

AN ORDINANCE AMENDING AND RE-ENACTING CHAPTER 3 OF THE CITY CODE OF THE CITY OF DICKINSON, NORTH DAKOTA, RELATING TO ADULT ENTERTAINMENT CENTERS OR ESTABLISHMENTS.

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF DICKINSON, NORTH DAKOTA, AS FOLLOWS:

Section 1: Article 3 of the City Code of the City of Dickinson is hereby amended and re-enacted as follows:

Sections:

- 3.010 Legislative intent and purpose**
- 3.020 Definitions**
- 3.030 Special use permit; license required**
- 3.040 Fees**
- 3.050 Hours of operation**
- 3.060 Location and zoning requirements**
- 3.070 Loitering, exterior lighting and monitoring, and interior lighting requirements**
- 3.080 Prohibited conduct**
- 3.090 Conditions of operations**
- 3.010 Signage**
- 3.011 Inspection**
- 3.012 Expiration and renewal of license**
- 3.013 Transfer of license**
- 3.014 Suspension and revocation of license**
- 3.015 Hearing procedure; appeal**
- 3.016 Remedies**
- 3.017 Severability**

Section 3.010 Legislative intent and purpose

The purpose of this chapter is to recognize and to provide for the fact that the operation of adult entertainment centers or adult establishments and the operation of associated mechanical amusement devices which depict or display specified sexual activities or specified anatomical areas results in increased enforcement problems for the city and additional expense to the city that justifies a higher license fee for these centers, establishments or devices than for other mechanical amusement devices, establishments or centers. This follows because it is not immediately possible to distinguish between constitutionally protected non-obscene depictions or portrayals of explicit sexual conduct, on one hand, from non-constitutionally protected obscene portrayals of sexual conduct on the other hand. This necessitates greater police vigilance to assure that the lawful business of displaying non-obscene portrayals or depictions of sexual conduct is not used inadvertently or by design as the means of unlawfully displaying or depicting obscenity. In order to recoup some of the costs thus imposed on the city, it is appropriate that there be imposed on the persons who profit from such devices, centers or establishments some of the costs of insuring that the devices, centers or establishments are used only lawfully. For the purposes of promoting the health, safety, morals or general welfare of the city residents as authorized by state law, the state has provided certain powers to the City in furtherance thereof. In addition to the increased enforcement problems for the City and additional expense, it is necessary that the City specify certain zoning areas and establish certain regulations pertaining to licensing adult entertainment centers or adult establishments and associated mechanical amusement devices, delineating the placement of such centers, establishments or devices in certain specified zoning areas and requiring certain information, before licensing such centers, establishments or devices and placement of such businesses. (Ord. No. 814, § 1.)

Section 3.020 Definitions

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Adult Bookstore. A bookstore having as a preponderance of its publications books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, or which also sells sexually oriented devices as herein defined in conjunction with their business as defined herein.

Adult Cabaret. Any commercial premises or private club, to which a member of the public or a club member is invited or admitted, and where an entertainer provides live entertainment or activity that includes any exhibition, performance or dance of any type involving a person who performs in such clothing or removes such clothing such that the areola of the female breast or any portion of the pubic area, anus, buttocks, vulva or genitals are less than completely and opaquely covered. This definition shall include the following:

- any exhibition, performance or dance involving the performance of acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts prohibited by law.
- the actual or simulated touching, caressing or fondling of the breast, buttocks, anus or genitals.
- the actual or simulated display of pubic hair, anus, vulva or genitals, or the nipples of a female.
- appearances, entertainment or performances of any type consisting of or containing any nude performer or topless female dancer.
- any exhibition, performance or dance that is intended to sexually stimulate any member of the public and which is conducted on a regular basis or as a substantial part of the premises activity.

Adult Establishment or Adult Entertainment Center. An adult bookstore, an adult cabaret, an adult motion picture theater, or an adult mini-motion picture theater, all as defined in this section, or any other business the preponderance of whose activities or sales are designed to display, show, perform or depict specified sexual activities or specified anatomical areas as defined in this section, or which may otherwise be designed to sexually arouse any member of the public. Any establishment or center that displays or sells sexually oriented devices as herein defined as a preponderance of its business is also an adult entertainment center or adult establishment within the meaning of this section.

