

**ORDINANCE NO \_\_\_\_\_**  
**AN ORDINANCE ESTABLISHING THE**  
**LOCATION AND LICENSING REGULATIONS**  
**FOR SEXUALLY ORIENTATED BUSINESSES**  
**WITHIN THE CITY OF GRACEVILLE, MINNESOTA**

WHEREAS, the City of Graceville, Big Stone County, Minnesota (hereinafter "City") has reviewed and analyzed numerous studies, reports, articles, judicial decisions, and the experience and legislative findings of other cities around the country concerning the impacts and secondary effects of sexually orientated businesses and the sale, distribution and display of sexually orientated materials (hereinafter collectively "Sexually Orientated Business Activities") on the areas in which such Activities are located or take place; and

WHEREAS, Sexually Orientated Business Activities can cause or contribute significantly to increases in criminal activity in the areas in which they are located or take place, thereby taxing crime prevention, law enforcement and public health service; and

WHEREAS, nude dancing and other similar conduct provided by Sexually Orientated Business Activities encourages prostitution, increases the frequency of sexual assaults, attracts or encourages other related criminal activity, increases public health and safety risks, and otherwise causes or contributes significantly to the adverse impacts or secondary effects of Sexually Orientated Business Activities on the areas in which such Activities are located or take place; and

WHEREAS, Sexually Orientated Business Activities can cause or contribute significantly to the deterioration of residential neighborhoods, can impair the character and quality of such neighborhoods and the housing located therein, and can inhibit the proper maintenance and growth of such neighborhoods, thereby limiting or reducing the availability of quality, affordable housing for area residents and reducing the value of property in such areas; and

WHEREAS, Sexually Orientated Business Activities can undermine the stability of other established business and commercial uses in the area in which Sexually Orientated Business Activities are located or take place and can cause or contribute significantly to the deterioration of such other business and commercial uses, thereby causing or contributing to a decline in such uses, an inhibition on business and commercial growth, and a resulting adverse impact on local government revenues and property values; and

WHEREAS, Sexually Orientated Business Activities can have a dehumanizing and distracting influence on young people and students attending schools, can diminish or destroy the enjoyment and family atmosphere of persons using parks, playgrounds, forest preserves, and other public recreational areas, can interfere with or destroy the spiritual experience of persons attending church, synagogue, or other places of worship, and can

interfere with or destroy the opportunity for solemn and respectful contemplation at cemeteries and similar facilities; and

WHEREAS, the presence of Sexually Orientated Business Activities is perceived by the public generally and by neighboring business owners and residents as an indication that the area in which such activities occur or take place is in decline and deteriorating, a perception that quickly leads to such decline and deterioration, prompting businesses and residents to flee the affected area to avoid the consequences of such decline and deterioration; and

WHEREAS, the exterior appearance, including signage, of Sexually Orientated Business Activities can have an adverse impact on young people and students, can contribute to the decline in property values, and can otherwise cause or contribute significantly to the adverse impacts and secondary effects of Sexually Orientated Business Activities on the areas in which such activities are located or take place; and

WHEREAS, the conduct of Sexually Orientated Business Activities, including specifically, but without limitation, adult cabarets that provide nude dancing or other similar conduct and the operation and use of adults booths, often encourages or allows sexual activities and prostitution, among other things, that place employees and patrons of such businesses at risk to exposure and contraction of sexually transmitted diseases, including specifically, but without limitation, the HIV virus, Acquired Immune Deficiency Syndrome, and venereal diseases; and

WHEREAS, the City has determined that Sexually Orientated Business Activities will, unless properly regulated, have these and other severe impacts and secondary effects on the City and its residents; and

WHEREAS, for the reasons set forth above, among others, the members of the City Council have found and determined that it is essential to the health, safety and general welfare of the City and its residents to adopt and enforce comprehensive licensing regulations relating to Sexually Orientated Business Activities, to the distribution and display of sexually orientated materials, and to the type and operations of Sexually Orientated Business Activities that may locate in the City; and

WHEREAS, the members of the City Council have further found and determined that the establishment of regulations provided in this Ordinance on the operation, location, maintenance, and structural aspects of Sexually Orientated Business Activities is necessary to minimize to the greatest extent possible, or to eliminate altogether, the public health and safety risks that customarily, but unnecessarily, exist in connection with such activities; and

WHEREAS, the members of the City Council have further found and determined that the limitation on the hours of operation of Sexually Orientated Business Activities set forth in this Ordinance are necessary to protect and secure neighboring uses, to control adverse noise and traffic impacts associated with Sexually Orientated Business

