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SEXUALLY THEMED BUSINESSES

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53.01 Purpose

It is the purpose of this ordinance to regulate sexually themed businesses in order to promote the health, safety, morals, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually themed businesses within the County, thereby reducing or eliminating the adverse secondary effects from such sexually themed businesses. The provisions of this ordinance have neither the purpose nor the effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually themed materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually themed materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually themed entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material or any other criminal act prohibited by the Iowa Code as currently enacted, and including any laws amended or enacted in the future.

53.02 Findings.

Based on evidence of adverse secondary effects of sexually themed businesses presented to the Board of Supervisors and on findings, interpretations, and narrowing constructions incorporated in both state and federal court cases, the Board of Supervisors finds that the regulatory provisions of this Chapter are within its constitutional power to enact, are designed to serve the County's substantial interest in preventing many of the negative secondary effects associated with sexually themed businesses, is narrowly tailored to that end, and provides reasonable alternative avenues of communication for sexually explicit messages within the County.

1. Sexually themed businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the un-permitted operators of the establishments.

2. Employees of sexually themed businesses, as defined in this Chapter, often engage in certain types of illicit sexual behaviors.

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

4. Communities have suffered adverse aesthetic impacts caused by sexually themed businesses, including sexually graphic and unsanitary litter in and around adult bookstores and other sexually themed businesses. Unincorporated areas are subject to the same concerns and regulations are needed to protect those who live in these areas.

5. Persons often frequent certain adult theaters, adult arcades, and other sexually themed businesses for the purpose of engaging in sex in or near the premises of such sexually themed businesses, or for the purpose of purchasing or selling illicit drugs.

6. Numerous communicable diseases may be spread by activities occurring in sexually themed businesses, including but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis, salmonella, campylobacter and Shigella infections, chlamydia, myoplasmal and ureaplasma infections, trichomoniasis and chancroid. Numerous studies and reports have determined that semen is found in the areas of sexually themed businesses where persons view "adult" themed films.

7. Men and women of all races are most likely to be infected by sexual contact.

8. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually themed businesses. Further, such a licensing procedure will place a heretofore nonexistent duty on the operators to see that sexually themed businesses are run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the County.

9. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

10. Requiring permittees of sexually themed businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

11. The fact that an applicant for a permit has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.

12. The general health, safety and welfare of the citizens of the County will be promoted by the enactment of this ordinance.

53.03 Jurisdiction.

The provisions of this Chapter shall apply to all of the unincorporated areas of Benton County, Iowa.

53.04 Definitions.

For purposes of this Chapter, the words and phrases defined in the sections of this ordinance shall have the

meanings described below, unless a different meaning is clearly indicated by the context or definition.

"Sexually themed businesses" means an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor, sexual encounter establishments, escort agency or nude model studio, defined as follows:

"Adult Arcade" means an establishment to which the public is permitted or invited where, for any form of consideration including but not limited to coin operated or slug-operated or electronically, electrically, or mechanically controlled, one or more still or motion picture machines, slide projectors, or other image-producing devices for viewing by five or fewer persons are regularly used to show films, motion pictures, video cassettes, slides or other photographic reproductions or images, where the images so displayed are distinguished or characterized by the depiction or description of "specific sexual activities" or "specified anatomical areas".

"Adult Bookstore, Adult Novelty Store, Adult Video Store" means a commercial establishment which has a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale or rental, for any form of consideration, of any one or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, videocassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas";

b. Instruments, devices, or paraphernalia designed for use or marketed primarily for stimulation of human

genital organs or for sadomasochistic use or abuse of themselves or others.

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

c. An establishment may have other principal business purposes that do not involved the offering for sale, rental or viewing of materials depicting or describing "specified sexual activities" or "specified anatomical areas", and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its principal business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "specified anatomical areas" or "specified sexual activities."

"Adult Cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

- a) persons who appear in a state of nudity or semi-nudity; or
- b) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

"Adult Motel" means a motel, hotel, or similar commercial establishment which:

- a. Offers accommodations to the public for any form of consideration; which provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions, or live performances which are characterized by the depiction or description of "specified sexual activities" or "specified

anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

c. Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten (10) hours.

