

**Chapter 3.55**  
**Sexually Oriented Businesses**

**3.55.005** **TITLE.** This ordinance shall be known and may be referred to as the “Pottawattamie County, Iowa, Sexually Oriented Businesses Ordinance”. (Ordinance #2003-08/August 8, 2003)

**3.55.010** **PURPOSE AND FINDINGS.**

**.01 PURPOSE:** It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the *County*, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the *County*. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material. (Ordinance #2003-08/August 8, 2003)

**.02 FINDINGS:** Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Board, and on findings, interpretations, and narrowing constructions incorporated in the cases of *Thomas v. Chicago Park District*, 534 U.S. 316 (2002); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Farkas v. Miller*, 151 F.3d 900 (8<sup>th</sup> Cir. 1998); *Jakes Ltd. v. City of Coates*, 284 F.3d 884 (2002); *BZAPS, Inc. v. City of Mankato*, 268 F.3d 603 (8<sup>th</sup> Cir. 2001); *Green v. City of St. Paul*, 1999 U.S. App. LEXIS 12057 (8<sup>th</sup> Cir. 1999) (unreported); *Scope Pictures v. City of Kansas City*, 140 F.3d 1201 (8<sup>th</sup> Cir. 1998); *Excalibur Group v. City of Minneapolis*, 116 F.3d 1216 (8<sup>th</sup> Cir. 1997); *ILQ Invs. v. City of Rochester*, 25 F.3d 1413 (8<sup>th</sup> Cir. 1994); *Ambassador Books & Video v. City of Little Rock*, 20 F.3d 858 (8<sup>th</sup> Cir. 1994); *Alexander v. Minneapolis*, 928 F.2d 278 (8<sup>th</sup> Cir. 1991); *John Doe v. Minneapolis*, 898 F.2d 612 (8<sup>th</sup> Cir. 1990); *Thames Enters. v. St. Louis*, 851 F.2d 199 (8<sup>th</sup> Cir. 1988); *MRM, Inc. v. City of Davenport*, 290 N.W.2d 338 (Iowa 1980); and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1984; Minneapolis, Minnesota - 1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas - 1977; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma County, Oklahoma - 1986; Cleveland, Ohio - 1977; and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York Times Square study - 1994; St. Cloud, Minnesota - 1994; Phoenix, Arizona - 1995-98; “Stripclubs According to Strippers: Exposing Workplace Sexual Violence,” by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; “Sexually Oriented Businesses: An Insider’s View,” by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Board finds that the regulatory provisions of this Chapter are within its constitutional power to enact, are designed to serve the *County's* substantial interest in preventing many of the negative secondary effects associated with sexually oriented adult uses, is narrowly tailored to that end, and provides reasonable alternative avenues of communication for sexually explicit messages within the *County*. (Ordinance #2003-08/August 8, 2003)

**A.** Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the unlicensed operators of the *establishments*. (Ordinance #2003-08/August 8, 2003)

- B. *Employees of and/or performers at sexually oriented businesses, as defined in this Chapter, often engage in certain types of illicit sexual behavior. (Ordinance #2005-02/August 26, 2005)*
- C. Sexual acts, including masturbation, and oral and anal sex, occur at unregulated sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. *(Ordinance #2003-08/August 8, 2003)*
- D. Communities have suffered adverse aesthetic impacts caused by sexually oriented businesses, including sexually graphic and unsanitary litter in and around *Adult Bookstores* and other sexually oriented adult uses. *(Ordinance #2003-08/August 8, 2003)*
- E. *Persons* often frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex in or near the premises of such sexually oriented businesses, or for the purpose of purchasing or selling illicit drugs. *(Ordinance #2003-08/August 8, 2003)*
- F. Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and shigella infections, chlamydial, myoplasmal and ureoplasmal infections, trichomoniasis and chancroid. *(Ordinance #2003-08/August 8, 2003)*
- G. According to research from the Kaiser Family Foundation, 816,149 people in the United States, as of December 2001 have reported having the AIDS virus, for which there is presently no cure. [www.statehealthfacts.org](http://www.statehealthfacts.org). *(Ordinance #2003-08/August 8, 2003)*
- H. Men and women of all races are most likely to be infected by sexual contact. *(Ordinance #2003-08/August 8, 2003)*
- I.. The Centers for Disease Control and Prevention estimate that as many as 1 in 3 people with HIV/AIDS do not know they are infected. *(Ordinance #2003-08/August 8, 2003)*
- J. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where *persons* view “adult” oriented films. *(Ordinance #2003-08/August 8, 2003)*
- K. 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 a heretofore nonexistent duty on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and *employees and/or performers*, as well as the citizens of the *County*. *(Ordinance #2005-02/August 26, 2005)*
- L. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theatres. *(Ordinance #2003-08/August 8, 2003)*
- M. Requiring *licensees* of sexually oriented businesses to keep information regarding current *employees and/or performers* and certain past *employees and/or performers* will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such *establishments*. *(Ordinance #2005-02/August 26, 2005)*
- N. The fact that an applicant for an adult use has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance. *(Ordinance #2003-08/August 8, 2003)*

