

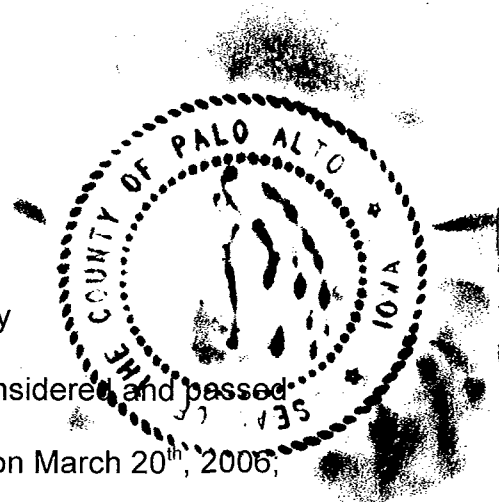


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LORI M. KLIEGL, COUNTY RECORDER
PALO ALTO IOWA

Resolution Adopting
Ordinance Number : 3-22-06



Sexually Oriented Business Ordinance for Palo Alto County

Whereas the Planning and Zoning Commission met and considered, and passed its recommendations for enacting a Sexually Oriented Business Ordinance on March 20th, 2006, and,

Whereas the Palo Alto County Supervisors published the synopsis of a Sexually Oriented Business Ordinance in the Emmetsburg Reporter-Democrat on March 16th, 2006 together with the Notice of Hearing to be held on March 22, 2006 and caused a full copy of the proposed ordinance to be available to the general public at the Palo Alto County Auditor's Office; and,

Whereas the Palo Alto County Supervisors did read the ordinance at their regular weekly meeting on March 22nd, 2006; and,

Whereas the Supervisors resolve to enact the Ordinance, and hereby resolve that this ordinance be passed by virtue of the authority established under Iowa Code 331.302.(5) and (6) and the County Home Rule Amendment to the Iowa Constitution.

The Palo Alto County Board of Supervisors moved by recorded vote to waive the necessity of a second and third reading of this proposed ordinance as permitted under Iowa Code Section 331.305. Wherefore the Palo Alto County Supervisors by affirmative recorded roll call vote hereby resolve to enact the Sexually Oriented Business Ordinance for Palo Alto County effective this 22nd day of March, 2006. The effective date of this Ordinance shall be the date of this resolution. Moved by Nelson Second by Graettinger

Ayes Steve Nelson, Ronald Graettinger, Philip Currans & Lannie Miller

original



**Palo Alto County Ordinance Dispersing Sexually Oriented
Businesses and Regulating their Proximity to Residences
and other Public and Private Facilities; providing for
licensing and regulation of sexually oriented businesses
and employees and performers and additional health and
safety regulations**

Ordinance Number: 3-22-06

This ordinance shall be known and may be referred to as the "Palo Alto County Sexually Oriented Businesses Ordinance".

3-22-06.01 **Purpose:** It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the County and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented business within the county. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to 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.

3-22-06.02 **Findings:** Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board and on findings, interpretations, and narrowing construction incorporated in the cases of:

Thomas V. Chicago Park District, 534 US 316 (2002); City of Los Angeles V. Alameda Books, Inc. 535 US 425 (2002); Pap's A.M. V. City of Erie, 529 US 277 (2000); City of Renton V. Playtime Theaters, Inc. 475 US 41 (1986), Young V. American Mini Theaters, 426 US 50 (1976),

Barnes V. Glen Theater, Inc. 501 US 560 (1991); California V. LaRue, 409 US 109 (1972), Farkas V. Miller, 151 F.3d 900, (8th Circuit 1998); FW/PBS, Inc. V. Dallas, 493 U.S. 215 (1990); City of National City v. Wiener, et al, 3 Cal. 4th 832 (1993); Topanga Press Inc., et al v. City of Los Angeles, 939 F.2d 1524 (1993); Jakes Ltd. v. City of Coates 284 F. 3d 603 (8th Circuit, 2001); Green V. City of St. Paul, 1999 US App LEXIS 1207 (8th Circuit 1999) (unreported); Scope Pictures V. City of Kansas City, 140 F3d 1201 (8th Circuit, 1998); Excalibur Group V. City of Minneapolis, 116 F3d 1216 (8th Circuit 1997); ILQ Invs. V. City of Rochester 25 F3d 1413 (8th Circuit 1994); Ambassador Books & Video v. City of Little Rock, 20 F3d 858 (8th Circuit 1994); Alexander V. Minneapolis, 928 F.2d 278 (8th Circuit 1991); John Doe V. Minneapolis 898 F.2d 612 (8th Circuit 1990); Thames Enters. V. St. Louis 851 F.2d 199 (8th Circuit 1988) MRM, Inc. v. City of Davenport 290 NW2d 338 (Iowa 1980); and,