"Adult Motion Picture Theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

"Adult Theater" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or semi-nudity.

"Board of Supervisors" means the Board of Supervisors of Benton County, Iowa.

"Controlling Interest" means the power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The ownership, control, or power to vote twenty percent (20%) or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.

"County" means Benton County, Iowa.

"County Attorney" means the County Attorney of Benton County, Iowa.

"County Auditor" means the County Auditor of Benton County, Iowa.

"County Engineer" means the County Engineer of Benton County, Iowa.

"County Land Use Administrator" means the individual or individuals appointed by the Board of Supervisors, or other individual designated by the Land Use Administrator or the Board of Supervisors to carry out those duties. **The Benton County Sheriff's Department shall always be considered a designee under this definition for the purposes of this Ordinance.**

"County Sanitarian" means the County Sanitarian appointed by the Board of Health of Benton County, Iowa, or other employee of the Board of Health designated by the Sanitarian or the Board of Health to carry out those duties.

"Day Care" or "Child Care Facility" means child care facilities as defined in Chapter 237A of the Iowa Code.

"Distinguished or Characterized By An Emphasis" means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or description of "Specified Sexual Activities" or "Specified Anatomical Areas", the films so described are those whose dominant or principal character and theme are the exhibition or description of "specified sexual activities" or "specified anatomical areas"."

"Employ, Employee, and Employment" means any person who works or performs any service on the premises of a sexually themed business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, whether or not said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or 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 sexually themed business as a new business;
- b. The conversion of an existing business, whether or not a sexually themed business, to any sexually themed business; or
- c. The addition of any sexually themed business to any other existing sexually themed business; or
- d. The relocation of any such sexually themed business.

"Home Based Business" means a business, other than a farming operation, operated from or on the premises of a residence in the unincorporated area of the County, which sells goods or services.

"Permittee" means a person, in whose name a permit to operate a sexually themed business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually themed business permit. In the case of an employee, it shall mean the person in whose name the sexually themed business employee permit has been

issued.

"Nudity or a State of Nudity" means:

a) the appearance of the bare human buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or

b) a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast, or where those areas are covered and the covering is removed and those areas displayed for any duration.

"Operator" means and includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted premises. "Operator" also includes any persons on the premises of a sexually themed business who are authorized to exercise overall operational control of the business or who causes to function or who puts or keeps the business in operation. A person may be found to be operating or causing to be operated a sexually themed business whether or not that person is an owner, part owner, or permittee of the business.

"Operate or Cause to Operate" means to cause to function or to put or keep in a state of doing business.

"Permittee Premises" means any premises that requires a permit and that is classified as a sexually themed business.

"Person" means any individual, proprietorship, partnership, corporation, association or other legal entity.

"Public building" means any building owned, leased or held by the United States, the State, the County, any

special district, school district, or any other agency or political subdivision, which building is used for governmental purposes.

"Public park or recreation area" means public land which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the County which is under the control, operation or management of the County park and recreation authorities.

"Religious facility or institution" means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.

"Residence" means any single family dwelling, duplex, townhouse, or multiple family dwelling or mobile home park or residential subdivision, or public or private campground.

"Regularly Features or Regularly Shows" means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually themed business.

"School" means any public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, special education schools, junior colleges, universities, and specifically includes homes or facilities where competent private instruction that complies with the provisions of Iowa Code Section 299A is held. "School" includes the school grounds but does not include the facilities

used primarily for another purpose and only incidentally as a school, except for a home or facility where competent private instruction under Chapter 299A takes place.

"Semi-Nude or State of Semi-Nudity" a state of undress in which opaque clothing does not fully cover the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices, or where those areas are covered and the covering is removed to any extent and those areas displayed for any duration. This definition shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided that the areola and nipple are not exposed in whole or in part.

