CHAPTER 41
SEXUALLY ORIENTED BUSINESSES.

41-101. Purpose and findings.

(1) Purpose: It is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this Ordinance 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. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

(2) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the City Council, and on findings incorporated in the cases of City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); City of Erie v. Pap’s A.M., 529 U.S. 277 (2000); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); Arcara v. Cloud Books, Inc., 478 U.S. 697, (1986); Iacobucci v. City of Newport, Ky, 479 U.S. 92 (1986); Young v. American Mini Theatres, 427 U.S. 50 (1976); California v. LaRue, 409 U.S. 109 (1972); United States v. O’Brien, 391 U.S. 367 (1968); DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir.1997); Kev, Inc. v. Kitsap County, 793 F.2d 1053 (9th Cir.1986); Hang On, Inc. v. City of Arlington,, 65 F.3d 1248 (5th Cir.1995); South Florida Free Beaches, Inc. v. City of Miami, 734 F.2d 608 (11th Cir.1984); and N.W. Enterprises v. City of Houston, 27 F.Supp. 2d 754 (S.D. Tex.1998)), as well as studies conducted in other cities including, but not limited to, Rochester, New York; San Diego, California; Denver, Colorado; Kansas City, Missouri; New York City, New York; Newport News, Virginia; St. Paul, Minnesota; Springfield, Missouri; Indianapolis, Indiana; Los Angeles, California; and Austin, Texas; and summaries of studies of from thirty-two other cities; and findings reported in the Final Report of the Attorney General’s Commission on Pornography
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(1986), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, and the Nebraska Department of Health and Human Services the City Council finds that:

(a) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.

(b) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. See, e.g., Studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.

(c) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. See, e.g., California v. LaRue, 409 U.S. 109, 111 (1972); See also Final Report of the Attorney General’s Commission on Pornography (1986).

(d) Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. See, e.g., Final Report of the Attorney General’s Commission on Pornography (1986).


(f) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections. See, e.g., Study of Fort Meyers, Florida.

(g) The cumulative estimated number of diagnoses of AIDS through 2005 in the United States is 952,629. See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention at www.cdc.gov.

(h) As of December, 2004, there have been 1,329 reported cases of AIDS in the State of Nebraska.

(i) In 2005, 976,445 chlamydia diagnoses were reported, up from 929,462 in 2004. Even so, most chlamydia cases go undiagnosed. It is estimated that there are approximately 2.8 million new cases of chlamydia in the United States each year. See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention at www.cdc.gov.

(j) Over the past five years, the syphilis rate in the United States has been increasing. Between 2004 and 2005, the national syphilis rate increased 11.1 percent, from 2.7 to 3.0 cases per 100,000 population. See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention at www.cdc.gov.

(k) Gonorrhea is the second most commonly reported infectious disease in the United States, with 339,593 cases reported in 2005. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention at www.cdc.gov.

(l) The surgeon general of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure
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to infected blood and blood components, and from an infected mother to her newborn.

(m) AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See, e.g. Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention at www.cdc.gov.

(n) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities. See, e.g., Final Report of the Attorney General’s Commission on Pornography (1986) at 377.

(o) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view “adult” oriented films. See, e.g., Final Report of the Attorney General’s Commission on Pornography (1986) at 377.


(q) Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use. See, e.g., Kev, Inc. v. Kitsap County, 793 F.2d 1053, 1056 (9th Cir.1986).

(r) The findings noted in paragraphs numbered (1) through (17) raise substantial governmental concerns.

(s) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(t) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of sexually oriented businesses. Further, such licensing procedure will place a heretofore non-existent incentive on operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the registrant is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(u) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.

(v) It is desirable, in the prevention of crime and the spread of communicable diseases, to obtain a limited amount of information regarding certain employees who may engage in the conduct this ordinance is designed to prevent, or who are likely to be witnesses to such activity.

(w) The fact that an applicant for a sexually oriented business registration has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this ordinance.

