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City of
Conway

A-4794

ORDINANCE NUMBER O-04-15

AN ORDINANCE DEFINING AND CLASSIFYING SEXUALLY ORIENTED BUSINESSES; PROVIDING RESTRICTIONS ON THE LOCATION OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR THE LICENSING OF SEXUALLY ORIENTED BUSINESSES AND THEIR EMPLOYEES; PROVIDING REGULATIONS CONCERNING THE OPERATION OF SEXUALLY ORIENTED BUSINESS; PROVIDING PENALTIES FOR VIOLATIONS; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS:

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

Whereas, 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 downgrading of property values; and

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

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

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

Whereas, licensing is a legitimate 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

Whereas, the City Council wants to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

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

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

FINDINGS: based on evidence concerning the adverse secondary effects of adult uses on the community presented in the cases of *City of Erie v. Pap's A.M.*, (98-1161, March 29, 2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. City of Newport, Ky.*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); and *South Florida Free Beaches, Inc. v. City of Miami*, 734 F.2d 608 (11th Cir. 1984), as well as studies conducted in other cities including, but not limited to, Oklahoma City, Oklahoma; Phoenix, Arizona; Minneapolis, Minnesota; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Whittier, California; and Seattle, Washington; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the City Council finds that:

- (1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.
- (2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. *See, e.g.* Study of Indianapolis, Indiana.
- (3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those that provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. *See, e.g., California v. LaRue*, 409 U.S. 109, 111 (1972); *See also* Final Report of the Attorney General's Commission on Pornography (1986) at 377.
- (4) Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. *See, e.g.,* Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
- (5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within the premises of such sexually oriented businesses. *See e.g., Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698 (1986); *See also* Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
- (6) For the period ending December 2001 the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 816,149. It was widely reported in February 2003 that for the first time in a decade, the incidence of AIDS cases and HIV cases were on the increase. *See, e.g.* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (7) From 1983 through September 30, 2002 the cumulative number of HIV-positive persons reported in Arkansas is 5,467. Of that number 3,349 meet AIDS case definitions. Since 1983 and to the present, there has been an increasing cumulative number of persons testing positive for HIV antibody test in Arkansas. *See* Arkansas HIV/AIDS Report September 30, 2002.
- (8) The number of new cases of genital herpes in the United States is estimated to be 1 million cases each year. *See, e.g.* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

- (9) The rates of reported cases of gonorrhea in the United States, after stabilizing between 1996 and 1997, increased by 9% between 1997 and 1999. *See, e.g.* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (10) The Surgeon General of the United States, in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.
- (11) According to the best scientific evidence available, AIDS and HIV infection, as well as genital herpes, gonorrhea and other sexually transmitted diseases, are principally transmitted by sexual acts. *See, e.g.* Findings of the U.S. Department of Health and Human Services, Center for Disease Control and Prevention.
- (12) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities. *See, e.g.*, Final Report of the Attorney General's Commission on Pornography (1986) at 377.
- (13) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. *See, e.g.*, Final Report of the Attorney General's Commission on Pornography (1986) at 377.
- (14) Nude dancing in adult establishment encourages prostitution, increases sexual assaults, and attracts other criminal activity. *See, e.g.*, *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 583 (1991).
- (15) Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use. *See, e.g.*, *Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1056 (9th Cir. 1986).
- (16) The findings noted in paragraphs number (1) through (15) raise substantial governmental concerns.
- (17) Sexually oriented businesses have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.
- (18) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that each sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
- (19) Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.
- (20) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.
- (21) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct this ordinance is designed to prevent or who are likely to be witnesses to such activity.

- (22) The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this ordinance.
- (23) The barring of such individuals from operation or employment in sexually oriented businesses for a period of time for a previous felony conviction serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.
- (24) The general welfare, health, morals, and safety of the citizens of the City of Conway, Arkansas will be promoted by the enactment of this ordinance.

SECTION 1: Sexually Oriented Businesses. That the Conway Zoning Ordinance, as adopted by Ordinance O-94-54 on September 27, 1994, is hereby amended by the adoption of **ARTICLE 1201, CONTROL OF SEXUALLY ORIENTED BUSINESSES**, as follows:

SECTION 1201.1 – PURPOSE

It is the purpose of this code to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment; or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene materials.

SECTION 1201.2 – DEFINITIONS

For the purposes of this Article, the definitions in this Section shall apply.

ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”

ADULT BOOKSTORE or **ADULT VIDEO STORE** means a commercial establishment that, as its principal business purpose, offers for sale or rental for any form of consideration any one or more of the following:

- (1) books, magazines, periodicals or other printed matter or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other photographic or visual representations in any format that depict or describe “specified sexual activities” or “specified anatomical areas”; or
- (2) instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities.”

The determination of the principal business purpose of an establishment is based on the visual inventory or commercial activity of the establishment; provided, there shall be a rebuttable presumption that any commercial establishment which utilizes more than ten percent (10%) of total display area for merchandise in open display of any type described in this definition shall be deemed to be engaged in the business of an adult bookstore or adult video store as its principal business purpose. However, any establishment which utilizes no more than thirty percent (30%) of total display area in a physically separated section, area, or "back room" with controlled access prohibiting admittance to persons under eighteen (18) years of age and which do not advertise or promote the adult merchandise therein either on the exterior or interior of the establishment shall not be deemed to be engaged in the business of an adult bookstore or adult video store as its principal business purpose.

ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment that presents:

- (1) persons who appear in a state of nudity or semi-nudity; or
- (2) films, motion pictures, video cassettes, slides or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" or
- (3) live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (4) live performances that are characterized by the display of any portion of the female breast or any portion of the human buttocks.

ADULT MOTEL means a hotel, motel, or similar commercial establishment that:

- (1) offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic or visual reproductions in any format that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and advertises on the exterior of the establishment the availability of this type of adult photographic reproductions; or
- (2) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (3) allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten (10) hours.

ADULT MOTION PICTURE THEATER means commercial establishments where, as its principal business purpose, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic or visual reproductions in any format are presented that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT SEX SHOP means a commercial establishment offering goods for sale or rent and that meets any of the following tests:

- (1) The establishment offers for sale items from any of the following categories: (a) adult media, as set out in the definition of adult book store or adult video store above, (b) leather goods, clothing, or other items marketed or presented in a context to suggest their use for sadomasochistic practices, or (c) any merchandise,

toy, or novelty which is marketed or presented inside or on the exterior of the establishment in a manner that depicts nudity, specified anatomical areas, or specified sexual activities; and the open display of any or all such items occupies more than ten percent (10%) of its total display area. However, any establishment which utilizes no more than thirty percent (30%) of total display area in a physically separated section, area, or "back room" with controlled access prohibiting admittance to persons under eighteen (18) years of age and which do not advertise or promote the adult merchandise therein either on the exterior or interior of the establishment shall not be deemed to be engaged in the business of an adult sex shop.

- (2) The establishment offers for sale sexually oriented toys or novelties in open display except that when the sexually oriented toys or novelties are merchandised in a manner which utilizes no more than thirty percent (30%) of total display area in a physically separated section, area, or "back room" with controlled access prohibiting admittance to persons under eighteen (18) years of age and which do not advertise or promote the adult merchandise therein either on the exterior or in the interior of the establishment shall not be deemed to be engaged in the business of an adult sex shop.

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

ADULT VIDEO-VIEWING BOOTH OR ADULT ARCADE BOOTH means any booth, cubicle, stall, room, or compartment that is designed, constructed, or used to hold or seat patrons and is used for presenting photographs, films, motion pictures, video cassettes or video reproductions, slides, or other photographic or visual representations in any format that depict or describe "specified sexual activities" or "specified anatomical areas" for observations by patrons therein. A video viewing booth or arcade booth shall not mean a theater, motion picture theater, room or enclosure or portion thereof that contains more than six hundred (600) square feet.

CHIEF means the Chief of Police of the City of Conway, Arkansas and such employee of the police department as he may designate to perform the duties of the Chief under this ordinance.

CLEAR AND CONVINCING means evidence so clear, direct and convincing as to enable the Chief to come to a clear conviction as to the allegations sought to be established.

EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person on the premises for repair, maintenance, or cleaning of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

ESCORT means a person who, for monetary consideration, agrees or offers to act as a companion, guide, or date for another person, or who, for monetary consideration, agrees or offers to model lingerie or to engage in a "specified sexual activity" and/or perform in a state of nudity or semi-nudity for another person off the premises of a sexually oriented business.

ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

ESTABLISHMENT means and includes any of the following:

- (1) the opening or commencement of any sexually oriented business as a new business;
- (2) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) the addition of any sexually oriented business to any other existing sexually oriented business; or
- (4) the relocation of any sexually oriented business.

INTENTIONALLY means that it was the conscious object of the person to engage in the conduct alleged, or to cause the result alleged.

KNOWINGLY means that the person was aware that his conduct was of the nature alleged, or that he was aware that it was practically certain that his conduct would cause the result alleged, or that he consciously disregarded a substantial risk that his conduct would cause the result alleged or that the result alleged would occur.

LICENSED DAY-CARE CENTER means a facility licensed by the State of Arkansas, whether situated within the City or not, that provides care, training, education, custody, treatment or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

LICENSEE means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

LINGERIE MODELING STUDIO means a commercial establishment or business that provides the services of live models modeling lingerie to individuals, couples, or small groups for consideration in a room smaller than six hundred (600) square feet, with the exception of those persons and places exempted by Section 1201.25 of this Ordinance.

NUDE MODEL STUDIO means a commercial establishment where a person who appears in a state of nudity or semi-nudity, or who displays "specified anatomical areas", to individuals, couples, or small groups for consideration in a room smaller than six hundred (600) square feet, with the exception of those persons and places exempted by Section 1201.25 of this Ordinance.

NUDITY or a STATE OF NUDITY means the showing of any "specified anatomical area."

OPEN DISPLAY means the act of exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it maybe readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, or public sidewalk, or from the parking lot or the parking spaces, or from the property of others, or from the exterior of the establishment in any manner, or from any portion of the premises where items and materials other than those regulated by the ordinance are on display to the public.

OPERATOR means any person in a supervisory capacity over employees and/or contractors, excluding maintenance, delivery or cleaning personnel, at the sexually oriented business, and any person responsible for security and/or any entrance/exit of the sexually oriented business.

PERSON means an individual, proprietorship, limited partnership, general partnership, corporation, association, limited liability company, or other legal entity.

PREMISES means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control or supervision of the licensee, as described in the application for a business license pursuant to Section 1201.4 of this ordinance.

SADOMASOCHISTIC PRACTICES means 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 clothed or naked.

