

CHAPTER 18 - SEXUALLY ORIENTED BUSINESSES

18.1.1 Purpose

It is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, 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 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 material.

18.1.2 Findings

Based on evidence of adverse secondary effects of adult uses presented in hearings and in reports made available to the Board of Supervisors and on findings, interpretations, and narrowing constructions incorporated in the cases of *Thomas v. Chicago Park District*, 534 U.S. 316 (2002); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Farkas v. Miller*, 151 F.3d 900 (8th Cir. 1998); *Jakes Ltd. v. City of Coates*, 284 F.3d 884 (2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *Green v. City of St. Paul*, 1999 U.S. App. LEXIS 12057 (8th Cir. 1999) (unreported); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8th Cir. 1998); *Excalibur Group v. City of Minneapolis*, 116 F.3d 1216 (8th Cir. 1997); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8th Cir. 1994); *Ambassador Books & Video v. City of Little Rock*, 20 F.3d 858 (8th Cir. 1994); *Alexander v. Minneapolis*, 928 F.2d 278 (8th Cir. 1991); *John Doe v. Minneapolis*, 898 F.2d 612 (8th Cir. 1990); *Thames Enters. v. St. Louis*, 851 F.2d 199 (8th Cir. 1988); *MRM, Inc. v. City of Davenport*, 290 N.W.2d 338 (Iowa 1980); and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1984; Minneapolis, Minnesota-1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas - 1977; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma County, Oklahoma - 1986; Cleveland, Ohio - 1977 ; and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York Times Square study - 1994; St. Cloud, Minnesota - 1994; Phoenix, Arizona -1995-98; "Stripclubs According to Strippers: Exposing

Workplace Sexual Violence,” by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; “Sexually Oriented Businesses: An Insider’s View,” by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and the Report of the Attorney General’s Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Board of Supervisors finds that the regulatory provisions of this Chapter 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 alternative 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 and/or Performers of sexually oriented businesses, as defined in this Chapter, 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 businesses, including sexually graphic and unsanitary litter in and around Adult Bookstores and other sexually oriented adult uses.
- e.** Person often frequent certain adult theatres, 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 are most likely to 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 and/or performers, 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 theatres.
- k.** Requiring licensees of sexually oriented business to keep information regarding current employees and/or performers and certain past employees and/or performers 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.

18.1.3 Jurisdiction

The provisions of this Chapter shall apply to all of the unincorporated territory of Mills County, Iowa.

18.1.4 Definitions

For purposes of this Chapter, 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 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 interior business or advertising, or maintains a substantial section 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, 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.”

- c. **Adult Cabaret:** A nightclub, bar, juice bar, restaurant, bottle club, or business or entity that has an emphasis on observation or viewing of nude or semi-nude performances (including but not limited to dancing, acting, or otherwise entertaining), whether or not such performer receives compensation and/or pays to perform whether or not alcoholic beverages are served, which regularly features persons who appear nude or semi-nude.
- d. **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 no 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.
- e. **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.
- f. **Board Of Supervisors:** The Board of Supervisors of Mills County, Iowa.

- g.** Controlling Interest: The power, directly or indirectly, to direct 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 percent (20%) or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.
- h.** County: Mills County, Iowa.
- i.** County Attorney: The County Attorney of Mills County, Iowa.
- j.** County Auditor: The County Auditor of Mills County, Iowa.
- k.** 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 whose dominant or principal character and theme are the exhibition or description “specified sexual activities” or “specified anatomical areas”. Similarly, when the phrase refers to a performance that is distinguished or characterized by an emphasis upon the exhibition or showing of "specified sexual activities" or specified anatomical areas, the performance so described are those whose dominant or principal character and theme are the exhibition or showing of "specified anatomical areas" or "specified sexual activities."
- l.** 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 basis, whether or not the person is denominated an employee, independent contractor, agent, performer, lessee or otherwise and/or whether or not said employee receives compensation and/or pays to perform. 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.
- m.** 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.