Activities, to enhance enforcement and implementation of these regulations set forth herein, and to otherwise address, mitigate and, if possible, eliminate the adverse impacts and secondary effects of Sexually Orientated Business Activities; and

WHEREAS, the members of the City Council have further found and determined that the disclosure and background information requirements set forth in this Ordinance relating to the owners, operators, and others in a position of control over Sexually Orientated Business Activities are necessary in order for the City to implement and enforce the terms and conditions of this Ordinance, to aid in the prevention of crime related to Sexually Orientated Business Activities, to minimize to the greatest extent possible, or eliminate altogether, the public health risks associated with Sexually Orientated Business Activities, and to otherwise carry out the purposes and objectives of the regulations established herein; and

WHEREAS, the regulations established pursuant to this Ordinance are in no way based on the content of protected speech, if any, associated with Sexually Orientated Business Activities, and the purpose and intent of the regulations established pursuant to this Ordinance are not to restrict or prohibit protected speech, if any, association with Sexually Orientated Business Activities, but rather is to address, mitigate, and, if possible, eliminate the adverse impacts and secondary effects of Sexually Orientated Business Activities in the areas in which such Activities are located or take place and to ensure that these Activities are established, managed, and operated in a safe and legal manner at all times; and

WHEREAS, the City has for many years engaged in rigorous, firm and effective policies and regulations relating to uses and activities that could have adverse impacts on the continued stability and vitality of the residential and business areas of the City, and the regulations imposed by this Ordinance are a continuation of and consistent with those long-standing policies and regulations; and

WHEREAS, the City has the power and authority to adopt and enforce the terms, conditions, licensing regulations, and zoning regulations established in this Ordinance pursuant to (i) its general police powers to protect the public health, safety, morals, and general public welfare; and (ii) all other applicable provisions of law;

**NOW THEREFORE, THE CITY OF GRACEVILLE ORDAINS:**

**Section 1: Recitals**

The foregoing recitals are incorporated herein as the findings and determinations of the members of the Graceville City Council.

**Section 2: Short Title**

This Ordinance shall be known as, and may be referred to as, the “Graceville Sexually Orientated Business Ordinance.”

**Section 3: Definitions**

- (a) **“Adult Arcade”** means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”
- (b) **“Adult Bookstore, Adult Novelty Store, or Adult Video Store”** means
- (1) A commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:
    - (A) books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas;” or
    - (B) instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”
  - (2) A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be categorized as “Adult Bookstore, Adult Novelty Store or Adult Video Store.” Such other business purposes will not serve to exempt such commercial establishments from being categorized as an “Adult Bookstore, Adult Novelty Store or Adult Video Store” so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”
  - (3) Notwithstanding the foregoing, a commercial establishment which offers for sale or rental any of the items listed in paragraph (1)(A) above will not be considered to have as one of its principal business purposes the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” provided all of the following conditions are met:

- (A) Total gross revenues from the sale or rental of any of the items listed in paragraph (1)(A) does not exceed ten percent (10%) of the commercial establishment's gross revenue; and
- (B) Total gross square footage of display space and stock are devoted to the sale or rental of any of the items listed in paragraph (1)(A) does not exceed ten percent (10%) of the commercial establishment's total square footage; and
- (C) Display of any of the items listed in paragraph (1)(A) is in a separate room or area restricted only to persons 18 years old or older and is closely monitored by management and/or employees of the commercial establishment to insure that no individual under the age of 18 enters the room where the items listed in paragraph (1)(A) are displayed or stored; and
- (D) No electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained on the premises of the establishment to show images of items listed in paragraph (1)(A) to any customers or potential customers of the commercial establishment; and
- (E) Only employees or management of the commercial establishment who are 18 years old or older are permitted to enter the area where the items listed in paragraph (1)(A) are stored, processed or displayed for customers or potential customers of the commercial establishment.

(c) **“Adult Cabaret”** means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- (1) persons who appear in a state of nudity or semi-nude; or
- (2) live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”; or
- (3) films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

(d) **“Adult Motel”** means a hotel, motel or similar commercial establishment which:

- (1) offers accommodations to the public for any form of consideration and also provided patron with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas” and has a sign visible from the public right of way which advertises the availability of these adult type of photographic reproduction; or
- (2) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (3) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

(e) **“Adult Motion Picture Theater”** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or other photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

(f) **“Adult Theater”** means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities”.

(g) **“Escort”** means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

(h) **“Escort Agency”** means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(i) **“Establishment”** means and includes any of the following:

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

(j) **“Licensee”** means a person in whose name a license to operate a sexually orientated business has been issued, as well as the individual listed as an applicant on the application for a license.

