

ORDINANCE 879

AN ORDINANCE AMENDING TITLE XIII, CHAPTER 132, BY ADDING SECTIONS 132.01 THROUGH 132.22, INCLUSIVE, RELATED TO SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR PENALTIES; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF GOTHENBURG, NEBRASKA AS FOLLOWS:

Section 1. Title XIII, Chapter 132, is hereby amended by adding Sections 132.01 through 132.22, inclusive, of the Gothenburg Municipal Code to read as follows:

## **CHAPTER 132: SEXUALLY ORIENTED BUSINESSES**

Section

132.01 Purpose and intent

132.02 Findings

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## **§ 132.01 PURPOSE AND INTENT.**

It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, morals 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 chapter 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 not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material or sexual activities.

## **§ 132.02 FINDINGS.**

Based on convincing documented evidence, studies, findings and reports concerning the negative secondary effects of sexually oriented businesses regarding both commercial and residential areas and the nexus between sexually oriented businesses, obscene materials and sexual exhibits and alcohol consumption, and illegal drug distribution and use, the City Council finds:

(A) Sexually oriented businesses have negative secondary effects on the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, the downgrading of property values, the downgrading of adjacent neighborhoods making adjacent neighborhoods significantly less attractive and less safe for raising children and denigrating both

residential life and commercial activity for other types of businesses and sexually oriented businesses downgrade the quality of life and fitness of property for other uses in areas both immediate and adjacent to such businesses.

(B) The negative secondary effects of sexually oriented businesses are increased when they are located in close proximity to each other and when the service or consumption of alcohol is permitted at or near such locations.

(C) Improper conduct involving sexual acts occurs at sexually oriented businesses which provide private or semi-private booths or viewing rooms for the viewing of films, videos or live performances.

(D) The findings noted above raise substantial governmental concerns for the health, safety and welfare of the citizens of the city and it is appropriate for the purpose of promoting and protecting the health, safety and welfare of the citizens of the city particularly the children of the community and those conducting general business that reasonable regulations be enacted so as to address the substantial governmental concerns to minimize and control the negative secondary effects of sexually oriented businesses and thereby promote and protect the health, safety and welfare of the citizens of the city, protect the citizens from increased crime, preserve the value of property, and preserve the quality of life and the quality and character of surrounding neighborhoods for residential and commercial purposes.

(E) The enactment of reasonable regulations of sexually oriented businesses which involve locational criteria, licensing criteria, operational criteria and the prohibition of alcohol and illegal substance use are appropriate to address the substantial governmental concerns and protect the health, safety and welfare of the citizens of the city.

(F) A reasonable licensing procedure and zoning requirements are appropriate mechanisms to place the burden of reasonable regulations on the owners of sexually oriented businesses and such a licensing procedure will place an incentive on the owners to see that the sexually oriented business is operated in a manner which is consistent with the health, safety and welfare of patrons, employees and citizens of the city.

### **§ 132.03 DEFINITIONS.**

For purposes of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***ADULT ARCADE.*** Any place to which the public is permitted or invited wherein coin operated or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to 5 or fewer persons per machine at any 1 time, and where the images so displayed are distinguished or characterized by the depicting or describing of specified sexual activities and/or specified anatomical areas.

***ADULT BOOKSTORE, ADULT VIDEO STORE or ADULT NOVELTY STORE.***

(1) A commercial establishment which has a significant or substantial portion of its stock-in-trade, or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for sale or rental, for any form of consideration, any 1 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, or

(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.

(2) 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.

**ADULT CABARET.** A nightclub, bar, restaurant, or similar commercial establishment which regularly features any of the following:

(1) Persons who appear in a state of nudity.

(2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

(3) Films, motion pictures, video cassettes or 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.

**ADULT MOTEL.** A hotel, motel or similar commercial establishment which does any of the following:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, compact discs or other photographic reproductions which are 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 which advertises the availability of this adult type of photographic reproductions.

(2) Offers a sleeping room for rent for a period of time that is less than 5 hours.

(3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 5 hours.

**ADULT MOTION PICTURE THEATER.** A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by, or where the principal subject of depiction or description is, specified sexual activities and/or specified anatomical areas.

**ADULT THEATER.** A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

**EMPLOYEE, EMPLOY and EMPLOYMENT.** Describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. **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.

