

## **ORDINANCE NO. 2-09**

**AN EMERGENCY ORDINANCE AMENDING TOWN OF FLEMING ORDINANCE NO. 1-74, AS AMENDED, TO ADOPT A NEW SECTION 12 CONTAINING REGULATIONS CONCERNING SEXUALLY ORIENTED BUSINESSES WITHIN THE TOWN AND AMENDING TOWN OF FLEMING ORDINANCE NO. 8 TO ADOPT A NEW ARTICLE III CONTAINING LICENSING AND OTHER REQUIREMENTS FOR SEXUALLY ORIENTED BUSINESSES.**

WHEREAS, there have been significant developments with respect to the regulation and licensing of adult theaters, adult bookstores, adult photo studios and similar sexually oriented businesses, and there have been numerous court decisions concerning such regulation and licensing of sexually oriented businesses; and

WHEREAS, the Town Council desires to revise Town of Fleming Ordinance No. 1-74, entitled "Zoning Ordinance," as amended by Ordinances Nos. 2-1988, 2-1994, 5-1995, 6-1995, 7-1996, 1-1997, 2-1997, 1-1998, and 1-1999, to incorporate provisions regarding the location and separation of, and other matters concerning, sexually oriented businesses; and

WHEREAS, the Town Council further desires to revise Town of Fleming Ordinance No. 8, entitled "To Provide for the Issuing of Licenses," to include licensing and other requirements for sexually oriented businesses; and

WHEREAS, sexually oriented businesses in the Town of Fleming, Colorado require regulation in order to protect, preserve and promote the health, safety and welfare of the citizens of the Town as well as the patrons of such businesses, through a comprehensive ordinance regulating such businesses; and

WHEREAS, the Town Council and Town Staff have received and reviewed land use studies, summaries of studies, surveys, and other documents concerning the secondary effects of sexually oriented business in the U.S. cities listed in Appendix A to this ordinance, which studies present secondary effects analogous to the anticipated secondary effects of sexually oriented businesses in the Town; and

WHEREAS, from review of such documents and testimony of its citizens and others, the Town Council finds that there is convincing evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on surrounding businesses and residential areas adjacent to them; and

WHEREAS, the Town Council finds that sexually oriented businesses have a deleterious effect on nearby public facilities, schools and public places of worship, and on the image of the Town of Fleming as an attractive residential community; and

WHEREAS, the Town Council finds that sexually oriented businesses, by their very nature, cause secondary adverse effects including crime, decreased property values, increased public safety concerns, and diminished quality of life in surrounding areas; and

WHEREAS, the Town Council finds that sexually oriented businesses, due to their nature, have significant objectionable operational characteristics, particularly when operated in close proximity to one another, thereby contributing to crime, decreased property values, increased public safety concerns, and diminished quality of life in surrounding areas; and

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

WHEREAS, the Town Council finds that increased crime and unhealthy conduct tend to accompany, concentrate around, and be aggravated by sexually oriented businesses including but not limited to prostitution; pandering; exposing minors to harmful materials; possession and distribution of obscene materials; possession and sale of controlled substances; and other crimes against persons and property; and

WHEREAS, the Town Council finds that concern over sexually transmitted diseases, including herpes, chlamydia, gonorrhea and AIDS, is a legitimate health concern of the Town that demands reasonable regulation of sexually oriented businesses in order to protect the health and well being of the citizens and patrons of sexually oriented business; and

WHEREAS, the Town Council finds because of such effects, sexually oriented businesses should not be located within areas that are within close walking distance of residential areas; within areas where minors frequent, patronize, or are expected to be; or within close proximity to residences, churches, schools, parks, and other public facilities; and

WHEREAS, the Town Council finds because of such effects, sexually oriented businesses should not be conducted as home occupations, nor should Town ordinances permitting home occupations be construed to permit sales of sexually oriented materials within residential areas; and

WHEREAS, the Town is authorized by law to enact zoning, licensing and other regulations concerning sexually oriented businesses, and finds that such zoning, licensing, and other police power regulations are legitimate and reasonable means to control the location, operation, and adverse secondary effects of sexually oriented businesses; and

WHEREAS, licensing is a legitimate and reasonable means of ensuring that operators of sexually oriented businesses comply with reasonable regulations and



ensuring that operators do not knowingly allow their businesses to be used as places for illegal activity; and

WHEREAS, the Town Council desires to minimize and control the adverse secondary effects of sexually oriented businesses, and thereby protect the health, safety and welfare of the citizens by protecting the citizens from increased crime; preserving the quality of life, property values, and character of neighborhoods and businesses; deterring the spread of blight; and protecting against the spread of sexually transmitted diseases; and

WHEREAS, the Town Council finds that locational criteria alone do not adequately protect the public health, safety and welfare, and that licensing and other requirements regarding sexually oriented businesses are in the public interest; and

WHEREAS, the Town Council finds that the licensing fees required herein are reasonably designed to defray the overall costs incurred by the Town in regulating sexually oriented businesses; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activity protected by the First Amendment or the Colorado Constitution, but instead to enact a content neutral ordinance that addresses and mitigates the adverse secondary effects of sexually oriented businesses while allowing such businesses reasonable opportunities to operate within the Town; and

WHEREAS, it is not the intent of this ordinance to condone or legitimize the distribution of obscene material, and the Town Council expects and encourages that state and local laws concerning obscenity be enforced to their full extent.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF FLEMING, COLORADO:

**Section 1.** The foregoing recitals are hereby affirmed and incorporated herein by this reference as findings of the Town Council.

**Section 2.** Section 10-03, "Definitions," of Town of Fleming Ordinance No. 1-74, as amended by Ordinances Nos. 2-1988, 2-1994, 5-1995, 6-1995, 7-1996, 1-1997, 2-1997, 1-1998, and 1-1999, is hereby amended by the addition of the following definitions to be inserted alphabetically into said section:

"Adult amusement or entertainment" means amusement or entertainment that is distinguished or characterized by an emphasis on material depicting, describing or relating to specified sexual activities or specified anatomical areas, or which features topless dancers, exotic dancers, strippers, male or female impersonators or similar entertainment.

“Adult arcade” means any commercial establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, videocassette players or similar machines, or other image-producing machines, for viewing by five or fewer persons each at any viewing, are used to show films, motion pictures, videocassettes, slides, or other photographic, digital or electronic reproductions that are characterized by the depiction, simulation or description of specified sexual activities or specified anatomical areas.

