

**BUCHANAN COUNTY ZONING CODE OF ORDINANCES
2008**

TABLE OF CONTENTS

TITLE VI – PROPERTY AND LAND USE

Chapter 53 – Sexually Oriented Establishments

CHAPTER 53

SEXUALLY ORIENTED ESTABLISHMENTS

53.01	Purpose	53.19	Cause for Revocation
53.02	Findings	53.20	Nature of Revocation
53.03	Jurisdiction	53.21	Right to Hearing Prior to Denial, Suspension, Revocation, Prompt Judicial Review, Right to Provisional License Pending Judicial Review
53.04	Definitions		
53.05	Classifications		
53.06	Standards of Conduct and Operation		
53.07	Live Public Semi-Nudity on Premise		
53.08	Exhibition of Sexually Explicit Films	53.22	Notices
53.09	Exterior Portions of Sexually Oriented Businesses	53.23	Transfer of License
53.10	Loitering, Exterior Lighting, and	53.24	Hours of Operation
53.11	Signage	53.25	Employee License Violation Imputed to Business Licensee
53.12	Persons Younger than Eighteen Prohibited	53.26	Siting Criteria
53.13	License Required; Application	53.27	Applicability to Existing Businesses Procedure
53.14	Issuance of License	53.29	Violations and Penalties
53.15	Fees	53.30	Repealer
53.16	Periodic Inspection	53.31	Savings Clause
53.17	Expiration of License	53.32	Effective Date
53.18	Cause for Suspension		

53.01 PURPOSE. The purposes of this Chapter are to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of Buchanan 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 Chapter are not intended to impose any limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented material; to restrict or deny access by adults to sexually oriented materials protected by the First Amendment; to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market; nor to condone or legitimize the distribution of legally obscene material.

53.02 FINDINGS. Based on evidence made available to this Board of the adverse secondary effects of adult usage of sexually explicit materials and patronage of sexually oriented businesses, and based on findings, interpretations, and narrowing constructions incorporated in both state and federal court cases, the Board of Supervisors 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 businesses, are narrowly tailored to that end, and provide reasonable alternative avenues for the communication of sexually explicit material within the County. The Board makes the following specific findings:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the unlicensed operators of these establishments.
2. Employees of sexually oriented businesses, as defined in this Chapter, often engage in certain types of illicit sexual behavior.
3. Sex acts occur at unregulated sexually oriented businesses, especially those that provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

4. 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 businesses.
5. Persons often frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex acts in or near the premises of such establishments, or for the purpose of purchasing or selling illicit drugs.
6. Sexually transmitted 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, chlamydia, myoplasmal and ureoplasmal infections, trichomoniasis, and chancroid.
7. Seminal fluid is often found in the areas of sexually oriented businesses where persons view films.
8. A reasonable licensing procedure is an appropriate mechanism to impose reasonable regulation on the owners and operators of sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent responsibility on the operators of such establishments to see to it that they are operated in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the County.
9. The removal of doors on booths and the requirement of sufficient lighting in adult theaters advance a substantial governmental interest in curbing illegal and unsanitary sexual activity occurring in these establishments.
10. Requiring licensees of sexually oriented businesses to maintain information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and thus enabling the prosecution of criminal behavior.
11. There is a rational basis for the belief that an applicant for a license of a sexually oriented business who has been convicted of a sexually related crime may engage in conduct in contravention of this Chapter.
12. The general health, safety, and welfare of the citizens of the County will be promoted by the enactment of this ordinance.

53.03 JURISDICTION. The provisions of this Chapter shall apply to all of the areas of Buchanan County, Iowa outside incorporated cities and towns.

53.04 DEFINITIONS. For purposes of this Chapter, the words and phrases defined in this section shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

1. **ADULT ARCADES:** Any place open to the public and in which coin-operated, slug-operated, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are Regularly Used to display images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized

by an emphasis on matter exhibiting or describing Specified Sexual Activities or Specified Anatomical Areas.

2. ADULT BOOKSTORE, ADULT NOVELTY STORE, ADULT VIDEO STORE: A commercial establishment that has a significant or substantial portion of its stock-in-trade, derives a significant or substantial portion of its revenues, devotes a significant or substantial portion of its interior business space or advertising, or maintains a substantial section of its sales or display space to the sale or rental, for any form of consideration, of any one or more of the following:
 - a. Books, magazines, periodicals or other printed matter; photographs, films, motion pictures, videocassettes, compact discs, slides, or other visual representations that are distinguished or characterized by an emphasis on the exhibition or description of Specified Sexual Activities or Specified Anatomical Areas;
 - b. Instruments, devices, or paraphernalia designed for use or marketed primarily for the stimulation of human genitalia or for use in sadomasochistic practices.