SEMI-NUDE OR SEMI-NUDITY means the appearance of any part of the female areola or nipple, or the showing of the perineum anal region, in anything less than a fully opaque covering.

SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

- (1) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity.

SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult sex shop, adult theater, escort agency, lingerie model studio, nude model studio, or sexual encounter center.

SEXUALLY ORIENTED TOYS OR NOVELTIES means 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:

- (1) the human genitals or anus less than completely and opaquely covered.

- (2) the human male genitals in a discernibly turgid state, even if fully and opaquely covered.

SPECIFIED CRIMINAL ACTIVITY means carnal abuse; rape; sexual abuse; violation of a minor; sexual misconduct; sexual solicitation of a minor; sodomy; prostitution; promotion of prostitution; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; and/or patronizing prostitution; in the case of any such conviction, it will constitute specified criminal activity if:

- (1) less than (1) year has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or
- (2) less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense.

The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant, with the exception of a *de novo* appeal from Municipal Court to Circuit Court. In the case of a *de novo* appeal from Municipal Court to Circuit Court, a disqualification is not effective until such time as there is a conviction in Circuit Court. Should a conviction be reversed on appeal or in the case of a *de novo* appeal from Municipal Court to Circuit Court, should the Circuit Court fail to convict, then there is no "conviction" for purposes of this ordinance.

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

- (1) any act of sexual gratification involving the touching by one person, either directly or through clothing, of the specified anatomical areas or buttocks of another person.
- (2) any act of sexual gratification involving the touching by one person, either directly or through clothing, of the female breast of another person;
- (3) intercourse, oral copulation, or sodomy, whether actual or simulated;
- (4) masturbation, actual or simulated; or
- (5) excretory functions as part of or in connection with any of the activities set forth in (1) through (4) above.

SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the effective date of this Ordinance.

TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

- (1) the sale, lease or sublease of the business;
- (2) the transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) the establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION 1201.3 – CLASSIFICATION

The following types of businesses are classified as sexually oriented businesses:

- (1) adult arcades;
- (2) adult bookstores or adult video stores;
- (3) adult cabarets
- (4) adult motels
- (5) adult motion picture theatres
- (6) adult sex shops
- (7) adult theaters
- (8) escort agencies
- (9) lingerie model studios
- (10) nude model studios
- (11) sexual encounter centers.

SECTION 1201.4 – LICENSE REQUIRED

(A) It shall be unlawful:

- (1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Chief pursuant to this ordinance;
- (2) For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license issued to such employee by the Chief pursuant to this ordinance;
- (3) For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the Chief pursuant to this ordinance.
- (4) It shall be a defense to subsections (A)(2) and (A)(3) of this Section if the employment is of limited duration and for the sole purpose of repair, maintenance and/or cleaning of machinery, equipment, or the premises.
- (5) Any person convicted of the violation of any provision within this subsection shall be subject to the general penalties as set out in Section 1.32.01 of the Conway Municipal Code.

(B) An application for a sexually oriented business license must be made on a form provided by the City. Except for a sexually oriented business lawfully operating on the date this Ordinance is enacted, the application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Prior to issuance of a license, the premises must be inspected by the fire department and code enforcement department.

(C) An application for a sexually oriented business employee license must be made on a form provided by the City.

(D) All applicants for a license must be qualified according to the provisions of this ordinance. The application may request, and the applicant shall provide, such information as to enable the City to determine whether the applicant meets the qualifications established under this

ordinance. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

- (E) If a person who wishes to own or operate a sexually oriented business is an individual, he must sign the application for a business license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, a representative of the partnership, corporation or limited liability company must sign the application for a business license as applicant.
- (F) Applications for a business license, whether original or renewal must be made to the Chief. Applications must be submitted to the office of the Chief or the Chief's designee during regular working hours. Application forms shall be supplied by the Chief, and shall only request the following information:
 - (1) The name, street address (and mailing address if different) of the applicant(s).
 - (2) A recent photograph of the individual or representative submitting the application form.
 - (3) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;
 - (4) The name under which the establishment is to be operated and a general description of the services to be provided;
 - (a) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state the sexually oriented business's fictitious name;
 - (5) Whether the applicant has been convicted or is awaiting trials on pending charges, of a "specified criminal activity" as defined in Section 1201.2, and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;
 - (6) Whether the applicant has had a previous license under this ordinance or other similar sexually oriented business ordinance from another city, county or state or political subdivision denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation or a member of a limited liability company that is or was licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended, or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation.
 - (7) Whether the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city or county in this or any other state and, if so, the names and locations of such other licensed businesses;
 - (8) The single classification of the license, as found in Section 1201.3 for which the applicant is filing;
 - (9) The telephone number of the establishment;
 - (10) The address, and legal description of the tract of land on which the establishment is to be located;
 - (11) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the

establishment began operations as a sexually oriented business at the location for which the business license is sought;

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

(G) Each application for a business license shall be accompanied by the following:

- (1) Payment of the application fee in full;
- (2) If the establishment is an Arkansas corporation, limited liability company or limited partnership, a certificate of good standing issued by the office of the Secretary of State of Arkansas;
- (3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state;
- (4) Except for a sexually oriented business lawfully operating on the date this Ordinance is enacted, a current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the following types of property: the property lines of any established church; public or private elementary, secondary or post-secondary school; public park; licensed day care center; and entertainment business that is oriented primarily towards children within 1,000 feet of the property to be certified and; the property lines of any established residential district within 500 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
- (5) Any of the items (G)(2) through (G)(4) shall not be required for a renewal application if the sexually oriented business was lawfully operating at the time this Ordinance was enacted or the applicant states that the documents previously furnished the Chief with the original application or previous renewals thereof remain correct and current.

