "Sexually Oriented Businesses" to read as follows:

SEXUALLY ORIENTED BUSINESSES

1. 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 County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented business within the County. The provisions of this ordinance have neither the purpose nor the 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 the 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.
2. Findings: Based on evidence of adverse secondary effects of adult uses presented to the Board of Supervisors and on findings, interpretations, and narrowing constructions incorporated in both state and federal court cases, the Board of Supervisors finds that the regulatory provisions of this Ordinance are within its constitutional power to enact, are designed to serve the County's substantial interest in preventing many of the negative secondary effects associated with sexually oriented adult uses, is narrowly tailored to that end, and provides reasonable alternatives avenues of communication for sexually explicit messages within the County.
  - A. Sexually oriented business lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the unlicensed operators of the establishments.
  - B. Employees of sexually oriented businesses, as defined in this Ordinance, often engage in certain types of illicit sexual behavior.
  - C. Sexual acts, including masturbation, and oral and anal sex, occur at unregulated sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos or live sex shows.
  - D. Communities have suffered adverse aesthetic impacts caused by sexually oriented business, including sexually graphic and unsanitary litter in and around Adult Bookstores and other sexually oriented adult uses.
  - E. Persons often frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex in or near the premises of such sexually oriented businesses, or for the purpose of purchasing or selling illicit drugs.
  - F. Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and Shigella infections, chlamydial, myoplasmal and ureaplasmal infections, trichomoniasis and chancroid.

- G. Men and women of all races may be infected by sexual contact.
  - H. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view “adult” oriented films.
  - I. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent duty on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the County.
  - J. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.
  - K. Requiring licenses of sexually oriented business to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
  - L. The fact that an applicant for a license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.
  - M. The general health, safety and welfare of the citizens of the County will be promoted by the enactment of this ordinance.
3. Jurisdiction: The provisions of this Ordinance shall apply to all of the unincorporated territory of Adair County, Iowa.
4. Definitions: For purposes of this Ordinance, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.
- A. ADULT ARCADE: Any place to which the public is permitted or invited wherein coin operated or slug operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing “specified sexual activities” or “ specified anatomical areas”.
  - B. ADULT BODY PAINTING STUDIO: An establishment or business that provides the services of applying paint or other substances, whether transparent or non-transparent, to or on the body of a patron when such body is wholly or partially nude in terms of “specified anatomical areas”.
  - C. ADULT BOOKSTORE, ADULT NOVELTY STORE, ADULT VIDEO STORE: A commercial establishment which has significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its sales or display space to the sale or rental, for any form of consideration, of any one or more of the following:
    - 1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, DVD’s, compact discs, slides or other visual representations which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas”;

2. Instruments, devices or paraphernalia designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

The term "Adult Bookstore, Adult Novelty Store or Adult Video Store" shall also include a commercial establishment which regularly maintains one or more "Adult Arcade".