"Semi-Nude Model Studio" means any place where a person, who regularly appears in a state of semi-nudity is provided money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

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

- a. By a college, junior college, or university supported entirely or partly by taxation;
- b. By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- 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 (3) days in advance of the class.

"Sexually Themed Entertainment Activity" means the sale, rental, or exhibition, for any form of consideration, of books, films, videocassettes, magazines, periodicals, or live performances which are characterized by an emphasis on the exposure or display specified anatomical areas or of specific sexual activity.

"Specified Anatomical Areas" means:

a) Human genitals, including the male and female pubic area, anus, or buttocks, or the nipple or areola of the female breast.

b) Less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae, or

c) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

"Specified Criminal Activity" means any of the following offenses:

1. Iowa Code Section 728.2 (dissemination and exhibition of obscene materials to minors); Iowa Code Section

728.3 (admitting minors to premises where obscene material is exhibited); Iowa Code Section 728.4 (rental or sale of hard-core pornography); Iowa Code Section 728.5 (public indecent exposure in certain establishments); Iowa Code Section 728.12 (sexual exploitation of a minor); Iowa Code Section 709.2-4 (sexual abuse); Iowa Code Section 709.8 (lascivious acts with a child); Iowa Code Section 709.9 (indecent exposure); Iowa Code Section 709.12 (indecent contact with a child); Iowa Code Section 709.14 (lascivious conduct with a minor); Iowa Code Section 709.C.1 (criminal transmission of human immunodeficiency virus); Iowa Code Section 711.4 (extortion); Iowa Code Sections 725.1-4 (prostitution, pimping, pandering, leasing premises for prostitution); criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions that, if the acts would have constituted any of the foregoing offenses, if the acts had been committed in Iowa; for which:

a. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense; or

c. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combinations of misdemeanor offenses occurring within any twenty-four (24) month period.

The fact that a conviction is being appealed shall have no effect of the disqualification of the applicant.

"Specified Sexual Activity" means and includes any of the following:

- a. The fondling or other intentional touching of human genitals, pubic regions, buttocks, anus or female breasts;
- b. Sex acts, actual or simulated, including but not limited to intercourse, oral copulation, masturbation or sodomy;
- c. Human genitals in a state of sexual stimulation, arousal or tumescence,
- d. Excretory functions as a part of or in connection with any of the activities described in subsections 1, 2 or 3 of this section.

"Substantial Enlargement of a Sexually Themed Business" means an increase in the floor areas occupied by the business by more than fifteen per cent (15%) as the floor areas exist on the date this ordinance is enacted.

"Transfer of Ownership or Control" means any of the following:

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

control.

"Video Room" means a room, booth, or area where a patron of a sexually themed business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

"Youth facility or organization" means a club, campground or camp, or other building or area where minors gather for recreation and/or learning activities. Such facilities include those which are occupied only on an occasional basis or only during certain times of the year.

53.05 Classifications. Sexually themed businesses shall be classified as follows:

1. Adult bookstores, adult novelty stores, adult video stores;
2. Adult cabarets;
3. Adult motels;
4. Adult motion picture theaters;
5. Nude or semi-nude model studios.

53.06 Regulations on Locations of Sexually Themed Businesses

1. A person shall not operate or cause to be operated a sexually themed business within two thousand (2,000) feet of:

- a. A residence.
- b. Any religious facility or institution.
- c. Any school.
- d. The boundary of any subdivision which is platted for residential development.
- e. Publicly owned park, pond, open space or recreation area.
- f. Facility for a youth organization, including but not limited to boys or girls club or similar youth organization.
- g. Day care or child care facility.
- h. Home based business.

2. A person shall not operate or cause to be operated a sexually themed business within one thousand (1,000) feet of another sexually themed business as defined in this Ordinance.

The distances shall be measured in a straight line from the boundary of the affected property to the boundary of the adjacent property without regard to intervening structures, topography and zoning.

53.07 Permit Required for Operators and Employees

1. It is unlawful for any person to operate a sexually themed business in the County without a valid sexually themed business permit issued by the County.