(H) Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the Chief by the person or a designated representative of the person to whom the employee license shall issue, except as otherwise provided in this Ordinance. Applications transmitted by facsimile will be accepted for this purpose. Each application for an employee license shall be accompanied by proof of payment of the application fee in full. A photocopy of the check or money order will be accepted for this purpose if transmitting the application by facsimile, so long as payment is actually received within five (5) working days. Application forms shall be supplied by the Chief. Applications must be submitted to the office of the Chief or the Chief's designee. Each applicant shall be required to give only the following information on the application form:

- (1) The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;
- (2) Age, and date and place of birth;
- (3) Height, weight, hair color and eye color;
- (4) Present residence address and telephone number;

- (5) Present business address and telephone number;
 - (6) Date, issuing state, and number of driver's license, or other identification card information;
 - (7) Social Security Number; and
 - (8) Proof that the individual is at least eighteen (18) years old.
- (I) Attached to the application form for an employee license to work and/or perform services in a sexually oriented business shall be the following:
 - (1) A color photograph of the applicant clearly showing the applicant's face. If application is made by facsimile, the photograph does not have to be a color photograph, but the color photograph shall be submitted within five (5) days.
 - (2) A statement whether the applicant has been convicted of a "specified criminal activity" as defined in Section 1201.2, and if so, the "specified criminal activity" involved, the date, place and jurisdiction of each.
 - (J) Every application for a license shall contain a statement under oath that the applicant has personal knowledge of the information contained in the application, that the information contained therein and furnished therewith is true and correct, and that the applicant is aware of the requirements of this Ordinance.
 - (K) A separate application and business license shall be required for each sexually oriented business classification as set forth in Section 1201.3.
 - (L) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business or employee license.

SECTION 1201.5 – ISSUANCE OF LICENSE

- (A) Upon the filing of an application for a sexually oriented business employee license, the Chief shall issue a temporary license to said applicant. In the case of an application filed by facsimile transmission, proof of the facsimile transmittal shall suffice as a temporary license until the actual temporary license is issued. The application shall then be referred to the appropriate City departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of the completed application. After the investigation, the Chief shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
 - (1) The applicant and/or the applicant's representative has intentionally failed to provide the information reasonably necessary for issuance of the license or has intentionally answered falsely a material question or request for information on the application form;
 - (2) The applicant is under the age of eighteen (18) years;
 - (3) The applicant has been convicted of a "specified criminal activity" as defined in Section 1201.2 of this Ordinance;
 - (4) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this Ordinance; or
 - (5) The applicant has had a sexually oriented business employee license revoked by the City within one (1) year of the date of the current application.

In the event that the Chief determines preliminarily that an applicant is not eligible for a sexually oriented business employee license, the applicant shall be given notice in writing as set forth in Section 1201.26 by certified mail, return receipt requested, of each of the above reasons which support such preliminary denial within thirty (30) days of the receipt of the completed application by the Chief. The applicant shall have ten (10) days after receipt of the notice to make modifications necessary for purposes of complying with this Section and to reapply for a sexually oriented business employee license. After ten (10) days, the denial will become final unless such modification and reapplication is made by the applicant. However, if additional time is shown by the applicant to be reasonably necessary to comply with this Section, the Chief may grant an extension, not to exceed an additional thirty (30) days. Upon receipt of modifications and reapplication by the Chief, the Chief shall issue an employee license, unless it is determined by a preponderance of the evidence that the modifications fail to remedy the original basis for the preliminary denial by the Chief. If such determination is made by the Chief, the Chief again must give notice in writing as set forth in Section 1201.26 by certified mail, return receipt requested, to the applicant of the reasons for the denial, and said denial is final and appealable.

A final denial, suspension, or revocation by the Chief of a license issued pursuant to this Section shall be subject to the same rights as those set forth in Subsection (I) of this Section.

- (B) A license issued pursuant to Subsection (A) of this Section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The employee shall keep the license available for inspection at the establishment upon lawful request at all times while engaged in employment or performing services on the sexually oriented business premises.
- (C) A license issued pursuant to subsection (A) of this Section shall be subject to annual renewal upon the written application of the applicant and a written finding determined by a preponderance of the evidence by the Chief that the applicant has not been convicted of any "specified criminal activity" as defined in this Ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew an employee license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 1201.6. The non-renewal of a license shall be subject to the same notice, modification and reapplication, and appeal rights as set forth elsewhere in this Section.
- (D) If application is made for a sexually oriented business license, the Chief shall approve or deny issuance of the license within forty-five (45) days of receipt of the completed application. The Chief shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
 - (1) An applicant has intentionally failed to provide the information reasonably necessary for issuance of the license or has intentionally answered falsely a material question or request for information on the application form;
 - (2) An applicant is under the age of eighteen (18) years;
 - (3) An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business. An applicant denied a license on this basis will have all rights and remedies set forth in Section 1201.5 (H) to attempt to remedy any such deficiency and reapply for a license;

