

ORDINANCE NO. 1397

AN ORDINANCE TO CREATE AND ENACT A NEW CHAPTER 27, CITY OF JAMESTOWN CODE OF ORDINANCES, REGULATING THE SEXUALLY ORIENTED BUSINESSES OF ADULT CABARETS AND ESCORT SERVICE, BY PROVIDING FOR LEGISLATIVE PURPOSES, FINDINGS AND INTENT; DEFINITIONS; NOTICE; PENALTIES, REMEDIES AND RELIEF; REQUIRING SEXUALLY ORIENTED BUSINESS OPERATOR AND EMPLOYEE LICENSES; PROVIDING FOR LICENSE APPLICATIONS, STANDARDS FOR APPROVAL AND DENIAL OF LICENSE APPLICATIONS; PROVIDING FOR EXPIRATION, CONTINUATION, TERMS, SUSPENSION, REVOCATION AND ENFORCEMENT OF LICENSES PROHIBITING THE TRANSFER OF LICENSES; PROVIDING FOR LICENSE SUSPENSION AND REVOCATION PROCEDURES AND PROCEEDINGS; PROVIDING FOR APPEALS; PROVIDING FOR PROHIBITED ACTIVITIES AND UNLAWFUL ACTS BY LICENSEES AND OPERATORS OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR HOURS OF OPERATION; PROVIDING FOR OTHER MISCELLANEOUS REQUIREMENTS; PROVIDING FOR SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, sexually oriented businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the communities where they locate; and

WHEREAS, the City Council finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the city that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate means of accountability to ensure that operators, licensees, employees, and customers of sexually oriented businesses comply with reasonable regulations, and to ensure that operators do not allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in proximity to each other or in or near locations that are licensed to sell alcohol, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime;

preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, it is not the intent of this ordinance to suppress or unreasonably regulate any speech activities protected by the First Amendment, but to enact a content-neutral ordinance that addresses the secondary effects of sexually oriented businesses as well as the health problems associated with such businesses; and

WHEREAS, it is not the intent of the City Council to condone or legitimize the distribution of obscene materials or any other illegal activity, and the Council recognizes that state and federal law prohibits the distribution of obscene materials and the Council expects and encourages local and state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the City; and

WHEREAS, 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 secondary effects 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; and

WHEREAS, 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 Erie v. PapsA.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); and other cases, and being aware of studies in other communities including, but not limited to, Madison, Wisconsin, as well as Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Cleveland, Ohio; Dallas, Texas; Tucson, Arizona; St. Croix County, Wisconsin; Bellevue, Washington; Newport News, Virginia; New York, New York; and from summaries of several of the foregoing secondary effects reports, and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the Council finds:

- A. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities in the establishments and in the areas surrounding them. This ordinance is designed to make the owners and operators of these establishments responsible, within constitutional boundaries, for the activities that occur on their premises.
- B. Certain employees of unregulated sexually oriented businesses engage in higher incidence of certain types of illicit sexual behavior than employees of other businesses.

- C. Sexual acts, including masturbation and oral and anal sex, occur at unregulated sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films or videos or live sexually oriented shows.
- D. Offering and providing such space encourages unsanitary activities, which create unhealthy conditions.
- E. Persons frequent certain adult cabarets and other sexually oriented businesses for the purpose of engaging in illicit sexual activities within the premises of such sexually oriented businesses, or for the purpose of purchasing or selling illicit drugs.
- F. Many communicable diseases, including sexually-transmitted diseases, may be spread by activities occurring in adult entertainment establishments.
- G. The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
- H. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
- I. 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 the operators of the facilities to self-regulate those activities and maintain those facilities.
- J. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view adult oriented films and live sexual shows.
- K. Nude dancing in sexually oriented businesses encourages prostitution, increases sexual assaults, attracts criminal activity, and increases the likelihood of drug dealing and drug use.
- L. The findings noted in the paragraphs A through K raise substantial governmental concerns.
- M. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- N. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will give an incentive to the operators to see that the sexually oriented businesses are run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, in possession and control of the premises and activities occurring therein.
- O. Requiring licensees of sexually oriented businesses to keep information regarding current and certain past employees will help reduce the incidence of certain types of criminal behavior

by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

P. 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 significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.

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

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

S. The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to, and prevents conduct which leads to, the transmission of sexually transmitted diseases.

T. The general welfare, health, morals, and safety of the citizens of this City will be promoted by the enactment of this ordinance.

NOW, THEREFORE, BE IT ORDAINED By the City Council of the City of Jamestown:

Chapter 27 of the Code of Ordinances is created and enacted thereby read as follows:

Chapter 27: Sexually Oriented Businesses

Section 27-1. Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning:

1. *Achromatic* means colorless, lacking in saturation or hue. Without limitation, grays, tans and light earth tones shall be included, but white and black and any bold coloration that attracts attention shall be excluded from the definition of achromatic.
2. *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, or other image-producing devices are maintained to show images to five (5) 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.
3. *Adult bookstore or adult video store* means a business whose primary business is the offering for sale or rental, whether for off-premises or on-premises consumption, for any form of consideration any one (1) or more of the following:

- (a) Books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that depict or describe specified sexual activities or specified anatomical areas; or
- (b) Instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.

The determination of the principal business purpose of an establishment is based on the visual inventory or commercial activity of the establishment; provided, there shall be a rebuttable presumption that any commercial establishment which utilizes more than ten (10) percent of total display area for merchandise of any type described in this definition shall be deemed to be engaged in the business of an adult bookstore or adult video store as its principal business purpose.

4. *Adult cabaret* means a business whose primary business is presenting persons who appear in a state of nudity or semi-nudity; or live performances that are characterized by the display of any portion of the female breast or any portion of the human buttocks, or which are characterized by the exposure of specified anatomical areas or by specified sexual activities which are intended to provide sexual stimulation or sexual gratification to such customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities, or specified anatomical areas; or films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depicting or description of specified sexual activities or specified anatomical areas.

5. *Adult modeling studio* means a business whose primary business is the provision to customers of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

6. *Adult motel* means a hotel, motel or similar commercial establishment that:

- (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 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 type of adult photographic reproductions; or
- (b) Offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
- (c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.

