

AITKIN COUNTYSEXUALLY ORIENTED BUSINESS ORDINANCETABLE OF CONTENTS

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STATUTORY AUTHORIZATION. This Sexually Oriented Business Ordinance is adopted pursuant to the authority delegated to Aitkin County by Minnesota Statutes, Chapter 394, commonly known as the Minnesota County's Planning and Zoning Enabling Legislation.

WHEREAS, sexually oriented businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the communities where they locate, and

WHEREAS, the Aitkin County Board of Commissioners finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and, the concern over sexually transmitted diseases is a legitimate health concern of the County that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations, and to ensure that operators do not allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Aitkin County Board of Commissioners wants to prevent these adverse effects and thereby protect the health, safety and welfare of the citizenry; 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, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of sexually oriented businesses as well as the health problems associated with such businesses; and

WHEREAS, it is not the intent of the Aitkin County Board of Commissioners to condone or legitimize the distribution of obscene materials, and the Board recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in Aitkin County.

SECTION I. Purpose and Findings.

(A) **Purpose.** It is the purpose of this ordinance to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of Aitkin County, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the County. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor 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. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene materials.

(B) **Findings.** Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the County Board, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. City of Newport, Ky*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir.1997); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir.1986); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir.1995); and *South Florida Free Beaches, Inc. v. City of Miami*, 734 F.2d 608 (11th Cir.1984), as well as studies conducted in other cities including, but not limited to, Phoenix, Arizona; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; and St. Paul, Minnesota; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group On the Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the County Board finds that:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.

(2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. *See, e.g.*, Studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex

shows. *See, e.g., California v. LaRue*, 409 U.S. 109, 111 (1972); *See also* Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(4) Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. *See, e.g.,* Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

(5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within the premises of such sexually oriented businesses. *See, e.g., Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698 (1986); *see also* Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

(6) At least 50 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 B, Non A, Non B amebiasis, salmonella infections, and shigella infections. *See, e.g.,* Study of Fort Meyers, Florida.

(7) For the period 1985 through 1995, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 513,486. *See, e.g.,* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(8) As of December 31, 2002, there have been 4008 diagnosed cases of AIDS in the State of Minnesota.

(9) Since 1981 and to the present, there has been an increasing cumulative number of persons testing positive for HIV antibody test in Minnesota.

(10) An estimated 70,000 cases of syphilis are diagnosed each year in the United States. *See, e.g.,* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,250,581 cases reported during the period 1993-1995. *See, e.g.* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(12) The surgeon general of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.

(13) According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. *See, e.g.* Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities. *See, e.g.*, Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(15) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. *See, e.g.*, Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(16) Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity. *See, e.g.*, *Barnes v. Glen Theatre*, 501 U.S. 560, 583 (1991).

(17) Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use. *See, e.g.*, *Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1056 (9th Cir.1986).

(18) The findings noted in paragraphs numbered (1) through (17) raise substantial governmental concerns.

(19) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(20) 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 non-existent incentive 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. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(21) Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental

interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.

(22) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.

(23) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct this ordinance is designed to prevent or who are likely to be witnesses to such activity.

(24) The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this ordinance.

(25) The barring of such individuals from operation or employment in sexually oriented businesses for a period of ten (10) years for a previous felony conviction serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(26) The general welfare, health, morals, and safety of the citizens of this County will be promoted by the enactment of this ordinance.

SECTION II. Definitions.

(1) **ADULT ARCADE** means 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 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 the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(2) **ADULT BOOKSTORE** or **ADULT VIDEO STORE** means a commercial establishment that, as its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

(A) books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas"; or

(B) instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

(3) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

(A) persons who appear in a state of nudity or semi-nudity; or

(B) live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(C) films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

(D) persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

(4) ADULT MOTEL means a hotel, motel or similar commercial establishment that:

(A) offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; or

(B) offers a sleeping room for rent at a rate less than a full days rate; or

(C) allows a tenant or occupant of a sleeping room to subrent the room for a rate less than a full days rate.

