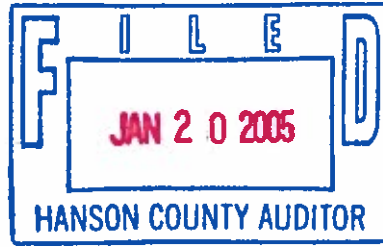


ORDINANCE #25

HANSON COUNTY ADULT ENTERTAINMENT
ORDINANCE

ORDINANCE NUMBER 25

HANSON COUNTY ADULT ENTERTAINMENT ORDINANCE



INTRODUCTION

The Hanson County Board of County Commissioners makes the following findings of fact based on evidence concerning the adverse secondary effects of adult uses on the County as presented in hearings and in reports made available to the County Commission, and on findings incorporated in the cases of *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *Jacobucci v. City of Newport, Ky.*, 479 U.S. 92 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *California v. LaRue*, 409 U.S. 109 (1972); *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); *South Florida Free Beaches, Inc. v. City of Miami*, 734 F.2d 608 (11th Cir.1984); and *N.W. Enterprises v. City of Houston*, 27 F.Supp. 2d 754 (S.D. Tex.1998)), as well as studies conducted in other cities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; 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 Hanson County Commission also makes the following findings having taken legislative notice of the evidence of conduct occurring in and around adult entertainment businesses located in other jurisdictions, which the Board of Commissioners hereby deems to be relevant to the potential for similar experiences in Hanson County, as reported in judicial opinions including but not limited to *City of Elko v. Abed*, 677 N.W. 2d 455 and *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 and as reported in the studies and findings of other city and county legislative bodies that have also adopted ordinances regulating adult entertainment businesses, including but not limited to the counties of Brookings, Lincoln, McCook, Minnehaha, Sanborn, and Turner along with the cities of Brookings, Garretson, Hartford, Mitchell, Rapid City, Salem, Sioux Falls, and Yankton.

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ARTICLE I
PURPOSE AND INTENT

Section 101 **Purpose**

It is the purpose of this ordinance to establish licensing, operational, and facility standards for adult entertainment businesses located in the unincorporated areas of Hanson County while promoting and protecting the health, safety, best interests, and general welfare of unincorporated Hanson County's residents residing within the unincorporated areas of the County.

The operation of adult entertainment businesses has historically and regularly been accompanied by secondary effects that are detrimental to the public health, safety, best interests, and general welfare of the citizens of Hanson County. Such secondary effects include significant criminal activity and activities injurious to the public health, safety, best interests, and general welfare of the community, detrimental effects on nearby businesses and residential areas, and a decline in property values in the area of the adult entertainment businesses. This history of criminal and injurious activity includes prostitution, narcotics, and liquor law violations, breaches of the peace, assaults, employment or involvement of minors, sexual conduct between customers or between customers and entertainers, the opportunity for the spread of sexually transmitted diseases, and the presence within the industry of individuals with hidden ownership interests and outstanding arrest warrants. Accordingly, there is a compelling need and interest to regulate adult entertainment businesses as provided in this ordinance to protect and promote the public health, safety, best interests, and general welfare of the citizens of Hanson County. It is not the intent of the Hanson County Board of County Commissioners that this ordinance has either the purpose or effect of suppressing speech activities or inalienable rights protected by the United States or State of South Dakota Constitutions.

Section 103 **Findings**

Upon completion of thorough and diligent research the Hanson County Board of County Commissioners finds:

1. The activities identified within Article I Section 101 occur regardless of whether adult entertainment is presented in conjunction with the sale of alcoholic beverages;
2. The resources available for responding to problems associated with adult entertainment businesses are limited and are most efficiently and effectively utilized through a permitting, licensing, and regulatory program;
3. The license fees required in this ordinance are necessary as reasonable fees imposed to help defray the costs of processing the permit and license applications and the substantial expenses incurred by Hanson County in regulating the adult entertainment industry;
4. Adult entertainment businesses have historically engaged in practices that involve secreting ownership interests for such purposes as money laundering, skimming profits, and tax evasion. These hidden ownership interests have, on occasion, been held by individuals and entities reputed to be involved in organized crime; and

5. It is necessary to have a licensed manager on the premises of an adult entertainment business during all hours of operation so there will be a person responsible for the overall operation of the business, including the actions of customers, entertainers, and other employees. To monitor the actions of these individuals, a manager must be able to observe these individuals at all times.
6. Violation of this ordinance constitutes a public nuisance.

Section 105 **Intent**

The Hanson County Board of County Commissioner's further finds that it is obligated to the citizens of Hanson County to further the following activities:

1. Detect and discourage the involvement of organized crime in the adult entertainment industry, to effectively deploy its limited law enforcement resources and to effectively protect the public health, safety, best interests, and general welfare of its citizenry, the county must be fully apprised of the actual and controlling interests of adult entertainment businesses and the identities and criminal backgrounds of persons responsible for the ownership, management, and control of such businesses; and
2. Prevent the exploitation of minors, to assure the correct identification of persons working in adult entertainment businesses, to effectively deploy its limited law enforcement resources and to effectively protect the public health, safety, best interests, and general welfare of its citizenry, the county must be fully apprised of the identity, age, and criminal background of managers, employees, and entertainers in adult entertainment businesses.
3. Protect the health, safety, best interests, and general welfare of Hanson County residents residing within the unincorporated areas of the County.

ARTICLE II
DEFINITIONS

Section 201 **Definitions**

For the purpose of this Ordinance, unless otherwise stated, words used in the present tense include the future; the singular number includes the plural and the plural the singular; the word shall means mandatory, not discretionary; the word may is permissive; the word person includes a firm, association, organization, partnership, trust, company or corporation, as well as, an individual.

Adult Arcade - A bookstore, video store, membership club, or other place:

1. To which the public or members of a membership club are invited or admitted, whether or not a membership fee, cover charge, or other consideration is required for admittance; and
2. That provides one or more booths for viewing a live performance, as specified in the definition of an "adult club", or motion picture films, video cassettes, recordings, cable television shows, computer-generated images, virtual reality experiences, or any other visual media distinguished or characterized by a predominant emphasis on performances involving nudity or sexual conduct.

Adult Bookstore - An establishment having twenty five (25) percent of its gross annual sales or stock-in-trade for sale, rent, lease, inspection, or viewing books, films, video cassettes, recordings, magazines, or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to specific sexual activities or specified anatomical areas, as defined below, and in conjunction therewith having facilities for the presentation of adult entertainment, as defined below, including adult-oriented films, movies, or live performances, for observation by patrons therein

Adult Cabaret - A venue which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers for observation by customers as defined herein.