2. It is unlawful for any person to be an employee, as defined in this Chapter, of a sexually themed business in the County without a valid sexually themed business employee permit issued by the County.

3. An applicant for a sexually themed business permit or a sexually themed business employee permit shall file in person at the office of the County Land Use Administrator a completed application made on a form provided by the County Land Use Administrator. The application shall be signed by the applicant and notarized. An application shall be considered complete when it contains the information required in paragraphs a through f as follows:

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

b. Current business address or another mailing address of the applicant.

c. Written proof of age, in the form of a copy of a birth certificate and a picture identification document issued by a governmental agency.

d. If the application is for a sexually themed business permit, the business name, location, legal description, mailing address and phone number of the sexually themed business.

e. If the application is for a sexually themed business permit, the name and business address of that

statutory agent or other agent authorized to receive service of process.

f. A statement of whether the applicant has been convicted or has pled guilty or nolo contendere (no contest) to a specified criminal activity as defined in this Chapter, and if so, the specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

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

4. An application for a sexually themed business permit shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Section 53.21 of this Chapter shall submit a diagram meeting the requirements of that section.

5. If a person who wishes to operate a sexually themed business is an individual, he or she shall sign the application for a permit as applicant. If a person who wishes to operate a sexually themed business is other than an individual, each officer, director, general partner, each other person who will manage, supervise, or control the premises, and each other person who will participate in decisions relating to management and control of the business shall sign the application for a permit as applicant. Each applicant must be qualified under Section 53.08 of this Chapter and each applicant shall be considered a permittee, if a permit is granted. 6. The information provided by an applicant in

connection with an application for a permit under this Chapter shall be maintained by the Land Use Administrator. Said information shall be maintained as a public record, unless otherwise exempted by law.

53.08 Issuance of Permit.

1. Upon the filing of a completed application under Section 53.07 for a sexually themed business permit, the County Land Use Administrator shall within thirty (30) days schedule a hearing before the Board of Supervisors upon the permit request. The Board of Supervisors shall approve the issuance of a permit unless:

a. An applicant is less than eighteen (18) years of age.

b. An applicant has failed to provide information as required by Section 53.07 of this Chapter for issuance of a permit or has falsely answered a question or request for information on the application form.

c. The permit application fee has not been paid.

d. An applicant has committed a violation of Section 53.09, Section 53.13, Section 53.20 of this Chapter within the previous year.

e. The sexually themed business premises are not in compliance with the interior configuration requirement of this Chapter.

f. An applicant has been convicted of or has plead guilty to a specified criminal activity, as defined by this Chapter.

g. An applicant has not complied with other relevant County ordinances such as Ordinance Numbers 24, 26, 34 and 38.

2. The permit, if granted, shall state on its face:

a. The name of the person or persons to whom it is granted;

b. The number of the permit issued to the permittee(s);

c. The expiration date; and

d. The address of the sexually themed business, if the permit is for a sexually themed business.

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

4. A sexually themed business employee shall keep the employee's permit on his or her person or on the premises where the permittee is when working or performing and shall produce such permit for inspection upon request by a law enforcement officer or other County official performing functions connected with the enforcement of this Chapter.

53.09 Fees.

1. Filing Fee Required.

A filing fee, in accordance with the established fee schedule, shall be charged for each application for initial permit and annual renewals to assist in deferring the costs of the administrative review. The applicant shall be held responsible for submitting the required fees upon submission of the completed application. No action shall be taken on any application until the required fee is paid in full.

2. Fee Schedule.

The fee schedule shall be established by the Board of Supervisors.

3. Fee Refund.

Whether the request is granted or denied, the applicant shall not be entitled to a refund of the fee paid.

53.10 Periodic Inspections.

1. After a permit is granted, sexually themed businesses and sexually themed business employees shall permit officials, employees, or agents of the County to inspect, from time to time, on an occasional basis, the portions of the sexually themed business premises where the patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually themed business is occupied by patrons or is open for business. A permittee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this section for purposes of permit denial, suspension, and/or revocation. This section shall be narrowly construed by the County to authorize reasonable inspection of the permitted premises pursuant to this Chapter, but not to authorize a

harassing or excessive pattern of inspection.