(5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(7) BOARD means the Aitkin County Board of Commissioners.

(8) COUNTY means Aitkin County, Minnesota.

(9) DIRECTOR means the Environmental Services Director and such employee(s) of the

Environmental Services department as he may designate to perform the duties of the director under this ordinance.

(10) EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full time or part time basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

(11) ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(12) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(13) ESTABLISHMENT means and includes any of the following:

(A) the opening or commencement of any sexually oriented business as a new business;

(B) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(C) the additions of any sexually oriented business to any other existing sexually oriented business; or

(D) the relocation of any sexually oriented business; or

(E) a sexually oriented business or premises on which the sexually oriented business is located.

(14) LICENSED DAY-CARE CENTER means a facility licensed by the State of Minnesota, whether situated within the County or not, that provides care, training, education, custody, treatment or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

(15) LICENSEE means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

(16) NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

(17) NUDITY or a STATE OF NUDITY means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the nipple; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

(18) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(19) PREMISES means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to Section IV of this ordinance;

(20) PUBLIC PARK or RECREATION AREA means a county park as defined under Minn.Stat. 398.32 or any area designated by the County as an area for public recreation including but not limited to camping areas, water accesses, swimming areas, athletic fields, environmental education areas, wayside rest areas, and scenic areas.

(21) SEMI-NUDE OR SEMI-NUDITY means the appearance of the female breast below a horizontal line across the top of the areola at its highest point. 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, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(22) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(A) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

(23) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(24) SPECIFIED ANATOMICAL AREAS means:

(A) the human male genitals in a discernibly turgid state, even if fully and opaquely covered;

(B) less than completely and opaquely covered human genitals, pubic

region, buttocks, or a female breast below a point immediately above the top of the areola.

(25) SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:

(A) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states, or other countries.

(B) for which:

(1) 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 misdemeanor offense;

(2) less than ten (10) 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;

(3) less than ten (10) years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period;

(C) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(26) SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

(A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;

(B) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(C) masturbation, actual or simulated; or

(D) excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above.

(27) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas exist on the effective date of this Ordinance.

(28) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(A) the sale, lease, or sublease of the business;

(B) the transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or

(C) the establishment of a trust, gift, or other similar legal device that 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 or control.

SECTION III. Classification.

Sexually oriented businesses are classified as follows:

- (1) adult arcades;
- (2) adult bookstores or adult video stores;
- (3) adult cabarets;
- (4) adult motels;
- (5) adult motion picture theaters;
- (6) adult theaters;
- (7) escort agencies;
- (8) nude model studios; and
- (9) sexual encounter centers.

SECTION IV. License Required.

(A) It shall be unlawful for any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Director pursuant to this ordinance;

Violation of any provision within this Subsection shall constitute a misdemeanor.

(B) An application for a sexually oriented business license must be made on a form provided by the County. The application must be accompanied by a sketch or a 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 must 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 inches. Prior to issuance of a license, the premises must be inspected by the Environmental Services Department, Fire Department, Sheriff's Department.

(C) An application for a sexually oriented business employee license must be made on a form provided by the County.

(D) All applicants for a license must be qualified according to the provisions of this ordinance. The application may request, and the applicant shall provide, such information (including fingerprints) as to enable the County to determine whether the applicant meets the qualifications established under this ordinance. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

(E) If a person who wishes to own operate a sexually oriented business is an individual, he must sign the application for a business license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10%) percent or greater interest in the business must sign the application for a business license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, each individual having a ten (10%) percent or greater interest in the corporation must sign the application for a business license as applicant.

