



Jackson County Missouri

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Legislation Text

File #: 3969, Version: 0

IN THE COUNTY LEGISLATURE OF JACKSON COUNTY, MISSOURI

AN ORDINANCE repealing chapters 43 and 59, Jackson County Code, 1984, relating to Massage Establishments and Pornography and enacting, in lieu thereof, one new chapter relating to Adult Live Entertainment and Adult Entertainment Businesses, consisting of 39 sections, with a severability clause, penalty provision, and an effective date.

ORDINANCE #3969, January 14, 2008

INTRODUCED BY Henry C. Rizzo, Dennis Waits, Dan Tarwarter, Theresa Garza Ruiz, Fred Arbanas, Scott Burnett, James D. Tindall, Greg Grounds and Bob Spence, County Legislators

WHEREAS, the Legislature finds that a substantial need exists to provide for licensing and regulation of sexually oriented businesses and employees within Jackson County, and,

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, and welfare of the employees and patrons of such businesses, as well as the citizens of the County, and to prevent the harmful secondary effects of these businesses; and,

WHEREAS, studies in other jurisdictions have shown that businesses providing adult live entertainment are increasingly associated with ongoing prostitution, disruptive conduct, and other criminal activity which is not currently subject to effective regulation and which constitutes an immediate threat to the public peace, health, and safety; and,

WHEREAS, these studies have shown that regulation of the adult live entertainment industry is necessary to deter prostitution and high-risk sexual conduct that may be associated with adult live entertainment facilities and to limit the health hazards of sexually transmitted diseases, including syphilis, gonorrhea, herpes, hepatitis-B, and HIV/AIDS, that may result; and,

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation, and the fees required are nominal fees designed to help defray the substantial expenses incurred by the County in processing applications for licenses and permits issued; and,

WHEREAS, it is necessary to license entertainers in the adult live entertainment industry and adult businesses to prevent the exploitation of minors, to ensure that each such entertainer is an adult, and to ensure that no such entertainer has assumed a false name, which would make regulation of the entertainer difficult or impossible; 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 a decrease in property values; and,

WHEREAS, the United States Supreme Court in *City of Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986), held that a local government may rely upon the experiences of other jurisdictions as well as on its own studies in enacting local legislation to regulate adult businesses; and,

WHEREAS, the Court in *Renton* and other cases has held that a jurisdiction may regulate such uses through content-neutral, time, place, and manner restrictions, so long as said regulations are designed to serve a governmental interest and do not unreasonably omit avenues of communication, and are aimed not at the content of protected speech within said establishments but rather at curbing the harmful secondary effects of said establishments on the surrounding communities; and,

WHEREAS, the Legislature 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 the Legislature to condone or legitimize the distribution of obscene material, and the Legislature recognizes that state and federal law prohibit the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the County; and,

WHEREAS, the County recognizes its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and,

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment of the U.S. Constitution or the Missouri Constitution, but to enact a content neutral ordinance which addresses the harmful secondary effects of sexually oriented businesses; and,

WHEREAS, the adoption of these new resolutions render existing County Code Chapters 43, dealing with Massage Establishments, and 59, dealing with Pornography, obsolete, such that repeal is

appropriate; now therefore

BE IT ORDAINED by the County Legislature of Jackson County, Missouri, as follows:

Section A. Enacting Clause. Chapters 43 and 59, Jackson County Code, 1984, are hereby repealed and one new chapter enacted in lieu thereof, to be known as chapter 43, Adult Businesses and Adult Entertainment Businesses, consisting of 39 sections, to read as follows:

GENERAL

4300. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult business means any business enterprise:

1. That has as a regular and substantial business purpose the sale, display or rental of goods that are designed for use in connection with Aspecified sexual activities,@ or that emphasize matters depicting, describing or relating to Aspecified sexual activities@ or A specified anatomical areas@.
2. The definition of Aadult business@ also includes, but is not limited to, any and all of the following, as defined herein:
 - a. *Adult retail establishments* means an establishment which as a regular and substantial business purpose, offers for sale or rent, any one or more of the following: instruments, devices, gifts or more of the following: instruments, devices, gifts or paraphernalia which are designed for use in connection with Aspecified sexual activities@ or clothing that graphically depicts Aspecified anatomical areas@ or any of the materials sold or rented in an adult bookstore as defined herein.
 - b. *Adult bookstore* means an establishment which as a regular and substantial business purpose, offers for sale or rent, books, magazines, periodicals or other printed matter, photographs, slides, films or video tapes, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to Aspecified sexual activities@ or Aspecified anatomical areas@.
 - c. *Adult newsrack* means any coin or card operated device that offers for sale by dispensing printed material, which is distinguished or characterized by its emphasis on matter depicting, describing or relating to Aspecified sexual activities@ or Aspecified anatomical areas@.

d. *Adult newsstand* means a freestanding structure, vehicle or booth which as a regular and substantial business purpose, offers for sale, books magazines, periodicals or other printed matter, which are distinguished or characterized by their emphasis on matter depicting, describing or relating to Aspecified sexual activities@ or Aspecified anatomical areas@.

3 *Substantial business purpose* means an establishment having twenty percent (20%) of its stock in trade in the above described materials, having twenty percent (20%) of its gross sales in the above described materials, or having twenty percent (20%) of its floor area devoted to the sale, rental or storage of the above described materials.

Adult cabaret means an adult live entertainment facility, or that part of an adult live entertainment facility, which regularly features or otherwise offers to the public, customers or members in a viewing area, any live exhibition, performance or dance by persons whose exhibition, performance or dance is characterized by the exposure of any specified anatomical area, or by specified sexual activities, or who otherwise appear unclothed or in such attire, costume or clothing so as to expose to view specified anatomical areas.

Adult entertainment business means any business, commercial establishment, or premises to which the public is permitted or invited operating as an adult motion picture theater; bathhouse; and/or motion picture arcade booth establishment.

Adult live entertainment business means an adult cabaret.

Adult live entertainment facility means any building, structure or facility which contains or is used for commercial entertainment, including theaters used for presenting live presentations, predominantly distinguished or characterized by their principal emphasis on matter displaying, depicting, describing or relating to specified sexual activities or specified anatomical area, and including adult cabaret facilities providing a live presentation, where the customers observe any live presentation, of any person wholly or partially nude with their genitals or pubic region exposed or covered only with transparent covering and additionally, in the case of a female person, with the areola and nipple of the breast exposed or covered only with transparent covering, or observe specified sexual activities.

Adult live entertainment facility premises means the bounds of the enclosure of an adult live entertainment facility that is licensed, or part of which is licensed, as an adult live entertainment business.

Adult media means magazines, newspapers, books, videotapes, movies, slides, cd-roms, digital video discs, other devices used to record computer images, or other media which are distinguished or characterized by their emphasis on matter displaying, depicting, describing or relating to specified sexual activities or specified anatomical areas.

Adult Motel means an enterprise where a regular and substantial portion of its business is the maintaining, operating, or offering public accommodations for consideration for the purpose of viewing closed circuit television transmissions, films, motion pictures, video cassettes, slide or other photographic reproductions which are distinguished or characterized by an emphasis on the depiction or description of Aspecified sexual activities@ or Aspecified anatomical areas@

and rents room accommodations for less than six hours at a time.

Adult motion picture theater means a building or portion of a building (including any portion of a building which contains more than 150 square feet) used for presenting motion pictures, movies, videos or other projected images if such building or portion of a building as a prevailing practice excludes minors by virtue of age, or if, as a prevailing practice, the movies, videos or other material presented are distinguished or characterized by an emphasis on the display, depiction or description of specified sexual activities or specified anatomical areas for observation by patrons therein.

Bathhouse means an establishment or business which provides the services of baths of all kinds, including all forms and methods of hydrotherapy, unless operated by a medical practitioner or professional physical therapist, licensed by the state.

