

ADULT BUSINESS ESTABLISHMENT ORDINANCE

WHEREAS, the Board of Commissioners of Dawson County, Georgia finds that a need exists to regulate the location of adult business establishments within the unincorporated area of Dawson County; and

WHEREAS, O.C.G.A. § 36-60-3 provides that the governing authority of each county is authorized to enact an ordinance that has the effect of restricting the operation of adult book stores, explicit media outlets, and adult movie houses to areas zoned for commercial or industrial purposes; and

WHEREAS, local governments may adopt ordinances that are designed to combat the undesirable secondary effects of sexually explicit businesses; and

WHEREAS, a local government may rely upon the experiences of other counties and municipalities to demonstrate a relationship between the proposed regulation and the undesirable secondary effects that the local government seeks to control; and

WHEREAS, the Board of Commissioners of Dawson County is aware of the experiences of the following counties and municipalities which establish the undesirable secondary effects of sexually explicit businesses: Atlanta and Fulton County, Georgia; DeKalb County, Georgia; Austin, Texas; Seattle and Renton, Washington; New York, New York; Los Angeles, California; and Ft. Lauderdale and Palm Beach, Florida, which experiences the Board of Commissioners believe are relevant to the problems faced by Dawson county; and

WHEREAS, adult entertainment uses are subject to carefully tailored regulation to minimize the adverse impacts; and

WHEREAS, zoning can legitimately be utilized to regulate adult entertainment uses by establishing zones where adult entertainment uses are most compatible with other uses or the surrounding neighborhood and to establish minimum distances between adult business uses and other uses; and

WHEREAS, a local government may rely upon the experience of other jurisdictions in enacting legislation to regulate adult entertainment uses; and

WHEREAS, the licensing of adult entertainment establishments and adult business establishments is not a per se violation of the First Amendment and requiring owners and employees of adult business establishments be of "good moral character," as defined, is not overbroad nor unconstitutional, and ordinances that permit a county government to consider the health, safety and welfare of the citizens, and the preservation of neighborhoods do not unconstitutionally give unfettered discretion in demanding information from applicants if ascertainable standards are set forth in the ordinance; and

WHEREAS, the Board of Commissioners of Dawson County understands that during public hearings regarding this ordinance law enforcement officers and property appraisers will provide information regarding the undesirable secondary effects associated with adult business establishments.

NOW THEREFORE, the Board of Commissioners of Dawson County hereby adopts this Ordinance to be known as the "Dawson County Adult Business Establishment Ordinance".

SECTION 1 – PURPOSE AND INTENT

The intent and purpose of this Ordinance is to regulate the place of operation of adult business establishments as defined herein. This Ordinance is intended to be a carefully tailored regulation to minimize the adverse impacts caused by the undesirable secondary effects of adult entertainment and adult media establishments. The Board of Commissioners of Dawson County finds that restricting adult business establishments and imposing development standards can legitimately regulate such establishments by delineating zones where adult business establishments are most compatible with other uses and the surrounding neighborhood. The Board also finds that requiring minimum distances to be maintained between adult business establishment uses and other uses will afford the most protection to residential uses. The Board does not intend to deny any person's right to free speech, conduct, or expression protected by the United States Constitution or the Georgia Constitution. The Board intends to adopt a content neutral measure to address the undesirable secondary effects of adult business establishments.

SECTION 2 – DEFINITIONS

"adult bookstore" see "explicit media outlet"

"adult business establishment" is an inclusive term used to collectively describe adult bookstore, adult movie house, adult hotel or motel, adult mini-motion picture theater, adult arcade, adult service establishment, explicit media outlet, and sex shop.

"adult movie house" means any movie theater that on a regular, continuing basis shows films rated "X" by the Motion Picture Coding Association of America or any movie theater that presents for public viewing on a regular, continuing basis so called "adult films" depicting sexual conduct.

