

SPONSORED BY TRUSTEE

TRUSTEE'S BILL

ORDINANCE NO.

NO. _____
Series of 2002

_____ Series of 2002

TITLE: A BILL FOR AN ORDINANCE PROVIDING FOR LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES, AND PROVIDING ADDITIONAL HEALTH AND SAFETY REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES

WHEREAS, sexually oriented businesses in the Town of Hudson require special supervision from public safety and health agencies of the Town in order to protect and preserve the health, safety and welfare of the patrons of such businesses, as well as citizens of the Town; and

WHEREAS, the Board of Trustees and staff have reviewed land use studies and surveys concerning the secondary effects of sexually oriented businesses in other cities around the United States, including, but not limited to, Denver, Colorado (1998); New York City, New York (1994); Garden Grove, California (1991); Seattle, Washington (1989); Austin, Texas (1986); Indianapolis, Indiana (1984); Minneapolis, Minnesota (1980); Islip, New York (1980); Phoenix, Arizona (1979); Los Angeles, California (1977); and Amarillo, Texas (1977); and

WHEREAS, from review of these studies and surveys, and testimony from its citizens, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both existing businesses around them and the surrounding residential areas adjacent to them, causing among other adverse secondary effects, increased crime and downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are operating in close proximity to each other, thereby contributing to crime, lower property values, urban blight, sexually-transmitted diseases, and downgrading of the quality of life in the adjacent area; and

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

WHEREAS, 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 sexually explicit materials, possession and distribution of obscene materials and child pornography,

possession and sale of controlled substances and violent crimes against persons and property; and

WHEREAS, concern over sexually transmitted diseases, including human immunodeficiency virus ("HIV"), is a legitimate health concern of the Town which demands reasonable regulation of sexually oriented businesses in order to protect the health and well being of the citizens; and

WHEREAS, zoning, licensing and other police power regulations are legitimate reasonable means of accountability to ensure that the operators of sexually oriented businesses comply with reasonable regulations; and

WHEREAS, the Board of Trustees desires to minimize and control adverse secondary effects associated with sexually oriented businesses, and thereby protect the health, safety and welfare of the citizens of the Town and preserve the quality of life; and

WHEREAS, the Board of Trustees has considered decisions of the United States Supreme Court and the Colorado Supreme Court regarding regulation of sexually oriented businesses, including, but not limited to, Young v. American Mini-Theatres, Inc., 427 U.S. 50 (1976); Renton v. Playtime Theatres, 475 U.S. 41 (1986); FW/PBS, Inc. v. Dallas, 493 U.S. 215 (1990); Barnes v. Glen Theatre, 111 S. Ct. 2456 (1991); City of Colo. Springs v. 2354 Inc., 896 P.2d 272 (Colo. 1995); 7250 Corp. v. Board of County Comm'rs, 799 P.2d 917 (Colo. 1990); and Regency Services v. Board of County Comm'rs, 819 P.2d 1049 (Colo. 1991), and has considered the stated secondary effects on the communities which are the topics of the foregoing legal authorities; and

WHEREAS, the Board of Trustees has determined that locational criteria alone do not adequately protect the health, safety and general welfare of the people of the Town, and thus certain requirements with respect to the ownership and operation of sexually oriented businesses is in the public interest; and

WHEREAS, the Board of Trustees, consistent with limitations on the sale of alcohol, finds that restricted hours of operation will further prevent the adverse secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment of the United States Constitution or the Colorado Constitution, but to enact a content neutral ordinance which addresses the adverse secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the Board of Trustees to condone or legitimize the distribution of obscene material, and the Board of Trustees recognizes that state law prohibits the distribution of obscene materials and expects and encourages law enforcement officials to enforce state obscenity statutes against such illegal activities in the Town.

BE IT ORDAINED BY THE BOARD OF TRUSTEES FOR THE TOWN OF HUDSON, COLORADO, THAT:

Section 1. The Hudson Municipal code is amended by the addition thereto of a new Article 3 of Chapter 6 to read as follows:

Article 3

SEXUALLY ORIENTED BUSINESSES

Division 1. In General

Sec. 6-41. Purpose and Intent.

The purpose and intent of this Article is to establish reasonable and uniform regulations designed to curtail the potential harmful secondary effects of sexually oriented businesses upon the surrounding communities in which they are located. These reasonable and uniform regulations are designed to protect Town citizens from increased crime, to preserve the quality of life, property values and character of neighborhoods and businesses, to deter the spread of urban blight, and to protect against the spread of sexually transmitted diseases. The provisions of this Article shall not impose limitations or restrictions on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent of this Article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment of the United States Constitution or the Colorado Constitution, or to deny access by the distributors and exhibitors of sexually oriented materials to their intended market. It is also not the intent or purpose of this Article to condone or legitimize the distribution of obscene material.

Sec. 6-42. Definitions.

Unless the context otherwise dictates, the words and phrases used in this Article shall have the following meanings:

(a) *Board of Trustees* is the Board of Trustees of the Town of Hudson.

(b) *Employee* means a person who works or performs in or for a sexually oriented business regardless of whether or not said person is paid a salary, commission, wage or other compensation by the operator of said business.

(c) *Establishment of a sexually oriented business* means and includes any of the following:

(1) The opening or commencement of any such business as a new business;

(2) The conversion of an existing business into a sexually oriented business;

(3) The addition of a sexually oriented business to any other existing sexually oriented business; or

(4) The relocation of a sexually oriented business.

(d) *Licensing Officer* means the Town Clerk of the Town of Hudson.

(e) *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.

(f) *Operator* means and includes the owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

(g) *Permittee and/or Licensee* means a person in whose name a permit or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit or license.

(h) *Person* means an individual, proprietorship, partnership, corporation, limited liability company, association, or other legal entity.

(i) *Premises or Permitted or Licensed Premises* means any premise that requires a license or permit and that is classified as a sexually oriented business.

(j) *Principal Owner* means any person owning, directly or beneficially: (a) ten percent (10%) or more of a corporation's equity securities; (b) ten percent (10%) or more of the membership interests in a limited liability company; or (c) in the case of any other legal entity, ten percent (10%) or more of the ownership interests in the entity.

(k) *Specified criminal acts* means any offense which is included in the definition of "unlawful sexual behavior" under Section 18-3-412.5, C.R.S., Sex Offenders-Duty to Register-Penalties, or any offense committed in another state that, if committed in the State of Colorado,

would constitute an offense involving unlawful sexual behavior, or any offense that has a factual basis of one (1) of the offenses specified in the definition of "unlawful sexual behavior." Specified criminal acts also include any offense involving soliciting for prostitution, prostitution, patronizing a prostitute, pandering, pimping, public indecency, or the distribution or possession of obscene materials.

(l) *Transfer of ownership or control of a sexually oriented business* means and includes any of the following:

- (1) The sale, lease or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- (3) The establishment of a trust, management arrangement, gift or other similar legal devise which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

(m) *Zoning Code* means the Town of Hudson Zoning Ordinance as amended.

Division 2. Permits for Sexually Oriented Businesses

Sec. 6-43. Permit Required.

(a) No sexually oriented business shall be permitted to operate without a valid sexually oriented business permit issued by the Town.

(b) It shall be unlawful for any person to operate or cause to be operated a sexually oriented business if said person knows or reasonably should know that:

- (1) The business does not have a sexually oriented business permit;
- (2) The business has a permit which is under suspension;
- (3) The business has a permit which has been revoked; or
- (4) The business has a permit which has expired.

(5) Before any person may work at a licensed premises, he/she shall file a notice with the Licensing Officer of his/her intended

employment on forms supplied by the Licensing Officer and shall receive approval of such employment from the Licensing Officer. The prospective employee shall supply such information as the Licensing Officer requires, including a set of fingerprints, on regular United States Department of Justice forms. Upon approval, the employee may begin working at the licensed premises. If approval is denied, the prospective employee may, within twenty (20) days from the date of the denial, apply to the Licensing Officer for a hearing. The decision of the Licensing Officer after hearing may be appealed to the Board of Trustees who may issue such order as is proper in the premises. An investigation fee of fifty dollars (\$50.00) shall accompany the notice of intended employment or a receipt of the Licensing Officer evidencing the payment of such fee at the time the notice is filed.

Sec. 6-44. Application for Permit for Sexually Oriented Business.

(a) The Licensing Officer is responsible for granting, denying, revoking, renewing, suspending, and canceling sexually oriented business permits for proposed or existing sexually oriented businesses.

(b) The Building Inspection Department is responsible for ascertaining whether a proposed sexually oriented business for which a permit application has been submitted complies with all locational requirements of this Article and the Zoning Ordinance.

(c) The Chief of Police or another duly authorized law enforcement representative or his/her designee is responsible for providing information on whether an applicant has been convicted of a specified criminal act during the time periods set forth in Section 6-47(c)(10).

(d) The Building Inspection Department is responsible for inspecting a proposed, sexually oriented business in order to ascertain whether it is in compliance with applicable statutes and ordinances.

(e) Any person desiring to operate a sexually oriented business shall file with the Licensing Officer an original and two (2) copies of a sworn permit application on the standard application form supplied by the Licensing Officer.

(f) 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/her legal name and any aliases and submit satisfactory proof that he/she is: (i) eighteen (18) years of age or older; or (ii) twenty-one (21) years of age or older if the sexually oriented business will provide live entertainment.

(2) If the applicant is a legal entity, the person 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 office 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, he/she must state the sexually oriented business' fictitious name.

(4) Whether the applicant or any of the other individuals listed pursuant to subsections (f)(1) or (2) have been convicted of a specified criminal act within the times set forth in Section 6-47(c)(10), 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 (f)(1) or (2) has had a previous permit under this or other similar sexually oriented business ordinances from another city, town or county denied, suspended or revoked, and, if so, the name and location of the sexually oriented business for which the permit 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 subsections (f)(1) or (2) has been a partner in a partnership or a principal owner of a corporation or other legal entity whose permit has previously been denied, suspended or revoked, and, if so, the name and location of the sexually oriented business for which the permit 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 (f)(1) or (2) holds any other permits and/or licenses under this Article or other similar sexually oriented business ordinances from another city, town or county and, if so, the names and locations of such other permitted businesses.

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

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

(10) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be 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 inches (6"). The Licensing Officer may waive the foregoing diagram for renewal applications if the

applicant adopts a diagram 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 subject to the provisions of Division 5 of this Article, the sketch shall show the locations of each manager's station and designate any portion of the premises in which patrons will not be permitted.

(11) A current certificate and straight-line drawing prepared within thirty (30) days prior to an initial application by a Colorado registered land surveyor depicting: (a) the property lines and the structures of the property to be certified; (b) the property lines of any church, school, library, daycare, educational facility, dwelling unit (single or multiple), public park or residential district within three hundred (300) feet of the property to be certified; and (c) the property lines and structures of any other sexually oriented business within one hundred (100) feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(g) If a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a permit as 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 permit as applicant.

(h) 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/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 permit shall be stayed during the period in which the applicant is allowed an opportunity to properly complete the application.

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

Sec. 6-45. Duty to Supplement Application.

Applicants for a permit under Section 6-44 shall have a continuing duty to promptly supplement application information required by that section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty

within thirty (30) days from the date of such change shall be grounds for suspension of a permit.

Sec. 6-46. Investigation and Application.

(a) Upon receipt of an application for a sexually oriented business permit 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 photocopies of the application to the Police Department or the Weld County Sheriff's Office and the Building Inspection Department. Each department or agency shall promptly conduct an investigation of the applicant, application and the proposed sexually oriented business in accordance with its responsibilities under law. Said investigation shall be completed within twenty (20) days of receipt of the application by the Licensing Officer. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it, and, in the event it disapproves, state the reasons therefor. The Police Department or the Weld County Sheriff's Office shall only be required to provide the information specified in Section 6-44(c), and shall not be required to approve or disapprove applications.

(b) A department or agency shall disapprove an application if it finds that the proposed sexually oriented business will be in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the Town. After its indication of approval or disapproval, each department or agency shall immediately return the photocopy of the application to the Licensing Officer.

Sec. 6-47. Issuance of Permit.

(a) The Licensing Officer shall grant or deny an application for a permit within thirty (30) days from the date of its proper filing. Upon the expiration of the thirtieth (30th) day, the applicant shall be permitted to begin operating the business for which the permit is sought, unless and until the Licensing Officer notifies the applicant of a denial of the application and states the reason(s) for such denial.

(b) Grant of Application for Permit:

(1) The Licensing Officer shall grant the permit application for a sexually oriented business in the zoning districts where such use is permitted under Title 16 of the Town of Hudson Municipal Code, unless one (1) or more of the criteria set forth in subsection (c) below is present.

(2) The permit, 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 permit 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.

(3) Denial of Application for Permit. The Licensing Officer shall deny the application for any of the following reasons:

(1) The applicant fails to show to the Town's satisfaction that the requirements of the Town's Zoning Ordinance have been met;

(2) An applicant is: (i) under eighteen (18) years of age, or (ii) under twenty-one (21) years of age if the sexually oriented business will provide live entertainment;

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

(4) An applicant has failed to provide information required by this section for the issuance of the permit or has falsely answered a question or request for information on the application form;

(5) The premises to be used for the sexually oriented business have been disapproved by an inspecting agency pursuant to the provisions of Section 6-44(b);

(6) The application or permit fees have not been paid;

(7) An applicant or the proposed business is in violation of, or is not in compliance with, any of the provisions of this Article;

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

(9) The applicant has a permit under this Article which has been suspended or revoked within the previous twelve (12) months; or

(10) An applicant has been convicted of a specified criminal act or acts for which: (i) 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; (ii) 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 permit only when the time period required above has elapsed.

(11) If the Licensing Officer denies the application, he/she shall notify the applicant of the denial and state the reason(s) for the denial.

Sec. 6-48. Expiration of Permit.

(a) Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 6-44 (for renewals, filing of original survey shall be sufficient) of this Article. Application for renewal of a permit shall be made at least thirty (30) days before the expiration date of the permit. If a renewal application is made fewer than thirty (30) days before the expiration date of a permit, the expiration of the permit will not be affected.

(b) If, subsequent to denial of renewal, the Licensing Officer finds that the basis for denial of the renewal of the permit has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date denial became final.

Sec. 6-49. Suspension of Permit.

(a) The Licensing Officer shall suspend a permit for a period not to exceed thirty (30) days if he/she determines that a permittee, or an employee of a permittee, has:

- (1) Violated, or is not in compliance with any section of this Article.
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this Article.
- (3) Operated the sexually oriented business in violation of a building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the division, department 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 permittee of the violation and shall allow the

permittee a seven (7) day period in which to correct the violation. If the permittee fails to correct the violation before the expiration of the seven (7) day period, the Licensing Officer shall forthwith suspend the permit and shall notify the permittee of the suspension.

(4) Engaged in a permit transfer contrary to Section 6-51. In the event that the Licensing Officer suspends a permit on the ground that a permittee engaged in a permit transfer contrary to Section 6-51, the Licensing Officer shall forthwith notify the permittee of the suspension. The suspension shall remain in effect until the applicable section of this Article has been satisfied.

(5) Operated the sexually oriented business in violation of the hours of operation provisions of Division 6.

(6) The suspension shall remain in effect until the violation of the statute, code, ordinance or regulation in question has been corrected.

Sec. 6-50. Revocation of Permit.

(a) The Licensing Officer shall revoke a sexually oriented business permit upon determining that:

- (1) A cause of suspension in Section 6-49 of this Article occurs and the permit has been suspended within the preceding twelve (12) months.
- (2) A permittee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a permit.
- (3) A permittee 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.
- (4) A permittee or an employee has knowingly allowed prostitution on the premises.
- (5) A permittee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's permit was suspended.
- (6) A permittee has been convicted of a specified criminal act for which the time period set forth in Section 6-47(c)(10) has not elapsed.
- (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 permitted 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 permit.
- (8) A permittee is delinquent in payment to the Town or state for any taxes or fees.
- (9) A permittee or an employee has knowingly allowed any specified sexual activity to occur in or on the permitted premises.
- (10) The permittee has operated more than one (1) sexually oriented business within the same building, structure, or portion thereof.

(11) When the Licensing Officer revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a

sexually oriented business permit for one (1) year from the date revocation became effective.

Sec. 6-51. Transfer of Permit.

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

(b) A permittee shall not transfer his/her permit to another person unless and until such other person satisfies the following requirements:

(1) Obtains an amendment to the permit from the Licensing Officer which provides that he/she is now the permittee, which amendment may be obtained only if he/she has completed and properly filed an application with the Licensing Officer, setting forth the information called for under Section 6-44 in the application; and

(2) Pays a transfer fee of twenty percent (20%) of the annual permit fee.

(3) No permit may be transferred when the Licensing Officer has notified the permittee that suspension or revocation proceedings have been or will be brought against the permittee.

(4) A permittee shall not transfer his/her permit to another location.

(5) Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void.

Sec. 6-52. Appeal Rights.

(a) Any denial, suspension, or revocation of a new or renewal permit under this Article may be appealed to the Board of Trustees by written notice within ten (10) days of such denial, suspension, or revocation. Unless the applicant requests a longer period, the Board of Trustees must hold a hearing on the appeal within thirty (30) days and must issue a decision affirming or reversing the denial, suspension, or revocation within fifteen (15) days after the hearing.

(b) Any decision by the Board of Trustees shall be a final appealable order, and the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction.

(c) In the event that an applicant or licensee seeks judicial review of a decision issued pursuant to this Article, the applicant or licensee shall provide written notice of such appeal to the Board of Trustees within three (3) days of the filing of the appeal. Within ten (10) days of receiving such written notice of appeal, or within such shorter time as may be ordered by the court, the Board of Trustees shall transmit to the court in which appeal was sought a copy of the full administrative record for the matter, including a complete transcript of all the original papers, testimony and evidence offered, heard, and taken into consideration in issuing the final order. The Board of Trustees shall provide any further information, assistance, or cooperation requested by the reviewing court without delay.

(d) Subject to the provisions of subsection (f) of this Section, any licensee lawfully operating a sexually oriented business prior to the denial of a permit renewal application, or the suspension or revocation of a permit may continue to operate said business during the pendency of an appeal of a decision rendered under this Article to the Board of Trustees or to a court.

(e) Subject to the provisions of subsection (f) of this Section, any licensee lawfully acting as a manager in a sexually oriented business prior to the denial of a license renewal application, or the suspension or revocation of a license, may continue to serve in such capacity during the pendency of an appeal of a decision rendered under this Article to the Board of Trustees or to a court.

(f) In the event that an applicant for a new sexually oriented business permit or a new sexually oriented business manager license seeks judicial review of the denial of a new license, and such review does not result in a final judicial decision within thirty (30) days of the date the appeal was filed, the Town will issue such applicant a provisional sexually oriented business permit or sexually oriented business manager license upon request of the applicant. The provisional license:

- (1) Will allow an applicant for a sexually oriented business permit to operate the sexually oriented business named in the permit application under the same terms as a normal sexually oriented business issued pursuant to Section 6-43 of this Article for the period of time specified in subparagraph (g) of this Section;
- (2) Will allow an applicant for a sexually oriented business manager license to act as a manager on the premises of a sexually oriented business under the same terms as a normal sexually oriented business employee license issued pursuant to Section 6-43 of this

Article for the period of time specified in subparagraph (g) of this section; and

(3) Will be subject to the same requirements as a normal sexually oriented business permit or sexually oriented business manager license issued under Section 6-43 or Section 6-53 of this Article.

(4) A provisional license will expire on whichever of the following three (3) dates is earliest:

(1) The date that a judicial decision is issued upholding the permit denial;

(2) The date on which a nonprovisional sexually oriented business permit or sexually oriented business manager license is issued to the applicant pursuant to a judicial decision overturning the license denial; or

(3) the date one (1) year from the issuance of the provisional license.

(4) In the event that judicial review of the denial of a new permit or license application is still pending thirty (30) days before the expiration date of a provisional license, the provisional licensee may file a renewal license application with the Town pursuant to Section 6-48 of this Article. The Licensing Officer shall grant an application for renewal of a provisional license unless he/she determines that new grounds exist for denial of a permit or license application pursuant to Section 6-47 of this Article, which did not exist at the time of the original permit or license application. In the event that an application for renewal of a provisional license is denied and the applicant seeks judicial review of that denial, the Town has the right to consolidate such review with the pending judicial appeal of the previous permit or license denial.

Division 3. Manager's License

Sec. 6-53. Manager's License Required.

It shall be unlawful, and a person commits a misdemeanor, if he/she works as a manager of a sexually oriented business without first obtaining a manager's license.

Sec. 6-54. 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, phone number, and the information required in Section 6-43.

(b) The Licensing Officer shall grant the application within ten (10) days of its filing unless:

- (1) The applicant is: (i) under eighteen (18) years of age; or (ii) under twenty-one (21) years of age if the sexually oriented business will provide live entertainment;
- (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 6-47(c)(10).

Division 4. Inspection

Sec. 6-55. Inspection.

(a) An applicant or permittee shall permit representatives of the Building Inspection Department, the 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) A person who operates a sexually oriented business or his/her agent commits a misdemeanor if he/she refuses to permit such lawful inspection of the premises at any time that it is occupied or open for business.

Division 5. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos in Peep Booths

Sec. 6-56. Generally.

A person who operates or causes to be operated a sexually oriented business, which exhibits on the premises in a peep booth or similar viewing area, a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the requirements of this Article.

Sec. 6-57. Regulation of Peep Booths.

(a) A sexually oriented business with a peep booth or similar viewing area, shall have one (1) or more manager's stations, subject to the following regulations:

- (1) At least one (1) employee must be on duty and situated at each manager's station at all times that any patron is present inside the premises; and
- (2) 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 rest rooms. Rest rooms 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 (1) of the manager's 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 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 6-44.

(3) Peep booths and similar viewing areas shall be subject to the following regulations:

- (1) No peep booth may be occupied by more than one (1) person at any time; and
- (2) No door, screen 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.

(3) A person having a duty under this Article commits a misdemeanor if he/she knowingly fails to fulfill that duty.

Division 6. Hours of Operation

Sec. 6-58. Hours of Operation.

It shall be unlawful for a sexually oriented business to be open for business or for the licensee or any employee of a licensee to allow patrons upon the licensed premises:

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

(2) On any Monday other than a Monday which falls on January 1, from 12:00 a.m. until 7:00 a.m.;

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

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

Sec. 6-59. Exemption.

This Article shall not apply to those areas of an adult motel that are private rooms.

Division 7. Minimum Age

Sec. 6-60. Minimum Age.

(a) It shall be unlawful for any person: (i) under the age of eighteen (18) years to be upon the premises of a sexually oriented business; or (ii) under the age of twenty-one (21) years to be upon the premises of a sexually oriented business that provides live entertainment.

(b) It shall be unlawful for the licensee or any employee of the licensee to allow any person: (i) under the age of eighteen (18) years to be upon the premises of a sexually oriented business; or (ii) under the age of twenty-one (21) years to be upon the premises of a sexually oriented business that provides live entertainment.

Division 8. Lighting Regulations

Sec. 6-61. Lighting Regulations.

(a) Excluding a private room of an adult motel, 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) 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 during the hours of operation prescribed in Section 6-58.

Division 9. Additional Regulations

Sec. 6-62. Stage Required in Adult Cabaret and Adult Theater.

Any adult cabaret or adult theater shall have one (1) or more separate areas designated as a stage in the diagram submitted as part of the application for the licensee. Entertainers shall perform only upon the stage. The stage shall be fixed and immovable. No seating for the audience shall be permitted within six (6) feet of the edge of the stage. No members of the audience shall be permitted upon the stage or within six (6) feet of the edge of the stage.

Sec. 6-63. Conduct in Sexually Oriented Businesses.

(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 specific defense to prosecution for a violation of this section that an employee of a sexually oriented business exposed any specified anatomical area during the employee's bona fide use of a rest room, or during the employee's bona fide use of a dressing room which is accessible only to employees.

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

Sec. 6-64. 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 (b) of this section.

(b) A licensee that desires to provide for tips from its patrons shall establish one (1) 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 (1) or more signs to be conspicuously visible to the patrons on the premises in letters at least one inch (1") 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."

Sec. 6-65. Unlawful Acts.

It shall be unlawful for the licensee or for any 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.

Sec. 6-66. Exemptions.

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

(1) A college, junior college, or university supported entirely or partly by taxation;

(2) 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; or

(3) 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 (1) nude model is on the premises in a state of undress at any one time.

Sec. 6-67. Fees.

(a) The annual fee for a sexually oriented business permit is two hundred fifty dollars (\$250.00).

(b) The annual manager's license fee is fifty dollars (\$50.00).

(c) An applicant for a sexually oriented business permit shall pay a nonrefundable application fee of eight hundred dollars (\$800.00) at the time of filing an application.

(d) An applicant for an employee permit shall pay a nonrefundable application fee of fifty dollars (\$50.00) at the time of filing an application.

*Division 10. Criminal Penalties and Additional Legal,
Equitable and Injunctive Relief*

Sec. 6-68 Town's Remedies.

(a) If any person fails or refuses to obey or comply with or violates any of the criminal provisions, such person upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed four hundred ninety-nine dollars (\$499.00). Each violation or noncompliance shall be considered a separate and distinct offense. Further, each day of continued violation shall be considered as a separate offense.

(b) Nothing herein contained shall prevent or restrict the Town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or noncompliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.

(c) All remedies and penalties provided for in this section shall be cumulative and independently available to the Town, and the Town shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.

Section 2. Section 16-20 of the Hudson Municipal Code is amended by the addition thereto of the following definitions:

(1.1) *Adult arcade* means an establishment where, for any form of consideration, one (1) or more still or motion picture projectors, slide projectors or similar machines, or other image producing machines, for viewing by five (5) or fewer persons each, are used to show 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*.

(1.2) *Adult bookstore, adult novelty store or adult video store* means:

a. A commercial establishment which: (1) devotes a significant or substantial portion of its stock-in-trade or interior floor space to; (2) receives a significant or substantial portion of its revenues from; or (3) devotes a significant or substantial portion of its advertising expenditures to the promotion of: the sale, rental or viewing (for any form of consideration) of books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by the depiction or description of *specified sexual activities* or *specified anatomical areas*;

b. An establishment may have other principal business purposes that do not involve the offering for sale, rental or viewing of materials depicting or describing *specified sexual activities* or *specified*

anatomical areas, and still be categorized as an adult bookstore, adult novelty store or adult video store. Such other business purposes will not serve to exempt such establishment from being categorized as an adult bookstore, adult novelty store or adult video store so long as the provisions of subsection a. are otherwise met.

(1.3) *Adult cabaret* means a nightclub, bar, restaurant or other commercial establishment which regularly features: (a) persons who appear nude or in a state of nudity; or (b) live performances which are characterized by the exposure of *specified anatomical areas* or by *specified sexual activities*.

(1.4) *Adult motel* means a motel, hotel or similar commercial establishment which: (a) 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; (b) offers a sleeping room for rent for a period of time less than ten (10) hours; or (c) allows a tenant or occupant to sub-rent a sleeping room for a time period of less than ten (10) hours.

(1.5) *Adult motion picture theater* means a commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions depicting or describing *specified sexual activities* or *specified anatomical areas* are regularly shown for any form of consideration.

(1.6) *Adult theater* means a theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of *specified anatomical areas* or by *specified sexual activities*.

(51.1) *Sexual encounter establishment* means a business or commercial establishment, that as one of its primary business purposes, offers, for any form of consideration, a place where two (2) or more persons may congregate, associate or consort for the purpose of *specified sexual activities* or the exposure of *specified anatomical areas* or activities when one (1) or more of the persons is in a state of nudity. An adult motel will not be classified as a sexual encounter establishment by virtue of the fact that it offers private rooms for rent.

(51.2) *Sexually oriented business* means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, sexual encounter establishment or nude model studio. The definition of *sexually oriented businesses* shall not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

(51.3) *Specified sexual activities* 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, but not limited to, intercourse, oral copulation, sodomy, sadomasochism or bestiality;
- c. Masturbation, actual or simulated;
- d. Human genitals in a state of sexual stimulation, arousal or tumescence;
- e. Excretory functions as part of or in connection with any of the activities set forth in subsections a. through d. of this Section.

Section 3. Section 16-__ of the Town of Hudson Municipal Code is amended by the addition of a new subsection ___ to read as follows:

(___) Sexually oriented businesses

- a. Sexually oriented businesses shall be located a minimum of three hundred (300) feet from any:
 - i. Area zoned for residential use;
 - ii. Single-family, two-family, or multi-family dwelling;
 - iii. Church;
 - iv. Licensed day-care facility;
 - v. School or educational facility, serving persons age eighteen (18) or younger.
- vi. Sexually oriented businesses shall also be located a minimum of one hundred (100) feet from any other sexually oriented business.
- vii. Distance between any two (2) sexually oriented businesses shall be measured in a straight line, without

regard to intervening structures, from the closest exterior structural wall of each business. Distance between any sexually oriented business and any church, school, day-care facility, dwelling unit, or residential district shall be measured in a straight line, without regard to intervening structures or objects, from the nearest portion 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 church, school, day-care facility, or dwelling unit, or the nearest boundary of a residential district.

Section 4. Safety Clause. The Town Board of Trustees hereby finds, determines, and declares that this ordinance is promulgated under the general police power of the Town of Hudson, that it is promulgated for the health, safety, and welfare of the public, and that this ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Board of Trustees further determines that the ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 5. Severability. If any clause, sentence, paragraph, or part of this ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 6. Effective Date. This Ordinance shall become effective thirty (30) days after final publication.

INTRODUCED, READ IN FULL, AND ADOPTED this _____ day of _____, 2002.

TOWN OF HUDSON, COLORADO

Donald B. Litton, Mayor ATTEST:

Judy Larson, Town Clerk

PASSED ON SECOND AND FINAL READING this _____ day of _____, 2002, AND ORDERED PUBLISHED ONCE IN FULL.

Donald B. Litton, Mayor ATTEST:

Judy Larson, Town Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, Town Attorney