The Board and other county officials considered reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to Phoenix Arizona- 1984; Minneapolis, Minnesota- 1980; Houston, Texas- 1997; Indianapolis, Indiana- 1984; Amarillo, Texas- 1977; Garden Grove, California- 1991; Los Angeles, California- 1977; Whittier California- 1978; Austin, Texas- 1986; Seattle Washington- 1989; Oklahoma County Oklahoma- 1986; Cleveland, Ohio- 1977; and Dallas, Texas- 1997; St. Croix County Wisconsin- 1993; Bellevue, Washington- 1998; Newport News, Virginia- 1996; New York

Times Square study 1994; St. Cloud , Minnesota - 1994; Phoenix, Arizona- 1995-1998; “Strip clubs According to Strippers: Exposing Workplace Sexual Violence.” By Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; Sexually Oriented Business: An Insider’s View. “ By David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12th, 2000; and the Report of the Attorney General’s Workshop Group on the Regulation of Sexually Oriented Businesses, (June 6th, 1989, State of Minnesota).

The Board and other county officials find that the regulatory provisions of this Chapter are within its constitutional power to enact, are designed to serve the County’s substantial interest in preventing many of the negative secondary effects associated with the sexually oriented adult uses, is narrowly tailored to that end, and provides reasonable alternative avenues of communication for sexually explicit messages within the County. The Board and other county officials further finds as follows:

- A. Sexually oriented business lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the unlicensed operators of the establishments.
- B. Employees of and/or performers at sexually oriented businesses , as defined in this Chapter , often engage in certain types of illicit sexual behavior.
- 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, videos or live sex shows.
- D. Communities have suffered adverse aesthetic impacts caused by sexually oriented businesses, including sexually graphic and unsanitary litter in and around Adult Bookstores and other sexually oriented adult uses.
- E. Persons often frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex in or near the premises of such sexually oriented businesses, or for the purpose of purchasing or selling illicit drugs.
- F. Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including , but not limited to syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis, salmonella, campylobacter and shigelia infections, chlamydial , myhoplasmal and ureoplasmal infections, trichomoniasis and chancroid.
- G. According to research as of Dec. 2004, from the Kaiser Family Foundation, 918,286 people in the United States have reported having AIDS virus, for which there is presently no cure. www.statehealthfacts.org

- H. Men and Women of all races and ethnic backgrounds are equally likely to be infected by sexual contact.
- I. The Centers for Disease Control and Prevention estimate that as many as 1 in 3 people with HIV/AIDS do not know they are infected.
- J. Numerous studies and reports have determined that semen is found in the areas of sexually oriented business where persons view “adult” oriented films.
- K. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of the sexually oriented businesses. Further , such a licensing procedure will place a heretofore nonexistent duty on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees and/or performers, as well as the citizens of the county.
- L. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.
- M. Requiring licensees of sexually oriented businesses to keep information regarding current employees and/or performers and certain past employees and/or performers 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.
- N. The fact that an applicant for an adult use 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.
- O. The general health , safety and welfare of the citizens of the county will be promoted by the enactment of his ordinance.
- P. It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment , but to enact a content neutral ordinance which addresses the adverse secondary effects of sexually oriented businesses.
- Q. It is not the intent of the Board of Supervisors to condone or legitimize the distribution of obscene material, and the Board recognizes the prohibitions concerning obscene materials contained in Chapter 728 of the Iowa Code (2005) and expects and encourages local and state enforcement officials to enforce state obscenity statutes against such illegal activities in the unincorporated areas of Palo Alto county.

