

**ORDINANCE**  
**FOR THE REGULATION OF**  
**ADULT USE AND**  
**SEXUALLY-ORIENTED BUSINESS**  
**CLEARWATER COUNTY,**  
**MINNESOTA**

Enacted on:

4/8/03

**ADULT USES AND SEXUALLY-ORIENTED BUSINESS ORDINANCE**

**CLEARWATER COUNTY, MINNESOTA**

**1.0 ADULT USES AND SEXUALLY-ORIENTED BUSINESS ORDINANCE**

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**1.0 ADULT USES AND SEXUALLY-ORIENTED BUSINESS ORDINANCE**

## **1.0 ADULT USES AND SEXUALLY-ORIENTED BUSINESS ORDINANCE**

### **1.1 PURPOSE AND INTENT**

In the development and adoption of this Ordinance, it is recognized that:

1. There are some adult business uses which have serious objectionable operational characteristics, particularly when located in close proximity to residential neighborhoods.
2. These business uses have deleterious impact upon property values.
3. These business uses frequently become places of criminality.

It is the further purpose of this ordinance to protect the well-being of the youth of the community from objectionable operational characteristics of these uses by regulating and restricting their close proximity to established facilities such as, but not limited to churches, parks, schools, and residential areas.

In recognition of the protections afforded to the citizens of the United States under the First and Fourteenth Amendments to the Constitution of the United States, it is neither the intent nor effect of this ordinance to inhibit the freedom of speech or the press. The provisions herein have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market. This ordinance represents a balancing of the legitimate ends of the County by imposing an incidental, content-neutral place, time and manner of regulation of sexually-oriented entertainment to sexually-oriented businesses without limiting alternative avenues of communication, and at the same time, requiring the businesses to carry their financial share of the law enforcement activities. The special regulations deemed necessary to control the undesirable effects arising from these enterprises are set forth in this ordinance. *See City of Erie v. Pap's A.M.*, 529 U.W. 277 297 (2000)(holding that municipalities may "reasonably rely on the evidentiary foundation set forth in *Renton* and *American Mini Theatres* to the effect that secondary effects are caused by the presence of even one adult entertainment establishment" in a community); *California v. LaRue*, 409 U.S. 109, 111 (1972) (describing illicit "sexual conduct between dancers and customers" which included oral copulation and prostitution, as well as public masturbation, indecent exposure, attempted rape, rape, and assaults on law enforcement officers); *see also Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976), *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), and *Barnes v. Glen*

*Theatre, Inc.*, 501 U.S.560 (1991) (noting cases of prostitution linked with nude dancing establishments).

## 1.2 FINDINGS

The Clearwater County Board of Commissioners makes the following findings about the effect adult uses and sexually oriented businesses have had on the communities in the secondary effects reports below and finds that present and future sexually-oriented businesses can have similar impacts on the character of the County's neighborhoods. See *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986) (finding that municipalities may rely upon the experiences of other cities for regulations designed to prevent future secondary effects).

In making the findings, the County Commissioners accept the recommendations of staff that has studied the experiences of other areas about such businesses: City of St. Cloud, MN, The Minnesota Attorney General, the City of Los Angeles, CA., the City of St. Paul, MN., the City of Austin TX., Adams County, CO., St. Croix County, WI., the City of New York, NY., and various other cities throughout the country have studied the impact of adult uses and sexually-oriented businesses. These studies have concluded that adult uses and sexually-oriented businesses have adverse impacts on the surrounding neighborhoods.

Additional land use and crime impact reports, police reports, investigator affidavits, and news reports concerning the secondary effects of sexually-oriented businesses have also reached the same conclusion and the Board relies upon the findings of secondary effects contained in them as well: Dallas, TX - 1977, Houston, TX - 1997, El Paso, TX - 1986, Attorney General's Commission on Pornography, Chapter 19, Organized Crime - 1986, Las Vegas, NV - 1978, Adams County, CO - 1987, Garden Grove, CA - 1991, Tucson Arizona - 1990, Sexually Oriented Businesses: An Insider's View - 2000, Strip Clubs According to Strippers: Exposing Workplace Sexual Violence - 1998; Police and Investigator Reports, Gary, IN - 2000-2001; Secondary Effects News Reports, 2001-2002, and summaries of several of the foregoing secondary effects reports.