Body Painting Studio means an establishment where a regular and substantial portion of its business is the maintaining, operating, or offering for compensation the applying of paint or other substance to or on the human body by any means of application, technique or process when the subject's body is displaying for the customers view Aspecified anatomical areas@.

Critical Violation means a provision of this Chapter that, if in noncompliance, is more likely than other violations to contribute to the harmful secondary effects of adult businesses, or to other health or safety hazards. ACritical item@ includes any item on the following list, but is not limited to those listed:

- 1) Ensure the business is only open to customers when there is a designated licensed manager on duty;
- 2) Ensure the no loitering policy is posted and enforced;
- 3) Prevent and ensure that no sexual activity, prostitution or solicitation, gambling, or unlawful sale, delivery or use of controlled substances or alcohol takes place on the business premises;
- 4) Prevent persons under eighteen (18) from entering the premises;
- 5) Prevent the display of sexually explicit materials inside the premises that are viewable from a public place;
- 6) Allow inspections at any time by law enforcement or code officials;
- 7) Ensure that doors in adult motion picture theaters are maintained so they cannot be locked from the inside while the business is open;
- 8) Ensure that no employee or entertainer shall: 1) be unclothed, unless separated by at least three feet from the nearest customer; 2) perform or engage in any sexual activities; 3) display any specified anatomical area except as otherwise provided for; 4) knowingly touch any specified anatomical area of another person; or 5) use or wear any device for specified sexual activities;
- 9) Ensure that no entertainer of any adult cabaret shall be visible from any public place while unclothed or in clothing to expose any specified anatomical area, or while performing entertainment;
- 10) Ensure that no entertainer shall solicit, demand or receive payment or gratuity except as provided for in this Chapter;
- 11) Ensure that no entertainment or graphic displaying any specified anatomical area shall be visible from a public place;

- 12) Ensure that the premises are equipped with overhead lighting to illuminate every place at an illumination of not less than 1.0 foot candle;
- 13) Ensure that each motion picture arcade booth shall have at least one side which is completely open to adjacent public rooms or hallways; and
- 14) Ensure that the visibility from adjacent public rooms or hallways into each motion picture arcade booth through the open side of the booth shall not be obstructed.

Customer means any person who:

- 1) Is allowed to enter an adult live entertainment, adult entertainment business or adult business in return for the payment of an admission fee or any other form of consideration or gratuity;
- 2) Enters an adult live entertainment or adult entertainment business and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or
- 3) Is a member or guest of and on the premises of an adult live entertainment or adult entertainment business operating as a private club.

Director means the Director of the Jackson County Public Works Department or his designee.

Display publicly means exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item or material in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway or public sidewalk, or from the property of others, or from any portion of the exhibitor's business, commercial establishment or premises, where items and material other than this material are offered for sale or rent to the public.

Employee means any person who renders any service whatsoever to the customers of an adult live entertainment or adult entertainment business or who works in or about an adult live entertainment or adult entertainment business, and who receives compensation for such service or work from the operator or owner of the business or from the customers therein. The term "employee" includes managers, entertainers and independent contractors who work in or at or render any services directly related to the operation of an adult live entertainment business.

Entertainer means any person who provides adult live entertainment within an adult live entertainment business, whether or not a fee is charged or accepted for entertainment.

Entertainment means any display, exhibition or dance of any type, pantomime, modeling or any other performance.

Explicit sexual material means any pictorial or three dimensional material displaying or depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation of unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of post-pubertal human genitals; provided, however, that works of art or anthropological significance are not included in this definition.

Gross public floor area means the total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture arcades, service areas, behind-counter

areas, storage areas visible from such other areas, restrooms (whether or not labeled "public"), areas used for cabaret or similar shows (including stage areas), plus aisles, hallways and entryways serving such areas.

Manager means any person who manages, directs, administers or is in charge of the affairs or conduct of any portion of any activity, including adult live or adult entertainment, occurring at an adult live entertainment or adult entertainment business.

Material means anything printed or written, or any picture, drawing, photograph, motion picture film, videotape or videotape production, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates and other latent representational objects.

Media means anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything which is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, cd-roms, digital video discs, other magnetic media, and undeveloped pictures.

Motion picture arcade booth means any booth, cubicle, stall or compartment which is designed, constructed or used to hold or seat a person and is used for presenting or viewing motion pictures or viewing publications which are distinguished or characterized by an emphasis on the display, depiction or description of specified sexual activities or specified anatomical areas by any photographic, electronic, magnetic tape, digital or other medium (including, but not limited to, film, video, magnetic tape, laser disc, digital video disc, cd-rom, digital video discs, books, magazines or periodicals) for observation by patrons therein. The terms "booth," "arcade booth," "preview booth," "video arcade booth," and "media room" shall be synonymous with the term "motion picture arcade booth." A motion picture arcade booth shall not mean a theater, movie house, playhouse or a room or enclosure or portion thereof which contains more than 150 square feet. No part of this definition shall be construed to permit more than one person to occupy a motion picture arcade booth at any time.

Motion picture arcade booth establishment is any business wherein one or more motion picture arcade booths are located. The terms "establishment" and "video arcade" shall be synonymous with "motion picture arcade booth establishment."

Operator means any person operating, conducting or maintaining an adult live entertainment or adult entertainment business.

Owner means the proprietor, if a sole proprietorship; all partners (general and limited), if a partnership; or all officers, directors and persons holding ten percent or more of the outstanding shares, if a corporation.

Person means any individual, partnership, corporation, trust, incorporated or unincorporated association, joint venture, governmental entity, or other entity or group of persons, however organized.

Premises means any place of business of an adult business which shall include the entire lot and

building occupied by the adult business and any other property owned, leased or controlled by the adult business including any parking areas adjacent to the business which are regularly utilized by employees, entertainers, servers, managers or customers of such business.

Primary live entertainment means that entertainment which characterizes the business, as determined (if necessary) from a pattern of advertising as well as actual performances.

Public place means any area generally visible to public view, and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots and automobiles, whether moving or not.

Recurrent violations means more than three (3) critical violations during the license period of one (1) year.

Revoke or revocation means the license or permit shall be taken from the licensee or permittee for the remainder of the license year.

Sadomasochistic practices mean flagellation or torture by or upon a person clothed or naked, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed or naked.

Sexually-oriented toys or novelties mean instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs.

Specified anatomical areas means and includes: (1) less than completely and opaquely covered: human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified sexual activities means sexual conduct, being actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact, in an act of apparent sexual stimulation or gratification, with a person's clothed or unclothed genitals, pubic area or buttocks, or the breast of a female; or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification, as such terms are defined in the pornography and related offenses chapter of the state's criminal code.

Suspend or suspension means the license or permit shall be taken from the licensee or permittee for a period of time listed on the notice of violation, up to ninety (90) days.

Viewing area means the area where a customer, member or guest would ordinarily be positioned while watching an exhibition, performance or dance.

4301. Applicability of other regulations; conflicting provisions.

- a. The licenses provided for in this Chapter are subject to the general provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other parts of this chapter or Code, the provisions of this Chapter shall control.

b. The licenses and fees required by this Chapter shall be in addition to any other licenses and fees required by the Code.

c. The license and permit fees required by this Chapter apply only to the costs of investigating and processing the applications for those licenses and permits.

d. Any business enterprise that sells or rents goods that are designed for use in connection with Aspecified sexual activities A, or that emphasize matters depicting, describing or relating to Aspecified sxual activities@ or Aspecified anatomical areas@ and that excluded minors by virtue of age from all or any part of the business premises shall be deemed to have consented to periodic entry into and inspection of the business premises by appropriate County officials and inspection by those officials of only those business records necessary for the limited purpose of determining whether such business enterprise is an AAdult Business@ as defined in this Chapter. This entry and inspections shall take place during hours when such adult business is open to the public, unless otherwise requested by the adult business, and shall not unreasonably interfere with the conduct of such business.