- (4) An applicant has been convicted of a "specified criminal activity" as defined in Section 1201.2;
 - (5) Except for a sexually oriented business lawfully operating on the date this Ordinance is enacted, the premises to be used for the sexually oriented business do not comply with the location restrictions set forth in Section 1201.14;
 - (6) The premises to be used for the sexually oriented business have not been approved by the fire department and the code enforcement department as being in compliance with applicable laws and ordinance;
 - (7) An applicant has been finally denied, after opportunity to exercise due process rights, a license by the City to operate a sexually oriented business for any of the above listed reasons within the preceding twelve (12) months, or his license to operate a sexually oriented business has been finally revoked, after opportunity to exercise due process rights, for any of the reasons listed in Section 1201.10 or Section 1201.11 within the preceding twelve (12) months.
- (E) A license issued pursuant to Subsection (D) of this Section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the Section 1201.3 classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
- (F) The fire department and code enforcement department shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the Chief. The certification shall be promptly presented to the Chief.
- (G) A sexually oriented business license shall issue for only one classification, as set forth in Section 1201.3.
- (H) In the event that the Chief determined preliminarily that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in writing by certified mail, return receipt requested, of each of the above reasons which support such preliminary denial within forty-five (45) days of the receipt of the completed application by the Chief. The applicant shall have ten (10) days after receipt of the notice to make modifications necessary for purposes of complying with this Section and to reapply for a sexually oriented business license. After ten (10) days, the denial will become final unless such modification and reapplication is made by the applicant. However, if additional time is shown by the applicant to be reasonably necessary to comply with this Section, the Chief may grant an extension, not to exceed an additional thirty (30) days. Upon receipt of modifications and reapplication by the Chief, the Chief shall issue a license, unless it is determined by a preponderance of the evidence that the modifications fail to remedy the original basis for the preliminary denial by the Chief. If such determination is made by the Chief, the Chief again must give notice in writing by certified mail, return receipt requested, to the applicant of the reasons for the denial, and said denial is final and appealable.
- (I) An applicant may appeal the decision of the Chief regarding a final denial to the City Council by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the applicant of the Chief's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Chief may, within fifteen (15) days of service upon him of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the City Council. After reviewing

such memoranda, as well as the Chief's written decision, if any, and exhibits submitted to the Chief, the City Council shall vote either to uphold or overrule the Chief's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal. Judicial review of a denial by the Chief and the City Council may be made pursuant to Section 1201.12 of this Ordinance. During the pendency of any appeal, the parties shall maintain the status quo unless in the interim, a court issues an injunction pursuant to Section 1201.27.

- (J) A license issued pursuant to Subsection (D) of this Section shall be subject to annual renewal upon the written application of the applicant and a written finding determined by a preponderance of the evidence by the Chief that the applicant has not been convicted of any "specified criminal activity" as defined in this Ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a business license shall be made within forty-five (45) days of the completed application. The renewal of a license shall be subject to the fees as set forth in Section 1201.6.

Any determination by the Chief with respect to the renewal of a sexually oriented business license must conform to the duties and rights set forth in Section 1201.5 (H). Furthermore, the applicant for a renewal of a license shall have the same rights with respect to renewal as those set forth in Section 1201.5 (I). During the pendency of any appeal, the parties shall maintain the status quo unless in the interim, a court issues an injunction pursuant to Section 1201.27.

SECTION 1201.6 – FEES

The annual fee for a sexually oriented business license, whether new or renewal is two hundred fifty dollars (\$250.00). The annual fee for a sexually oriented business employee license, whether new or renewal is twenty-five dollars (\$25.00). These fees are to be used to pay for the cost of the administration and enforcement of this ordinance.

SECTION 1201.7 – INSPECTION

- (A) An applicant or licensee shall permit representatives of the police department, fire department, code enforcement department, or other City or state departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is open for business.
- (B) No person who operates a sexually oriented business nor his agents or employees shall refuse to promptly permit such lawful inspection of the premises.
- (C) A person convicted of violation of this Section shall be subject to the penalties set out in Section 1.32.01 of the Conway Municipal Code.

SECTION 1201.8 – EXPIRATION OF LICENSE

- (A) Each business license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 1201.4, and by payment of the fee set forth in Section 1201.6. Upon filing of an application for renewal of a business license, the existing business license shall remain in effect until a final determination on the application for renewal is made as set forth in Section 1201.5 (J).

- (B) Each sexually oriented business employee license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 1201.4, and by payment of the fee set forth in Section 1201.6. Upon filing an application for renewal of a business employee license, the existing license shall remain in effect until a final determination on the application for renewal is made as set forth in Section 1201.5 (J).
- (C) The applicant shall not be issued a license for one year from the date of a final denial if such denial is not appealed, or for one year from the date of a final determination by the appropriate appeals tribunal if the denial is appealed and is upheld on that appeal.

Any determination with respect to the renewal of a license must conform to the duties and rights set forth in Section 1201.5 of this Ordinance.

SECTION 1201.9 – ASSESSMENT OF FINES

The Chief shall fine a business licensee and/or any person who is an operator, as the case may be, in the amount of two hundred fifty dollars (\$250.00) for each offense where he determines by clear and convincing evidence that:

- (1) A business licensee or an individual operator knew or should have known of the possession, use or sale of controlled substances in the establishment;
- (2) A business licensee or an individual operator knew or should have know of the sale, use or consumption of alcoholic beverages in the establishment;
- (3) A business licensee or an individual operator knew or should have known of nudity or “specified sexual activities” occurring in the establishment; or
- (4) A business licensee or an individual operator knew or should have known of a person under eighteen (18) years of age entering the establishment.