The County also takes official notice of findings and legal conclusions concerning the secondary effects of adult uses as announced in the aforementioned Supreme Court cases, as well as in cases from the federal appellate courts and the Minnesota courts, including but not limited to: *Jakes, Ltd. v. City of Coates*, 284 F. 3d 884 (8<sup>th</sup> Cir. 2002), cert. Denied 2002 U.S. LEXIS 7609 (Oct. 15, 2002); *BZAPS, Inc. v. City of Mankato*, 268 F. 3d 603 (8<sup>th</sup> Cir. 2002), cert. denied 2002 U.S. LEXIS 4232 (June 10, 2002); *Farkas v. Miller*, 151 F.3d 900 (8<sup>th</sup> Cir. 1998); *Ambassador Books & Video, Inc. v. City of Little Rock*, 20 F. 3d 858 (8<sup>th</sup> Cir. 1994); *Excalibur Group, Inc. v. City of Minneapolis*, 116 F.3d 1216 (8<sup>th</sup> Cir. 1997); *ILQ Investments, Inc. v. City of Rochester*, 25 F.3d 1413 (8<sup>th</sup> Cir. 1994); *DLS, Inc. v. City of*

*Chattanooga*, 107 F.3d 403 (6<sup>th</sup> Cir. 1997); *Steakhouse, Inc. v. City of Raleigh*, 166 F.3d 634 (4<sup>th</sup> Cir. 1999); *Di Ma Corp. v. City of St. Cloud*, 562 N.W.2d 312, 316 (Minn. App. 1997); *Minnesota v. Holmberg*, 545 N.W.2d 65 (Minn. App. 1996); *Kismit Investors, Inc. v. Benton County*, 617 N.W.2d 85, 93 (Minn. App. 2000).

Based on the foregoing, the County Commissioners conclude:

1. **Adult uses and sexually-oriented businesses can contribute to an increase in crime in the area where such businesses are located. This can be a burden to the County crime prevention programs and law enforcement services.**
2. **Adult uses and sexually-oriented businesses can significantly contribute to the deterioration of the residential neighborhoods and can increase neighborhood blight. These businesses also can impair the character and quality of the residential housing in the area where such businesses are. This situation can lessen the amount of desirable housing for residents.**
3. **The concentration of adult uses and sexually-oriented businesses in one area can greatly affect the area where such businesses are concentrated and on the quality of life. A cycle of decay can result from the influx and concentration of adult uses and sexually-oriented businesses. Others may perceive the presence of such businesses as an indication that the area is deteriorating and the results can be devastating. That is, other businesses move out of the vicinity and residents flee from the area. Lower property values that can result from the concentration of such businesses erode the County's tax base and contribute to the blight.**
4. **Adult uses and sexually-oriented businesses have adverse secondary impacts of the type discussed above.**
5. **It is necessary to provide for the special and express regulations of these businesses: establishments or commercial enterprises that operate as adult body painting, studios, adult bookstores, adult cabarets, adult car washes, adult companionship establishments, adult hotels or motels, adult massage parlors or health clubs, adult motion picture arcades or theaters, adult modeling studios, adult novelty businesses, adult saunas, and similar adult-oriented services operating under various names to protect the public health, safety and welfare, and to guard against inception and transmission of disease.**
6. **The commercial enterprises such as the types described in paragraph 5 above and all other similar establishments whose services include sessions offered to adults**

conducted in private by members of the same or opposite sex, and the employing personnel with no specialized training are susceptible to operations contravening, subverting, or endangering the morals of the County by being the site of acts of prostitution, illicit sex, and occasions of violent crimes, thus requiring close inspection, permitting and regulations.