(x) The barring of such individuals from operation or employment in sexually oriented businesses for a period of five (5) years for a previous felony conviction serves as a deterrent to further criminal conduct, and prevents conduct which leads to the transmission of sexually transmitted diseases.

(y) The general welfare, health, and safety of the citizens of this City will be promoted by enactment of this ordinance.
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(2) When more than one sexually oriented business use occupies the same location or business address, the secondary effects caused by such businesses are increased. Secondary effects are eliminated or controlled to a greater degree when only a single sexually oriented business use is allowed to occupy the same location. (Ord. No. 4143-10/2007)

41-102. Definitions.

Words, terms and phrases in this Ordinance shall be defined as follows:

(1) **ADULT ARCADE** means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, videos, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(2) **ADULT BOOKSTORE, ADULT VIDEOS STORE OR ADULT NOVELTY STORE**: A commercial establishment which has a substantial portion of its stock-in-trade, or derives a substantial portion of its revenues or devotes a substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for sale or rental, for any form of consideration, any one or more of the following:

   (a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, video reproductions, slides, laser or compact discs, or other visual representations which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas,"

   (b) instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or sadomasochistic use or abuse of the user or others.

   (c) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental or material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such commercial establishment from being categorized as an adult bookstore, adult novelty store, or adult video store so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas" or if the business advertises the sale or rental of any such material in a way that can be seen or heard from the outside of the location.

(3) **ADULT CABARET** means a nightclub, bar, restaurant, café, or similar commercial establishment that regularly, commonly, habitually, or consistently features:

   (a) persons who appear in a state of nudity or semi-nudity; or

   (b) live performances that are distinguished or characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

   (c) films, motion pictures, video cassettes, slides, photographic reproductions, or other image producing devices that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

   (d) persons who engage in "exotic" or erotic dancing or performances that are intended for the
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sexual interests or titillation of an audience or customers.

(4) **ADULT MOTEL** means a hotel, motel or similar commercial establishment that does any of the following:

(a) offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right of way that advertises the availability of this adult type of photographic reproductions; 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.

(5) **ADULT MOTION PICTURE THEATER** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly, commonly, habitually, or consistently shown that are distinguished or characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(6) **ADULT THEATER** means a theater, concert hall, auditorium, or similar commercial establishment that regularly, commonly, habitually, or consistently features persons who appear, in person, in a state of nudity and/or semi-nudity, and/or live performances that are distinguished or characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(7) **DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS UPON** means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display 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 display of "specified anatomical areas" or "specified sexual activities."

(8) **EMPLOYEE, EMPLOYER, EMPLOYMENT** describes and pertains to any person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the 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 equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

(9) **ENFORCEMENT OFFICER** means the Chief of Police and such employee(s) of the Police Department as they may designate to perform the duties of the Chief of Police under this ordinance.

(10) **ESCORT** means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(11) **ESCORT AGENCY** means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
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(12) **ESTABLISHMENT** means and includes any of the following:

(a) the opening or commencement of any sexually oriented business as a new business;

(b) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(c) the additions of any sexually oriented business to any other existing sexually oriented business; or

(d) the relocation of any sexually oriented business; or

(e) a sexually oriented business or premises on which the sexually oriented business is located.

(13) **REGISTRANT** means a person in whose name a registration has been issued, as well as the individual listed as an applicant on the application for a registration; and in the case of a manager, a person in whose name a registration had been issued authorizing employment as a manager in a sexually oriented business.

(14) **LIVE THEATRICAL PERFORMANCE** means a play, skit, opera, ballet, concert, comedy, or musical drama.

(15) **NUDE MODEL STUDIO** means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Nebraska; or a college, junior college or university supported entirely or in part by public taxation; or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation.

(16) **NUDE, NUDITY** or a **STATE OF NUDITY** The showing or depiction of the human post-pubertal male or female genitals, pubic area or buttocks with less than a full opaque covering, the showing or depiction of covered male genitals in a discernibly turgid state, or the showing or depiction of the female breast with less than a full opaque covering of any portion thereof below the top of the areola of the nipple.