**ESCORT.** 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.

**ESCORT AGENCY.** A person or business association, who furnishes, offers to furnish, or advertises to furnish escorts as 1 of its primary business purposes for a fee, tip, or other consideration.

**ESTABLISHMENT.** Any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business.
- (2) The conversion of an existing business to a sexually oriented business or from one type of sexually oriented business to another type or types of sexually oriented business.
- (3) The addition of any sexually oriented business to any other existing sexually oriented business.
- (4) The relocation of any sexually oriented business.

**LICENSEE.** A person in whose name a license to operate a sexually oriented business has been issued but also includes the individual listed as an applicant on the application for a license.

**NUDE MODEL STUDIO.** A commercial establishment which regularly features a person who appears in a state of nudity and is provided to be observed, sketched, drawn, painted, sculpted, or photographed by other persons who pay money or any form of 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.

**NUDE, NUDITY or 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. This definition shall include the entire portion of the human female breast below the top of the areola of the nipple, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other clothing.

**OPERATE or CAUSE TO BE OPERATED.** 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 or not that person is an owner, part owner, or licensee of the business.

**PERSON.** An individual, proprietorship, partnership, limited liability company or partnership, corporation, association or other legal entity.

**RESIDENTIAL.** A single family, two family, or multiple family use as defined in the ordinances of the City of North Platte.

**SEMI-NUDE.** A state of dress in which clothing covers no more than the genitals, pubic region, and the female breast below the top of the areola of the nipple, with other portions of the body covered by supporting straps, materials or devices. This definition shall include the entire portion of the human female breast below the top of the areola of the nipple, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, shirt, leotard, bathing suit or other clothing.

**SEXUAL ENCOUNTER CENTER.** A business or commercial enterprise that offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex.
- (2) Activities between male and female persons and/or persons of the same sex when 1 or more of the persons is in a state of nudity or semi-nude.

**SEXUALLY ORIENTED BUSINESS.** An adult arcade, adult bookstore or adult novelty store or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, semi-nude model studio or sexual encounter center.

**SPECIFIED ANATOMICAL AREAS.** The human, post-pubertal male or female genitals, pubic area, or buttocks with less than a full opaque covering, the male genitals in a discernibly turgid

state even if completely and opaquely covered, or the female breast with less than a full opaque covering of any portion thereof below the top of the areola of the nipple.

***SPECIFIED SEXUAL ACTIVITIES.***

- (1) The fondling or other erotic touching of human genitals, pubic area, buttocks or female breasts whether clothed or unclothed; or
- (2) Acts whether actual or simulated, of human sexual intercourse, oral copulation, masturbation, or sodomy; or
- (3) Excretory functions as part of or in connection with any of the activities set forth in divisions (1) and (2) above.

***SUBSTANTIAL ENLARGEMENT.*** The increase in floor area occupied by the business by more than 25% as the floor area exists on the date this chapter takes effect or on the date of the issuance of a sexually oriented business license.

***TRANSFER OF OWNERSHIP OR CONTROL.***

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

**§ 132.04 CLASSIFICATION OF BUSINESSES.**

Sexually oriented businesses are classified as follows:

- (A) Adult arcade;
- (B) Adult bookstore, adult video store or adult novelty store;
- (C) Adult cabaret;
- (D) Adult motel;
- (E) Adult motion picture theater;
- (F) Adult theater;

(G) Escort agency;

(H) Nude model studio;

(I) Sexual encounter center.



## **§ 132.05 LICENSE REQUIRED; APPLICATION FOR LICENSE.**

(A) It is unlawful to establish, operate, or cause to operate, a sexually oriented business without a valid license issued by the city for the particular type of classification of business.

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

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

(D) If a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a license 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 a license as applicant. Each applicant must meet the qualifications as stated in this chapter and each applicant shall be considered as a licensee if a license is granted.

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

(1) If the applicant is:

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

(b) 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;

(c) 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 process.

(2) 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.

(3) Whether the applicant has been convicted of a crime as specified in § 132.07(A)(7)(a), and, if so, the crime, date, place and jurisdiction.