7. Control and regulation of commercial establishments of these types, in view of the abuses often perpetrated, require intensive efforts by the Sheriff's Office and other departments of the County. It is necessary for the County to provide services to all Clearwater County without concentrating the public services in one area. The concentrated use of County services detracts from and reduces the level of services available to the rest of Clearwater County. Thus, these types of establishments can diminish the ability of the County to protect and promote the general health, welfare, morals and safety of the citizens of Clearwater County.
8. The County Board of Commissioners adopts the following land use and permitting regulations, recognizing that it has an interest in the present and future character of the County's residential and commercial neighborhoods. These regulations are to lessen the detrimental and adverse effects adult uses and sexually-oriented businesses have on adjacent land uses and protect and promote the health, safety and welfare of the residents of Clearwater County.

## **2.0 DEFINITIONS:**

The following words shall have the following meanings:

**2.01 ADULT USES:** Adult body painting studios, adult book stores, adult car washes, adult hotels or adult motels, adult motion pictures theaters, adult mini-motion picture theaters, adult massage parlors, adult health/sport clubs, adult sauna/steam room/bath houses, adult companionship establishments, adult rap/conversation parlors, adult novelty businesses, adult motion picture arcades, adult modeling studios. This definition does not apply to the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry by State licensed registered persons. Activities classified as obscene as defined by Minnesota Statutes Section 617.241 are not lawful and are not included in the definitions of adult uses.

**2.02 ADULT USES - ACCESSORY:** The offering of goods and/or services classified as adult uses on a limited scale that are incidental to the primary activity and goods and/or services offered by the establishment. Examples include adult magazines, adult movies, adult novelties, and the like.

**2.03 ADULT USES - PRINCIPAL:** The offering of goods and/or services classified as adult uses as a primary or sole activity of a business or establishment and include, but are not limited to the following:

**ADULT BODY PAINTING STUDIO:** An establishment or business that regularly provides the services of applying paint or other substance, whether transparent or non-transparent, to or on the body of a patron when such body is nude or semi-nude.

**ADULT BOOK STORE:** An establishment, building or business engaging in the barter, rental, or sale of items or merchandise consisting of printed matter, pictures, slides, records, audio tapes, video tapes, computer or video disks, motion picture film, or any other similar materials, if such shop is not open to the public generally but only to one or more classes of the public, excluding any minor because of age, and if a consistent and substantial useable floor area of the establishment, building or business, is characterized by the emphasis on matters depicting, describing or related to "specified sexual activities" or "specified anatomical areas."

**ADULT CABARET:** An establishment, building or business that regularly provides dancing or other live entertainment if such dancing or live entertainment is distinguished or characterized by an emphasis on the performance or presentation, display, depiction or description of "specified sexual activities" or "specified anatomical areas".

**ADULT COMPANIONSHIP ESTABLISHMENTS:** An establishment or business, if such establishment excludes minors because of age and regularly provides the service of engaging in or listening to conversation, talk or discussion between an employee of the establishment and a customer, if such service is distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

**ADULT ENTERTAINMENT FACILITY:** A building or space in which an admission is charged for the entrance, or food or non-alcoholic beverages are being sold or intended for consumption, and in which may be regularly observed live presentation of entertainment distinguished or characterized by an emphasis on "specified sexual activities" or "specified anatomical areas".

**ADULT HOTEL OR MOTEL:** A motel, hotel, or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, and which regularly provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition of description of "specified

sexual activities” or “specified anatomical areas” and which regularly advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to, newspapers, magazines, pamphlets, or leaflets, radio or television, and (b) offers a sleeping room for rent for a period of time less than ten (10) hours.

ADULT MASSAGE PARLOR, HEALTH/SPORT CLUB: A massage parlor or health/ sport club that restricts minors because of age or law, which regularly provides services of massage if such services is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas”.

ADULT MINI-MOTION PICTURE THEATER: A business or establishment in an enclosed building with a capacity for less than fifty (50) persons regularly used for the presenting of visual media material if such business as a prevailing practice excludes minors by age or law, and if said material is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas” for observation by patrons.

ADULT MODELING STUDIO: An establishment or business whose major business is the regular provision to customers of employees who are provided with the intent of providing sexual stimulation or sexual gratification to such customers, and when said employees engage in “specified sexual activities” or “specified anatomical areas” while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

ADULT MOTION PICTURE ARCADE: Any building or place to which the public is allowed or invited in which coin or slug operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, computers or other image producing devices that regularly show images to five (5) or fewer persons per machine at once, and are characterized by an emphasis on depicting or describing “specified sexual activities” or “specified anatomical areas.”

