

NOTICE

TO WHOM IT MAY CONCERN:

At regular meeting held February 25, 2014, the Buffalo County Board of Supervisors adopted the following county ordinance:

Be it ordained by the County Board of the County of Buffalo, State of Nebraska, that the following ordinance be adopted as a county ordinance as authorized pursuant to Neb.Rev.Stat. §23-174.10 and § 23-187, *et seq*:

ADULT ENTERTAINMENT ESTABLISHMENT ORDINANCE

SECTION A. PURPOSE.

1. This ordinance is intended to ensure that the adverse effects created by Adult Entertainment Establishments are minimized and controlled so as not to cause or contribute to crime, increased blighting, or downgrading of adjacent property and the surrounding neighborhood by restricting their proximity to public parks, schools, hospitals, churches, certain governmental and civic facilities, and residentially zoned areas.
2. This ordinance is intended to protect and preserve the quality, property values, integrity and character of the county's neighborhoods, rural areas, and commercial districts, deter the spread of urban blight, and protect the citizens of Buffalo County, Nebraska, from the objectionable effects of Adult Entertainment Establishments.
3. It is the intent of this ordinance to prevent the concentration of Adult Entertainment Establishments within Buffalo County, Nebraska. It is not intended to impose a limitation or restriction on the content of any communicative materials, nor restrict or deny access by adults to sexually oriented materials protected by the First Amendment to the Constitution of the United States or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market.
4. Previously, Buffalo County has adopted and implemented a Comprehensive Plan and Zoning Resolution to assure that property values remain protected to the residents of this county and to preserve the integrity and character of the county's neighborhoods, rural areas, and commercial districts. This ordinance is a logical progression of appropriate regulation of land use to preserve property values and to preserve the integrity and character of the county's neighborhoods, rural areas, and commercial districts.

SECTION B. USES REGULATED.

Uses regulated by the provisions of this ordinance shall be applicable to Adult Entertainment Establishments, further defined as follows:

1. An Adult Entertainment Establishment shall be defined as any commercial establishment open to the public which:
 - a. Displays, distributes, issues, gives, provides, lends, delivers, transfers, transmits, circulates, disseminates, presents, exhibits, advertises, sells, rents or leases a substantial or significant portion, as herein defined, of its stock in trade, any material defined by the Neb. Rev. Stat. Sec. 28-808 or characterized by the depiction of "specified anatomical areas" or "specified sexual activities", as such are herein defined; or
 - b. Utilizes a substantial or significant portion, as herein defined, of its display areas, including but not limited to, floor, shelf, rack, table, stand or case display areas, boxes, cabinet drawers, cartons, or any other storage area or apparatus, for any material defined by the Neb.Rev.Stat. Sec. 28-807, et. seq., or characterized by the depiction of "specified anatomical areas" or "specified sexual activities", as such are herein defined; or
 - c. Exhibits for a substantial or significant portion, as herein defined, of the total presentation time any material defined by Neb.Rev.Stat. Sec. 28-808, et seq, or characterized by the depiction of "specified anatomical areas" or "specified sexual activities", as such are herein defined.
2. An Adult Entertainment Establishment shall be further defined as any commercial establishment open to the general public which involves employees or customers who engage in conduct which is distinguished or characterized by "specified sexual activities" or "specified anatomical areas", as herein defined.
3. Adult Entertainment Establishments specifically identified and regulated by the provisions of this Article shall include, but are not necessarily limited to:
 - a. Adult arcades, meaning any place to which the public is permitted or invited wherein coin-operated, slug- or token-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 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 anatomical areas" or "specified sexual activities," as herein defined;
 - b. Adult bookstores, means a commercial establishment which has devoted a substantial or significant portion of its business to the sale, rental or any form of consideration, of any one or more of the following:
 - i. Books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, video tapes, or other video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or
 - ii. Instruments, devices, or paraphernalia which depict "specified anatomical areas" or are designed for use in connection with "specified sexual activities".