(k) **“Nude Model Studio”** means any place where a person who appears semi-nude, in a state of nudity, or who displays “specified anatomical areas” and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Minnesota or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates education programs in which credits are transferable to a college, junior college or university supported entirely or partly by taxation; or in a structure:

- (1) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- (2) where in order to participate in a class, a student must enroll at least three days in advance of the class; and
- (3) where no more than one nude or semi-nude model is on the premises at any one time.

(l) **“Nudity” or a “State of Nudity”** means the showing of the human male or female genitals, pubic area, vulva or anus with less than a fully opaque covering or the showing of the covered male genitals in a discernibly turgid state.

(m) **“Person”** means in individual, proprietorship, partnership, corporation, association, or other legal entity.

(n) **“Semi-Nude” or “Semi-Nude Condition”** means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but 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 the areola is not exposed in whole or in part.

(o) **“Sexual Encounter Center”** means a business or commercial enterprise that, as one of its principal business purposes, offer for any form of consideration:

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

(p) **“Sexually Oriented Business”** means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(q) **“Specified Anatomical Areas”** means:

- (1) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- (2) less than completely and opaquely covered human genitals, pubic areas, vulva, or anus.

(r) **“Specified Criminal Activity”** means any of the following offenses: Any unlawful, lewd, indecent or immoral conduct, including specifically, but without limitation, any of the lewd, indecent, or immoral criminal acts specified in any of the following statutes:

- (1) Minnesota Statutes Sec. 609.293-609.365 (Sex Offenses); or
- (2) Minnesota Statutes Sec. 617.23-617.296 (Obscenity Statutes); or
- (3) Minnesota Statutes Sec. 152.01-152.21 (Controlled Substance Law)

(s) **“Specified Sexual Activities”** include, but without limitation, any of the following:

- (1) Fondling or other erotic touching of human genitals, pubic region, or anus; or
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy; or
- (3) Masturbation, actual or simulated; or
- (4) Human genitals in a state of sexual stimulation, arousal or tumescence; or
- (5) Excretory functions as part of or in connection with any of the activities set forth in paragraphs 1, 2, 3, or 4 of this definition; or
- (6) Bestiality.

(t) **“Substantial Enlargement of a Sexually Orientated Business”** means the increase in floor areas occupied by the business by more than twenty-five percent (25%) as the floor areas exist on the date this ordinance takes effect.

(u) **“Transfer of Ownership or Control of Sexually Orientated Business”** means and includes any of the following:

- (1) the sale, lease or sublease of the business; or
- (2) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) the establishment of a trust, gift, or other similar legal device 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.



**Section 4. License Required**

- (a) It is unlawful for any person to operate a sexually orientated business without a valid sexually orientated business license issued by the City pursuant to this Ordinance.
- (b) An application for a license must be made on a form provided by the City.
- (c) All applicants must be qualified according to the provisions of this Ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the City to determine whether the applicant meets the qualifications established in this Ordinance.
- (d) If a person who wishes to operate a sexually orientated business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually orientated business is other than an individual, each individual who has a twenty percent (20%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a license is granted.
- (e) The completed application for a sexually orientated business license shall contain the following information and shall be accompanied by the following documents:
  - (1) If the applicant is:
    - (A) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age;
    - (B) a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
    - (C) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process;

- (2) If the applicant intends to operate the sexually orientated business under a name other than that of the applicant, he/she must (i) state the sexually orientated business' fictitious name and (ii) submit the required registration documents.
- (3) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this ordinance, and, if so convicted, the specified criminal activity involved, the date, place, and jurisdiction of each.
- (4) Whether the applicant, or a person residing with the applicant, has had a previous license under this Ordinance or other similar sexually orientated business ordinances from another city or county denied, suspended, or revoked, including the name and location of the sexually orientated business for which the permit was denied, suspended, or revoked, and whether the applicant, or a person residing with the applicant, has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this Ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually orientated business for which the permit was denied, suspended or revoked as well as the date of denials, suspension or revocation.
- (5) Whether the applicant or a person residing with the applicant holds any other licenses under this Ordinance or other similar sexually orientated business ordinance from another city or county and if so, the names and locations of such other licensed businesses.
- (6) The location of the proposed sexually orientated business, including legal description of the property, the owner of said property, street address, and telephone number(s), if any.
- (7) The applicant's mailing address and residential address.
- (8) The applicant's drivers license number, Social Security number, and/or his/her state and/or federally issued tax identification number.
- (9) 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 it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