"adult hotel or motel" means a hotel or motel wherein material is presented that is distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined herein.

"explicit media outlet" means any commercial establishment that has an inventory of goods that is composed of at least 50% of books, pamphlets, magazines, or other printed publications, films, or other media that depict sexually explicit nudity or sexual conduct.

"sex shop" means an establishment offering goods for sale or rent that meets any of the following tests:

(1) the establishment offers for sale any two of the following categories:

(a) adult media, (b) lingerie, or (c) leather goods marketed or presented in a context to suggest the use of such good for masochistic practices; and the combination of such items constitutes more than ten (10) percent of the stock in trade or occupies more than ten (10) percent of the floor area.

(2) more than five (5) percent of the stock in trade consists of adult toys or novelties; or

(3) more than five (5) percent of the floor area displays is devoted to the display of adult toys or novelties.

"sexual conduct" means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is female, breast that to the average person applying contemporary community standards taken as a whole lacks serious literary, artistic, political, or scientific value and predominately appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.

"sexually explicit nudity" means the state of undress so as to expose the human male or female genitals or pubic area with less than a full opaque covering or the depiction of covered or uncovered male genitals in a discernibly turgid state that to the average person applying community standards taken as a whole lacks serious literary, artistic, political, or scientific value and predominately appeals to the prurient interest, that is, a shameful or morbid interest in nudity or sex.

"specified sexual activities" shall be defined to mean and include the following activities:

(1) Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral anal copulation, bestiality, direct physical stimulation of unclothed genitals, flagellation or torture in the context of a sexual relationship, or the use of excretory functions in the context of a sexual relationship and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, zooerasty;

- (2) Use of human or animal ejaculation, sodomy, oral copulation, coitus or masturbation;
- (3) Fondling or other erotic touching of nude human genitals, pubic region, buttocks or female breast;
- (4) Masochism, erotic or sexually oriented torture, restraining, beating or the infliction of pain, clothed or unclothed; or
- (5) Erotic or lewd touching, fondling or other sexual contact with an animal by a human being.

"specified anatomical areas" shall include the following:

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

SECTION 3 – ADULT BUSINESS ESTABLISHMENT LICENSE

A. License Required

It hereby declared to be unlawful for any person, association, partnership, or corporation to operate, engage in, conduct, or carry on, in or upon any premises within the unincorporated area of Dawson County an adult business establishment as defined herein without first procuring an annual license to do so. The issuance of such an annual license shall not be deemed to authorize, condone, or approve any activity thereunder if such activity is deemed illegal or unlawful under the laws of the State of Georgia or the United States. Any premises licensed as an adult business establishment shall not be eligible to apply at any time for a license to sell distilled spirits or malt beverages or wine for consumption on the premises. Each use must be the primary use of the establishment and licensed separately; therefore, no "accessory" adult uses shall be allowed.

B. License Fee

There shall be an initial license fee for each adult business establishment in the amount of \$750.00, which shall be due and payable to Dawson County, Georgia upon

the granting of an adult business establishment license. There shall also be an annual fee for each adult business establishment licensed within Dawson County in the amount of \$750.00. The annual fee must be paid to the County Manager or his or her designated representative no later than November 30 of the year preceding the year for which the renewal is to be effective. No adult business establishment license or renewal thereof shall be issued until the most recent annual fee has been paid. All licenses granted in accord with the terms hereof shall expire on December 31 of each year. Licensees who desire to renew a license shall file an application with the County Manager on the form provided for the renewal of the license for the ensuing year. Applications for renewal must be filed before November 30 of each year. Any renewal application received after November 30 shall pay, in addition to the annual fee, a late charge of 20 percent. If a license renewal application is received after January 1, then such application shall be treated as an initial application, and the applicant shall be required to comply with all rules and regulations for the granting of licenses as if no previous license had been issued. If a license application is received after January 1, then investigative and administrative costs as set forth herein shall be assessed. All licenses granted in accord with terms hereof shall be for the calendar year, and the full annual fee must be paid for a license renewal application filed before July 1 of the license year. One-half of a full annual fee shall be paid for a license renewal application filed after July 1 of the license year. Any person renewing any license issued hereunder who pays the annual fee, or any portion thereof, after January 1, shall, in addition to the annual fee and late charges, pay simple interest on the delinquent balance at the annual rate then charged by the Internal Revenue Service of the United States on unpaid federal income taxes.