ADULT MOTION PICTURE THEATER: A business or establishment in an enclosed building with a capacity for fifty (50) or more persons regularly used for the presenting of visual media material if such business as a prevailing practice excludes minors by age or law, and if said material is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas” for observation by patrons.



ADULT NOVELTY BUSINESS: A business that has a principal and regular activity the sale of materials or devices that stimulate human genitals or devices designed for sexual stimulation or which depict or which relate to “specified sexual activities” or “specified anatomical areas”.

ADULT SAUNA/STEAM ROOM/BATHHOUSE: A business that excludes minors because of age, and which regularly provides a steam bath or a heat bathing room used for bathing, pleasure, relaxation or reducing, utilizing steam or hot air as a cleaning, relaxing or reducing agent, if the service provided by the sauna/steam room/bathhouse is distinguished or characterized by an emphasis on “specified sexual activities” or “specified anatomical areas”.

2.04 COUNTY BOARD OF COMMISSIONERS OR COUNTY BOARD OR BOARD: The governing body of Clearwater County, Minnesota.

2.05 AUDITOR: The Auditor for Clearwater County or his or her authorized representative.

2.06 DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS UPON: 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 “specified anatomical areas” or “specific sexual activities.”

2.07 EMPLOYEE: Any person who performs any service on the premises of a sexually-oriented business, on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

2.08 LICENSED FAMILY DAY CARE, LICENSED GROUP FAMILY DAY CARE, LICENSED CHILD CARE CENTER: A facility holding a license from Clearwater County or Minnesota pursuant to Minnesota Statutes, chapter 245A and/or Minnesota Rules, Chapter 9502 or Chapter 9053, as amended.

2.09 MINOR: Any person under the age of eighteen (18) years.

2.10 NUDITY: The showing of the human male or female genitals or pubic area with less than fully opaque covering; the showing of the female breast with less than fully opaque covering of any portion of the nipple; or the depiction or showing of the coverage of male genitals in a discernibly turgid state.

**2.11 PUBLIC LIBRARY:** Any library that provides free access to all residents of a city or county without discrimination and is organized under Minnesota Statutes, Chapter 134.

**2.12 PUBLIC PARK:** A park, reservation, playground, beach, or recreation or community center in the County owned, leased, or used wholly or in part by the city, county, state, school district, or federal government for recreational purposes.

**2.13 PLACE OF WORSHIP:** A building or space that is principally used as a place where people of the same faith or religion regularly assemble for worship.

**2.14 SCHOOL:** A building or space that is principally used as a place where twenty-five (25) or more persons receive a full course of educational instruction. Any post-secondary or post high school educational building, including any college or other vocational technical college shall not be deemed a school for purposes of this Ordinance.

**2.15 SEXUALLY-ORIENTED BUSINESS:** Adult body painting studios, adult book stores, adult car washes, adult hotels or adult motels, adult motion picture theaters, adult mini-motion picture theaters, adult massage parlors, adult health/sport clubs, adult sauna/steam room/bath houses, adult companionship establishments, adult rap/conversation parlors, adult novelty businesses, adult motion picture arcades, adult modeling studios and other premises, enterprises or establishments, businesses, or places open to some or all members of the public at or in which there is an emphasis on the presentation or display, depiction, or description of "specified sexual activities" or "specified anatomical areas" which the public could see. This definition does not apply to the practice of medicine, surgery, osteopathy, chiropractic, physical therapy or podiatry by State licensed registered persons. Activities classified as obscene are defined by Minnesota Statutes Section 617.241 are not lawful and are not included in the definitions of adult uses.

**2.16 SPECIFIED ANATOMICAL AREAS:** Anatomical areas consisting of:

1. Less than completely and opaquely covered human genitals, pubic region or pubic hair, buttock, anus, or female breasts or breast below the point immediately above the top of the areola or any combination of the foregoing; and
2. Human genitals in discernibly turgid state, even if completely or opaquely covered.