- D. ADULT CABARET: A nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear nude or semi-nude, and/or which is characterized by its emphasis on the exposure or display of specific sexual activity and/or specified anatomical areas.
- E. ADULT CAR WASH: A wash facility for any type of motor vehicle that allows employees, agents, independent contractors or persons to appear in a state of partial or total nudity in terms of "specified anatomical areas".
- F. ADULT COMPANIONSHIP ESTABLISHMENTS: An establishment of business, if such excludes minors because of age, and which provides the service of engaging in or listening to conversation, talk, or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".
- G. ADULT ENTERTAINMENT FACILITY: A building or space in which an admission is charged for the entrance, or food or non-alcoholic beverages are sold or intended for consumption, and in which may be observed live presentation of entertainment distinguished by an emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas".
- H. ADULT ESTABLISHMENT: An establishment, building, or business engaging in any of the following activities or which uses any of the following business procedures or practices:
  1. Any business conducted exclusively for the patronage of adults and about which minors are specifically excluded from patronage thereat whether by law or by the operator of said business; or,
  2. Any other business that offers its patrons services, products or entertainment characterized by an emphasis on matters depicting, exposing, describing, discussing or relating to "specified sexual activities" or "specified anatomical areas".
- I. ADULT MOTEL: A motel, hotel or similar commercial establishment which:
  1. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, other photographic reproductions, or live performances which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
  2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- J. ADULT MASSAGE PARLOR, HEALTH/SPORT CLUB: A massage parlor or health/sport club that restricts minors because of age and law, which provides the services of massage if such service is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas”.
  - K. ADULT MINI-MOTION PICTURE STUDIO: A business, building, or establishment in an enclosed building or outdoor venue with a capacity for less than fifty (50) persons used for the presenting of visual media material in such business as a prevailing practice excludes minors by virtue of age, and law, or if said material is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas” for observation by patrons.
  - L. ADULT MOTION PICTURE THEATRE: A commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas” are regularly shown for any form of consideration.
  - M. ADULT SAUNA/STEAM ROOM/BATHHOUSE: A business that excludes minors because of age or law and which provides a steam bath or heat bathing room used for bathing, pleasure, relaxation, or reducing agent, if the services provided by same is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas”.
  - N. ADULT PRIVATE CLUB: A business that excluded the public through membership fees, gender, race, age or other means of distinguishing for the purpose of adult uses.
  - O. BOARD OF SUPERVISORS: The Board of Supervisors of Adair County, Iowa.
  - P. CONTROLLING INTEREST: The power, directly or indirectly, to indirect the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The ownership, control, or power to vote twenty (20%) or more of any class of voting securities of the management, operation or policies of the business.
  - Q. COUNTY: Adair County, Iowa.
  - R. COUNTY ATTORNEY: The County Attorney of Adair County, Iowa.
  - S. COUNTY AUDITOR: The County Auditor of Adair County, Iowa.
  - T. DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS ON: The dominant or principal theme of the object described by such phrase. For instance when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or description of “Specified Sexual Activities” or “Specified Anatomical Areas”, the films so described are

those in which the dominant or principal character and theme are the exhibition of or description of “specified sexual activities” or “specified anatomical areas”.

- U. EMPLOY, EMPLOYEE AND EMPLOYMENT: Any person who performs any service on the premises of a sexually oriented business, on a full-time, part-time, or contract or rental basis, whether or not the person is denominated an employee, independent contractor, agent, lessee or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.
- V. ESTABLISH OR ESTABLISHMENT: The term or terms shall mean and include any of the following:
  - 1. The opening or commencement of any sexually oriented business as a new business;
  - 2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
  - 3. The addition of any sexually oriented business to any other existing sexually oriented business.
- W. LICENSEE: A person, in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an employee, it shall mean the person in whose name the sexually oriented business employee license has been issued.
- X. NUDE, NUDITY OR A STATE OF NUDITY: The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft, or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.
- Y. OPERATE OF CAUSE TO OPERATE: The term or terms shall mean to cause to function or to put or keep in a state of doing business.
- Z. OPERATOR: Any persons on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.
- AA. PERSON: An individual, proprietorship, partnership, corporation, association, or other legal entity.
- BB. REGULARY FEATURES OR REGULARLY SHOWS: A consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.
- CC. SEMI-NUDE OR STATE OF SEMI-NUDITY: A state of the dress in which opaque clothing covers no more than the genitals, anus, anal cleft, or cleavage, pubic area, vulva and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices. This definition shall not include any portion of the cleavage of the human female

breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided that the areola and nipple are not exposed in whole or in part.

DD. SEMI-NUDE OR NUDE MODEL STUDIO: Any place where a person, who regularly appears in a state of semi-nudity or nudity is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

It is a defense to prosecution for any violation of this ordinance that a person appearing semi-nude or in a state of semi-nudity did so in a modeling class operated:

1. By a college, junior college, or university supported entirely or partially by taxation;
2. By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or
3. In a structure:
  - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates that a semi-nude or nude person is available for viewing; and
  - b. Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.

EE. SEXUALLY ORIENTED ENTERTAINMENT ACTIVITY: The sale, rental or exhibition, for any form of consideration, of books, films, videocassettes, magazines, periodicals, or live performances which are characterized by an emphasis on the exposure and/or display of specific sexual activity and/or the exposure and/or display of specified anatomical areas as defined herein.

FF. SPECIFIED ANATOMICAL AREAS: Human genitals, anus, cleft of the buttocks, or the nipple or areola of the female breast.