- O. The general health, safety, and welfare of the citizens of the *County* will be promoted by the enactment of this ordinance. (Ordinance #2003-08/August 8, 2003)

3.55.015 **JURISDICTION.** The provisions of this Chapter shall apply to all of the unincorporated territory of Pottawattamie County, Iowa. (Ordinance #2003-08/August 8, 2003)

3.55.020 **DEFINITIONS.** For purposes of this Chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context. (Ordinance #2003-08/August 8, 2003)

**.01 ADULT BOOKSTORE, ADULT NOVELTY STORE, ADULT VIDEO STORE:** A commercial *establishment* which has significant or substantial portion of its stock-in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale or rental, for any form of consideration, of any one or more of the following: (Ordinance #2003-08/August 8, 2003)

- A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of "*specified sexual activities*" or "*specified anatomical areas*"; (Ordinance #2003-08/August 8, 2003)
- B. Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others. (Ordinance #2003-08/August 8, 2003)

The term "*Adult Bookstore, Adult Novelty Store, or Adult Video Store*" shall also include a commercial *establishment*, which regularly maintains one or more "*Adult Arcades.*" "*Adult Arcade*" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer *persons* per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing "*specified sexual activities*" or "*specified anatomical areas.*" (Ordinance #2003-08/August 8, 2003)

**.02 ADULT CABARET:** A nightclub, bar, juice bar, restaurant, bottle club, or business or entity that has an emphasis on observation or viewing of nude or semi-nude performances (including but not limited to dancing, acting or otherwise entertaining), whether or not such *performer* receives compensation and/or pays to perform whether or not alcoholic beverages are served, which regularly features *persons* who appear nude or semi-nude. (Ordinance #2005-02/August 26, 2005)

**.03 ADULT MOTEL:** A motel, hotel, or similar commercial *establishment* which: (Ordinance #2003-08/August 8, 2003)

- A. offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the depiction or description of "*specified sexual activities*" or "*specified anatomical areas*"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or (Ordinance #2003-08/August 8, 2003)

- B. offers a sleeping room for rent for a period of time that is less than 10 hours; or  
(Ordinance #2003-08/August 8, 2003)
- C. allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than 10 hours. (Ordinance #2003-08/August 8, 2003)

**.04 ADULT MOTION PICTURE THEATER:** A commercial *establishment* where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the exhibition or description of “*specified sexual activities*” or “*specified anatomical areas*” are regularly shown for any form of consideration. (Ordinance #2003-08/August 8, 2003)

**.05 BOARD OF SUPERVISORS:** The Board of Supervisors of Pottawattamie County, Iowa. (Ordinance #2003-08/August 8, 2003)

**.06 CONTROLLING INTEREST:** The power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The ownership, control, or power to vote twenty per cent or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business. (Ordinance #2003-08/August 8, 2003)

**.07 COUNTY:** Pottawattamie County, Iowa. (Ordinance #2003-08/August 8, 2003)

**.08 COUNTY ATTORNEY:** The County Attorney of Pottawattamie County, Iowa. (Ordinance #2003-08/August 8, 2003)

**.09 COUNTY PLANNING DIRECTOR:** The Director of the Office of Planning and Development of Pottawattamie County, Iowa. (Ordinance #2003-08/August 8, 2003)

**.10 DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS ON:** Means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or description of *Specified Sexual Activities* or *Specified Anatomical areas*,” the films so described are those whose dominant or principal character and theme are the exhibition or description “*specified anatomical areas*” or “*specified sexual activities*.” Similarly, when the phrase refers to a performance that is distinguished or characterized by an emphasis upon the exhibition or showing of “specified sexual activities” or specified anatomical areas, the performance so described are those whose dominant or principal character and theme are the exhibition or showing of “specific anatomical areas” or “specified sexual activities.” (Ordinance #2005-02/August 26, 2005)

**.11 EMPLOY, EMPLOYEE, AND EMPLOYMENT:** Describe and pertain to any *person* who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the *person* is denominated an *employee*, independent contractor, agent, performer, lessee or otherwise and/or whether or not said employee receives compensation and/or pays to perform. *Employee* does not include a *person* exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises. (Ordinance #2005-02/August 26, 2005)