- R. The Board of Supervisors and county officials find that live entertainment presented by some sexually oriented businesses establishments involves a considerable amount of bodily contact between patrons and performers, including physical contact while giving and receiving gratuities, including but not limited to hugging, kissing, and sexual fondling of or contact between performers and patrons , simulated or actual sex acts, “lap dances” where performers and patrons have sexually arousing contact with various areas of the body, including but not limited to the genital , anal or breast areas of the body and the use of food items including but not limited whipped cream or bananas in the course of the above described acts , which also increases the sanitation and disease transmission concerns.
- S. Some of this conduct would violate the Iowa Criminal Code and the County ordinances, which prohibit , among other things, public sex acts. Although no actual sexual intercourse may be involved, contact titillation provided in exchange for a gratuity is tantamount to prostitution, which is defined in Iowa Criminal Code Section 725.1 and 702.17, as “[a] performer who sells or offers for sale the person’s services as a partner in a sex act, or who purchases or offers to purchase such services, and thereby commits an aggravated misdemeanor”.
- T. The Board and other county officials finds that a number of courts have upheld distance limitations between performers and patrons, prohibitions against physical contact between performers and patrons, and prohibitions against direct payment and receipt of gratuities between performers and patrons at sexually themed business establishments that provide live entertainment: BSS, Inc. V. King County , 804 F2d 1104, 1110-11 (9th Circuit, 1986) (six feet); Kev, Inc. v. Kitsap County , 793 F2d 1091 (9th Circuit 1986) (ten feet); Zanganeh V. Hymes, 844 F.Supp. 1987 , 1091 (D Md. 1994) (six feet); T-Marc, Inc. V. Pinellas County, 804 F. Supp. 1500, 1506 (M. D. Fla 1992) (three feet); DLS, Inc. v. City of Chattanooga, 894 F. Supp. 1140 (E.D. Tenn. 1995) (six feet and prohibiting direct payment and receipt of gratuities) ; Parker v. Whitfield County , 463 S.E. 2d 116 (Ga. 1995) (prohibiting tipping and contact between dancers and patrons); and Hang On, Inc., v. Cit of Arlington, 65 F.3d 1248 (5th Circuit 1995) (affirmed prohibition on touching or any contact between dancers and patrons);
- U. The Board of Supervisors and county officials recognize that preventing prostitution and the spread of sexually transmitted diseases are clearly within its regulatory powers. Southeastern Promotions, Inc. v. Conrad 361 F.Supp. 465, 477 (E.D. Tenn. 1972), reversed on other grounds 420 U.S. 546 (1975). The Board and other county officials and staff believe that prohibiting physical contact between performers and patrons at a sexually oriented business establishment, prohibiting performers from soliciting payment of gratuities from patrons, and the direct payment of gratuities to performers by patrons are a reasonable and

effective means of addressing these legitimate governmental interests. It is not the intent of the County to place any impermissible burden on any constitutionally protected expression or expressive conduct by the enactment or enforcement of such regulations.

3-22-06.03 **Jurisdiction:** The provisions of this Chapter shall apply to all of the unincorporated territory of Palo Alto County, Iowa.

3-22-06.04 **Definitions.** For purposes of this Chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

Adult bookstore, Adult Novelty Store, Adult Video Store:

a commercial establishment which has significant or substantial portion of its stock-in trade or derives a significant portion of its revenues or devotes a significant or substantial portion of its interior business or advertising or maintains a substantial section of its sales or display space to the sale or rental for any form of consideration, of any one or more of the following:

- A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides or other visual representations which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas”;
- B. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others. The term “adult Bookstore, Adult Novelty Store, or Adult Video Store” shall also include a commercial establishment, which regularly maintains one or more “Adult Arcades”. 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 regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing “specified sexual activities” or specified “anatomical areas”.

Adult Cabaret

A nightclub, bar, juice bar, restaurant, bottle club or business or entity that has an emphasis on observation or viewing of nude or semi-nude performance (including but not limited to dancing, acting or otherwise entertaining), whether or not such performer receives compensation and/or pays to perform whether or not

alcoholic beverages are served, which regularly features persons who appear nude or semi-nude.

Adult Motel

A motel, hotel, or similar commercial establishment which :

- A. Offers accommodations to the public for any form of consideration; provides patrons with close-circuited television transmissions, films, motion pictures, video cassettes, Internet, other photographic reproductions or live performance which are characterized by the depiction or description of “specified sexual activities: or “specified anatomical areas”; and which advertises the availability of such material by means of a sign visible from the public right of way, or by means of any on or off - premises advertising, including but not limited to newspapers, magazine, pamphlets or leaflets, radio or television ; or
- B. Offers a sleeping room for rent for a period of time that is less than 10 hours; or
- C. Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than 10 hours.