**2.17 SPECIFIED SEXUAL ACTIVITIES:** Activities consisting of the following:

1. Actual or simulated sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, bestiality, direct physical stimulation or fondling of unclothed genitals, pubic region, buttock, or female breast, flagellation or torture in a sexual relationship, or any other explicit sexual act or conduct of an obscene nature; or
2. Human genitals in the state of sexual stimulation, arousal or tumescence; or
3. Use or acts of human or animal ejaculation, sexual intercourse, sodomy, oral copulation, coitus or masturbation; or
4. Fondling or touching of human genitals, pubic regions or pubic hair, buttocks, female breast; or
5. Situations involving a person or persons, any of whom are nude, clad in undergarments or in sexually revealing costumes, who are engaged in activities involving the flagellation, torture, fettering, binding or other physical restraint of any such person; or
6. Erotic or lewd touching, fondling or other sexually-oriented contact with an animal by a human; or
7. Human excretion, urination, menstruation, vaginal or anal irrigation; or
8. Any combination of the above.

**2.18 REGULAR OR REGULARLY:** Means a consistent, ongoing, and substantial course of conduct, such that the films, performances, or business activities so described constitute a significant and substantial portion of the films or performances offered as a part of the ongoing business of the sexually-oriented business. See *FWIPBS, Inc. v. City of Dallas*, 493 U.S. 215, 259-261 (1990) (Scalia, J., concurring in part and dissenting in part).

**2.19 SEMINUDE:** Means a state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple of the female breast, as well as portions of the body covered by supporting straps or devices.

**2.20 SPECIFIED CRIMINAL ACTIVITY:** Means any of the following offenses:

1. Prostitution or promotion of prostitution; dissemination of obscenity or illegal pornography; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; lewdness; sexual battery; rape; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually-oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; 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 Minnesota; for which:
  - a. less than two 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 years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the conviction is of a felony offense; or
  - c. less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

### **3.0 PERMITTING OR LICENSES:**

#### **3.1 LICENSE REQUIRED:**

No person, firm or corporation shall own or operate an Adult Use of Sexually-Oriented Business in Clearwater County without having first secured a license as provided herein. The license shall be one of two types:

- A. Adult Use Principal
- B. Adult Use Accessory

#### **3.2 APPLICATIONS:**

The County shall provide an application for Adult Use or Sexually-Oriented Business license.

This application shall include the following information and is deemed complete if it contains:

- A. The legal and full name, business address and phone number and birth date of the applicant, if any individual; and if any corporation, partnership, LLC, or similar entity, the legal full names, business address and phone numbers, and birth dates of those owners holding more than twenty (20) percent of the issued and outstanding stock of the corporation or ownership interest in a partnership, LLC or similar entity. If a license is granted, each applicant shall be considered a licensee.
- B. The legal full name, business address and phone number and birth date of the operator and manager of such operation, if different from the owners. If a license is granted, each applicant shall be considered a licensee.
- C. The address and legal description of the building, establishment or premises where the adult use or sexually-oriented business is to be located.
- D. A statement detailing each specified criminal activity, as defined in this chapter, for which persons required to be disclosed in subsection A above have been convicted.
- E. The kind of adult use license under Section 3.1 being applied for.
- F. An application for sexually-oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- G. Each applicant shall contain a provision on the application in bold print stating that knowingly providing false information will be grounds for the denial or revocation of a license. Any changes in the information provided on the application or provided during the investigation shall be provided to the Auditor in writing, and the Auditor shall report the changes to the County Board of Commissioners. Failure to report such changes known to the applicant(s) or the licensee within 10 days of the applicant or licensee's knowledge of such change may result in the denial or revocation of a license.

### 3.3 LICENSE FEES:

- A. Each application for a license shall be accompanied by a fee, as set by the resolution of the County Board of Commissioners, not to exceed five hundred dollars (\$500.00), for payment in full of the required application and investigative fees for the license as established. All fees shall be paid at time of application.
- B. All permits/licenses, except Provisional Licenses granted pursuant to Section 3.12 D., shall expire on the last day of December in each year. The County shall issue each license for one (1) year, except if part of the license year has elapsed when the application is made the County may issue a license for the remainder of the year at a prorated fee. In computing such fee, the County shall count any unexpired fraction of a month as one (1) month..