7. *Adult movie/motion picture theatre* means a business, as its principal business purpose for any form of consideration, exhibits to customers films, motion pictures, video cassettes, slides, or similar photographic reproductions which are intended to provide sexual stimulation or sexual gratification to such customers and which are distinguished by or characterized by an emphasis

on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

8. *Adult theatre* means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of nudity, semi-nudity, and/or live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

9. *Applicant* means the individual or entity seeking a sexually oriented business operator's or employee license in the City.

10. *Church* means a building, whether situated within the city or not, in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

11. *Commercial multi-unit center* means a building or structure (including a shopping mall or strip shopping center) containing three or more separate premises, each of which is offered by lease or otherwise for separate occupancy or control and each of which occupies an enclosed area having its own door or entranceway opening onto public property, a public way, or a common area.

12. *Customer* means any person who:

(a) Is allowed to enter an enterprise in return for the payment of an admission fee or any other form of consideration or gratuity; or

(b) Enters an enterprise and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or

(c) Is a member of and on the premises of an enterprise operating as a private club.

13. *Display surface* means the entire surface of a sign, on one side, devoted to exhibiting advertising. The display surface shall not include the sign frame and incidental supports thereto.

14. *Employee* means any managers, entertainers, person, and independent contractors who works in or at or renders any services directly related to the operation of the sexually oriented business, including any person functioning and/or dispatched as an escort. "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.

15. *Entertainment* means any act or performance, such as a play, skit, reading, revue, pantomime, scene, song, dance, musical rendition or striptease, whether performed by employees, agents, contractors, or customers. The term "entertainment" shall also mean bartenders, waiters, waitresses, or other employees exposing specified anatomical areas or engaging in specified sexual activities in the presence of customers.

16. *Entertainer* means any Go-Go dancer, exotic dancer, stripper, male or female impersonator, and other similar person.

17. *Escort* means any person who, for a salary, fee, tip, commission, hire, profit, or other consideration, makes oneself available to the public as a companion, guide, or date for another person, or who, for monetary consideration, agrees or offers to model lingerie, perform erotic dancing or to engage in a specified sexual activity and/or perform in a state of nudity or semi-nudity for another person off the premises of a sexually oriented business.
18. *Escort Service* means any business, agency, or person who, for a salary, fee, tip, commission, hire, profit or other consideration, furnishes, offers to furnish, advertises to furnish, or arranges for persons to accompany other persons for companionship, or who, for a salary, fee, tip, commission, hire, profit or other consideration, furnishes, offers to furnish, advertises to furnish or arranges for persons to privately model lingerie or privately perform erotic dancing for another person.
19. *Exterior portion* means any part of the physical structure of an enterprise, including a wall, veneer, door, fence, roof, roof covering, or window, which is visible from any public way or public property.
20. *Licensed day-care center* means a facility licensed by the State of North Dakota, whether situated within the city or not, that provides care, training, education, custody, treatment or supervision for more than four (4) children under 14 years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than 24 hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.
21. *License* means a current, valid license issued by the City of Jamestown pursuant to the terms of this chapter to an operator or employee.
22. *Licensee* means a person who has been issued a sexually oriented business operator's license or a sexually oriented business employee's license.
23. *Liquor* means all beverages defined in Chapter 5 of the Jamestown Code of Ordinances, including but not limited to Alcohol, Alcoholic Beverages, Liquor, Beer, Distilled spirits, Malt beverage, Sparking wine, and Wine.
24. *Manager* means an individual or other natural person employed to act in a supervisory capacity over employees and/or contractors, excluding a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.
25. *Multi-family residence* means any residential tract that contains any building or buildings or portion or portions thereof, that is designed, built, rented, leased, sold, let out or hired out to be occupied, or which is occupied, in separate units, each containing living, sleeping and food preparation facilities, as the homes or residences of three or more families, groups, or individuals living independently of each other.
26. *Nude model studio* means any place where a person who appears in a state of nudity or semi-nudity, or whose displays specified anatomical areas, is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

27. *Nudity or state of nudity* means the appearance of a human anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of the nipple; or human male genitals in a discernibly turgid state even if completely and opaquely covered.
28. *Operator* means any person owning, operating, conducting, or maintaining a sexually oriented business.
29. *Owner or owners* means the proprietor if a sole proprietorship, all general partners if a partnership, or the corporation and all officers, directors, and persons holding 50 percent or more of the outstanding shares if a corporation.
30. *Person* means any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons, however organized.
31. *Public park*. A publicly owned or leased tract of land, whether situated in the city or not, designated, dedicated, controlled, maintained and operated for use by the general public for active or passive recreational or leisure purposes by the city or any political subdivision of the state and containing improvements, pathways, access or facilities intended for public recreational use. The term "public park" shall not include parkways, public roads, rights-of-way, esplanades, traffic circles, easements or traffic triangles unless such tracts or areas contain and provide improvements or access to a recreational or leisure use by the public. A current list of public parks shall be compiled and revised by the director of the parks and recreation department and maintained for public inspection in the office of the city secretary.
32. *Residence or residential* means to the use of land, whether situated within the city or not, for premises such as homes, townhomes, patio homes, manufactured homes, duplexes, condominiums and apartment complexes, which contain habitable rooms for nontransient occupancy and which are designed primarily for living, sleeping, cooking, and eating therein. A premises which is designed primarily for living, sleeping, cooking and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes. Boarding houses, nursing homes, college or university dormitories, hospitals, nursery schools, licensed daycare facilities and/or child care facilities are considered residential for the purposes of this chapter. Hotels and motels shall not be considered to be residential. The term 'residential' shall also include any unimproved tract designated for tax appraisal purposes as residential by the City of Jamestown if situated in the city or by Stutsman County if not situated in the city. The term additionally shall include any tract that has been subdivided or platted for residential use, but that is not yet designated for tax appraisal purposes as residential.
33. *School*. A building, whether situated within the city or not, where persons regularly assemble for the purpose of instruction or education together with the playgrounds, stadia and other structures or grounds used in conjunction therewith. The term is limited to:
- (a) Public and private schools used for primary or secondary education, in which any regular kindergarten or grades one through 12 classes are taught; and

(b) Special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or any of grades one through 12.

34. *Semi-nude or semi-nudity means:*

(a) For a female, a state of dress in which opaque clothing covers no more, or little more, than the nipple and areola of the female breast, the genitals, public region and anus; or

(b) For a male, a state of dress in which opaque clothing covers no more, or little more, than the genitals, pubic region and anus.