(4) Whether the applicant has had a previous license or holds a present license under this chapter or other similar sexually oriented business ordinances from another city or county and whether any license has been denied, suspended or revoked in this or any other jurisdiction, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant has been a partner or member in a partnership or limited liability company or an officer, director, or principal stockholder of a corporation that is licensed under this chapter or in another jurisdiction or whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the license was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(5) Whether the applicant holds any other licenses under this chapter or operates other similar sexually oriented businesses in another city or county and, if so, the names and locations of such other businesses.

(6) The classification of license for which the applicant is filing.

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

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

(9) The applicant's driver's license number, social security number, and state or federal issued tax identification number.

(10) 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 a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus 6 inches.

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

(G) 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 the law and this chapter by the Building Inspector and Police Department.

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

## **§ 132.06 INVESTIGATION OF APPLICATION.**

(A) Upon receipt of a copy of an application for a sexually oriented business license, the Chief of Police or designee shall conduct an investigation of the applicant and application including a location inspection and shall issue an investigation report.

(B) The Chief of Police or designee shall forward a copy of the application and investigation report to the Building Inspector and the Building Inspector shall inspect the location.

## **§ 132.07 LICENSE ISSUANCE AND DISPLAY.**

(A) The Chief of Police shall recommend to the City Clerk approval of the issuance of a license to an applicant within 20 days after receipt by the City Clerk of an application unless he or she finds 1 or more of the following to be true:

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

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

(3) 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.

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

(5) The premises to be used for the sexually oriented business is not in compliance with state or local building codes, rules and regulations.

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

(7) An applicant has been convicted of a crime:

(a) Involving:

1. Any of the following offenses as described in Nebraska State Statutes:

a. Prostitution;

b. Pandering;

c. Keeping a place of prostitution;

d. Debauching a minor;

e. Obscenity;

f. Contributing to the delinquency of a child;

g. Child pornography;

h. Possession, distribution or sale of child pornography;

2. Any of the following offenses as described in Nebraska State Statutes:

a. Incest;

b. Public indecency;

c. Allowing a child to participate in child pornography;

3. Sexual assault or sexual assault of a child as described in Nebraska State Statutes;

4. Solicitation of a child, or harboring a runaway child as described in Nebraska State Statutes; or

5. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

(b) For which:

1. Less than 5 years have elapsed since the date of conviction or the date of release from confinement for the conviction, or the date of release from probation or parole, whichever is the later date, if the conviction is a misdemeanor offense;

2. Less than 10 years have elapsed since the date of conviction or the date of release from confinement for the conviction, or the date of release from probation or parole, whichever is the later date, if the conviction is a felony offense; or

3. Less than 10 years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, or the date of release from probation or parole, whichever is the later date, if the convictions are of 2 or more misdemeanors of the offenses listed in division (A)(7)(a) above.

(B) The fact that a conviction is being appealed has no effect on the disqualification of the applicant under division (A) of this section.

(C) An applicant who has been convicted of an offense listed in division (A)(7)(a) above may qualify for a sexually oriented business license only when the time period required by division (A)(7)(b) has elapsed and all fines reference the criminal offenses have been fully paid.

(D) The City Clerk shall approve or deny the issuance of a license to an applicant within 45 days after receipt of an application. The City Clerk, upon approving the issuance of a sexually oriented business license, shall cause to be sent to the applicant, by certified mail, return receipt requested, written notice of that action and that the applicant must pay the investigation/inspection and license fees at the Office of the City Clerk. The City Clerk's approval of the issuance of a license 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 license. The City Clerk, upon denial of the issuance of sexually oriented business license, 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 30 days of the date of denial. City Council will hear the appeal within 30 days from the date the written appeal is received. After hearing, Council will affirm or reverse the decision of the City Clerk within 30 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 license shall issue.

(E) The license, 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 license is issued. The license 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.

(F) A sexually oriented business license shall issue for only 1 classification and the applicant can operate a business for only 1 licensed location in the city.

(G) The Police Department, Fire Department, and the City Building Inspector shall complete their certification that the premises is in compliance or not in compliance within 20 days of receipt of the application by the City Clerk. The certifications of the Building Inspector and Fire Department shall be promptly presented to the Chief of Police.