GG. SPECIFIED CRIMINAL ACTIVITY: Any of the following offenses:

1. Iowa Code 728.2 (dissemination and exhibition of obscene materials to minors); Iowa Code 728.3 (admitting minors to premises where obscene material is exhibited); Iowa Code 728.4 (rental or sale of hard-core pornography); Iowa Code 728.5 (public indecent exposure in certain establishments); Iowa Code 728.12 (sexually exploitation of a minor); Iowa Code 709.2-4 (sexual abuse); Iowa Code 709.8 (lascivious acts with a child); Iowa Code 709.9 (indecent exposure); Iowa Code 709.12 (indecent contact with a child); Iowa Code 709.14 (lascivious conduct with a minor); Iowa Code 709C.1 (criminal transmission of human immunodeficiency virus); Iowa Code 711.4 (extortion); Iowa Code 725.1-4 (prostitution, pimping, pandering, leasing premises for prostitution); criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses; or offenses in other jurisdictions which would have constituted any of the foregoing offenses had the acts had been committed in Iowa and:
  - a. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

- b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense; or
  - c. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever if the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.
2. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

HH. SPECIFIED SEXUAL ACTIVITY: The term means any of the following:

1. Sex acts, normal or perverted, including intercourse, oral copulation, masturbation or sodomy; or
2. Exposure and/or display of specified anatomical areas as defined herein; and/or
3. Excretory functions as a part of or in connection with any of the activities described in Section 1, Paragraph 4(HH) (1).

II. TRANSFER OF OWNERSHIP OR CONTROL: The term or terms shall mean any of the following:

1. The sale, lease or sublease of the business;
2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
3. The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership control.

JJ. VIDEO ROOM: The room, booth or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette or other video reproduction.

5. Classifications: Sexually oriented businesses shall include, but not limited to, the following: Adult body painting studios, adult bookstores, adult novelty stores, adult video stores, adult cabarets, adult car washes, adult companionship establishments, adult entertainment facilities, adult establishments, adult motels, adult massage parlors, adult health/sport clubs, adult sauna/steam room/bathhouse, adult motion picture theaters, adult mini-motion picture studios, adult arcades, adult Nude or Semi-Nude modeling studios, and adult private clubs.

6. License Required: Temporary License Upon Application:

1. It is unlawful for any person to operate a sexually oriented business in the County without a valid sexually oriented business license.
2. It is unlawful for any person to be an employee, as defined in this Ordinance, of a sexually oriented business in the County without a valid sexually oriented business employee license.
3. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the County Auditor a completed application made on a form provided by the County Auditor. The application shall be signed

by the applicant and notarized. An application shall be considered complete when it contains the information required in Paragraphs 1-6 as follows:

1. The applicant's full name and any other names used in the preceding five (5) years.
2. Current business address or another mailing address of the applicant.
3. Written proof of age, in the form of a copy of a birth certificate and a picture identification document issued by a governmental agency.
4. If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.
5. If the application is for a sexually oriented business license, the name and business address of the registered agent authorized to receive service of process.
6. A statement of whether the applicant has been convicted or has plead guilty or no contender (no contest) to a specified criminal activity as defines in this Ordinance, and if so, the specified criminal activity (s) involved, including the date, place, jurisdiction and case number of each as well as the dates of conviction and release from confinement, where applicable.

The information provided pursuant to paragraphs 1-6 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the County Auditor within ten (10) working days of a change of circumstances that would render the information originally submitted as false or incomplete.

4. An application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Section 1 Paragraph 20 of this Ordinance shall submit a diagram meeting the requirements of that section.
5. If a person who wishes to operate a sexually oriented business is an individual, he or she shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each officer, director, general partner, each other person who will manage, supervise or control the premises and each other person who will participate in decisions relating to management and control of the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 1, Paragraph 7 of this Ordinance and each applicant shall be considered a license, if a license is granted.
6. The information provided by an applicant in connection with an application for a license under this Ordinance shall be maintained by the County Auditor on a confidential basis, except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order.