(17) **OPERATE OR CAUSE TO BE OPERATED** means to cause to function or to put or keep in a state of doing business. **Operator** means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business, or who causes to function or who puts or keeps in operation, the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or registrant of the business.

(18) **PERSON** means an individual, proprietorship, partnership, limited liability company or partnership, corporation, association, or other legal entity.

(19) **PREMISES** means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the registrant, as described in the application for a business registration pursuant to Section 105 of this ordinance;
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(20) **REGULARLY FEATURES OR REGULARLY SHOWN** means at least thirty percent (30%) of the gross floor space or retail floor space are devoted to the purpose, or at least thirty (30%) of the annual gross sales of the business are derived from that purpose.

(21) **SEMI-NUDE OR SEMI-NUDITY** means the appearance of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but 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 the areola is not exposed in whole or in part.

(22) **SEXUAL ENCOUNTER CENTER** means a business or commercial enterprise that offers for any form of consideration:

(a) physical contact in the form of wrestling or tumbling between persons of the opposite sex or persons of the same sex that is not sanctioned by a nationally recognized body of sport; or

(b) activities between persons of the opposite sex and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nudity.

(23) **SEXUALLY ORIENTED BUSINESS** means any business enterprise that:

(a) Regularly features or regularly shows the sale, display or rental of goods that are designed for use in connection with "specified sexual activities," or that emphasize matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas"; or

(b) Regularly features or regularly shows entertainment where the emphasis is on performances, live or otherwise, that depict, portray, exhibit or display "specified anatomical areas" or "specified sexual activities"; or regularly features services that provide "specified sexual activities" or "specified anatomical areas" ancillary to other pursuits, or allow participation in "specified sexual activities" ancillary to other pursuits,

(24) **SPECIFIED ANATOMICAL AREAS** means:

(a) the human male genitals in a discernibly turgid state, even if fully and opaquely covered;

(b) less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

(25) **SPECIFIED CRIMINAL ACTIVITY** means any of the following offenses:

(a) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states, or other countries.

(b) for which:

(i) 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;
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(ii) 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;

(iii) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period;

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

(26) SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

(a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;

(b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, bestiality or sodomy;

(c) masturbation, actual or simulated; or

(d) excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

(27) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in gross floor areas occupied by the business by more than twenty-five (25%) percent on the date this Ordinance takes effect or on the date of the issuance of a sexually oriented business registration.

(28) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes 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 that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

(Ord. No. 4143-10/2007)

41-103. Classification.

(1) Sexually oriented businesses allowed in the City of Hastings are classified as follows:

(a) adult bookstores, adult novelty stores, or adult video stores;

(b) adult cabarets;

(c) adult motion picture theaters;
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(d) adult theaters;

(2) Prohibited sexually oriented businesses in the City of Hastings, but not limited to:

(a) adult arcade;
(b) adult motel;
(c) nude model studio;
(d) sexual encounter center;

(Ord. No. 4143-10/2007)

41-104. Registration required for sexually oriented business.

(1) It shall be unlawful for any person to operate or maintain a sexually oriented business in the City unless the owner, operator or lessee thereof has obtained a sexually oriented business registration from the City, or to operate such business after such registration has been revoked or suspended by the City.

(2) It shall be unlawful for any person to knowingly work as an employee or manager at a sexually oriented business unless said business is registered in the City.

(3) A sexually oriented business registration shall issue for only one classification and the applicant can operate a business for only one registered location in the City.

(4) It shall be prima facie evidence that any sexually oriented business that fails to post the required adult entertainment business registration in the manner prescribed herein shall be operating unlawfully. In addition it shall be prima facie evidence that any entertainer, employee or manager who performs any service or entertainment in a sexually oriented business in which an adult business registration is not posted as specified herein, shall have knowledge that such business is not registered.

(5) Any registered sexually oriented business shall be deemed to have consented to a periodic inspection of the business premises by appropriate City officials. This inspection shall take place during hours when such sexually oriented business is open to the public, unless otherwise requested by the sexually oriented business, and shall not unreasonably interfere with the conduct of such business.

