

ORDINANCE 971

AN ORDINANCE TO CREATE ARTICLE VII – SEXUALLY ORIENTED BUSINESSES IN CHAPTER IV OF THE REVISED MUNICIPAL CODE OF CENTRAL CITY, TO RETEAL ALL OTHER CONFLICTING ORDINANCES OR PARTS OF ORDINANCES, TO AUTHORIZE PUBLICATION IN PAMPHLET FORM, AND TO PROVIDE FOR AN EFFECTIVE DATE.

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

Section 1. That Chapter 4 of the Central City Municipal Code be amended to include Article 7 as follows:

SECTION 4-701: PURPOSE

It is the purpose of this Ordinance is 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 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.

SECTION 4-702: DEFINITIONS

Unless otherwise expressly stated, the following terms shall, for the purposes of this Ordinance have the meanings indicated in this section.

“Nudity or A State of Nudity” means a state of dress which fails to completely and opaquely cover a human buttock, vulva, anus, male genitals, or female genitals. or any part of the female breast or breasts that is situated below a point immediately above the top of the areola of the female breast.

“Sexually Oriented Business” means:

1. A commercial establishment to which the public is permitted or invited which, as its principal business purpose, offers for sale, rental or viewing, 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 pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe activities which are characterized by the exposure of human genitals in a state of sexual arousal or simulated to be in a state of sexual arousal, pubic region, or pubic hair; any buttock; or any portion of the female breast or breasts that is situated below a point immediately above the top of the areola. when less than completely and opaquely covered:

b. instruments, devices, or paraphernalia or any other items intended to provide sexual stimulation or sexual gratification to its customers, or are designed for use in activities which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to sexual activities which are designed for use in connection with sexual activities which are characterized by the exposure of human genitals in a state of sexual arousal or simulated to be in a state of sexual arousal, pubic region, or pubic hair; any buttock; or any portion of the female breast or breasts that is situated below a point immediately above the top of the areola. when less than completely and opaquely covered:

: This does not include items used for birth control or for prevention of sexually transmitted diseases.

The term “Sexually Oriented Business” shall not be construed to include:

a. Any business operated by or employing a licensed psychologist, licensed physical therapist, licensed masseuse, licensed vocational nurse, registered nurse, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing the normal and customary functions authorized under the license held;

b. Any business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts;

c. Any retail establishment whose principal business is the offering of wearing apparel for sale to customers and that does not exhibit merchandise on live models; or

d. An activity conducted or sponsored by a proprietary school licensed by the State of Nebraska or a college, junior college or university supported entirely or partly by taxation; or by a private college or university which maintains or operates educational programs in which credits are transferable to a college,

junior college, or university supported entirely or partly by taxation;

SECTION 4-703: LOCATION

A person commits an offense if he establishes, operates or causes to be operated or expanded a Sexually Oriented Business within 1,000 feet of a church; a public or private elementary or secondary school; a boundary of a residential district; a licensed day care center; or a public park.

SECTION 4-704: LICENSE REQUIRED

1. A person commits an offense if the person operates or causes to operate a Sexually Oriented Business without a valid license, issued by the City for the particular type of business.
2. Any person, association, firm, partnership, or corporation desiring to obtain a Sexually Oriented Business license shall make application on a form provided by the Chief of Police. 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 six inches (6").
3. The applicant must be qualified according to the provisions of this article.
4. An individual person who wishes to operate a Sexually Oriented Business 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 individual who has a twenty percent (20%) or greater interest in the business must sign the application for a license as applicant.
5. Each applicant shall be considered a licensee if a license is granted.
6. The fact that a person possesses other types of State or City permits does not exempt that person from the requirement of obtaining a license for a Sexually Oriented Business.
7. All applications for a license under this article shall be accompanied by a nonrefundable application fee. The fee is Five Hundred Dollars (\$500.00). An application shall not be considered to have been received until the fee is paid and all information required by the application form has been submitted.

8. A licensee or operator commits an offense if the licensee or operator fails to display a legible copy of the complete permit or certificate on the exterior of the Sexually Oriented Business premises. Such copy of the permit or certificate must be prominently and continuously displayed where customers enter the premises and immediately adjacent to such entrances.

SECTION 4-705: LICENSE ISSUANCE AND GROUNDS FOR DENIAL

1. The City Code Enforcement Officer shall approve the issuance of a license to an applicant within thirty (30) days after receipt of an application, unless the City Code Enforcement Officer finds one (1) or more of the following to be true:

- A. The location of the Sexually Oriented Business is or would be in violation of this Chapter.
- B. The applicant failed to supply all of the information requested on the application.
- C. The applicant gave false, fraudulent or untruthful information on the application.
- D. An applicant is under eighteen (18) years of age.
- E. An applicant or an applicant's spouse is overdue in payment to the City of taxes, fees, fines or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a Sexually Oriented Business.
- F. An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation or community supervision for a violation of a provision of this Chapter, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- G. An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation or community supervision for a violation of the laws of Nebraska, or any other jurisdiction for: prostitution; promotion of prostitution; aggravated promotion of prostitution; compelling prostitution; obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession of child pornography; indecent exposure; indecency with a child; sexual assault or aggravated sexual assault; incest, solicitation of a child or harboring a runaway child; for which less than five (5) years have elapsed since the date of conviction, or the date of release from the terms of community supervision, probation, parole or deferred disposition or the date of release from confinement for the conviction, whichever is the later date,

or the applicant or the applicant's spouse is required to register as a sex offender under the provisions of Nebraska Law.