### 3.4 GRANTING OF LICENSE:

- A. Upon the filing of a completed application under Section 3.2, the County shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the County to deny or grant the license. Notwithstanding anything to the contrary, within twenty (20) days of the initial filing date of the completed application, the County shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The County shall approve the issuance of a license unless one or more of the conditions in Section 3.5 is met.
- B. The county shall only issue the license to the applicant. The license shall not be transferred to another holder. The county shall only issue each license for the premises or location described in the application. No license may be transferred to another location or place without the approval of the County Board of Commissioners.

### 3.5 INELIGIBLE FOR LICENSE:

The County shall not grant a license to nor may one be held by any person who:

- A. Is under eighteen (18) years of age.
- B. Has been convicted of a specified criminal activity, as defined in this ordinance. Convictions that are later reversed shall not serve to disqualify an applicant from obtaining a license under this ordinance.

- C. Is not the owner or manager of the establishment for which the license is issued.
- D. Has not paid the license fee required.
- E. Is not a citizen of the United States.
- F. Has had a license revoked under this ordinance in the previous year. If a Provisional License was issued pursuant to the revocation, the year time frame shall be calculated from the date that the Provisional License expired.

**3.6 PLACES INELIGIBLE FOR LICENSE:**

- A. No license shall be granted for adult uses or sexually-oriented business on any premises where the licensee has been convicted of a violation of this ordinance, or where any license hereunder has been revoked for cause until one (1) year has elapsed after such conviction or revocation.

**3.7 CONDITIONS OF LICENSE GENERALLY:**

- A. Every license shall be granted subject to the conditions in the following subdivisions and all other provisions of this Ordinance.
- B. All licensed premises shall have the license posted in a conspicuous place. No minor shall be allowed in or on the premises of an adult use or sexually-oriented business. Sexually-oriented businesses and their employees shall permit officers or agents of the County to inspect, from time to time on an occasional basis, the portions of the sexually-oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually-oriented business is occupied by patrons or is open for business. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this section for purposes of license denial, suspension, and/or revocation. This section shall be narrowly construed by the County to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize an excessive pattern of inspections or violations of constitutional rights.
- C. Insurance: No license shall be granted for adult use or sexually-oriented business on any premises unless and until the adult use or sexually-oriented

- D. **Lighting:** All parking lots and exterior business premises shall be lit in such a way so that they are visible to law enforcement without the aid of flashlights and/or spotlights.

### 3.8 CONDITIONS OF LICENSE - ADULT USE PRINCIPAL

The County permits adult use principal sexually-oriented businesses subject to the following conditions:

- A. No adult use principal sexually-oriented business shall be located closer than 2000 feet from any other adult use principal or accessory sexually-oriented business. Measurements shall be made in a straight horizontal line, without regard to city, township or county boundaries, intervening structures or objects, from the nearest point of the property line of the legal parcel upon which the business is located to the nearest point of the property line of the legal parcel upon which the nearest adult principal or accessory sexually-oriented business is located.
- B. No adult use principal sexually-oriented business shall be located closer than 2000 feet from any residential structure, place of worship, school, public park, licensed child care or day care center in any city or county. Measurements shall be made in a straight horizontal line, without regard to city or county boundaries, intervening structures or objects, from the nearest point of the actual business premises of the adult use principal sexually-oriented business to the nearest building used as a residential structure, place of worship, school, public park, licensed child care or day care center.
- C. No adult use principal sexually-oriented business shall engage in any activity or conduct or permit any other person to engage in any activity or conduct in or about the adult use establishment that is prohibited by any ordinance of Clearwater County, the laws of the State of Minnesota or the United States of America. Nothing in this Ordinance shall be construed as authorizing or permitting conduct that is prohibited or regulated by other statutes or ordinances prohibiting the exhibition, sale or distribution of obscene materials generally, or the exhibition, sale, or distribution of specified materials to minors.
- D. No adult use principal sexually-oriented business shall be conducted in any manner that permits the perception or observation from any property not approved as an adult use of any materials depicting, describing, or relating to



“specified sexual activities” or specified anatomical areas” by any visual or auditory media, including display, decoration, sign, show window, sound transmission or other means.