(Ord. No. 4143-10/2007)

41-105. Registration required for managers.

It is unlawful for any person to work as a manager at a sexually oriented business without first obtaining the registration to do so from the City, or to work as a manager at a sexually oriented business after such person's registration to do so has been revoked or suspended.

The owner of a sexually oriented business shall maintain the record of the names, addresses and dates of birth of all employees of said business on a monthly basis to be inspected by the Police Department.

(Ord. No. 4143-10/2007)

41-106. Registration fees.

(1) The registration year for all fees required under this chapter shall start the date of issuance. The classification of registrations and fees for each shall be as follows:
Sexually oriented business registration fee is $1000.00 per year.
Sexually oriented business manager's registration fee is $50.00 per year.

(2) In addition to the annual registration fee to be paid to the City at registration issue as required by Subsection 1 of this Section, an applicant for an initial sexually oriented business registration shall, at the time of making application, pay a nonrefundable investigation fee of $500.00 for the City to conduct an investigation of the application and for the City also to conduct inspections of the location to insure that the proposed sexually oriented business is in compliance with the locational and other restrictions set forth in this ordinance.

(3) Fees shall be paid to the City Treasurer. The application is not complete until the fee is paid. Registrations are for specific locations as indicated on the registration and are nontransferable. Any change in the type of sexually oriented business shall invalidate the adult business registration. No more than one sexually oriented business may occupy a business premise at one time.

(4) The renewal fee shall be waived when no changes are made to the original application, and when no instances from Section 114(2) are committed in a registered sexually oriented business within the previous registered year.
(Ord. No. 4143-10/2007)

41-107. Registration application for a sexually oriented business.

(1) An application for a registration must be made to the City Clerk on a form provided by the City.

(2) The applicant must meet all qualifications stated in this Chapter before the registration is issued and continuously thereafter during the registration term. The application shall require and the applicant shall provide such information and documentation as is specified in this Chapter.

(3) If a person who wishes to operate a sexually oriented business as an individual, he must sign the application for the registration as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each officer, director, general partner, managing partner or other person who will participate directly in decisions relating to management of the business shall sign the application for the registration as applicant. Each applicant must meet the qualifications as stated in this Chapter and each applicant shall be considered as a registrant if a registration is granted.

(4) The completed application for a sexually oriented business registration shall contain the following information and shall be accompanied by the following documents:

(a) If the applicant is:

(i) An individual, the individual shall state his or her legal name and any aliases and submit proof that he or she is twenty-one (21) or more years of age;

(ii) A partnership or limited liability company, the partnership or limited liability company shall state its complete name, and the names of all partners or members, residence address and whether the partnership or company is general or limited, a copy of the partnership, LLC/LLP organizational agreement, if any, and verification of current state registration, if any;

(iii) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the name, capacity and address of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of
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process.

(b) Name of business. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state the sexually oriented business’s name and submit any registration documents.

(c) The classification of registration for which the applicant is filing.

(d) The location of the proposed sexually oriented business, including a legal description of the property, street address and telephone number(s), if any.

(e) The applicant's mailing address and residential address.

(f) The applicant's driver’s license number, date of birth, and state or federal issued tax identification number.

(g) The application must 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 must be drawn to scale with marked dimensions of both the interior and exterior dimensions.

(h) A statement detailing the registration history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state, or country, has ever had any registration, license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name(s) under which the registration was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(i) A statement whether the applicant has, within the past five (5) years, been convicted, or is awaiting trial on pending charges of a “specified criminal activity” as defined in Section 102. If so, state the “specified criminal activity” involved, the date, place and jurisdiction of each.

(5) Each application for the registration under this ordinance shall contain a statement under oath that:

(a) The applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is true and correct; and,

(b) The applicant has read the provisions of this article.

(6) A person commits a misdemeanor if he or she operates a sexually oriented business without a valid registration issued by the City for that particular classification of business.