It is not the intent of this Ordinance for the Chief to impose a fine upon a business licensee for the occurrence of incidents outside the actual knowledge of the business licensee.

If the business licensee or the same individual operator of a sexually oriented business is fined (and such fine(s) are upheld after judicial review pursuant to Section 1201.12) for the same offense three times or more, and the dates of these offenses have occurred within a twelve (12) month period, the business licensee or the individual operator, as the case may be, shall be suspended in accordance with Section 1201.10. For purposes of Sections 1201.9, 1201.10 and 1201.11, multiple incidents of the same nature which would constitute a violation of any of the provisions set forth in (1) through (4) above, shall be considered as only one (1) offense if they occur within the same business day.

In the event that the Chief determines that one of the above described offenses has occurred and determines that the assessment of a fine against the business licensee or an individual operator is appropriate, the Chief must give notice in writing by certified mail, return receipt requested, of each of the above reasons which support the assessment of a fine, including the date or dates which each such incident occurred. Such notice shall be given within thirty (30) days of the incident or incidences for which the business is being cited, or within thirty (30) days of the conclusion of the Chief’s investigation, whichever is earlier.

A licensee may appeal the decision of the Chief regarding the assessment of a fine to the City Council by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the Chief’s decision. The notice of appeal shall be

accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Chief may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the City Council. After reviewing such memoranda, as well as the Chief's written decision, if any, and exhibits submitted to the Chief, the City Council shall vote either to uphold or overrule the Chief's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal. Judicial review of a fine by the Chief and City Council may be made pursuant to Section 1201.12 of this Ordinance.

Furthermore, judicial review of a suspension by the Chief and City Council may be made pursuant to Section 1201.12 of this Ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this Ordinance. This Section in no way is intended to replace or substitute for other criminal penalties which may apply under local, state or federal law for any of the activities enumerated above.

SECTION 1201.10 - SUSPENSION

The Chief shall suspend the license of a business licensee and/or any person who is an operator, as the case may be, for a period not to exceed thirty (30) days if he determines by clear and convincing evidence that:

- (1) a business licensee intentionally answered falsely a material question or request for information during the application process;
- (2) a business licensee or an individual operator is convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;
- (3) a business licensee or an individual operator has, with knowledge, permitted prostitution on the premises;
- (4) a business licensee or an individual operator has been fined for the same offense, of those offenses listed in Section 1201.9, three times or more, and the dates of those offenses occurred within a twelve (12) month period; or
- (5) a business licensee or an individual operator is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business. A licensee found in violation in this regard will have all rights and remedies set forth in Section 1201.5 (H) to attempt to remedy any such deficiency before any suspension of the license may occur.

If a business licensee is suspended by the Chief more than one time in a twelve (12) month period, the license shall be revoked in accordance with Section 1201.11.

In the event that the Chief determines that one of the above described incidents has occurred, and determines that suspension of the business license is appropriate, the Chief must give notice in writing by certified mail, return receipt requested, of each of the above reasons which support the suspension of the business license, including the date or dates when each such incident occurred. Such notice shall be given within thirty (30) days of the incident or incidences for which the business is being cited, or within thirty (30) days of the conclusion of the Chief's investigation, whichever is earlier.

A licensee may appeal the decision of the Chief regarding a suspension to the City Council by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the Chief's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Chief may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the City Council. After review such memoranda, as well as the Chief's written decision, if any, and exhibits submitted to the Chief, the City Council shall vote either to uphold or overrule the Chief's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal.

Judicial review of a suspension by the Chief and City Council may be made pursuant to Section 1201.12 of this Ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this Ordinance.

SECTION 1201.11 - REVOCATION

The Chief shall revoke a license for one (1) year from the date the revocation becomes effective if he determines that any of the grounds for suspension set forth in Section 10 is proven by clear and convincing evidence, and that the license has already been suspended within the preceding twelve (12) months; or that the business operated while its license was suspended.

A licensee may appeal the decision of the Chief regarding a revocation to the City Council by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the Chief's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Chief may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the City Council. After reviewing such memoranda, as well as the Chief's written decision, if any, and exhibits submitted to the Chief, the City Council shall vote either to uphold or overrule the Chief's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal.

Judicial review of a revocation by the Chief and City Council may be made pursuant to Section 1201.12 of this Ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this Ordinance.

SECTION 1201.12 - JUDICIAL REVIEW

After denial of an initial or renewal application by the Chief and City Council, or upon a fine, suspension or revocation by the Chief and City Council, the applicant or licensee may seek judicial review in any court of competent jurisdiction. The rules and procedures for such appeal are modeled on Rule 9 of the Arkansas Inferior Court Rules. Those Rules provide as follows:

- (1) Time for taking appeal. All appeals from the City Council to a court of competent jurisdiction must be filed in the office of the Clerk of the particular Court having

jurisdiction of the appeal within thirty (30) days from the date of the vote by the City Council.