The term “Adult Bookstore, Adult Novelty Store, or Adult Video Store” shall also include a commercial establishment that regularly maintains one or more Adult Arcades.

3. ADULT CABARET: A commercial establishment that regularly features:
 - a. Persons who appear Semi-Nude;
 - b. Live performances that are distinguished or characterized by an emphasis on the exposure of Specified Sexual Activities or Specified Anatomical Areas;
 - c. Display of films, motion pictures, video cassettes, slides, DVDs, or other photographic reproductions that are distinguished or characterized by an emphasis on the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; or
 - d. Entertainers who engage in dancing or performances that are intended to appeal to the sexual interest or for the sexual stimulation of patrons of the establishment.
4. ADULT MOTEL: A motel, hotel, or similar commercial establishment that:
 - a. Offers accommodations to the public for any form of consideration and that provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances that are distinguished or characterized by an emphasis on the depiction or description of Specified Sexual Activities or Specified Anatomical Areas and that 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
 - b. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

- c. Allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than ten (10) hours.
- 5. ADULT MOTION PICTURE THEATRE: A commercial establishment where films, motion pictures, videocassettes, slides, DVDs, or similar photographic reproductions that are distinguished or characterized by an emphasis on the exhibition or description of Specified Sexual Activities or Specified Anatomical Areas are regularly shown for any form of consideration.
- 6. ADULT THEATER: A theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a State Of Nudity or live performances that are distinguished or characterized by an emphasis on the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.
- 7. 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 percent (20%) 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.
- 8. DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS ON: The dominant or principal theme of the object described by such phrase.
- 9. EMPLOY, EMPLOYEE, and EMPLOYMENT: 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, or otherwise, and the act of engaging the services of such an individual; provided, however, that the term "employee" shall not include a person exclusively on the premises for repair or maintenance of the premises or equipment or fixtures therein or for the delivery of goods to the premises.
- 10. ESCORT: A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person and who agrees or offers to privately model lingerie or privately perform a striptease for such other person.
- 11. ESCORT AGENCY: A person or business association which furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
- 12. ESTABLISH or ESTABLISHMENT: The term or terms shall mean and include any of the following:
 - a. The opening or commencement of any Sexually Oriented Business as a new business;
 - b. The conversion of an existing business, whether or not a sexually oriented business, to any Sexually Oriented Business; or
 - c. The addition of any Sexually Oriented Business to any other existing Sexually Oriented Business.

13. LICENSED DAY-CARE CENTER: A facility licensed by the State that provides care, training, education, custody, treatment, or supervision for children for less than twenty four (24) hours a day, regardless of whether the facility is operated for a profit or charges for the services it renders.
14. LICENSEE: A person in whose name a license to operate a Sexually Oriented Business has been issued, and/or the individual or individuals listed as an applicant or applicants on the application for a license to operate a Sexually Oriented Business.
15. NUDITY or A STATE OF NUDITY: The public display of human male or female genitalia, pubic area, vulva, anus, or the anal cleft or cleavage with less than a fully opaque covering, or the public display of the female breast with less than a fully opaque covering of any part of the nipple and areola.
16. OPERATE or CAUSE TO OPERATE: To cause to function or to put or keep in a state of doing business.
17. OPERATOR: Any person on the premises of a Sexually Oriented Business who is authorized to exercise overall operational control of the business, who causes the business to function, or who puts or keeps the business in operation, without regard to whether or not that person is an owner, part owner, or licensee of the business.
18. PERSON: An individual, proprietorship, partnership, corporation, association or other legal entity.
19. REGULARLY FEATURES, REGULARLY SHOWS or REGULARLY USES: 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.
20. SEMI-NUDE or STATE OF SEMI-NUDITY: A state of dress in which opaque clothing covers no more than the genitalia, 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; provided, however, that the term “semi-nude” or “state of semi-nudity” shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, leotard, bathing suit, halter top, or other wearing apparel provided that the female areola and nipple are not exposed in whole or part.
21. SEMI-NUDE MODEL STUDIO: Any place where a person who regularly appears in a state of semi-nudity is provided money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons; provided, however, that the term “semi-nude model studio” shall not apply to a modeling class operated:
 - a. By a college, junior college, or university supported entirely or partly by taxation;
 - b. By a private college or university that maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or
 - c. In a structure:

- i. 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
 - ii. Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.

- 22. SEXUAL ENCOUNTER CENTER: A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
 - a. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - b. 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 or is semi-nude.