(7) The applicant must be qualified according to the provisions of this Chapter and the premises must be inspected and found to be in compliance with city ordinances and this Chapter by the City of Hastings Development Services Department, Fire Department and Hastings Police Department.

(8) The fact that a person possesses other types of state or county licenses/registrations does not exempt him or her from the requirement of obtaining a sexually oriented business registration.

(Ord. No. 4143-10/2007)
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41-108. Registration application for managers.

(1) Applications for manager’s registration to work in a sexually oriented business, whether original or renewal must be made to City Clerk by the person to whom the employee registration shall issue. Each application for a manager’s registration shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the City Clerk. Applications must be submitted to the office of the City Clerk or the City Clerk’s designee during regular working hours. Each applicant shall be required to give the following information on the application form:

(a) The applicant’s given name, and any other names by which the applicant is or has been known, including “stage” names and/or aliases;

(b) Age, and date and place of birth;

(c) Height, weight, hair color, and eye color;

(d) Present residence address and telephone number;

(e) Present business address and telephone number;

(f) Date, issuing state, and number of photo driver’s license, or other state issued identification card information; and

(g) Proof that the individual is at least eighteen (18) years old.

The personal information provided in this subsection shall be confidential, and shall not be disclosed to the public except to the extent required by state or federal law.

(2) Attached to the application form for any registration under this ordinance shall be the following:

(a) A color photograph per passport photo dimension.

(b) The applicant shall submit a set of finger prints collected by a law enforcement agency. Any fees for photographs and fingerprints shall be paid by the applicant.

(c) A statement detailing the registration, license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state, or country, has ever had any registration, license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name(s) under which the registration was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(d) A statement whether the applicant has, within the past five (5) years, been convicted, or is awaiting trial on pending charges, of a “specified criminal activity” as defined in Section 102, if so, the “specified criminal activity” involved, the date, place and jurisdiction of each.

(3) Every application for a registration under this ordinance shall contain a statement under oath that:

(a) The applicant has personal knowledge of the information contained in the application, and
that the information contained therein and furnished therewith is true and correct; and,

(b) The applicant has read the provisions of this article.

(4) A person commits a misdemeanor if he or she is employed by a sexually oriented business without a valid registration issued by the City for that particular classification of business.

(5) The applicant must be qualified according to the provisions of this Chapter.

(6) The fact that a person possesses other types of state or county licenses/registration does not exempt him or her from the requirement of obtaining a sexually oriented business registration.

(Ord. No. 4143-10/2007)

41-109. Investigation of application.

(1) Upon receipt of a complete application for a sexually oriented business registration, the City Clerk shall forward a copy of the application to the Police Department who shall conduct an investigation of the applicant, and the Development Services Department and the Fire Department who shall inspect the location.

(2) The Police Department, Development Services Department and the Fire Department shall complete their investigations and shall issue an investigation report within twenty (20) business days of receipt of the application by the City Clerk.

(Ord. No. 4143-10/2007)

41-110. Registration issuance and display.

(1) The City Clerk shall approve the issuance of a registration to an applicant within 30 calendar days after receipt of an application unless he or she finds one or more of the following to be true:

(a) An applicant is not 21 or more years of age.

(b) An applicant is currently required to register pursuant to the Nebraska Sex Offender Registration Act.

(c) An applicant or an applicant’s spouse is overdue in his or her payment to the city or county of fees, fines, or penalties assessed against him or her or imposed upon him or her in relation to a sexually oriented business.

(d) An applicant has failed to provide information reasonably necessary for issuance of the registration including all information requested on the application form or has falsely answered a question or request for information on the application form.

(e) The premises to be used for the sexually oriented business is not in compliance with the applicable state or local health, zoning, building code, fire and property maintenance ordinances of the City of Hastings.

(f) The investigation, inspection and registration fees required by this chapter have not been paid.

(g) The applicant has been convicted of a “specified criminal activity” as defined in Section 102 of this ordinance;
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(2) The City Clerk, upon approving the issuance of a sexually oriented business registration, shall cause to notify the applicant of that action and that the applicant must pay the investigation and registration fees at the Office of the City Clerk. The City Clerk’s approval of the issuance of a registration does not authorize the applicant to operate a sexually oriented business until the applicant has paid all fees required by this Chapter and has obtained possession of the registration.