### **§ 132.08 LICENSE FEE.**

(A) The amount of the annual license fee for a sexually oriented business shall be reflected in the fee resolution adopted annually by the City Council

(B) In addition to the annual license fee to be paid to the city at license issue as required by division (A) of this section, an applicant for an initial sexually oriented business license shall, at the time of making application, pay a nonrefundable investigation fee, also in an amount reflected in the fee resolution adopted annually by the City Council, 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 location and other restrictions set forth in § 132.14

## **§ 132.09 INSPECTIONS.**

(A) An applicant, licensee, operator or employee shall permit representatives of the Police Department, Fire Department, City Building Inspector, and any other state, county or city agency in the performance of any function connected with the enforcement of this chapter 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.

(B) An applicant, licensee 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 division (A) of this section at any time it is occupied or open for business.

## **§ 132.10 LICENSE TERM AND RENEWAL.**

(A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in this chapter.

(B) A sexually oriented business license may be renewed only by making application as provided in §132.05. Application for renewal should be made at least 45 days before the expiration date, and when made less than 45 days before the expiration date, the expiration of the license will not be affected by the pendency of the application.

## **§ 132.11 LICENSE SUSPENSION.**

(A) The Chief of Police shall direct the City Clerk to suspend a license for a period not to exceed 30 days if he or she determines that a licensee or an employee of a licensee:

- (1) Violated or is not in compliance with any section of this chapter.
- (2) Is required to register under the Nebraska Sex Offender Registration Act.
- (3) Engaged in or permitted or did not control excessive use of alcoholic beverages on the sexually oriented business premises.
- (4) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.
- (5) Knowingly permitted gambling by any person on the sexually oriented business premises.

(B) Appeal of the decision of the City Clerk and 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 15 days from the filing of the appeal upon written notice mailed at least 10 days prior to the hearing to the business address and applicant residence address as it appears on the application which the licensee is to amend if the residence address changes.

## **§ 132.12 LICENSE REVOCATION.**

(A) The City Council shall revoke a license if a cause of suspension in § 132.11 occurs and the license has been suspended within the preceding 12 months.

(B) The City Council shall revoke a license if Council determines that:

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

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

(3) A licensee or an employee has knowingly allowed prostitution on the premises;

(4) A licensee or an employee knowingly operates the sexually oriented business during a period of time when the licensee's license was suspended;

(5) A licensee has been convicted of an offense listed in § 132.07(A)(7)(a) for which the time period required in § 132.07(A)(7)(b) has not elapsed.

(6) On 2 or more occasions within a 24-month period, a person or persons committed an offense in or on the licensed premises of a crime listed in § 132.07(A)(7)(a) for which a conviction has been obtained and the person or persons convicted were licensees or employees of the sexually oriented business at the time the offenses were committed; or

(7) A licensee 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 licensed premises. This division shall not apply to an adult motel unless the licensee or employee knowingly allowed such sexual acts to occur either in exchange for money or in a public place or within public view.

(C) After revocation, the licensee shall not be issued a sexually oriented business license for 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 license if at least 90 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 license was revoked under division (B)(5) above, an applicant may

not be granted another license until the appropriate number of years required under § 132.07(A)(7)(b) has elapsed.

(D) 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 license holder or its representatives 15 days in advance of said hearing, stating that Council will consider revoking the license and the grounds therefore. At said hearing, the license holder or its representatives may present oral or written evidence in support of the continuance of its license and may confront and question any witnesses or evidence in opposition to the continuation of its license. Although rules of evidence do not apply, any decision will be based on credible evidence of violation of the requirements as stated herein.

### **§ 132.13 TRANSFER OF LICENSE.**

A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the location designated in the license.

### **§ 132.14 LOCATION OF SEXUALLY ORIENTED BUSINESS.**

(A) No sexually oriented business shall be established, operated or caused to be operated, in any zoning district other than an I-2 zoning district as defined in the city ordinances.

(B) No sexually oriented business shall be established, operated or caused to be operated, within 1000 feet of:

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

(2) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, home schools, elementary schools, middle schools, high schools, special education schools and community colleges. School includes the school grounds and playgrounds.

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

(4) A park;

(5) A hospital;

(6) Community recreation center;

(7) Public library;

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



(C) No sexually oriented business shall be established, operated, caused to be operated or substantially enlarged, within 1000 feet of another sexually oriented business.