“Adult bookstore, adult novelty store, or adult video store” means a commercial establishment that devotes a significant or substantial portion of its stock-in-trade or interior floor space to, or has as one of its principal business purposes, the sale, rental or viewing, for any form of consideration, of (a) any books, magazines, periodicals or other printed matter or photographs, films, motion pictures, videocassettes, slides, or other visual representations characterized by the depiction or description of specified sexual activities or specified anatomical areas, or (b) any instruments, devices or items designed or intended for use with or in specified sexual activities.

“Adult cabaret” means a nightclub, bar, restaurant, concert hall, auditorium or other commercial establishment which features persons who appear nude or in a state of nudity or seminudity; or live performances that are characterized by the exposure of specified anatomical areas or by the exhibition of specified sexual activities.

“Adult motel” means a hotel, motel or similar commercial establishment that offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides, or other photographic productions however produced that 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 that advertises the availability of this adult type of photographic reproductions.

“Adult motion picture theater” means a commercial establishment that is distinguished or characterized by showing of films, motion pictures, videocassettes, slides, or similar photographic reproductions with an emphasis on depicting or describing specified sexual activities or specified anatomical areas that are regularly shown for any form of consideration.

“Commercial establishment,” with respect to the regulation of sexually oriented businesses, may have other principal business purposes that do not involve the depicting or describing of specified sexual activities or specified anatomical areas and still be categorized as a sexually oriented business. Such other business purposes will not serve to



exempt such commercial establishments from being categorized as a sexually oriented business so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe specified sexual activities or specified anatomical areas. The term commercial establishment includes clubs, fraternal organizations, social organizations, civic organizations or other similar organizations with paid memberships.

“Establishment of a sexually oriented business” means and includes any of the following: (a) the opening or commencement of any such business as a new business; (b) the conversion of an existing business into a sexually oriented business; (c) the addition of a different sexually oriented business to any other existing sexually oriented business; or (d) the relocation of a sexually oriented business.

“Nude model studio” means any place where a person who appears in a state of nudity or displays specified anatomical areas is provided money or any form of consideration to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons.

“Nudity” or “state of nudity” means:

- (a) The appearance of human bare buttocks, anus, male genitals, female genitals, pubic region, or the areola or nipple of the female breast; or
- (b) A state of dress which fails to opaquely and fully cover human buttocks, anus, male or female genitals, pubic region, or areola or nipple of the female breast.

“Park” means any public land that has been designated or used for any park, open space, or recreational uses or activities including but not limited to a park, playground, nature trail, swimming pool, reservoir, athletic field, basketball court, tennis court, bike or pedestrian path, open space, wilderness area, or similar land within the Town.

“Peep booth” means a room, semi-enclosure or other similar area located within a licensed premises wherein a person may view representations of specified anatomical areas or specified sexual activities.

“Photo studio, adult” means an establishment that, upon payment of a fee, provides photographic equipment and/or models for the purpose of photographing specified anatomical areas.

“Religious institution” means any church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities.

“Seminude” or “Seminudity” means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breasts, as well as portions of the body covered by supporting straps or devices.

“Sexually oriented business” means and includes an adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motion picture theater or nude model studio. The term sexually oriented business does not mean or include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional licensed by the state engages in medically approved and recognized sexual therapy.

“Specified anatomical areas” means and includes any of the following:

- (a) Less than completely and opaquely covered:
  - (1) Human genitals, pubic region,
  - (2) Buttocks, anus, or
  - (3) Female breasts below a point immediately above the top of the areola; or
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“Specified sexual activities” means and includes any of the following:

- (a) The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (c) Masturbation, actual or simulated;
- (d) Human genitals in a state of sexual stimulation, arousal, or tumescence; or



- (e) Excretory functions as part of or in connection with any of the activities set forth in subsections (a) through (d) of this definition.

“Theater, adult” means a theater, concert hall, auditorium, or similar commercial establishment that, for any form of consideration, regularly features persons who appear in a state of nudity or live performances characterized by specified sexual activities or by an emphasis on exposure of specified anatomical areas.

**Section 3.** Section 2-03(A)(3) of Town of Fleming Ordinance No. 1-74, as amended by Ordinances Nos. 2-1988, 2-1994, 5-1995, 6-1995, 7-1996, 1-1997, 2-1997, 1-1998, and 1-1999, is hereby amended to read as follows (words added are underlined):

### **2-03. Accessory Uses Permitted**

The following accessory uses are permitted in the following districts, provided that they are incidental to and on the same premises as a permitted use.

#### **(A) Low Density Residential (R-LD) and Mobile Home (R-MH)**

...

(3) Home occupations or professional activities, but conducted only by residents living on the premises and not exceeding one-quarter (1/4) of the area of one floor of the principal structure. (See Section 10-03 Definitions). The following occupation, because of its detrimental impact on the character and value of residential properties, or on the peace, tranquility, safety and quiet of a residential zone district, is prohibited as a home occupation:

(i) Sexually oriented businesses, and, irrespective of whether the use may be categorized as a sexually oriented business, no retail or wholesale sales to consumers upon the premises of any types of materials specified in this Article that describe or depict specified sexual activities or specified anatomical areas shall be permitted.

**Section 4.** Section 3-04 of Town of Fleming Ordinance No. 1-74, as amended by Ordinances Nos. 2-1988, 2-1994, 5-1995, 6-1995, 7-1996, 1-1997, 2-1997, 1-1998, and 1-1999, is hereby amended by the addition of a new subsection (H):

### 3-04. Standards Governing Conditional Uses

#### (H) Sexually Oriented Businesses.

- a. **Criteria.** The following criteria shall be considered by the approving agency when reviewing conditional use permits for sexually oriented businesses:
  - i. That the proposed use would not be contrary to the general welfare and economic prosperity of the Town or the immediate neighborhood.
  - ii. That such use will lend economic stability compatible with the character of any surrounding established areas.
  - iii. That the use will not require a level of Town facilities and services, including storm drainage facilities, sewage and water facilities, law enforcement and fire protection, greater than that available.
  - iv. That the external effects of the proposed use are controlled considering compatibility of land use; movement or congestion of traffic; the arrangement of signs and lights as to prevent the occurrence of a nuisance; landscaping and other similar features to prevent the occurrences of nuisances; landscaping and other similar features to prevent littering or accumulation of trash; and other factors deemed to affect public health, welfare, safety, and convenience.
- b. **Modifications and Conditions.** In considering conditional use permits for sexually oriented businesses, the approving agency shall consider and may impose modifications and conditions concerning, by way of illustration and not limitation, the following development features to the extent such modifications or conditions are necessary to ensure compliance with the criteria of subsection (H)(a):
  - i. Size and location of the site;
  - ii. Internal traffic circulation and access to adjoining public streets;
  - iii. Location and amount of off-street parking;
  - iv. Walls and vegetative screening;



- v. Building and bulk location;
- vi. Signs and lighting; and
- vii. Noise and other environmental influences.