(3) The City Clerk, upon denial of the issuance of sexually oriented business registration, shall cause to be sent to the applicant, by certified mail, return receipt requested, written notice of that action and the applicant can appeal such decision to the City Council, in writing filed with the City Clerk, within thirty (30) calendar days of the date of denial. City Council will hear the appeal within thirty (30) calendar days from the date the written appeal is received. After hearing, Council will affirm or reverse the decision of the Chief of Police within thirty (30) calendar days after conclusion of the hearing. The hearing will be informal and rules of evidence do not apply. The applicant has the right to be represented. In case of reversal, the registration shall be issued. The applicant has the option to seek immediate judicial review.

(4) The registration, if granted, must state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the classification for which the registration is issued. The registration must be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(5) All sexually oriented businesses shall conspicuously display the following signs of which uppercase letters shall be at least two inches high and lowercase letters at least one inch high:

(a) At the interior of the entrances to the premises, display signs which read as follows:

THIS SEXUALLY ORIENTED BUSINESS IS REGULATED AND REGISTERED WITH THE CITY OF HASTINGS, NEBRASKA

(b) At the interior of the entrances to the premises, display signs which read as follows:

EMPLOYEES ARE:

Not permitted to engage in any type of sexual conduct or prostitution on the premises or to fondle caress or touch the breasts, pubic region, buttocks or genitals of any employee, patron, or other entertainer or to permit any employee, patron, or other entertainer to fondle, caress or touch the breasts, pubic region, buttocks or genitals of said entertainer.

Not permitted to be nude, unclothed, or in less than opaque attire, costume or clothing so as to expose to view any portion of the breasts below the top of the areola, or any portion of the pubic region, buttocks and or genitals.

Not permitted to demand or collect any payment or gratuity from any patron for entertainment while in the state of semi-nudity.

Not permitted to perform, except on a stage of at least 24 inches above the floor level of the audience and to maintain at least a 4-foot separation from any patron at all times while performing.

PATRONS ARE:

Not permitted to be upon the stage at any time.
Sexually Oriented Businesses

Not permitted to touch, caress or fondle the breasts, pubic region, buttocks or genitals of any employee, server or entertainer or engage in solicitation for prostitution.
(Ord. No. 4143-10/2007)

41-111. Inspections.

(1) An applicant, registrant, operator or employee shall permit representatives of the City of Hastings Police Department, Development Services Department, Fire Department and any other state, county or city agency in the performance of any function connected with the enforcement of this Ordinance or other applicable laws, to inspect the premises of a sexually oriented business, for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(2) An applicant, registrant or operator of a sexually oriented business or his or her agent or employee commits a misdemeanor offense if he refuses to permit an inspection of the premises by a representative of an agency designated in Subsection 1 of this Section at any time it is occupied or open for business.
(Ord. No. 4143-10/2007)

41-112. Registration term and renewal.

Each registration shall expire one (1) year from the January 1st and may be renewed only by making an application as provided in this Chapter. Application for renewal should be made at least thirty (30) calendar days before the expiration date, and when made less than thirty (30) calendar days before the expiration date, the expiration of the registration will not be affected.
(Ord. No. 4143-10/2007)

41-113. Registration suspension.

(1) The Chief of Police may suspend a registration for a period not to exceed thirty (30) calendar days if he or she determines that a registrant or an employee of a registrant:

(a) Violated or is not in compliance with any section of this Ordinance.

(b) Engaged in or permitted or did not control excessive use (exceeding a Blood Alcohol Concentration of 0.8) of alcoholic beverages on the sexually oriented business premises.

(c) Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter.

(d) Knowingly permitted gambling by any person on the sexually oriented business premises.