Adult Club - A nightclub, membership club, bar, restaurant, salon, hall, studio, or other place:

1. To which the public or members of a membership club are invited or admitted, whether or not a membership fee, cover charge, or other consideration is required for admittance;
2. That provides, on a regular basis or as a substantial part of the activity on the premises at anytime, a live performance that: includes nudity; is distinguished or characterized by a predominant emphasis on depictions or simulations of sexual conduct; or otherwise constitutes an erotic performance; and
3. A place that provides such a live performance only for viewing by an individual in a booth in accordance with this ordinance is an adult arcade and not an adult club.

Adult Entertainment - Any exhibition of any motion pictures, live performance, display, or dance of any type which has as a significant or substantial portion of such performance, or is distinguished or characterized by an emphasis on, any actual or simulated performance of specified sexual activities or exhibition and viewing of specified anatomical areas, as defined below, appearing unclothed or the removal of articles of clothing to reveal specified anatomical areas.

Adult Entertainment Business - Includes, but is not limited to, adult arcades, adult bookstores, adult cabarets, adult clubs, or adult theaters, each as defined in the following, or a combination of an adult arcade, an adult bookstore, an adult cabaret, an adult club, or an adult theater. An adult entertainment business further means any premises to which public patrons or members are invited or admitted and which are so physically arranged as to provide booths, cubicles, rooms, compartments, or stalls separate from the common area of the premises for the purposes of viewing adult-oriented motion pictures or wherein an entertainer provides adult entertainment to a member of the public, a patron or a member, whether or not such adult entertainment is held, conducted, operated, or maintained for a profit, direct or indirect. The terms shall also include, without being limited to, any adult entertainment studio or any premises that is physically arranged and used as such, whether advertised or represented as an adult entertainment studio, exotic dance studio, encounter studio, sensitivity studio, modeling studio or any other similar term or activity.

Adult Theater - A movie theater, bookstore, video store, membership club or other place:

1. To which the public or members of a membership club are invited or admitted, whether or not a membership fee, cover charge, or other consideration is required for admittance; and
2. That provides a room or other area that can accommodate more than one person for viewing motion picture films, video cassettes, recordings, cable television shows, computer-generated images, virtual reality experiences, or any other visual media distinguished or characterized by a predominant emphasis on performances involving nudity or sexual conduct.

Applicant - A person who applies for an adult entertainment business license, an adult entertainment manager license, adult entertainment employee license, or an adult entertainer license.

Auditor - The Hanson County Auditor or their designee.

Board - The Hanson County Board of County Commissioners.

Booth, Room, or Cubicle - Such enclosures as are specifically offered to the public or members of an adult-oriented establishment for hire or for a fee as part of a business operated on the premises which offers as part of its business the entertainment to be viewed within the enclosure, which shall include, without limitation, such enclosures wherein the entertainment is dispensed for a fee but a fee is not charged for mere access to the enclosure. However, "booth," "room," or "cubicle" does not mean such enclosures that are private offices used by the business control persons, managers, or persons employed on the premises for attending to the tasks of their employment, which enclosures are not held out to the public or members of the establishment for hire or for a fee or for the purpose of viewing entertainment for a fee and are not open to any persons other than employees, nor shall this definition apply to hotels, motels, or other similar establishments licensed by the State of South Dakota.

Business Control Person - A partner, corporate officer, director, shareholder, or other individual who has responsibility for the management of an adult entertainment business.

Business License - For the purpose of this ordinance shall be also referred to as an adult entertainment business license as defined herein.

Certified Law Enforcement Agency - An entity or agency created by local, state, or federal laws which is charged with enforcing the laws, regulations, or rules of the sponsoring governmental entity.

Certified Law Enforcement Officer - An officer of law certified or licensed by a governing body.

Church - A building wherein persons regularly assemble for religious worship, and which is maintained and controlled by a religious body organized to sustain public worship.

Clinic - A building or part of a building used solely for the purpose of consultation, diagnosis, and treatment of patients by one or more legally qualified physicians, dentists, optometrists, podiatrists, chiropractors, or drugless practitioners, together with their qualified assistants, and without limiting the generality of the foregoing, the building may include administrative offices, waiting rooms, treatment rooms, laboratories, pharmacies, and dispensaries directly associate with the clinic, but shall not include accommodation for in-patient care or operating rooms for major surgery.

County - Hanson County, South Dakota

Customer - A customer, patron, club member, or other individual who is invited or admitted to an adult entertainment business during its hours of operation, regardless of whether he or she makes a purchase or pays a fee, charge, gratuity, or other consideration. However, "customer" does not include an employee or entertainer while the employee or entertainer is engaged in his or her duties or performance.

Dressing Room - A room or space in a theatre, store, or home for changing clothes or costumes. The term "dressing room" may also include "fitting room" for trying on potential clothing purchases.

Employee - An individual, including an independent contractor, who works in or at or renders service directly related to the operation of an adult entertainment business, whether or not the person is paid compensation by the business control person and/or manager of the business.

Entertainer - Any person who provides entertainment within an adult-oriented establishment as defined in this ordinance, whether or not a fee is charged or accepted for entertainment and whether or not entertainment is provided as an employee or independent contractor.

Entertainer License - A license for an entertainer issued under this ordinance.

Erotic Performance - A performance, in an adult club, that is intended to sexually stimulate a customer; the end result of which is not relevant to the definition.

Hospital - An institution devoted primarily to the operation of facilities of the diagnosis, treatment, and cure of disease, illness, injury, or other abnormal physical conditions with provisions for keeping patients overnight.

Locker Room - A room as in a gym, school, or fitness center with lockers in which equipment and clothing can be stored. A locker room may also be equipped with sinks, toilets, and showers.

Manager - An individual who provides on-site management, direction, or administration of the operation or conduct of any portion of an activity conducted in an adult entertainment business and includes an assistant manager working with or under the direction of a manager to carry out those purposes.

Manager License - A license for a manager issued under this ordinance.

Membership Club - A club or organization that invites or accepts a membership application from the public.

Nudity or Nude – Shall include:

1. The exposure to view, by not completely covering with an opaque material, of the human male or female pubic region, anus, cleft of the buttocks, genitalia, or any portion of the areola or nipple of the female breast;
2. The exposure to view of a device or covering that simulates the appearance of the human male or female pubic region, anus, cleft of the buttocks, genitalia, or any portion of the areola or nipple of the female breast; or
3. The display of male genitalia in a discernible state of sexual stimulation, whether covered or not with opaque material.

Obscene - A performance that:

1. Taken as a whole, by an average person applying contemporary American societal standards, appeals to a prurient interest in sex;
2. Taken as a whole, by an average person applying contemporary American societal standards, depicts patently offensive representations of the sexual acts; and
3. Taken as a whole, lacks serious literary, artistic, political, or scientific value.