Adult Entertainment License. A license to operate an adult establishment or adult entertainment center, all as defined in this Chapter.

Adult Mini-Motion Picture Theater. An enclosed building with a capacity for less than fifty persons and which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons of the theater.

Adult Motion Picture Theater. An enclosed building with a capacity of fifty or more persons and which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons of the theater.

Influential interest. This shall mean any of the following:

- (1) The actual power to operate the adult entertainment center or control the operation, management or policies of the adult entertainment center or legal entity which operates the adult entertainment center;
- (2) Ownership of a financial interest of thirty (30) percent or more of a business or of any class of voting securities of a business; or
- (3) Holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the adult entertainment center.

Licensee. A person in whose name a license to operate an adult entertainment center has been issued, as well as the individual or individuals listed as an applicant on the application for an adult entertainment center license.

Mechanical Amusement Device. Without limitation, any machine which, upon the insertion of a coin or the payment of consideration, operates or may be operated for use as a game, contest or amusement of any description, or which depicts, displays or projects, directly or indirectly, pictures, photographs or other visual images.

Nudity. 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 female breast with less than a fully opaque covering of any part of the nipple and areola.

Operator. Any person on the premises of an adult entertainment center who manages, supervises, or controls the business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

Person. An individual, proprietorship, partnership, corporation, association, or other legal entity.

Premises. The real property upon which the adult entertainment center is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the adult entertainment center, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a adult entertainment center license.

Regularly. The consistent or repeated doing of an act on an ongoing basis.

Sexually Oriented Device. Without limitation, any artificial or simulated specified anatomical area or any other device or paraphernalia that is designed, in whole or in part, for specified sexual activities.

Specified Anatomical Areas.

- 1) Less than completely and opaquely covered human genitals and pubic regions, buttocks or female breasts below a point immediately above the top of the areola.
- 2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified criminal activity. Any of the following specified crimes for which less than five (5) years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- 1) Sex offenses as defined in N.D.C.C. Chapter 12.1-20;
- 2) Obscenity-related offenses as defined in N.D.C.C. Chapter 12.1-27.1;
- 3) Offenses involving sexual performances by children as defined in N.D.C.C. Chapter 12.1-27.2;
- 4) Prostitution offenses as defined in N.D.C.C. Chapter 12.1-29;
- 5) Assault-related offenses as defined in N.D.C.C. Chapter 12.1-17;
- 6) Controlled substance offenses as defined in N.D.C.C. Chapter 19-03.1;
- 7) Drug paraphernalia offenses as defined in N.D.C.C. Chapter 19-03.4;
- 8) Racketeering offenses as defined in N.D.C.C. Chapter 12.1-06.1;
- 9) Any attempt, solicitation, or conspiracy to commit one (1) of the foregoing offenses; or
- 10) Any offense in another jurisdiction that, had the predicate act(s) been committed in North Dakota, would have constituted any of the foregoing offenses.

Specified sexual activities.

- 1) Human genitals in a state of sexual stimulation or arousal;
- 2) Actual or simulated acts of human masturbation, sexual intercourse or sodomy; or
- 3) Fondling or other erotic touching of human genitals and pubic regions, buttocks or female breasts.

Transfer of ownership or control. This shall mean any of the following:

- 1) The sale, lease, or sublease of the business;
- 2) The transfer of securities which constitute an influential 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 3.030 Special use permit; license required

(1) *License Required.* It shall be unlawful for any person to operate an adult entertainment center in the City without a valid adult entertainment center license. In order to obtain a license, an applicant must complete a special use permit application pursuant to Subsection 2 of this section.