35. *Sexual encounter center* means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(a) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

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

36. *Sexually Oriented Business* means an adult arcade, adult bookstore or adult video store, adult cabaret, adult escort service, adult modeling studio, adult motel, adult motion picture theatre, sexual encounter center or any establishment whose primary business is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to its customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. The term "sexually oriented business" shall not be construed to include:

(a) Any business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers performing functions authorized under the licenses held;

(b) Any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts; or

(c) Any retail establishment whose major business is the offering of wearing apparel for sale to customers.

37. *Sign.* Any display, design, pictorial, or other representation, which shall be so constructed, placed, attached, painted, erected, fastened or manufactured in any manner whatsoever so that the same is visible from the outside of an enterprise and that is used to seek the attraction of the public to any goods, services or merchandise available at such enterprise. The term 'sign' shall also include such representations painted on or otherwise affixed to any exterior portion of an enterprise as well as such representations painted on or otherwise affixed to any part of the tract upon which such an enterprise is situated.

38. *Specified anatomical areas:*

- (a) Less than completely and opaquely covered:
 - i. Human genitals, pubic region or pubic hair; or
 - ii. Buttock; or
 - iii. Female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola; or
 - iv. Any combination of the foregoing; or,
- (b) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

39. *“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 city, county or state; or other cities, counties or states, or other countries 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;
 - 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;
- (b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

40. *Specified sexual activities* include:

- (a) Human genitals in a discernible state of sexual stimulation or arousal; or
- (b) Actual or simulated sexual acts, normal or perverted, including acts of masturbation, sexual intercourse, oral copulation, or sodomy; or
- (c) Touching, caressing, fondling, erotic touching or other contact stimulation of human genitals, pubic region or pubic hair, buttock, anus, or female breast or breasts, whether covered or uncovered; or

(d) Excretory functions as part of or in connection with any of the activities set forth above;
or

(e) Any combination of the foregoing.

41. *Tract.* A contiguous parcel of land under common ownership, whether situated within the city or not.

Section 27-2. Classification of licenses.

Sexually oriented businesses are classified as follows:

1. Adult arcades;
2. Adult bookstores or adult video stores;
3. Adult cabarets;
4. Adult motels;
5. Adult motion picture theaters;
6. Adult theaters;
7. Escort services;
8. Nude model studios; and
9. Sexual encounter centers.

Section 27-3. License Required.

1. It shall be unlawful for any person to operate or conduct any business in a sexually oriented business without a valid operator's license ("operator's license") issued by the City pursuant to this ordinance.
2. It shall be unlawful for any person who operates a sexually oriented business to employ an employee to work and/or perform services on the premises, if such employee is not in possession of a valid employee license ("employee license") issued to such employee by the City pursuant to this ordinance, except if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.
3. It shall be unlawful for any person (including an operator) to be an employee of a sexually oriented business if such person is not in possession of a valid sexually oriented employee license issued to such person by the City pursuant to this ordinance, except if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.
4. It shall be unlawful for any person to knowingly work in or about, or to knowingly perform any service directly related to the operation of any unlicensed sexually oriented business. It is unlawful for an employee to knowingly work in or about, or to knowingly perform any service

directly related to the operation of any unlicensed sexually oriented business while sexually oriented entertainment is being presented.

5. It shall be unlawful for a person to operate a sexually oriented business at a location that is also licensed to sell liquor.
6. It shall be unlawful for a sexually oriented business to dispense, distribute, provide, serve or offer, for compensation or as a complementary service to customers, liquor in its establishment or allow the consumption of liquor upon the premises.
7. It shall be unlawful for a person to operate a sexually oriented business at a location that is not zoned M-2 under the Code of the City of Jamestown, ND.
8. Any person, partnership, limited partnership, joint venture, corporation or any other type of business entity which desires to operate more than one (1) sexually oriented business must have a license for each sexually oriented business.
9. Only one (1) sexually oriented business license, regardless of classification, may be issued for each sexually oriented business location. A separate application and business license shall be required for each sexually oriented business and for each sexually oriented business classification.
10. A business existing and operating as a sexually oriented business at the time of the adoption of this ordinance shall have seventy-five (75) days in which to comply with the licensing provisions required herein. Employees of an existing sexually oriented business shall have sixty (60) days in which to comply with the licensing provisions required herein.
11. It shall be unlawful for a person to operate a sexually oriented business at a location that is within three hundred (300) feet of another licensed sexually oriented business, a location licensed to sell liquor, a church, school, residence or multi-family residence. Distances shall be determined as set forth in Section 5-25 of this Code.

Section 27-4. Application for Sexually Oriented Business Operator's License.

1. All applications for a sexually oriented business operator's license shall be submitted to the City Administrator in the name of the person or entity proposing to conduct a sexually oriented business on the business premises and shall be signed by such person and certified as true under penalty of perjury. A copy of the application shall be provided by the City Administrator to the Chief of Police.
2. An application for a sexually oriented business operator's license must be made on a form provided by the City. Prior to issuance of an operator's license, the premises must be inspected by the building inspector, or his designee, and the fire department.
3. All applicants for a license must be qualified according to the provisions of this ordinance. The application may request, and the applicant shall provide, such information reasonably necessary, including fingerprints, to enable the City to determine whether the applicant meets the qualifications established under this ordinance. The applicant has an affirmative duty to

supplement an application with new information received subsequent to the date the application was deemed completed.

4. If a person who wishes to own or operate a sexually oriented business is an individual, he or she must sign the application for an operator's license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10%) percent or greater interest in the business must sign the application for an operator's license as an applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, all corporate officers and directors must sign the application for an operator's license as applicant.

5. Applications for an operator's license, whether original or renewal, shall contain the following information:

(a) The name (including aliases), street address (and mailing address if different) of the applicant(s);

(b) All residential addresses of each applicant for the past three (3) years;

(c) The applicant's Social Security number and/or his state or federally issued tax identification number;

(d) The name under which the establishment is to be operated and a general description of the services to be provided;

(e) Whether the applicant, or a person with whom the applicant is residing, has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in this ordinance and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;

(f) Whether the applicant, or a person with whom the applicant is residing, has had a previous license under this ordinance or other similar ordinance from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of corporation that is or was licensed under a similar ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;

(g) Whether the applicant, or a person with whom the applicant is residing, holds any other licenses under this ordinance or other similar business ordinance from another city or county and, if so, the names and locations of such other licensed businesses;

(h) The classification of license for which the applicant is applying;

(i) The telephone number of the establishment;

(j) The address and legal description of the tract of land on which the establishment is to be located;

(k) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;

(l) If the establishment is not in operation, the expected startup date. If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.