Owner – Any person, partnership, corporation, company, joint venture, or similar entity operating, conducting, maintaining, or owning any adult entertainment business.

Performance - An exhibition, display, appearance, dance, modeling, demonstration, show, pantomime, or presentation of any kind, whether live or depicted in a motion picture film, video cassette, cable television show, virtual reality experience, computer-generated image, slide, or other non-live visual image.

Person - An individual, firm, corporation, joint venture, partnership, association, membership club, fraternal organization, estate, trust, or other entity or group acting as a unit.

Premises - The entire real estate parcel on which an adult entertainment business is located, including all interior areas and exterior areas such as parking areas.

Public Place – A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public.

Restroom – A room equipped with facilities which may include sinks, toilets, and showers.

Satisfactory Documentation – Shall include:

1. A current, valid motor vehicle operator's license, issued by a state, bearing the applicant's photograph and date of birth;
2. A current, valid identification card bearing the applicant's photograph and date of birth issued by a federal or state government agency; or

3. A valid passport issued by the United States of America or another country.

Sexual Conduct – Shall include:

1. Caressing, fondling, or other erotic touching of genitalia, pubic region, buttocks, anus, female breast, or artificial depictions of those anatomical areas, whether covered or not with opaque material; or
2. An act of masturbation, genital intercourse, anal intercourse, fellatio, cunnilingus, sadomasochistic abuse, or bestiality.

Sheriff's Department - The Hanson County Sheriff's department and its employees.

Specified Anatomical Areas – Shall be defined as follows:

1. Less than completely and opaquely covered human genitals, pubic region, buttocks, and female breasts below the point immediately above the top of the areola; or
2. Human male genitals in a discernible turgid state, even if opaquely covered.

Specified Sexual Activities – Shall be defined as follows and include simulated or actual activities

1. Showing of human genital in any form including a state of sexual stimulation or arousal;
2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio, or cunnilingus; or
3. Fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts.

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ARTICLE III

PERMITTING

Section 301 **Permit Required**

1. No adult-oriented establishment shall be operated or maintained in the unincorporated areas of Hanson County without first obtaining a permit to operate issued by Hanson County.
2. A permit may be issued for only one adult-oriented establishment located at a fixed and certain place per application filed. Any person, partnership, or corporation who or which desires to operate more than one adult-oriented establishment must have a permit for each.
3. No permit or interest in a permit may be transferred to any person, partnership, or corporation.
4. It shall be unlawful for any business control person, entertainer, employee, or manager to knowingly work in or about or to knowingly perform any service directly related to the operation of any adult-oriented establishment which does not have a valid permit pursuant to this ordinance.

Section 303 **Permit Application**

1. Any person, partnership or corporation desiring to secure a permit shall make application to the County Auditor. The applicant shall file four (4) copies of the complete application with, and dated by, the County Auditor. A copy of the application shall be distributed within forty eight (48) hours of receipt by the County Auditor to the Hanson County Sheriff's Department, Hanson County States Attorney's Office, and to the applicant.
2. The application for a permit shall be upon a form provided by the County Auditor. An applicant for a permit shall furnish the following information which must be verified and certified to be complete and true under penalty of perjury by the notarized signature of the applicant, if the applicant is an individual. If the applicant is a partnership, corporation, company, or similar entity the notarized signature must be that of a general partner of the partnership, president of the corporation, or chief officer of a similar entity:
 - a. The legal names, previous names, aliases, stage names, residential and mailing addresses, residential and business telephone numbers, social security numbers, drivers license number and issuing state, and dates and places of birth of the applicant and any partner or limited partner in a partnership applicant and any officer, director, and shareholder holding more than ten (10) percent of the stock of a corporate applicant;
 - b. A complete set of fingerprints taken by the Sheriff's office or sent directly to the County Sheriff's Department from another law enforcement agency;
 - c. Satisfactory documentation that any person required to be named under Subsection 2(a) of this section is at least eighteen (18) years of age;

- d. The exact nature of the adult use to be conducted and the business's proposed "doing-business-as" name;
- e. The location of the proposed adult entertainment business, including a legal description of the property;
- f. the common address and each telephone number assigned to the business;
- g. The name, address, and telephone number of each owner and lessee of the property at which the adult entertainment business is proposed to be conducted;
- h. Whether the applicant proposes to serve liquor or malt beverages in the adult entertainment business and the status of the business's liquor or malt beverage license or application for the liquor or malt beverage license;
- i. Whether any person required to be named under Subsection 2(a) of this section currently holds any other licenses under this ordinance or an adult entertainment-related license issued by another jurisdiction; and, if so, the name and address of the businesses to which the licenses pertain;
- j. Whether any person required to be named under Subsection 2(a) of this section has previously operated, in this or any other county, municipality, or state under an adult-oriented establishment permit or similar business permit or license and whether the applicant has ever had such a permit revoked or suspended, the reason therefore and the business entity or trade name under which the applicant operated that was subject to the suspension or revocation;
- k. If the applicant is a corporation, limited liability company, or similar entity, the application shall also specify the name of the corporation or company, the date and state of incorporation or formation and the name, federal and state tax identification numbers, evidence that the corporation/company is qualified to do business in the State of South Dakota, and address of the registered agent for service of process;
- l. If the applicant is a partnership, joint venture, or similar entity, the application shall also specify the name and type of the partnership, a copy of the partnership agreement, the date and state of formation and the name, federal and state tax identification numbers, evidence that the partnership is qualified to do business in the State of South Dakota, and address of the registered agent for service of process;
- m. The employment, business, and occupational history for the three (3) years immediately preceding the date of the application, including the name and address of employers or persons for whom the applicant or business control person performed services as an independent contractor;
- n. Whether the applicant or business control person has been the subject of a bail forfeiture, adverse finding, or conviction in connection with local, state, or federal criminal law, other than a parking offense or traffic infraction, within the five (5) years immediately preceding the date of the application; and, if so, the nature of the crime and the date, location, and nature of the judicial action taken; and