4302. Business license required.

a. It shall be unlawful for any person to operate or maintain an adult live entertainment or adult entertainment business in the County unless the owner, operator or lessee thereof has obtained from the Director a license to do so, to be designated an "adult live entertainment business license", or "adult entertainment business license" as the case may be or to operate the business after the license has been revoked or while the license is suspended.

b. It shall be unlawful for any entertainer, employee or manager to knowingly perform any service or entertainment directly related to the operation of an unlicensed adult live entertainment business, or an unlicensed adult entertainment business.

c. It shall be prima facie evidence that any adult live entertainment or adult entertainment business that fails to have posted, in the manner required by this Chapter, an adult live entertainment or adult entertainment business license, has not obtained a license. It shall be prima facie evidence that any entertainer, employee or manager who performs any service or entertainment in an adult live entertainment business or adult entertainment business in which a license is not posted in the manner required by this Chapter had knowledge that the business was not licensed.

4303. Permit required for managers and entertainers.

a. It shall be unlawful for any person to work as an entertainer or manager at an adult live entertainment business or as a manager at any adult entertainment business without having first obtained from the County a permit to do so, to be designated as an "adult entertainer's permit," an "adult live entertainment manager's permit," or an "adult entertainment manager's permit," respectively, or to work as an entertainer or manager at such business after such person's permit has been revoked or while such person's permit is suspended.

b. It shall be unlawful for any person not holding a valid adult entertainer's permit issued to that person under this chapter to display, expose or depict specified anatomical areas in an adult entertainment facility or premises, except while lawfully discharging urine or feces in a

bathroom or restroom meeting the County's building code.

4304. License and permit classifications and fees.

a. The license or permit year for all fees required for an adult live entertainment or adult entertainment business license or permit shall be from each January 1 through December 31. The application for a license or permit shall be accompanied by payment in full of the fee stated in this section, by cash, certified or cashier's check or money order, and no application shall be considered complete until the fee is paid. The fee shall not be refunded under any circumstances. The fees shall not be prorated.

b. The classification of adult live entertainment or adult entertainment business licenses, and the fees for each, shall be as follows:

- 1) New adult cabaret license, \$750.00 per year; renewal of adult cabaret license, \$750.00 per year.
- 2) New adult entertainment business license, \$750.00 per year; renewal of adult entertainment business license \$750.00 per year.
- 3) Adult live entertainment manager's permit, \$50.00 per year.
- 4) Adult entertainer's permit, \$50.00 per year.
- 5) Adult entertainment manager's permit, \$50.00 per year.

4305. Effective date of provisions; existing adult entertainment businesses and existing live entertainment businesses.

(a) The Director shall identify each owner or operator of an adult live entertainment or adult entertainment businesses requiring a license hereunder, but not required to hold and not actually holding a license under the provisions of this Chapter. No later than thirty (30) days after the effective date of Ordinance 3969, the Director shall notify each such owner or operator of the enactment of this Chapter, and shall furnish a copy of the Chapter to each owner or operator.

(b) Any owner or operator of an adult live entertainment or adult entertainment business that meets the requirements of subsection (a) of this section, and which shall be required to obtain an adult live entertainment or adult entertainment business license under the provisions of this Chapter, shall submit a completed application for a license, in the manner provided by this Chapter, no later than sixty (60) days after the effective date of Ordinance 3969.

(c) If any owner or operator of an adult live entertainment or adult entertainment business that meets the requirements of subsection (a) of this section, and which shall be required to obtain an adult live entertainment or adult entertainment business license under the provisions of this Chapter, shall fail to submit a completed application during the time provided in subsection (b) of this section, the provisions of this Chapter shall become effective with respect to that business no later than 30 days after notification of the enactment of this Chapter.

(d) The Director shall investigate the application from any owner or operator who meets the requirements of subsection (a) of this section, in the manner provided by this Chapter, and shall approve or disapprove such application.

(e) If any owner or operator of an adult live entertainment or adult entertainment business that meets the requirements of subsection (a) of this section shall submit a completed application during the time provided in subsection (b) of this section, the other provisions of this Chapter shall not become effective until the application is approved, or, if the application is disapproved, until ten days after the disapproval.

(f) For any person who does not meet the requirements of subsection (a) of this section, and who shall be required to obtain an adult live entertainment or adult entertainment business license under the provisions of this Chapter, the provisions of this Chapter shall become effective ten days after enactment of this Chapter.

4306. Authority to prescribe additional regulations.

The Director shall have the power to promulgate regulations as may be necessary and feasible for the carrying out of the duties of the office and which are not inconsistent with the provisions of this Chapter.

APPLICATIONS

4307. Application for adult live entertainment or adult entertainment business license.

(a) All applications for an adult live entertainment or adult entertainment business license shall be submitted in the name of the person proposing to conduct or operate such adult live entertainment business or adult entertainment business on the premises, and shall be signed by the applicant and notarized. All applications shall be submitted to the Director on a form supplied by the Director, and shall require the following:

- 1) The name, all alias names, residence address, home telephone number, date and place of birth of the applicant.
- 1) 2) The business name, address and telephone number of the business.
- 3) The names, all alias names, residence addresses, residence telephone numbers, and dates of births of all partners, if the applicant is a partnership; or, if the applicant is a corporation, of all corporate officers and directors and all shareholders with greater than a ten percent interest.
- 4) Addresses of the applicant, or of all partners, or of all corporate officers and directors for the five years immediately prior to the date of application.
- 5) A description of the adult live entertainment or adult entertainment business or similar business history of the applicant, or of all partners, or of all corporate officers and directors; and whether any such person or entity, in previously operating in this or another county, or state, has had a business license revoked or suspended, the reason therefore, and the activity or occupation subjected to such action, suspension or revocation.
- 6) A description of the business, occupation or employment of the applicant, or of all partners, or of all corporate officers and directors for the five years immediately preceding the date of

application.

- 7) A statement from the applicant, all partners or each corporate officer and director that each such person has not been either: convicted of, or released from confinement for conviction of, or diverted from prosecution on:
 - a. any felony within the ten (10) years immediately preceding the application, or,
 - b. a misdemeanor within the two (2) years immediately preceding the application, or,
 - c. a municipal or County ordinance violation within the two (2) years immediately preceding the application, where such felony, misdemeanor, municipal or County ordinance violation involved sexual offenses, prostitution, indecent exposure, sexual abuse of a child or pornography or related offenses, or controlled substances or illegal drugs or narcotics offenses as defined in the Missouri Statutes or County or municipal ordinances.
- 8) A full set of fingerprints of the applicant and of all partners and of all corporate officers and directors shall be taken by the Sheriff's Department, at the applicant's expense, and forwarded to the Director.
- 9) Applicant, all partners and all corporate officers shall at the time they are fingerprinted by the Sheriff's Department, furnish to the Sheriff's Department two current photographs of his/her face which are also forwarded to the Director.
- 10) If the applicant is a corporation, a certificate of good standing issued by the secretary of state not more than 30 days prior to the submittal of the application.

(b) Failure to provide information required by this subsection shall constitute an incomplete application and the application shall not be processed.

(c) *Determination of completeness.* For applications received after July 1, 2008, within five business days after receiving an application for an adult live entertainment or adult entertainment business license, the Director shall determine whether the application is complete, in accordance with the requirements of this section. If the application is not complete, the Director shall within five business days after the Director's determination notify the applicant by using first class mail of the deficiencies in the application.

4308. Application for adult live entertainment manager's permit, adult live entertainer's permit or adult entertainment manager's permit.