4-706: RENEWAL OF LICENSE

1. Each license shall expire one year after the date of issuance. Renewal of a license may be applied for by submission to the City Code Enforcement Officer of an application on the form prescribed by such official and payment of a nonrefundable renewal processing fee of Five Hundred Dollars (\$500.00).
2. Application for renewal shall be made at least thirty (30) days before the expiration date of the current license.

4-707: REVOCATION

The City Code Enforcement Officer may revoke a Sexually Oriented Business license if the City Code Enforcement Officer determines that within a five (5) year period of time a licensee(s) or operator(s) (or any combination thereof) has/have been convicted of or placed on deferred disposition, probation or community supervision for conduct occurring in a licensing period on the premises of a Sexually Oriented Business that constitutes any of the offenses of the State of Nebraska which would subject the person to file as a sex offender; if a licensee or operator gave false or misleading information in the material submitted to the Chief of Police during the application process; if a licensee or operator has knowingly allowed possession, use or sale of a controlled substance on the premises; if a licensee or operator has on two (2) or more occasions knowingly allowed prostitution on the premises.

4-708: ADDITIONAL REGULATIONS

1. Any employee of a Sexually Oriented Business commits an offense if the employee, while appearing in a state of nudity touches a customer or the clothing of a customer.
2. A licensee, operator or employee commits an offense if the licensee, operator or employee appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of the Sexually Oriented Business premises which can be viewed from the public right-of-way.
3. A person commits an offense if the person employs at a Sexually Oriented Business any person under the age of eighteen (18) years.
4. A person commits an offense if the person knowingly allows a person under the

age of eighteen (18) years to appear in a state of nudity in or on the premises.

5. Live entertainment is prohibited in any room or booth of less than 500 square feet of floor space, as well as any other room adjacent to or visible from any viewing room or booth.

6. The owners, operator and any agents and employees present on the premises shall ensure: that the view area specified in Subsection (5) of this section remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials at all times that any customer is present on, in or about the premises; and, that no customer is permitted access to any area of the premises which has been designated as an area in which customers will not be permitted in the application.

7. A licensee, operator or employee commits an offense if the licensee, operator or employee knowingly allows a person under the age of eighteen (18) years on the premises of a Sexually Oriented Business.

8. A licensee, operator or employee commits an offense if the licensee, operator or employee knowingly allows, in a Sexually Oriented Business, another to appear in a state of nudity, unless the person is an employee who, while in a state of nudity, is on a stage (on which no customer is present) at least eighteen (18) inches above the floor, and is: (1) at least six (6) feet from any customer (hereinafter called "unenclosed performance stage"); or (2) physically separated from customers by a wall or partition composed of solid glass or light-transmitting plastic, or substantially equivalent material extending from the floor of the performance stage to at least five (5) feet above the level of the performance stage, but such that there are no openings in the wall or partition that would permit physical contact between customers and such employee.

9. It is an offense for an employee, while in a state of nudity in a Sexually Oriented Business, to receive directly any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to any employee, while that employee is in a state of nudity in a Sexually Oriented Business. Such gratuity or pay may be provided to such employee through a tip receptacle, located more than six (6) feet from the nearest point of the performance stage where such employee is in a state of nudity, or may be paid to an employee that is not in a state of nudity, as part of the customer's bill.

10. A licensee or operator commits an offense if the licensee or operator fails to display a sign on the interior of the Sexually Oriented Business premises notifying customers and employees:

TOUCHING OR TIPPING AN EMPLOYEE WHO IS IN A STATE OF NUDITY IS A CRIME (MISDEMEANOR), PUNISHABLE BY FINE UP TO \$200. PATRONS SHALL REMAIN AT LEAST SIX FEET FROM ALL UNENCLOSED PERFORMANCE STAGES.

The City Code Enforcement Officer may require, at the time of issuance or renewal of the license, the licensee to also display the sign in a language other than English if he determines that a substantial portion of the expected customers speak the other language as their familiar language.

11. A person having a duty under Subsections (1) through (10) of Subsection (A) herein commits a misdemeanor if he or she knowingly fails to fulfill that duty.

4-709: HOURS OF OPERATION

1. No Sexually Oriented Business, may remain open at any time between the hours of two o'clock (2:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and two o'clock (2:00) A.M. and noon (12:00) P.M. on Sundays.

4-710: VIOLATION A MISDEMEANOR

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined an amount not to exceed One Thousand Dollars and No Cents (\$1,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

Section 2: Any other ordinance or section passed and approved prior to passage, approval, and publication of this ordinance and in conflict with its provisions is repealed.

Section 3. This ordinance shall be published in pamphlet form.

Section 4. This ordinance shall take effect and be in full force from and after its passage, approval, and publication as required by law

PASSED AND APPROVED this 13th day of May, 2013.

CITY OF CENTRAL CITY, NEBRASKA

By: _____
Clayton Erickson, Mayor

Attest:

City Clerk

(SEAL)