- o. The Auditor may request other information or clarification in addition to that provided in the application form if necessary to determine compliance with this ordinance and applicable zoning, building, fire, public health, and other ordinances, statutes, and rules.
3. Upon receipt of a complete permit application the Auditor shall cause a notice of application to be published at least once in the County's legal newspapers. Said notice shall include at a minimum:
 - a. The legal names, mailing addresses, of the applicant and any partner or limited partner in a partnership applicant and any officer, director, and shareholder holding more than ten (10) percent of the stock of a corporate applicant;
 - b. The exact nature of the adult use to be conducted and the business's proposed "doing-business-as" name;
 - c. The location of the proposed adult entertainment business, including a legal description of the property;
 - d. the common address and each telephone number assigned to the business;
 - e. The name, address, and telephone number of each owner and lessee of the property at which the adult entertainment business is proposed to be conducted;
 - f. Whether the applicant proposes to serve liquor or malt beverages in the adult entertainment business and the status of the business's liquor or malt beverage license or application for the liquor or malt beverage license;
4. Within thirty (30) days of receiving an application for a permit the County Auditor shall notify the applicant whether the application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the County Auditor shall advise the applicant in writing whether the application is granted or denied.
5. Whenever an application is denied or held for further investigation, the County Auditor shall advise the applicant in writing of the reasons for such action and that the applicant has the right to request that the County Auditor review said determination.
6. Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this ordinance shall constitute an admission by the applicant that he or she is ineligible for such permit and shall be grounds for denial thereof by the County Auditor.
7. Prior to or as part of the permitting process the applicant shall document compliance with all local, state, and federal regulations including but not limited to land use, health, safety, and building.

Section 305 Standards for Permit Issuance

To receive a permit to operate an adult-oriented establishment, an applicant must meet the following standards:

1. If the applicant is an individual:
 - a. Satisfactory documentation that the applicant shall be at least eighteen (18) years of age;
 - b. The applicant shall not have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application; and
 - c. The applicant shall not have been convicted of or pleaded “no contest” to any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of the application unless the applicant has been duly pardoned.
2. If the applicant is a corporation or limited liability company
 - a. Satisfactory documentation that all officers, directors, shareholders, and agents required to be named under Section 303 2(a) of this Article shall be at least eighteen (18) years of age;
 - b. No officer, director, or shareholder required to be named under Article III Section 303 2(a) of this ordinance shall have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application; and
 - c. No officer, director, shareholder, or agent required to be named under Article III Section 303 2(a) of this ordinance shall have been convicted of or pleaded “no contest” to any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of the application unless he or she has been duly pardoned.
3. If the applicant is a partnership, joint venture, or similar entity where two (2) or more persons have a financial interest:
 - a. Satisfactory documentation that all persons having a financial interest in the partnership, joint venture, or other type of organization shall be at least eighteen (18) years of age.
 - b. No person having a financial interest in the partnership, joint venture, or other type of organization shall have been found to have violated any provision of this ordinance within five (5) years immediately preceding the date of the application.

- c. No person having a financial interest in the partnership, joint venture, or other type of organization required to be named under Article III Section 303 2(a) of the ordinance shall have been convicted of or pleaded “no contest” to any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of the application unless he or she has been duly pardoned.

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ARTICLE IV

LICENSES

Section 401 License Required

In addition to the permit requirements previously set forth for owners and business control persons of adult-oriented establishments, no person shall be an employee, entertainer, or manager in an adult-oriented establishment without first obtaining a valid license issued by the County Auditor

Section 403 License Application

1. Any person desiring to secure a license shall make application to the County Auditor. The applicant shall file four copies of the complete application with, and dated by, the County Auditor. A copy of the application shall be distributed within forty eight (48) hours of receipt by the County Auditor to the Hanson County Sheriff's Department, Hanson County States Attorney's Office, and to the applicant.
2. The application for a license shall be upon a form provided by the County Auditor. An applicant shall furnish the following information which must be verified and certified to be complete and true under penalty of perjury by the notarized signature of the applicant:
 - a. The applicant's legal name, previous names, aliases, stage names, residential and mailing addresses, residential telephone numbers, social security number, drivers license number and issuing state, and date and place of birth;
 - b. A complete set of fingerprints taken by the Sheriff's office or sent directly to the County Sheriff's Department from another law enforcement agency;
 - c. Satisfactory documentation that the applicant is at least eighteen (18) years of age; and
 - d. Whether the applicant, while previously operating in this or any other county, municipality or state under an adult-oriented establishment license or similar business license or permit, has ever had such a license or permit revoked or suspended, the reason therefore and the business entity or trade name for which the applicant was employed or associated at the time of such suspension or revocation.
3. Within thirty (30) days of receiving an application for a license the County Auditor shall notify the applicant whether the application is granted, denied, or held for further investigation. Such additional investigation shall not exceed an additional thirty (30) days unless otherwise agreed to by the applicant. Upon the conclusion of such additional investigation, the County Auditor shall advise the applicant in writing whether the application is granted or denied.
4. Whenever an application is denied or held for further investigation, the County Auditor shall advise the applicant in writing of the reasons for such action and that the applicant has the right to request that the County Auditor review said determination.

5. Failure or refusal of the applicant to give any information relevant to the investigation of the application or his or her refusal or failure to appear at any reasonable time and place for examination under oath regarding said application or his or her refusal to submit to or cooperate with any investigation required by this ordinance shall constitute an admission by the applicant that he or she is ineligible for such license and shall be grounds for denial thereof by the County Auditor.

Section 405 **Standards for License Issuance**

To receive a license as an employee, entertainer, or manager for an adult-oriented establishment, an applicant must meet the following standards:

1. The applicant shall have provided satisfactory documentation that he or she is at least eighteen (18) years of age.
2. The applicant shall not have been found to have previously violated this ordinance within five (5) years immediately preceding the date of the application.
3. The applicant shall not have been convicted of or pleaded "no contest" to any offense involving moral turpitude, prostitution, obscenity, or other offense of a sexual nature in any jurisdiction within the five (5) years immediately preceding the date of the application unless the applicant has been duly pardoned.

Section 407 **Permit and License Fees**

Any business control person or entity applying for a license or permit under this ordinance shall pay the appropriate non refundable fees when submitting an application for licensure or permit.

1. A non refundable permit fee of one thousand (1,000) dollars shall be submitted with the application for a permit.
2. A non refundable license fee of one hundred (100) dollars shall be submitted with the application for a license.
3. If more than one type of adult entertainment business is proposed or permitted on the same premises. The permit fee is one thousand (1,000) dollars for the first type and five hundred (500) dollars for each additional type.
4. Replacement permits or licenses if original or any subsequent replacement thereof is lost or destroyed is twenty-five (25) dollars.

Section 409 **Display of Permit and/or License**

1. The permit shall be displayed in a conspicuous public place in the adult-oriented establishment.
2. The license shall be carried by an employee upon his or her person and shall be displayed upon request of any member of the Hanson County's Sheriff's Department, certified law enforcement agency, or person designated by the Hanson County Board of County Commissioners.

ARTICLE V

PERMIT OR LICENSE RENEWAL

Section 501 **Permit and/or License Expiration**

Every permit and license issued in accordance with this ordinance shall terminate at the expiration of one (1) year from the date of issuance, unless sooner revoked, and must be renewed before operation is allowed in the following year.