- 23. SEXUALLY ORIENTED BUSINESS: Commercial activity consisting of an Adult Arcade, Adult Bookstore, Adult Novelty Store, Adult Video Store, Adult Cabaret, Adult Motel, Adult Motion Picture Theater, Adult Theater, Escort Agency, or Semi-Nude Model Studio.

- 24. SPECIFIED ANATOMICAL AREAS: Human genitalia, anus, cleft of the buttocks, or the nipple or areola of the female breast.

- 25. SPECIFIED CRIMINAL ACTIVITY: Conviction of a violation of any of the following offenses:
 - a. Iowa Code Section 728.2 (dissemination and exhibition of obscene materials to minors); Iowa Code Section 728.3 (admitting minors to premises where obscene material is exhibited); Iowa Code Section 728.4 (rental or sale of hard-core pornography); Iowa Code Section 728.5 (public indecent exposure in certain establishments); Iowa Code Section 728.12 (sexual exploitation of a minor); Iowa Code Section 709.2-4 (sexual abuse); Iowa Code Section 709.8 (lascivious acts with a child); Iowa Code Section 709.9 (indecent exposure); Iowa Code Section 709.12 (indecent contact with a child); Iowa Code Section 709.14 (lascivious conduct with a minor); Iowa Code Section 709C.1 (criminal transmission of human immunodeficiency virus); Iowa Code Section 711.4 (extortion); Iowa Code Section 725.1-4 (prostitution, pimping, pandering, leasing premises for prostitution);
 - b. Criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses; or
 - c. An act or acts in another jurisdiction that would have constituted any of the foregoing offenses if the act or acts had been committed in Iowa; for which:
 - i. 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;
 - ii. Less than five (5) 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 felony offense; or

- iii. Less than five (5) 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 convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.
 - d. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.
26. SPECIFIED SEXUAL ACTIVITY: The term means either of the following:
- a. A sex act or acts as defined in Iowa Code Section 702.17; or
 - b. Excretory functions as part of or in connection with any of the activities described in Subsection (a) above.
27. TRANSFER OF OWNERSHIP OR CONTROL: This term or terms shall mean any of the following:
- a. The sale, lease, or sublease of a business;
 - b. The transfer of securities that constitute a controlling interest in a business, whether by sale, exchange, or similar means; or
 - c. The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of a business, except for transfer by bequest or other operation of the law upon the death of the person possessing the ownership or control.
28. VIDEO ROOM: The room, booth, or area where a patron of a Sexually Oriented Business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

53.05 CLASSIFICATIONS. Sexually Oriented businesses shall be classified as follows:

- 1. Adult Bookstores, Adult Novelty Stores, Adult Video Stores;
- 2. Adult cabarets;
- 3. Adult Motels;
- 4. Adult Motion Picture Theaters;
- 5. Adult Theaters;
- 6. Escort Agencies;
- 7. Semi-Nude Model Studios; and
- 8. Sexual Encounter Centers.

53.06 STANDARDS OF CONDUCT AND OPERATION. Entertainers and Employees of any Sexually Oriented Business shall adhere to the following standards of conduct while on the premises:

1. No employee or entertainer shall be in a State Of Nudity or clad in less than opaque and complete attire, costume or clothing so as to expose to view any Specified Anatomical Area, unless such entertainer or employee is separated from any and all customers by a window or other partition which is maintained free of holes or other structural openings which would permit physical contact between such entertainer or employee and any customer within the viewing area and customers are not permitted within four (4) feet of the window or other partition. However, a single opening in such window or partition, allowing for payment for entertainment, by a customer to the entertainer, shall be permitted, in which event customers shall be permitted to be within two (2) feet of the window or other partition to allow customers to reach the opening.
2. No employee or entertainer shall perform:
 - a. Any Specified Sexual Activities; or
 - b. The displaying of any Specified Anatomical Area, except as provided for in Paragraph 1 of this subsection.
3. No employee or entertainer who is either not separated from any and all customers as provided in paragraph 1 of this subsection, or in an area of the premises not open to customers, shall be in a State Of Nudity or in less than opaque and complete attire, costume or clothing as described in Paragraph 1 of this subsection.
4. No employee or entertainer shall knowingly touch, fondle or caress any Specified Anatomical Area of another person, whether such area is clothed, unclothed, covered or exposed, or knowingly permit another person to touch, fondle or caress any Specified Anatomical Area of such employee or entertainer, whether such area is clothed, unclothed, covered or exposed.
5. No entertainer shall be visible from any public place during the hours of his or her employment, or apparent hours of his or her employment, while such entertainer is in a State Of Nudity or clad in such attire, costume or clothing to expose to view any Specified Anatomical Area or while performing any entertainment, either while clothed or in a State Of Nudity.
6. No entertainer or employee shall solicit, demand or receive any payment or gratuity from any customer for any act prohibited by this Chapter.
7. No entertainer shall receive any payment or gratuity from any customer, except through an opening in the window or partition separating such entertainer from a customer, as described in Paragraph 1 of this subsection.