- (2) How taken. An appeal from the City Council to a Court of competent jurisdiction shall be taken by filing the record of the findings and proceedings of the Chief and the City Council, to the extent such a record is available. It shall be the duty of the City Clerk to prepare and certify such record when requested by the appellant, and upon payment of any fees authorized by law therefore. The appellant shall have the responsibility of filing such record in the office of the Clerk of the Court of competent jurisdiction.
- (3) No record available. When the City Clerk neglects or refuses to prepare and certify a record for filing in a Court of competent jurisdiction, the person desiring an appeal may perfect the appeal on or before the 30th day from the date of the vote by the City Council by filing an Affidavit in the office of the Clerk of the Court of competent jurisdiction showing that he has requested the City Clerk to prepare and certify the records for purposes of appeal, and that the City Clerk has neglected to prepare and certify such records for purposes of appeal. A copy of such Affidavit shall be promptly served upon the City Clerk and upon the adverse party.

SECTION 1201.13 – NO TRANSFER OF LICENSE

A licensee shall not transfer his/her license to any person who has not obtained a license, nor shall a business licensee operate a sexually oriented business under the authority of a sexually oriented business license at any place other than the address designated in the application. This section is not intended to prevent a business licensee from being allowed to sell, assign or transfer ownership or control of his/her business to another person already possessing a valid sexually oriented business license. It is intended only to prevent the sale, assignment, or transfer of ownership or control of a license by the licensee, or of the business to a non-licensee.

SECTION 1201.14 – LOCATION RESTRICTIONS

Sexually oriented businesses not already lawfully operating on the effective date of this Ordinance shall be permitted only in zoning districts C-3 Highway Service & Open Display Districts and I-3 Intensive Industrial District, subject to the following:

- (1) the sexually oriented business may not be operated within:
 - (a) one thousand (1,000) feet of a church;
 - (b) one thousand (1,000) feet of a public or private elementary, secondary or post-secondary school;
 - (c) one thousand (1,000) feet of a public park;
 - (d) one thousand (1,000) feet of a licensed day-care center;
 - (e) one thousand (1,000) feet of an entertainment business that is oriented primarily toward children;
 - (f) five hundred (500) feet of a boundary of any residential district; or
 - (g) one thousand (1,000) feet of another sexually oriented business.
- (A) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business classified pursuant to Section 1201.3.
- (B) For the purpose of this Ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property of the premises where sexually oriented business is conducted, to the nearest property line of a church;

public or private elementary, secondary or post-secondary school; public park; licensed day care center; entertainment business that is oriented primarily toward children; boundary of any residential district or other sexually oriented business.

SECTION 1201.15 – ADDITIONAL REGULATIONS FOR ADULT MOTELS

- (1) Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the enterprise is an adult motel as that term is defined in this Ordinance.
- (2) A person in control of an adult motel must have a sexually oriented business license or be subject to penalties as set forth below.
- (3) For purposes of Subsection (B) of this Section, the terms “rent” or “subrent” mean the act of permitting a room to be occupied for any form of consideration.
- (4) Any person convicted of the violation of Subsection (B) of this Section shall be subject to the general penalties as set out in Section 1.32.01 of the Conway Municipal Code.

SECTION 1201.16 – ADDITIONAL REGULATIONS FOR ESCORT AGENCIES

- (1) An escort agency shall not employ any person under the age of eighteen (18) years.
- (2) An escort agency may not provide or agree to provide an escort or escort service to any person under the age of eighteen (18) years.
- (3) A person shall not act as an escort or agree to act as an escort to any person under the age of eighteen (18) years.
- (4) A person convicted of a violation of any provision of this Section shall be subject to the general penalties as set out in Section 1.32.01 of the Conway Municipal Code.

SECTION 1201.17 – ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY

- (1) A person shall not appear in person in a state of nudity or semi-nudity in a sexually oriented business.
- (2) A person shall not engage in any specified sexual activity in a sexually oriented business.
- (3) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1.32.01 of the Conway Municipal Code.

SECTION 1201.18 – TYPES OF SEXUALLY ORIENTED BUSINESSES PROHIBITED

The following types of sexually oriented business are prohibited:

- (1) adult arcades
- (2) adult cabarets of less than six hundred (600) square feet of floor space
- (3) adult theaters less than six hundred (600) square feet in floor space
- (4) adult motion picture theatres with less than six hundred (600) square feet of floor space
- (5) lingerie model studios
- (6) nude model studios
- (7) sexual encounter centers

SECTION 1201.19 – VIDEO-VIEWING BOOTHS OR ARCADE BOOTHS

Except for adult motels, adult video-viewing booths or adult arcade booths are prohibited in any establishment.

SECTION 1201.20 – EXTERIOR PORTIONS OF AND SIGNAGE

- (A) No owner or operator of a sexually oriented business shall allow the merchandise or activities of the establishment to be visible from a point outside the establishment.
- (B) No owner or operator of a sexually oriented business shall allow the exterior portion of the sexually oriented business to have any photographs of any person in a state of nudity or engaged in any “specified sexual activity,” nor shall such owner or operator allow the exterior portion of the sexually oriented business to have any pictorial or other representations of any kind of any person in a state of nudity or engaging in any “specified sexual activity.”
- (C) Notwithstanding any other City ordinance, code, or regulation to the contrary, the operator of any sexually oriented business or any other person shall not erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.
- (D) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:
 - (1) conform with the City’s sign code;
 - (2) be a flat plane, rectangular in shape; and
 - (3) not exceed sixty-four (64) square feet in area.
- (E) Primary signs shall contain no photographs, and shall contain no pictorial or other representations of any kind of any person in a state of nudity or engaging in any “specified sexual activity.”
- (F) Secondary signs shall have no more than one (1) display surface. Such display surface shall:
 - (1) conform with the City’s sign code;
 - (2) be a flat plane, rectangular in shape;
 - (3) not exceed twenty (20) square feet in area;
 - (4) not exceed five (5) feet in height and four (4) feet in width; and
 - (5) be affixed or attached to any wall or door of the enterprise.
- (G) The provisions of Subsection (E) above shall also apply to secondary signs.
- (H) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1.32.01 of the Conway Municipal Code.