6. Each application for an operator's license shall be accompanied by the following:

(a) Payment of the application fee in full;

(b) Two (2) recent color photographs, taken by the Jamestown Police Department, of the applicant clearly showing the applicant's face and the applicant's fingerprints, to facilitate the background check, on a form provided by the police department. Any fees for photographs and fingerprints shall be paid by the applicant.

(c) If the establishment is a State of North Dakota corporation, a copy of the articles of incorporation, together with all amendments thereto, the name and address of the corporation's registered agent, and the name and address of all persons who will be involved in the day-to-day operation and management of the business;

(d) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto, the name and address of the corporation's registered agent, and the name and address of all persons who will be involved in the day-to-day operation and management of the business;

(e) If the establishment is a partnership, limited partnership, or limited liability company formed under the laws of the State of North Dakota, a certified copy of the certificate of partnership, limited partnership, or limited liability company together with all amendments thereto, the name and address of the entity's agent, and the name and address of all persons who will be involved in the day-to-day operation and management of the business;

(f) If the establishment is a foreign partnership, limited partnership, or limited liability company a certified copy of the certificate of partnership, limited partnership, or limited liability company and the qualification documents, together with all amendments thereto, the name and address of the entity's agent, and the name and address of all persons who will be involved in the day-to-day operation and management of the business;

(g) Proof of the current fee ownership of the property on which the establishment is to be situated in the form of a copy of the recorded deed. If the persons identified as the fee owner(s) of the property are not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other

document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually oriented business to have or obtain the use and possession of the property thereof that is to be used for the business;

(h) A drawing, which does not have to be professionally drawn, depicting the structures containing any existing sexually oriented businesses, established church, school, public park or recreation area, single or multi-family residence, or family-oriented entertainment business within one thousand (1000) feet of the property. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted;

(i) A diagram, drawn to scale of the premises but is not required to be professionally drawn, including the total floor space, the location and layout of all viewing rooms or booths and stages and the location of the clerk/manager's stand or counter; and

(j) Items (c) through (j), above shall not be required for a renewal application if the applicant states that the documents previously furnished to City Administrator with the original application or previous renewals thereof remain correct and current.

7. Every application for a license shall contain a statement certifying that the applicant has personal knowledge of the information contained in the application, that the information contained therein and furnished therewith is true and correct; and the applicant has read the provisions of this ordinance.

8. The fact that a person possesses other types of state or city permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business or employee license.

9. If any of the information on the application changes over the course of the time for which the license is issued, including any changes in the physical layout of the premises, the licensee shall inform the City Administrator, in writing, of the changes.

Section 27-5. Inspections and Investigations for Sexually Oriented Business Operator's License Application.

1. The inspection department shall inspect the premises to insure that the premises complies with the diagram submitted with the application and any physical layout requirements set out in this chapter.

2. The police department shall perform a background investigation of the applicant's criminal history using the two (2) color photographs of the applicant and the applicant's fingerprints.

3. The results of the inspection and the investigation shall be filed in writing with the City Administrator no later than twenty (20) days after the date the completed application was filed with the City Administrator. Any inspection or investigation information not filed with the City Administrator in the time period specified shall not prevent the applicant from receiving the license and shall be treated by the City Administrator as if the report revealed no violations of applicable statutes, ordinances, or regulations, no violations of the provisions of this chapter, no

sexually oriented business/adult entertainment zoning code violations and/or no applicable criminal history.

4. If the building/structure has a valid use and occupancy permit, the applicant shall provide the inspection department with a copy of the valid use and occupancy permit which shall be made part of the file.

Section 27-6. Approval/Renewal of Sexually Oriented Business Operator’s License.

1. The City shall approve or deny issuance of the license within forty-five (45) days of filing of the completed application. The City Council shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- (a) An applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- (b) An applicant is under the age of eighteen (18) years;
- (c) An applicant, or a person with whom the applicant is residing, has been denied a license by the City to operate a sexually oriented business within the preceding twelve months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve months;
- (d) An applicant, or a person with whom the applicant is residing, is overdue in payment to the City in taxes, fees, fines, or penalties assessed against or imposed upon him in relation to any business, or taxes or special assessments are overdue for the property on which the sexually oriented business is located or will be located;
- (e) An applicant, or a person with whom the applicant is residing, has been convicted of a "specified criminal activity;"
- (f) The premises to be used for the sexually oriented business have not been approved as being in compliance with applicable laws and ordinances and/or the premises does not conform with the submitted diagram and/or any viewing rooms or booths or stages do not conform with the submitted diagram or the requirements of this chapter;
- (g) The license fee required under this ordinance has not been paid;
- (h) An applicant of the proposed establishment is in violation of, or is not in compliance with, one or more of the provisions of this ordinance.

2. The operator’s license issued shall 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 shall 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.

3. In the event that the City Council determines that an applicant is not eligible for a sexually oriented business operator's license, the applicant shall be given notice in writing of the reasons for the denial within ten (10) days of the decision. Denial of a license shall be subject to appeal as hereinafter set forth.
4. If an applicant is denied a license because the applicant is not in compliance with this chapter, zoning code, building requirements, or any other ordinance or regulation, the applicant shall have fifteen (15) days to cure the violation and request reinspection or request an extension of time to cure any such violation.
5. A license may annually renew upon the written application of the applicant and a finding by the City Council that the applicant has not been convicted of any "specified criminal activity", as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application being filed with the City Administrator. The renewal of a license shall be subject to the fee as set by the City Council. If a license is not renewed the City Administrator shall send notice of the non-renewal to the applicant within ten (10) days of the decision. The non-renewal of a license shall be subject to appeal as hereinafter set forth.

Section 27-7. Appeal for Denial or Non-Renewal of Sexually Oriented Business Operator's License.