53.07 LIVE PUBLIC SEMI-NUDITY ON PREMISES.

1. It shall be a violation of this Chapter for a licensee required to obtain a sales tax permit to knowingly or intentionally violate Iowa Code Section 728.5. It shall be a violation for any person on the premises of a Sexually Oriented Business subject to Iowa Code Section 728.5 to knowingly or intentionally appear in a State Of Nudity.
2. It shall be a violation of this Chapter for an employee to knowingly and intentionally appear Semi-Nude on the premises of a Sexually Oriented Business

unless the employee, while Semi-Nude, remains not less than six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor.

3. It shall be a violation of this Chapter for an employee, while Semi-Nude on the premises of 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 of a Sexually Oriented Business to knowingly or intentionally pay or give any gratuity directly to any Sexually Oriented Business employee, while said employee is Semi-Nude.
4. It shall be a violation of this Chapter for an employee, while Semi-Nude in a Sexually Oriented Business, to knowingly or intentionally touch a customer or patron or the clothing of a customer or patron or for a customer or patron to knowingly intentionally touch an employee or the clothing of an employee, while said employee is Semi-Nude.

A sign in a form to be prescribed by the Board of Supervisors and summarizing the provisions of Paragraphs 1 through 4 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 onto the premises.

53.08 EXHIBITION OF SEXUALLY EXPLICIT FILMS. The operator of a Sexually Oriented Business other than an Adult Motel that exhibits on the premises in a video room of less than one hundred fifty (150) square feet of floor space a film, video cassette, DVD, or other video reproduction Distinguished Or Characterized By An Emphasis On the display of Specified Sexual Activities or Specified Anatomical Areas shall comply with the following requirements:

1. No alteration in the configuration or location of a manager's station depicted in the diagram submitted with the application for license pursuant to Section 53.13 may be made without the prior approval of the Director.
2. It is the duty of the owners and Operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present on the premises.
3. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station to every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
4. It shall be the duty of the owners and Operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection 3 remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to Section 53.13 of this Chapter.
5. No video room may be occupied by more than one person at any time.

6. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access to an illumination of not less than one foot-candle as measured at the floor level.
7. It shall be the duty of the owners and Operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

53.09 EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES.

1. It is unlawful for an owner or Operator of a Sexually Oriented Business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.
2. It is unlawful for the owner or Operator of a Sexually Oriented Business to allow the exterior portion of the Sexually Oriented Business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings or pictorial representations of any manner except to the extent permitted by the provisions of this Chapter.
3. It is unlawful for the owner or Operator of a Sexually Oriented Business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a Sexually Oriented Business if the following conditions are met:
 - a. The establishment is a part of a commercial multi-unit center; and
 - b. The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

Nothing in this Chapter shall be construed to require the painting of an otherwise unpainted exterior portion of a Sexually Oriented Business.

53.10 LOITERING, EXTERIOR LIGHTING, AND MONITORING REQUIREMENTS.

1. The Operator of a Sexually Oriented Business shall:
 - a. Post conspicuous signs stating that loitering on the premises is prohibited;
 - b. Designate one or more employees to monitor continually the activities of persons on the premises by visual inspection at least or inspection by use of video camera and monitors; and
 - c. Provide lighting of the exterior premises of sufficient intensity to permit continual visual inspection or video monitoring to prohibit loitering thereon.

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 is regularly present.

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

53.11 SIGNAGE.

1. Notwithstanding any other ordinance, code or regulation to the contrary, it is unlawful for the owner or Operator of any Sexually Oriented Business or any other person to erect, construct, or maintain any sign for the Sexually Oriented Business other than one primary sign and one secondary sign, as provided herein.
2. Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:
 - a. Not contain any flashing lights;
 - b. Be a flat plane, rectangular in shape;
 - c. Not exceed seventy-five (75) square feet in area; and
 - d. Not exceed ten (10) feet in height or ten (10) feet in length.
3. Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.
4. Each letter forming a word on a primary sign shall be of a solid color and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
5. Secondary signs shall have only one display surface. Such display surface shall:
 - a. Be a flat plane, rectangular in shape;
 - b. Not exceed twenty (20) square feet in area;
 - c. Not exceed five (5) feet in height and four (4) feet in width; and
 - d. Be affixed or attached to any wall or door of the enterprise.
 - e. The provisions of Paragraph "a" of subsection 2 and of Subsections 3 and 4 shall also apply to secondary signs.
6. At any Sexually Oriented Business, the following are required:
 - a. A sign, on which upper-case letters are at least two (2) inches high and lower-case letters are at least one (1) inch high, shall be conspicuously displayed in the common area at the principal entrance and shall read as follows:

*THIS ADULT ENTERTAINMENT BUSINESS IS
REGULATED BY BUCHANAN COUNTY, IOWA.
ENTERTAINERS ARE:*

1. *Not permitted to engage in any type of sexual conduct on the premises or in prostitution;*

2. *Not permitted to be unclothed or in such less than opaque and complete attire, costume or clothing so as to expose to view any portion of the breasts below the top of the areola, or any portion of the pubic region, buttocks and/or genitals, except when separated from customers by the window or partition between the entertainer and customers.*
3. *Not permitted to receive any payment or gratuity from any customer, except through an opening in the window or partition separating such entertainer from a customer.*
 - b. Neither entertainment nor any photograph, drawing, sketch or other pictorial or graphic representation thereof displaying any Specified Anatomical Area shall be visible from a public place.
 - c. The premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one foot-candle as measured at the floor level, and such illumination must be maintained at all times that any customer is present in or on the premises.

53.12 PERSONS YOUNGER THAN EIGHTEEN PROHIBITED.

1. It is unlawful to 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 that the Sexually Oriented Business is open for business.
2. It shall be the duty of the 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 regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the Sexually Oriented Business. It shall be presumed that an attendant knew a person was under the age of 18 unless such attendant asked for and was furnished:
 - a. A valid operator's, commercial operator's, or chauffeur's license; or
 - b. A valid personal identification certificate issued by the State, reflecting that such person is 18 years of age or older.

53.13 LICENSE REQUIRED; APPLICATION PROCEDURE.

1. It shall be unlawful for any person to operate a Sexually Oriented Business in the County without a valid Sexually Oriented Business license.
2. It shall be unlawful for any person to be an Employee of a Sexually Oriented Business in the County without a valid Sexually Oriented Business employee license.
3. An applicant for a Sexually Oriented Business license or Sexually Oriented Business employee license shall file in person at the office of the County Zoning Administrator a completed application made on a form provided by the Auditor. The application shall be signed by the applicant and notarized. An application shall not be considered completed unless it contains all information required in Paragraphs "a" through "e" below:

- a. The applicant's full name and any other names, including trade names, used in the preceding five (5) years.
- b. Current business address or another mailing address of applicant.
- c. Written proof of age, in the form or copy of a birth certificate and a picture identification document issued by a governmental agency.
- d. If the application is for a Sexually Oriented Business license, the business name, legal description of the property where the Sexually Oriented Business is to be located, mailing address and phone number of the Sexually Oriented Business, and the name and business address of the statutory agent or other agent authorized to receive service of process on behalf of the Sexually Oriented Business.
- e. A statement of whether the applicant has been convicted of Specified Criminal Activity as defined in this Chapter, and if so, the name(s), date(s) and place(s) of occurrence of the offense or offenses involved, the jurisdiction and the dates of conviction of each offense, and dates of release from confinement, where applicable.

The information provided pursuant to paragraphs "a" through "e" of this Subsection shall be supplemented in writing by certified mail, return receipt requested, sent to the Zoning Administrator within ten (10) working days of a change of circumstance that would render the information originally submitted as false or incomplete.

4. An application for a Sexually Oriented Business license shall be accompanied by a sketch or diagram showing the floor plan of the premises, including a statement of total floor space to be occupied by the Sexually Oriented 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 subject to Sections 53.07 and 53.08 of this Chapter shall submit a diagram meeting the requirements of those sections.
5. If a person who wishes to operate a Sexually Oriented Business is an individual, he or she shall sign the application for a license as 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 applicants. Each applicant must be qualified under Section 53.14 of this Chapter and each applicant shall be considered a licensee if a license is granted.