**.12 LICENSEE:** A *person* in whose name a license to *operate* a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an “*employee*,” it shall mean the *person* in whose name the sexually oriented business *performer/employee license* has been issued. (Ordinance #2005-02/August 26, 2005)

- .13 **NUDITY OR A STATE OF NUDITY:** The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola. *(Ordinance #2005-02/August 26, 2005)*
- .14 **OPERATE OR CAUSE TO OPERATE:** Shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any *persons* on the premises of a sexually oriented business who is authorized to exercise overall operational control of the Business or who causes to function or who puts or keeps in operation the business. A *person* may be found to be operating or causing to be operated a sexually oriented business whether or not that *person* is an owner, part owner, or *licensee* of the business. *(Ordinance #2005-02/August 26, 2005)*
- .15 **PERFORM, PERFORMER AND PERFORMANCE:** Describe and pertain to any *person* who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the *person* is denominated a performer, independent contractor, agent, employee, lessee or otherwise and/or whether or not said performer receives compensation and/or pays to perform. *Performer* does not include a *person* exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises. *(Ordinance #2005-02/August 26, 2005)*
- .16 **PERSON:** Shall mean individual, proprietorship, partnership, corporation, association, or other legal entity. *(Ordinance #2003-08/August 8, 2003)*
- .17 **REGULARLY FEATURES OR REGULARLY SHOWN:** Means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business. *(Ordinance #2003-08/August 8, 2003)*
- .18 **SEMI-NUDE OR STATE OF SEMI-NUDITY:** A state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices. This definition shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided that the areola and nipple are not exposed in whole or in part. *(Ordinance #2003-08/August 8, 2003)*
- .19 **SEMI-NUDE MODEL STUDIO:** Means any place where a *person*, who regularly appears in a *state of semi-nudity* is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other *persons*. *(Ordinance #2003-08/August 8, 2003)*

It is a defense to prosecution for any violation of this ordinance that a *person* appearing in a *state of semi-nudity* or *semi-nudity* did so in a modeling class operated: *(Ordinance #2003-08/August 8, 2003)*

By a college, junior college, or university supported entirely or partly by taxation; *(Ordinance #2003-08/August 8, 2003)*

A. By a private college or university which maintains and *operates* educational programs in which credited are transferable to college, junior college, or university supported entirely or partly by taxation; or: *(Ordinance #2003-08/August 8, 2003)*

B. In a structure:

- 1. Which has no sign visible from the exterior of the structure and no other advertising that indicates a *semi-nude person* is available for viewing; and *(Ordinance #2003-08/August 8, 2003)*

2. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class. *(Ordinance #2003-08/August 8, 2003)*

**.20 SEXUALLY ORIENTED ENTERTAINMENT ACTIVITY:** Means the sale, rental, or exhibition for any form of consideration, of books, films, videocassettes, magazines, periodicals, or live performances which are characterized by an emphasis on the exposure or display of specific sexual activity. *(Ordinance #2003-08/August 8, 2003)*

**.21 SPECIFIED ANATOMICAL AREAS:** Means human genitals, anus, cleft of the buttocks, or the nipple or areola of the female breast. *(Ordinance #2003-08/August 8, 2003)*

**.22 SPECIFIED CRIMINAL ACTIVITY** means any of the following offenses: *(Ordinance #2003-08/August 8, 2003)*

A. Iowa Code § 728.2 (dissemination and exhibition of obscene materials to minors); Iowa Code § 728.3 (admitting minors to premises where obscene material is exhibited); Iowa Code § 728.4 (rental or sale of hard-core pornography); Iowa Code § 728.5 (public indecent exposure in certain establishments); Iowa Code § 728.12 (sexual exploitation of a minor); Iowa Code § 709.2-4 (sexual abuse); Iowa Code § 709.8 (lascivious acts with a child); Iowa Code § 709.9 (indecent exposure); Iowa Code § 709.12 (indecent contact with a child); Iowa Code § 709.14 (lascivious conduct with a minor); Iowa Code § 709C.1 (criminal transmission of human immunodeficiency virus); Iowa Code § 711.4 (extortion); Iowa Code § 725.1-4 (prostitution, pimping, pandering, leasing premises for prostitution); criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions that, if the acts would have constituted any of the foregoing offenses if the acts had been committed in Iowa; for which: *(Ordinance #2003-08/August 8, 2003)*