1. An applicant may appeal the denial or non-renewal of a license to the City Council by filing a written notice of appeal with the City Administrator within ten (10) days after service of the notice of the denial or non-renewal. The notice shall inform the applicant(s) of the factual allegations which form the basis for denial or non-renewal.
2. The City Administrator shall provide the applicant with written notice, to the applicant's last known address as indicated in the applicant's application, of the date, time, and place of the hearing. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.
3. The hearing shall be held no later than forty-five (45) days after the City Administrator receives the request for hearing.
4. If the applicant does not appear at the hearing, or if he does not dispute the factual allegations, the factual allegations shall be deemed to be admitted.
5. If the applicant requests the hearing date be continued, the City Council shall grant a continuance to a mutually convenient time. Only one (1) continuance shall be granted.
6. The decision regarding the appeal shall be made within thirty (30) days of the hearing. The City Administrator shall send notice of the results of the appeal to the applicant within ten (10) days of the decision.

7. The decision of the City Council shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review.

Section 27-8. Application for Sexually Oriented Business Employee License.

1. The applicant shall provide such information, including fingerprints, as necessary to enable the City to determine whether the applicant meets the qualifications established under this ordinance. Application forms shall be supplied by the City. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

2. The City Administrator shall provide a copy of the application to the Chief of Police.

3. Each application for an employee license shall be accompanied by payment of the application fee in full.

4. Each applicant shall be required to provide the following information on or with 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, including cell phone number;

(e) All residential addresses of each applicant for the past three (3) years;

(f) Present business address and telephone number;

(g) Copy of driver's license, or other state-issued photo identification card;

(h) Social Security Number; and

(i) Proof that the individual is at least eighteen (18) years of age (twenty-one (21) years of age if the business has an alcoholic beverage license).

5. The personal information provided in this subsection (3) shall be confidential, and shall not be disclosed to the public except to the extent required by state or federal law.

6. Attached to the application form shall be the following:

(a) Two (2) recent color photographs of the applicant taken by the Jamestown Police Department clearly showing the applicant's face and the applicant's fingerprints, to facilitate the background check, on a form provided by the police department. Any fees for photographs and fingerprints shall be paid by the applicant.

(b) A statement detailing the employment history in sexually oriented businesses and 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 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, the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and description in full of 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.

(c) A statement whether the applicant has been convicted, or is awaiting trial on pending charges, of a “specified criminal activity” as defined in this ordinance and, if so, the “specified criminal activity” involved, the date, place and jurisdiction of each.

7. Every application for an employee license shall contain a statement under oath, signed by the employee, that the employee has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is true and correct; and the applicant has read the provisions of this ordinance.

8. The fact that a person possesses other types of state or city permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business or employee license.

Section 27-9. Investigation of Sexually Oriented Business Employee License Application.

1. The application shall be referred to the appropriate city departments for investigation to be made on the information contained in the application. The police department shall perform a background investigation of the applicant's criminal history using the two (2) color photographs of the applicant and the applicant's fingerprints. The results of the investigation shall be completed no later than twenty (20) days after the date the application was filed with the City Administrator. Any investigation information not filed with the City Administrator in the time period specified shall not prevent the applicant from receiving the license and shall be treated by the City Administrator as if the report revealed no violations of the provisions of this chapter and/or no applicable criminal history.

Section 27-10. Approval/Renewal of Sexually Oriented Business Employee License.

1. After the investigation, the City shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- a. The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- b. The applicant is under the age of eighteen (18) years (twenty-one (21) years if the business has an alcoholic beverage license);
- c. The applicant has been convicted of a “specified criminal activity” as defined in this ordinance;

- d. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule, or regulation, or prohibited by a particular provision of this ordinance; or
 - e. The applicant has had a sexually oriented business employee license revoked by the City within two (2) years of the date of the current application.
 - f. The location and/or facility fails to qualify for a license based upon the provisions of this ordinance.
2. An employee license shall have a photo of the employee and state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business.
 3. The employee shall keep the license on his person at all times while engaged in employment or performing services on the sexually oriented business premises so that said license may be available for inspection upon lawful request.
 4. An employee license shall be subject to annual renewal upon the written application of the applicant and a finding by the City that the applicant has not been convicted of any “specified criminal activity”, as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the filing of the completed application. The renewal of a license shall be subject to the fee as set by the City Council. Non-renewal of a license shall be subject to appeal as hereinafter set forth.
 5. If the applicant is denied a license because the applicant is not in compliance with this chapter or any other ordinance or regulation, the applicant shall have fifteen (15) days to submit new information and/or amend his application.
 6. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as hereinafter set forth.

Section 27-11. Appeal of Denial or Non-Renewal of Sexually Oriented Business Employee License Application.

1. An applicant may appeal the denial or non-renewal of a license to the City Council by filing a written notice of appeal with the City Administrator within ten (10) days after service of the notice of the denial or non-renewal. The notice shall inform the applicant of the factual allegations which form the basis for denial or non-renewal.
2. The City Administrator shall provide the applicant with written notice, to the applicant’s last known address as indicated in the applicant’s application, of the date, time, and place of the hearing. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.
3. The hearing shall be held no later than forty-five (45) days after the City Administrator receives the request for hearing.

4. If the applicant does not appear at the hearing, or if he does not dispute the factual allegations, the factual allegations shall be deemed to be admitted.
5. If the applicant requests the hearing date be continued, the City Council shall grant a continuance to a mutually convenient time. Only one (1) continuance shall be granted.
6. The decision regarding the appeal shall be made within thirty (30) days of the hearing. The City Administrator shall send notice of the results of the appeal to the applicant within ten (10) days of the decision.
7. The decision of the City Council shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review.

Section 27-12. Fees.

The annual fee for a sexually oriented business operator's license or sexually oriented business employee's license, whether new or a renewal, shall be established from time to time by resolution of the City Council. These fees are to be used to pay for the cost of the administration and enforcement of this ordinance.

Section 27-13. Inspection of Premises.

An applicant or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Building Department, or other city or state departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is open for business. It is unlawful to refuse such an inspection.

Section 27-14. License Term.

1. The term of all operator's and employee's licenses issued pursuant to this article shall commence at 12:00 a.m. of July 1st, if the license is a renewal license; or at the date and time of its issuance, if the license is an initial license. All operator's and employee's licenses shall expire at 12:00 p.m. of the following 30th of June. Notwithstanding the fact that an initial license may be issued for a term of less than one (1) year the license fee shall not be reduced or prorated.
2. When the City denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial.
3. An application for renewal of an existing license must be made at least sixty (60) days prior to the expiration date of the license. If an application for renewal is made less than sixty (60) days before the expiration date, the license will expire as scheduled and will remain invalid until a new license is issued.

Section 27-15. Suspension or Revocation of an Operator's or Employee's License.

