

## CHAPTER 43

### ADULT LIVE ENTERTAINMENT AND ADULT ENTERTAINMENT BUSINESSES

#### GENERAL

#### 4300. Rationale and findings.

(a) *Purpose.* It is the purpose of this Chapter to regulate adult entertainment businesses in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of adult entertainment businesses within the County. The provisions of this Chapter have neither the purpose nor 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 Chapter 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 Chapter to condone or legitimize the distribution of obscene material.

(b) *Findings and Rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Legislature, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *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); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); and

*Sensations, Inc. v. City of Grand Rapids*, --- F.3d ---, 2008 WL 2097410 (6th Cir. May 20, 2008); *Farkas v. Miller*, 151 F.3d 900 (8th Cir. 1998); *Jakes, Ltd. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8th Cir. 2001); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *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); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *United States v. Evans*, 272 F.3d 1069 (8th Cir. 2002); *United States v. Mueller*, 663 F.2d 811 (8th Cir. 1981); *United States v. Frederickson*, 846 F.2d 517 (8th Cir. 1988); *Ctr. for Fair Public Policy v. Maricopa County*,

336 F.3d 1153 (9th Cir. 2003); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 176 F.3d 1358 (11th Cir. 1999); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *North Avenue Novelties, Inc. v. City of Chicago*, 88 F.3d 441 (7th Cir. 1996); *Williams v. Morgan*, 478 F.3d 1316 (11th Cir. 2007); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *H&A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Green v. City of St. Paul*, 1999 WL 376099 (8th Cir. 1999); *Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County*, 274 F.3d 377 (6th Cir. 2002); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Kentucky Restaurant Concepts, Inc. v. City of Louisville*, 209 F. Supp. 2d 672 (W.D. Ky. 2002); *People ex rel. Deters v. Effingham Retail #27, Inc. d/b/a The Lion's Den Adult Superstore*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

and based upon reports concerning secondary effects occurring in and around adult entertainment businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Grove, California - 1991; Houston, Texas - 1983, 1997; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Oklahoma City, Oklahoma - 1986; Dallas, Texas - 1997; Ft. Worth, Texas - 2004; Kennedale, Texas - 2005; Greensboro, North Carolina - 2003; Amarillo, Texas - 1977; McCleary Report - 2008; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota),

the Legislature finds:

(1) Adult entertainment businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.

(2) Each of the foregoing negative secondary effects constitutes a harm which the County has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the County's rationale for this Chapter, exists independent of any comparative analysis between sexually oriented and non-adult entertainment businesses. Additionally, the County's interest in regulating adult entertainment businesses extends to preventing future secondary effects of

either current or future adult entertainment businesses that may locate in the County. The County finds that the cases and documentation relied on in this Chapter are reasonably believed to be relevant to said secondary effects.

The County hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of adult businesses, including the judicial opinions and reports related to such secondary effects. (Ord. 3993, Eff. 06/02/08)

#### 4301. 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.

*“Adult Bookstore or Adult Video Store”* means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.”

A “principal business activity” exists where the commercial establishment:

- (a) has at least 35% of its displayed merchandise which consists of said items, or
- (b) has at least 35% of the wholesale value of its displayed merchandise which consists of said items, or
- (c) has at least 35% of the retail value (defined as the price charged to customers) of its displayed merchandise which consists of said items, or
- (d) derives at least 35% of its revenues from the sale or rental, for any form of consideration, of said items, or
- (e) maintains at least 35% of its interior business space for the display, sale, and/or rental, for any form of consideration, of said items (aisles and walkways used to access said items shall be included in “interior business space” maintained for the display, sale, or rental of said items), or
- (f) maintains at least five hundred square feet (500 sq. ft.) of its interior business space for the display, sale, and/or rental of the foregoing items (aisles and walkways used to access said items shall be included in “interior business space” maintained for the display, sale, or rental of said items) and limits access to the premises to adults only; or

(g) offers for sale or rental at least two thousand (2,000) of the foregoing items *and* limits access to the premises to adults only; or

(h) maintains an “adult arcade,” which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting “specified sexual activities” or “specified anatomical areas.”

“*Adult Cabaret*” means a nightclub, juice bar, restaurant, lounge, or similar commercial establishment which regularly features persons who appear semi-nude.