- E. All adult use principal sexually-oriented business shall prominently display a sign at the entrance and located within two (2) feet of the door opening device of the adult use establishment or section of the establishment devoted to adult book or materials which states: “This business sells or displays material containing adult themes. Persons under eighteen (18) years of age shall not enter”.
- F. Adult use principal sexually-oriented businesses shall not be open between the hours of 1:00 a.m. and 8:00 a.m. on the days of Monday through Saturday, nor between 1 a.m. and 12 p.m. (Noon) on Sunday.

### 3.9 CONDITIONS OF LICENSE - ADULT USE ACCESSORY:

- A. No adult use accessory sexually-oriented business shall be located closer than 2000 feet from any other adult use accessory or principal sexually-oriented business. Measurements shall be made in a straight horizontal line, without regard to city or county boundaries, intervening structures or objects, from the nearest point of the actual business premises of the adult use accessory sexually-oriented business to the nearest point of the actual business premises of any other adult accessory or principal sexually-oriented business.
- B. No adult use accessory sexually-oriented business shall be located closer than 2000 feet from any residential structure, place of worship, school, public park, licensed child care or day care center in any city or county. Measurements shall be made in a straight horizontal line, without regard to city or county boundaries intervening structures or objects, from the nearest point of the actual business premises of the adult use accessory sexually-oriented business to the nearest building used as a residential structure, place of worship, school, public park, licensed child care or day care center.
- C. An adult use accessory sexually-oriented business shall not sell or dispense intoxicating or non-intoxicating liquors, nor shall it be located within 2000 feet of a building that contains a business that sells or dispenses intoxicating or non-intoxicating liquors. Measurements shall be made in a straight horizontal line, without regard to city or county boundaries, intervening structures or objects, from the nearest point of the actual business premises of the adult use principal sexually-oriented business to the nearest business that sells or

line, without regard to city or county boundaries, intervening structures or objects, from the nearest point of the actual business premises of the adult use principal sexually-oriented business to the nearest business that sells or dispenses intoxicating or non-intoxicating malt liquors. An adult use accessory sexually-oriented business shall not allow the consumption of non-intoxicating or intoxicating liquors anywhere on a parcel containing that use or business.

### 3.10 REVOCATION OF LICENSE:

- A. The Auditor may issue a letter of intent to suspend, for 30 days, a sexually-oriented business license if a licensee knowingly commits, or allows an employee to commit, a violation of this ordinance.
- B. The Auditor may issue a letter of intent to revoke a sexually-oriented business license, for one year, if a licensee knowingly commits, or allows an employee to commit, three or more violations of this ordinance within a one year period, or if one or more of the following occurs:
  - 1. The licensee, or an employee of the licensee, has committed fraud, or a material misrepresentation in securing a license.
  - 2. The licensee, or an employee of the licensee, has allowed habitual drunkenness or intemperance in use of a controlled substance under Minnesota Statutes, Chapter 152, on the premises.
  - 3. The licensee, or an employee of the licensee, has allowed prostitution on the premises.
  - 4. The licensee, or an employee of the licensee, has operated the sexually-oriented business during a period of time when the license was suspended.
  - 5. The licensee, or an employee of the licensee, has allowed any act of sexual intercourse, sodomy, oral copulation, or direct physical stimulation of unclothed genitals to occur on the premises.