- n.** 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 performer license has been issued.
- o.** 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.
- p.** Operate Or Cause To Operate: The term or terms shall describe and pertain to any person who performs any service on the premises of a sexually orientated business, on a full-time, part-time, or a contract basis, whether or not the person is denominated a performer, independent contractor, agent, employee, lessee or otherwise and/or whether or not said performer receives compensation and/or pays to perform. Performer 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.
- q.** 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.
- r.** Person: Any individual, proprietorship, partnership, corporation, association or other legal entity.
- s.** Regularly Features Of 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.
- t.** Semi-Nude Or State Of Semi-Nudity: A state of 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.
- u.** Semi-Nude Model Studio: Any place where a person, who regularly appears in a state of semi-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 partly 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 a semi-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.
- v. 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 or display of specific sexual activity.
- w. Specified Anatomical Areas: Human genitals, anus, cleft of the buttocks, or the nipple or areola of the female breast.
- x. Specified Criminal Activity: Any of the following offenses:
- (1) Iowa Code Section 728.2 (dissemination and exhibition of obscene materials to minors), as amended; Iowa Code Section 728.3 (admitting minors to premises where obscene material is exhibited), as amended; Iowa Code Section 728.4 (rental or sale of hard-core pornography), as amended; Iowa Code Section 728.5 (public indecent exposure in certain establishments), as amended; Iowa Code Section 728.12 (sexual exploitation of a minor), as amended; Iowa Code Section 709.2-4 (sexual abuse), as amended; Iowa Code Section 709.8 (lascivious acts with a child), as amended; Iowa Code Section 709.9 (indecent exposure), as amended; Iowa Code Section 709.12 (indecent contact with a child), as amended; Iowa Code Section 709.14 (lascivious conduct with a minor), as amended; Iowa Code Section 709C.1 (criminal transmission of human immunodeficiency virus), as amended; Iowa Code Section 711.4 (extortion), as amended; Iowa Code Section 725.1-4 (prostitution, pimping, pandering, leasing premises for prostitution), as amended;

criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions that, if the acts would have constituted any of the foregoing offenses, if the acts had been committed in Iowa; for which:

- (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 is 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.
- y. Specified Sexual Activity: The term means any of the following:
 - (1) Sex acts, normal or perverted, including intercourse, oral copulation, masturbation or sodomy and including performances simulating or imitating any of the previously described sex acts; or
 - (2) Excretory functions as a part of or in connection with any of the activities described in section 1 immediately preceding this statement.
 - (3) Directly or indirectly touching or caressing either by any individual or the specific anatomical areas specified herein or the simulation or imitation or touching or caressing of said specified anatomical areas; or
 - (4) Exposure of the specific anatomical areas.
- z. Transfer Of Ownership Or Control: This 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.

aa. 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.

18.1.5 Classifications

Sexually oriented businesses shall be classified as follows:

- a. Adult bookstores, adult novelty stores, adult video stores;
- b. Adult cabarets;
- c. Adult motels;
- d. Adult motion picture theatres;
- e. Semi-nude model studios.

18.1.6 License Required: Temporary License Upon Application.

- a. It is unlawful for any person to operate a sexually oriented business in the County without a valid sexually oriented business license.
- b. It is unlawful for any person to be an employee and/or performer, as defined in this Chapter, of a sexually oriented business in the County without a valid sexually oriented business performer license.
- c. An applicant for a sexually oriented business license or a sexually oriented business performer 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 through 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 statutory agent or other agent authorized to receive service of process.
- (6) A statement of whether the applicant has been convicted or has pled guilty or nolo contendere (no contest) to a specified criminal activity as defined in this Chapter, and if so, the specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

The information provided pursuant to paragraphs 1 through 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.

- d. 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 18.1.20 of this Chapter shall submit a diagram meeting the requirements of that section.
- e. 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 18.1.7 of this Chapter and each applicant shall be considered a licensee, if a license is granted.
- f. The information provided by an applicant in connection with an application for a license under this Chapter 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.

18.1.7 Issuance of License

- a.** Upon the filing of a completed application under Section 18.1.6(c) for a sexually oriented business license, the County Auditor shall immediately 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 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 18.1.6 of this Chapter 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 18.1.9(a), Section 18.1.12(b), Section 18.1.20(a), (b), and (c) of this Chapter within the previous year.
 - (5) The sexually oriented business premises are not in compliance with the interior configuration requirements of this Chapter.
 - (6) An applicant has been convicted of a specified criminal activity, as defined by this Chapter.
- b.** Upon the filing of a completed application for a sexually oriented business performer 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 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 18.1.6 of this Chapter 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 18.1.9(a), Section 18.1.12(b), Section 18.1.20(a), (b), and (c) of this Chapter within the previous year.

- (5) An applicant has been convicted of a specified criminal activity, as defined by this Chapter.
- 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 issued 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 and/or performer shall keep the performer's license on his or her person or on the premises where the licensee 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 Chapter.

18.1.8 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.

18.1.9 Periodic Inspections

- a. Sexually oriented businesses and sexually oriented business employees and/or performers shall permit agents of the County to inspect, from time to time, on an occasional basis, the portions of the sexually oriented business premises where the patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually oriented business is occupied by patrons or is open for business. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this Section for purposes of license denial, suspension, and/or revocation. This Section shall be narrowly construed by the County to authorize reasonable inspection of the licensed premises pursuant to this Chapter, 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 a permanent or temporary habitation.