“*Adult Entertainment Business*” means an “adult bookstore or adult video store,” an “adult cabaret,” an “adult motion picture theater,” an “explicit novelty store,” or a “semi-nude model studio.”

“*Adult Motion Picture Theater*” means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas” are regularly shown to more than five persons for any form of consideration.

“*Characterized by*” means describing the essential character or quality of an item. As applied in this Chapter, no business shall be classified as an adult entertainment business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

“*County*” means Jackson County, Missouri.

“*Director*” means the Director of the Jackson County Public Works Department or his or her designee.

“*Employ, Employee, and Employment*” describe and pertain to any person who performs any service on the premises of an adult entertainment business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

“*Establish or Establishment*” shall mean and include any of the following:

(a) The opening or commencement of any adult entertainment business as a new business;

(b) The conversion of an existing business, whether or not an adult entertainment business, to any adult entertainment business; or

(c) The addition of any adult entertainment business to any other existing adult entertainment business.

*“Explicit Novelty”* means any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

*“Explicit Novelty Store”* means a commercial establishment that is open to adults only and that regularly features explicit novelties. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services.

*“Hearing Officer”* means an attorney, not otherwise employed by the County, who is licensed to practice law in Missouri, and retained to serve as an independent tribunal to conduct hearings under this Chapter.

*“Influential Interest”* means any of the following: (1) the actual power to operate the adult entertainment business or control the operation, management or policies of the adult entertainment business or legal entity which operates the adult entertainment business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the adult entertainment business.

*“Licensee”* shall mean a person in whose name a license to operate an adult entertainment business has been issued, as well as the individual or individuals listed as an applicant on the application for an adult entertainment business license. In the case of an "employee," it shall mean the person in whose name the adult entertainment business employee license has been issued.

*“Nudity or a State of Nudity”* means 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.

“*Operator*” means any person on the premises of an adult entertainment business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated an adult entertainment business whether or not that person is an owner, part owner, or licensee of the business. For purposes of this Chapter, an operator of an adult entertainment business shall also be deemed a manager of the adult entertainment business.

“*Person*” shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

“*Premises*” means the real property upon which the adult entertainment business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult entertainment business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for an adult entertainment business license.

“*Regularly*” means the consistent and repeated doing of an act on an ongoing basis.

“*Semi-Nude or State of Semi-Nudity*” means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

“*Semi-Nude Model Studio*” means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a class operated:

(a) By a college, junior college, or university supported entirely or partly by taxation;

(b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(c) In a structure:

(1) 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

(2) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

“*Specified Anatomical Areas*” means and includes:

(a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“*Specified Criminal Activity*” means any of the following crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement with respect to a felony, or for which less than two years has elapsed since the date of conviction with respect to a misdemeanor, whichever is the later date:

(a) sexual offenses set forth in RSMo ch. 566;

(b) prostitution offenses set forth in RSMo ch. 567;

(c) offenses involving a child and sex set forth in RSMo ch. 568;

(d) pornography and related offenses set forth in RSMo ch. 573;

(e) controlled substance, illegal drug, or narcotics offenses as set forth in the state comprehensive drug control act set forth in RSMo ch. 195;

(f) offenses similar to the foregoing offenses that are set forth in other portions of the state statutes;

(g) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses;  
or

(h) any offense in another jurisdiction that, had the predicate act(s) been committed in Missouri, would have constituted any of the foregoing offenses.

“*Specified Sexual Activity*” means any of the following:

(a) intercourse, oral copulation, masturbation or sodomy; or

(b) excretory functions as a part of or in connection with any of the activities described in (a) above.

“*Transfer of Ownership or Control*” of an adult entertainment business shall mean any of the following:

(a) The sale, lease, or sublease of the business;

(b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

(c) 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 or control.

“*Viewing Room*” shall mean the room, booth, or area where a patron of an adult entertainment business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction. (Ord. 3993, Eff. 06/02/08)

#### 4302. License required.

(a) *Business License.* It shall be unlawful for any person to operate an adult entertainment business in the unincorporated area of Jackson County without a valid adult entertainment business license.

(b) *Employee License.* It shall be unlawful for any person to be an “employee,” as defined in this Chapter, of an adult entertainment business in the unincorporated area of Jackson County without a valid adult entertainment business employee license, except that a person who is a licensee under a valid adult entertainment business license shall not be required to also obtain an adult entertainment business employee license.