(a) All applications for an adult live entertainment manager's permit, adult live entertainer's permit or adult entertainment manager's permit shall be signed by the applicant and notarized. All applications shall be submitted to the Director on a form supplied by the Director and shall require the following:

- 1) The applicant's name, all alias names, home address, home telephone number, date and place of birth, and any stage names or nicknames used in entertaining.
- 2) The name and address of each business at which the applicant intends to work as a manager or entertainer, and an "intent to hire" statement from an adult live entertainment business or an

adult entertainment business that is licensed, or that has applied for a license, under the provisions of this Chapter.

- 3) A statement from the applicant that the applicant has not been convicted of, or released from confinement for conviction of, or diverted from prosecution on, any felony, whichever event is later, within five (5) years immediately preceding the application, or has not been convicted of, or diverted from prosecution on, a misdemeanor, or released from confinement for conviction of a misdemeanor, whichever event is later, within two (2) years immediately preceding the application, where such felony or misdemeanor involved sexual offenses, prostitution, indecent exposure, sexual abuse of a child or pornography and related offenses, or controlled substances or illegal drugs or narcotics offenses as defined in the Missouri statutes or municipal ordinances. The statement shall also indicate that the applicant has not been convicted of a municipal ordinance violation or diverted from prosecution on a municipal ordinance violation within two (2) years immediately preceding the application where such municipal ordinance violation involved sexual offenses, indecent exposure, prostitution or sale of controlled substances or illegal drugs or narcotics.
- 4) A full set of fingerprints of the applicant shall be taken by the Sheriff's Department, at the applicant's expense, and forwarded to the Director. The applicant will furnish a photograph of his/her face at the time of fingerprinting, also to be forwarded to the Director.
- 5) The applicant shall present documentation that he or she has attained the age of 18 years. Any of the following shall be accepted as documentation of age:
 - a. A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;
 - b. A state-issued identification card bearing the applicant's photograph and date of birth;
 - c. An official passport issued by the United States of America;
 - d. An immigration card issued by the United States of America;
 - e. Any other picture identification issued by a governmental entity; or
 - f. Such other form of identification as the Director deems, by rule, to be acceptable.

(b) Failure to provide information required by this subsection shall constitute an incomplete application and the application shall not be processed.

(c) Determination of completeness. Within five business days after receiving an application for an adult live entertainment manager's permit, adult entertainer's permit, or an adult entertainment manager's permit, the Director shall determine whether the application is complete, in accordance with the requirements of this section. If the application is not complete, the Director shall within five business days after the Director's determination notify the applicant by first class mail of the deficiencies in the application.

4309. Notification of complete application and schedule for hearing.

(a) Within ten business days after a new application for an adult live entertainment or adult entertainment business license is determined by the Director to be complete, the Director shall mail to applicant and all owners of property parcels located in Jackson County, Missouri, as defined by Geographic Information Systems maps based on the North American Datum 1983 Missouri West State Plane Coordinate System, maintained by the Information Technology Department of the County, within 1000 feet from the proposed premises, as measured from the property lines of the property which is the subject of the application, written notification of that determination.

(b) If within ten business days after the Director mails notice to the property owners entitled to notice under subsection (a) of this section that the application for an adult live entertainment or adult entertainment business license is complete, any such owner files with the Director a written request for a hearing before the Director on whether the applicant has satisfied the criterion, which shall state a reason(s) that a particular criteria has not been satisfied, then the Director shall, within five days of receipt of a timely request, mail a notice of a hearing to the applicant and any property owner requesting the hearing and the notice shall include the date, time and place for the hearing before the Director. The date for the hearing shall be not less than 30 days nor more than 40 days following the determination that the application is complete.

(c) If a hearing is requested by any property owner entitled to notice under subsection (a) of this section, then the Director shall hear matters raised by those property owner(s) if any, in objection to issuance of the license, but the Director may not deny issues of the license without finding that one or more of the criteria have not been satisfied.

ISSUANCE

4310. Criteria for issuance of license or permit.

(a) *Business license.* The Director shall investigate the application for an adult live entertainment or adult entertainment business license and shall issue the license authorized by this Chapter if the Director finds that each of the following conditions is met without exception:

- 1) Applicant, or all partners, officers, directors, employees, managers or any shareholders of applicant with greater than a ten percent interest are over 18 years of age;
- 2) Applicant (and, if an individual, applicant's spouse) is current in all taxes, fees and other amounts due to the County on any account, for any purpose;
- 3) The application is complete and appears to be truthful and accurate;
- 4) The application is accompanied by the required fee;
- 5) The proposed premises are the subject of a zoning determination or a certificate of legal nonconformance showing that the use of the premises for the proposed business is permitted under the Unified Development Code, Chapter 240;
- 6) The proposed premises comply with the separation requirements set forth in applicable zoning districts or hold a valid certificate of legal nonconformance indicating that the business is not subject to such separation requirements because the proposed premises existed at this location before the establishment of the separation requirements;

- 7) The proposed premises meets all other applicable health, safety, building and fire codes and ordinances of the County;
- 8) The applicant provides evidence that the applicant owns the premises or has a lease giving it control of the premises through the proposed licensing period;
- 9) No applicant, or any spouse, partner, officer, of the applicant, or shareholder with greater than a ten percent interest in applicant, has been convicted of a violation of this Chapter or has had a license under this Chapter revoked at any time in the two years immediately preceding the date of application;
- 10) No applicant, or any spouse, partner, officer, of the applicant, or shareholder with greater than a ten percent interest in applicant has, within the previous ten years been convicted of, or remains under confinement for, any felony, misdemeanor, ordinance violation or municipal ordinance violation involving sexual offenses, prostitution, sexual abuse of a child, or pornography and related offenses as defined in the state's criminal code, RSMo chs. 556--600, or similar statutes in other states, or controlled substance or illegal drugs or narcotics offenses, as described in the state's comprehensive drug control act; and
- 11) The applicant has provided the Director with a designated agent for service who can regularly be found in the County during normal business hours.

(b) *Burden of proof.* The applicant shall have the burden of proof on each of the criterion.

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(c) *Manager's or entertainer's permit.* The Director shall investigate the application and shall issue any applicable permit authorized by this Chapter if the Director finds that:

- 1) The applicant has not made any false, misleading or fraudulent statement of material fact in the application for a license, or in the providing of documentation of age, as part of the original permit application or application for renewal thereof.
- 2) The applicant has attained the age of 18 years.
- 1) 3) The applicant has not been convicted of a felony or released from confinement for conviction of a felony, whichever event is later, within five years immediately preceding the application, or has not been convicted of a misdemeanor or released from confinement for conviction of a misdemeanor, whichever event is later, within two years immediately preceding the application, where such felony or misdemeanor involved sexual offenses, prostitution, sexual abuse of a child or pornography and related offenses, as defined in the state's criminal code, RSMo chs. 556--600, or similar statutes, or controlled substance or illegal drugs or narcotics offenses, as described in the state comprehensive drug control act, or similar statutes, or has not been convicted of a municipal ordinance violation or released from confinement for conviction of a municipal ordinance violation, whichever event is later, within two years immediately preceding the application, where such municipal ordinance violation involved indecent exposure, prostitution, or sale of controlled substances or illegal drugs or narcotics.
- 4) The applicant has not had a license or permit issued under the provisions of this Chapter

revoked within two years immediately preceding the application.

4311. Approval or disapproval of application; for adult live entertainment business or adult entertainment business license and hearing.

- a. The application for an adult live entertainment or adult entertainment business license authorized under this Chapter shall be approved or disapproved within 50 days from the date of the Director's determination that the application is complete, unless the applicant agrees in writing to an extension of that time period. If a license application is disapproved, the Director shall notify the applicant in person, or by registered or certified mail to the applicant's last known address, and shall state the basis for such disapproval.
- b. If within ten days after the Director mails notice to the applicant that the application has been disapproved, the applicant for an adult live entertainment or adult entertainment business license files with the Director a written request for a hearing before the Director on whether the applicant has satisfied the criterion, then the Director shall, within five days of receipt of a timely request, mail a notice of a hearing to the applicant, which shall include the date, time and place for the hearing before the Director. The date for the hearing shall be not less than 30 days nor more than 40 days following the filing of the request for a hearing under this section, unless the aggrieved party requesting the hearing agrees to extend the time for the hearing, or for good cause shown.