53.14 ISSUANCE OF LICENSE.

1. Upon the filing of a completed application for a Sexually Oriented Business license under Section 13 above, the Zoning Administrator shall immediately issue a provisional license that shall be valid pending issuance of the license or denial of the application, provided the application appears to be in order. Within twenty (20) working days of the filing date of the completed application, the

Zoning Administrator shall issue either a license or a notice of intent to deny the application. The Zoning Administrator shall not issue a provisional license or a license if any of the following is true:

- a. An applicant is less than eighteen (18) years of age.
 - b. An applicant has failed to provide information as required by Section 53.13 of this Chapter or has falsely answered a question or request for information on the application form.
 - c. The license application fee has not been paid.
 - d. An applicant has committed a violation of Subsections (1), (2), and (3) of Section 53.07, Section 53.16(1), or Section 53.19(2) of this Chapter within the previous year.
 - e. The premises of the Sexually Oriented Business are not in compliance with the interior configuration requirements of this Chapter.
 - f. An applicant has been convicted of Specified Criminal Activity.
2. Upon the filing of a completed application for a Sexually Oriented Business employee license under Section 13 above, the Zoning Administrator shall immediately issue a provisional license that shall be valid pending issuance of the license or denial of the application, provided the application appears to be in order. Within twenty (20) working days of the filing date of the completed application, the Zoning Administrator shall issue either a license or a notice of intent to deny the application. The Zoning Administrator shall not issue a provisional license or a license if any of the following is true:
- a. The applicant is less than eighteen (18) years of age.
 - b. The applicant has failed to provide information as required by Section 53.13 of this Chapter for issuance of a license or has falsely answered a question or request for information on the application form.
 - c. The license application fee has not been paid.
 - d. An applicant has committed a violation of Subsections 7(1), (2), and (3) of Section 53.07, Section 53.16(1), or Section 53.19(2) of this Chapter within the previous year.
 - e. An applicant has been convicted of Specified Criminal Activity.
3. The license, if granted, shall state:
- a. The name(s) of the person or persons to whom it is granted;
 - b. The number of the license issued to the licensee(s);
 - c. The expiration date; and
 - d. The address of the Sexually Oriented Business. If the license is issued pursuant to Subparagraph 2 above, the license shall contain the address of the Sexually Oriented Business where the licensee shall be employed.

4. 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.
5. An employee of a Sexually Oriented Business shall keep the employee's license in a readily accessible place on the premises where the licensee is employed and shall produce such license for inspection upon request by a law enforcement officer or other County official enforcing the provisions of this Chapter.

53.15 FEES.

1. **FILING FEE REQUIRED.** Each application for a license under this Chapter shall be accompanied by payment of the filing fee in accordance with the established fee schedule. No action shall be taken on any application until the required fee is paid in full.
2. **FEE SCHEDULE.** The Board of Supervisors shall establish the initial fee schedule required by this Chapter and shall adjust the same from time to time.
3. **FEE REFUND.** An applicant shall not be entitled to a refund of the fee paid, regardless of whether the application for license is granted or denied.

53.16 PERIODIC INSPECTION.

1. Sexually Oriented Businesses and Sexually Oriented Business employees shall permit agents of the County to inspect, from time to time, 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, when the Sexually Oriented Business 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. The County shall narrowly construe this Section to authorize reasonable inspection of licensed premises pursuant to this Chapter, and shall avoid harassment or an excessive pattern of inspection.
2. The provisions of this Section do not apply to areas of an Adult Motel that are leased by a customer for use as the customer's permanent or temporary habitation.

53.17 EXPIRATION OF LICENSE.

1. Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. A license may be renewed only by filing an application and payment of a fee as provided in Sections 53.13 and 53.15 of this Chapter.
2. Applications for renewal should be made at least ninety (90) days before the license's expiration date. If an application for renewal is made less than ninety (90) days before the expiration date, the expiration of the license will not be affected.

53.18 CAUSE FOR SUSPENSION.

1. The County shall issue a 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 a provision of this Chapter or has knowingly permitted an employee to violate a provision of this Chapter.
2. The County shall issue a letter of intent to suspend a Sexually Oriented Business employee license for a period not to exceed thirty (30) days, if the employee has violated a provision of this Chapter.

53.19 CAUSE FOR REVOCATION.

1. The County shall issue a letter of intent to revoke a Sexually Oriented Business license or a Sexually Oriented Business employee license, if the respective licensee commits two (2) or more violations defined in Subsection 2 below within a twelve (12) month period.
2. The County shall issue a letter of intent to revoke a Sexually Oriented Business license or Sexually Oriented Business employee license if:
 - a. The licensee knowingly gave false information in the application for a Sexually Oriented Business license or Sexually Oriented Business employee license;
 - b. The licensee knowingly engaged in or permitted the possession, use, or sale of a controlled substance on the licensed premises;
 - c. The licensee knowingly engaged in or permitted prostitution or soliciting for prostitution on the licensed premises;
 - d. The licensee knowingly operated the Sexually Oriented Business when the license for the premises was suspended;
 - e. The licensee knowingly engaged in or permitted any Specified Sexual Activity to occur in or on the licensed premises.
3. A business licensee shall be liable for the acts of an employee only pursuant to the standard established in Section 53.25 of this Chapter.