C. License Non-Transferable

No adult business establishment license may be sold, transferred or assigned by any licensee, or by operation of law, to any other person, persons, or entity. Any such sale, transfer or assignment or attempted sale, transfer or assignment shall be deemed to constitute a voluntary surrender of such license, and such license shall thereafter be null and void; provided and excepting, however, that if the licensee is a partnership and one or more of the partners should die, then one or more of the surviving partners may acquire, by purchase or otherwise, the interest of the deceased partner or partners without effecting a surrender or termination of such license; and in such case, the permit upon notification to the County, shall be placed in the name of the surviving partner. An adult business establishment license issued to a corporation shall be deemed terminated and void when either any outstanding stock of the corporation is sold, transferred or assigned after the issuance of the license or any stock authorized but not issued at the time of the granting of a license is thereafter issued and sold, transferred or assigned.

D. Change in Location or Name

- (a) No adult business establishment shall move from the location specified within the license until a change of location has been properly approved in accord with the terms hereof.
- (b) No Licensee shall operate, conduct, manage, engage in or carry on an adult business establishment under any name other than the name of the business as specified on the license.
- (c) Any application for an extension or expansion of a building or other place of business where an adult business establishment is located shall require inspection and shall comply with the provisions and regulations of this Ordinance.

SECTION 4 – ON-PREMISES OPERATOR REQUIRED

An adult entertainment establishment shall have a designated person(s) to serve as an on-premises operator. The operator(s) shall be principally in charge of the establishment and shall be located on the premises during all operating hours.

SECTION 5 – APPLICATION PROCESS AND QUALIFICATIONS

- (a) **Process.** Any person, association, partnership or corporation desiring to obtain a license to operate, engage in, conduct, or carry on any adult business establishment in the unincorporated areas of the County shall make application to the County Manager or to his or her designated representative. Such application shall be made on forms furnished by the County, shall be made in the name of the adult business establishment by an applicant who is a natural person and an agent of the adult business establishment, and shall include the name(s) of the business operator(s) as defined herein and of the owner(s) as defined herein. If the adult business establishment is a corporation, then the agent, for purposes of making application for a license hereunder, shall be an officer of the corporation. If the adult business establishment is a partnership, then the agent for such purposes shall be a general partner. At the time of submitting such application, a nonrefundable investigative fee in the amount of \$300.00 and a non-refundable license application fee of \$100.00 shall be paid to the County Manager or to his or her designated representative to defray, in part, the cost of investigation and reporting as required by this Ordinance. The County Manager or his or her designated representative shall issue a receipt showing that such application fee(s) have been paid. The application for license does not authorize the operation of, engaging in, conduct or carrying on of any adult business establishment.

(b) Contents. Each application for an adult business establishment license shall contain the following information:

- (1) The full true name and any other names used by the applicant, the operator(s), and owner(s);
- (2) The present address and telephone number of the applicant, the operator(s), and owner(s);
- (3) The previous addresses of the applicant, the operator(s), and the owner(s), if any, for a period of five (5) years immediately prior to the date of the application and the dates of residence at each;
- (4) Acceptable written proof that the applicant, the operator(s), and the owner(s) are at least 18 years of age;
- (5) The operator(s)' height, weight, color of eyes and hair and date and place of birth;
- (6) Two photographs of the operator(s) at least two (2) inches by two (2) inches taken within the last six (6) months;
- (7) The business, occupation or employment history of the applicant, the operator(s), and owner(s) for the five (5) years immediately preceding the date of application;
- (8) The business license history of the adult business establishment seeking a license and whether such establishment has had a license or permit for an adult business or similar type of business revoked or suspended, the reason therefor, and the business activity or occupation subsequent to such action of revocation or suspension;
- (9) If the application is made on behalf of a corporation, then the name of the corporation, exactly as shown in its articles of incorporation or charter, together with the place and date of incorporation. If the application is on behalf of a limited partnership, then a copy of the certificate of limited partnership filed with the County Clerk shall be provided. If one or more of the partners is a corporation, then the provisions of this subsection pertaining to corporations shall apply;
- (10) The names and addresses of the owner and lessor of the real property upon which the adult business establishment is to be operated, engaged in, conducted, or carried on, and a copy of the lease or rental agreement;

- (11) With respect to the applicant, the operator(s), and the owner(s), all convictions, (excluding misdemeanor traffic violations unrelated to driving under the influence of drugs or alcohol) within the past five (5) years, including a complete description of the crime or violation, the date of the crime or violation, date of conviction (including plea of guilty or nolo contendere), jurisdiction and any disposition, including any fine or sentence imposed and whether the terms of disposition have been fully completed. Each person required to disclose convictions hereunder shall also provide a signed and notarized consent, on forms prescribed by the Georgia Crime Information Center, authorizing the release of his or her criminal records to the County.
- (12) A complete set of fingerprints of the applicant and the operator(s);
- (13) If the person or business entity on whose behalf an application is made for a license is doing business under a trade name, then a copy of the trade name as properly recorded. If the application is made on behalf of a corporation, then a copy of its authority to do business in this State, including articles of incorporation, trade name affidavit, if any, and last annual report, if any;
- (14) At least three (3) character references for the applicant, the operator(s), and owner(s) from individuals who are in no way related to the applicant or any operator(s) or owner(s) and who are not or will not benefit financially in any way from the application if the license is granted. The County shall prepare forms consistent with the provisions of this subsection for the applicant, the operator(s), and owner(s), who shall submit all character references on such forms;
- (15) The address of the premises where the adult business establishment will be operated, engaged in, conducted, or carried on;
- (16) A plat by a registered engineer or a registered land surveyor, licensed by the State, showing the location of the proposed premises where the adult business establishment will be operated, engaged in, conducted or carried on in relation to the neighborhood, the surrounding zoning, its proximity in feet to any residence, area zoned residential, church, school, library, public park, public or semi-public playground, children's daycare facility, establishment selling alcoholic beverages or malt beverages and wine, or other adult business establishment;

- (17) Each application for an adult business establishment license shall be verified and acknowledged under oath to be true and correct by:
- (A) If application is made on behalf of an individual, then the individual;
 - (B) If application is made on behalf of a partnership, then by a general partner;
 - (C) If application is made on behalf of a corporation, then by the president of the corporation;
 - (D) If application is made on behalf of any other organization or association, then by the chief administrative official.
- (c) Appearance by applicant: The applicant shall personally appear before the County Manager or his or her designated representative and produce proof that a nonrefundable application fee, in an amount established by this Ordinance or by any subsequent resolution of the Board of Commissioners, has been paid and shall present the application containing the aforementioned and described information.
- (d) Investigation; standards for granting of license. The County shall have thirty (30) days from the date of actual receipt of the application and investigatory fee to investigate the facts provided in the application and the background of the applicant, the operator(s), and owner(s). The County Manager or his or her designated representative shall stamp the date of actual receipt of each application on the first page thereof, and notify the applicant of the actual receipt of the application within five (5) business days of actual receipt of such application. The County Manager or his or her designated representative shall approve or deny any application for an adult business establishment license within thirty (30) days of actual receipt of such application. The application for an adult business establishment license shall be granted if the County Manager or his or her designated representative finds:
- (1) the required \$300.00 investigative fee has been paid;
 - (2) the applicant has not made a material misrepresentation in the application;
 - (3) neither the applicant, nor any of the operator(s) or owner(s) has been convicted or pled guilty or entered a plea of nolo contendere to any crime involving keeping a place of prostitution, pandering, pimping, public indecency, prostitution, sodomy, solicitation of sodomy, masturbation for hire, sexual battery, rape, child