4312. Manager's or entertainer's permit; approval, disapproval of application; review.

- a. The application for a manager's or entertainer's permit authorized under this Chapter shall be approved or disapproved within 30 days from the date of filing a completed application which complies with the requirements of this Chapter, unless the applicant agrees in writing to an extension of such time period, or for good cause shown. Pending the approval or disapproval of a completed permit application, the manager or entertainer shall be provided a temporary permit to be a manager or entertainer. The temporary permit shall automatically expire and become null and void upon the approval or disapproval of a permit. Any manager or entertainer issued a temporary permit shall comply with the provisions of this Chapter, and the temporary permit shall be withdrawn by the Director if the permittee violates any provisions of this Chapter. Additionally, any manager or entertainer issued a temporary permit shall be subject to the penalty provisions provided in this Chapter. It shall be the duty of the Director to request criminal records and to investigate other information required by the permit application. If a permit application is disapproved, the Director shall notify the applicant in person, or by registered or certified mail to the applicant's last known address, and shall state the basis for the disapproval.
- b. *Judicial review.* An applicant for a manager's or entertainer's permit authorized under this Chapter aggrieved by the decision of the Director to approve or disapprove a permit may seek judicial review in a manner provided by law. Venue lies exclusively in the Circuit Court of Jackson County, Missouri.

RENEWAL OF LICENSE OR PERMIT

4313. Renewal of license or permit.

- a. An adult live entertainment business license, adult entertainer permit or an adult live entertainment manager permit issued under this Chapter may be renewed by making application to the Director on application forms provided for that purpose. Licenses and permits shall expire on December 31 of each calendar year, and renewal applications for such licenses or permits shall be submitted between December 1 and December 21 of each calendar year.
- b. An adult entertainment business license or an adult entertainment manager permit issued under this Chapter may be renewed by making application to the Director on application forms provided for that purpose. Licenses shall expire on December 31 of each calendar year, and renewal applications for such licenses or permits shall be submitted between December 1 and December 21 of each calendar year.
- c. Upon timely application therefore, an adult live entertainment business license or adult entertainment business license issued under the provisions of this Chapter shall be renewed by issuance of a new license unless the Director disapproves the renewal application. However, an applicant for a renewal license shall have no duty to request confirmation of compliance with other County ordinances, no inspections by other County departments shall be required unless requested by the Director.
- d. Upon timely application therefore, an adult entertainer permit, an adult live entertainment manager permit or an adult entertainment manager permit issued under the provisions of this Chapter shall be renewed by issuance of a new permit, unless the Director disapproves the renewal application.
- e. Upon the filing of a timely application for renewal of a license or permit issued under the provisions of this Chapter, the Director shall issue a temporary license or permit to the applicant, which temporary license or permit shall remain in effect until the Director has approved or disapproved the application. If a hearing is held, the temporary license or permit shall remain in effect until the Director has issued an order following the hearing. However, if any hearing is delayed at the request of the applicant, the temporary license or permit issued under the provisions of this subsection shall expire as of the date the hearing was scheduled by the Director, unless the applicant shows good cause for the delay.
- f. Any applicant issued a temporary license or permit under the provisions of this section shall comply, or continue to comply, with the provisions of this Chapter. Additionally, an applicant issued a temporary license or permit under the provisions of this section shall be subject to the penalty provisions provided in this Chapter.
- g. If the application for renewal of a license or permit is not made during the time provided in subsections (a) or (b) of this section, the license or permit shall expire and the licensee or permittee shall cease those activities authorized under this Chapter and the licensee or permittee shall file a new application and meet all requirements of this

Chapter before engaging in the business or occupations regulated under this Chapter. An application for renewal filed after the expiration date shall be treated as a new application.

CONDUCT OF BUSINESS

4314. Display of license or permit.

- a. Every person, corporation, partnership or association licensed under this Chapter as an adult live entertainment business or an adult entertainment business shall post the license in a conspicuous place and manner on the business premises.
- b. Every adult entertainer, adult live entertainment manager or adult entertainment manager shall have his or her permit located on the adult live entertainment business premises or the adult entertainment business premises so it shall be readily available for inspection by County authorities responsible for enforcement of this Chapter. If the permit is a temporary permit, the form of identification presented as part of the application for the permit shall be stated by the Director on the face of the permit, and the identification must be on file with the adult live entertainment manager on duty or the adult entertainment manager on duty at any time the temporary permittee shall be working on the premises.

4314. Hours of operation.

- a. It shall be unlawful for any adult cabaret/adult live entertainment to be conducted, operated or otherwise open for any purpose to the public, customers or members between the hours of 3:00 a.m. and 6:00 a.m.
- b. It shall be unlawful for any motion picture arcade booth/adult entertainment to be operated or otherwise open to the public, customers or members between the hours of 1:30 am. and 6:00 am.

4316. Compliance with other regulations.

It shall be the duty of an adult live entertainment business licensee and adult entertainment business licensee to comply with the building codes, zoning, fire and health ordinances of the County and with regulations of the departments of the County. Failure to continue compliance with the ordinances or regulations after written notification of noncompliance has been delivered to the business by the County may be a basis for suspension, revocation or nonrenewal of the license.

4317. Licensee's duties to monitor business and premises.

- a. It is and shall be the affirmative duty of each licensee to:
 - 1) Allow the business to be open to customers only when there is a designated manager on duty who is licensed as required; the name of the manager on duty at any time shall be prominently displayed at or near the manager's station;
 - 2) Ensure that all lighting, including theater runway/aisles lighting, required by this

- Chapter actually operates, with working bulbs, turned on, during all hours when the business is open;
- 3) Post and enforce a "no loitering" policy on the business premises, including parking areas and other exterior parts of the business premises;
 - 4) Prevent and ensure that no prostitution or solicitation for prostitution takes place on the business premises, whether in or out of public view;
 - 5) Prevent and ensure that no gambling takes place on the business premises;
 - 6) Prevent any unlawful sale, distribution, delivery or use of controlled substances, illegal drugs or narcotics on the business premises;
 - 7) Prevent any sale, distribution, delivery or use of any alcoholic beverages of any kind on the business premises;
 - 8) Prevent persons under eighteen (18) years of age from entering the business premises or the portion or portions thereof which contain adult media, adult live entertainment or sexually-oriented toys and novelties;
 - 9) Prevent the display of sexually explicit materials inside the licensed premises that are viewable from a public place or viewable within portions of the business open to the general public;
 - 10) Prevent and ensure that no person engages in sexual activities including actual sexual conduct; normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact, in an act of apparent sexual stimulation or gratification, with a person's clothed or unclothed genitals, pubic area or buttocks, or the breast of a female; or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification, as such terms are defined in the pornography and related offenses chapter of the state's criminal code (RSMo ch. 573), or causes any bodily discharge of semen, urine or feces while in any adult entertainment business or any adult live entertainment business excepting the discharge of urine or feces in a bathroom or restroom meeting the County's building code;
 - 11) Allow law officers, code enforcement officers, health officers or other representatives of the County or other public agencies full access to the business premises at anytime during business hours for purposes of inspection to ensure compliance with this Chapter and other applicable laws; and
 - 12) Ensure that doors in adult motion picture theaters are designed and maintained so that they cannot be locked by customers or otherwise locked from the inside while the business is open. This shall not preclude a management-controlled locking system used to limit access to the theater portion of the premises, provided that at any time the manager on duty can release the lock at her or his own volition or at the request of a law enforcement officer or County inspector

and ensure that lobbies remain unlocked at all times that the adult motion picture theater is in operation.