Section 503 **Permit and/or License Renewal**

Any business control person desiring to renew a permit shall make application to the County Auditor. The application for renewal must be filed not later than sixty (60) days before the permit expires. The application for renewal shall be filed in same manner as the original and dated by the County Auditor. A copy of the application for renewal shall be distributed within forty eight (48) hours of receipt by the County Auditor to the Hanson County Sheriff's Department, Hanson County States Attorney's Office, and to the business control person. The application for renewal shall be upon a form provided by the County Auditor and shall contain such information and data, given under oath or affirmation, as is required for an application for a new permit.

1. A non refundable permit renewal fee of one thousand (1,000) dollars shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of two hundred fifty (250) dollars shall be assessed against any applicant who files for a renewal less than sixty (60) days before the permit expires.
2. If the Hanson County Sheriff's Department, Hanson County States Attorney's Office, or other entity recognized by the Hanson County Board of County Commissioners is aware of any information bearing on the applicant's qualifications, that information shall be filed in writing with the County Auditor.
3. Every license issued pursuant to this ordinance shall terminate at the expiration of one (1) year from the date of issuance unless sooner revoked and must be renewed before an employee, entertainer, or manager is allowed to continue employment in an adult-oriented establishment
4. Any employee, entertainer, or manager desiring to renew a license shall make application to the County Auditor. The application for renewal must be filed not later than sixty (60) days before the license expires. The application for renewal shall be filed in the same manner as the original with and dated by the County Auditor. A copy of the application for renewal shall be distributed within forty eight (48) hours of receipt by the County Auditor to the Hanson County Sheriff's Department, Hanson County States Attorney's Office, and to the employee, entertainers, or manager. The application shall be upon a form provided by the County Auditor and shall contain such information and data given under oath or affirmation as is required for a new license.
5. A non refundable license renewal fee of one hundred (100) dollars shall be submitted with the application for renewal. In addition to the renewal fee, a late penalty of fifty (50) dollars shall be assessed against any applicant who files for a renewal less than sixty (60) days before the license expires.

6. If the Hanson County Sheriff's Department, Hanson County States Attorney's Office, or other entity recognized by the Hanson County Board of County Commissioners is aware of any information bearing on the applicant's qualifications, that information shall be filed in writing with the County Auditor.

ARTICLE VI

SUSPENSION OR REVOCATION OF PERMIT OR LICENSE

Section 601 **Conditions of Suspension or Revocation**

Any act or omission of any employee constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the business control person for purposes of determining whether the business control person's or entity's permit shall be revoked, suspended, or renewed.

In accordance with the provisions of this ordinance a permit or license issued under this ordinance shall be revoked for any of the following reasons:

1. Discovery that false or misleading information or data was given on any application or material facts were omitted from any application;
2. The business control person, manager, entertainer, or any employee of the business control person violates any provision of this ordinance or any rule or regulation adopted by the Board pursuant to this ordinance; provided, however, that in the case of a first offense by a business control person and/or manager where the conduct was solely that of an employee, the penalty shall not exceed a suspension of thirty (30) days if the Board shall find that the business control person and/or manager had no actual or constructive knowledge of such violation and could not by the exercise of due diligence have had such actual or constructive knowledge;
3. The business control person, manager, or employee becomes ineligible to obtain a permit;
4. An business control person and/or manager employs an employee who does not have a license issued by Hanson County or provides space on the premises, whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without an applicable Hanson County license.
5. Any cost or fee required to be paid by this ordinance is not paid or if any check, note, or charge is denied for payment by the financial institution from which if it is drawn;
6. Any intoxicating liquor or fermented malt beverage is sold, served, or consumed on the premises of the adult-oriented establishment not possessing an appropriate liquor license;
7. Any narcotic or controlled substance is sold, possessed, served, or consumed on the premises of the adult-oriented establishment;
8. Any business control person, manager, employee, or entertainer sells, furnishes, gives or displays, or causes to be sold, furnished, given or displayed, to any minor any adult-oriented entertainment or adult-oriented material; or
9. The transfer of a permit or license or any interest in a permit or license shall automatically and immediately revoke the permit or license.

Section 603 **Notice of Violation**

The County Auditor, upon making an initial determination that a violation of this ordinance has occurred, shall serve written notice of said violation(s) on the business control person, manager, employee, or entertainer. Said written notice shall include specific charges and shall provide the business control person, manager, employee, or entertainer with notice that revocation or suspension of the permit or license will occur unless a written request for a review of the County Auditor's decision is made to the Board of County Commissioners within thirty (30) days after service of said notice to the business control person, manager, employee, or entertainer.

Section 605 **Right of Appeal**

Unless otherwise extended by an agreement with the aggrieved party, within thirty (30) days of receipt of a request for review the Board of County Commissioners shall conduct a hearing pursuant to Article IX, at which time the business control person, manager, employee, or entertainer may present evidence bearing upon the question. The appellant shall be provided with written notice of such hearing by mail or personal service at least ten (10) days before such hearing. A final determination shall be made by the Board of County Commissioners.

Section 605 **Limitation of Authority**

No provisions of this Ordinance shall be construed to abridge the authority or responsibilities of the Hanson County Sheriff's Department, County Auditor, States Attorney, any certified law enforcement agency, or other regulatory entity to enforce this ordinance or to issue any citation(s) or complaints for violations of this ordinance or any other ordinance or county, state, or federal law.

Section 607 **Reinstatement of Permit or License**

Any business control person, manager, employee, or entertainer whose permit or license is revoked and who seeks to obtain a permit or license under this ordinance must apply for a permit or license according to the application provisions set forth in this ordinance and must meet the standards for the issuance of a permit or license as set forth in this ordinance. No location or premises for which a permit has been revoked shall be used as an adult-oriented establishment for six (6) months from the date of revocation of the permit.

ARTICLE VII
DEVELOPMENT STANDARDS

Section 701 **Location**

Minimum facility and operation standards including separation distances for adult entertainment businesses will aid in preventing the exploitation of minors, assure the correct identification of persons working in adult entertainment businesses, effectively deploy its limited law enforcement resources, and effectively protect the public health, safety, best interests and general welfare of its citizenry.

The Hanson County Commission further recognizes a need to regulate the physical location of adult entertainment businesses to minimize the impact upon potentially conflicting land uses. Therefore, no adult-oriented establishment shall be located:

1. Within one thousand three hundred and twenty (1,320) feet of an existing adult-oriented establishment;
2. Within one thousand three hundred and twenty (1,320) feet of an establishment that in any manner sells or dispenses alcohol;
3. Within one thousand three hundred and twenty (1,320) feet of any residential dwelling or residentially zoned property;
4. Within two thousand six hundred and forty (2,640) feet of any educational institution, day care, or nursery school;
5. Within one thousand three hundred and twenty (1,320) feet of a public park or recreation area; and
6. Within two thousand six hundred and forty (2,640) feet of any church.