53.20 NATURE OF REVOCATION. Subject to the provisions of Section 53.21 below, revocation of a license shall continue for two (2) years and the licensee shall not be issued a Sexually Oriented Business license or Sexually Oriented Business employee license for two (2) years from the date revocation becomes effective, provided that, if the conditions of Section 53.21(2) of this Chapter are met, a provisional license shall be granted pursuant to that section. If revocation was based on a violation of Subsection 53.19(2)(a) of this Chapter and if the Zoning Administrator finds that the basis for the revocation has been corrected or abated, the Zoning Administrator shall reissue the license to the licensee, provided that at least ninety (90) days shall have elapsed since the effective date of the revocation. If the license was revoked under Subsections 53.19(2)(b), (c), (d), or (e) of this Chapter, the Zoning Administrator shall not issue another license to the licensee until at least two (2) years have elapsed from the date of revocation.

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

1. If the Zoning Administrator determines that cause under this Chapter exists to warrant the denial of an application for a license or for the suspension or revocation of a license, the Zoning Administrator shall notify the applicant or licensee (hereafter "Respondent") in writing of the intent to deny the application or suspend or revoke the license. The notification shall specify the grounds for the proposed action. The notification shall be given by personal delivery or by certified mail to the most current business address or other mailing address for the Respondent on file with the Zoning Administrator. If the Respondent intends to appeal the proposed action of the Zoning Administrator, the Respondent shall submit a written request to the Zoning Administrator for an appeal hearing before the Board of Supervisors within ten (10) working days of the receipt of such notice. Failure of the Respondent to file timely a request for such appeal hearing shall be deemed a waiver of the right to appeal, and the action of the Zoning Administrator shall be final.

The Zoning Administrator shall notify the Respondent in writing of the hearing date before the Board of Supervisors within five (5) days of the receipt of the respondent's written request. The Board of Supervisors shall conduct the appeal hearing within twenty (20) working days of the receipt of Respondent's request. At the hearing, the Respondent shall have the right to be represented by counsel, present evidence and witnesses on the Respondent's behalf, and cross-examine any of the County's witnesses. The Zoning Administrator shall also be represented by counsel, and shall bear the burden of proving the grounds for denying the application or for the suspension or revocation of the license by a preponderance of the evidence. 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 of the Board is to uphold the action of the Zoning Administrator, the decision shall set out the grounds for the decision. The denial of the application or the suspension or revocation of the license shall become final immediately for purposes of appeal, but shall not take effect or be enforced until thirty (30) days thereafter. If the decision is to reverse the action of the Zoning Administrator, the Zoning Administrator shall immediately issue or reissue, as the case may be, a license to the Respondent.

2. An applicant or licensee (hereafter "Aggrieved Party") may challenge or appeal the decision of the Board of Supervisors or seek a declaration of rights concerning such action and/or concerning this Chapter, upon factual or constitutional grounds or both, to a Court of competent jurisdiction within thirty (30) days after issuance of the Board of Supervisor's written decision. Upon the filing of any such Court action, the Zoning Administrator shall immediately issue the Aggrieved Party a provisional license. The Zoning Administrator 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 as a Sexually Oriented Business employee and shall remain in effect until the Court shall have rendered judgment on the merits of the Aggrieved Party's action.

In lieu of the procedure described above, the Aggrieved Party may, within thirty (30) days after issuance of the Board of Supervisor's written decision, elect to require the County to file in a Court of competent jurisdiction a petition seeking a declaratory judgment, on the issue of the validity of the decision of the Board of Supervisors and/or the constitutionality of the provisions of this Chapter. 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 Zoning Administrator 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 as a Sexually Oriented Business employee and shall remain in effect until the Court shall have rendered judgment on the merits of the action.

This section shall be liberally construed to permit the uninterrupted operation of the Sexually Oriented Business or the uninterrupted employment of the Sexually Oriented Business employee during the course of any Court action challenging this Chapter or an adverse licensing decision under this Chapter.