SECTION 1201.21 – SALE, USE OR CONSUMPTION OF ALCOHOLIC BEVERAGES

- (A) The sale, use or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.
- (B) A person convicted of the violation of this Section shall be subject to the penalties as set out in Section 1.32.01 of the Conway Municipal Code.

SECTION 1201.22 – PERSONS YOUNGER THAN EIGHTEEN PROHIBITED FROM ENTRY; ATTENDANT REQUIRED

- (A) No person shall allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.
- (B) It shall be the duty of the business licensee and/or operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented businesses' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years of age from entering the sexually oriented business. It shall be a rebuttable presumption that a person knew a person was under the age of eighteen (18) unless the attendant asked for and was furnished;
 - (1) a valid operator's, commercial operator's, or chauffeur's driver's license issued by any state reflecting that such person is eighteen (18) years of age or older; or
 - (2) a valid personal identification certificate issued by any state reflecting that such person is eighteen (18) years of age or older.
- (C) It shall be unlawful for any person under the age of eighteen (18) years to misrepresent such person's age for the purpose of entering the premises of a sexually oriented business at any time the sexually oriented business is open for business.
- (D) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1.32.01 of the Conway Municipal Code.

SECTION 1201.23 – MASSAGES OR BATHS

It shall be unlawful for any business operating as a sexually oriented business to offer the services of a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided, or where any physical contact with the recipient of such services constitutes specified sexual activities, regardless of the gender of the recipient or the provider of the services. A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1.32.01 of the Conway Municipal Code.

SECTION 1201.24 – HOURS OF OPERATIONS

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of five o'clock (5:00) A.M. and eleven o'clock (11:00) A.M.

SECTION 1201.25 - EXEMPTIONS

It is a defense to prosecution under this Ordinance that a person appearing in a state of nudity or semi-nudity did so in a modeling class, art class, or live performance operated:

- (1) by a proprietary school, licensed by the State of Arkansas, a college, junior college, or university supported entirely or partly by taxation;
- (2) by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

SECTION 1201.26 – NOTICES

- (A) Any notice required or permitted to be given by the Chief or any other City office, division, department or other agency under this Ordinance to any applicant, licensee operator or owner of a sexually oriented business must be given by certified United State mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or in any subsequent notice of address change that has been received by the Chief. Notices mailed as above shall be deemed given upon their receipt in the United States mail. In the event that any notice given by mail is returned by the postal service, the Chief or his designee shall cause it to be posted at the principal entrance to the establishment, and notice will be considered received upon the date of such posting.
- (B) A license may designate an agent for service and notify the Chief of the identity and address of the agent for service. In such event, notices are subject to the requirement of Subsection (A) above, except that notice shall be made at the address of the designated agent for service.
- (C) Any notice required or permitted to be given to the Chief by any person under this Ordinance shall not be deemed given until and unless it is received in the office of the Chief.
- (D) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Chief in writing of any change in residence or mailing address.

SECTION 1201.27 - INJUNCTION

A person who operates or causes to be operated a sexually oriented business without a valid business license, or a business shown by clear and convincing evidence to be engaging in a regular pattern or practice of violations of this Ordinance, is subject to a suit for injunction as well as prosecution for criminal violation. Each day a sexually oriented business so operates, or each day a person so acts in violation of a provision of this Ordinance is to be considered a separate offense or violation.

SECTION 2: Conflicting Ordinances Repealed. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3: Separability.

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

SECTION 4: Emergency Clause.

It is hereby found and declared by the City Council that an emergency situation exists with reference to those matters set forth herein, and that passage and immediate effect of this Ordinance is necessary for the preservation of the health, safety and welfare of the inhabitants of the City. This Ordinance shall be in full force and effect upon and after the date of passage.

PASSED this 24th day of February 2004.

APPROVED:



Mayor Tab Townsell

ATTEST:



City Clerk Michael O. Garrett

CERTIFICATE

STATE OF ARKANSAS)
COUNTY OF FAULKNER)
CITY OF CONWAY)

I, Michael Garrett, the duly elected, qualified, and acting Clerk-Treasurer of the City of Conway, Arkansas, do hereby certify that the attached and foregoing is a true and correct copy of an ordinance pass by the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 24th day of FEBRUARY 2004, same is duly recorded in the minutes of meeting of said Council.

Witness, my hand and seal of the City of Conway, Arkansas, this 8th day of MARCH, 2004.

Michael Garrett
CITY CLERK-TREASURER

Seal

Doc#2004- 4748
Date 03/10/2004
02:31:21 PM
Filed & Recorded in
Official Records of
Faulkner County 234905
SHARON RIMMER
FAULKNER COUNTY CIRCUIT CLERK
Fees \$83.00
by *Sharon Rimmer* D.C.

CERTIFICATE OF RECORD
Doc#2004- 4748
03/10/2004
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Filed and Recorded in Official Records of
FAULKNER COUNTY
SHARON RIMMER
FAULKNER COUNTY CIRCUIT CLERK
by *Sharon Rimmer* D.C.