

ORDINANCE NO. 370

**AN ORDINANCE ENACTING ARTICLE 6 OF CHAPTER X OF THE CITY
CODE OF THE CITY OF BEACH, NORTH DAKOTA, RELATING TO
ADULT ENTERTAINMENT CENTERS OR ESTABLISHMENTS**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BEACH, NORTH DAKOTA,
AS FOLLOWS:

Section 1: Article 6 of Chapter X of the City Code of the City of Beach is hereby
amended and re-enacted as follows:

Chapter X

BUSINESS REGULATIONS AND LICENSES

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ARTICLE 6

ADULT ENTERTAINMENT CENTERS OR ESTABLISHMENTS

Section 6.010 Legislative intent and purpose

The purpose of this chapter is to recognize and to provide for the fact that the operation of adult entertainment centers or adult establishments and the operation of associated mechanical amusement devices which depict or display specified sexual activities or specified anatomical areas results in increased enforcement problems for the city and additional expense to the city that justifies a higher license fee for these centers, establishments or devices than for other mechanical amusement devices, establishments or centers. This follows because it is not immediately possible to distinguish between constitutionally protected non-obscene depictions or portrayals of explicit sexual conduct, on one hand, from non-constitutionally protected obscene portrayals of sexual conduct on the other hand. This necessitates greater police vigilance to assure that the lawful business of displaying non-obscene portrayals or depictions of sexual conduct is not used inadvertently or by design as the means of unlawfully displaying or depicting obscenity. In order to recoup some of the costs thus imposed on the city, it is appropriate that there be imposed on the persons who profit from such devices, centers or establishments some of the costs of insuring that the devices, centers or establishments are used only lawfully.

For the purposes of promoting the health, safety, morals or general welfare of the city residents as authorized by state law, the state has provided certain powers to the city in furtherance thereof. In addition to the increased enforcement problems for the city and additional expense, it is necessary that the city specify certain zoning areas and establish certain regulations pertaining to licensing adult entertainment centers or adult establishments and associated mechanical amusement devices, delineating the placement of such centers, establishments or devices in

certain specified zoning areas and requiring certain information, before licensing such centers, establishments or devices and placement of such businesses.

Section 6.020 Definitions

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

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

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

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

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

also an adult entertainment center or adult establishment within the meaning of this section.

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

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

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

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

Specified Anatomical Areas.

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

Specified sexual activities.

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

Section 6.030 Licenses generally

- (a) The annual license fee for adult entertainment centers or adult establishments and mechanical amusement devices shall be as follows:
 - (1) For each entertainment center or adult establishment, ten thousand dollars (\$10,000), plus any additional fees determined by law enforcement, or as may otherwise be determined by the City Council by resolution.
 - (2) For mechanical amusement devices used on a regular basis to depict or display specified anatomical areas or specified sexual activities as defined herein, one thousand dollars (\$1,000) per machine per year, irrespective of the number of machines owned by any one person, or as may otherwise be determined by the City Council by resolution.
- (b) The owner of any mechanical amusement device shall furnish a complete list of all devices owned or operated subject to licensing, with an indication thereon of the location of each machine and a list of all films used and the date of any film or placement during the license period.
- (c) The fees provided for herein shall be payable on July 1 of each year and prorated on a daily basis if the license becomes effective at any time other than July 1.
- (d) No license issued under the provisions of this chapter shall be transferable by a licensee, and any attempt to do so shall constitute a violation of this chapter; provided, that upon the death of the licensee, the license may be transferred to the executors or administrators of such deceased licensee. For the purposes of this section, the transfer of twenty-five percent or more of the capital stock of any licensee corporation or the change in the vesting of voting rights of over twenty-five percent of the stock of the licensee corporation shall be considered a transfer and change of ownership, and in such event a new license must be obtained by such corporation.
- (e) A license may only be issued to the owner of the center or establishment.

Section 6.040 Location and conditions for operation; license application

Notwithstanding anything in Chapter XIX of this Code and this chapter to the contrary, an adult entertainment center or adult establishment shall be allowed to operate only in Industrial (zoning districts and in no other zoning district, and only provided that the center or establishment meets the following conditions:

- (a) The center or establishment is in a permanent location no closer than two thousand six hundred forty (2,640) feet from any preexisting church, school, private residence, residentially-zoned property, or downtown commercial zoned property. Mobile, temporary, or transitory centers or establishments shall not be allowed.

- (b) The center or establishment excludes from its premises those persons less than eighteen years of age.
- (c) The center or establishment displays no signs visible from the exterior of the center, except non-obscene signs identifying the center as an adult entertainment center or adult establishment as defined herein.
- (d) No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of the center or establishment.
- (e) The manager and the owners of the center or establishment are registered with the chief of police and have provided him with such information as is reasonably required herein with respect to names, addresses, fingerprints and prior criminal records or criminal convictions associated with the operations of the business of adult entertainment centers or adult establishments in particular, if any.
- (f) The business premises of the center or establishment that are generally open to its patrons shall be closed to its patrons from 1:00 A.M to 8:00 A.M. daily, except 12:01 A.M. on Sundays to 8:00 A.M. the following day.
- (g) The center or establishment is licensed by the city.
- (h) Any person who is eligible for a license as provided herein may obtain a license as delineated herein within the city, if otherwise entitled thereto under this chapter and upon fully complying with all of the provisions of this chapter, by executing, under oath, forms provided by the city auditor and/or the chief of police, setting forth the name, citizenship and place of residence of the applicant and the legal description of the premises where the center or establishment is proposed to operate its business, together with such detailed description of the premises and facilities as the city auditor or chief of police may require. The application shall have attached to it a receipt of the county treasurer showing that all taxes of the applicant on real and personal property levied and assessed him are paid. The application must also show the age of the applicant if an individual, the name, place of residence, citizenship and the age of each partner if the applicant is a partnership and if the applicant is a corporation, either private or municipal, the name, place of residence, citizenship and age of each officer, director, manager and any stockholder owning more than five percent of the stock in such corporation.
- (i) Every applicant shall be required, as a portion of his written application, to promise and agree to abide by and obey all applicable laws of the state and all applicable ordinances of the city so far as such laws or ordinances may be concerned with his operation of the licensed premises and any activities conducted thereon. There shall also be incorporated on any such application the following consent, which shall be signed by the applicant: "The applicant herein does expressly consent that any member of the City Council, any police officer of the city and city attorney or any person or persons duly authorized by the City Council may enter upon the premises

described in this application at any reasonable hour of the day or night; and at such time they shall have free access to all portions of the property comprising the licensed premises for the purpose of inspecting such premises for any possible violation of any of the laws of the state or any of the ordinances of the city, whether they pertain specifically to the operation of the business or not. Such access shall be permitted for such purposes without the necessity of a search warrant.”

- (j) In addition to the provisions required of all applicants, all new applicants or those who previously have not been granted a license under this chapter shall be required to furnish the following:
 - (1) Such applicant shall furnish a complete statement of the type of business contemplated and give a comprehensive description of its physical layout.
 - (2) Each applicant shall submit a complete financial statement, detailing all his assets and liabilities of every nature and description and including all property interests of every nature and description.
 - (3) Each applicant shall cooperate to the fullest extent in obtaining and submitting to the city auditor and/or city police chief complete military and police records concerning any persons involved with the applicant organization. Each applicant shall prepare and submit a complete history of his business experience.
 - (4) The applicant shall show a history of his residency and employment for five years immediately prior to the date of the application. If the applicant is a partnership, this information shall be furnished for all of the partners; and if a corporation, the amount of authorized capital, the amount paid in capital, whether such corporation is a subsidiary of any corporation and, if so, the name of the parent corporation, the purposes for which the corporation was incorporated and the names and addresses of all officers, directors and managing agents and the names and addresses of all stockholders holding more than five percent of the capital stock of such corporation shall be furnished.
 - (5) The applicant shall state the name and address of the legal title owner of the premises for which the license is sought, and if the license is sought for a person other than the owner of the premises, the terms and conditions of the lease under which the applicant holds the possession of such premises shall be stated, insofar as the terms of the lease and the rental to be paid are concerned. The applicant shall, when required by the City Council, furnish to a copy of the lease under which he holds possession of the premises. If the license is sought by the owner of the premises, the application shall state the time when such applicant acquired title thereto.

- (6) The applicant shall state whether he has ever engaged in the form of business he is applying for prior to the date of application, and if so, the date and type of business and the place where such business was conducted shall be furnished.
- (7) It shall be stated whether the applicant has ever had a license for such business revoked or canceled by any municipality, state or federal authority, and if so, the date of cancellation, the place and authority canceling the same and the reasons for such cancellation shall be stated.
- (8) It shall be stated whether the applicant has ever been convicted of a violation of any law of the United States or of any state or of the violation of any local ordinance, and if so, the dates, names of places and courts in which such convictions were obtained.
- (9) The applicant shall state whether any other persons other than the applicant have any right, title or interest in the leasehold or in the furniture and fixtures of the premises for which the license is sought, and if so, names and addresses of such persons, together with a statement of the interest held, shall be furnished.
- (10) It shall be stated whether the applicant has any agreement, understanding or intention to have any agreement or understanding with any person to obtain for any other person or to transfer to any other person the license obtained or to use the license for any other purpose other than the specific use of the applicant, and if so, the names and addresses of such persons and the conditions of such agreements shall be stated.
- (11) The applicant shall state whether he has any interest whatsoever, directly or indirectly, in any other similar business within or without the state, and if so, the names, addresses and details concerning such establishments shall be furnished.

(k) All portions of the licensed premises to which members of the general public are admitted shall be readily visible from immediately within the front entrance of the center or establishment; and the center or establishment shall contain no private booths or other areas screened off or otherwise not visible from immediately within the front entrance of the center or establishment, ordinary restrooms or bathrooms excepted; provided that any entrance and exit to such restrooms or bathrooms is readily visible from immediately within the front entrance of the center or establishment. No member of the public shall be permitted at any time to enter into any of the non-public portions of the licensed premises, which shall include but are not limited to: the dressing rooms of entertainers or other rooms provided for the benefit of employees, the kitchen and storage areas; provided that persons delivering goods and material, food and beverages, or performing maintenance or repairs to the premises or equipment may be permitted into non-public areas to the extent necessary to perform their job duties.

- (l) The center or establishment shall not sell, distribute, or permit the consumption of any alcohol or other intoxicating substance on the premises of the center or establishment, nor shall such center or establishment be eligible for an alcohol license.
- (m) No center or establishment may be located within two thousand six hundred forty (2,640) feet of any other center or establishment licensed herein.
- (n) The following standards of conduct shall be observed and adhered to by all employees and entertainers of any center or establishment:
 - (1) No employee or entertainer shall be unclothed or in less than completely opaque attire so as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic region, anus, buttocks, vulva or genitals.
 - (2) No employee shall caress, fondle, or erotically touch any member of the public. No employee or entertainer shall encourage or permit any member of the public to caress, fondle or erotically touch any employee or entertainer.
 - (3) No employee or entertainer shall perform any actual or simulated act of sexual conduct as defined in this Chapter, or any act that constitutes a violation of NDCC Chapters 12.1-27.1 or 12.1-27.2, or which may otherwise be a criminal violation under North Dakota state law.
 - (4) No employee or entertainer shall conduct any dance, performance or exhibition in or about a non-stage area of the center or establishment for less than all members of the public present in the center or establishment.
 - (5) No employee or entertainer shall accept tips or gratuities in advance of their performance. No employee or entertainer shall accept tips or gratuities directly from patrons. All tips or gratuities shall be deposited in a receptacle provided by the center or establishment.
 - (6) The performance area where any performance, exhibition or dance where adult entertainment is provided shall be a stage or platform at least eighteen (18) inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least six (6) feet from all areas to which members of the public have access. A continuous railing at least three (3) feet high and located at least six (6) feet from all points of the performance area shall separate the performance area from the patron seating area.
 - (7) Sufficient lighting shall be provided and equally distributed throughout the public areas of the premises so that all objects are plainly visible at all times.

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

THIS CENTER OR ESTABLISHMENT IS REGULATED BY THE CITY OF BEACH. ENTERTAINERS ARE:

- (1) NOT PERMITTED TO ENGAGE IN ANY TYPE OF SEXUAL CONDUCT
- (2) NOT PERMITTED TO APPEAR NUDE OR SEMI-NUDE
- (3) NOT PERMITTED TO ACCEPT TIPS OR GRATUITIES IN ADVANCE OF THEIR PERFORMANCE
- (4) NOT PERMITTED TO ACCEPT TIPS DIRECTLY FROM PATRONS AT ANY TIME. TIPS MAY BE DEPOSITED IN THE RECEPΤICLE PROVIDED BY THIS CENTER OR ESTABLISHMENT.

Section 6.050 License Suspension and Revocation – Notice – Hearing – Appeal.

(a) The City may, upon recommendation of the City Auditor, suspend or revoke any license issued under this Chapter at any time for the following reasons:

- (1) The licensee has violated or failed to comply with any provision of this Chapter.
- (2) The license was procured by fraud or false representation of fact.
- (3) Any agent, servant, partner, business associate or employee, of the licensee has violated any provision of this Chapter under circumstances where the licensee knew or should have known of the violation.
- (4) The conviction of the licensee of any crime involving prostitution, promoting prostitution, or transactions involving controlled substances committed on the licensed premises
- (5) The conviction of the licensee of any crime involving moral turpitude.

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

(c) The city auditor shall provide at least ten days prior written notice to the licensee of the recommendation to suspend or revoke the license and the date of the hearing before the City Council, which must not be more than 30 days from the date of service of the notice, either by certified mail with a return receipt or by personal service upon the manager or owner of the licensed premises. Such notice shall inform the licensee of the right to a hearing before the City

Council, the date of the scheduled hearing, and shall state the grounds for revocation and suspension. The City Council shall hold the hearing within 30 days of service upon the licensee and shall issue its decision within 15 days following the close of the hearing. Any person aggrieved by the decision of the City Council shall have a right to appeal to the district court. The decision of the City Council shall be stayed during the pendency of the appeal except as provided in Subsection (d) below.

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

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

Section 6.060 Severability

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

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

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

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

(seal)

Mayor
City of Beach, North Dakota

ATTEST

Kim Nunberg, City Auditor

First Reading: November 21, 2011

Second Reading: December 5, 2011

Final Passage: December 19, 2011