2. The provisions of this section do not apply to areas of an Adult Motel which are currently being rented by a customer for use as a permanent or temporary habitation.

53.11 Expiration of Permit.

1. Each Temporary Permit shall be valid for the time specified, and shall not be extended after it expires. Each permit issued shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such permit may be renewed only by making application and payment of a fee as provided in Section 53.07 and Section 53.09 of this Chapter. If the permit is suspended, the expiration date of the permit shall not be extended.

2. Application for renewal should be made at least ninety (90) days before the expiration date. When made less than ninety (90) days before the expiration date, the expiration date of the permit will not be affected.

53.12 Cause for Suspension.

1. The County shall issue a letter of intent to suspend a sexually themed business permit for a period not to exceed thirty (30) days, if the sexually themed business permittee has violated this Chapter or has knowingly allowed an employee to violate this Chapter.

2. The County shall issue a letter of intent to suspend a sexually themed business employee permit for a period not to exceed thirty (30) days, if the employee has violated this Chapter.

53.13 Cause for Revocation.

1. The County shall issue a letter of intent to revoke a sexually themed business permit or a sexually themed business employee permit, if the respective permittee commits two (2) or more violations of this ordinance within a twelve (12) month period.

2. The County shall issue a letter of intent to revoke a sexually themed business permit or a sexually themed business employee permit if:

a. The permittee knowingly gave false information in the application for a sexually themed business permit or sexually themed business employee permit;

b. The permittee knowingly engaged in possession, use, or sale of controlled substances on the premises;

c. The permittee knowingly engaged in prostitution on the premises;

d. The permittee knowingly operated the sexually themed business during a period of time when the permit was suspended;

e. The permittee knowingly engaged in or allowed any specified sexual activity to occur in or on the permitted premises.

f. Alcoholic beverages were knowingly permitted in or on the premises of a sexually themed business in violation of this ordinance or State or Federal law.

3. A business permit shall be liable for the acts of an employee only pursuant to the standard established in Section 53.20 of this Chapter.

53.14 Nature of Revocation.

When, after the notice and hearing procedure described in Section 53.15 of this Chapter, the County Land Use Administrator revokes a permit, the revocation shall continue for two (2) years and the permittee shall not be issued a sexually themed business permit or sexually themed employee permit for two (2) years from the date revocation becomes effective, provided that, if the conditions of Section 53.15 of this Chapter are met, a Provisional Permit will be granted pursuant to that section. If, subsequent to revocation, the Land Use Administrator finds that the basis for the revocation pursuant to Section 53.13 of this Chapter has been corrected or abated, the applicant shall be granted a permit, if at least ninety (90) days have elapsed since the date the revocation became effective. If the permit was revoked under subsections 53.13(2),(a),(b),(c),(d), (e) or (f) of this Chapter, an applicant may not be granted another permit until at least two (2) years have elapsed.

53.15 Right to Hearing Prior to Denial, Suspension, Revocation: Prompt Judicial Review; Right to Provisional Permit Pending Judicial Review.

1. If facts exist that warrant the denial, suspension, or revocation of a permit under this Chapter, the County Land Use Administrator shall notify the applicant or permittee (respondent) in writing of the intent to deny, suspend, or revoke the permit, including the grounds thereof, by personal delivery, or by certified mail. The notification shall be directed to the most current business address or other mailing address on the file with the Land Use Administrator for the respondent. Within ten (10) working days of the receipt of such notice, the respondent may submit a written request to the Land Use Administrator for a hearing before the Board of Supervisors to refute the grounds

alleged by the Land Use Administrator for denial, suspension, or revocation of the permit.

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

If the respondent does not request a hearing within ten (10) business days of receiving the Land Use Administrator's notice of intent to deny, suspend, or revoke the permit, the permit shall be deemed denied, suspended, or revoked, as applicable.