(c) *Application.* An applicant for an adult entertainment business license or an adult entertainment business employee license shall file in person at the office of the Director a completed application made on a form provided by the Director. An adult entertainment business may designate an individual with an influential interest in the business to file its application for an adult entertainment business license in person on behalf of the business. The application shall be signed as required by subsection (d) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (c), accompanied by the appropriate licensing fee:

(1) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.

(2) Current business address or another mailing address for the applicant.

(3) Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.

(4) If the application is for an adult entertainment business license, the business name, location, legal description, mailing address and phone number of the adult entertainment business.

(5) If the application is for an adult entertainment 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 an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this Chapter, and if so, each 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.

(7) A statement of whether any adult entertainment business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

(i) been declared by a court of law to be a nuisance; or

(ii) been subject to a court order of closure or padlocking.

(8) An application for an adult entertainment business license shall be accompanied by a legal description of the property where the business is located and 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 the stage, booth, and/or room configuration requirements of this Chapter shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations.

The information provided pursuant to this subsection (c) shall be supplemented in writing by certified mail, return receipt requested, to the Director within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) *Signature.* A person who seeks an adult entertainment business employee license under this section shall sign the application for a license. If a person who seeks an adult entertainment business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks an adult entertainment business license is other than an individual, each person with an influential interest in the adult entertainment business or in a legal entity that controls the adult entertainment business shall sign the application for a license as applicant. Each applicant must be qualified under this Chapter and each applicant shall be considered a licensee if a license is granted.

(e) The information provided by an applicant in connection with an application for a license under this Chapter shall be maintained by the office of the Director on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by court order. (Ord. 3993, Eff. 06/02/08)

#### 4303. Issuance of license.

(a) *Business License.* Upon the filing of a completed application for an adult entertainment business license, the Director shall immediately issue a Temporary License to the applicant if the completed application is from a preexisting adult entertainment business that is lawfully operating in the County and the completed application, on its face, indicates that the applicant is entitled to an annual adult entertainment business license. The Temporary License shall expire upon the final decision of the County to deny or grant an annual license. Within twenty (20) days of the filing of a completed adult entertainment business license application, the Director shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Director shall issue a license unless:

- (1) An applicant is less than eighteen (18) years of age.
- (2) An applicant has failed to provide information required by 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 required by this Chapter has not been paid.
- (4) The adult entertainment business, as defined herein, is not in compliance with the interior configuration requirements of this Chapter or the locational requirements of any other part of the Jackson County Code, including Chapter 240 of the Unified Development Code.
- (5) Any adult entertainment business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the

influential interest):

- (i) been declared by a court of law to be a nuisance; or
- (ii) been subject to an order of closure or padlocking.

(6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Chapter.

(b) *Employee License.* Upon the filing of a completed application for an adult entertainment business employee license, the Director shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed adult entertainment business and the completed application, on its face, indicates that the applicant is entitled to an annual adult entertainment business employee license. The Temporary License shall expire upon the final decision of the County to deny or grant an annual license. Within twenty (20) days of the filing of a completed adult entertainment business employee license application, the Director shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The Director shall issue a license unless:

- (1) The applicant is less than eighteen (18) years of age.
- (2) The applicant has failed to provide information as required by 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 required by this Chapter has not been paid.
- (4) Any adult entertainment business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- (i) been declared by a court of law to be a nuisance; or
- (ii) been subject to an order of closure or padlocking.

(5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Chapter.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for an adult entertainment business, the address of the adult entertainment business. The adult entertainment business license shall be posted in a

conspicuous place at or near the entrance to the adult entertainment business so that it may be read at any time that the business is occupied by patrons or is open to the public. An adult entertainment business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing. If a person has a Temporary License, the person shall have the form of identification that the person submitted with its application on the premises at all times that the person is on the premises. (Ord. 3993, Eff. 06/02/08)

#### 4304. Fees.

The initial license and annual renewal fees for adult entertainment business licenses and adult entertainment business employee licenses shall be as follows: seven hundred fifty dollars (\$750) for the initial fee for an adult entertainment business license and seven hundred fifty dollars (\$750) for annual renewal; fifty dollars (\$50) for the initial adult entertainment business employee license and fifty dollars (\$50) for annual renewal.