(2) *Special Use Permit Application.* An applicant for an adult entertainment center license shall file in person at the office of the City Planner a completed special use permit application made on a form provided by the City. An adult entertainment center may designate an individual with an influential interest in the business to file its application for an adult

entertainment center license in person on behalf of the business. The application shall be signed as required by subsection (3) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (2), accompanied by the appropriate licensing fee:

- (A) The applicant's full legal name and any other names used by the applicant in the preceding five (5) years.
- (B) Current business address or another mailing address for the applicant.
- (C) A complete statement of the type of business contemplated.
- (D) A complete financial statement, detailing all of applicant's assets and liabilities of every nature and description and including all property interests of every nature and description.
- (E) Written proof of age, in the form of a driver's license, a picture identification document containing the applicant's date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (F) The business name, location, legal description, mailing address and phone number of the adult entertainment center.
- (G) The name and business address of the statutory agent or other agent authorized to receive service of process.
- (H) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this article, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (I) A statement of whether the applicant has ever been convicted of a violation of any law of the United States or of any state or of the violation of any local ordinance, and if so, the dates, names of places and courts in which such convictions were obtained.
- (J) The applicant shall show a history of his residency and employment for five years immediately prior to the date of the application. If the applicant is a partnership, this information shall be furnished for all of the partners; and if a corporation, the amount of authorized capital, the amount paid in capital, whether such corporation is a subsidiary of any corporation and, if so, the name of the parent corporation, the purposes for which the corporation was incorporated and the names and addresses of all officers, directors and managing agents and the names and addresses of all stockholders holding more than five percent of the capital stock of such corporation shall be furnished.
- (K) The applicant shall state the name and address of the legal title owner of the premises for which the license is sought, and if the license is sought for a person other than the owner of the premises, the terms and conditions of the lease under which the applicant holds the possession of such premises shall be stated, insofar as the terms of the lease and the rental to be paid are concerned. The applicant shall, when required by the Board of City Commissioners, furnish to the Board a copy of the lease under which he holds possession of the premises. If the license is sought by the owner of the premises, the application shall state the time when such applicant acquired title thereto.
- (L) The applicant shall state whether the applicant has ever engaged in the form of business he is applying for prior to the date of application, and if so, the date and type of business and the place where such business was conducted shall be furnished.
- (M) The applicant shall state whether the applicant has ever had a license for such business revoked or canceled by any municipality, state or federal authority, and if so, the date of cancellation, the place and authority canceling the same and the reasons for such cancellation shall be stated.
- (N) The applicant shall state whether he or she has any interest whatsoever, directly or indirectly, in any other similar business within or without the state, and if so, the names, addresses and details concerning such establishments shall be furnished.

- (O) A statement of whether any adult entertainment center in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - 1. Been declared by a court of law to be a nuisance; or
 - 2. Been subject to a court order of closure or padlocking.
- (P) An application for an adult entertainment center license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this article shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. The City may waive the requirements of this subsection (P) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (Q) A statement to promise and agree to abide by and obey all applicable laws of the state and all applicable ordinances of the City so far as such laws or ordinances may be concerned with the operation of the licensed premises and any activities conducted thereon.

(3) *Signature.* If a person who seeks an adult entertainment center license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks an adult entertainment center license is other than an individual, each person with an influential interest in the adult entertainment center or in a legal entity that controls the adult entertainment center shall sign the application for a license as applicant. Each applicant must be qualified under this article and each applicant shall be considered a licensee if a license is granted.

(4) *Supplemental Information.* The information provided pursuant to this subsection shall be supplemented in writing by certified mail, return receipt requested, to the City within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(5) *Issuance of License.* If the City approves the special use permit application, the City may issue an applicant an adult entertainment center license, which is subject to an annual renewal pursuant to this Chapter.

(5) *Compliance.* The City shall conduct an annual review of the requirements set forth in the special use permit issued by the City to determine if applicant remains in compliance and is eligible for renewal in the event applicant chooses to seek a renewal.

Section 3.040 Fees

The fee for the special use permit application shall be set by the City fee schedule. After the issuance of the special use permit, the annual renewal license fee shall be \$2,000.00.

Section 3.050 Hours of operation

The business premises of the adult entertainment center or adult establishment that are generally open to its patrons shall be closed to its patrons from 1:00 A.M to 8:00 A.M. daily, except 12:01 A.M. on Sundays to 8:00 A.M. the following day.