molestation, enticing a child for indecent purposes, or any offense included in the definition of a "criminal offense against a victim who is a minor" as defined in O.C.G.A. § 42-1-12(a)(4)(A) and (B), within a period of five (5) years prior to the date of the application. For purposes of this Ordinance, a conviction or plea of guilty or nolo contendere shall be ignored as to any offense for which the applicant was allowed to avail himself of the Georgia First Offender Act unless the applicant is later adjudicated guilty of having violated the terms of his first offender treatment;

- (4) neither the applicant, nor any of the operator(s) or owner(s) has had an adult business establishment license or other similar license or permit revoked for cause prior to the date of application within the preceding five (5) years;
- (5) the building, structure, equipment and location of the premises of the adult business establishment as proposed by the applicant complies with all applicable laws, including but not limited to health, zoning, distance, fire and safety requirements and standards;
- (6) the applicant is at least 18 years of age;
- (7) on the date the business for which a license is required herein commences, and thereafter, there will be an operator(s) as defined herein on the premises at all times during which the business is open;
- (8) the proposed premises shall be located at least the minimum distances set forth in this Ordinance from any residential use, church, school, library, public park, public or semi-public playground, children's daycare facility, establishment selling alcoholic beverages or malt beverages and wine, or other adult business establishment; and
- (9) the grant of such license shall not cause a violation of and shall not be in conflict with this Ordinance or any other law, ordinance or regulation, of Dawson County, the State of Georgia or the United States.

The County Manager or his or her designated representative shall deny the application for an adult business establishment license if the application fails to meet any requirement contained in this Ordinance.

SECTION 6 – REGULATION OF ADULT BOOKSTORES AND EXPLICIT MEDIA OUTLETS

- (a) This section shall apply to Adult Bookstores as defined in this Article.
- (b) Location. No adult business bookstore or explicit media outlet shall be located:
 - (1) within 1000 feet of any parcel of land that is either used or zoned for residential uses or purposes ("residential area");
 - (2) within 1000 feet of any parcel of land on which a church, school, library, public park, public or semi-public playground, or children's daycare is located;
 - (3) within 1000 feet of any parcel of land upon which any establishment authorized to sell alcoholic beverages or malt beverages and wine, either by the package or for consumption on the premises, is located;
 - (4) in any zoning district other than a CIR (Commercial Industrial Restricted);
 - (5) within 500 feet of any parcel of land upon which another adult business establishment regulated or defined hereunder is located;
 - (6) within the GA 400 Corridor Overlay District or any subsequent corridor protection overlay district;
 - (8) on any parcel of land less than one (1) acre, or on any parcel of land containing less than one-hundred fifty (150) feet of road frontage.

For purposes of this section, the distance the measurement shall be from the closest property line on which the adult bookstore or explicit media outlet is located to the closest property line of the parcels of land involved. The term "parcel of land" means any quantity of land capable of being described by location and boundary, designated and used or to be used as a unit.

- (a) Hours of operation: An adult bookstore may be open only between the hours of 9:00 a.m. and 12:00 midnight Monday through Saturday. No adult bookstore shall be open on Sunday or on Christmas Day.
- (b) Display of licenses: An adult entertainment establishment licensee shall conspicuously display the license required by this Ordinance.