Adult Motion Picture Theater:

A commercial establishment where films motion pictures, video cassettes Slides or similar photographic reproductions which are characterized by their emphasis upon the exhibition or by the depiction or description of “specified sexual activities: or “specified anatomical areas” are regularly shown for any form of consideration.

Board of Supervisors:

The Board of Supervisors of Palo Alto County, Iowa.

Controlling Interest:

The power, directly or indirectly , to direct the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The ownership, control, or power to vote twenty per cent or more of any class of voting securities of a business shall be presumed , subject to rebuttal, to be the power to direct the management , operation or policies of the business.

County:

Palo Alto County, Iowa .

County Attorney:

The County Attorney of Palo Alto County, Iowa.

County Zoning Officer:

The officer representing the Planning and Zoning Commission appointed by the Palo Alto county Board of Health for Palo Alto County , Iowa , or other employee of the Board of Health designated by the Sanitarian or Board of Health to carry out those duties.

Distinguished or Characterized by an emphasis on :

Means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis” upon the exhibition of description of Specified Sexual Activities or Specified Anatomical areas, the films so described are those whose dominant or principal character and theme are the exhibition or description “specified anatomical areas” or “specified sexual activities”. Similarly , when the phrase refers to a performance that is distinguished or characterized by an emphasis upon the exhibition or showing of “ specified sexual activities” or specified anatomical areas, the performance so described are those whose dominant or principal character and theme are the exhibition or showing of “specific anatomical areas” or “specified sexual activities”.

Employ, Employee, and Employment:

Describes and pertains to any person who performs any service on the premises of a sexually oriented business, on a full time, part time or contract basis, whether or not the person is denominated as an employee, independent contractor, agent, performer, lessees or otherwise and/or whether or not said employee receives compensation and /or pays to perform. 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.

Establish or Establishment :

Shall mean and include any of the following:

- A. The opening or commencement of any sexually oriented business as a new business.
- B. The conversion of an existing business whether or not a sexually oriented business, to any sexually oriented business; or
- C. The addition of any sexually oriented business to any other existing sexually oriented business.

Licensee:

A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an “employee”,

licensee shall mean the person in whose name the sexually oriented business performer/employee license has been issued.

Nudity or a State of Nudity :

The showing of a human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering , or the showing of the female breast with less than a fully opaque covering in any part of the nipple and areola, and shall include human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Operate or Cause to Operate:

Shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any persons on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner or licensee of the business.

Perform, Performer and Performance:

Describes and appertains to any person who performs any service on the premises of Sexually Oriented Business, on a full time , part time, or contract basis, whether or not the persons is denominated as a performer, independent contractor, agent, employee, lessees or otherwise and/or whether or not said performer receives compensation and/or pays to perform. Performer 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.

Person:

Shall mean individual, proprietorship, partnership, corporation, association or other legal entity.

Regularly Features or Regularly Shown:

Means a consistent or substantial course of conduct, such that the films or performances exhibited constitutes a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

Semi-Nude or "State of Semi-Nudity:

A state of dress in which opaque clothing covers no more than the genitals , anus, anal cleft or cleavage, pub ic area, vulva, and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices. This definition shall not include any portion of the cleavage of the human female breast exhibited by a dress blouse, skirt, leotard, bathing suit or other wearing apparel provided that the areola and nipple are not exposed in whole or in part.

Semi-Nude Model Studio:

Means any place where a person, who regularly appears in a state of semi-nudity is provided for money or any form of consideration to be observed sketched, drawn , painted , sculptured , photographed or similarly depicted by other persons.

It is a defense to prosecution for any violation of this ordinance that a person appearing in a state of semi-nudity or semi-nudity did so in a modeling class operated :

By a Junior College, Community College or University supported entirely or partly by taxation, or by a private college or university which maintains and operates educational programs in which credited hours are earned and are transferable to another college, junior college or community college or university supported entirely or partly by taxation; or,

In a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing ; and, Where in order to participate in a class a student must enroll at least three (3) days in advance of the class.

Sexually Oriented Entertainment Activity:

Means the sale, rental or exhibition for any form of consideration of books, films, videocassettes, magazines, periodicals or live performances which are characterized by an emphasis on the exposure or display of specific asexual activity.