**Section 5.** Town of Fleming Ordinance No. 1-74, as amended by Ordinances Nos. 2-1988, 2-1994, 5-1995, 6-1995, 7-1996, 1-1997, 2-1997, 1-1998, and 1-1999, is hereby amended by the addition of a new Section 12 to read as follows:

**Section 12 Sexually Oriented Businesses**

- 12-01. Location.
- 12-02. Sign and Display Requirements.

SECTION 12

SEXUALLY ORIENTED BUSINESSES

**12-01. Location.**

(a) Sexually oriented businesses shall be located only within the industrial (I) zoned areas located within the Town. It shall be unlawful to cause or permit the operation, establishment, or maintenance of a sexually oriented business outside of these areas.

(b) It shall be unlawful to cause or permit the operation, establishment, or maintenance of a sexually oriented business unless a conditional use permit has been obtained pursuant to Section 3 of Town of Fleming Ordinance No. 1-74, as amended by Ordinance No. 2-1994 and 2-2009, and unless the use is in compliance with such approval and all applicable regulations of the Town of Fleming ordinances.

(c) No sexually oriented business shall be established, operated or maintained within seven hundred and fifty (750) feet of:

- (1) Any school, or platted tract or lot dedicated for school purposes;
- (2) Any licensed day care facility;
- (3) Any religious institution;
- (4) Any public building;

(5) Any of the following existing dwellings:

- (i) Mobile home;
- (ii) Modular home;
- (iii) Multi-family;
- (iv) Single-family; or
- (v) Two-family.

(6) Any park; or

(7) Another sexually oriented business.

(d) The setback requirements set forth in subsections (c)(3) for religious institutions, (c)(4) for public buildings, (c)(5) for existing dwellings, (c)(6) for parks, and (c)(7) for another sexually oriented businesses shall be reduced to a distance of no less than one hundred (100) feet by the Town Council during conditional use review if the applicant presents sufficient evidence to the satisfaction of Town Council that walls or vegetative screening shall be provided along the perimeter of the sexually oriented business where needed to protect residents from undesirable views, lighting, noise, or other off-site inconsistent land use characteristics of sexually oriented businesses. Off-street parking areas and service areas for loading and unloading of other than passenger vehicles, and storage and collection of trash and garbage shall also be screened.

(e) The distance between two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business.

(f) The distance between a sexually oriented business and any religious institution, school, public building, day care facility, existing dwelling, or park shall be measured in a straight line, without regard to intervening structures or objects, from the nearest point of the building or structure used as part of the premises where the sexually oriented business is conducted, to the nearest property line of the premises of a religious institution, school, public building, day care facility, or existing dwelling, or the nearest boundary of an affected park.

(g) No more than one sexually oriented business shall be established, operated or maintained within the same building, structure, premises or portion thereof.

(h) Any sexually oriented business lawfully operating on the effective date of this ordinance that is in violation of subsection (c) of this section will be permitted to continue for a period of one (1) year from the effective date hereof.



(i) Notwithstanding the provisions of subsection (h) of this section, the Town may grant an extension of time during which a sexually oriented business in violation of subsection (c) of this section will be permitted to continue upon a showing that the owner of the business has not had a reasonable time to recover the initial financial investment in the business. No such extension of time shall be for a period greater than that reasonably necessary for the owner of the business to recover his or her initial financial investment in the business. A sexually oriented business in violation of subsection (c) of this section may continue during such extended period unless the business is sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such business shall not be enlarged, extended, or altered except that the business may be brought into compliance with this subsection.

(j) If two or more sexually oriented businesses are within seven hundred and fifty (750) feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operating at the particular location will be deemed to be in compliance with subsection (c) of this section and the later established business(es) will be deemed to be in violation of such subsection.

(k) A sexually oriented business, which at the time it received its sexually oriented business license was in compliance with the location requirements of subsection (c) of this section, does not violate that subsection if, when the sexually oriented business applies to renew its valid sexually oriented business license, a school, church, public building, day care facility, or dwelling is now located within seven hundred and fifty (750) feet of the sexually oriented business. This provision applies only to the renewal of a valid sexually oriented business license and does not apply to an application for a sexually oriented business license that is submitted as a result of the previous sexually oriented business license expiring or being revoked.

#### **12-02. Sign and display requirements.**

(a) In addition to any applicable requirements of the Town of Fleming ordinances, sexually oriented businesses shall comply with the sign and display requirements set forth in this section. In the event of conflict between this section and any other provisions of the Town of Fleming ordinances, the restrictions set forth in this section shall apply and control.

(b) Signs for sexually oriented businesses shall not contain photographs, silhouettes, drawings or pictorial representations of any type

or manner. Such signs may contain only the name of the enterprise and a phrase denoting the type of sexually oriented business by reference to the classifications set forth in this title, such as “adult arcade,” “adult bookstore,” or “adult theater.”

(c) For any adult bookstore, adult novelty shop or adult video store, there shall be presented to the licensing officer with the application required under Section 8 of Article III, Town of Fleming Ordinance No.8, a scaled floor plan showing the specific locations within the commercial establishment where the stock-in-trade describing or depicting specified sexual activities or specified anatomical areas, or designed or intended for use with or in specified sexual activities, will be displayed and sold. The plan shall also describe the method of display of such stock-in-trade.

(d) For any commercial establishment that is open for other business purposes to persons under the age of 21, the sexually oriented business shall segregate such stock-in-trade into a separate and distinct area within the establishment that may be accessed only by persons over the age of 21, and where the stock-in-trade may not readily viewed by persons outside such area regardless of age. Alternatively, such stock-in-trade need not be segregated into a separate and distinct area if any matter describing or depicting specified sexual activities or specified anatomical areas is covered by an opaque material, such as an opaque magazine, book or video sleeve, that prevents viewing of such matter by persons under the age of 21. It is the specific intent of this section to require that adult books, magazines, videos, and novelty items, and any other adult materials displayed in the establishment, either be displayed only in areas not accessible to persons under the age of 21, or be displayed only after matter describing or depicting specified sexual activities or specified anatomical areas is first shielded from view by opaque covering.