Section 3.060 Location and zoning requirements

(1) Notwithstanding anything in Chapter 39 of this Code and this chapter to the contrary, an adult entertainment center shall be allowed to operate only in General Industrial (GI) or Light Industrial (LI) zoning districts and in no other zoning district, provided the center or establishment meets the conditions set forth in this Chapter as well as any additional requirements as determined through the special use permit application process.

(2) It shall be unlawful to establish, operate, or cause to be operated an adult entertainment center in the City of Dickinson, unless said adult entertainment center is at least:

ordinary restrooms or bathrooms excepted; provided that any entrance and exit to such restrooms or bathrooms is readily visible from immediately within the front entrance of the center or establishment.

(2) No member of the public shall be permitted at any time to enter into any of the non-public portions of the licensed premises, which shall include but are not limited to: the dressing rooms of entertainers or other rooms provided for the benefit of employees, the kitchen and storage areas; provided that persons delivering goods and material, food and beverages, or performing maintenance or repairs to the premises or equipment may be permitted into non-public areas to the extent necessary to perform their job duties.

(3) The following standards of conduct shall be observed and adhered to by all employees and entertainers of any center or establishment:

- a) No employee or entertainer shall be unclothed or in less than completely opaque attire so as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals.
- b) No employee shall caress, fondle, or erotically touch any member of the public. No employee or entertainer shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or entertainer.
- c) No employee or entertainer shall perform any actual or simulated act of sexual conduct as defined in this Chapter, or any act that constitutes a violation of NDCC Chapters 12.1-27.1 or 12.1-27.2, or which may otherwise be a criminal violation under North Dakota state law.
- d) No employee or entertainer shall conduct any dance, performance or exhibition in or about the non-stage area of the center or establishment for less than all members of the public present in the center or establishment.
- e) No employee or entertainer shall accept tips or gratuities in advance of their performance. No employee or entertainer shall accept tips or gratuities directly from patrons. All tips or gratuities shall be deposited in a receptacle provided by the center or establishment.
- f) The performance area where any performance, exhibition or dance where adult entertainment is provided shall be a stage or platform at least eighteen (18) inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least six (6) feet from all areas to which members of the public have access. A continuous railing at least three (3) feet high and located at least six (6) feet from all points of the performance area shall separate the performance area from the patron seating area.

Section 3.010 **Signage**

(1) An adult entertainment center shall not be permitted to display signs visible from the exterior of the premises, except non-obscene signs identifying the facility as an adult entertainment center or adult establishment as defined herein.

(2) No materials depicting specified sexual activities or specified anatomical activities shall be visible from the exterior of the center or establishment.

(3) A sign at least two feet by two feet, with letters at least one inch in height shall be conspicuously displayed in the public areas of the premises, stating as follows:

This center or establishment is regulated by the City of Dickinson. Entertainers are:

1. Not permitted to engage in any type of sexual conduct.
2. Not permitted to appear nude or semi-nude.
3. Not permitted to accept tips or gratuities in advance of their performance.
4. Not permitted to accept tips directly from patrons at any time. Tips may be deposited in the receptacle provided by this center or establishment.

Section 3.011 **Inspection**

An adult entertainment center does expressly consent that any member of the Board of City Commissioners, any police officer of the city, city planner and city attorney or any person or persons duly authorized by the Board of City Commissioners may enter upon the premises described in this application at any reasonable hour of the day or night; and at such time they shall have free access to all portions of the property comprising the licensed premises for the purpose of inspecting such premises for any possible violation of any of the laws of the state or any of the ordinances of the city, whether they pertain specifically to the operation of the business or not. Such access shall be permitted for such purposes without the necessity of a search warrant. This

section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this article, but not to authorize a harassing or excessive pattern of inspections.

Section 3.012 **Expiration and renewal 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. Such license may be renewed only by making application and payment of a fee as provided in this article.

(2) Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

Section 3.013 **Transfer of license**

A licensee shall not transfer his or her license to another, nor shall a licensee operate an adult entertainment center under the authority of a license at any place other than the address designated in the adult entertainment center license application.