- b. It shall be unlawful for any person to engage in any sexual activities including actual sexual conduct; normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact, in an act of apparent sexual stimulation or gratification, with a person's clothed or unclothed genitals, pubic area or buttocks, or the breast of a female; or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification, as such terms are defined in the pornography and related offenses chapter of the state's criminal code (RSMo ch. 573), or cause the bodily discharge of semen, urine or feces while in any adult entertainment business or any adult live entertainment business, excepting the discharge of urine or feces in a bathroom or restroom meeting the County's building code.
- c. It shall be unlawful for a business licensed under this Chapter to have in existence or to use any form of electrical, mechanical, or other notification device for purposes of warning or informing any person on the business premises of the presence of any County investigator or any law enforcement officer in connection with the enforcement of the provisions of this Chapter.
- d. The license and the standards of operation, affirmative duties and other requirements of this Chapter shall apply to an entire business operation and its premises, regardless of the fact that some parts of the business operation, if conducted separately at a different location, would not be subject to licensing under this Chapter.
- e. Failure to comply with the requirements of this section and all other requirements of this Chapter is unlawful and a violation of this Chapter and shall be grounds for suspension, revocation or nonrenewal of a license.

4318. Standards of conduct and operation for adult cabarets.

- a. The following standards of conduct must be adhered to by employees of any adult cabaret while on the adult live entertainment business premises:
 - 1) Dancing or other live entertainment distinguished or characterized by an emphasis on the display, depiction or description of specified anatomical areas for observation by customers shall take place only in a location and manner meeting all of the following conditions:
 - a) In a theater or open room of at least 600 square feet;
 - b) On a stage, elevated at least 24 inches above the level on which patrons sit or stand; and
 - c) With a horizontal separation of at least three feet between the performing area, as defined by the edge of the stage or by a rail or other physical barrier on the stage, and the nearest space to which customers or patrons

shall have access.

- 2) No employee or entertainer shall be unclothed or in such less than opaque and complete attire, costume or clothing so as to expose to view any specified anatomical area, unless separated at least three feet from the nearest customer.
- 3) No employee or entertainer shall perform or engage in any sexual activities including actual sexual conduct; normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact, in an act of apparent sexual stimulation or gratification, with a person's clothed or unclothed genitals, pubic area or buttocks, or the breast of a female; or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification, as such terms are defined in the pornography and related offenses chapter of the state's criminal code (RSMo ch. 573) on the premises.
- 4) No employee or entertainer shall display any specified anatomical area except as provided for in subsection (a) (1) and (2) of this section.
- 5) No employee or entertainer who is not separated from any and all customers as provided in subsection (a)(2) of this section shall be unclothed or in less than opaque and complete attire, costume or clothing as described in subsection (a) (2) of this section, except in an area of the business premises not open to customers.
- 6) No employee or entertainer shall knowingly touch any specified anatomical area of another person, or knowingly permit another person to touch any specified anatomical area of the employee or entertainer. No employee or entertainer shall knowingly fondle or caress any specified anatomical area of another person, whether the area is clothed, unclothed, covered or exposed, or knowingly permit another person to fondle or caress any specified anatomical area of such employee or entertainer, whether the specified anatomical area is clothed, unclothed, covered or exposed.
- tx43207) No employee or entertainer shall wear or use any device or covering exposed to view which simulates any specified anatomical area.
- 8) No employee or entertainer shall use artificial devices or inanimate objects to display, depict or perform any specified sexual activities.
- 9) No entertainer of any adult cabaret shall be visible from any public place during the hours of his or her employment, or apparent hours of his or her employment, while the entertainer is unclothed or in such attire, costume or clothing to expose to view any specified anatomical area, or while performing any entertainment, either while clothed or unclothed.
- 10) No entertainer shall solicit, demand or receive any payment or gratuity from any customer for any act prohibited by this Chapter.

- 11) No entertainer shall receive any payment or gratuity from any customer for entertainment, except as follows:
 - a) While the entertainer is on the stage as provided in subsection (a)(1) of this section, a customer may place the payment or gratuity into a box located between the stage and the horizontal separation; or
 - b) While such entertainer is not on the stage, and is clothed so as to not expose to view any specified anatomical areas, a customer may either place the payment or gratuity into the entertainer's hand, or under a leg garter worn by the entertainer at least four inches below the bottom of the pubic region.

b. At any adult cabaret, the following are required:

- 1) A sign, on which upper-case letters shall be at least two inches high, and lowercase letters shall be at least one inch high, shall be conspicuously displayed in the common area at the principal entrance of the premises, and shall read as follows:

THIS ADULT LIVE ENTERTAINMENT BUSINESS IS REGULATED BY JACKSON COUNTY, MISSOURI. ENTERTAINERS ARE:

- a) Not permitted to engage in any type of sexual activities on the business premises, or in prostitution.
- b) Not permitted to be unclothed or in less than opaque or complete attire, costume or clothing so as to expose to view any portion of the breasts below the top of the areola, or any portion of the pubic region, buttocks or genitals, unless separated at least three feet from the nearest customer and upon a stage at least 24 inches above the immediate floor level.
- c) Not permitted to demand or collect any payment or gratuity from any customer for entertainment, except as follows:
 - i) While the entertainer is on the stage, by placing the payment or gratuity into the box affixed to the stage; or
 - ii) While the entertainer is not on the stage, by either placing the payment or gratuity into the entertainer's hand, or under the entertainer's leg garter.
- 2) Neither any entertainment nor any photograph, drawing, sketch or other pictorial or graphic representation thereof displaying any specified anatomical area shall be visible from a public place.
- 3) The premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than 1.0 foot candle as measured at the floor level, and the

illumination must be maintained at all times that any customer is present in or on the premises.

4319. Responsibilities of manager.

- a) An adult live entertainment manager shall be on duty at an adult live entertainment business at all times adult live entertainment is being provided or that customers are on the premises. The name of the manager on duty shall be prominently posted during business hours.
- b) It shall be the responsibility of the manager to verify that any person who provides adult live entertainment within the premises possesses a current and valid adult entertainer's permit, and that such permit is posted in the manner required by this Chapter.
- c) An adult entertainment manager shall be on duty at an adult entertainment business at all times that the business is open. The name of the manager on duty shall be prominently posted during business hours.

4320 Location and manner of presenting certain videos or motion pictures.

- a) No motion picture or video which depicts as a prevailing practice, the movies, videos or other material distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons therein shall be shown for a fee (whether collected per feature, per unit of time or as a general admission charge to a facility) in any space of less than 150 square feet.
- b) This section does not apply to the showing of informational videos by professionals licensed by the state to clients who pay a fee for service, where the showing of the videos is incidental to a professional service and not the subject of separate consideration from the patron.
- c) Doors in adult motion picture theaters shall be designed so that they cannot be locked by customers or otherwise locked from the inside while the business is open. This shall not preclude a management-controlled locking system used to limit access to the theater portion of the premises, provided that at any time the manager on duty can release the lock at her or his own volition or at the request of a law enforcement officer or County inspector and lobbies shall remain unlocked at all times that the adult motion picture theater is in operation.
- d) All aisles in adult motion picture theaters shall have theater runway/aisle lighting which illuminates the entire floor surface of the aisle at a level not less than 0.2 foot candle.