For purposes of this ordinance, distances are to be measured in a straight line, without regard to intervening structures or objects, from the property line of the adult-oriented establishment to the nearest property line of another adult-oriented establishment, alcohol sales or dispensary, educational institution, daycare, or nursery school, church, public park or recreation area, or residential dwelling or residentially zoned property.

Section 703 **Minimum Facility Standards**

Any adult entertainment business as defined herein shall comply with the following requirements:

1. A live adult entertainment stage must be at least eighteen (18) inches in elevation above the level of the customer area and at least ten (10) feet from all areas of the premises to which a customer has access;
2. To separate the customer area from the stage, a continuous railing at least three (3) feet in height must be attached to the floor and located at least ten (10) feet from all points of the live adult entertainment stage;

3. A live adult entertainment stage must be visible immediately on entering the adult club's seating area and visibility may not be blocked or obscured by a door, curtain, drape, or other obstruction;
4. The premises must be maintained in a clean and sanitary condition;
5. Adult entertainment occurring on the premises of an adult club, or a pictorial representation of adult entertainment displaying nudity or sexual conduct, must not be visible from outside the business;
6. No adult-oriented establishment shall be situated in such manner as to allow public view of either its stock-in-trade or adult entertainment from outside of the establishment. The interior of an adult theater must be configured such that any entrance used by a customer shall open into a common area. All seats in a viewing area must be visible from the entrance to the viewing area without obstruction by a curtain, door, wall, merchandise, display rack, or other material;
7. Sufficient lighting must be provided and equally distributed throughout the areas that are open to and used by customers such that, during hours of operation, all objects are plainly visible. "Sufficient lighting" means a minimum lighting level of at least ten (10) foot candles of light, for all areas open to and used by customers;
8. A door to an area on the premises that is available for use by a person other than the business control person or manager, or both, or business control person's or manager's agent or employee, may not be locked during business hours;
9. Restroom facilities provided for customers must be separate from those provided employees and entertainers;
10. A restroom may not contain viewing equipment;
11. A sign must be conspicuously displayed inside every entrance to the adult club, that states as follows:

THIS ADULT ENTERTAINMENT BUSINESS IS REGULATED BY HANSON COUNTY ORDINANCE WHICH INCLUDES THE FOLLOWING PROHIBITIONS:

- No person under eighteen (18) years old shall be permitted on the premises.
 - No person is permitted to expose nudity or otherwise engage in an erotic performance except on a stage. No customer is permitted on stage or inside the railing, which is located at least ten (10) feet from the stage.
 - No person is permitted to perform an offstage erotic performance.
 - No person shall engage in sexual conduct while on the premises.
 - A tip, gratuity, or other payment offered to an entertainer performing on stage must be placed into a receptacle located outside the stage and setback area.
 - A violation is subject to criminal prosecution and civil penalties.
12. A person may not operate or maintain a warning device or system for the purpose of warning or aiding and abetting the warning of an entertainer, employee, customer, or other person that the police, health, fire, or other public official is approaching or entered the premises;

13. An area in an adult theater in which adult entertainment is viewed must contain at least eight (8) seats. The seats must be permanently affixed to the floor and must all face the screen on which the adult entertainment is viewed.
14. All booths must be accessible from the common area immediately inside the business's entrance unless configured such that all the booths are located in a section of the premises dedicated solely for that purpose, herein referred to as a "booth section". If the booths are located in a booth section within the arcade, all booths must be visible from the entrance to the booth section;
15. The entrance to the booth section must be open to the common area and may not be obstructed by a curtain, door, wall, merchandise, display rack, or other material;
16. A sign must be conspicuously displayed at the entrance to the booth section, if applicable, and in each booth, that states as follows:

THIS ADULT ENTERTAINMENT BUSINESS IS REGULATED BY HANSON COUNTY ORDINANCE WHICH INCLUDES THE FOLLOWING PROHIBITIONS:

- No person under eighteen (18) years old is permitted on the premises.
 - Masturbation and other sexual conduct are prohibited and unlawful on the premises.
 - More than one (1) person may not occupy a booth at a time.
 - A violation is subject to criminal prosecution and civil penalties.
17. Each booth, room, or cubicle shall be totally accessible to and from aisles and public areas of the adult-oriented establishment and shall be unobstructed by any door, lock, or other control-type devices;
 18. Every booth, room, or cubicle shall meet the following construction requirements:
 - a. Each booth, room, or cubicle shall have at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times of anyone occupying the same;
 - b. Each booth, room, or cubicle shall not exceed twelve (12) square feet in size;
 - c. Steps or risers are not allowed in a booth;
 - d. If an individual is able to view a live performance from an arcade booth, the booth must be constructed so that the opening between the booth and the performance area is entirely covered by an immovable panel of transparent nonporous material that extends the full length and width of the opening, does not contain a hole and prevents contact between the individual in the booth and the entertainer;
 - e. Each booth, room, or cubicle shall be separated from adjacent booths, rooms, or cubicles and any nonpublic areas by a wall;
 - f. All walls shall be solid and extend from the floor to a height of not less than six (6) feet, and be light colored, nonporous, smooth textured, and easily cleanable;

- g. A ventilation device or hole in a booth must be covered by a permanently affixed ventilation cover. A ventilation hole may be located only within one (1) foot from the top of or one (1) foot from the bottom of the booth walls, or both. There may not be any other holes or openings in the booths;
- h. The seating surface in a booth may not provide a seating surface of more than eighteen (18) inches in either length or width and there may not be more than one chair or seating surface in a booth;
- i. The floor, walls, and ceiling surfaces must be light colored, nonporous, smooth textured and easily cleanable surfaces and may not consist of fabric, rugs, or carpeting; and
- j. The lighting level of each booth, room or cubicle when not in use shall be a minimum of ten (10) foot candles at all times, as measured from the floor; provided, however, that at no time shall there be less than one (1) foot candle of illumination in said booth, room, or cubicle, as measured from the floor.