(2) Appeal of the decision of the Chief of Police as to the existence of or non-compliance with the above matters shall be made to the City Council. Hearing will be informal and the rules of evidence shall not apply. The hearing will occur within fifteen (15) calendar days from the filing of the appeal upon written notice mailed at least ten (10) calendar days prior to the hearing to the business address and applicant residence address as it appears on the application which the registrant is to amend if the residence address changes.
(Ord. No. 4143-10/2007)

41-114. Registration revocation.

(1) The City Council may revoke a registration if a cause of suspension in Section 113 occurs and
the registration has been suspended within the proceeding twelve (12) months.

(2) The City Council shall revoke a registration if the Council determines that:

(a) A registrant gave false or misleading information in the material submitted during the application process;

(b) A registrant or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;

(c) A registrant or an employee has knowingly allowed prostitution on the premises;

(d) A registrant or an employee knowingly operates the sexually oriented business during a period of time when the registrant’s registration was suspended;

(e) A registrant has been convicted of a specified criminal activity listed in Section 102 for which the time period required in Section 102 has not elapsed.

(f) On two or more occasions within a twenty-four month period, a person or persons committed an offense in or on the registered premises of a crime listed in Section 102 for which a conviction has been obtained and the person or persons convicted were registrants or employees of the sexually oriented business at the time the offenses were committed; or

(g) A registrant or an employee of the sexually oriented business has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or other sex act to occur in or on the registered premises.

(h) Any violations of Section 113(1)(a)-(d) of this Chapter.

(3) The determination by the City Council as to the existence of or non-compliance with the above matters shall be made in open City Council session after mailing notice of hearing time, place and date to the registration holder or its representatives at least fifteen (15) calendar days in advance of said hearing, stating that Council will consider revoking the registration and the grounds therefore. At said hearing, the registration holder or its representatives may present oral or written evidence in support of the continuance of its registration and may confront and question any witnesses or evidence in opposition to the continuance of its registration. Although rules of evidence do not apply, any decision will be based on credible evidence of violation of the requirements as stated herein.

(4) After revocation, the registrant shall not be issued a sexually oriented business registration for two (2) years from the date revocation became effective. If, subsequent to revocation, the City Council finds that the basis for the revocation has been corrected or abated, the applicant may be granted a registration if at least ninety (90) calendar days have elapsed since the date revocation became effective and a corrective plan which addresses the violation and assures that the violation will not occur again is provided to Council. If the registration was revoked under Subsection (2)(e) above, an applicant may not be granted another registration until the appropriate number of years required under Section 102 of this Chapter has elapsed.

(Ord. No. 4143-10/2007)

41-115. Transfer of registration.

A registrant shall not transfer his/her registration to another, nor shall a registrant operate a sexually oriented business under the authority of a license/registration at any place other than the location
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designated in the registration.
(Ord. No. 4143-10/2007)

41-116. Location of sexually oriented business.

(1) No sexually oriented business shall be established, operated or caused to be operated, in any zoning district other than an I-1 or I-2 zoning district as defined in the City of Hastings Ordinances.

(2) No sexually oriented business shall be established, operated or caused to be operated, within five hundred feet (500') of:

(a) a church or other building primarily used for religious services or associated church structure such as a parish or fellowship hall;

(b) childcare facilities,

(c) a property line of a lot devoted to a residential use, either single or multiple family;

(d) a park;

(e) a hospital;

(f) community recreation center;

(g) public library,

(h) facility for youth service such as youth center, boys or girls club, scout, 4-H or other youth program meeting building.

(3) No sexually oriented business shall be established, operated or caused to be operated, within one thousand feet (1000') of a public or private educational facility including but not limited to nursery schools, preschools, elementary schools, middle schools, high schools, special education schools and community colleges. School includes the school grounds and playgrounds.

(4) No sexually oriented business shall be established, operated, caused to be operated or substantially enlarged, within five hundred feet of another sexually oriented business.

(5) For the purposes of Section 116(2)-(3), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Section 116(2)-(3).