18.1.10 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 and payment of a fee as provided in Section 18.1.6 and Section 18.1.8 of this Chapter.
- 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.

18.1.11 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 Chapter or has knowingly allowed an employee and/or performer to violate this Chapter.
- b. The County shall issue a letter of intent to suspend a sexually oriented business performer license for a period not to exceed thirty (30) days, if the employee and/or performer has violated this Chapter.

18.1.12 Cause for Revocation

- a. The County shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business performer license, if the respective licensee commits two (2) or more violations within a 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 performer license if:

- (1) The licensee knowingly gave false information in the application for a sexually oriented business license or sexually oriented business performer 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 to occur in or on the licensed premises.
- c. A business licensee shall be liable for the acts of an employee and/or performer only pursuant to the standard established in Section 18.1.21 of this Chapter.

18.1.13 Nature of Revocation

When, after the notice and hearing procedure described in Section 18.1.14 of this Chapter, 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 sexually oriented performer license for two (2) years from the date revocation becomes effective, provided that, if the conditions of Section 18.1.14(b) of this Chapter are met, a Provisional License will be granted pursuant to that Section. If, subsequent to revocation, the County Auditor finds that the basis for the revocation pursuant to Section 18.1.12(b)(1) of this Chapter 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 subsections 18.1.12(b)(2), (3), (4), or (5) of this Chapter, an applicant may not be granted another license until at least two (2) years have elapsed.

18.1.14 Right to Hearing Prior to Denial, Suspension, 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 Chapter, 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 ten (10) working days of the receipt 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) 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) days after the hearing. If the decision is to deny, suspend, or revoke the license, it 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 ten (10) business days of receiving 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 Chapter, upon factual grounds or constitutional grounds or both, to a court of law within thirty (30) days after issuance of the Board of Supervisor's written decision. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin or seek a declaration of rights concerning this Chapter or the County Auditor's denial, suspension, or revocation, 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 lawsuit within fifteen (15) days after receiving notice of the lawsuit. 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/or performer 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 Chapter or the County's denial, suspension, or revocation of a license under this Chapter.

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 Board of

Supervisor's 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 Board of Supervisor's written decision. Upon the delivery of the election notice to the County Attorney's Office, the County 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/or performer and will expire only upon the court's entry of a judgment on the merits of the validity of this Chapter 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 and/or performer during the course of any court action challenging this Chapter or an adverse licensing decision under this Chapter until the court of law rules upon all the aggrieved party's factual and or constitutional claims.

18.1.15 Transfer of License

A licensee 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.

18.1.16 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.

18.1.17 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 at least once every two

(2) hours or 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.
- (4) 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 employer is regularly present.

b. It shall be unlawful for a person having a duty under this Section to knowingly fail to fulfill that duty.

18.1.18 Violations and Penalties

The penalty for violating the provision of this Chapter shall be as set forth in Chapter 5 – Violations And Penalties of the Mills County Code of Ordinances.

18.1.19 Applicability to Existing Businesses

The provision of this Chapter shall apply to the activities of all sexually oriented businesses and sexually oriented business employees and/or performers described herein, whether such business or activities were established or commenced before, on, or after the effective date of this Chapter. All existing sexually oriented businesses and sexually oriented business employees and/or performers 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 Chapter. Within said one hundred eighty (180) days, all sexually oriented businesses and sexually oriented business employees must make application for a license pursuant to this Chapter. Within said one hundred eighty (180) days, sexually oriented businesses must make any necessary changes to the interior configurations of the regulated business premise to conform to this Chapter.

18.1.20 Regulations Concerning Live Public Nudity on Premises

- a. It shall be a violation of this Chapter for a licensee required to obtain a sales tax permit to knowingly or intentionally violate Iowa Code Section 728.5, as amended. 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 Chapter for an employee and/or performer to knowingly and intentionally appear semi-nude in a sexually oriented business unless the employee, while 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 Chapter for an employee and/or performer, while 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 to knowingly or intentionally pay or give any gratuity directly to any employee, while said employee is semi-nude in a sexually oriented business.
- d. It shall be a violation of this Chapter for an employee and/or performer, while 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 and intentionally touch an employee or the clothing of an employee and/or performer, while said employee and/or performer is 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 Paragraphs A through D of this Section, 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.

18.1.21 Employee License Violation Imputed to Business Licensee

Notwithstanding anything to the contrary, for the purposes of this Chapter, an act by an employee and/or performer that constitutes grounds for suspension or revocation of that performer'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 Chapter that the person to whom the violative act is imputed was powerless to prevent the act.