1. less than two (2) years have 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; *(Ordinance #2003-08/August 8, 2003)*
2. less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or *(Ordinance #2003-08/August 8, 2003)*
3. less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period. *(Ordinance #2003-08/August 8, 2003)*

B. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant. *(Ordinance #2003-08/August 8, 2003)*

**.23 SPECIFIED SEXUAL ACTIVITY:** Means any of the following: *(Ordinance #2005-02/August 26, 2005)*

A. sex acts, normal or perverted, including intercourse, oral copulation, masturbation or sodomy and including performances simulating or imitating any of the previously described sex acts; or *(Ordinance #2005-02/August 26, 2005)*

B. excretory functions as a part of or in connection with any of the activities described in (a) above; or *(Ordinance #2005-02/August 26, 2005)*

- C. directly or indirectly touching or caressing either by any individual of the specific anatomical areas specified herein or the simulation or imitation of touching or caressing of said specified anatomical areas; or (Ordinance #2005-02/August 26, 2005)
- D. exposure of the specific anatomical areas. (Ordinance #2005-02/August 26, 2005)

**.24 TRANSFER OF OWNERSHIP OR CONTROL:** Of a sexually oriented business, shall mean any of the following: (Ordinance #2003-08/August 8, 2003)

- A. The sale, lease, or sublease of the business; (Ordinance #2003-08/August 8, 2003)
- B. The transfer of securities which constitute a *controlling interest* in the business, whether by sale, exchange, or similar means; or (Ordinance #2003-08/August 8, 2003)
- C. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the *person* possessing the ownership or control. (Ordinance #2003-08/August 8, 2003)

**.25 VIDEO ROOM:** Shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction. (Ordinance #2003-08/August 8, 2003)

**3.55.030 CLASSIFICATIONS.** Sexually oriented businesses shall be classified as follows: (Ordinance #2003-08/August 8, 2003)

**.01 Adult bookstores, adult novelty stores, adult video stores;** (Ordinance #2003-08/August 8, 2003)

**.02 Adult cabarets;** (Ordinance #2003-08/August 8, 2003)

**.03 Adult motels;** (Ordinance #2003-08/August 8, 2003)

**.04 Adult motion picture theaters;** (Ordinance #2003-08/August 8, 2003)

**.05 Semi-nude model studios.** (Ordinance #2003-08/August 8, 2003)

**3.55.040 LICENSE REQUIRED; TEMPORARY LICENSE UPON APPLICATION.**

**.01** It is unlawful for any *person* to *operate* a sexually oriented business in the *County* without a valid sexually oriented business license. (Ordinance #2003-08/August 8, 2003)

**.02** It is unlawful for any *person* to be an “*employee and/or performer,*” as defined in this Chapter, of a sexually oriented business in the *County* without a valid sexually oriented business *performer/employee license.* (Ordinance #2005-02/August 26, 2005)

**.03** An applicant for a sexually oriented business license or a sexually oriented business *performer/employee license* shall file in *person* at the office of the *County Planning Director* a completed application made on a form provided by the *County Planning Director.* The application shall be signed by the applicant and notarized. An application shall be considered complete when it contains the information required in Paragraphs A through F as follows: (Ordinance #2005-02/August 26, 2005)

- A. The applicant’s full true name and any other names used in the preceding five (5) years. (Ordinance #2005-02/August 26, 2005)

- B. Current business address or another mailing address of the applicant. *(Ordinance #2005-02/August 26, 2005)*
- C. Written proof of age, in the form of a copy of a birth certificate and a picture identification document issued by a governmental agency. *(Ordinance #2005-02/August 26, 2005)*
- D. If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business. *(Ordinance #2005-02/August 26, 2005)*
- E. If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process. *(Ordinance #2005-02/August 26, 2005)*
- F. A statement of whether the applicant has been convicted or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, the specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable. *(Ordinance #2005-02/August 26, 2005)*

The information provided pursuant to Paragraphs A through F of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the *County Planning Director* within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete. *(Ordinance #2005-02/August 26, 2005)*

- .04 An application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Sections 3.55.140 and 3.55.180 of this Chapter shall submit a diagram meeting the requirements of those sections. *(Ordinance #2003-08/August 8, 2003)*
- .05 If a *person* who wishes to *operate* a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a *person* who wishes to *operate* a sexually oriented business is other than an individual, each officer, director, general partner, each other *person* who will manage, supervise, or control the premises, and each other *person* who will participate in decisions relating to management and control of the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 3.55.050 and each applicant shall be considered a *licensee* if a license is granted. *(Ordinance #2003-08/August 8, 2003)*
- .06 The information provided by an applicant in connection with an application for a license under this Chapter shall be maintained by the *County Planning Director* on a confidential basis, except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order. *(Ordinance #2003-08/August 8, 2003)*