SECTION 8 – REGULATION OF SEX SHOPS

- (a) This section shall apply but is not limited to *Sex Shops* as defined in this Article.
- (b) Location. No Sex Shop establishment shall be located:
 - (1) Within 1000 feet of any parcel of land which is either used or zoned for residential uses or purposes ("residential area");
 - (2) Within 1000 feet of any parcel of land on which a church, school, library, public park, public or semi-public playground, or children's daycare is located;
 - (3) Within 1000 feet of any parcel of land upon which any establishment authorized to sell alcoholic beverages or malt beverages and wine, either by the package or for consumption on the premises, is located;
 - (4) In any zoning district other than a CHB (Commercial Highway Business);
 - (5) Within 500 feet of any parcel of land upon which another adult business establishment regulated or defined hereunder is located;
 - (6) Within the GA 400 Corridor Overlay District or any subsequently adopted corridor protection overlay district;
 - (8) On any parcel of land less than one (1) acre, or on any parcel of land containing less than one-hundred fifty (150) feet of road frontage.

For purposes of this section, the distance the measurement shall be from the closest property line on which the adult bookstore or explicit media outlet is located to the closest property line of the parcels of land involved. The term "parcel of land" means any quantity of land capable of being described by location and boundary, designated and used or to be used as a unit.

- (a) Hours of operation: A sex shop may be open only between the hours of 9:00 a.m. and 10:00 p.m. Monday through Friday, and between the hours of 9:00 a.m. and 11:00 midnight on Saturday. No sex shop establishment shall be open on Sunday or on Christmas Day.

- (b) Display of licenses. A Sex Shop establishment licensee shall conspicuously display the license required by this Ordinance.
- (c) Covering of windows and doors. All Sex Shop toys, novelties, media or other stock in trade which are permitted by this article shall be carried on inside a closed building with all windows and doors covered or opaquely tinted so that the activities carried on inside cannot be viewed from the immediate areas surrounding the outside of the building.

SECTION 9 – PROHIBITED ESTABLISHMENTS AND SPECIFIC CONDUCT OR ACTIVITIES PROHIBITED

- (a) The following establishments are specifically prohibited: Adult Contact Facilities, Adult Hotel or Motel, Adult Mini-Motion Picture Theater, Adult Arcade, and Adult Service Establishments.
- (b) Advertising without license. No person, partnership, corporation or other entity shall advertise or cause to be advertised an adult business establishment without a valid adult business establishment license issued pursuant to this Ordinance.
- (c) Employment of minors or unpermitted persons. No adult business establishment licensee shall employ or contract with a person under the age of 18 years, or an adult entertainer who has not obtained a permit pursuant to this Ordinance.
- (d) Sale, consumption of alcohol. No adult business establishment licensee shall serve, sell, distribute, or suffer the consumption or possession of any alcoholic beverages, malt beverages or wine or controlled substance upon the premises of the licensee.
- (e) Contact between patrons, employees. No dancing or other performance by an adult entertainer or other employee at an adult business establishment shall occur closer than four (4) feet to any patron. No patron, customer or guest shall be permitted to touch, caress or fondle any specified anatomical area of or any part of the body or clothing of any adult entertainer or other employee. No patron shall directly pay or give any gratuity to any adult entertainer or other employee. No adult entertainer or other employee shall solicit any pay or gratuity from any patron.
- (f) Engaging in specified sexual activities prohibited. No adult entertainer, other employee, patron or other person at an adult business establishment shall be allowed to engage in any "specified sexual activity," as defined herein, on the premises of any adult business establishment.

- (g) Public indecency prohibited. No adult entertainer, other employee, patron or other person at an adult business establishment shall, while on the premises of an adult business establishment, commit the offense of public indecency as defined in O.C.G.A. § 16-6-8.