## 7. Issuance of License:

- A. Upon the filing of a properly completed application for a sexually oriented business license, the County Auditor shall immediately issue a Temporary License to the applicant. The Temporary shall expire upon the final decision of the Board of Supervisors to deny or grant the license. Within twenty (20) days of the initial filing date of the properly completed application, the County Auditor shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The County Auditor shall approve the issuance of a license unless:
1. An applicant is less than eighteen (18) years of age;
  2. An applicant has failed to provide information as required by Section 1, Paragraph 6 of this Ordinance for issuance of a license or has falsely answered a question or request for information on the application form.
  3. The license application fee has not been paid.
  4. An applicant has committed a violation of Section 1, Paragraphs 9A, 12B or paragraphs 20A, B or C of this Ordinance within the previous year.
  5. The sexually oriented business premises are not in compliance with the interior configuration requirements of this Ordinance or as set forth in their application or supplemented application.
  6. An applicant has been convicted of a specified criminal activity, as defined by this Ordinance.
- B. Upon the filing of a properly completed application for a sexually oriented business employee license, the County Auditor shall issue a Temporary License to the Applicant. The Temporary License shall expire upon the final decision of the Board of Supervisors to deny or grant the license. Within twenty (20) days of the initial filing date of the properly completed application, the County Auditor shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The County Auditor shall approve the issuance of a license unless:
1. An applicant is less than eighteen (18) years of age.
  2. An applicant has failed to provide information as required by Section 1, Paragraph 6 of this Ordinance for issuance of a license or has falsely answered a question or request for information on the application form.
  3. The license application fee has not been paid.
  4. An applicant has committed a violation of Section 1, Paragraphs 9A, 12B, or Paragraphs 20A, B or C of this Ordinance within the previous year.
  5. An applicant has been convicted of a specified criminal activity, as defined by this Ordinance.
- C. The license, if granted, shall state on its face:
1. The name of the person or persons to whom it is granted;
  2. The number of the license issues to the licensee(s);
  3. The expiration date; and
  4. The address of the sexually oriented business, if the license is for a sexually oriented business.

The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business, so that it may be easily read at any time.

A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the license is then working or performing and shall produce such license for inspection upon request by a law enforcement officer or other County Official performing functions connected with the enforcement of this Ordinance.

8. Fees:

- A. **FILING FEE REQUIRED:** A filing fee, in accordance with the established fee schedule, shall be charged for each application for initial license and annual renewals to assist in deferring the costs of the administrative review. The applicant shall be held responsible for submitting the required fees upon submission of the completed application. No action shall be taken on any application until the required fee is paid in full.
- B. **FEE SCHEDULE:** The fee schedule shall be established by the Board of Supervisors.
- C. **FEE REFUND:** Whether the request is granted or denied, the applicant shall not be entitled to a refund of the fee paid.

9. Periodic Inspections:

- A. Sexually oriented businesses and sexually oriented business employees shall permit agents of the County to inspect, on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Ordinance, during those times when the sexually oriented business is occupied by patrons or is open for business. A licensee's unknowingly or intentional refusal to permit such an inspection shall constitute a violation of this Ordinance for purposes of license denial, suspension, and/or revocation. This paragraph shall be narrowly construed by the County to authorize reasonable inspection of the licensed premises pursuant to this Ordinance, but not to authorize a harassing or excessive pattern of inspection.
- B. The provisions of this section do not apply to areas of an Adult Motel which are currently being rented by a customer for use as permanent or temporary habitation.

10. Expiration of License:

- A. Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application as provided in Section 1, Paragraph 6, and payment of a fee as provided in Section 1, Paragraph 8 of this Ordinance.
- B. Application for renewal should be made at least ninety (90) days before the expiration date. When made less than ninety (90) days before the expiration date, the expiration of the license will not be affected.

11. Cause for Suspension:

- A. The County shall issue a letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days, if the sexually oriented business licensee has violated this Ordinance or has knowingly allowed an employee, as defined herein, to violate this Ordinance.
- B. The County shall issue a letter of intent to suspend a sexually oriented business employee license for a period not to exceed (30) days, if the employee, as defined herein, has violated this Ordinance.

12. Cause for Revocation:

- A. The County shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, if the respective licensee commits two (2) or more violations of this Ordinance within any twelve (12) month period.
- B. The County shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license if:
  - 1. The licensee knowingly gave false information in the application for a sexually oriented business license or sexually oriented business employee license;
  - 2. The licensee knowingly engaged in possession, use or sale of controlled substances on the premises;
  - 3. The licensee knowingly engaged in prostitution on the premises;
  - 4. The licensee knowingly operated the sexually oriented business during a period of time when the license was suspended;
  - 5. The licensee knowingly engaged in any specified sexual activity occurring in or on the licensed premises.
- C. A business licensee shall be liable for the acts of an employee only pursuant to the standard established in Section 1, Paragraph 21 of this Ordinance.