2. An applicant or permittee (aggrieved party) whose application for a permit has been denied or whose permit has been suspended or revoked shall have the right to challenge or appeal such action or seek a declaration of rights concerning such action and/or concerning this Chapter, upon factual grounds or constitutional grounds or both, to the district court within thirty (30) days after issuance of the Board of Supervisors written decision. Upon the filing of

any court action to appeal, challenge, restrain, or otherwise enjoin or seek a declaration of rights concerning this Chapter or the Land Use Administrator's denial, suspension, or revocation, the Land Use Administrator shall immediately issue the aggrieved party a Provisional Permit. The County shall supply the court with any documents, reports, or transcripts relevant to the lawsuit within fifteen (15) days after receiving notice of the lawsuit. The Provisional Permit shall allow the aggrieved party to continue operation of the sexually themed business or to continue employment as a sexually themed business employee and will expire only upon the court's entry of a judgment on the merits of the aggrieved party's action to appeal, challenge, restrain, or otherwise enjoin or seek a declaration of rights concerning this Chapter or the county's denial, suspension, or revocation of a permit under this Chapter.

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

53.16 Transfer of Permit.

A permittee shall not transfer his or her permit to another, nor shall a permittee operate a sexually themed business under the authority of a permit at any place other than the address designated in the sexually themed business permit application.

53.17 Hours of Operation.

A person who operates, causes to be operated, or is a permittee of a sexually themed business, except for an Adult Motel, regardless of whether or not a permit has been issued for said business under this Ordinance, shall not allow such business to be or remain open for business or permit any employee to engage in a performance, solicit a

performance, make a sale, solicit a sale, provide a service, or solicit a service, between the hours of 12:01 a.m. and 9:00 a.m., Monday through Saturday, or between 11:00 p.m. on Sunday and 9:00 a.m. on the following Monday, however, a sexually themed business which holds a liquor license or retail beer permit entitling the holder to sell alcohol, liquor or beer on Sunday may remain open between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday for the purpose of selling alcohol, liquor or beer only.

An employee of a sexually themed business, except for an Adult Motel, regardless of whether or not a permit has been issued for said business under this Chapter, shall not engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service between the hours of 12:01 a.m. and 9:00 a.m. Monday through Saturday, or between 11:00 p.m. on Sunday and 9:00 a.m. on the following Monday, however, a sexually themed business which holds a liquor license or retail beer permit entitling the holder to sell alcohol, liquor or beer on Sunday may remain open between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday for the purposes of selling alcohol, liquor or beer only.

53.18 Alcohol Prohibited.

The sale, possession, use or consumption of alcoholic beverages are prohibited in or on the premises of a sexually themed business, except for the sale of alcoholic beverages pursuant to a valid alcoholic beverages permit or license issued to the business by the State of Iowa and approved by the County.

53.19 Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos in Video Booths.

1. A person who operates or causes to be operated a sexually themed business, other than a sexually themed motel/hotel and regardless of whether or not a permit has been issued to said business under this Chapter, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video

cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

a. Upon application for a sexually themed business permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's or employee's stations, the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's or employee's station may not exceed thirty-two (32) square feet of floor area with no dimension greater than eight (8) feet. The diagram shall also designate the place at which this permit will be conspicuously posted, if granted. Each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimension of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. Such plans may, in the discretion of the County, be reviewed by the County Engineer or the Engineer's designee to ensure conformity with this Chapter and any other applicable regulations. The Land Use Administrator or his/her designee, may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

b. The application shall be sworn to be true and correct by the applicant.

c. No alteration in the configuration or location of a manager's or employee's station may be made without the prior approval of the County or its designee.

d. It is the duty of the owners and operator of the premises to insure that at least one employee is on duty and situated at each manager's or employee's station at all times that any patron is present inside the premises.

e. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's or employee's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have two or more manager's or employee'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 from at least one of the manager's or employee's stations. The view required in this subsection must be by direct line of sight from the manager's or employee's station.

f. It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present on the premises to insure that the view area specified in 53.19(e) remains unobstructed by any doors, walls, merchandise, display racks or other materials or person at all times and to insure 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 in the application filed pursuant to Subsection a. of this Section.

g. No viewing room may be occupied by more than one person at any one time. No holes, commonly known as "glory holes", shall be allowed in the walls or partitions which separate each viewing room from an adjoining viewing room or restroom. There shall not be any obstructions to the interiors of the viewing rooms by the manager or employee, such as doors or curtains.

h. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access and an illumination of not less than two (2.0) foot candle as measured at the floor level.

i. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present on the premises to insure that the illumination described above is maintained at all times that any patron is present on the premises.