- c. Adult cabarets means a nightclub, bar, restaurant, juice bar, or similar commercial establishment which regularly features:
 - i. Person or persons who appear by the exposure of his, her, and/or their “specified anatomical areas”, or
 - ii. Live performances which are characterized by the exposure of "specified anatomical areas", or by "specified sexual activities", including topless or bottomless dancers, exotic dancers, or strippers; or
 - iii. Films, motion pictures, video cassettes or tapes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".
 - d. Adult motion picture theaters means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes or tapes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".
 - e. Adult theaters means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of exposure of “specified anatomical areas”, or live performances that are characterized by the depiction or description of "specified sexual activities" or the exposure of "specified anatomical areas".
 - f. Nude modeling studios means any place where a person who displays any "specified anatomical area" that is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. This shall not include uses where instruction is given for human lactation, breastfeeding support groups, and human breastfeeding education groups.
4. “Specified Anatomical Area” shall mean:
- a. Less than opaquely covered human genitals, pubic region or pubic hair; or
 - b. Less than opaquely covered perineum, buttock, or anus; or
 - c. Less than opaquely covered female breast below a point immediately above the top of the areola; or
 - d. Human male genitals in a discernibly erect or turgid state, even if completely and opaquely covered.
5. “Specified Sexual Activities” shall mean:
- a. Human genitals in a discernable state of sexual stimulation or arousal; or
 - b. Acts or representations of human masturbation, sexual intercourse, sodomy, bestiality, excretory functions, sadism, masochism, lewd exhibition of genitals; or
 - c. Fondling or other erotic touching of human genitals, pubic region or pubic hair, perineum, buttock or anus, or female breast.

6. “ Substantial, Significant, or Primary” shall mean, regardless of whether these words are used singly or in combination, the use of over fifty (50) percent of stock in trade, display area, or presentation time, whichever may be applicable to the nature of the establishment. Stock in trade and material shall be measured in terms of titles or objects. Items with the same title or name shall be considered as separate titles or objects

SECTION C. LOCATIONAL CRITERIA.

1. OPERATION:

- a. It shall be unlawful to operate an Adult Entertainment Establishment, as herein defined, within Buffalo County, Nebraska, unless such use is located on property, consisting of one lot, that is situated in the Commercial (C) District of the official zoning district map of Buffalo County, Nebraska.
- b. Adult Entertainment Establishments shall be excluded as a specially permitted use on any property which is zoned as the Agricultural (AG) District.
- c. Adult Entertainment Establishments shall be subject to, and comply with, the rules and provisions of the flood plain and zoning resolutions of Buffalo County.
- d. An Adult Entertainment Establishment shall be located in a freestanding building, situated on one lot, containing no other uses or Adult Entertainment Establishments.
- e. An Adult Entertainment Establishment, as herein defined, shall not be open to customers between the hours of one (1:00) a.m. and ten (10:00) a.m.
- f. Where conflict exists between the prescriptions established in this Article and the requirements of the zoning resolution, flood plain, or any other applicable code, resolution, or ordinance of Buffalo County or the State of Nebraska, then the more restrictive requirements shall apply.
- g. No owner, operator, employee, manager or other person in charge of the premises of an adult entertainment establishment shall permit alcoholic liquor or cereal malt beverages, purchased at a location other than the adult entertainment establishment, to be brought in, upon, or to be consumed on the premises;
- h. Only persons eighteen (18) years of age or older shall be permitted on the premises of any adult entertainment establishment. For any adult entertainment establishment that serves alcoholic beverages on the premises, only persons twenty-one (21) or older shall be permitted on the premises.
- i. An adult entertainment establishment shall post a sign at the entrance of the premises, which shall state the nature of the business and shall state that no one under the age of eighteen (18) years, or in the case of one that serves alcoholic beverages, the age of twenty-one (21) years, is allowed on the premises. This sign shall be conspicuously displayed in the common area at the principal entrance to the premises, on which

uppercase letters shall be at least two inches high. This provision shall not be construed to prohibit the owner of the Adult Entertainment Establishment from establishing an older age limitation for coming on to the premises.

- j. All adult entertainment establishment businesses, its owners, managers, entertainers, and any other employee thereof shall permit any governmental official acting in their official capacity to inspect the premises and activities on the premises as necessary to insure the business is complying with all applicable regulations and laws.