### 3.11 HEARING; DENIAL, SUSPENSION, REVOCATION OF LICENSE; APPEAL.

- A. If facts exist that warrant the denial, suspension, or revocation of a license under this chapter, the Auditor shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds thereof, by personal delivery, or by certified mail. The notification shall be directed to the most current business address or other mailing address on file with the Auditor for the respondent. Within ten (10) working days of the receipt of such notice, the respondent may submit a request to the Auditor for a hearing before the County Board of Commissioners to refute the grounds alleged by the County for denial, suspension, or revocation of the license.
- B. Within five (5) days of the receipt of respondent's written response, the 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 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 Board shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended to meet the requirements of due process and proper administration of justice. The Board shall issue a written decision within five (5) days after the hearing, which decision shall either deny, suspend, or revoke the license, and state the reasons for such action, or shall withdraw the Auditor's written intent to deny, suspend, or revoke the license. Any decision adverse to the applicant shall be deemed final immediately upon its issuance, but shall not take effect for thirty (30) days.
- C. If the respondent does not request a hearing within ten (10) working days of receiving the Auditor's notice of intent to deny, suspend, or revoke the license, the license shall be deemed denied, suspended, or revoked, as applicable. Any such denial, suspension, or revocation shall be deemed final immediately thereafter, but shall not take effect for thirty (30) days.
- D. An applicant or licensee (aggrieved party) whose license has been denied or whose license has been suspended or revoked shall have the right to challenge or appeal such action, upon factual grounds or constitutional grounds or both, to a court of law within thirty (30) days after the final decision of the Board (under Subsection B above) or Auditor (under Subsection C above).

Immediately upon receiving notice of the filing of any state or federal court action to appeal, challenge, restrain, or otherwise enjoin the County's enforcement of the denial, suspension, or revocation, the County shall issue the aggrieved party a Provisional License. The Provisional License shall allow the aggrieved party to continue operation of the sexually-oriented business and will expire upon the court's entry of a judgment on the merits of the aggrieved party's appeal or other action to restrain or enjoin the County's enforcement of the adverse licensing decision.

#### 4.0 SIGN RESTRICTIONS:

The following sign regulations shall apply to all sexually-oriented businesses in Clearwater County. These regulations are aside from any other provisions of the County's regulations.

1. All signs shall be flat wall, or freestanding signs. No sign shall be located on the roof, or contain any flashing lights, moving elements or electronically or mechanical changing messages.
2. Each licensee shall be limited to one (1) sign of not more than thirty-five (35) square feet in total surface area. No sign shall project higher than six (6) feet above the average grade.
3. No photos, pictures, digital representations or visual depictions of any person, product, device or service relating to "specified sexual activities" or "specified anatomical area" shall be displayed on any sign.
4. No merchandise, photos, or pictures of any products or entertainment characterized by an emphasis on visual display of "specified sexual activities" or "specified anatomical areas" on the premises shall be displayed in window areas or any area where they can be viewed from the sidewalk or public right-of-way adjoining the building or structure in which the adult use or sexually-oriented business is located.

#### 5.0 OFFENSES AND PENALTIES:

1. Any person knowingly violating any provision of this Ordinance is guilty of a misdemeanor and upon conviction shall be punished not more than the maximum penalty for a misdemeanor as prescribed by State law.

2. It shall be a misdemeanor for a person to knowingly or intentionally, in a sexually-oriented business, appear in a nude or semi-nude condition unless the person is an employee who, while in a nude or semi-nude, shall be on a stage at least six (6) feet from any patron or customer and at least two (2) feet from the floor.

5.01 SCIENTER REQUIRED TO PROVE VIOLATION OF LICENSEE LIABILITY:

Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by any person shall be deemed a violation only if the person knowingly committed the act. Notwithstanding anything to the contrary, for purposes of this Ordinance, violations by employees of the business shall be imputed to the business for purposes of finding a violation of this ordinance, or for purposes of license denial, suspension, or revocation, only if a licensee 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 licensee to whom the violation is to be imputed was powerless to prevent the act.

6.0 SEVERABILITY:

If any section, subsection, sentence, clause or phrase of this Ordinance, or any application thereof to any person or circumstances, is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the Ordinance. The County Board of Commissioners declares its legislative intent that, notwithstanding any other evidence of legislative intent, it would have adopted the ordinance and each section, subsection, sentence, clause or phrase of it irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases are declared invalid.

7.0 EFFECTIVE DATE:

This ordinance shall become effective the 8<sup>th</sup> day of April, 2003.