#### 4305. Inspection.

Adult entertainment businesses and adult entertainment business employees shall permit the Director and his or her agents to inspect, from time to time on an occasional basis, not less than once per quarter, the portions of the adult entertainment business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the adult entertainment business is occupied by patrons or is open to the public. This section shall be narrowly construed by the County to authorize reasonable inspections of the licensed premises pursuant to this Chapter, but not to authorize a harassing or excessive pattern of inspections. (Ord. 3993, Eff. 06/02/08)

#### 4306. Expiration and renewal of license.

(a) Each license shall remain valid for a period of one 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 this Chapter.

(b) Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected. (Ord. 3993, Eff. 06/02/08)

#### 4307. Suspension.

(a) The Director shall issue a written notice of intent to suspend an adult entertainment business license for a period not to exceed thirty (30) days if the adult entertainment

business licensee has knowingly violated this Chapter or has knowingly allowed an employee or any other person to violate this Chapter.

(b) The Director shall issue a written notice of intent to suspend an adult entertainment business employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly violated this Chapter. (Ord. 3993, Eff. 06/02/08)

#### 4308. Revocation.

(a) The Director shall issue a written notice of intent to revoke an adult entertainment business license or an adult entertainment business employee license, as applicable, if the licensee knowingly violates this Chapter or has knowingly allowed an employee or any other person to violate this Chapter and a suspension of the licensee's license has become effective within the previous twelve-month (12-mo.) period.

(b) The Director shall issue a written notice of intent to revoke an adult entertainment business license or an adult entertainment business employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for the adult entertainment business license or the adult entertainment business employee license.

(2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises of the adult entertainment business;

(3) The licensee has knowingly or recklessly engaged in or allowed solicitation or prostitution on the premises of the adult entertainment business;

(4) The licensee knowingly or recklessly operated the adult entertainment business during a period of time when the license was finally suspended or revoked;

(5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the adult entertainment business; or

(6) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to consume alcohol or appear in a state of semi-nudity or nudity on the premises of the adult entertainment business.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) When, after the notice and hearing procedure described in this Chapter, the County revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued an adult entertainment business license or adult entertainment business employee license for one (1) year from the date revocation becomes effective. (Ord. 3993, Eff. 06/02/08)

4309. Hearing; license denial, suspension, revocation; appeal.

(a) When the Director issues a written notice of intent to deny, suspend, or revoke a license, the Director shall immediately send such notice, which shall include the specific grounds under this Chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Director for the respondent. The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the Director, a written request for a hearing. If the respondent does not request a hearing within said ten (10) days, the Director's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued, and shall be subject to the provisions of subsection (b) of this Section.

If the respondent does make a written request for a hearing within said ten (10) days, then the Director shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The County shall provide for the hearing to be transcribed. At the hearing, the 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 Director's witnesses. The Director 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 at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a final written decision, including specific reasons for the decision pursuant to this Chapter, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and the decision shall not become effective until the thirtieth (30th) day after it is rendered. If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the Director to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the Director shall contemporaneously therewith issue the license to the applicant.

(b) If any court action challenging a licensing decision is initiated, the County shall prepare and transmit to the court a transcript of the hearing within thirty (30) days after receiving written notice of the filing of the court action. The County shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any adult entertainment business that is lawfully operating as an adult entertainment business, or any adult entertainment business employee that is lawfully employed as an adult entertainment business employee, on the date on which the completed business or employee application, as applicable, is filed with the Director: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the County's enforcement of any denial, suspension, or revocation of a Temporary License or annual license, the Director shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the adult entertainment business or to continue employment as an adult entertainment business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the County's enforcement. (Ord. 3993, Eff. 06/02/08)

4310. Transfer of license.

A licensee shall not transfer his or her license to another, nor shall a licensee operate an adult entertainment business under the authority of a license at any place other than the address designated in the adult entertainment business license application. (Ord. 3993, Eff. 06/02/08)

4311. Hours of operation.

No adult entertainment business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

4312. Regulations pertaining to exhibition of sexually explicit films on premises.

(a) A person who operates or causes to be operated an adult entertainment business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for an adult entertainment business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for

displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since the diagram was prepared.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- (i) That the occupancy of viewing rooms less than 150 square feet is limited to one person.
- (ii) That specified sexual activity on the premises is prohibited.
- (iii) That the making of openings between viewing rooms is prohibited.
- (iv) That violators will be required to leave the premises.
- (v) That violations of these regulations are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) through (iv) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station, which shall be in a fixed location, of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more

operator's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.