Sexually Themed Business:

Means the sale, rental or exhibition for any form of consideration, of books, films, videocassettes, magazines, periodicals, or live performances which are characterized by an emphasis on the exposure or display of specified anatomical areas or of specific sexual activity.

Specified Anatomical Areas :

Means human genitals, anus, cleft of the buttocks or the nipple or the areolas of the female breast.

Specified Criminal Activity means any of the following Iowa Code Sections:

- §728.2 - dissemination and exhibition of obscene materials to minors
- §728.3 - admitting minors to premises where obscene material is exhibited
- §728.4 - rental or sale of hard-core pornography
- §728.5 - public indecent exposure in certain establishments
- §728.12 - sexual exploitation of a minor
- §709.2-4 - sexual abuse
- §709.8 - lascivious acts with a child
- §709.9 - indecent exposure

- §709.12 - indecent contact with a child
- §709.14 - lascivious conduct with a minor
- §709C.1 - criminal transmission of human immunodeficiency virus
- §711.4 - extortion
- §725.1-4 - prostitution, pimping, pandering, leasing premises for prostitution

Criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions that , if the acts would have constituted any of the foregoing offenses if the acts had been committed in Iowa for which :

1. Less than two (2) years have elapsed since the date of the 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;
2. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction , which ever is the later date, if the conviction is of a felony offense; or ,
3. Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction , whichever is the later date , if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

Specified Sexual Activity : Means any of the following :

- A. Sex acts, normal or perverted, including intercourse, oral copulation, oral genital contact of any kind, oral anal contact of any kind, masturbation or sodomy and including performances simulating or imitating any of the previously described sex acts; or,
- B. Excretory functions as a part of or in connection with any of the activities described in (A) above; or ,
- C. Directly or indirectly touching or caressing either by any individual of the specific anatomical areas specified herein or the simulation or imitation of touching or caressing of said specified anatomical areas; or,
- D. Exposure of the specific anatomical areas.

Transfer of Ownership or Control of a sexually oriented business : means

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

Video Room : means the room , booth or area where a patron of sexually oriented business would ordinarily be positioned which watching a film videocassette, Internet or the video reproduction.

3-22-06.05 **License Required;** Temporary License Upon Application

1. It is unlawful for any person to operate a sexually oriented business in the County without valid sexually oriented business license.
2. It is unlawful for any person to be an “employee and/or performer” as defined in this Chapter , of a sexually oriented business in the county without a valid sexually oriented business performer/employee license.
3. An applicant for a sexually oriented business license or a sexually oriented business performer/employee license shall file in person at the office of the Palo Alto County Zoning Officer a completed application made on a form provided by the County Zoning Officer. The application shall be signed by the applicant and notarized. An application shall be considered complete when it contains the information required in Paragraphs A through F as follows:
 - A. The applicants full true name and any other names used in the preceding five(5) years.
 - B. The Current business address or another mailing address of the applicant.
 - C. Written proof of age, in the form of a copy of a birth certificate and a picture identification document issued by a governmental agency.
 - D. If the application is for a sexually oriented business license , then the application shall contain the business name, location , legal description , mailing address and the phone number of the sexually oriented business.
 - E. If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process shall be included in the application;
 - F. A statement of whether the applicant has been convicted or has plead guilty or “nolo contendere” to a specified criminal activity as defined in this ordinance, and if so, the specified criminal activity involved, including the date, place and jurisdiction of each as well as the dates of conviction and release from confinement , where applicable.

The information provided pursuant to Paragraphs A through F of this subsection shall be supplemented in writing by certified mail, return receipt requested , to the County Zoning Officer within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

An application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business . The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with this chapter shall submit a diagram meeting the requirements

of those sections.

If a person who wishes to operate a sexually oriented business is an individual, he or she shall sign the application for a license as an applicant. If a person who wishes to operate a sexually oriented business is other than an individual, then each officer, director, general partner, each other person who will manage , supervise or control the premises, and each other person who will participate in decisions relating to management and control the premises, and each other person who will participate in decisions relating to the management and control of the premises, and each other person who will participate in decisions relating to the management and control of the business shall sign the application for a license as applicant. Each applicant must be qualified and each applicant shall be considered a licensee if a license is granted.