4321. Operation of motion picture arcade establishments.

- a) If any motion picture arcade booth exists on the licensed premises, the licensee shall have the following additional affirmative duties in the operation of the business:
 - 1) Ensure that each motion picture arcade booth shall have at least one side which

is completely open to adjacent public rooms or adjacent hallways and meets all of the following conditions:

- a) The adjacent hallway shall meet the requirements of the County building code and the adjacent hallway must serve more than one motion picture arcade booth;
 - b) The open side of each motion picture arcade booth shall be completely open to adjacent public rooms or adjacent hallways and the open side of each motion picture arcade booth shall be not less than 30 inches in width, and not less than 84 inches in height as measured from the level of the floor of the booth;
 - c) The entire floor area of the interior of each motion picture arcade booth shall have a uniform elevation and the elevation of the entire floor area of the interior of each motion picture arcade booth shall be uniform with the floor elevation of adjacent public rooms or adjacent hallways;
 - d) No furniture of any kind shall be positioned in a booth with the exception of one chair or seating platform meeting the requirements of this section;
 - e) A chair or seating platform authorized under this section to be used in a booth shall rest on the floor of the booth and the surface of the seat, including any cushion or other padding on the chair or seating platform, shall not exceed 18 inches in height as measured from the surface of the floor;
 - f) The back rest of any chair or seating platform used in a booth shall not exceed 36 inches in height as measured from the surface of the floor, nor exceed 18 inches in width;
 - g) No chair or seating platform used in a booth shall be equipped with armrests, shades, canopies or any other device which obstructs the view of a person's lap while the person is seated on the chair or seating platform;
- 2) Ensure that the visibility from adjacent public rooms or adjacent hallways into each motion picture arcade booth through the open side of the booth shall not be obstructed by any temporary or permanent curtain, door, wall, enclosure, chair or other device;
 - 3) Ensure that the hallways and public rooms adjacent to motion picture arcade booths shall be illuminated in such a way that the entire area inside of each motion picture arcade booth is visible to persons in adjacent public rooms or adjacent hallways. Ensure that the illumination level shall be at a minimum illumination of not less than 1.0 foot candle, as measured at the floor level within the booths;
 - 4) Ensure that no more than one person occupies a motion picture arcade booth at

- one time and, if more than one person is found in a motion picture arcade booth, that those persons are immediately escorted from the establishment;
- 5) Ensure that there are no openings in the walls between motion picture arcade booths, which shall include the duty to cover immediately any opening that is found;
 - 6) Ensure that there is at least one employee on duty and situated in the manager's station or walking through the hallways adjacent to the motion picture arcade booths at any time that any booth is occupied;
 - 7) Ensure that the manager or employee on duty shall make a visual inspection of the inside of each motion picture arcade booth at least once each hour during the hours of operation and maintain a daily log to record the time, a description of the conditions found, and the name and signature of the person who conducted the visual inspection;
 - 8) Ensure that there are no porous surfaces on the floors, walls or seats in any motion picture arcade booth;
 - 9) Ensure that the manager or other employee on duty can actually see the unobstructed interior of every motion picture arcade booth from the manager's station or from a hallway accessible to the public. This duty shall include the duty to remove any obstacle blocking the view, to repair any electronic device providing such view and, where the prompt removal or repair is not possible, to close to public use the affected motion picture arcade booth(s) until full visibility of the interior can be reestablished;
 - 10) Ensure and prevent any person occupying a motion picture arcade booth from engaging in any "specified sexual activities" or causing any bodily discharge of semen, urine or feces while inside the motion picture arcade booth; and
 - 11) Ensure and prevent any video reproduction equipment in any restroom in the establishment.
- b. It shall be unlawful for any person occupying a motion picture arcade booth to engage in any "specified sexual activities" or to cause any bodily discharge of semen, urine or feces while inside the motion picture arcade booth.
- c. Establishments with "media rooms," "preview rooms" or other spaces created as exempt, because they were nominally designed to seat ten or more people, shall have until May 1, 2008 to remove the doors from those rooms and to take other actions to bring those spaces into compliance. As an alternative, the establishment may replace those rooms with not more than the number of motion picture arcade booths existing in the same space, provided that each and every replacement motion picture arcade booth shall fully conform to the requirements of this section.

ENFORCEMENT

4322. Critical Item: Time to Correct.

Critical violations shall be corrected immediately or within 3 days of the inspection date.

4323. Non Critical Item: Time to Correct.

Non-Critical violations shall be corrected within 10 days of the inspection date.

4324. Inspections and Re-Inspections.

The Director is hereby empowered to appoint inspectors of adult live entertainment or adult entertainment businesses, and all those businesses shall be open to the inspections of the Director or inspectors appointed by him or to any member of the sheriff's department at any time during the hours allowed for business and at other reasonable times.

Inspections shall be conducted once every quarter (3 months). Re-inspections shall be conducted as noted in the original inspection report according to Critical and Non-Critical violations.

The Director may also make such additional inspections and re-inspections as are reasonably necessary for the enforcement of this chapter.

4325. Notice.

When the Director discovers a violation of this chapter, the Director shall notify the adult live entertainment/ adult entertainment business licensee or adult live entertainment/ adult entertainment manager of the establishment of the violation by means of an inspection report form or other written notice.

4326. Content of Violation Notification.

The notice of violation shall include the following:

4326.1 Violation.

The notice shall include the specific violation(s) found.

4326.2 Time to Correct.

The notice shall include a specific and reasonable period of time for the correction of the violations.

4326.3 Effect of Noncompliance.

The notice shall include a statement that failure to comply with the notice within the time period specified may result in the immediate closure of the establishment and suspension of the permit.

4326.4 Appeal.

The notice of violation shall include a statement that an opportunity for an appeal from the order/notice or inspection findings will be provided on written request to the Director within the period of time established in the notice for correction, but in no event later than ten (10) days from the date of notice.

4327. Service of Notice.

Proper service of a notice of violation shall be by personal delivery to the permit holder or to the

person in charge of the establishment, or by certified mail, return receipt requested, to the last known address of the permit holder.

4328. Failure to Comply.

When a permit holder fails to comply with a notice of violation issued by the Director, the permit holder shall be notified of the following:

4328.1 Immediate Suspension and Closure of the Establishment.

The current permit is immediately suspended and the establishment is closed effective on service of notice.

4328.2 Hearing.

On written request of the Director, a hearing shall be afforded as soon as possible.

4329. Separate Offense.

Each day that a violation of this chapter exists shall constitute a separate offense.

4330. Imminent Health Hazard.

If an imminent health hazard exists, such as a sewage backup into the establishment, fire, gross unsanitary occurrence or conditions, or other circumstances that may endanger public health, the establishment shall immediately cease operations. Operations shall not be resumed until authorized by the Director.

4331. Suspension, revocation, or nonrenewal of license.

Whenever the Director has information that:

4331.1 The owner or operator of an adult live entertainment or adult entertainment business or a holder of a manager or entertainer license has violated, or knowingly allowed or permitted the violation of any of the provisions of this chapter; or

4331.2 There have been recurrent violations of provisions of this chapter that have occurred under such circumstances that the owner or operator of an adult live entertainment or adult entertainment business knew or should have known that such violations were committed; or

4331.3 The adult live entertainment or adult entertainment business licensee or the manager or entertainer licensee knowingly obtained through false statements in the application for such license, or renewal thereof; or

4331.4 The adult live entertainment or adult entertainment business licensee or the manager or entertainer licensee knowingly failed to make a complete disclosure of all information in the application for such license, or renewal thereof; or

4331.5 The owner or operator, or any partner, or any corporate officer or director holding an adult live entertainment or adult entertainment business license has become disqualified from having a license by a conviction as provided herein; or

4331.6 If the owner or operator of an adult live entertainment or adult entertainment business or the holder of a manager or entertainer license has become disqualified from having a license by a conviction as provided herein, then the Director shall conduct a public hearing, in accordance with Notice and Hearing Procedure set forth in this Chapter, to determine whether the license should be suspended or revoked. Based on the evidence produced at the hearing, the Director may take any of the following actions:

- a) Suspend the license/ permit for up to ninety (90) days;
- b) Revoke the license/ permit for the remainder of the license year; or
- c) Place the license/ permit holder on administrative probation for a period of up to one (1) year, on the condition that no further violations of this chapter occur during the period of probation. If a violation does occur and after a hearing the violation is determined to have actually occurred, the license will be revoked for the remainder of the license year.