13. Nature of Revocation: When, after the notice of hearing procedure described in Section 1, Paragraph 14 of this Ordinance, the County Auditor revokes a license, the revocation shall continue for two (2) years and the licensee shall not be issued a sexually oriented business license or a sexually oriented employee license for two (2) years from the date revocation becomes effective, provided that, if the conditions or Section 1, Paragraph 14B of this Ordinance are met, a Provisional License will be granted pursuant to that section. If, subsequent to revocation, the County Auditor finds that basis for the revocation pursuant to Section 1, Paragraph 12B (1) of this Ordinance has been corrected or abated, the applicant shall be granted a license, if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Section 1, Paragraphs 12B (2), (3), (4) or (5) of this Ordinance, an applicant may not be granted another license until at least two (2) years have elapsed.

14. Right to Hearing Prior to Denial, Suspension, or Revocation: Prompt Judicial Review; Right to Provisional License Pending Judicial Review:

- A. If facts exist that warrant the denial, suspension or revocation of a license under this Ordinance, the County Auditor shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds thereof, by personal delivery, or by certified mail. The notification shall be directed to the most current business address or other mailing address on file with the County Auditor for the respondent. Within fifteen (15) working days of the mailing of such notice, the respondent may submit a written request to the County Auditor for a hearing before the Board of Supervisors to refute the grounds alleged by the County Auditor for denial, suspension or revocation of the license.

Within five (5) working days of the receipt of respondent's written response, the County Auditor shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding. Within twenty (20) working days of the receipt of respondent's written response, the Board of Supervisors shall conduct a hearing at which respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the County's witnesses. The County Auditor shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending or revoking the license. The hearing shall take no longer than two (2) days, unless extended to meet the requirements of due process and proper administration of justice. The Board of Supervisors shall issue a written decision within five (5) working days after the hearing. If the decision is to deny, suspend or revoke the license, the Board shall state the reasons for such action, and the denial, suspension or revocation shall become final for purposes of appeal immediately, but shall not take effect or be enforced until thirty (30) days thereafter. If the decision is to grant the license, the County Auditor shall immediately issue a license to the respondent. If the respondent does not request a hearing within fifteen (15) working days of the mailing the County Auditor's notice of intent to deny, suspend or revoke the license, the license shall be deemed denied, suspended or revoked, as applicable.

- B. An applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to challenge or appeal such action or seek a declaration of rights concerning such action and/or concerning this Ordinance, upon factual grounds or constitutional grounds or both, to a court of law within thirty (30) days after issuance of the County Auditor's letter of intent to deny or the Board of Supervisors' written decision to suspend or revoke. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin or seek a declaration of rights concerning this Ordinance or the County's denial, suspension or revocation of a license hereunder, the County Auditor shall immediately issue the aggrieved party a Provisional License. The County shall supply the court with any documents, reports or transcripts relevant to the court action within fifteen (15) days after receiving notice of the court action. The Provisional License shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire only upon the court's entry of a judgment on the merits of the aggrieved party's action to appeal, challenge, restrain or otherwise enjoin or seek a declaration of rights concerning this Ordinance or the County's denial, suspension, or revocation of a license under this Ordinance.

If, in the alternative, the aggrieved party does not wish to bear the burden of initiating a court action, he or she may, within thirty (30) days after the County Auditor's letter of intent to deny or the Board of Supervisors' written decision is issued, elect to require the County to file a declaratory action in a court of competent jurisdiction, seeking a declaration that the denial, suspension, or revocation is valid and that the ordinance is constitutionally sound. Such an election must be made in writing and be delivered to the County Attorney's office within thirty (30) days of issuance of the County Auditor's letter of intent to deny or the Board of Supervisor's written decision. Upon delivery of the election notice to the County Attorney's office, the County Auditor shall immediately issue the aggrieved party a Provisional License. The Provisional License shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire only upon the court's entry of a judgment on the merits of the validity of this Ordinance and the County's denial, suspension or revocation decision.