The information provided by an applicant in connection with an application for a license under this Chapter shall be maintained by the County Zoning officer on a confidential bases , except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function or as may be required by governing law or court order.

Upon the filing of a completed application for a **sexually oriented business license**, the County Zoning Officer shall within twenty (20) days of the initial filing date of the completed application, the County Zoning Officer shall issue a license to the applicant or in the alternative, issue the applicant a letter of intent to deny the application . The County Zoning Officer shall approve the issuance of a license unless :

- A. An applicant is less than eighteen (18) years of age.
- B. An applicant has failed to provide information as required for issuance of a license or has falsely answered a question or request for information on the application form.
- C. The license application fee of \$500.00 has not been paid.
- D. An applicant has been committed a violation of a Section of this Chapter within the previous year.
- E. The sexually oriented business premises is not in compliance with the interior configuration requirements of his Chapter or is not in compliance with locational requirements established in this Chapter and the applicable zoning code provisions.
- F. An applicant has been convicted of a specified criminal activity , as defined in this ordinance.

Upon the filing of a completed application for a **sexually oriented business performer/employee license**, the County Zoning Officer within twenty (20) days of the initial filing date of the completed application, shall issue a license to the applicant or issue the applicant a letter of intent to deny the application. The County Zoning Officer may approve the issuance of a license unless:

- A. an applicant is less than eighteen (18) years of age.
- B. an applicant has failed to provide information as required for issuance of a license or has falsely answered a question or request for information on the application form.
- C. The license application fee of \$500.00 has not been paid.
- D. An applicant has been committed a violation of this Chapter within the previous year.
- E. The sexually oriented business premises is not in compliance with the interior configuration requirements of his Chapter or is not in compliance with locational requirements established in this Chapter and the applicable zoning code provisions.
- F. An applicant has been convicted of a specified criminal activity , as defined in this ordinance.

The License, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that the license may be easily read at any time. A sexually oriented business employee and/or performer shall keep the performer's license on his or her person or on the premises where the licensee is then working or performing and shall produce such license for inspection upon request by a law enforcement officer or other county official performing functions connected with the enforcement of this Chapter.

Sexually oriented businesses and sexually oriented business employees and/or performers shall permit agents of the county inspect , from time to time on an occasional basis , the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter , during those times when the sexually oriented business is occupied by patrons or is open for business. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this section for purposes of licence denial , suspension, and/or revocation.

The provisions of this section do not apply to areas of an Adult Motel which are currently being rented by a customer for use as a permanent or temporary habitation.

3-22-06.06 **Expiration of License**

- 1. Each license shall remain valid for a period of one (1) calendar year from the date

of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in the above section(s)

2. Application for renewal should be made at least ninety (90) days before the expiration date.

3-22-06.07 **Cause for Suspension**

1. The county shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has violated this chapter or has knowingly allowed an employee and/or performer to violate this chapter.
2. The County shall issue a written letter of intent to suspend a sexually oriented business performer/employee license if the employee and/or performer has violated this chapter.

3-22-06.08 **Cause for Revocation**

1. The County shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business performer/employee license if the respective licensee commits two or more violations within a twelve (12) month period.
2. The County shall issue written letters of intent to revoke a sexually oriented business performer/employee license if:
 - A. The licensee has knowingly given false information in the application for a sexually oriented business license or a sexually oriented business performer/employee license;
 - B. The licensee has knowingly engaged in possession, use or sale of controlled substances on the premises;
 - C. The licensee has knowingly engage in prostitution on the premises;
 - D. The licensee knowingly operated the sexually oriented business during a period of time when the license was suspended;
 - E. The licensee has knowingly engaged in any specified sexual activity to occur in or on the licensed premisesA business licensee shall be liable for the acts of an employee and/or performer only pursuant to the standard established in this ordinance.

3-22-06.09 **Nature of Revocation.**

When after the notice and hearing procedure, the County Zoning Officer revokes a license, the revocation shall continue for two (2) years and the licensee shall not be issued a sexually oriented business license or sexually oriented business performer/employee license for two (2) years from the date the revocation becomes effective.

An applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right

to challenge or appeal such action or seek a declaration of rights to challenge or appeal such action or seek a declaration of rights concerning such action and/or concerning this chapter, upon factual grounds or constitutional grounds or both, to a court of law within thirty (30) days after issuance of the Board of Supervisors written decision denying, suspending, or revoking a license under this Chapter.