(F) Applications for a business license, whether original or renewal, must be made to the Director by the intended operator of the enterprise. Applications must be submitted to the office of the Director or the Director's designee during regular working hours. Application forms shall be supplied by the Director. The following information shall be provided on the application form:

(1) The name, street address (and mailing address if different) of the applicant(s);

(2) A recent photograph of the applicant(s);

(3) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;

(4) The name under which the establishment is to be operated and a general description of the services to be provided;

(a) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state 1) the sexually oriented business's fictitious name and 2) submit the required registration documents;

(5) Whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in Section II, subsection (25), and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;

(6) Whether the applicant has had a previous license under this ordinance or other similar sexually oriented business ordinance from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;

(7) Whether the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses;

(8) The single classification of license, as found in Section III, for which the applicant is filing;

(9) The telephone number of the establishment;

(10) The address, and legal description of the tract of land on which the establishment is to be located;

(11) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;

(12) If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same;

(13) If an applicant wishes to operate a sexually oriented business, other

than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section XIX hereunder.

(G) Each application for a business license shall be accompanied by the following:

(1) Payment of the application fee in full;

(2) If the establishment is a State of Minnesota corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

(4) If the establishment is a limited partnership formed under the laws of the State of Minnesota, a certified copy of the certificate of limited partnership, together with all amendments thereto;

(5) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;

(6) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;

(7) If the persons identified as the fee owner(s) of the tract of land in item (6) are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the establishment for the purpose of the operation of the establishment;

(8) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,500 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, public park or recreation area, or family-oriented entertainment business within 1,500 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted;

(9) Any of items (2) through (8), above shall not be required for a renewal application if the applicant states that the documents previously furnished the Director with the original application or previous renewals thereof remain correct and current.

The Business License holder shall be required to collect and keep records of the following information on all employee's:

- (1) The employee's given name, and any other names by which the employee is or has been known, including "stage" names and/or aliases;
- (2) Age, and date and place of birth;
- (3) Height, weight, hair color, and eye color;
- (4) Present residence address and telephone number;
- (5) Present business address and telephone number;
- (6) Date, issuing state, and number of photo driver's license, or other state issued identification card information;
- (7) Social Security Number; and
- (8) Proof that the individual is at least eighteen (18) years old.
- (9) A color photograph of the employee clearly showing the employee's face, and the employee's fingerprints on a form provided by the Sheriff's department. Any fees for the photographs and fingerprints shall be paid by the business license holder or employee.
- (10) A statement detailing the license history of the employee for the five (5) years immediately preceding the date of the filing of the records, including whether such employee, in this or any other county, city, state, or country, has ever had any license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
- (11) A statement whether the employee has been convicted of a "specified criminal activity" as defined in Section II, subsection (25) and, if so, the

"specified criminal activity" involved, the date, place and jurisdiction of each.

(H) Every record shall contain a statement under oath that:

(1) The employee has personal knowledge of the information contained in the record, and that the information contained therein and furnished therewith is true and correct; and,

(2) The employee has read the provisions of this article.

(I) A separate application and business license shall be required for each sexually oriented business classification as set forth in Section III.

(J) The fact that a person possesses other types of state, county or city permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business license.

SECTION V. Issuance of License.

(A) If application is made for a sexually oriented business license, the Director shall approve or deny issuance of the license within forty-five (45) days of receipt of the completed application. The Director shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(2) An applicant is under the age of eighteen (18) years;

(3) An applicant has been denied a license by the County to operate a sexually oriented business within the preceding twelve (12) months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;

(4) An applicant is noncurrent in payment to the County in taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business;

(5) An applicant has been convicted of a "specified criminal activity" as defined in Section II, subsection (25) and time frames have not lapsed;

(6) The premises to be used for the sexually oriented business have not been approved by the Environmental Services Department, Fire Department, Sheriff's Department, Treasurer and the County Attorney as being in compliance with applicable laws and ordinances;

(7) The license fee required under this ordinance has not been paid;

(8) An applicant of the proposed establishment is in violation of or is not in compliance with one or more of the provisions of this ordinance or any other County ordinance.

(B) A license issued pursuant to subsection (A) of this Section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the Section III classification for which the license is issued. The 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.