2. A person having a duty under Section 1, a through i commits a misdemeanor if he/she knowingly fails to fulfill that duty.

53.20 Prohibitions Regarding Minors and Sexually Themed Businesses.

A person commits a misdemeanor if he/she operates or causes to be operated a sexually themed business, regardless of whether or not a permit has been issued for said business under this Chapter, and knowingly or with reasonable cause to know, permit, suffer, or allow:

1. Admittance of a person under eighteen (18) years of age to the business premises.
2. A person under eighteen (18) years of age to remain at the business premises.
3. A person under eighteen (18) years of age to purchase goods, or services at the business premises.
4. A person who is under eighteen (18) years of age to work at the business premises as an employee.

53.21 Advertising Regulations.

A person who operates or causes to be operated a sexually themed business, regardless of whether a permit has

been issued under this Chapter, and advertises the presentation of any activity prohibited by any applicable State statute or local Chapter commits a separate County civil infraction for each violation. For a violation that occurs on more than one day, each day shall be a separate County civil infraction.

A person who operates or causes to be operated a sexually themed business, regardless of whether a permit has been issued under this Chapter, may not display or otherwise exhibit the materials and/or performances at such sexually themed business in any advertising which is visible outside the premises. This prohibition shall not extend to advertising of the existence or location of such sexually themed business. A violation of this section is a separate County civil infraction for each violation. For a violation that occurs on more than one day, each day shall be a separate County civil infraction.

The operator or permittee shall not allow any portion of the interior premises to be visible from outside the premises.

53.22 Loitering, Exterior Lighting and Monitoring Requirements.

A. It shall be the duty of the operator or permittee of a sexually themed business to:

1. Post conspicuous signs stating that no loitering is permitted on such property, and that no one under 18 may enter the premises;

2. Designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every two (2) hours or inspecting such property by use of video camera and monitors; and

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

3. Provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering.

All off-street parking areas and premise entries of the sexually themed business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1.0) foot candle of light on the parking surfaces and/or walkways. This required lighting level is established in order to provide sufficient illumination of the parking areas and walkways serving the sexually themed business for the personal safety of the patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premise.

53.23 Applicability to Existing Businesses.

The provisions of this Chapter shall apply to the activities of all sexually themed businesses and sexually themed business employees described herein, whether such business or activities were established or commenced before, on, or after the effective date of this Chapter. All existing sexually themed businesses and sexually themed business employees are hereby granted a Temporary Permit to continue operation or employment for a period of one hundred eighty (180) days following the effective date of this Chapter. Within said one hundred eighty (180) days, all sexually themed businesses and sexually themed business employees must make application for a permit pursuant to this Chapter. Within said one hundred eighty (180) days, sexually themed businesses must make any necessary changes to the interior

configurations of the regulated business premise to conform to this Chapter.

53.24 Regulations Concerning Live Public Nudity on Premises.

A. It shall be a violation of this Chapter for a permittee required to obtain a sales tax permit to knowingly or intentionally violate Iowa Code Section 728.5. It shall be a violation for any person to knowingly or intentionally, in a sexually themed business, to appear in a state of nudity.

B. It shall be a violation of this Chapter for an employee to knowingly and intentionally appear semi-nude in a sexually themed business unless the employee, while semi-nude, shall be at least six (6) feet from any patron or customer and on a stage at least two (2) feet high as measured from the floor.