The presence of any political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

(6) For purposes of Subsection 4 of this Section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to any intervening structures or objects, from the closest exterior wall of the structure in which each business is located.
(Ord. No. 4143-10/2007)

41-117. Nonconforming uses.
(1) Any sexually oriented business lawfully operating on the effective date of this ordinance that is in violation of this Chapter shall be deemed a nonconforming use. The nonconforming use will be permitted to continue unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) calendar days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use upon application and issuance of a registration. Such nonconforming use shall not be made to conform to the location and operational standards unless said use is in violation of Section 113(1)(b)-(d) or Section 114 of this Chapter.

(2) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the establishment of a Section 116(2)-(3) use, subsequent to the grant of the sexually oriented business registration, within 500 feet of the sexually oriented business. This provision applies only to the renewal of a valid registration, and does not apply when an application for a registration is submitted after a registration has expired, has not been continuously in effect, or has been revoked.

(Ord. No. 4143-10/2007)

41-118. Additional regulations concerning public nudity.

(1) It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a state of nudity in a sexually oriented business. It is a defense to prosecution under this subsection if the person was in a restroom not open to the public view or visible by any other person, or if the person was an employee in a dressing room not open to the public or within the public view.

(2) It shall be a misdemeanor for a person who, with knowledge and intent, appears in person in a semi-nude condition on the sexually oriented business premises, unless the person is an employee who, while semi-nude, is at least four (4) feet from any patron or customer and on a stage at least two (2) feet above the floor level of the audience.

(3) It shall be a misdemeanor for an employee, while semi-nude on the sexually oriented business premises, to solicit any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude.

(4) It shall be a misdemeanor for an employee, while semi-nude, to touch a patron or the clothing of a patron, or for a patron to touch a semi-nude employee or the clothing of a semi-nude employee, while said employee is on the premises of the sexually oriented business.

(Ord. No. 4143-10/2007)


No person under the age of eighteen (18) years shall be allowed on the premises of a sexually oriented business and it is the registrant’s affirmative duty to enforce this minor age restriction through supervision and verification by identification.

(Ord. No. 4143-10/2007)

41-120. Hours of operation.

No sexually oriented business may remain open at any time between the hours of one o’clock (1:00) a.m. and six o’clock (6:00) a.m. on weekdays and Saturdays and one o’clock (1:00) a.m. and noon (12:00) p.m. on Sundays.

(Ord. No. 4143-10/2007)
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41-121. Display of sexually oriented materials to minors.

(1) No registrant or employee of a registrant shall permit a person under the age of eighteen (18) years of age to be present on its business premises, which age limitation will be enforced by age verification by said business.

(2) No sexually oriented business shall display posters, signs, depictions or other visual representation on outside walls or any inside or outside window which depict any of the following:

(a) human sexual intercourse, masturbation or sodomy;

(b) fondling or other erotic touching of human genitals, buttocks, or female breasts;

(c) less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola of the nipple; or

(d) human male genitals in a discernibly turgid state, whether covered or uncovered.

(3) Each sexually oriented business shall be limited to one (1) wall mounted advertising sign no greater than one (1) square foot of sign per linear foot of wall length, not to exceed a total of fifty (50) square feet, said sign shall not flash, blink or move by mechanical means and shall not extend above the roof line of the building.

(4) The windows and doors of a sexually oriented business will be tinted to the extent that there is no view of the interior from the exterior of the business.

(5) “Display” means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:

(a) it is available to the general public for handling and inspection; or

(b) the cover or outside packaging on the item is visible to members of the general public.

(Ord. No. 4143-10/2007)

41-122. Enforcement and penalties.

Any person who violates any of the prohibitions or provisions of any article or Section of this Chapter and Ordinance shall be deemed guilty of a misdemeanor. Unless otherwise specified in the particular article or Section for which the person stands convicted of violating, the penalty for such violation shall be a fine in any sum not exceeding five hundred dollars ($500.00) or imprisonment for a term not to exceed six (6) months or both said fine and imprisonment at the discretion of the sentencing court. A separate violation shall be deemed to have been committed on each 24-hour period that a violation continues after conviction.

(Ord. No. 4143-10/2007)