3-22-06.10 **Right to Hearing Prior to Denial, Suspension, Revocation:** Prompt Judicial Review; Right to Provisional License Pending Judicial Review.

If facts exist that warrant the denial, suspension, or revocation of a license under this Chapter, the County Auditor shall notify the applicant or licensee in writing of the intent to deny, suspend, or revoke the license, including the grounds thereof, by personal delivery, or by certified mail. The notification shall be directed to the most current business address or other mailing address on file with the County Auditor for the respondent. Within ten (10) working days of the receipt of such notice, the respondent may submit a written request to the County Auditor for a hearing before the Board of Supervisors to refute the grounds alleged by the County Auditor for denial, suspension, or revocation of the license.

Within five (5) days of the receipt of respondent's written response, the County Auditor shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding. Within 20 days of the receipt of the respondent's written response, the Board of Supervisors shall conduct a hearing at which respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross examine any of the County's witnesses.

The county Auditor shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending or revoking the license. The hearing shall take no longer than two (2) days, unless extended or recessed to meet the requirements of due process and proper administration of justice. The Board of Supervisors shall issue a written decision within five (5) days after the hearing. If the decision is to deny, suspend or revoke the license, it shall state the reasons for such action and the denial, suspension or revocation shall become final for purposes of appeal immediately, but shall not take effect or be enforced until thirty (30) days thereafter.

If the decision is to grant the license, the County Auditor shall immediately issue a license to the respondent.

If the respondent does not request a hearing within ten (10) business days of receiving the County Auditor's notice of intent to deny, suspend, or revoke the license, the license shall be deemed denied, suspended or revoked as applicable.

- 3-22-06.11 **Transfer of License**
A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application .
- 3-22-06.12 **Hours of Operation**
No sexually oriented business , except for an Adult Motel, shall be or remain open for business between 2:00 AM and 6:00 AM on a weekday or between 2:00 am on a Sunday and 6:00 AM on the following Monday, however, a sexually oriented business which holds a liquor license or retail beer permit entitling the holder to sell alcoholic liquor or beer on Sundays may remain open between the hours of 8:00 am on Sunday and 2:00 am on the following Monday.
- 3-22-06.13 **Regulations Regarding Exhibition of Sexually Explicit Films on the Premises.**
A person who operates or causes to be operated a sexually oriented business, other than an Adult Motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the requirements contained in the Palo Alto County Iowa Code.

It shall be unlawful for a person having a duty under this section to knowingly fail to fulfil that duty.

It shall be the duty of the operator of a sexually oriented business to :

- (A) post conspicuous signs stating that no loitering is permitted on such property,
- (B) designate one or more employees and/or performers to monitor the activities of persons on such property by visually inspecting such property at least once every two (2) hours or inspecting such property by use of video cameras and monitors; and
- (C) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used , video cameras and monitors shall operate continuously at all times that the remises are open for business. The monitors shall be installed within a manager's station or at a cash register where an employee and/or performer is regularly present..

- 3-22-06.14 **Violations and Penalties.**
The penalty for violating the provisions of this Chapter shall be those consistent with simple misdemeanors under the Iowa Code.
- 3-22-06.15 **Prohibitions Regarding Minors and Sexually Oriented Businesses.**
A person commits a misdemeanor if he or she operates or causes to be operated a sexually oriented business, regardless of whether or not a permit has been issued

for said business under this chapter, and knowingly or with reasonable cause to know , or should have known , permit suffer or allows:

1. Admittance of a person under eighteen (18) years of age to the business premises.
2. A person under eighteen (18) years of age to remain at the business premises.
3. A person under eighteen (18) years of age to purchase goods, or services at the business premises.
4. A person who is under eighteen (18) years of age to work at the business premises as an employee.