(C) The Environmental Services Department, Fire Department, Sheriff's Department and County Attorney shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the Director. The certification shall be promptly presented to the Director.

(D) A sexually oriented business license shall issue for only one classification, as set forth in Section III.

(E) In the event that the Director determines that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in writing of the reasons for the denial within forty five (45) days of the receipt of the completed application by the Director. The applicant may request, in writing upon receipt of notice, ten (10) days in order to make modifications necessary to comply with this ordinance.

(F) An applicant may appeal the decision of the Director regarding a denial to the County Board by filing a written notice of appeal with the County Administrator within fifteen (15) days after service of notice upon the applicant of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may, within fifteen (15) days of service upon him of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the County Board. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the County Board shall vote either to uphold or overrule the Director's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the County Administrator receives the notice of appeal. However, all parties shall be required to comply with the Director's decision during the pendency of the appeal. Judicial review of a denial by the Director and County Board may be made pursuant to Section XI of this ordinance.

(G) A license issued pursuant to subsection (A) of this Section shall be subject to annual renewal upon the written application of the applicant. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section VI.

SECTION VI. Fees.

The annual fee for a sexually oriented business license shall be set pursuant to the Aitkin County fee schedule. The fee is to be used to pay for the cost of the administration and enforcement of this ordinance.

SECTION VII. Inspection.

(A) An applicant or licensee shall permit representatives of the Sheriff's Department, Environmental Services Department, Fire Department and/or Fire Marshall, or other County or State Departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is open for business.

(B) A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he/she refuses to promptly permit such lawful inspection of the premises.

SECTION VIII. Expiration of License.

(A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section IV. Application for renewal should be made at least thirty (30) days before the expiration date; when made less than forty-five (45) days before the expiration date, the expiration of the license will not be affected.

SECTION IX. Suspension.

The Director shall suspend a license for a period not to exceed thirty (30) days if he determines that licensee or an employee of licensee has:

- (1) violated or is not in compliance with any section or provision of this ordinance;
- (2) operated or performed services in a sexually oriented business while using controlled substances illegally;
- (3) refused to allow prompt inspection of the sexually oriented business premises as authorized by this ordinance;
- (4) with knowledge, permitted gambling by any person on the sexually oriented business premises.

SECTION X. Revocation.

(A) The Director shall revoke a license if a cause of suspension in Section IX occurs and the license has been suspended within the proceeding twelve (12) months.

(B) The Director shall revoke a license if he determines that:

- (1) a licensee gave false or misleading information in the material submitted during the application process;

- (2) a licensee has, with knowledge, permitted the possession, use, or sale of controlled substances on the premises;
- (3) a licensee has, with knowledge, permitted the sale, use, or consumption of alcoholic beverages on the premises;
- (4) a licensee has, with knowledge, permitted prostitution on the premises;
- (5) a licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;
- (6) a licensee has, with knowledge, permitted any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises;
- (7) a licensee is delinquent in payment to the County or State for any taxes or fees;
- (8) a licensee has, with knowledge, permitted a person under eighteen (18) years of age to enter the establishment; or
- (9) a licensee has attempted to sell or transfer his or her business license;
- (10) A licensee has, with knowledge, permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business.

(C) When the Director revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented license for one (1) year from the date revocation became effective.

SECTION XI. Judicial Review.

After denial of an initial or renewal application by the Director and County Board, or suspension or revocation of a license by the Director, the applicant or licensee may seek judicial review of such administrative action in any court of competent jurisdiction.

SECTION XII. No Transfer of License.

A licensee shall not transfer his/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 application.

SECTION XIII. Location Restrictions.