### **3.55.050 ISSUANCE OF LICENSE.**

- .01 Upon the filing of a completed application under Section 3.55.040.03 for a sexually oriented business license, the *County Planning Director* shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the *County* to deny or grant the license. Within twenty (20) days of the initial filing date of the completed application, the *County Planning Director* shall

issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The *County Planning Director* shall approve the issuance of a license unless: (Ordinance #2003-08/August 8, 2003)

- A. An applicant is less than eighteen (18) years of age. (Ordinance #2003-08/August 8, 2003)
- B. An applicant has failed to provide information as required by Section 3.55.040 for issuance of a license or has falsely answered a question or request for information on the application form. (Ordinance #2003-08/August 8, 2003)
- C. The license application fee required by Chapter 1.50 has not been paid. (Ordinance #2003-08/August 8, 2003)
- D. An applicant has been committed a violation of Section 3.55.070.01, Section 3.55.100.02, Section 3.55.180.01, .02, or .03 of this Chapter within the previous year. (Ordinance #2003-08/August 8, 2003)
- E. The sexually oriented business premises is not in compliance with the interior configuration requirements of this Chapter or is not in compliance with locational requirements established in this Chapter and the applicable zoning code provisions. (Ordinance #2003-08/August 8, 2003)
- F. An applicant has been convicted of a specified criminal activity, as defined in this ordinance. (Ordinance #2003-08/August 8, 2003)

**.02** Upon the filing of a completed application for a sexually oriented business *performer/employee license*, the *County Planning Director* shall issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the *County* to deny or grant the license. Within twenty (20) days of the initial filing date of the receipt of a completed application, the *County Planning Director* shall either issue a license or issue a written notice of intent to deny a license to the applicant. The *County Planning Director* shall approve the issuance of a license unless one or more of the following is found to be true. (Ordinance #2005-02/August 26, 2005)

- A. An applicant is less than eighteen (18) years of age. (Ordinance #2005-02/August 26, 2005)
- B. An applicant has failed to provide information as required by Section 3.55.040 for issuance of a license or has falsely answered a question or request for information on the application form. (Ordinance #2005-02/August 26, 2005)
- C. The license application fee required by Chapter 1.50 has not been paid. (Ordinance #2005-02/August 26, 2005)
- D. An applicant has been shown to have committed a violation of Section 3.55.070.01, Section 3.55.100.02, Section 3.55.180.01, .02, or .03 of this Chapter within the previous year. (Ordinance #2005-02/August 26, 2005)
- D. An applicant has been convicted of a specified criminal activity, as defined in this ordinance. (Ordinance #2005-02/August 26, 2005)

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

other *County* official performing functions connected with the enforcement of this Chapter. (Ordinance #2005-02/August 26, 2005)

### **3.55.060 FEES.**

- .01 FILING FEE REQUIRED.** A filing fee in accordance with the established fee schedule shall be charged for each application for initial license and annual renewals to assist in deferring the cost of the administrative review. The applicant shall be held responsible for submitting the required fees upon submission of the completed application. No action shall be taken on any application until the required fee is paid in full. (Ordinance #2003-08/August 8, 2003)
- .02 FEE SCHEDULE.** The fee schedule as set forth in Chapter 1.50 is hereby established for matters pertaining to this Ordinance. (Ordinance #2003-08/August 8, 2003)
- .03 FEE REFUND.** Whether the request is granted or denied, the applicant shall not be entitled to a refund of the fee paid. (Ordinance #2003-08/August 8, 2003)

### **3.55.070 PERIODIC INSPECTION.**

- .01** Sexually oriented businesses and sexually oriented business *employees and/or performers* shall permit agents of the *County* to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually oriented business is occupied by patrons or is open for business. A *licensee's* knowing or intentional refusal to permit such an inspection shall constitute a violation of this section for purposes of license denial, suspension, and/or revocation. This section shall be narrowly construed by the *County* to authorize reasonable inspections of the licensed premises pursuant to this Chapter, but not to authorize a harassing or excessive pattern of inspections. (Ordinance #2005-02/August 26, 2005)
- .02** The provisions of this Section do not apply to areas of an *Adult Motel* which are currently being rented by a customer for use as a permanent or temporary habitation. (Ordinance #2003-08/August 8, 2003)

### **3.55.080 EXPIRATION OF LICENSE.**

- .01** Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in Section 3.55.040 and Section 3.55.060. (Ordinance #2003-08/August 8, 2003)
- .02** Application for renewal should be made at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected. (Ordinance #2003-08/August 8, 2003)