SECTION 10 – ADULT BUSINESS ESTABLISHMENT EMPLOYEES

- (1) **Qualifications.** Employees of an adult business establishment shall be not less than 18 years of age and shall not have been convicted of an offense described in section 5(d)(3) of this Ordinance within the five (5) years immediately preceding the proposed employment at or by an adult business establishment
- (2) **Permit for employment.** Before any person may work at on premises licensed as an adult business establishment, such person shall file a notice with the County Manager or his or her designated representative of the intended employment on forms supplied by the County Manager or his or her designated representative and shall receive a permit for such employment from the County Manager or his or her designated representative. The prospective employee shall supply a signed and notarized consent, on forms prescribed by the Georgia Crime Information Center, authorizing the release of his or her criminal records to the County Manager or his or her designated representative. The prospective employee shall also provide a list of all of his or her convictions of offenses described in section 5(d)(3) of this Ordinance (including pleas of nolo contendere) within the past five (5) years. The County Manager or his or her designated representative shall approve or deny the permit within fifteen (15) days of the application. If the prospective employee is found to meet the requirements of this subsection, then upon payment of the permit fee, the County Manager or his or her designated representative shall issue a permit approving such employment within forty-eight (48) hours. If such permit is not issued within forty-eight (48) hours of such finding, the employee seeking the permit may commence work at the adult business establishment, which is the subject of the permit application, without such a permit. Upon receipt of a permit, the employee may begin working on the licensed premises. If approval is denied, the County Manager or his or her designated representative shall provide the prospective employee the reasons for the denial and the prospective employee may, within ten (10) days of said denial, appeal to the Dawson County Board of Commissioners, who shall uphold or reverse the decision within thirty (30) days of such appeal. The annual permit fee shall be \$25.00, and a non-refundable investigation fee in the amount of

\$50.00 shall accompany the permit application to defray, in part, the cost of investigation and report required by this Ordinance.

- (3) *Suspension or revocation of permit; procedure.* Violation by an adult business establishment employee of the provisions of this Ordinance and/or conviction of an offense described in section 5(d)(3) of this Ordinance shall subject an adult business establishment employee to suspension or revocation of the permit for employment. Whenever the County Manager or his or her designated representative finds that reasonable grounds exist to suspend or revoke a permit for employment issued hereunder, the County Manager or his or her designated representative shall schedule a hearing before the Dawson County Board of Commissioners to consider such action, and shall notify the employee, at least twenty (20) days prior to the hearing, of the time and place of the hearing and the proposed action and grounds therefore. The employee shall be entitled to present evidence and cross-examine witnesses with or without legal counsel. The Dawson County Board of Commissioners shall make its decision within ten (10) days of the hearing and shall notify the employee promptly in writing. In the event that the decision to suspend or revoke an employment permit is upheld, a \$50.00 appeal cost shall be assessed against the appellant.

SECTION 11 – PENALTY FOR VIOLATION

Any person accused of violating any provision of this Ordinance shall be subject to the jurisdiction of the Magistrate Court of Dawson County and upon conviction shall be subject to a fine not to exceed \$1,000.00 per violation or by imprisonment for a period not to exceed 60 days, or both. Each day of operation in violation of this Ordinance shall be deemed a separate offense.

SECTION 12 – UNLAWFUL OPERATION DECLARED NUISANCE

Any adult business establishment operated, conducted or maintained contrary to the provisions of this Ordinance shall be, and the same is hereby declared to be, unlawful and a public nuisance. The County may, in addition to or in lieu of prosecuting a criminal action hereunder, commence an action, proceeding for abatement, removal or enjoinder thereof in the manner provided by law.

SECTION 13 – CONDITIONS OF ADULT BUSINESS ESTABLISHMENT

- (a) Cleaning of licensed premises. All adult business establishments shall be kept in a clean, sanitary condition, and shall be in full compliance with all applicable ordinances and regulations of the County and the State.
- (b) Inspection of licensed premises. The County Manager or his or her designated representative, the County Fire Marshall, and the County Sheriff shall have the authority to regularly inspect adult business establishments to determine compliance with and enforce all applicable fire, health and other codes of the County.
- (c) Inspection for unsanitary or unsafe conditions. The County Manager or his or her designated representative and the County Sheriff shall have the authority to periodically inspect adult business establishments to determine compliance with and enforce all provisions of this article and other applicable ordinances, regulations and laws.