Sexually oriented businesses shall be permitted in accordance with the Aitkin County Shoreland Management Ordinance and the Aitkin County Zoning Ordinance provided that:

- (A) the sexually oriented business may not be operated within:

- (1) 1,500 feet of a church, synagogue or regular place of religious worship;
- (2) 1,500 feet of a public or private elementary or secondary school;
- (3) 1,500 feet of a boundary of any residential district;
- (4) 1,500 feet of a public park or recreation area;
- (5) 1,500 feet of a licensed day-care center;
- (6) 1,500 feet of An entertainment business that is oriented primarily towards children or family entertainment; or
- (7) 1,000 feet of another sexually oriented business.

(B) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business classified pursuant to Section III.

(C) For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, synagogue, regular place of worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot, or licensed day care center, or child or family entertainment business.

(D) For purposes of subsection (C) of this section, the distance between any two sexually oriented business uses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

SECTION XIV. Non-Conforming Uses; Amortization.

(A) Any business lawfully operating on the effective date of this ordinance that is in violation of the locational or structural configuration requirements of this ordinance shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operated at a particular location is the conforming use and the later-established business(es) is non-conforming.

(B) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park,

residential district, or child or family entertainment business within one thousand, five hundred (1,500) feet of the sexually oriented business. This provision applies only to the renewal of a valid business license, and does not apply when an application for a business license is submitted after a business license has expired or has been revoked.

SECTION XV. Additional Regulations for Adult Motels.

(A) Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this chapter.

(B) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(C) For purposes of subsection (B) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(D) Violation of subsection (B) of this Section shall constitute a misdemeanor.

SECTION XVI. Additional Regulations For Escort Agencies.

(A) An escort agency shall not employ any person under the age of 18 years.

(B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(C) Violation of this Section shall constitute a misdemeanor.

SECTION XVII. Additional Regulations For Nude Model Studios

(A) A nude model studio shall not employ any person under the age of 18 years.

(B) A person under the age of 18 years commits a misdemeanor if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a room not open to the public view or visible by any other person.

(C) A person commits a misdemeanor if the person appears in a state of nudity, or with knowledge, allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

SECTION XVIII. Additional Regulations Concerning Public Nudity

(A) It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a nude or semi-nude condition in a sexually oriented business, unless the person is an employee who, while nude or semi-nude, is on a stage at least two (2) feet above the floor and is at least ten (10) feet from any patron or customer.

(B) It shall be a misdemeanor for an employee, while nude or semi-nude in a sexually oriented business, to solicit or accept any pay or gratuity from any patron or customer while said employee is nude or semi-nude in the sexually oriented business.

(C) It shall be a misdemeanor for an employee, while nude or semi-nude, to touch a patron or the clothing of a patron, or for a patron to touch a nude or semi-nude employee or the clothing of a nude or semi-nude employee.

SECTION XIX. Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos.

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction, that depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Director or his designee.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated,

then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (5) of this section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to subsection (1) of this section.

(7) No viewing room may be occupied by more than one person at any time.

(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candle as measured at the floor level.

(9) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(10) No licensee shall allow an opening of any kind to exist between viewing rooms or booths.

(11) No person shall make any attempt to make an opening of any kind between the viewing booths or rooms.

(12) The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

(B) A person having a duty under Subsections (1) through (14) of this Section commits a misdemeanor if he/she, with knowledge, fails to fulfill that duty.

SECTION XX. Exterior Portions of Sexually Oriented Businesses.

(A) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

SECTION XXI. Sale, Use, or Consumption of Alcoholic Beverages Prohibited.

(A) The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

(B) Any violation of this Section shall constitute a misdemeanor.

SECTION XXII. Persons Younger Than Eighteen Prohibited From Entry; Attendant Required.

(A) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.

(B) It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented businesses' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

(1) a valid operator's, commercial operator's, or chauffeur's driver's license; or

(2) a valid personal identification certificate issued by the State of Minnesota reflecting that such person is eighteen (18) years of age or older.

(C) Violation of this Section shall constitute a misdemeanor.

SECTION XXIII. Massages or Baths Administered by Person.