Section 705 Operating Requirements and Standards of Conduct

On the premises of an adult entertainment business, the business and its business license holders, business control persons, managers, employees, entertainers, and customers shall adhere to the following operating requirements and standards of conduct:

- 1. The adult entertainment business permit holder and any business control persons shall be responsible for and shall assure that the conduct of the managers, entertainers, employees, and customers of the adult club complies with this ordinance;
- 2. In addition to normal and customary business insurance policies the adult entertainment business must carry a minimum of one million dollar (1,000,000) in liability insurance or the bond equivalent thereof;
- 3. During hours of operation a licensed manager shall be stationed in a location from which every live entertainment stage, setback area, viewing area, booth, and customer area of the business is visible by direct line of sight and continuous video monitoring at all times;
- 4. All video cameras and monitoring equipment shall be linked to a recording device;
- 5. Recordings of the video monitoring system shall be preserved, stored, and cataloged for a period of one (1) year from the date of recording and be available for review upon request of the Hanson County's Sheriff's Department, certified law enforcement agency, or person designated by the Hanson County Board of County Commissioners.
- 6. The on-duty manager is responsible for and shall assure that the conduct of the entertainers, employees, and customers of the adult entertainment business complies with this ordinance;
- 7. The holder of the adult entertainment business permit shall post the permit in a conspicuous place at or near the entrance to the adult entertainment business so that the permit can be easily read when the business is open. The manager shall post his or her license next to the business permit when he or she is on duty as the manager. An entertainer shall provide a legible copy of his or her license to the manager on duty who shall maintain the entertainer's

license on the premises for immediate inspection when the entertainer is on the premises. The manager shall, on request by the Auditor or any certified law enforcement agency, make available for inspection the copy or original license as directed of an entertainer on the premises;

8. The business control person and/or manager shall maintain on a form prescribed by the Auditor a record of all employees, entertainers, and managers showing:
 - a. name;
 - b. aliases;
 - c. stage names;
 - d. business license number;
 - e. home address;
 - f. age;
 - g. birth date;
 - h. sex;
 - i. height;
 - j. weight;
 - k. color of hair and eyes;
 - l. telephone numbers;
 - m. date of employment, and termination;
 - n. duties of each employee; and
 - o. other information as may be required by the Board.

The above information on each employee, entertainer, or manager shall be maintained in a register on the premises for a period of one (1) year following termination of the employee, entertainer, or manager and shall be made immediately available for inspection upon demand of a member of the Hanson County Sheriff's Department, any certified law enforcement agency, or person designated by the Hanson County Board of County Commissioners at all reasonable times;

9. The business license holder, business control person, or manager may not operate the adult club, or allow the adult club to be open to customers in accordance with the provisions of this ordinance;
10. An individual under eighteen (18) years old may not be in or on the premises. The business license holder, business control person, or manager may not permit or allow a person under eighteen (18) years old to be in or on the premises;
11. An individual may not possess, consume, or serve an alcoholic beverage unless, and to the extent, the adult entertainment business is covered by a valid liquor or malt beverage license issued by the Hanson County Board of County Commissioners or State of South Dakota;

12. An individual may not expose nudity or engage in any erotic performance except on a stage meeting the requirements of this ordinance;
13. An individual may not engage in sexual conduct;
14. An individual may not engage in an obscene performance;
15. A customer may not enter on the stage or the stage setback area;
16. An employee or entertainer may not enter a customer restroom nor may a customer enter an employee and entertainer restroom;
17. An entertainer may not accept a tip, gratuity, or other payment offered directly to the entertainer by a customer;
18. A tip, gratuity, or other payment offered to an entertainer performing on a live adult entertainment stage must be placed into a receptacle located outside the stage and stage setback area provided through a manager on duty on the premises;
19. The adult theater viewing area must be open to any person entering the adult theater and may not be reserved for use by one or more customers. An adult theater may not admit more persons to a viewing area than the number of seats provided;
20. Only one individual shall occupy a booth, room, or cubicle at any time. No occupant of the same shall engage in any type of sexual activity, cause any bodily discharge, or litter while in the booth. No individual shall damage or deface any portion of the booth;
21. There shall be posted and conspicuously displayed in the common areas of each adult-oriented establishment a list of any and all entertainment provided on the premises. Said list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed. Viewing adult-oriented motion pictures shall be considered as entertainment. The business control person and/or manager shall make the list available immediately upon demand of the Hanson County Sheriff's Department, certified law enforcement agency, or person designated by the Hanson County Board of County Commissioners at all reasonable times;
22. No employee of an adult-oriented establishment shall allow any minor to loiter around or frequent an adult-oriented establishment or allow any minor to view adult entertainment as defined herein;
23. The business control person and/or manager shall maintain the premises in a clean and sanitary manner at all times;
24. The business control person and/or manager shall maintain at least ten (10) foot candles of light in the public portions of the establishment, including aisles, at all times. However, if a lesser level of illumination in the aisles shall be necessary to enable a patron to view the adult entertainment in a booth adjoining an aisle, a lesser amount of illumination may be maintained in such aisles; provided, however, that at no time shall there be less than one (1) foot candle of illumination in said aisles, as measured from the floor;

25. An adult entertainment business which operates an adult theatre utilizing film projector technology may submit a written lighting plan and request to the Auditor for permission to reduce the minimum lighting standard of at least ten (10) foot candles during the operation of the film projector. If the Auditor finds that the specified lighting standard prevents the projection of the image onto the theatre's screen, the Auditor may allow a reduction of the minimum lighting standard within the viewing area to a level that allows for the projection of the image while still providing sufficient lighting that all objects are plainly visible within the viewing area. However, that at no time shall there be less than one foot candle of illumination in said aisles, as measured from the floor; and
26. The business control person and/or manager shall ensure compliance of the establishment and its patrons with the provisions of this ordinance.

Section 707 Hours of Operation

An adult entertainment business shall adhere to the following hours of operation:

1. No adult-oriented establishment shall be open between the hours of 2:00 a.m. and 12:00 p.m. on weekdays and Saturdays or Sundays between the hours of 2:00 a.m. and 12:00 p.m. on the following Monday.
2. All adult-oriented establishments shall be open to inspection at all reasonable times by the Hanson County Sheriff's Department, certified law enforcement agency, or person recognized by the Hanson County Board of County Commissioners.

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ARTICLE VIII

INSPECTION

Section 801 Right of Inspection Prior to Permit Approval

The Auditor and personnel from other departments or agencies may conduct on-site inspections of the premises of the adult entertainment business before the Auditor issues a permit to ensure compliance with this ordinance and applicable zoning, building, fire, public health, and other ordinances, statutes, and rules.

Section 803 Right of Inspection Post Permit Approval

An adult entertainment business shall permit the Hanson County Sheriff's Department, any certified law enforcement agency, or person designated by the Hanson County Board of County Commissioners to conduct unannounced inspections, during the hours when the business is open, of all exterior and interior areas of the business premises open to and used by customers and all books and records required to be kept under this ordinance. The purpose of such inspections is to determine if the business is being conducted in compliance with this ordinance.