1. The City Council shall have the power to suspend or revoke any license issued under this chapter, or for any of the following reasons:
 - (a) The licensee violates the laws of this state or of any of the provisions of this chapter;

- (b) The licensee has become ineligible to obtain a license under the provisions of this chapter;
- (c) The licensee willfully makes a false statement or a misrepresentation as to a material fact in the application for the issuance of the license;
- (d) The licensee knowingly engages in or permits the occurrence of a pattern or practice of disorderly or immoral acts upon the licensed premises;
- (e) The licensee is convicted of a “specified criminal activity”;
- (f) A licensee has, with knowledge, engaged in or permitted prostitution on the premises;
- (g) The licensee knowingly employs, or with due diligence should have known that licensee was employing an employee who does not have a permit. The licensee knowingly provides, or with the exercise of due diligence should have known the he was providing space on the premises whether by lease or otherwise, to an independent contractor who performs or works as an entertainer without a permit;
- (h) A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;
- (i) A licensee is delinquent in payment to the City or State for any taxes, fees, fines, or penalties;
- (j) A licensee has, with knowledge, permitted a person under eighteen (18) years of age to enter and/or remain in the establishment;
- (k) A licensee denies access to law enforcement personnel during business hours to any portion of the licensed premises;
- (l) A licensee fails to maintain the licensed premises in a sanitary and safe condition;
- (m) A licensee has attempted to sell his business or employee license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee;
- (n) A licensee has, with knowledge, engaged in or permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business;
- (o) A licensee has, with knowledge, consumed or permitted the consumption of alcoholic beverages on the premises;
- (p) The licensee does not hold a necessary permit or license issued by another governmental entity, which license or permit is required by that governmental entity as a precondition to the carrying on by the license of the activity authorized by the City of Jamestown license.

2. No license shall be suspended or revoked without providing the licensee with notice and an opportunity for hearing before the City Council. The City Administrator shall provide the licensee with written notice, to the licensee’s last known address as indicated in the applicant’s application, of the date, time, and place of the hearing. The notice shall inform the licensee that

the license may be suspended or revoked and it shall set forth the factual allegations which form the basis for doing so under this section. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.

3. If the licensee does not appear at the hearing, or if the licensee does not dispute the factual allegations, the factual allegations in the complaint shall be deemed to be admitted. If the licensee requests hearing date be continued, the City Council shall grant a continuance to a time mutually convenient to the licensee and the council, but the council shall have the discretion to suspend the license from the date for which the hearing was originally scheduled to the date of the continued hearing. Only one (1) continuance shall be granted.

4. The decision of the City Council shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review.

5. When a license is revoked, the revocation shall continue for one (1) year, and the licensee shall not be issued a license for one (1) year from the date revocation became effective.

Section 27-16. Judicial Review.

Within thirty (30) days of a decision denying an initial or renewal application by the City Council, or suspending or revoking a license by the City Council, the applicant or licensee may seek judicial review of such administrative action in District Court. The administrative action shall then be reviewed by the court for a prompt judicial determination. Pending the completion of the appeal process, the applicant or licensee may seek from the District Court a stay of the City's action and request the issuance of a temporary license. If such stay is granted and a temporary license is issued, the applicant holding the temporary license shall be subject to all the remaining provisions of this ordinance. Such temporary license shall not be granted if the action denying, suspending or revoking the license is based in whole or in part upon a finding that a condition exists upon the premises which constitutes a threat of immediate serious injury or damage to persons or property.

Section 27-17. No Transfer of License.

1. A licensee shall not transfer or sell his license to another, nor shall a licensee, or any other person, operate a sexually oriented business under the authority of a license at any place other than the address designated in the application and set forth in the operator's license.

2. An operator's license shall not be transferable from one location to another.

Section 27-18. Hours of Operation.

No sexually oriented business may be open:

1. After 6:00 p.m. on Christmas Eve;
2. Any time on Christmas Day;
3. After 2:00 a.m. on Thanksgiving Day;
4. After 2:00 a.m. and before 8:00 a.m. Monday through Saturday;
5. After 2:00 a.m. and before noon on Sunday.

Section 27-19. Additional Regulations for Adult Motels.

1. Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two (2) or more times in a period of less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel.
2. It is unlawful if a person in control of a sleeping room in a hotel, motel, or similar commercial enterprise, that does not have a sexually oriented business license, to rent or subrent a sleeping room to a person and, within ten (10) hours from the time the room is rented, rent or subrent the same sleeping room again. The terms "rent" and "subrent" mean the act of permitting a room to be occupied for any form of consideration.

Section 27-20. Additional Regulations For Escort Services.

It is unlawful for an escort service to employ a person under the age of eighteen (18) years of age, or for a person under the age of eighteen (18) to act, agree to act, or attempt to act as an escort. It shall also be unlawful for an employee of an escort service to knowingly or intentionally commit, or for an operator of an escort service to knowingly or intentionally allow an employee of an escort service to commit any of the following acts:

1. Enter a hotel or motel for the purpose of meeting a customer, without immediately notifying the front desk, presenting a copy of their sexually oriented employee license, identifying the escort service that sent them, the name of the customer they are meeting, the location of the meeting, and notifying the front desk upon leaving safely;
2. Distribute or post any unsolicited business cards, advertisement, or promotional material on or within the premises of any business;
3. Begin a meeting or service with a customer outside of the hours of operation prescribed in this chapter;
4. Begin a meeting or service with a customer without first meeting said customer in a public place such as a bar or restaurant before accompanying the customer to anyplace which is not open and occupied by the public, such as a hotel room or residence;
5. To appear in a state of nudity with a customer;
6. To solicit a customer to appear in a state of nudity; or
7. To engage in a specified sexual activity with a customer for money or any other type of consideration.
8. To act as an escort or agree to act as an escort for any person under the age of eighteen (18) years.

Section 27-21. Additional Regulations For Nude Model Studios.

1. Nudity is prohibited in a nude model studio. However, an exception may be granted in the reasonable discretion of the City Administrator upon a finding that the operation is in fact a bona fide art instruction business.