53.22 NOTICES.

1. Any notice required or permitted to be given by the Zoning Administrator or any other County office, division, department or other agency under this Chapter to any applicant, operator or owner of an establishment may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit, a transfer application that has been received by the Zoning Administrator, or any notice of address change that has been received by the Zoning Administrator. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the Zoning Administrator shall cause it to be posted at the principal entrance to the establishment.
2. Any notice required or permitted to be given to the Zoning Administrator by any person under this Chapter shall not be deemed given until and unless it is received in the office of the Zoning Administrator.
3. It is the duty of each owner who is so designated on a permit application and each Operator to furnish a notice to the Zoning Administrator in writing of any change of residence or mailing address.

53.23 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.

53.24 HOURS OF OPERATION. No Sexually Oriented Business other than 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 that 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; provided, however, that no entertainer or employee of such business nor any other person shall be permitted to appear in A State Of Nudity or Semi-Nudity on the premises of such business on Sunday.

53.25 EMPLOYEE LICENSE VIOLATION IMPUTED TO BUSINESS LICENSEE. Notwithstanding any provision to the contrary, for the purposes of this Chapter, an act by an Sexually Oriented Business employee that constitutes grounds for suspension or revocation of that employee's

license shall be imputed to the Sexually Oriented Business licensee for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or any 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.

53.26 SITING CRITERIA.

1. It shall be a violation of this Chapter to operate or cause to be operated a Sexually Oriented Business in any zoning district other than those designated as C (Commercial), C-M (Commercial-Manufacturing), or I (Industrial) districts in the Buchanan County Zoning Ordinance.
2. It shall be a violation of this Chapter to operate or cause to be operated a Sexually Oriented Business within one thousand (1000) feet of:
 - a. A church, synagogue, mosque, temple, or any other structure that is used primarily for religious worship and related religious activities;
 - b. A public or private educational facility, including 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. The term “school” includes the school campus or grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
 - c. A boundary of a Residential “R” District as defined in the Buchanan County Zoning Ordinance;
 - d. A park, playground, or plaza open for use by the public;
 - e. A cemetery;
 - f. A licensed day-care facility; or
 - g. Another Sexually Oriented Business.
3. For the purpose of enforcing the provisions of Subsection 2 of this Section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property line of the premises where a Sexually Oriented Business is located to the nearest property line of the premises of a use listed in Subsection 2. The presence of a County, City or other political subdivision boundary shall be not be relevant for purposes of calculating and applying the distance requirement of this Section.
4. For purpose of enforcing Subsection 2(g) of this Section, the distance between any two Sexually Oriented Businesses shall be measured in a straight line, without regard to existence of intervening structures, objects, or political boundaries, from the closest exterior wall of the structure in which each business is located.

53.27 APPLICABILITY TO EXISTING BUSINESSES. The provisions of this Chapter shall apply to all Sexually Oriented Businesses and Sexually Oriented Business employees described herein, whether such business or activities were established or commenced before, on, or after the effective date of this

Chapter. All Sexually Oriented Businesses in operation, along with their employees, on the effective date of this Chapter shall be granted a De Facto Temporary License to continue operation or employment. The Temporary License shall be valid for one hundred eighty (180) days following such effective date. All Sexually Oriented Businesses and Sexually Oriented Business employees shall apply for a license pursuant to this Chapter prior to the expiration of said period to continue operations and employment. Sexually Oriented Businesses shall make any necessary alterations to the interior configurations of the regulated business premises to conform to this Chapter prior to the expiration of said period in order to continue operations.

53.28 NONCONFORMING USE.

1. Any Sexually Oriented Business in operation as of the effective date of this Chapter that is in violation of Section 53.26 of this Chapter but is otherwise in lawful operation shall be deemed a nonconforming use pursuant to Section 50.19 of the Buchanan County Code of Ordinances. 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 use 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 that was first established and continually operating at a particular location shall be deemed the conforming use.
2. A Sexually Oriented Business in lawful operation 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 53.26(2) of this Chapter within one thousand (1000) feet of the Sexually Oriented Business. This paragraph shall be applicable only to the renewal of a valid license, and shall not apply when an application is made for a license after the applicant's previous license has expired or been revoked.

53.29 VIOLATIONS AND PENALTIES. Violations of the provisions of this Chapter shall be deemed County infractions pursuant to Iowa Code Section 331.307.

53.30 REPEALER. All previous ordinances or parts of previous ordinances in conflict with the provisions of this Chapter are hereby repealed upon final passage and approval of this Chapter.

53.31 SAVINGS CLAUSE. If any section, provision, or part of this Chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this Chapter as a whole, or any section thereof, or part thereof, not adjudged invalid or unconstitutional.

53.32 EFFECTIVE DATE. This Chapter shall be in full force and effect upon its final passage, approval and publication as required by law.