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ARTICLE IX
ADMINISTRATIVE APPEALS

Section 901 **Administrative Appeals**

An administrative appeal pursuant to the provisions contained herein, may be made by an aggrieved person to the Board of County Commissioners and a hearing shall be held by the Board of County Commissioners pursuant to Article IX

Section 903 **Administrative Appeal Procedures**

It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the County Auditor and that such questions shall be presented to the Board of County Commissioners only on appeal from the decision of the County Auditor. Upon exhaustion of the administrative appeal process as described herein recourse shall be to the Court of competent jurisdiction.

Section 905 **Powers and Duties**

The Board of County Commissioners shall have the power to hear appeals of a decision rendered by the County Auditor.

Section 907 **Appeals**

The Board of County Commissioners shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by the County Auditor based on or made in the enforcement of any provision contained herein. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of County Commissioners, that by reason of facts stated in the certificate a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by a court of competent jurisdiction on application or notice to the officer for whom the appeal is taken and on due cause shown. Prior to hearing an appeal the following requirements shall be completed.

1. The County and appellant shall act upon appeals pursuant to Article IX.
2. The applicant or any other person aggrieved by the decision of the County Auditor shall file a written appeal with the County Auditor within thirty (30) days of the decision;
3. The County Auditor or official from whom the appeal is taken shall forthwith transmit to the Board of County Commissioners all the documents and information constituting the record upon which the action appealed was taken;
4. Notice of the hearing date shall be given once and at least ten (10) days in advance by publication in the legal newspapers of the county;
6. Written notice shall be sent to the appellant and applicant via certified mail at least ten (10) days in advance of the hearing date.

7. At the hearing, interested parties to the decision shall present evidence relative thereto to the Board of County Commissioners.
8. The Board of County Commissioners may affirm, amend, or overrule the matter appealed. The Board may also send the appeal back to the County Auditor for further proceedings.
9. Upon exhaustion of the administrative appeal process as described herein recourse shall be to the Court of competent jurisdiction.

ARTICLE X
EXEMPTIONS

Section 1001 **General Exemptions**

Notwithstanding any other provision of this ordinance, “nude,” “nudity,” and “adult entertainment establishment,” does not apply to nor include:

1. Children under ten (10) years of age;
2. Exposure of a breast during the process of breastfeeding an infant;
3. Enclosed public restrooms;
4. Lockers, and/or dressing rooms;
5. Accredited clinics or hospitals;
6. Private residences; and
7. Licensed hotel or motel rooms.

Section 1001 **Cultural Exemptions**

Notwithstanding any other provision of this ordinance, “adult arcade,” “adult bookstore,” “adult cabaret,” “adult club,” “adult entertainment establishment,” and “adult theater” does not include:

1. A theater or performing arts institution that presents a play, opera, musical, dance, or other dramatic works that are not distinguished or characterized by a predominant emphasis on nudity or sexual conduct; and
2. An art gallery, display, exhibition, or similar venue when less than ten (10) percent of the objects on display portray nudity, specified anatomical areas, or specified sexual activities.

Section 1001 **Educational Exemptions**

Notwithstanding any other provision of this ordinance, “adult arcade,” “adult bookstore,” “adult cabaret,” “adult club,” “adult entertainment establishment,” and “adult theater” does not include:

1. All private or public educational institutions accredited by the State of South Dakota that provides a modeling session or other class or seminar depicting nudity or sexual conduct.
2. All private or public educational institutions accredited by the State of South Dakota instructing pupils in sex education as part of their curriculum.

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ARTICLE XI
VIOLATIONS AND PENALTIES

Section 1101 **Enforcement and Accountability**

Any act or omission by a manager, employee, or entertainer constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the business control person if such act or omission occurs either with the authorization, knowledge or approval of the business control person or as a result of the business control person's failure to supervise the manager's, employee's, or entertainer's conduct, and the business control person shall be punishable for such act or omission in the same manner as if the business control person committed the act or caused the omission.

Section 1103 **Criminal Penalties for Violations**

Any person, partnership, corporation, company, joint venture, business control person, employee, entertainer, manager, customer, or other person directly involved with an adult entertainment business who or which is found to have violated any provision of this ordinance shall be subject to any or all of the following:

1. A fine not to exceed two hundred (200) dollars for each violation;
2. Imprisonment for a period not to exceed thirty (30) days for each violation; or
3. By both fine and imprisonment; and
4. An action for civil injunctive relief, pursuant to SDCL 21-8.

In addition, all costs and expenses involved in the case shall be paid by the defendant; each day such violation continues shall be a separate offense.

Section 1105 **Civil Penalties for Violations**

In addition to or as an alternative to any other penalty provided in this ordinance or by law, a person who violates this ordinance is subject to a civil penalty not to exceed two hundred (200) dollars per violation, to be directly assessed by the Auditor. The Auditor, in a reasonable manner, may vary the amount of the penalty assessed by considering:

1. The appropriateness of the penalty to the size of the business of the violator;
2. The gravity of the violation; the number of past and present violations committed; and
3. The good faith of the violator in attempting to achieve compliance after notification of the violation.

A civil penalty assessed may be enforced and collected in accordance with the procedure specified under this title.

Section 1107 Public Nuisance

Violation of this ordinance is determined to be a public nuisance and shall be subject to the provisions of of the South Dakota Code regulating public nuisances in addition to the provisions of this ordinance.

Section 1109 Additional Remedies

Notwithstanding the existence of any other remedy, the County may seek legal or equitable relief to enjoin an act or practice that constitutes a violation of this ordinance or an applicable rule adopted under this title.

Section 1111 Limitation of Liability

This ordinance is not intended to create a cause of action or provide the basis for a claim against the county, its officials, or its employees for the performance or the failure to perform a duty or obligation running to a specific individual or specific individuals. A duty or obligation created under this ordinance is intended to be a general duty or obligation running in favor of the general public.

ARTICLE XIII
LEGAL STATUS PROVISIONS

Section 1301 Separability

Should any article, section, or provisions of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

Section 1303 Purpose of Sub-Titles

The sub-titles appearing in connection with the foregoing sections are inserted simply for convenience, to serve the purpose of any index and they shall be wholly disregarded by any person, officer, court or other tribunal in construing the terms and provisions of this Ordinance.

Section 1305 Effective Date

This Ordinance shall take effect and be in force from and after its adoption.

Dated January 18, 2005

Chester McManus

Chester McManus
Chairman, Board of Commissioners

Attest: *Janet Ibis*

Janet Ibis, County Auditor

By: _____
Gloria Kunkel, Deputy



Administrative:

First Reading: December 21, 2004
Second Reading: January 18, 2005
Votes for: 3, votes against: 0
Passed

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