2. A nude model studio shall not employ any person under the age of eighteen (18) years of age.
3. It is unlawful for a person under the age of eighteen (18) years of age to appear in a state of nudity in or on the premises of a nude model studio.
4. It is unlawful to appear in a state of nudity, or with knowledge, allow another to appear in a state of nudity or semi-nudity, in an area of a nude model studio premises which can be viewed from the public right of way.
5. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises; except that a sofa may be placed in a reception room open to the public.
6. It is a defense to prosecution under this ordinance that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated by either a proprietary school licensed by the State of North Dakota, a college, junior college, or university supported entirely or partly by taxation, or by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

Section 27-22. Additional Regulations Concerning Public Nudity.

1. It is unlawful for a person to appear live in a state of nudity in a sexually oriented business.
2. It is unlawful for a person to appear live in a state of semi-nudity unless the person is an employee who is at least three (3) feet from any patron or customer and on a stage at least two (2) feet above the floor.
3. It is unlawful for an employee, while in a state of semi-nudity in a sexually oriented business, 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 such employee.
4. It is unlawful for an employee, while in a state of semi-nudity in a sexually oriented business, to touch a patron or the clothing of a patron, or for a patron to touch any such employee.
5. It shall be unlawful for an employee to engage in any specified sexual activity in a sexually oriented business.

Section 27-23. Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos.

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

1. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not

exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The City Administrator may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. Every application for a license shall contain a statement certifying that the applicant has personal knowledge of the information contained in the application, that the information contained therein and furnished therewith is true and correct; and the applicant has read the provisions of this ordinance.

3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the City Administrator or his designee.

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

5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not be equipped with viewing equipment and sexually oriented film, motion pictures, movies, videos, video cassettes or other video reproductions may not be displayed in restrooms. If the premises has two (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 the entire area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

6. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the license application.

7. 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 five (5) foot-candle as measured at the floor level.

8. It shall be the duty of the 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.

9. No viewing room or booth may be occupied by more than one (1) person at any time.

10. Each viewing room or booth shall be totally accessible to and from aisles and public areas of the sexually oriented business and shall be unobstructed by any door, gate, lock or other

control-type device. Each viewing room and booth shall have at least one (1) side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the same.

11. It shall be the duty of the operator, and any agents or employees, to ensure that the line of sight and view area between the common area and any viewing rooms or booths remain unobstructed by any doors, walls, curtains, merchandise, display racks or other materials at any time that any patron is permitted access to any viewing room or booth. Entertainers and employees, on the premises for furthering the business, not including independent contractors on the premises for repairs or construction, shall not place any obstructions in front of any booths at any time that any patron is permitted access to any viewing room or booth.

12. It shall be unlawful to install enclosed viewing rooms or booths for the purpose of viewing sexually oriented motion pictures, sexually oriented movies, sexually oriented film, or sexually oriented videos.

13. All walls and ceiling surfaces in and between viewing rooms or booths shall be solid and without any openings, extended from the floor to a height of not less than six (6) feet and be light colored, and constructed of nonabsorbent, smooth textured and easily cleanable materials.

14. The operator of the sexually oriented business shall cause all floor coverings in viewing rooms or booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.

15. No licensee shall allow an opening of any kind to exist between viewing rooms or booths.

16. No person shall make any attempt to make an opening of any kind between the viewing rooms or booths.

17. The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing rooms or booths to determine if any openings or holes exist.

Section 27-24. Conduct and Operation.

1. No person shall appear in a state of nudity in a sexually oriented business, except in areas to which customers or patrons are not allowed to be present.

2. No patron or employee may erotically touch, caress, or fondle a patron or employee or the clothing of a patron or employee, nor may an employee encourage or permit a patron or employee to erotically touch, caress, or fondle any patron or employee.

3. No operator, entertainer or employee shall permit to be performed, offer to perform or allow customer, employees or entertainers to perform actual or simulated acts of specified sexual activities as defined in this ordinance, or any act which constitutes a violation of Chapters 12.1-27.1 or 12.1-27.2 of the North Dakota Century Code.

4. Any live performance of sexually oriented entertainment shall occur upon a stage at least two (2) feet above the immediate floor level and removed at least three (3) feet from the nearest customer. A three (3) foot boundary from the outer edge of the stage shall be indicated on the

floor by a rail, barrier, lighting, luminous tape or paint, or any other method which will make the boundary visible in a darkened condition so that the customer will not invade the three (3) foot boundary from the stage with any portion of his body.

5. No customer shall be permitted to have any physical contact with any entertainer on the licensed premises while the entertainer is engaged in a performance of live sexually oriented entertainment.
6. No customer shall invade the three (3) foot boundary from the outer edge of the stage.
7. A sign shall be conspicuously displayed in the common area of the premises, and shall read as follows:

This Sexually Oriented Business is regulated by the Jamestown City Code which provides that no customer shall be permitted to have any physical contact with any entertainer on the premises during any performance. All performances shall only occur upon a state at least two (2) feet above the immediate floor level at least three (3) feet from the nearest customer.

8. An operator is responsible for the conduct of all entertainers while on the licensed premises and any act or omission of any entertainer constituting a violation of the provisions of this chapter shall be deemed the act or omission of the operator for purposes of determining whether the operator's license shall be revoked, suspended, or renewed.
9. No employee on the premises, but not including independent contractors on the premises for repairs and construction, of a sexually oriented business shall allow any minor to loiter around or to frequent a sexually oriented business or to allow any minor to view sexually oriented entertainment as defined herein on the premises of a licensed business.
10. Live sexually oriented entertainment shall not be permitted in viewing rooms or booths.
11. Only one (1) individual shall occupy a viewing room or booth at any time. No occupant of a viewing room or booth shall engage in any type of copulation, masturbation or display of specified anatomical areas as defined herein or cause any bodily discharge or urine, feces or semen while in the viewing room or booth. No individual shall damage or deface any portion of the viewing room or booth.
12. It shall be unlawful for an owner or operator of a sexually oriented business to allow the activities of the establishment to be visible from any point outside the establishment, or to allow an employee to violate subsections 1, 2, and 3 of this section.
13. The City may regularly inspect the premises of the sexually oriented business in order to ensure compliance with the provisions of this ordinance and any other regulations. Representatives of the Police Department shall be permitted to inspect the premises at any time the establishment is open for business. Such inspection shall be limited to visual assessment of the activities conducted in areas to which patrons have access or are allowed access; to requests for inspection of the licenses required under this ordinance; and to requests for identification of those individuals who reasonably appear to be under the age of eighteen (18).