SECTION 14 – DENIAL, SUSPENSION OR REVOCATION OF LICENSE; HEARING

- (a) Grounds.
 - (1) A license may be denied to persons or entities that have submitted an incomplete application or that have failed to satisfy any of the requirements of this Ordinance.
 - (2) Any of the following shall be grounds for suspension or revocation of a license:
 - (A) making any material statement on an application for a license issued hereunder that is false;
 - (B) violation of any of the regulations or prohibitions of this Ordinance;
 - (C) with respect to the applicant, operator(s) and owner(s), conviction of or a plea of guilty or nolo contendere regarding any of the crimes that would make such person or adult entertainment establishment ineligible to hold a license under section 5(d)(3) above.
 - (3) Denial; procedure. Within thirty (30) days of actual receipt of an application for an adult business establishment license, the County Manager or his or her designated representative shall either approve or deny the application. In no event shall the County

Manager or his or her designated representative's decision be withheld for more than forty-five (45) days after actual receipt of the application. In the event that such an application is held without decision for a period of more than forty-five (45) days, however, the license application shall be deemed approved. The County Manager or his or her designated representative shall issue an adult business establishment license to an applicant who informs the County Manager or his or her designated representative of the fact that an application has been submitted, but no decision has been made thereon for a period of more than forty-five (45) days following actual receipt of the application. In the event that the County Manager or his or her designated representative denies an application for an adult business establishment license, notice of such denial shall be delivered to the applicant in person or by certified mail within five (5) business days of such denial.

- (4) Suspension or revocation; procedure. Whenever the County Manager or his or her designated representative finds reasonable grounds to suspend or revoke a license issued hereunder, the County Manager or his or her designated representative shall schedule a hearing before the Dawson County Board of Commissioners to consider such suspension or revocation and shall, at least twenty (20) days prior to the hearing, notify the licensee of the time and date of the hearing and the proposed action and the grounds therefore. The licensee shall be entitled to present evidence and cross-examine any witnesses at the hearing, with or without legal counsel. The Dawson County Board of Commissioners shall make its decision within ten (10) days of the hearing and shall notify the licensee in writing within five (5) business days of the decision.

SECTION 15 – MISCELLANEOUS

Nothing contained in this Ordinance shall be deemed to permit or condone any activity whatsoever, which is otherwise found to be obscene, lewd, or illegal under applicable code, regulation, or statute. Further, the activities and uses which are regulated and permitted by this Ordinance shall only be allowed if such activities are not obscene or lewd and not in violation of any other such prohibitions on nudity or sexual activity.

SECTION 16 – SEVERABILITY

If any portion or subsection of this Ordinance, or its application to any person or circumstance, is held invalid by a court of competent jurisdiction, then the remainder or application to other persons or circumstances shall not be affected.

SECTION 17 – AUTOMATIC LICENSE FORFEITURE FOR NONUSE

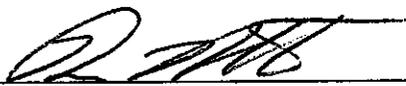
Any holder of any license hereunder who shall for a period of three (3) consecutive months after the license has been issued, cease to operate the business or the sale of the product or products authorized shall after the said three-month period automatically forfeit the license without the necessity of any further action.

SECTION 18 – REPEAL OF CONFLICTING PROVISIONS

All resolutions or ordinances, or parts thereof, in conflict with this Ordinance are hereby repealed.

SO ORDAINED THIS 3rd DAY OF June, 2004.

DAWSON COUNTY BOARD OF COMMISSIONERS



Don Roberts, Chairman

Attest: 

County Clerk

Vote:
Yes 3
No 0

Dates of Public Hearing:
May 20, 2004
June 3, 2004