3-22-06.16 **Regulations concerning Live Public Nudity on Premises.**

1. It shall be a violation of this Chapter for a licensee required to obtain a sales tax permit to knowingly or intentionally violate Iowa Code Section 728.5 . It shall be a violation for any person to knowingly or intentionally , in a sexually oriented business , to appear in a state of nudity;
2. It shall be a violation of this Chapter for an employee and /or performer to knowingly and intentionally appear semi-nude in a sexually oriented business unless the employee and /or performer while semi-nude , shall be at lease six (6) feet from any patron or customer and on a stage at least two (2) feet elevated from the floor.
3. It shall be a violation of this Chapter for an employee and/or performer, while semi-nude in a sexually oriented business , to knowingly or intentionally receive any pay or gratuity directly from any patrol or customer or patron or customer to knowingly or intentionally pay or give any gratuity directly to any employee and/or performer, while said employee and/or performer is semi-nude in a sexually oriented business.
4. It shall be a violation of this Chapter for an employee and/or performer, while semi-nude in a sexually oriented business to knowingly or intentionally touch a costumer or patron or the clothing of a customer or patron; for a customer to knowingly and intentionally touch an employee and/or performer or the clothing of an employee and/or performer, while said employee and/or performer is semi-nude in a sexually oriented business.

A sign in the form to be prescribed by the County Zoning Officer and summarizing the above provisions of paragraphs .01 through .04 of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry into the inside of the building.

- see enter*
- 3-22-06.17 **Scienter Required to Prove Violation or Business Licensee Liability**
Notwithstanding anything to the contrary, for the purposes of this Chapter , an act

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by an employee and/or performer that constitutes grounds for suspension or revocation of that employee and/or performer's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director or general partner, or person who managed supervised, or controlled the business premises, knew or reasonably should have known that such act was occurring and failed to prevent such act. It shall be a defense to liability under this Chapter that the person to whom the violative act sought to be imputed, was powerless to prevent the act.

3-22-06.18

Siting Criteria.

1. A person commits a violation of this Chapter if that person operates or causes to be operated a sexually oriented business in any zoning district other than AC, (Agricultural Conservation) District; or FPC (Flood plane Conservation) District; or C (commercial) District; or LI (Light Industrial) District; or HI (Heavy Industrial) District as defined and described in the Palo Alto County Zoning Ordinance;

2. A person commits an offense if the person operates or causes to be operated a sexually oriented business within one thousand five hundred (1,500) feet of:
 - A. A church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities;
 - B. A public or private educational facility ,including child day care facilities, nursery schools, preschools, kindergartens, elementary schools , private schools, intermediate schools, junior high schools, middle schools , high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, community colleges and universities ; schools includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
 - C. A boundary of a residential "R" district or platted residential subdivision as defined in the Palo Alto County Iowa zoning ordinance.
 - D. A public park, public playground, public plaza, man made recreational waterway or cemetery;
 - E. A residential dwelling unit; or
 - F. Another sexually oriented business.

For the purpose of subsection 2 of this section, measurement shall be made in a straight line, without regard to intervening structures or objects from the nearest property line of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Subsection .02 A, B, C, D, E or F. The presence of a county, city or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

For purposes of this subsection, the distance between any two sexually oriented businesses shall be measured in a straight line without regard to the intervening structures of objects or political boundaries from the closest exterior wall of the structure in which each business is located.

Any sexually oriented business lawfully operating on the effective date of this Chapter that is in violation of subsection .01 through .04 of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased enlarged, extended or altered except that the use may be changed to a conforming use.

If two or more sexually oriented businesses are within one thousand five hundred (1,500) feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and was continually operating at a particular location, is the conforming use and the later established business(es) is/are nonconforming.

A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license of a use listed in Subsection .02 of this section within one thousand five hundred five hundred fee of another sexually oriented business. This provision applies only to the renewal of a valid license and does not apply when an application is made for a license after the applicant's previous license has expired or been revoked.

3-22-06.19 **Immunity from Prosecution**

The County and departments and employees, the Palo Alto County Sheriff's office and all other state or county officers, agents and employees charged with enforcement of State and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable and /or good faith trespass upon a sexually oriented business while acting within the scope of authority conferred by this Chapter.

3-22-06.20 **Severability**

That should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, that decision shall not effect that validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

3-22-06.21 **Effective Date**

This ordinance shall be in full force and effect after its passage, approval and publication as provided by Law.

Passed and Approved by the Palo Alto County Planning and Zoning Commission on March 20th, 2006 .

Signed: Dean Henderson
Chairperson for the Palo Alto County Planning and Zoning Commission

Whereupon the proposed ordinance was presented to the Board of Supervisors on March 22nd, 2006 for their consideration and actions thereupon.