14. This division shall not be construed to prohibit:
 - (a) Plays, operas, musicals, or other dramatic works that are not obscene;
 - (b) Classes, seminars and lectures which are held for serious scientific or educational purposes and which are not obscene; or
 - (c) Exhibitions, performances, expressions or dances that are not obscene.

These exemptions shall not apply to specified sexual activities as defined in this chapter.

Section 27-25. Persons Prohibited From Entry.

1. It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the business is open for business.
2. It shall be the duty of the operator of each sexually oriented business to prohibit any under-aged person from entering. An attendant must be stationed at each public entrance to the sexually oriented business at all times during such sexually oriented businesses' regular business hours.

Section 27-26. Notices.

1. Any notice required or permitted to be given to any applicant or licensee may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the City. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the City shall cause it to be posted at the principal entrance to the establishment.
2. Any notice required or permitted to be given to the City by any person under this ordinance shall not be deemed given until and unless it is received in the office of the City Administrator.
3. It shall be the duty of each owner who is designated on the license application and each operator and employee to furnish notice to the City in writing of any change of residence or mailing address.

Section 27-27. Exterior Building Requirements; Signs.

1. All building openings, entries, windows, doors, etc. shall be located, covered, or serviced in such a manner as to prevent a view into the interior from anywhere outside of the premises. Windows shall also be located to reduce the audio impact on any public or adjacent privately-owned areas, sidewalk or street. For new construction, the building shall be oriented so as to minimize any possibility of viewing the interior and to minimize the audio impact from any public or privately-owned areas.
2. Each sexually oriented business shall have no more than one (1) sign on its premises, excluding the required notice signs as provided in this chapter. Such sign shall:

- (a) Not contain flashing lights and/or words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except as permitted by this ordinance;
 - (b) Be a flat plane, rectangular in shape;
 - (c) Be attached to a wall of the building;
 - (d) Not exceed seventy-five (75) square feet in area;
 - (e) Not exceed ten (10) feet in height or ten (10) feet in length,
 - (f) Have all words on the sign in a solid color and each letter on the sign must be the same print-type size and color.
3. The sign may only contain the name of the enterprise and/or one of the following phrases:
- (a) “Adult bookstore.”
 - (b) “Adult movie theatre.”
 - (c) “Adult cabaret.”
 - (d) “Adult entertainment.”
 - (e) “Adult novelties.”
 - (f) “Adult modeling studio.”
 - (g) “Adult encounter center.”
4. Each sexually oriented business shall maintain at least one (1) conspicuously placed, permanently mounted sign at each public entrance, in accordance with the City’s sign codes, of a size of at least 18 inches in height and 24 inches in width, easily visible and legible to all persons prior to entry into the establishment, with all letters at least one-half inch in height and three-quarters of an inch in width for each letter on the sign which contains a statement to the effect:

THIS IS A SEXUALLY ORIENTED BUSINESS
 ESTABLISHMENT WHICH REGULARLY FEATURES [description
 of the type of activity or merchandise as permitted herein]. IF
 NUDITY OR ACTIVITY OF A SEXUAL NATURE OFFENDS
 YOU, DO NOT COME IN.

NO PERSON UNDER 18 YEARS OF AGE ALLOWED ENTRY!

5. No merchandise shall be visible from any point outside of the sexually oriented business.
6. All exterior portions and/or facades, including the roof, shall be painted a single achromatic color with a single achromatic color trim, both colors consisting of a neutral earth tone color only; however, the trim and the building may be a different neutral earth tone. Nothing in this section requires the painting of an otherwise unpainted exterior portion of a sexually oriented business. This provision shall not apply if the following conditions are met:

- (a) The business is in part of commercial multi-unit center; and
- (b) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the enterprise, are painted the same color as one another or are painted in such a way as to be a component of the overall architectural style or pattern of the commercial multi-center unit.

Section 27-28. Surveillance and/or Security Required.

1. During hours of darkness when a sexually oriented business is in operation, the operator shall maintain all parking and pedestrian areas of the premises equipped and illuminated by overhead lighting fixtures of sufficient illumination to provide reasonably safe lighting conditions for persons or vehicles traveling into, on and out of the property. Said lighting fixtures shall be directed onto the property as much as possible so as to avoid being directed onto neighboring properties.
2. One (1) or more employee(s) shall monitor the activities or persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors.
3. If the Chief of Police for the Jamestown Police Department determines that the operation of a sexually oriented business has resulted in increased police reports, citizen complaints, and/or a general increase in crimes committed in the general vicinity, he may require the owner or operator to hire and staff a personal security guard to monitor the entrance to such establishment, verify identification, and maintain order inside and outside the establishment as situations necessitate.

Section 27-29. Massages or Baths Prohibited.

It shall be unlawful for any sexually oriented business to offer the services of a massage salon, massage parlor, baths or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex, or where any physical contact with the recipient of such services constitutes specified sexual activities, regardless of the gender of the recipient or the provider of the service.

Section 27-30. Public Nuisance.

Any sexually oriented business operating without a valid business license is hereby declared to be a public nuisance, and may be summarily abated by closing the business or may be abated by either criminal or civil action.

Section 27-31. Penalties/Remedies/Relief.

Any person who knowingly violates, disobeys, omits, neglects, or refuses to comply with any of the provisions of this division shall, upon conviction, be punished as provided in Section 1-9 of the City of Jamestown Code of Ordinances. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. In addition to the penalties provided under this section, violators of this division shall be subject to any other appropriate civil or criminal action provided by law in a court of competent jurisdiction, including, but not limited to, injunctive relief. Nothing in this section shall be held to exclude prosecution or

actions by any other provisions of applicable law or to exempt anyone violating this division or any other law from any penalty which may be prescribed for said violation.

Section 27-32. Severability.

If any section, subsection, or clause of this division shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section 27-33. Conflicting Ordinances.

The provisions of this division shall be in addition to the provisions set forth in any other part of this Code. To the extent the provisions of this division are in conflict with the provisions of any other ordinance, the more restrictive provisions shall govern.

Section 27-34. Effective Date.

This ordinance shall become effective upon final passage and approval as provided by law.

ATTEST:

Jeff Fuchs
City Administrator

APPROVED:

Katie Andersen
Mayor

Introduced by Council Member Gumke
Seconded by Council Member Brubakken
First Reading: June 3, 2013
Second Reading: October 7, 2013
Final Passage: October 7, 2013
Roll Call No. 3 showed: 5 ayes, 0 nays, 0 absent.