This section shall be liberally construed to permit the uninterrupted operation of the sexually oriented business or the uninterrupted employment of the sexually oriented business employee during the course of any court action challenging this Ordinance or an adverse licensing decision under this Ordinance until the court of law rules upon all the aggrieved party's factual and/or constitutional claims.

15. Transfer of License: A license shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

16. Hours of Operation: No sexually oriented business, except for an Adult Motel, shall be or remain open for business between 2:00 a.m. and 6:00 a.m. on a weekday or between 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday. However, a sexually oriented business which holds a liquor license or retail beer permit entitling the holder to sell alcoholic liquor or beer on Sunday may remain open between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday.

17. Loitering and Exterior Lighting and Monitoring Requirements:

- A. It shall be the duty of the operator of a sexually oriented business to:
1. Post conspicuous signs stating that no loitering is permitted on such property;
  2. Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property by use of video camera and monitors; and
  3. Provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering.

If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within a manager's station or at a cash register where an employee is regularly present.

- B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

18. Violations and Penalties: The penalty for violating any provision of this Ordinance shall be incarceration for a term not to exceed 30 days and/or a fine of at least \$50.00, but not to exceed \$500.00. Each day that a violation occurs or is permitted to continue constitutes a repeat offense.

19. Applicability to Existing Businesses: The provisions of this Ordinance shall apply to the activities of all sexually oriented business and sexually oriented business employees described herein, whether such business or activities were established or commenced before, on, or after the effective date of this Ordinance. All existing sexually oriented businesses and sexually oriented business employees are hereby granted a De Facto Temporary License to continue operation or employment for a period of one hundred eighty (180) days following the effective date of this Ordinance. Within said 180 days, all sexually oriented business employees must make application for a license pursuant to this Ordinance. Within said 180 days, sexually oriented businesses must make any necessary changes to the interior configurations of the regulated business premises to conform to this Ordinance.

20. Regulations Concerning Live Public Nudity on Premises:

- A. It shall be a violation of this Ordinance for a licensee required to obtain a sales tax permit to knowingly or intentionally violate Iowa Code 728.5. It shall be a violation for any person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity.
- B. It shall be a violation of this Ordinance for an employee to knowingly and intentionally appear nude or semi-nude in a sexually oriented business unless the employee, while nude or semi-nude, shall be at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor.
- C. It shall be a violation of this Ordinance for an employee, while nude or semi-nude in a sexually oriented business, to knowingly or intentionally receive any pay or gratuity directly from any patron or customer or for any patron or customer knowingly or intentionally pay or give any gratuity directly to any employee, while said employee is nude or semi-nude in a sexually oriented business.
- D. It shall be a violation of this Ordinance for an employee, while nude or semi-nude in a sexually oriented business, to knowingly or intentionally touch a customer or the clothing of a customer or for a customer to knowingly or intentionally touch an employee or the clothing of the employee, while said employee is nude or semi-nude in a sexually oriented business.

A sign, in a form to be prescribed by the Board of Supervisors and summarizing the provisions of Section 1, Paragraph 20 (A-D), shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry into the inside of the building.

21. Employee License Violation Imputed to Business License: Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of license denial, suspension, or revocation, only if an officer, director or general partner or a person who managed, supervised or controlled the business premises, knew or reasonably should have

known that such act was occurring and failed to prevent such act. It shall be a defense to liability under this Ordinance that the person whom the violative act is imputed was powerless to prevent the act.

**Section 2 REPEALER:** All previous ordinances or parts of previous ordinances in conflict with the provisions of this ordinance are hereby repealed upon final passage and approval of this ordinance.

**Section 3 SEVERABILITY CLAUSE:** If any section, provision, or part of this ordinance shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the ordinance as a whole, or any section thereof, or part thereof, not adjudged invalid or unconstitutional.

**Section 4 WHEN EFFECTIVE:** This Ordinance shall be in full force and effect upon its final passage, approval and publication as required by law.

First Reading: 9/28/2005  
Second Reading: 10/5/2005  
Third Reading: 10/12/2005

Approved:

\_\_\_\_\_  
Chair – Board of Supervisors

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Adair County Auditor

\_\_\_\_\_  
Date