### **3.55.090 CAUSE FOR SUSPENSION.**

- .01** The *County* shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business *licensee* has violated this Chapter or has knowingly allowed an *employee and/or performer* to violate this Chapter. (Ordinance #2005-02/August 26, 2005)
- .02** The *County* shall issue a written letter of intent to suspend a sexually oriented business *performer/employee license* if the *employee and/or performer* has violated this Chapter. (Ordinance #2005-02/August 26, 2005)

**3.55.100 CAUSE FOR REVOCATION.**

- .01 The *County* shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business *performer/employee license* if the respective *licensee* commits two or more violations within a twelve (12) month period.
- .02 The *County* shall issue written intent to revoke a sexually oriented business license or a sexually oriented business *performer/employee license* if:
- A. The *licensee* has knowingly given false information in the application for a sexually oriented business license or a sexually oriented business *performer/employee license*;
  - B. The *licensee* has knowingly engaged in possession, use, or sale of controlled substances on the premises;
  - C. The *licensee* has knowingly engaged in prostitution on the premises;
  - D. The *licensee* knowingly *operated* the sexually oriented business during a period of time when the license was suspended;
  - E. The *licensee* has knowingly engaged in any specified sexual activity to occur in or on the licensed premises.
- .03 A business *licensee* shall be liable for the acts of an *employee and/or performer* only pursuant to the standard established in Section 3.55.190.
- .04 **Nature of Revocation.** When, after the notice and hearing procedure described in Section 3.55.110, the *County Planning Director* revokes a license, the revocation shall continue for two (2) years and the *licensee* shall not be issued a sexually oriented business license or sexually oriented business *performer/employee license* for two (2) years from the date revocation becomes effective, provided that, if the conditions of Section 3.55.110.02 are met, a Provisional License will be granted pursuant to that section. If, subsequent to revocation, the *County Planning Director* finds that the basis for the revocation based on subsection 3.55.100.02.A. of this section has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under subsections 3.55.100.02.B., C., D., or E of this section, an applicant may not be granted another license until at least two (2) years have elapsed.

**3.55.110 RIGHT TO HEARING PRIOR TO DENIAL, SUSPENSION, REVOCATION; PROMPT JUDICIAL REVIEW; RIGHT TO PROVISIONAL LICENSE PENDING JUDICIAL REVIEW.**

- .01 If facts exist that warrant the denial, suspension, or revocation of a license under this Chapter, the *County Planning Director* shall notify the applicant or *licensee* (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds thereof, by personal delivery, or by certified mail. The notification shall be directed to the most current business address or other mailing address on file with the *County Planning Director* for the respondent. Within ten (10) working days of the receipt of such notice, the respondent may submit a request to the *County Planning Director* for a hearing before the *Board of Supervisors* to refute the grounds alleged by the *County* for denial, suspension, or revocation of the license.
- (Ordinance #2003-08/August 8, 2003)

Within five (5) days of the receipt of respondent's written response, the *County Planning Director* shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding. Within twenty (20) working days of the receipt of respondent's written response, the *Board of Supervisors* shall conduct a hearing at which respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the *County's* witnesses. The *County Planning Director* shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended to meet the requirements of due process and proper administration of justice. The *Board of Supervisors* shall issue a written decision within five (5) days after the hearing. If the decision is to deny, suspend, or revoke the license, it shall state the reasons for such action, and the denial, suspension, or revocation shall become final for purposes of appeal immediately, but shall not take effect or be enforced until thirty (30) days thereafter. If the decision is to grant the license, the *County* shall immediately issue a license to the respondent. (Ordinance #2003-08/August 8, 2003)

If the respondent does not request a hearing within ten (10) business days of receiving the *County Planning Director's* notice of intent to deny, suspend, or revoke the license, the license shall be deemed denied, suspended, or revoked, as applicable. (Ordinance #2003-08/August 8, 2003)

- .02 An applicant or *licensee* (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to challenge or appeal such action or seek a declaration of rights concerning such action and/or concerning this Chapter, upon factual grounds or constitutional grounds or both, to a court of law within thirty (30) days after issuance of the *Board of Supervisor's* written decision. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin or seek a declaration of rights concerning this Chapter or the *County's* denial, suspension, or revocation, the *County* shall immediately issue the aggrieved party a Provisional License. The *County* shall supply the court with any documents, reports, or transcripts relevant to the lawsuit within fifteen (15) days after receiving notice of the lawsuit. The Provisional License shall allow the aggrieved party to continue operation of the sexually oriented business or to continue *employment and/or performance* as a sexually oriented business *employee and/or performer* and will expire only upon the court's entry of a judgment on the merits of the aggrieved party's action to appeal, challenge, restrain, or otherwise enjoin or seek a declaration of rights concerning this Chapter or the *County's* denial, suspension, or revocation of a license under this Chapter.