(b) It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly fail to fulfill that duty.

(c) No patron shall knowingly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.

(d) No patron shall knowingly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.

(e) No person shall knowingly make any hole or opening between viewing rooms. (Ord. 3993, Eff. 06/02/08)

4313. Loitering, exterior lighting and monitoring, and interior lighting requirements.

(a) It shall be the duty of the operator of an adult entertainment business to: (I) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candles as measured at the floor level. 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 an operator's station.

(b) It shall be the duty of the operator of an adult entertainment business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not

less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.

(c) No adult entertainment business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

(d) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty. (Ord. 3993, Eff. 06/02/08)

#### 4314. Penalties and enforcement.

(a) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Chapter shall be guilty of a misdemeanor, and, upon conviction, shall be punishable by a fine of not more than \$1,000.00, by imprisonment in the Jackson County Department of Corrections for not more than one year, or by both fine and imprisonment. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(b) The County's legal counsel is hereby authorized to institute civil suits necessary for the enforcement of this Chapter to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the County, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Chapter, or any of the laws in force in the County or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred. (Ord. 3993, Eff. 06/02/08)

#### 4315. Applicability of Chapter to existing businesses.

All preexisting adult entertainment businesses lawfully operating in the County in compliance with all state and local laws prior to the effective date of this Chapter, and all adult entertainment business employees working in the County prior to the effective date of this Chapter, are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of sixty (60) days following the effective date of this Chapter. By the end of said sixty (60) days, all adult entertainment businesses and adult entertainment business employees must conform to and abide by the requirements of this Chapter. (Ord. 3993, Eff. 06/02/08)

4316. Prohibited conduct.

- (a) No patron, employee, or any other person shall knowingly or intentionally, in an adult entertainment business, appear in a state of nudity or engage in a specified sexual activity.
- (b) No person shall knowingly or intentionally, in an adult entertainment business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.
- (c) No employee who regularly appears semi-nude in an adult entertainment business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of an adult entertainment business.
- (d) No person shall sell, use, or consume alcoholic beverages on the premises of an adult entertainment business.
- (e) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of an adult entertainment business.
- (f) No person shall engage in any gambling activity on the premises of an adult entertainment business.
- (g) No operator or licensee of an adult entertainment business shall knowingly violate the regulations in this section or knowingly allow an employee or any other person to violate the regulations in this section.
- (h) A sign in a form to be prescribed by the Director, and summarizing the provisions of subsections (a), (b), (c), (d), (e), and (f) shall be posted near the entrance of the adult entertainment business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign. (Ord. 3993, Eff. 06/02/08)

4317. Scienter required to prove violation or business licensee liability.

This Chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Chapter. Notwithstanding anything to the contrary, for the purposes of this Chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the adult entertainment business licensee for purposes of finding a violation of this Chapter, or 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 operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that

the person to whom liability is imputed was powerless to prevent the act. (Ord. 3993, Eff. 06/02/08)

4318. Failure of County to meet deadline not to risk applicant/licensee rights.

In the event that a County official is required to act or to do a thing pursuant to this Chapter within a prescribed time, and fails to act or to do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the County official under this Chapter, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the County of an applicant or licensee's application for an adult entertainment business license or an adult entertainment business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the County's action has passed. (Ord. 3993, Eff. 06/02/08)

4319. Severability.

This Chapter and each section and provision of said Chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this Chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Chapter.

4320. Payment of Property Taxes.

Notwithstanding anything contained in this chapter to the contrary, the issuance of a license under this chapter to any applicant may be withheld and any license previously issued under this chapter to any applicant may be suspended or revoked, if property tax due to the county on any Applicant Property (defined below) is or becomes delinquent. As used herein, the term "Applicant Property" shall mean any personal property that is owned by such applicant or that is used in the activity for which the license is required and owned by any party related to such applicant or owned by any entity owned or controlled by or under common ownership or control with such applicant. (Ord. 4327, Eff. 08/09/11)