**Section 6.** Town of Fleming Ordinance No. 8 is hereby amended by the addition of a new Article III to read as follows:

### **ARTICLE III**

#### **Sexually Oriented Businesses**

Section 1	Purpose and intent.
Section 2	Definitions.
Section 3	Exemptions.
Section 4	Unlawful acts.
Section 5	License fees.
Section 6	Inspection.
Section 7	Sexually oriented business license required.
Section 8	Application for sexually oriented business license.
Section 9	Duty to supplement application.
Section 10	Investigation of application.



Section 11	Issuance of sexually oriented business license.
Section 12	Manager's license required; change of manager.
Section 13	Application for manager's license.
Section 14	Interior lighting regulations.
Section 15	Stage required in adult cabaret and adult theater.
Section 16	Conduct in sexually oriented business.
Section 17	Employee tips.
Section 18	Regulation of peep booths.
Section 19	Hours of operation.
Section 20	Minimum age.
Section 21	Expiration of sexually oriented business license.
Section 22	Suspension of sexually oriented business license.
Section 23	Revocation of sexually oriented business license.
Section 24	Suspension or revocation hearing.
Section 25	Transfer of sexually oriented business license.
Section 26	Expiration of manager's license.
Section 27	Suspension of manager's license.
Section 28	Revocation of manager's license.
Section 29	Suspension or revocation hearing.
Section 30	Notice.
Section 31	Judicial review.

### ARTICLE III

#### SEXUALLY ORIENTED BUSINESSES

##### **Section 1. Purpose and intent.**

The purpose and intent of this Article is to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town, thereby reducing or eliminating the adverse secondary effects from such sexually oriented businesses. The provisions of this Town are not intended to impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is not the intent of this Town to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or the Colorado Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this section to condone or legitimize the distribution of obscene material.

## **Section 2. Definitions.**

Words, terms and phrases with definitions, as used in this Article shall have the meanings set forth in this Section 2 and Section 10-03, "Definitions," of Town of Fleming Ordinance No. 1-74, as amended by Ordinances Nos. 2-1988, 2-1994, 5-1995, 6-1995, 7-1996, 1-1997, 2-1997, 1-1998, 1-1999, and 2-2009. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this Article except where the context clearly indicates a different meaning:

"Employee" means a person who works or performs in and/or for a sexually oriented business, regardless of whether or not said person is paid a salary, wage, or other compensation by the operator of said business.

"Licensee" means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a sexually oriented business license.

"Licensing officer" means the Town Clerk or his or her designee.

"Manager" means an operator, other than a licensee, who is employed by a sexually oriented business to act as a manager or supervisor of employees or is otherwise responsible for the operation of the business.

"Operator" means and includes the owner, license holder, custodian, manager, operator, or person in charge of any licensed premises.

"Person" means and includes an individual, partnership, corporation, association, unincorporated organization, trust or any other legal or commercial entity including a joint venture or affiliated ownership.

"Premises or licensed premises" means any premises that requires a sexually oriented business license and that is classified as a sexually oriented business, including parking lots and sidewalks immediately adjacent to the structure containing the sexually oriented business.

"Principal owner" means any person owning, directly or indirectly, ten (10) percent or more of the ownership interests in the entity.

"Specified criminal acts" means sexual crimes against children, sexual abuse, sexual assault, or crimes connected with another sexually oriented business including, but not limited to, distribution of obscenity, prostitution, or pandering.



“Transfer of ownership or control of a sexually oriented business” means and includes any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (c) The establishment of a trust, management arrangement, gift or other similar legal device which transfers ownership or control of the business, including a transfer by bequest or operation of law.

### **Section 3. Exemptions.**

The provisions of this Article regulating nude model studios do not apply to:

- (a) A college, junior college, or university supported entirely or partly by taxation;
- (b) A private college or university that maintains and operates educational programs for which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (c) A business located in a structure which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and where no more than one nude model is on the premises at any one time.

### **Section 4. Unlawful acts.**

It shall be unlawful for a licensee, manager or employee to violate any of the requirements of this Article or to knowingly permit any patron to violate the requirements of this Article.

### **Section 5. License fees.**

- (a) The annual fee for a sexually oriented business license is \$200.00.
- (b) The annual manager’s license fee is \$50.00.

(c) An applicant for a sexually oriented business license shall pay a nonrefundable application fee of \$500.00 at the time of filing an application.

#### **Section 6. Inspection.**

(a) An applicant or licensee or manager shall permit representatives of the licensing officer, zoning administrator, maintenance superintendant, law enforcement personnel, the county health department and the fire department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business.

(b) It shall be unlawful for any person, applicant, licensee, or manager who operates a sexually oriented business or his or her agent to refuse to permit such lawful inspection of the premises at any time that it is occupied or open for business.

#### **Section 7. Sexually oriented business license required.**

(a) No sexually oriented business license shall be issued for any sexually oriented business located within any area of the Town except for Industrial (I) zoned areas.

(b) No person shall operate a sexually oriented business without first having obtained a valid type A or type B sexually oriented business license issued by the Town.

(1) A type A sexually oriented business license shall be required for sexually oriented businesses where alcoholic beverages or alcoholic liquors, as defined by the Colorado Liquor Code and/or fermented malt beverages, as defined by the Colorado Beer Code, are allowed pursuant to a valid license issued by the Town.

(2) A type B sexually oriented business license shall be required for all sexually oriented businesses where alcoholic beverages or alcoholic liquors, as defined by the Colorado Liquor Code and/or fermented malt beverages, as defined by the Colorado Beer Code, are not allowed.

(c) It shall be unlawful to operate or cause to be operated a sexually oriented business when said person knows or reasonably should know that:



(1) The business does not have a sexually oriented business license;

(2) The business has a sexually oriented business license that is under suspension;

(3) The business has a sexually oriented business license that has been revoked; or

(4) The business has a sexually oriented business license that has expired.

**Section 8. Application for sexually oriented business license.**

(a) The licensing officer is responsible for granting, denying, revoking, renewing, and suspending sexually oriented business licenses for proposed or existing sexually oriented businesses.

(b) The licensing officer is authorized to consult the appropriate law enforcement officer to obtain information on whether an applicant has been convicted of a specified criminal act during the time periods set forth in Section 11(c)(9).

(c) Any person desiring to operate a sexually oriented business shall file with the licensing officer an original and two (2) copies of a sworn sexually oriented business license application on the standard application form supplied by the licensing officer.