(D) (1) For the purposes of § 132.14(B), 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 § 132.14(B).

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

(E) For purposes of division (C) of this section, the distance between any 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.

### **§ 132.15 NONCONFORMING USES.**

(A) Any sexually oriented business lawfully operating on December 18, 2012, that is in violation of this chapter shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed 3 years, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 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 license.

(B) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the establishment of a facility as defined in § 132.14 , subsequent to the grant of the sexually oriented business license, within 1000 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired, has not been continuously in effect, or has been revoked.

### **§ 132.16 FILMS OR VIDEOS.**

(A) A person who operates or causes to be operated a sexually oriented business, classified as an adult arcade, which exhibits on the premises in a viewing room of 150 square feet or less of floor space a film, video, cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) It is the duty of the owners and operator of the premises to ensure that at least 1 employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(2) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has 2 or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any reason from at least 1 of the manager's stations and all must be staffed when viewing access is made available so that all areas other than restrooms are supervised at all times viewing access is permitted. The supervision required in this division must be by direct line of sight from the manager's station.

(3) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in division (A)(2) above remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to this chapter.

(4) No viewing room may be occupied by more than 1 person at any time.

(5) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than 1 foot-candle as measured at the floor level.

(6) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(B) A person having a duty under division (A) above commits a misdemeanor if he or she knowingly fails to fulfill that duty.

### **§ 132.17 ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY OR SEMI-NUDITY.**

(A) No person shall appear, in a sexually oriented business, in a state of nudity or engage in or simulate specified sexual activities.

(B) No person shall appear, in a sexually oriented business, in a seminude condition unless the person is an employee who, while seminude, shall be at least 6 feet from any patron or customer and on a stage at least 2 feet from the door.

(C) No employee shall, while semi-nude in a sexually oriented business, solicit any pay or gratuity from any patron or customer, and no patron or customer shall pay or give any gratuity to any employee while said employee is semi-nude in a sexually oriented business.

(D) No employee shall, while semi-nude in a sexually oriented business, touch a patron or customer or the clothing of a patron or customer.

(Ord. 3739, passed 10-21-2008) Penalty, see § 132.22

### **§ 132.18 ADDITIONAL REGULATIONS CONCERNING ALCOHOL.**

No sexually oriented business shall sell or serve alcohol and no sexually oriented business shall permit the consumption of alcohol on the premises of the sexually oriented business.

### **§ 132.19 PROHIBITION OF CHILDREN IN A SEXUALLY ORIENTED BUSINESS.**

No person under the age of 19 years shall be allowed on the premises of a sexually oriented business and it is the licensee's affirmative duty to enforce this minor age restriction through supervision and verification by identification.

### **§ 132.20 HOURS OF OPERATION.**

No sexually oriented business may remain open at any time between the hours of 1:00 a.m. and 8:00 a.m. on weekdays and Saturdays and 1:00 a.m. and 12:00 p.m. on Sundays.

### **§ 132.21 DISPLAY OF SEXUALLY ORIENTED MATERIALS TO MINORS.**

(A) No licensee or employee of a licensee shall permit a person under the age of 19 years of age to be present on its business premises, which age limitation will be enforced by age verification by said business.

(B) 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:

- (1) Human sexual intercourse, masturbation or sodomy;
- (2) Fondling or other erotic touching of human genitals, buttocks, or female breasts;
- (3) 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
- (4) Human male genitals in a discernibly turgid state, whether covered or uncovered.

(C) 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.

(D) **DISPLAY** means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:

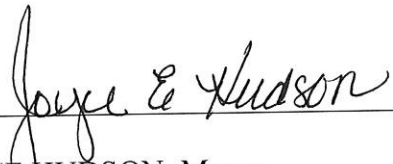
- (1) It is available to the general public for handling and inspection; or
- (2) The cover or outside packaging on the item is visible to members of the general public.

**§ 132.22 PENALTY.**

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 \$500 or imprisonment for a term not to exceed 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.

Passed and approved this 18<sup>th</sup> day of December, 2012.

CITY OF GOTHENBURG, NEBRASKA

  
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JOYCE HUDSON, Mayor

ATTEST:

  
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CONNIE L. DALRYMPLE, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

MICHAEL L. BACON, City Attorney