C. It shall be a violation of this Chapter for an employee, while semi-nude in a sexually themed business, to knowingly or intentionally receive any pay or gratuity directly from any patron or customer or for any patron or customer to knowingly or intentionally pay or give any gratuity directly to any employee, while said employee is semi-nude in a sexually themed business.

D. It shall be a violation of this Chapter for an employee, while semi-nude in a sexually themed business, to knowingly or intentionally touch a customer or the clothing of a customer or for a customer to knowingly and intentionally touch an employee or the clothing of an employee, while said employee is semi-nude in a sexually themed business.

A sign, in a form to be prescribed by the Board of Supervisors and summarizing the provisions of Paragraphs A through E of this section, shall be posted near the entrance of the sexually themed business in such a manner as to be clearly visible to patrons upon entry into the inside of the building.

E. All patrons of a sexually themed business must be fully clothed. No patron may be on the premises of a sexually themed business in any state of full or partial nudity.

53.25 Employee Permit Violation Imputed to Business Permittee.

Notwithstanding anything to the contrary, for the purposes of this Chapter, an act by an employee that constitutes grounds for suspension or revocation of the employee's permit shall be imputed to the sexually themed business permittee for purposes of permit denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the business premises, knew or reasonably should have known that such act was occurring and failed to prevent such act. It shall be a defense to liability under this Ordinance that the person to whom the violative act is imputed was powerless to prevent the act.

53.26 Repealer and Severability.

All previous ordinances or parts of previous ordinances in conflict with the provisions of this Chapter are hereby repealed upon final passage and approval of this Chapter.

If any section, provision, or part of this Chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the Chapter as a whole or any section thereof, or part thereof, not adjudged invalid or unconstitutional.

53.27 Prohibition Against "Sex Supermarkets".

No building, premises, structure or other facility that contains any sexually themed business shall contain any other kind of sexually themed business.

53.28 Immunity from Prosecution.

The County and departments and employees, the Benton County Sheriff's Office and all other State or County officers, agents and employees charged with enforcement of State and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon a sexually themed business while acting within the scope of authority conferred by this Chapter.

53.29 Ongoing duty to comply.

The operator or permittee of a sexually themed business shall comply with all requirements of this sexually themed business Chapter, any amendments, or any subsequently enacted State or County laws, ordinances or regulations. For any existing business, in the event of changes in this Chapter, the business shall have no more than ninety (90) days to comply with the new regulations. Failure to comply will result in suspension of the establishment permit until the establishment complies with the changes.

53.30 Civil Infraction, Injunction, and Enforcement.

A person who operates or causes to be operated a sexually themed business without having a valid permit, or which violates the location regulations of Section 53.06, or in violation of any provisions of this ordinance commits a civil infraction under the Benton County Code of Ordinances. Unless otherwise specified, the penalty for violating the provisions of this Ordinance shall be a County infraction Under Iowa Code Section 331.307. Each day that a violation occurs shall be considered a separate violation. This provision does not limit the power of the County of any other person to sue for injunctive relief for violations of or non-compliance with this Ordinance.

All sexually themed businesses shall comply with any other applicable federal, state, or county laws or ordinances and any court decisions, and all penalties and enforcement actions under those laws shall apply in addition to any remedies specified in this ordinance.

Effective Date. This ordinance shall be in effect after its final passage, approval and publication as provided by law.

Passed and adopted by the Benton County of Supervisors this 25th day of August, 2006.

BENTON COUNTY BOARD OF SUPERVISORS



Ronald R. Buch, Chairman



Jason Sanders



David Vermedahl

ATTEST: 

Jill Marlow, Benton County Auditor

- August 15, 2006 – Approved 1st Consideration of Ordinance #53
- August 18, 2006 – Approved 2nd Consideration of Ordinance #53
- August 25, 2006 – Approved 3rd Consideration of Ordinance #53
- August 25, 2006 - Adopted Ordinance #53
- August 30, 2006 – Published Ordinance #53

I, Jill Marlow, do hereby certify the above to be a true and correct copy of Ordinance #53 and the dates of consideration and publication are correct.



Jill Marlow, Benton County Auditor