- (10) A straight-line drawing, consistent with provisions of Section 11 herein, shall be prepared within thirty (30) days of receipt of the application depicting the property lines and the structures containing any existing sexually orientated businesses within 1000 feet of the property to be licensed; and also the property lines of any established religious institution/synagogue, school, or public park, or recreation area within 500 feet of the property to be licensed. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted. The drawing shall be reviewed by the Planning Commission or the city council's designee for accuracy. In the event of a dispute between the applicant and the City as to the accuracy of the drawing, the Planning Commission or the city council's designee may order the applicant to provide a drawing with the information required under this paragraph by a registered land surveyor.
- (11) Copy of lease and all financing documents; all business related contracts for supply of materials and consulting management.
- (12) The health department, fire department, and the building official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the City.
- (13) Every application for a sexually orientated business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$1,000.00 non-refundable application and investigation fee.

**Section 5. Issuance of License**

- (a) Upon the filing of said application for a sexually orientated business license, said application shall be referred to the appropriate city departments and personnel for an investigation to be made on such information as is contained in the application. The application process shall be completed within sixty (60) days from the date the completed application is filed. After the

investigation, the City shall issue a license unless it determines by a preponderance of the evidence that any one or more of the following findings is true:

- (1) An applicant is under eighteen (18) years of age.
  - (2) An applicant or a person with whom the applicant is residing is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.
  - (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
  - (4) An applicant or a person with whom the applicant is residing has been denied a license by the City to operate a sexually orientated business within the preceding twelve (12) months or whose license to operate a sexually orientated business has been revoked or suspended by the City within the preceding twelve (12) months.
  - (5) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity as defined in this ordinance.
  - (6) The premises to be used for the sexually orientated business has not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.
  - (7) The license fee required by this Ordinance has not been paid.
  - (8) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this Ordinance.
- (b) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually orientated business and the classification for which the license is issued pursuant to Section 3. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually orientated business so that they may be easily read at any time.

- (c) In addition to the application and investigation fee required above, every sexually orientated business that is granted a license (new or renewal) shall pay to the City an annual non-refundable license fee of \$4,000.00. All fees shall be paid directly to the City Clerk.

**Section 6. Inspection**

- (a) An applicant or licensee shall permit representatives of the Big Stone County Sheriff's Department, State Health Department, State Fire Marshall, City Fire Department, City Zoning Department and/or other City and/or State departments or agencies to inspect the premises of a sexually orientated business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.
- (b) A person who operates a sexually orientated business or his agent or employee commits a violation of this chapter if he refuses to permit such lawful inspection of the premises at any time it is open for business.

**Section 7. Expiration of License**

- (a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided herein. Application for renewal shall be made at least thirty (30) days before the expiration date.
- (b) When the City denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to the denial, the City finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

**Section 8. Regulation of Sexually Orientated Businesses**

- (a) All licensed sexually orientated businesses shall comply with the provisions of this Ordinance, all other applicable City ordinances, and all other applicable federal, state and local laws.
- (b) No sexually orientated business shall be maintained or operated in any manner that causes, creates, or allows public viewing of any adult material or any entertainment depicting, describing, or relating to "specified sexual activities" or "specified anatomical area", from any sidewalk, public or private right-of-way, or any property other than the lot on which the licensed premises is

located. No portion of the exterior of a sexually orientated business shall utilize or contain any flashing lights, search lights, spotlights, or any other similar lighting systems, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent specifically allowed herein. This subsection shall apply to any advertisement, display, promotional material, decoration or sign; to any performance or show; and to any window, door or other opening.

- (c) All signs for sexually orientated businesses shall be flat wall signs. The maximum allowable sign area shall be one square foot of sign per foot of lot frontage on a street, but in no event exceeding thirty-two (32) square feet. The maximum number of signs shall be one per lot frontage. Signs otherwise permitted pursuant to this Ordinance shall contain only: (i) the name of the sexually orientated business and/or (ii) the specific type of sexually orientated business conducted on the licensed premises. Temporary signage shall not be permitted in connection with any sexually orientated business.
- (d) No sexually orientated business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) a.m. and ten o'clock (10:00) p.m. on weekdays and Saturdays, and one o'clock (1:00 a.m.) and noon (12:00 p.m.) on Sundays.
- (e) A person commits a violation of this chapter if the person allows a person under the age of 18 years on the premises of a sexually orientated business.