If, in the alternative, the aggrieved party does not wish to bear the burden of initiating a court action, he may, within thirty (30) days after the *Board of Supervisor's* written decision is issued, elect to require the *County* to file a declaratory action in a court of competent jurisdiction, seeking a declaration that the denial, suspension, or revocation is valid and that the ordinance is constitutionally sound. Such an election must be made in writing and be delivered to the *County Attorney's* Office within thirty (30) days of issuance of the *Board of Supervisor's* written decision. Upon the delivery of the election notice to the *County Attorney's* Office, the *County* shall immediately issue the aggrieved party a Provisional License. The Provisional License shall allow the aggrieved party to continue operation of the sexually oriented business or to continue *employment and/or performance* as a sexually oriented business *employee and/or performer* and will expire only upon the court's entry of a judgment on the merits of the validity of this Chapter and the *County's* denial, suspension, or revocation decision.

This section shall be liberally construed to permit the uninterrupted operation of the sexually oriented business or the uninterrupted *employment and/or performance* of the sexually oriented business *employee and/or performer* during the course of any court action challenging this Chapter or an adverse licensing

decision under this Chapter until the court of law rules upon all of the aggrieved party's factual and or constitutional claims.

**3.55.120** **TRANSFER OF LICENSE.** A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application. (Ordinance #2003-08/August 8, 2003)

**3.55.130** **HOURS OF OPERATION.** No sexually oriented business, except for an *Adult Motel*, shall be or remain open for business between 2:00 a.m. and 6:00 a.m. on a weekday, or between 2:00 a.m. on Sunday and 6:00 a.m. on the following Monday, however, a sexually oriented business which holds a liquor license or retail beer permit entitling the holder to sell alcoholic liquor or beer on Sunday may remain open between the hours of 8:00 a.m. on Sunday and 2:00 a.m. on the following Monday. (Ordinance #2003-08/August 8, 2003)

**3.55.140** **REGULATIONS REGARDING EXHIBITION OF SEXUALLY EXPLICIT FILMS ON THE PREMISES.**

**.01** A person who operates or causes to be operated a sexually oriented business, other than an *Adult Motel*, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of *specified sexual activities or specified anatomical areas* shall comply with the requirements contained in Subsections 3.60.030.02, .03, .04, and Section 3.60.040 of the Pottawattamie County, Iowa, Code. (Ordinance #2003-08/August 8, 2003)

**.02** It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty. (Ordinance #2003-08/August 8, 2003)

**3.55.150** **LOITERING AND EXTERIOR LIGHTING AND MONITORING REQUIREMENTS.**

**.01** It shall be the duty of the operator of a sexually oriented business to: (a) post conspicuous signs stating that no loitering is permitted on such property; (b) designate one or more *employees and/or performers* to monitor the activities of *persons* on such property by visually inspecting such property at least once every two (2) hours or inspecting such property by use of video cameras and monitors; and (c) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall *operate* continuously at all times that the premises are open for business. The monitors shall be installed within a manager's station or at a cash register where an *employee and/or performer* is regularly present. (Ordinance #2005-02/August 26, 2005)

**.02** It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty. (Ordinance #2003-08/August 8, 2003)

**3.55.160** **VIOLATIONS AND PENALTIES.** The penalty for violating the provisions of this Chapter shall be as set forth in Chapter 1.75. (Ordinance #2003-08/August 8, 2003)

**3.55.170** **APPLICABILITY TO EXISTING BUSINESSES.** The provisions of this Ordinance shall apply to the activities of all sexually oriented businesses and sexually oriented business *employees and/or performers* described herein, whether such businesses or activities were *established* or commenced before, on, or after the effective date of this ordinance. All existing sexually oriented businesses and sexually oriented business *employees and/or performers* are hereby granted a *De Facto* Temporary License to continue operation or *employment* and/or performance for a period of one hundred eighty (180) days following the effective date of this ordinance. Within said one hundred eighty (180) days, all sexually oriented businesses and sexually oriented business *employees and/or performers* must make application for a license pursuant to this Chapter. Within said one hundred eighty

(180) days, sexually oriented businesses must make any necessary changes to the interior configurations of the regulated business premises to conform to this Chapter. (Ordinance #2005-02/August 26, 2005)