2. LOCATION AND DISTANCING:

- a. An Adult Entertainment Establishment, as herein defined:
 - i. Shall only be allowed in the Commercial (C) Zoned zoning district as delineated in Official Zoning District Map of Buffalo County, Nebraska.
 - ii. Shall not be located or expanded within one thousand (1,000) feet of Agricultural Residential (AGR) District zoned property;
 - iii. Shall not be located or expanded within one thousand (1,000) feet of any other Adult Entertainment Establishment;
 - iv. Shall not be located or expanded within one thousand (1,000) feet of any church, synagogue or temple, hospital, public school or public park, or any day care center or day care home.
- b. Measurements pursuant to Section C(2)(a) shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises of an Adult Entertainment Establishment to:
 - i. The nearest property line of any real estate situated in the Agricultural Residential (AGR) use district by the Zoning Map of Buffalo County; and
 - ii. The nearest portion of the building or structure used as a part of the premises of any other Adult Entertainment Establishment; and
 - iii. The nearest property line of the premises of a church, synagogue, temple, hospital, public school, public park, day care center, or day care home.

SECTION D. BUILDING AND EXTERIOR:

1. EXTERIOR SIGNS:

- a. Exterior signs located on the building or premises shall not advertise, either graphically or verbally, either by explicit or literal expression, connotation, or implied reference, any "specified sexual activity" or "specified anatomical area", as herein defined.
- b. Number of signs. Not more than one (1) business wall sign shall be permitted for an adult entertainment establishment and this sign shall be permitted only on the front facade. In addition to the one (1) permitted business wall sign, an adult entertainment business shall be permitted not more than one (1) pole or ground sign structure if it is an entity of

commercial development held in either private ownership or long-term lease, and which meets all of the requirements of the zoning district in which it is located. These requirements shall include direct access to a public street from that property and a full amount of required parking on the site with the use. All other sign structures shall be prohibited.

- c. Sign surface area. The sign surface areas of a business wall sign for an adult entertainment establishment shall not exceed an amount equal to five (5) percent of the front building facade of the first floor elevation (first ten (10) feet) of the premises occupied by the adult entertainment establishment, or one hundred (100) square feet, whichever is the lesser. The maximum sign surface area of a ground or pole sign structure, where permitted, shall not exceed one (1) square foot for each lineal foot of frontage of the lot, or thirty-six (36) square feet, whichever is the lesser.
- d. Lighting. Signs and sign structures may be illuminated, provided, however, such illumination shall not be by way of exposed neon, exterior lighting (e.g., spot or floodlights), or any flashing or animated lights (either interior to the sign, on the exterior of the sign, or as a border to the sign).

2. EXTERIOR DISPLAY.

- a. No adult entertainment establishment shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specified anatomical areas by display, decorations, sign, show window or other opening from any public view.
- b. All adult entertainment establishments, its owners, managers, entertainers, and any other employee thereof shall permit any governmental official acting in their official capacity to inspect the premises and activities on the premises as necessary to insure the establishment is complying with all applicable regulations and laws.

SECTION E. VIOLATION PENALTY.

It is unlawful for any person to violate any of the provisions of this ordinance. Upon conviction thereof, such person shall be fined not less than one dollar or more than five hundred dollars. Each day's or separate instance's violation of, or failure, refusal or neglect to comply with, any provision of this ordinance shall constitute a separate and distinct offense.

SECTION F. APPLICABILITY:

This ordinance shall be effective within the boundaries of Buffalo County, Nebraska, except those areas inside of the corporate boundaries of any city or village or outside the corporate boundaries of any city or village in which such city or village is exercising powers by ordinance on a similar subject matter to which this ordinance pertains. The definition of Adult Entertainment Establishment and the provisions of this Ordinance shall apply to the opening or commencement of a new business, the conversion of an existing business to an Adult

Entertainment Establishment, the addition to or expansion of an existing Adult Entertainment Establishment, or the relocation of any Adult Entertainment Establishment. An existing Adult Entertainment Establishment now in existence at time of adoption of this ordinance that violates any distancing requirement of this ordinance shall be allowed to continue to exist but shall not be allowed to expand its business. If an existing Adult Entertainment Establishment now in existence ceases to be operational for any span of one hundred eighty (180) days, it shall not be allowed to reopen and any future use of the building, property, and premises shall conform to this ordinance.

SECTION G, SEVERABILITY:

If any section, subsection, paragraph, sentence clause or phrase in this ordinance, or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decisions shall not affect the validity or the effectiveness of the remaining portions of this ordinance, or any part thereof.