(d) The completed application shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is an individual, the individual shall state his or her legal name and any aliases, and submit satisfactory proof that he or she is twenty-one (21) years of age or older in the case of a type A sexually oriented business license or eighteen (18) years of age or older in the case of a type B sexually oriented business license.

(2) If the applicant is a legal entity, the application shall state its complete name, the date and place of its organization, evidence that it is in good standing under the laws of the state in which it is organized, and if it is organized under the laws of a state other than Colorado, that it is registered to do business in Colorado, the names and capacity of all officers, directors, managers, and principal owners, and the name of the registered

agent and the address of the registered agent for service of process, if any.

(3) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the sexually oriented business' fictitious name must be stated.

(4) Whether the applicant or any of the other individuals listed pursuant to subsections (d)(1) or (d)(2) of this section have been convicted of a specified criminal act within the times set forth in Section 11(c)(9), and if so, the specified criminal act involved, the date of conviction and the place of conviction.

(5) Whether the applicant or any of the other individuals listed pursuant to subsections (d)(1) or (d)(2) of this section has had a previous license under this or other sexually oriented business ordinance from another city, city or county denied, suspended, or revoked and, if so, the name of the city, city or county where the license was previously denied, suspended or revoked, and the name and location of the sexually oriented business for which the license was denied, suspended, or revoked, as well as the date of the denial, suspension or revocation.

(6) Whether the applicant or any other individuals listed pursuant to subsection (d)(1) or (d)(2) of this section has been a partner in a partnership or a principal owner of a corporation or other legal entity whose license has previously been denied, suspended, or revoked and, if so, the name of the city, city or county where the license was previously denied, suspended or revoked, and the name and location of the sexually oriented business for which the license was denied, suspended, or revoked, as well as the date of denial, suspension, or revocation.

(7) Whether the applicant or any other individual listed pursuant to subsections (d)(1) or (d)(2) of this section holds any other licenses under this Article or other sexually oriented business ordinance from another city, city or county and, if so, the name of such city, city or county, and names and locations of such other licensed businesses.

(8) The location of the proposed sexually oriented business including a legal description of the property, street address, and telephone number(s).

(9) Proof of the applicant's right to possession of the premises wherein the sexually oriented business will be conducted.



(10) The applicant's mailing address and residential address.

(11) A sketch or diagram showing the configuration of the premises including a statement of total floor space occupied by the business, and if applicable, the plan required by Section 12-02(c) of Fleming Ordinance No. 1-74. The sketch or diagram need not be professionally prepared, but it must be oriented to the north or to some designated street or object and 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. The licensing officer may waive the foregoing diagram or plan for renewal applications if the applicant adopts a diagram or plan that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared. If the sexually oriented business has or will have a peep booth or booths, the sketch shall show the locations and dimensions of any manager's stations and demonstrate that there is an unobstructed view from one or more of the manager's station(s) of every area of the premises to which any patron is permitted access, excluding restrooms. The floor plan shall designate those rooms or other areas of the premises where patrons are not permitted and shall also designate the use of each room or other area of the premises.

(12) A current certificate and straight-line drawing prepared within thirty (30) days prior to an initial application by a Colorado registered land surveyor depicting: (i) the property lines and the structures of the property to be certified; and (ii) the location of the property lines of any school, or platted tract or lot dedicated for school purposes, any church, dwelling, or another sexually oriented business within seven hundred and fifty (750) feet of the property to be certified. For purposes of this section, a use or platted tract or lot shall be considered existing or established if it is in existence or pending at the time an application is submitted.

(13) If a person who wishes to operate a sexually oriented business is an individual, he or she must sign the application for a sexually oriented business license as the applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each principal owner of the applicant must sign the application for a sexually oriented business license as applicant.

(e) In the event that the licensing officer determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business, he or she shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. The time period for granting or denying a sexually oriented business license shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.

(f) The fact that a person possesses other types of state or Town licenses does not exempt him or her from the requirement of obtaining a sexually oriented business license.

#### **Section 9. Duty to supplement application.**

(a) Applicants for a sexually oriented business license and licensees shall have a continuing duty to promptly supplement any application information required by this Article in the event that said information changes in any way from what is stated on the application.

(b) The failure to comply with said continuing duty to supplement an application within thirty (30) days from the date of such change shall be grounds for denial of an application or suspension of a sexually oriented business license.

#### **Section 10. Investigation of application.**

(a) Upon receipt of an application for a sexually oriented business license properly filed with the licensing officer and upon payment of the nonrefundable application fee, the licensing officer shall immediately stamp the application as received and send copies of the application to the zoning administrator and the appropriate law enforcement officer. The zoning administrator and law enforcement officer, or their respective designees, shall promptly conduct an investigation of the applicant, application, and the proposed sexually oriented business in accordance with this Article. Investigations shall be completed within twenty (20) days of receipt of the application by the licensing officer. At the conclusion of their investigations, the zoning administrator shall indicate on the copy of the application his or her approval or disapproval of the application, date it, sign it, and in the event of disapproval, state the reasons therefor. The law enforcement officer shall only be required to provide the information specified in Section 8(b) of this Article, and shall not approve or disapprove applications.

(b) The zoning administrator may disapprove an application if he or she finds that the proposed sexually oriented business will be or is in



violation of any provision of any statute, code, ordinance, regulation, or other law in effect in the Town. After their investigations and review, the zoning administrator and law enforcement officer shall each immediately return the copy of the application to the licensing officer.

**Section 11. Issuance of sexually oriented business license.**

(a) The licensing officer shall grant or deny an application for a sexually oriented business license within thirty (30) days from the date of its proper filing. Upon the expiration of the thirty (30) days, the applicant shall be licensed to begin operating the business for which the sexually oriented business license is sought, unless and until the licensing officer notifies the applicant of a denial of the application and states the reason(s) for that denial.

(b) The licensing officer shall grant the sexually oriented business license unless one or more of the criteria set forth in subsection (c) below is present. The sexually oriented business license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at any time.

(c) The licensing officer shall deny the application for any of the following reasons:

(1) An applicant is under twenty-one (21) years of age in the case of an application for a type A sexually oriented business license or under eighteen (18) years of age in the case of an application for a type B sexually oriented business license.

(2) An applicant is overdue on his or her payments to the Town of taxes, fees, fines, or penalties assessed against or imposed upon him or her in relation to a sexually oriented business.