### **3.55.180 REGULATIONS CONCERNING LIVE PUBLIC NUILITY ON PREMISES.**

- .01 It shall be a violation of this Chapter for a *licensee* required to obtain a sales tax permit to knowingly or intentionally violate Iowa Code § 728.5. It shall be a violation for any person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity. (Ordinance #2005-02/August 26, 2005)
- .02 It shall be a violation of this Chapter for an *employee and/or performer* to knowingly and intentionally appear *semi-nude* in a sexually oriented business unless the *employee and/or performer*, while *semi-nude*, shall be at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor. (Ordinance #2005-02/August 26, 2005)
- .03 It shall be a violation of this Chapter for an *employee and/or performer*, while *semi-nude* in a sexually oriented business, to knowingly or intentionally receive any pay or gratuity directly from any patron or customer or for any patron or customer to knowingly or intentionally pay or give any gratuity directly to any *employee and/or performer*, while said *employee and/or performer* is *semi-nude* in a sexually oriented business. (Ordinance #2005-02/August 26, 2005)
- .04 It shall be a violation of this Chapter for an *employee and/or performer*, while *semi-nude* in a sexually oriented business, to knowingly or intentionally touch a customer or the clothing of a customer or for a customer to knowingly and intentionally touch an employee and/or performer or the clothing of an *employee and/or performer*, while said *employee and/or performer* is *semi-nude* in a sexually oriented business. (Ordinance #2005-02/August 26, 2005)

A sign in a form to be prescribed by the *County Planning Director* and summarizing the provisions of Paragraphs .01 through .04 of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry into the inside of the building. (Ordinance #2005-02/August 26, 2005)

**3.55.190 SCIENTER REQUIRE TO PROVE VIOLATION OR BUSINESS LICENSEE LIABILITY.** Notwithstanding anything to the contrary, for the purposes of this Chapter, an act by an *employee and/or performer* that constitutes grounds for suspension or revocation of that *employee and/or performer's* license shall be imputed to the sexually oriented business *licensee* for purposes of finding a violation of this ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a *person* who managed, supervised, or controlled the business premises, knew or reasonably should have known that such act was occurring and failed to prevent such act. It shall be a defense to liability under this Chapter that the *person* to whom the violative act is imputed was powerless to prevent the act. (Ordinance #2005-02/August 26, 2005)

### **3.55.200 SITING CRITERIA.**

- .01 A *person* commits a violation of this Chapter if that *person operates or causes to be operated* a sexually oriented business in any zoning district other than C-1 (Highway Commercial), C-2 (General Commercial), C-3 (Commercial Recreational), I-1 (Limited Industrial), I-2 (General Industrial), or I-3 (Planned Mixed Use Area Development), as defined and described in the Pottawattamie County, Iowa, Zoning Ordinance. (Ordinance #2003-08/August 8, 2003)
- .02 A *person* commits an offense if the *person operates or causes to be operated* a sexually oriented business within one thousand (1000) feet of: (Ordinance #2005-02/August 26, 2005)

- A. A church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities; *(Ordinance #2005-02/August 26, 2005)*
  - B. A public or private educational facility, including child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school; *(Ordinance #2005-02/August 26, 2005)*
  - C. A boundary of a residential "R" district or platted residential subdivision as defined in the Pottawattamie County, Iowa, Zoning Ordinance. *(Ordinance #2005-02/August 26, 2005)*
  - D. A public park, public playground, public plaza, or cemetery; *(Ordinance #2005-02/August 26, 2005)*
  - E. A residential dwelling unit; or *(Ordinance #2005-02/August 26, 2005)*
  - F. Another sexually oriented business. *(Ordinance #2005-02/August 26, 2005)*
- .03** For the purpose of Subsection .02 of this Section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property line of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Subsection .02.A., B., C., D., or E. The presence of a County, city or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section. *(Ordinance #2003-08/August 8, 2003)*
- .04** For purposes of Subsection (E) of this Section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located. *(Ordinance #2003-08/August 8, 2003)*
- .05** Any sexually oriented business lawfully operating on the effective date of this Chapter that is in violation of Subsection .01 through .04 of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within one thousand (1000) feet of one another and otherwise in a permissible location, the sexually oriented business which was first *established* and continually operating at a particular location is the conforming use and the later *established* business(es) is/are nonconforming. *(Ordinance #2003-08/August 8, 2003)*
- .06** A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in Subsection .02 of this Section within one thousand (1000) feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application is made for a license after the applicant's previous license has expired or been revoked. *(Ordinance #2003-08/August 8, 2003)*