4332. Notice and hearing procedure.

4332.1 In any instance in this Chapter wherein a hearing is required, the Director shall, after no less than ten (10) days written notice to the applicant or licensee, hold such hearing to ascertain all facts in the matter.

4332.2 Notice of such hearing shall be in writing and shall set forth the reason for the hearing or the complaint against the licensee and shall be served upon the licensee in person or by registered or certified mail to the licensee's last-known address. In the event that the Director is unable to serve the adult entertainment business licensee in person, and any notice sent by mail is returned by the postal service, the Director shall cause such notice to be posted at the principal entrance of the adult live entertainment or adult entertainment business and such posting shall be a valid means of service.

4332.3 At such hearing, an applicant or licensee shall have full right to be represented by counsel, to produce witnesses and other evidence, and to cross-examine all witnesses who appear against him or her. Oral evidence shall be taken only upon oath or affirmation. All proceedings in such hearing shall be recorded and transcribed as required by law. The Director may receive evidence relevant to the issues from the applicant or licensee. Witnesses may be subpoenaed, and upon request of any party, the Director shall issue subpoenas, and in a proper case, subpoenas duces tecum, which shall be served and returned as in civil actions in circuit court.

4332.4 The Director shall issue findings of fact and conclusions of law, and an order wherein it dismisses the complaint, or suspends or revokes the license previously issued. The Director's order shall be served upon the applicant or licensee in person or by registered or certified mail to the applicant's or licensee's last-known address. In the event that the Director is not able to serve such order upon the licensee or applicant for renewal license in the manner stated above, such order may be served by posting such order at the principal entrance of the adult entertainment business and such posting shall be a valid means of service.

4333. Motion picture arcade booth establishments; additional enforcement.

In addition to the enforcement procedures set forth in this Chapter, the Director may enforce the provisions of this Chapter pertaining to motion picture arcade establishments through the following administrative enforcement procedure:

4333.1 The Director or an authorized representative, may issue a written notice and order to the owner, operator, manager or person in charge of a motion picture arcade booth establishment of any violation of the requirements or duties set out in this Chapter requiring that at least one side of each motion picture arcade booth shall be completely open, that the surface of all walls between booths be covered with metal and maintained free of holes or other structural openings, that the visibility from adjacent public rooms or adjacent hallways into each motion picture arcade booth through the open side of the booth is not obstructed by any temporary or permanent curtain, door, wall, enclosure, chair or other device, and that no more than one person occupy a booth at any one time. The notice and order shall set forth the alleged violations of this Chapter, describe the premises where the violations are alleged to exist and specify a period of 48 hours from the time of service of the notice and order for the correction of any violation alleged.

4333.2 The notice and order shall be served upon the owner, operator or person in charge of the motion picture arcade booth establishment by delivery of a copy of the notice and order to such owner, operator, manager or person in charge of a motion picture arcade booth establishment or by leaving such copy at their usual place of abode with a member of the family over the age of 15 years or by mail addressed to the owner, operator or person in charge or agent thereof. If service is by mail, the notice and order will be deemed to have been served 72 hours after it was placed in the U.S. mail. If one or more persons to whom such notice and order is addressed cannot be found after diligent effort to do so, service may be made upon such person by posting the notice and order in or about the premises described in the notice and order, and by causing such notice and order to be published in a newspaper of general publication. If service is by posting and publication, the notice and order will be deemed to have been served 72 hours after posting or publication, whichever occurs later.

4333.3 If the Director or authorized designee, finds that the alleged violation still exists after 48 hours from the time of service, the Director or his designee may order the closure of the portion of the establishment containing the booths and shall prominently post notice of the closure on the premises. Any closure shall remain in effect until the Director determines that the violations have been abated. If the owner, operator, manager or person in charge of the establishment believes that the violations have been abated but the Director disagrees, the owner, operator, manager or person in charge may request a hearing in writing. The hearing shall be before the Director or authorized designee and shall be provided within ten days of receipt of the written request. The Director may from time to time establish rules governing the conduct of the hearings.

4333.4 To prevent a stay or closure, the owner, operator, manager or person in charge of the motion picture arcade booth establishment may request a hearing within 48 hours of the time of service of a notice and order. The request for a hearing must be in writing. The hearing shall be before the Director or authorized designee and shall be provided within 10 days of receipt of the written request. The filing of a written request for a hearing shall stay the Director's power to order closure until after the hearing is concluded and an administrative

decision has issued finding a violation enforced under this section. The Director may from time to time establish rules governing the conduct of the hearings.

4334. Judicial review-stay of enforcement of orders.

Following the entry of an order by the Director suspending or revoking a license issued pursuant to this chapter, or disapproving the renewal application for a license, such licensee or applicant may seek judicial review in a manner provided by law. The Director shall stay enforcement of such order for a period of time not to exceed thirty (30) days pending the filing and/or final disposition of proceedings for judicial review. Venue lies exclusively in the Circuit Court of Jackson County, Missouri.

4335. Injunction.

With or without the issuance of a suspension, revocation, nonrenewal, an administrative written notice and order or the initiation of legal proceedings in circuit court, the County may apply to the appropriate court for injunctive relief which would require the correction or abatement of any violation of this Chapter. The initiation or exhaustion of one of these enforcement proceedings shall not be a prerequisite to the initiation of any other of these enforcement proceedings. Different types of enforcement proceedings may be pursued concurrently.

4336. Judicial review of orders of Director; stay of enforcement of orders.

Following the entry of an order by the Director against a licensee, suspending or revoking a license or permit, or disapproving a new or renewal application for a license or permit, such licensee, permittee or applicant may seek judicial review in a manner provided by law. The Director shall stay enforcement of such order for a period of time not to exceed 30 days pending the filing or final disposition of proceedings for judicial review.

4337. Informal disposition of contested cases.

Nothing contained in this Chapter shall preclude the informal disposition of contested cases by stipulation, consent order or default, or by agreed settlement.

4338. Penalty for violation of Chapter.

It shall be unlawful for any person to violate any of the provisions of this Chapter. Upon conviction thereof, such person shall be punished by a fine of not more than \$1000 or up to 1 year in the Jackson County Department of Corrections for each offense. Each day's violation of, or failure, refusal or neglect to comply with any provision of this Chapter shall constitute a separate and distinct offense. The penalties provided in this section are in addition to and are separate from any administrative actions by the Director against a license, suspend, revoke or disapprove renewal of a license or permit issued under this Chapter, or to order the closure of any portion of a motion picture arcade entertainment containing motion picture arcade booths.

Section B. Severability Clause. It is hereby declared to be the intention of the Legislature that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional

or invalid by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the Legislature without the incorporation in this Chapter of any such unconstitutional or invalid phrase, clause, sentence, paragraph, or section.

Section C. Penalty Provision. Violations of any of the penal provisions of the Ordinances are punishable, upon conviction, pursuant to section 4338. of the Ordinance.

Section D. Effective Date. Sections 4322. through 4338. of the ordinances shall be effective on July 1, 2008, The remaining sections of this Ordinance shall be effective immediately upon its signature by the County Executive as more fully set out in article II, section 12 of the Jackson County Charter.

Effective Date: This Ordinance shall be effective immediately upon its signature by the County Executive.

APPROVED AS TO FORM:

Chief Deputy County Counselor

County Counselor

I hereby certify that the attached Ordinance, Ordinance #3969 introduced on January 14, 2008, was duly passed on January 22, 2008 by the Jackson County Legislature. The votes thereon were as follows:

Yeas 9

Nays 0

Abstaining 0

Absent 0

This Ordinance is hereby transmitted to the County Executive for his signature.

Date

Mary Jo Spino, Clerk of Legislature

I hereby approve the attached Ordinance #3969.

Date

Michael Sanders, County Executive