(3) An applicant has failed to provide information required by this section for the issuance of the sexually oriented business license or has falsely answered a question or request for information on the application form and has refused to provide corrected information.

(4) The premises to be used for the sexually oriented business have been disapproved by an inspecting agency.

(5) The application or sexually oriented business license fees have not been paid.

(6) An applicant for the proposed business is in violation of or is not in compliance with any of the provisions of this Article.

(7) The granting of the application would violate a statute, ordinance, or court order.

(8) The applicant has a sexually oriented business license under this section that has been suspended or revoked within the previous twelve (12) months.

(9) An applicant has been convicted of a specified criminal act or acts for which:

- a. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense;
- b. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; or
- c. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanors.

The fact that a conviction is being appealed shall have no effect on disqualification of the applicant. An applicant who has been convicted of a specified criminal act or acts may qualify for a sexually oriented business license only when the time period required above has elapsed.

(10) If the licensing officer denies the application, he or she shall notify the applicant of the denial and state the reason(s) for the denial. A copy of such denial shall be forwarded to the town attorney.



**Section 12. Manager's license required; change of manager.**

(a) A manager or designee shall be on the premises of a sexually oriented business at all times during operation. It shall be unlawful for any person to work as a manager of a sexually oriented business without first obtaining a manager's license.

(b) In the event a manager ceases to be employed at the premises listed in his or her application, the manager shall immediately report such change to the licensing officer within ten days of such change.

**Section 13. Application for manager's license.**

(a) A manager shall submit an application for a manager's license on a form to be provided by the licensing officer. The application shall contain the applicant's name, address, date of birth, telephone number, address, the name(s) and address(es) of the sexually oriented business(es) that manager proposes to manage and the information required in Section 8.

(b) The appropriate law enforcement officer shall conduct an investigation of the applicant to determine if the applicant has been convicted of a specified criminal act within the times set forth in Section 11(c)(9).

(c) The licensing officer shall grant the application (10) days of its filing unless:

(1) The applicant is under the age of twenty-one (21) in the case of a type A sexually oriented business license or under the age of eighteen (18) in the case of a type B sexually oriented business license;

(2) The applicant has failed to provide the information required by this section;

(3) The license fee has not been paid; or

(4) The applicant has been convicted of a specified criminal act within the times set forth in Section 11(c)(9).

**Section 14. Interior lighting regulations.**

(a) The interior portion of the premises of a sexually oriented business to which patrons are permitted access shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place

(including peep booths) at an illumination of not less than five (5.0) foot candles as measured at the floor level.

(b) It shall be the duty of the licensee and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

**Section 15. Stage required in adult cabaret and adult theater.**

Any adult cabaret or adult theater shall have one or more separate areas designated as a stage in the diagram submitted as part of the application for the sexually oriented business license. Entertainers shall perform only upon the stage. The stage shall be fixed and immovable. No seating for the audience shall be permitted within three (3) feet of the edge of the stage. No members of the audience shall be permitted upon the stage or within three (3) feet of the edge of the stage.

**Section 16. Conduct in sexually oriented business.**

(a) No licensee, manager or employee mingling with the patrons of a sexually oriented business, or serving food or drinks, shall be in a state of nudity. It is a defense to prosecution for a violation of this subsection that an employee of a sexually oriented business exposed any specified anatomical area only during the employee's bona fide use of a restroom or during the employee's bona fide use of a dressing room that is accessible only to employees.

(b) No licensee, manager or employee shall encourage or knowingly permit any person upon the premises to touch, caress, or fondle the breasts, anus, or specified anatomical areas of any person.

(c) An adult bookstore, adult novelty shop and adult video store shall be operated in compliance with Section 12-02(c) of Ordinance No. 1-1974, as amended by Ordinances Nos. 2-1988, 2-1994, 5-1995, 6-1995, 7-1996, 1-1997, 2-1997, 1-1998, 1-1999, and 2-2009.

**Section 17. Employee tips.**

(a) It shall be unlawful for any employee of a sexually oriented business to receive tips from patrons except as set forth in subsection (c) of this section.

(b) A licensee that desires to provide for tips from its patrons shall establish one or more boxes or other containers to receive tips. All tips for such employees shall be placed by the patron of the sexually oriented business into the tip box.



(c) A sexually oriented business that provides tip boxes for its patrons as provided in this section shall post one or more signs to be conspicuously visible to the patrons on the premises, in bold letters at least one inch high to read as follows: "All tips are to be placed in the tip box and not handed directly to employees. Any physical contact between a patron and employees is strictly prohibited."

#### **Section 18. Regulation of peep booths.**

(a) It shall be unlawful for a person who operates or causes to be operated a sexually oriented business with peep booths to violate the requirements of this section.

(b) At least one employee must be on duty and situated at each manager's station at all times that any patron is present inside the premises. The interior of the premises shall be configured in such a manner that such employee shall be clearly visible from every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. If the premises has two (2) 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 the employee from at least one of the managers' stations from each area of the premises to which any patron is permitted access for any purpose. The view required in this subsection must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any opaque coverings, two-way mirrors, doors, walls, merchandise, display racks, or other materials at all times, and no patron shall be permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Section 8.

(c) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video display equipment. If the premises has two (2) 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 managers' stations. The view required in this subsection must be by direct line of sight from the manager's station. The view area shall remain unobstructed by any opaque coverings, two-way mirrors, doors, walls, merchandise, display racks, or other materials at all times, and no patron shall be 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 8.

(d) No peep booth may be occupied by more than one person at any one time.

(e) No door, two-way mirror, screen, opaque covering or other covering shall be placed or allowed to remain on any peep booth, and no holes or openings shall be placed or allowed to remain in the wall between any two (2) adjacent peep booths.

**Section 19. Hours of operation.**

It shall be unlawful for a sexually oriented business to be open for business or for the licensee, manager or any employee of a licensee to allow patrons upon the licensed premises during the following time periods:

(a) On any Tuesday through Saturday from 2:00 a.m. until 7:00 a.m.;

(b) On any Monday, other than a Monday which falls on January 1, from 12:00 a.m. until 8:00 a.m.;

(c) On any Sunday from 2:00 a.m. until 8:00 a.m.;

(d) On any Monday which falls on January 1 from 2:00 a.m. until 7:00 a.m.

**Section 20. Minimum age.**

(a) It shall be unlawful for any person under the age of eighteen (18) years to be upon the premises of a sexually oriented business.

(b) It shall be unlawful for the licensee, manager or any employee of the licensee to allow anyone under the age of eighteen (18) years to be upon the premises of a sexually oriented business.

**Section 21. Expiration of sexually oriented business license.**

(a) Each sexually oriented business license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 8 (for renewals, filing of original survey shall be sufficient) of this section. Application for renewal of a sexually oriented business license shall be made at least thirty (30) days before the expiration date of the sexually oriented business license.



(b) If, subsequent to denial of renewal the licensing officer finds that the basis for denial of the renewal of the sexually oriented business license has been corrected, the applicant shall be granted a sexually oriented business license if no more than ninety (90) days have elapsed since the date denial became final.

**Section 22. Suspension of sexually oriented business license.**

(a) The licensing officer may suspend a sexually oriented business license for a period not to exceed one hundred fifty (150) days if he or she determines that a licensee or an employee of a licensee has:

(1) Violated or is not in compliance with any section of this Article or any other section of this Ordinance regulating sexually oriented businesses; or

(2) Refused to allow an inspection of the sexually oriented business premises as authorized by this Article; or

(3) Knowingly allowed repeated disturbances of public peace to occur within the licensed establishment or upon the premises of the licensed establishment involving patrons, employees, or the licensee; or

(4) Operated the sexually oriented business in violation of a building, fire, health, or zoning code, ordinance, or regulation whether federal, state, or local, said determination being based on investigation by the department, division, or agency charged with enforcing said rules or laws. In the event of such a statute, code, ordinance, or regulation violation, the licensing officer shall promptly notify the licensee of the violation and shall allow the licensee a twenty (20) day period in which to correct the violation. If the licensee fails to correct the violation before the expiration of the twenty (20) day period, the licensing officer shall forthwith suspend the sexually oriented business license and shall notify the licensee of the suspension; or

(5) Operated the sexually oriented business in violation of the hours of operation provisions set forth in this Article; or

(6) Transferred a sexually oriented business license contrary to the provisions of this Article. In the event of such suspension, the licensing officer shall forthwith notify the original licensee and the transferee of the suspension. The suspension shall remain in effect until the applicable section of this Article has been satisfied.

(b) The suspension shall remain in effect until and including the last day in the licensing officer's order and the violation of the statute, code, ordinance, or regulation in question has been corrected.

**Section 23. Revocation of sexually oriented business license.**

(a) The licensing officer may revoke a sexually oriented business license upon determining that:

(1) A cause of suspension as set forth in this Article occurred and the sexually oriented business license has been suspended within the preceding twelve (12) months; or

(2) A licensee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a sexually oriented business license; or

(3) A licensee, manager or an employee has knowingly allowed possession, use, or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises; or

(4) A licensee, manager or an employee has knowingly allowed acts of prostitution or negotiations for acts of prostitution on the premises; or

(5) A licensee, manager or an employee knowingly operated the sexually oriented business during a period of time when the licensee's sexually oriented business license was suspended; or

(6) A licensee has been convicted of a specified criminal act for which the time period set forth in Section 11(c)(9) has not elapsed; or

(7) On two (2) or more occasions within a twelve (12) month period, a person or persons committed an offense, occurring in or on the licensed premises constituting a specified criminal act for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the sexually oriented business license; or



(8) A licensee is delinquent in payment to the Town or state for any taxes or fees; or

(9) A licensee, manager or an employee has knowingly allowed any specified sexual activity to occur in or on the licensed premises; or

(10) The licensee has operated more than one sexually oriented business within the same building, structure, or portion thereof.

(b) When the licensing officer revokes a sexually oriented business license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective.

#### **Section 24. Suspension or revocation hearing.**

(a) A licensee shall be entitled to a hearing before the licensing officer if the Town seeks to suspend or revoke his or her sexually oriented business license based on a violation of this Article or any other section of the Fleming ordinances regulating sexually oriented businesses. The business may continue to operate during the hearing process.

(b) When there is probable cause to believe that a cause for suspension or revocation exists, the Town attorney may file a written complaint with the licensing officer setting forth the circumstances of the alleged violation.

(c) The licensing officer shall provide a copy of the complaint to the licensee, together with notice to appear before the licensing officer for the purpose of a hearing on a specified date to show cause why the licensee's sexually oriented business license should not be suspended or revoked.

(d) At the hearing, the licensing officer shall hear such statements and consider such evidence as the law enforcement personnel, or other enforcement officers, the owner, occupant, lessee, or other party in interest, or any other witness shall offer that is relevant to the violation alleged in the complaint. The licensing officer shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the licensing officer determines that a cause for suspension or revocation exists, he or she shall issue an order suspending or revoking the sexually oriented business license within thirty (30) days after the hearing is concluded based on the

findings of fact. A copy of the order shall be mailed to or served on the licensee at the address on the license.

(e) The order of the licensing officer made pursuant to subsection (d) above shall be a final decision and may be appealed to the district court pursuant to Colorado Rules of Civil Procedure 106(a)(4). Failure of a licensee to timely appeal said order constitutes a waiver by him or her of any right he or she may otherwise have to contest the suspension or revocation of the sexually oriented business license.

(f) The licensing officer shall have the power to administer oaths, issue subpoenas, and when necessary grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing which the licensing officer conducts. It is unlawful for any person to fail to comply with any subpoena issued by the licensing officer. A subpoena shall be served in the same manner as a subpoena issued by the district court of the State of Colorado.

(g) All hearings held before the licensing officer regarding suspension or revocation of a sexually oriented business license issued under this ordinance shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the licensing officer, and shall pay all costs of preparing such record.

(h) In the event of suspension, revocation, or cessation of business, no portion of the sexually oriented business license fee shall be refunded.

## **Section 25. Transfer of sexually oriented business license.**

(a) A licensee shall not operate a sexually oriented business under the authority of a sexually oriented business license at any place other than the address designated in the application for sexually oriented business license.

(b) A licensee shall not transfer his or her sexually oriented business license to another person unless and until such other person satisfies the following requirements:

(1) Obtains an amendment to the sexually oriented business license from the licensing officer which provides that he or she is now the licensee, which amendment may be obtained only if he or she has completed and properly filed an application with



the licensing officer setting forth the information called for under Section 8; and

(2) Pays a transfer fee of twenty (20) percent of the annual sexually oriented business license fee.

(c) No sexually oriented business license may be transferred when the licensing officer has notified the licensee that suspension or revocation proceedings have been or will be brought against the licensee.

(d) Any attempt to transfer a sexually oriented business license either directly or indirectly in violation of this section is hereby declared void.

#### **Section 26. Expiration of manager's license.**

(a) Each manager's license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 13. Application for renewal of a manager's license shall be made at least thirty (30) days before the expiration date of the manager's license.

(b) If, subsequent to denial of renewal, the licensing officers finds that the basis for denial of the renewal of the manager's license has been corrected, the applicant shall be granted a manager's license if no more than ninety (90) days have elapsed since the date denial became final.

#### **Section 27. Suspension of manager's license.**

(a) The licensing officer may suspend a manager's license for a period not to exceed ninety (90) days if he or she determines that the manager has:

- (1) Violated or is not in compliance with any section of this Article; or
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this Article; or
- (3) Knowingly allowed repeated disturbances of public peace to occur within the licensed establishment or upon the premises of the licensed establishment involving patrons, employees, or the licensee; or

- (4) Operated the sexually oriented business in violation of the hours of operation provisions set forth in this Article.

(b) The suspension shall remain in effect until and including the last day in the licensing officer's order and the violation of the statute, code, ordinance, or regulation in question has been corrected.

**Section 28. Revocation of manager's license.**

(a) The licensing officer may revoke a sexually oriented business manager's license upon determining that:

(1) A cause of suspension as set forth in this Article occurred and the sexually oriented business manager's license has been suspended within the preceding twelve (12) months; or

(2) A licensee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a manager's license; or

(3) The manager knowingly allowed possession, use, or sale of controlled substances (as defined in Part 3 of Article 22 of Title 12, C.R.S.) on the premises; or

(4) The manager knowingly allowed acts of prostitution or negotiations for acts of prostitution on the premises; or

(5) The manager knowingly operated the sexually oriented business during a period of time when the sexually oriented business license was suspended; or

(6) The manager has been convicted of a specified criminal act for which the time period set forth in Section 11(c)(9) has not elapsed; or

(7) The manager has knowingly allowed any specified sexual activity to occur in or on the licensed premises; or

(8) The manager has knowingly allowed more than one sexually oriented business to be operated within the same building, structure, or portion thereof.

(b) When the licensing officer revokes a manager's license, the revocation shall continue for one year and the licensee shall not be issued



a manager's license for one year from the date revocation became effective.

**Section 29. Suspension or revocation hearing.**

(a) A manager shall be entitled to a hearing before the licensing officer if the Town seeks to suspend or revoke the manager's license based on a violation of this Article or any other section of this Code regulating sexually oriented businesses. The manager may continue to manage a sexually oriented business during the hearing process.

(b) When there is probable cause to believe that a cause for suspension or revocation exists, the Town attorney may file a written complaint with the licensing officer setting forth the circumstances of the alleged violation.

(c) The licensing officer shall provide a copy of the complaint to the licensee, together with notice to appear before the licensing officer for the purpose of a hearing on a specified date to show cause why the licensee's license should not be suspended or revoked.

(d) At the hearing, the licensing officer shall hear such statements and consider such evidence as the law enforcement personnel, or other enforcement officers, the owner, employer, occupant, lessee, or other party in interest, or any other witness shall offer which is relevant to the violation alleged in the complaint. The licensing officer shall make findings of fact from the statements and evidence offered as to whether the violation occurred in or near the licensed establishment. If the licensing officer determines that a cause for suspension or revocation exists, he or she shall issue an order suspending or revoking the manager's license within thirty (30) days after the hearing is concluded based on the findings of fact. A copy of the order shall be mailed to or served on the licensee at the address on the license.

(e) The order of the licensing officer made pursuant to subsection (d) above shall be a final decision and may be appealed to the district court pursuant to the Colorado Rules of Civil Procedure 106(a)(4). Failure of a licensee to timely appeal said order constitutes a waiver by him or her of any right he or she may otherwise have to contest the suspension or revocation of the manager's license.

(f) The licensing officer shall have the power to administer oaths, issue subpoenas, and, when necessary, grant continuances. Subpoenas may be issued to require the presence of persons and production of papers, books, and records necessary to the determination of any hearing the licensing officer conducts. It is unlawful for any person to

fail to comply with any subpoena issued by the licensing officer. A subpoena shall be served in the same manner as a subpoena issued by the district court of the State of Colorado.

(g) All hearings held before the licensing officer regarding suspension or revocation of a manager's license issued under this ordinance shall be recorded stenographically or by electronic recording device. Any person requesting a transcript of such record shall post a deposit in the amount required by the licensing officer, and shall pay all costs of preparing such record.

(h) In the event of suspension, revocation, or cessation of business, no portion of the manager's license fee shall be refunded.

### **Section 30. Notice.**

Any notice required by this Article shall be deemed sufficient if it is deposited in first class mail, postage pre-paid, to the address on the application and shall be effective upon mailing.

### **Section 31. Judicial review.**

After denial of an application, or denial of a renewal of an application, or suspension or revocation of a license, such act shall be a final decision. Therefore, the applicant or licensee may seek judicial review of such administrative action pursuant to the Colorado Rules of Civil Procedure. The court shall promptly review such administrative action.

**Section 7.** If any portion of this ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Council hereby declares that it would have passed this ordinance and each part hereof irrespective of the fact that any one part be declared invalid.

**Section 8.** The repeal or modification of any provision of the Town of Fleming ordinances by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

**Section 9.** Any person who violates any provision of this Ordinance shall be punished by a fine of not more than \$300.00 or by imprisonment not to exceed ninety



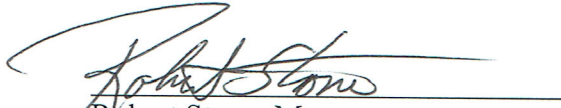
(90) days or both such fine and imprisonment. Each day during any portion of which any violation of any provision of this ordinance is committed, continued, or permitted by any such person shall be a separate offense.

**Section 10.** All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

**Section 11.** The Town Council herewith finds, determines, and declares that this ordinance is necessary to the immediate preservation of public property, health, welfare, peace, or safety. Pursuant to C.R.S. § 31-16-105 this ordinance shall be effective upon adoption.

**INTRODUCED, READ, ADOPTED, APPROVED BY AT LEAST THREE-FOURTHS OF THE TOWN COUNCIL, AND ORDERED PUBLISHED IN FULL this 26<sup>th</sup> day of February, 2009.**

TOWN OF FLEMING, COLORADO

  
Robert Stone, Mayor

ATTEST:

  
Kim Harms, Town Clerk

## **APPENDIX A**

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