Section 3.014 **Suspension and revocation of license**

(1) The City may suspend or revoke any license issued under this Chapter at any time for the following reasons:

- a) The licensee knowingly gave false information in the application for the license;
- b) The licensee knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises;
- c) The licensee knowingly or recklessly engaged in or allowed prostitution on the premises;
- d) The licensee knowingly or recklessly operated an adult entertainment center during a period of time when the license was finally suspended or revoked;
- e) The licensee knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises;
- f) The licensee knowingly or recklessly allowed a person under the age of twenty-one (21) years to consume alcohol on the premises; or
- g) The licensee has knowingly or reckless allowed a person under the age of (18) years on the premises.

(2) A license procured by fraud or misrepresentation shall be revoked. Where other violations of this Chapter or other applicable ordinances, statutes or regulations are found, the license shall be suspended for a period of thirty (30) days upon the first such violation, ninety (90) days upon the second violation within a twenty-four (24) month period and revoked for the third and subsequent violations within a twenty-four (24) month period, not including periods of suspension.

(3) When, after the notice and hearing procedure described in this article, the City revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a license or for one (1) year from the date revocation becomes effective.

Section 3.015 **Hearing procedure; appeal**

(1) The City Administrator or his or her designee shall provide at least ten days prior written notice to the licensee of the recommendation to suspend or revoke the license and the date of the hearing before the Board of City Commissioners, which must not be more than 30 days from the date of service of the notice, either by certified mail with a return receipt or by personal service upon the manager or owner of the licensed premises.

(2) Such notice shall inform the licensee of the right to a hearing before the Board of City Commissioners, the date of the scheduled hearing, and shall state the grounds for revocation and suspension.

(3) The Board of City Commissioners shall hold the hearing within 30 days of service upon the licensee and shall issue its decision within 15 days following the close of the hearing.

(4) Any person aggrieved by the decision of the Board of City Commissioners shall have a right to appeal to the district court. The decision of the Board of City Commissioners shall be stayed during the pendency of the appeal except as provided in Subsection (5) below.

(5) Where the city building official or fire chief or their designees or the city health officer find that any condition exists upon the premises of a center or establishment which constitutes a threat of immediate serious injury or damage to persons or property, said official may immediately suspend any license issued under this Chapter pending a hearing in accordance with the provisions of this section. The official shall issue notice setting forth the basis for the action and the facts that constitute a threat of immediate serious injury or damage to persons or property, and informing the licensee of the right to appeal the suspension to the Board of City Commissioners under the same appeal provisions set forth in Subsection (c) above, provided, however, that a suspension based on threat of immediate serious injury or damage shall not be stayed during the pendency of the appeal and the licensee may request an expedited hearing at the next scheduled regular meeting of the Board.

(6) Any person aggrieved by the action of the Board in refusing to issue or renew any license issued under this Chapter shall have the right to appeal such action to the district court. Pending completion of the appeal process the City shall issue a temporary license, provided the aggrieved person files a notice of appeal with the City within 30 days of notice of the refusal to issue or renew.

Section 3.016 Remedies

The city attorney is hereby authorized to institute civil proceedings necessary for the enforcement of this article to enjoin, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the city, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this article, or any of the laws in force in the city or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

Section 3.017 Severability

The provisions in this chapter are severable, and if any of the provisions, sentences, clauses or paragraphs shall be held unconstitutional, contrary to statute, exceeding the authority of the city or otherwise illegal or inoperative by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other remaining provisions, unless the court should conclude that the partial invalidation would frustrate the intent of this chapter.

Section 2: Repeal of Ordinances in Conflict. All Ordinances and parts of Ordinances in conflict herewith are hereby repealed.

Section 3: Severability. In the event any section of this Ordinance is held invalid by court of competent jurisdiction, the invalidity shall extend only to the section affected, and other sections of this Chapter shall continue in full force and effect.

Section 4: Effective Date: This Ordinance shall be in full force and effect from and after the final passage.

Scott Decker, President
Board of City Commissioners

ATTEST

Brian Winningham, City Administrator

First Reading: September 21, 2021
Second Reading: October 5, 2021
Final Passage: October 5, 2021