It shall be unlawful for any sexually oriented business, regardless of whether in a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person. Violation of this Section shall constitute a misdemeanor.

SECTION XXIV. Hours of Operation

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of ten o'clock (10:00) P.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and ten o'clock (10:00) P.M. and twelve o'clock (12:00) P.M. on Sundays.

SECTION XXV. Notices.

(A) Any notice required or permitted to be given by the Director or any other County office, division, department or other agency under this ordinance to any applicant, operator or owner of a sexually oriented business may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the Director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the Director or his designee shall cause it to be posted at the principal entrance to the establishment.

(B) Any notice required or permitted to be given to the Director by any person under this ordinance shall not be deemed given until and unless it is received in the office of the Director.

(C) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Director in writing of any change of residence or mailing address.

SECTION XXVI. Jurisdiction. The provisions of this Ordinance shall apply to all sexually oriented businesses located in the unincorporated areas within the boundaries of Aitkin County. Incorporated areas of Aitkin County may adopt the provisions of this Ordinance, by reference in their own Ordinances.

SECTION XXVII. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid business license or in violation of Section XIII of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation.

SECTION XXVIII. Penalty. Any person, firm or corporation who violates, disobeys, omits, neglects or refuses to comply with, or who resists the enforcement of any other provisions of this Ordinance shall be guilty of a misdemeanor. Each day that a violation is permitted to exist shall constitute a separate offense. The County Attorney shall have the authority to prosecute any and all violations of this Ordinance.

SECTION XXIX. Enforcement. The Aitkin County Board of Commissioners, the Aitkin County Sheriff, the Aitkin County Attorney and the Aitkin County Environmental Services Director are responsible for the enforcement of this Ordinance.

SECTION XXX. Separability.

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

SECTION XXXI. Conflicting Ordinances Repealed.

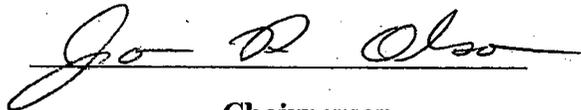
All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION XXXII. Effective Date.

This ordinance shall be enforced from and after .

Adopted by the Aitkin County Board of Commissioners this 8 Day of

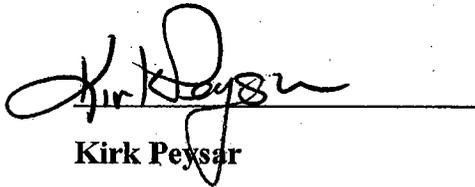
February 2005.



Chairperson

Aitkin County Board of Commissioners

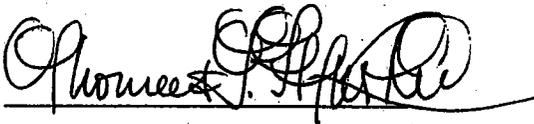
Attest:



Kirk Peysar

Aitkin County Auditor

Approved as to Form:



Thomas Murtha

Aitkin County Attorney

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FACT INDEX
LANTOR
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OMPARED

COUNTY RECORDER
AITKIN COUNTY, MINNESOTA
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Diane M. Chaffery
As Doc. No.

364624

*Aitkin Co. Planning + Zoning
(Terry Neff)*

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1-9

ORDINANCE CERTIFICATION CHECKLIST
AITKIN COUNTY MINNESOTA

1. December 29, 2004 Date of Published Hearing Notice.
January 5, 12 + 19, 2005
2. N/A Date of Postmark of Hearing Notice
To Commissioner of the DNR / Area
Hydrologist.
3. February 1, 2005 Date of Hearing (s).
February 8, 2005
4. February 8, 2005 Date of Ordinance Adoption.
5. January 19, 2005 Date of Affidavit of Published
Amendments to the Ordinance.
6. March 7, 2005 Date of Official Filing of Adopted
Amendments to the Ordinance.
(Doc # 364624 Record Book Number
_____ Page Number.)
7. YES Board of Adjustment/Appeals has
Been Established.