**Section 9. Suspension/Revocation**

- (a) The City shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:
  - (1) violated or is not in compliance with any section of this Ordinance; or
  - (2) refused to allow an inspection of the sexually orientated business premises as authorized by this Ordinance.
- (b) The City shall revoke a license if a cause of suspension occurs and the license has been suspended within the preceding twelve (12) months.
- (c) The City shall revoke a license if it determines that:

- (1) a licensee gave false or misleading information in the materials submitted during the application process; or
  - (2) a licensee has knowingly allowed possession, use, or sale of a controlled substance on the premises; or
  - (3) a licensee has knowingly allowed prostitution on the premises; or
  - (4) a licensee has knowingly operated the sexually orientated business during a period of time when the licensee's license was suspended; or
  - (5) except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or
  - (6) a licensee is delinquent in payment to the City, County or State for any taxes or fees past due; or
  - (7) a licensee or one of his/her employee(s) has/have, during the term of the license, been convicted of a "specified criminal activity" as defined herein.
- (d) When the City revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually orientated business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the City finds that the basis for revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.
- (e) After denial of an application, or denial of an application for renewal of a license, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

**Section 10. Transfer of License**

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually orientated business under the authority of a license at any place other than the address designated in the application.

**Section 11. Zoning and Location**

- (a) **As Conditional Use.** Sexually orientated businesses shall be considered conditional uses and may be permitted only within qualifying areas of the Commercial District.

- (b) **License.** No sexually orientated business may be granted a conditional use permit under this section unless it has applied for and received a license under this Ordinance. Application for the sexually orientated business license and a conditional use permit may happen concurrently or a conditional use permit may be granted under this section subject to the applicant receiving a license under this Ordinance. An applicant for a conditional use permit under this section shall also include a copy of the application for the license under this Ordinance.
- (c) **Location.** No sexually orientated business may be located or operated within 500 feet of:
- (1) a church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities; or
  - (2) a public or private educational facility including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, high schools, intermediate schools, junior high schools, middle schools, private schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; schools include the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school; or
  - (3) a public park or recreational area which has been designated for park or recreational activities, including, but not limited to, a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball or tennis court, pedestrian/bicycle paths, wilderness areas, or other similar public land within the City, which is under the control, operation or management of the City; or
  - (4) a public theater; or
  - (5) a shopping center; or
  - (6) an airport.
- (d) **Location Near Other Sexually Orientated Businesses.** The operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually orientated business may not occur within 1000 feet of another sexually orientated business. In addition, there shall not be more than one sexually orientated



business within a block front even if said block is greater than 1000 feet in length.

- (e) **Multiple Uses or Enlargement of Uses.** The operation, establishment, or maintenance of more than one sexually orientated business in the same building, structure, or portion thereof, or the increase of floor area of any sexually orientated business in any building, structure, or portion thereof containing another sexually orientated business is prohibited.
- (f) **Measurement from Certain Uses.** For the purpose of subsection (c) of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest point of the building or structure used as a part of the premises where a sexually orientated business is conducted, to the nearest property line of the premises of a use listed in subsection (c). Presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section. Such distances shall be measured across property lines, regardless of ownership of the property.
- (g) **Measurement between Sexually Orientated Businesses.** For purposes of subsection (d) of this Section, the distance between any two sexually orientated 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.
- (h) **Nonconforming Use.** Any sexually orientated business lawfully operating on September 1, 2002, that is in violation of subsection (a) through (g) of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue until 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 orientated businesses are within 1000 feet of one another and otherwise in a permissible location, the sexually orientated 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.
- (I) **Lawful Operation.** A sexually orientated business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the

conditional use permit under this section, of a use listed in subsection (c ) of the Section within 1000 feet of the sexually orientated business. This provision applies only to the renewal of a valid license and does not apply when an application for a license is submitted after a license has expired or been revoked or suspended.

**Section 12. Penalty.**

Any person who violates, neglects, refuses to comply with, or assists or participates in any way in the violation of any of the provisions of this Ordinance is guilty of a misdemeanor and is subject to a penalty of 90 days in jail and/or a \$1,000 fine for each violation. Each day such violation continues shall constitute a separate offense.

**Section 13. Severability.**

In the event that any portion of this Ordinance, or any part thereof, or any application thereof to any person or circumstance, is for any reason held to be unconstitutional or otherwise invalid or ineffective by any court of competent jurisdiction on its face or is applied, such holding shall not affect the validity or effectiveness of any of the remaining provisions of this Ordinance, or any part thereof, or any application thereof to any person or circumstances or of said provisions as applied to any other person or circumstance. It is hereby declared to be the intent of the City that this Ordinance would have been adopted had such unconstitutional, invalid, or ineffective provisions not been included therein.

**Section 14. Effective Date.**

This Ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed by the Graceville City Council this \_\_\_\_ day of \_\_\_\_\_, 2002.

CITY OF GRACEVILLE

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk