

## **SECTION 45 – SEXUALLY ORIENTED BUSINESS ZONING REGULATIONS**

### **45.1 PURPOSE AND INTENT**

45.1.1 It is the purpose of these Sexually Oriented Business Zoning Regulations to regulate Sexually Oriented Businesses to promote the health, safety, and general welfare of the citizens of Sarpy County (“County”), and to establish reasonable and uniform regulations for Sexually Oriented Businesses within the County. The provisions of these Sexually Oriented Business Zoning Regulations have neither the purpose nor effect of: imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials; restricting or denying access by adults to sexually oriented materials protected by the First Amendment; denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market; or imposing a limitation or restriction on exercises of free speech that are protected by the First Amendment.

45.1.2 The findings contained in the preamble of these Sexually Oriented Business Zoning Regulations are determined to be true and correct and are adopted as part of these Sexually Oriented Business Zoning Regulations.

### **45.2 TITLE**

This Section of the Sarpy County Zoning Regulations shall be known and cited as the “Sarpy County Sexually Oriented Business Zoning Regulations.”

### **45.3 SEVERABILITY**

45.3.1 If any word, phrase, sentence, part, section, subsection, or other portion of these Sexually Oriented Business Zoning Regulations or any application thereof to any entity or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remainder of these Sexually Oriented Business Zoning Regulations, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

45.3.2 A Sexually Oriented Business Special Use Permit issued under these Sexually Oriented Business Zoning Regulations shall be comprehensive and not severable. If part of a Sexually Oriented Business Special Use Permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the Sexually Oriented Business Special Permit shall be void in total.

### **45.4 DEFINITIONS**

For purposes of these Sexually Oriented Business Zoning Regulations, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in these Sexually Oriented Business Zoning Regulations. In addition, when not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include words in the plural number. The word “shall” is always mandatory, and not merely directory.

**Adult arcade** means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

**Adult cabaret** means a nightclub, bar, restaurant, or similar commercial establishment which regularly features persons who appear in a state of nudity; or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

**Adult motel** means a motel, hotel, or similar commercial establishment which: (i) offers public accommodations for any form of consideration, and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, or (ii) offers a sleeping room for rent for a period of time less than ten (10) hours; or (iii) allows a tenant or occupant to sub-rent a sleeping room for a time period of less than ten (10) hours.

**Adult motion picture theater** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

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

**Employee, Employ, and Employment** describes and pertains to any person who performs any service on the premises of a Sexually Oriented Business on a full-time, part-time, or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. For purposes of these Sexually Oriented Business Zoning Regulations only, "employee" does not include a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises.

**Entity** means a person, proprietorship, trust, partnership, corporation, company, association, or other legal entity.

**Escort** means a person who, for any form of consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person or persons.

**Escort agency** means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or any other form of consideration.

**Establish, Establishing, or Establishment** means and includes any of the following: the operation of any Sexually Oriented Business as a new business; the conversion of any existing business, whether or not a Sexually Oriented Business, to any Sexually Oriented Business; the addition of any Sexually Oriented Business to any other existing Sexually Oriented Business; or the relocation of any Sexually Oriented Business.

**Media, sexually oriented** means magazines, books, videotapes, movies, slides, CD's, DVD's or other medium used to record images, or other media which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas."

**Media store, sexually oriented** means an establishment that rents and/or sells sexually oriented media, and that meets any of the following three tests: (i) more than 40% of the gross floor area is devoted to sexually oriented media; (ii) more than 40% of the stock in trade consists of sexually oriented media; or (iii) the business advertises or holds itself out in any forum as a "XXX," "adult" or "sex" business, or otherwise as a sexually oriented business, other than sexually oriented media outlet, sexually oriented motion picture theater, or sexually oriented cabaret.

**Nude or Seminude Model(ing) Studio** means a commercial establishment which regularly features a person who appears in a state of nudity or semi-nudity and is provided to be observed, sketched, drawn, painted, sculpted, or photographed by other persons who pay money or any other form of consideration. "Nude or Seminude Model(ing) Studio" shall not include a proprietary school licensed by the State of Nebraska; or a college or junior college or university supported entirely or in part by public taxation; or a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

**Nudity or a state of nudity** means the exposure, with less than a fully opaque covering, of the human male genital area, female genital area, buttocks, nipple of the female breast, or areola of the female breast.

**Planning and Building Director** means the Planning and Building Director of the County or his or her designated agent and/or deputy.

**Planning Commission** means the Sarpy County Planning Commission.

**Public park** means a tract of land maintained by or at the direction of federal, state, or a local government for the recreational use and enjoyment of the general public.

**Public library** means a nonprofit library maintained for public use.

**Public place** means all spaces owned by or open to the general public, whether or not an admission or cover charge is levied for entrance thereto; and public streets, sidewalks, alleys, or other public thoroughfares, and areas in or such close proximity thereto, as to be observed by the public traveling on such street, sidewalk, or other thoroughfare.

**Public right-of-way** means a strip of land that is granted, through an easement, or other mechanism, for public transportation purposes, including (but not limited to) a trail, driveway, rail line, highway, or street.

**Rent** means to allow the occupation and use of property in exchange for any form of consideration.

**Restricted Use Area** means a school, public library, or public park; and areas of land zoned as Agricultural Residential District, Residential Estates I District, Residential Estates II District, Single Family Residential District, Two-Family Residential District, General Residential District, Mobile Home Residential District, Planned Development District, Planned Townhouse Development, Mixed Use District, Build Through Acreages, Agricultural Development District, or General Business District, whether located in the County's Zoning Jurisdiction or Zoning Jurisdictions of the cities of Bellevue, Papillion, La Vista, Springfield, or Gretna, so long as the areas within the Zoning Jurisdictions of the those cities are substantially similar to those mentioned in this definition.

**School** means any public or private preschool, learning center, elementary, middle, or secondary school.

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

**Sex shop** means an establishment offering goods for sale or rent and that meet any of the following tests: 1) it offers for sale items from any two of the following categories -- sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices; and the combination of such items constitute more than 10% of its stock in trade or occupies more than 10% of its floor area; 2) more than 5% of its stock in trade consists of sexually oriented toys; or 3) more than 5% of its gross public floor area is devoted to the display of sexually oriented toys.

**Sexual encounter center** means a business which provides two or more persons, for pecuniary compensation, consideration, hire or reward, with a place to assemble for the purpose of engaging in "specified sexual activities" or displaying "specified anatomical areas."

**Sexually Oriented Business** is an inclusive term used to describe collectively the following businesses: adult arcade, sexually oriented media store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, sex shop, nude or seminude model studio, and/or sexual encounter center.

**Sexually Oriented Business Special Use Permittee** means an entity that has been issued a Sexually Oriented Business Special Use Permit.

**Specified anatomical areas** means the exposure, with less than a fully opaque covering, of the human male genital area, female genital area, buttocks, nipple of the female breast, or areola of the female breast. "Specific anatomical areas" also means the human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Specified sexual activities** means acts of human masturbation, sexual intercourse, or sodomy. These activities include, but are not limited to the following: bestiality, erotic

or sexual stimulation with objects or mechanical devices, acts of human anilingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, sodomy, or any excretory functions as part of or in connection with any of the activities set forth above. This definition shall include apparent sexual stimulation of genitals whether clothed or unclothed.

**Substantial enlargement of a Sexually Oriented Business** means the increase in floor area occupied by the business by more than 20% as the floor area exists on the effective date of these Sexually Oriented Business Zoning Regulations.

**Transfer of ownership or control of a Sexually Oriented Business** means and includes any of the following: the sale, lease, or sublease of the business; the transfer of securities or other ownership interest which constitutes a direct, indirect, legal, equitable or beneficial controlling interest in the business, whether by sale, exchange, or similar means; or the establishment of a trust, gift, or other similar device which transfers the direct, indirect, legal, equitable or beneficial ownership or control of the business.

#### 45.5 **SEXUALLY ORIENTED BUSINESS SPECIAL USE PERMIT REQUIRED, EXEMPTIONS**

45.5.1 A valid Sexually Oriented Business Special Use Permit is required prior to establishing or substantially enlarging a Sexually Oriented Business. If a Sexually Oriented Business is in operation on the date of the passage of these Sexually Oriented Business Zoning Regulations, then it will be subject to the Amortization Provision, found in Section 45.19.

45.5.2 The following are exempt from regulation under these Sexually Oriented Business Zoning Regulations:

- (A) A bookstore, movie theater, or video store, unless that business is an adult bookstore, adult movie theater, or adult video store and the primary purpose of which is the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer;
- (B) A business operated by or employing a licensed psychologist, licensed physical therapist, licensed massage therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber, engaged in performing the functions authorized under the license held; or
- (C) A business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.

#### 45.6 **APPLICATION FOR A SEXUALLY ORIENTED BUSINESS SPECIAL USE PERMIT**

45.6.1 An application for a Sexually Oriented Business Special Use Permit must be made on a form provided by the Sarpy County Planning and Building Department and shall be accompanied by a non-refundable fee as established in the "Master Fee Schedule" for the Planning and Building Department as adopted by the County Board.

45.6.2 All entities that intend to establish or substantially enlarge a Sexually Oriented Business must sign the Sexually Oriented Business Special Use Permit application as "applicant." If the entity that intends to establish or substantially enlarge a Sexually Oriented Business is other than a single individual, each individual who has a 20% or greater interest in the Sexually Oriented Business or the entity that owns the Sexually Oriented

Business, must sign the application for the Sexually Oriented Business Special Use Permit as “applicant.” Each applicant shall be considered a Sexually Oriented Business Special Use Permittee if the Sexually Oriented Business Special Use Permit is granted.

#### **45.7 INSPECTION OF THE SEXUALLY ORIENTED BUSINESS PREMISES**

The Sarpy County Planning and Building Director, upon receipt of the application outlined in Section 45.6 shall forward said application to the appropriate officials for their review. The Sexually Oriented Business premises must be inspected and found to be in compliance with any relevant codes, including the applicable building and fire codes. At any time after the application for the Sexually Oriented Business Special Use Permit has been submitted (including any point after the application for the Sexually Oriented Business Special Use Permit has been granted), in order to verify that the Sexually Oriented Business is operating in accordance with all applicable safety, fire, building, and zoning codes; laws and regulations; and other applicable requirements, a representative of the Planning Department, Planning Commission, and/or the County Board may inspect the premises of the Sexually Oriented Business at any time it is occupied by at least one person. The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer. Furthermore, this Section shall not be construed as a limitation on any law enforcement authorized inspection or search of a Sexually Oriented Business premises.

#### **45.8 POSTING AND NOTICE REQUIREMENTS**

45.8.1 An applicant for a Sexually Oriented Business Special Use Permit, at least twenty-one (21) days prior to the public hearing by the Planning Commission (identified in Section 45.9), shall prominently post outdoor signage at the proposed location stating that a Sexually Oriented Business is intended to be located on the premises and must provide the name and business address of at least one applicant. The signage must be at least twenty-four (24) by thirty-six (36) inches in size and must be written in lettering at least three (3) inches in size; the background of the sign must be white in color and the lettering must be black in color. The County may require signage to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language. The signage must be of sufficient quantities to be placed upon the property so as to identify it as being subject to a proposed Sexually Oriented Business Special Use Permit. It shall be the duty of each applicant as to each particular application to post said signage along the property so as to be clearly visible from the public right-of-way. One sign shall be posted for each three-hundred (300) hundred-foot increment of public right-of-way on said property. Said signage shall remain posted and appropriately maintained until the application for the Sexually Oriented Business Special Use Permit has been approved or denied by the County Board.

45.8.2 The Planning Department will send written notice of the Sexually Oriented Business Special Use Permit application to property owners within three-hundred (300) feet of the property which is the subject of said application. Such notice will also include the date and time of the Planning Commission public hearing and the estimated date of the County Board public hearing.

#### **45.9 APPLICATION REVIEW AND PUBLIC HEARINGS**

45.9.1 Upon receiving confirmation that the Sexually Oriented Business premises is in compliance with any relevant codes, pursuant to Section 45.7, the Planning and Building Director shall forward the application for the Sexually Oriented Business Special Use

Permit, along with any other relevant documentation, to the Planning Commission. The Planning Commission shall then set a time and date for a public hearing regarding the application for the Sexually Oriented Business Special Use Permit, and give notice of the public hearing in a legal paper with general circulation in Sarpy County at least ten (10) days prior to said hearing. After the public hearing, the Planning Commission shall then make a recommendation to the County Board regarding approval or denial of the application for the Sexually Oriented Business Special Use Permit. In making its recommendation, the Planning Commission shall consider, in addition to the testimony from the public hearing, the "Causes for Denial" and "Performance Standards" identified below in sections 45.9.1(A) and (B), respectively. The Planning Commission shall not recommend approval of the application for the Sexually Oriented Business Special Use Permit if it finds one (1) of "Causes for Denial" to be true.

(A) Causes for Denial:

1. Any applicant is under 18 years of age.
2. Any applicant is overdue in his or her payment to the County of taxes, fees, fines, or penalties assessed against him or her or imposed upon him or her in relation to a Sexually Oriented Business.
3. Any applicant has failed to provide information reasonably necessary for issuance of the Sexually Oriented Business Special Use Permit, has provided false information on the application for the Sexually Oriented Business Special Use Permit, or has falsely answered a question or request for information from the Planning Department, Sheriff's Department, or County Attorney's Office, in relation to the application for the Sexually Oriented Business Special Use Permit.
4. Any applicant has been found to be in violation of any provision of these Sexually Oriented Business Zoning Regulations. The fact a violation of these Regulations is being appealed is irrelevant for purposes of this Section.
5. The premises to be used for the Sexually Oriented Business are not in compliance with applicable zoning laws or have not been approved by the fire department or the building inspection department as being in compliance with applicable laws and regulations.
6. The fee required by the Master Fee Schedule, as established by the Master Fee Schedule, adopted by the County Board.
7. The Sexually Oriented Business will be located within two thousand five hundred (2,500) feet of a Restricted Use Area, within one thousand (1,000) feet of the Highway Corridor District, or within five hundred (500) feet of another Sexually Oriented Business which does not have a common entrance with another Sexually Oriented Business. Measurement shall be made in a straight line, without regard to intervening political subdivision boundaries, buildings, and/or structures from the nearest portion of the building or structure used as a part of the premises where a Sexually Oriented Business is conducted, to the nearest property line or boundary of an affected Restricted Use Area, Highway Corridor District, or another Sexually Oriented Business

8. Any applicant is a registered sex offender.
9. Any applicant has been convicted, in any jurisdiction, of a crime involving any of the following offenses, including attempt, conspiracy, solicitation, or aiding and abetting:

Admitting minor to obscene motion picture;

Contributing to the delinquency of a child or minor;

Debauching a minor;

Distributing obscene literature;

Harboring a runaway child;

Indecency with an animal;

Incest;

Keeping a place of prostitution;

Kidnapping;

Obscenity;

Pandering;

Possession of a visual depiction of child, including child pornography and any related offenses, including but not limited to allowing a child to participate in child pornography, possession, distribution, or sale of child pornography;

Prostitution and any related crimes, including but not limited to solicitation of prostitution;

Public indecency;

Public lewdness;

Public nudity;

Sale of obscene literature to a minor;

Sexual abuse;

Sexual assault; and

For which:

Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction,



whichever is the later date, if the conviction is of a misdemeanor offense;

Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24)-month period.

The fact that conviction for the crimes identified above shall be irrelevant for purposes of the Sexually Oriented Business Special Use Permit application process. When considering an application for a Sexually Oriented Business Special Use Permit, the Planning Commission and County Board shall consider the convictions identified above until the time periods described above have elapsed.

(B) Performance Standards:

1. That adequate utilities, access roads, drainage, and/or necessary facilities have been or are being provided.
2. That adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion in the public streets.
3. The Sexually Oriented Business will not include any activity involving the use or storage of flammable or explosive material unless protected by adequate fire-fighting suppression equipment and by such safety devices as are normally used in the handling of any such material.
4. The Sexually Oriented Business will not produce noise which is objectionable due to volume, frequency, or beat unless muffled or otherwise controlled.
5. The Sexually Oriented Business will not involve any activity substantially increasing the movement of traffic on public streets unless procedures are instituted to limit traffic hazards and congestion.
6. The Sexually Oriented Business will not involve any activity substantially increasing the burden on any public utilities or facilities unless provisions are made for any necessary adjustments.

45.9.2 After receiving a recommendation for approval or denial of the Sexually Oriented Business Special Use Permit from the Planning Commission, the County Board shall set a time and date for a public hearing regarding the application for the Sexually Oriented Business Special Use Permit and give notice of the public hearing in a legal paper with general circulation in Sarpy County at least ten (10) days prior to said hearing. After the public hearing, the County Board shall, in determining whether to approve or deny the application for the Sexually Oriented Business Special Use Permit, consider the recommendation of the Planning Commission, testimony from the public hearing, and

the “Causes for Denial” and “Performance Standards” identified in sections 45.9.1(A) and (B), respectively. The County Board shall not approve the application for the Sexually Oriented Business Special Use Permit if it finds one of the “Causes for Denial” to be true.

#### 45.10 PERMIT POSTING

The Sexually Oriented Business Special Use Permit, if granted, shall state on its face the name of the entities to whom it is granted, the expiration date, and the address of the Sexually Oriented Business. It shall be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business so that it may be easily read at any time.

#### 45.11 EXPIRATION

Each Sexually Oriented Business Special Use Permit shall expire one (1) year from the date of issuance, unless revoked. At least three months prior to the expiration of the Sexually Oriented Business Special Use Permit, a new application and applicable fee shall be submitted.

#### 45.12 RESTRICTIONS

45.12.1 No Sexually Oriented Business shall serve or sell alcohol, or permit the consumption of alcohol on the premises of the Sexually Oriented Business.

45.12.2 At no time shall a person under the age of eighteen (18) years old be allowed on the premises of a Sexually Oriented Business.

45.12.3 No Sexually Oriented Business shall operate between the hours of 1:00 a.m. and 10:00 a.m.

45.12.4 No part of the interior of the Sexually Oriented Business shall be visible from the exterior of the business.

45.12.5 No sign for a Sexually Oriented Business shall contain flashing lights, words, lettering, photographs, silhouettes, drawings, or pictorial representations that emphasize “specified anatomical areas” or “specified sexual activities.” Please see Section 39 of the Sarpy County Zoning Regulations for additional signage requirements.

45.12.6 No Sexually Oriented Business Special Use Permittee shall transfer its Sexually Oriented Business Special Use Permit or any part of its ownership or control of a Sexually Oriented Business to another entity or entities, nor shall a Sexually Oriented Business Special Use Permittee operate a Sexually Oriented Business under the authority of a Sexually Oriented Business Special Use Permit at any place other than the address designated in the application for the Sexually Oriented Business Special Use Permit.

#### 45.13 SUSPENSION

The County Board may suspend a Sexually Oriented Business Special Use Permit for a period not to exceed thirty (30) days if it determines that:

- (A) A Sexually Oriented Business Special Use Permittee, agent, employee, or other related individual has refused to allow an inspection of the Sexually Oriented Business premises as authorized by these Sexually Oriented Business Zoning Regulations;

- (B) A Sexually Oriented Business Special Use Permittee, agent, employee, or other related individual has demonstrated an inability to operate or manage a Sexually Oriented Business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers; or
- (C) A Sexually Oriented Business Special Use Permittee, agent, employee, or other related individual has not complied with the restrictions identified in Section 45.12, above.

#### 45.14 REVOCATION

45.14.1 The County Board may revoke a Sexually Oriented Business Special Use Permit if it determines that:

- (A) A cause of suspension in Section 45.13 has occurred two (2) or more times, including simultaneous causes of suspension, within a twelve (12) month period of time.
- (B) The use of the Sexually Oriented Business Special Use Permit or structure of the Sexually Oriented Business is substantially varied from the originally-permitted intent and thus found to be in non-compliance with the special use as issued.
- (C) A Sexually Oriented Business Special Use Permittee has provided false information on the application for the Sexually Oriented Business Special Use Permit, or has falsely answered a question or request for information from the County or law enforcement, in relation to the application for the Sexually Oriented Business Special Use Permit;
- (D) A Sexually Oriented Business Special Use Permittee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (E) One of the crimes listed in Section 45.9.1(A)(8) has occurred on the premises of the Sexually Oriented Business, thus resulting in a conviction for said crime(s);
- (F) A Sexually Oriented Business Special Use Permittee or an employee operated the Sexually Oriented Business during a period of time when the Sexually Oriented Business Special Use Permit was suspended or revoked;
- (G) A Sexually Oriented Business Special Use Permittee has been convicted of an offense listed in Section 45.9.1(A)(8) for which the time period required by that Section has not elapsed;
- (H) A Sexually Oriented Business Special Use Permittee or an employee has knowingly allowed any specified sexual activity to occur in a public place on the Sexually Oriented Business premises; or
- (I) A Sexually Oriented Business Special Use Permittee is delinquent in payment to the County for taxes related to the Sexually Oriented Business.

45.14.2 The fact that a conviction is being appealed shall be irrelevant for purposes of Sections 45.14.1(D), (E), and (G).

45.14.3 When the County Board revokes a Sexually Oriented Business Special Use Permit, the revocation shall continue for one (1) year and any Sexually Oriented Business Special Use Permittee will not be eligible for a Sexually Oriented Business Special Use Permit for one (1) year from the date the revocation became effective. If the Sexually Oriented Business Special Use Permit was revoked under Sections 45.14.1(G), an applicant may not be granted another such permit until the appropriate number of years required under Section 45.9.1(A)(8) has elapsed.

#### 45.15 **SUBSEQUENT DEVELOPMENTS**

A Sexually Oriented Business lawfully operating under these Sexually Oriented Business Zoning Regulations is not rendered a non-conforming use by the subsequent location of a Restricted Use Area or Highway Corridor District. However, if a Sexually Oriented Business is not operating lawfully under these Sexually Oriented Business Zoning Regulations, then it will be rendered a non-conforming use by the subsequent location of a Restricted Use Area or Highway Corridor District,

#### 45.16 **INDEMNIFICATION**

Any application for a Sexually Oriented Business Special Use Permit that is proposed for County property, pursuant to these Sexually Oriented Business Zoning Regulations, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the County, and its officers, Boards, employees, committee members, attorneys, and agents from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, intentional or negligent acts of persons on the premises of the Sexually Oriented Business, the placement, construction, modification, location, operation, maintenance, repair, removal, or restoration of the Sexually Oriented Business, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the County, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, expert witness fees, and any other fees recoverable by law are included in those costs that are recoverable by the County.

#### 45.17 **OTHER COMPLIANCE**

The fact that an entity possesses any other valid special use permit required by law does not exempt that entity from the requirement of obtaining a Sexually Oriented Business Special Use Permit. Furthermore, the possession of a Sexually Oriented Business Special Use Permit does not exempt an entity from having to comply with the other provisions of the Sarpy County Zoning Regulations and/or any other applicable city, county, state, or federal laws, including any public nudity and public indecency laws.

#### 45.18 **ENFORCEMENT**

Any entity who violates any of these Regulations shall be guilty of a Class III misdemeanor, punishable by a maximum of three months imprisonment, a five hundred dollar fine, or both.

#### 45.19 **AMORTIZATION PROVISION**

Any Sexually Oriented Business operating at the time these Sexually Oriented Business Zoning Regulations are enacted, shall be deemed a non-conforming use. The non-conforming use will

be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall be required to apply for a Sexually Oriented Business Special Use Permit within three (3) months prior to the one (1) year anniversary of the enactment of these Sexually Oriented Business Zoning Regulations.

45.20 **EFFECTIVE DATE**

These Sexually Oriented Business Zoning Regulations shall be effective immediately upon passage, pursuant to applicable and legal procedural requirements.