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**CITY OF ELY
LINN COUNTY, IOWA
ORDINANCE No. 193**

REGULATING ADULT-ORIENTED ESTABLISHMENTS

Section 1. Purpose. The City Council of the City of Ely, Iowa finds:

- A. Adult-oriented establishments require special consideration in order to protect and preserve the health, safety, and welfare of the patrons of such establishments as well as the citizens of Ely;
- B. Adult-oriented establishments, because of their very nature, have a detrimental effect on both existing establishments around them and surrounding residential areas adjacent to them;
- C. The concern over sexually-transmitted diseases is a legitimate health concern of the City that demands reasonable regulation of adult-oriented establishments in order to protect the health and well-being of the community;
- D. Adult-oriented establishments, due to their very nature, have serious objectionable operational characteristics, thereby contributing to blight and downgrading the quality of life in the adjacent area;
- E. The City of Ely wants to prevent these adverse effects and thereby protect the health, safety, and welfare of its residents; protect residents from increased crime; preserve the quality of life; preserve the property values and character of the surrounding neighborhoods; and deter the spread of blight;
- F. It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact content neutral regulations that address the secondary effects of adult-oriented establishments as well as the health problems associated with such establishments.

Section 2. Definitions Related to Adult-Oriented Establishments.

- a. **ADULT BOOKSTORE:** An establishment that has a facility or facilities, including but not limited to, booths, cubicles, rooms or stalls for the presentation of "adult entertainment," including adult-oriented films, movies, or live performances for observation by patrons

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therein; or an establishment having a substantial or significant portion of its stock-in-trade for sale, rent, trade, lease, inspection, or viewing of books, films, video cassettes, magazines, or other periodicals, which are distinguished or characterized by their emphasis on matters depicting, describing, or relating to specified anatomical areas or specified sexual activities as defined below.

- b. *ADULT ENTERTAINMENT*: Any exhibition of any motion picture, live performance, display, or dance of any type, which has as its dominant theme or is distinguished or characterized by an emphasis on any actual or simulated specified sexual activities or specified anatomical areas as defined below.
- c. *ADULT MOTION PICTURE THEATER*: An enclosed building used for presenting material having as its dominant theme or distinguished or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined below for observation by patrons of the building.
- d. *ADULT-ORIENTED ESTABLISHMENT*: Any premises including, without limitation, "adult bookstores," or "adult motion picture theaters." It further means any premises to which public patrons or members are invited or admitted and which are physically arranged so as to provide booths, cubicles, rooms, compartments, or stalls separate from the common area of the premises for the purposes of viewing adult-oriented motion pictures, or wherein an entertainer provides adult entertainment to a member of the public, a patron, or a member, where such adult entertainment is held, conducted, operated, or maintained for a profit, direct or indirect. "Adult-Oriented Establishment" further includes, without limitation, any premises physically arranged and used as such whether advertised or represented as an adult entertainment studio, exotic dance studio, encounter studio, sensitivity studio, or any other term of like import.
- e. *OPERATORS*: Any person, partnership, or corporation operating, conducting, maintaining or owning any adult-oriented establishment.
- f. *SPECIFIED ANATOMICAL AREAS*: Less than completely and opaquely covered human genitals, buttocks, female breasts below the areola; or, male genitalia.
- g. *SPECIFIED SEXUAL ACTIVITIES*: Simulated or actual (a) showing of human genitals in a state of sexual stimulation or arousal; (b) acts of sexual activity, sodomy, or sado-masochism; or (c) fondling or erotic touching of human genitals, buttocks, or female breasts.

Section 3. Location Restrictions.

An adult-oriented establishment shall be permitted within the City of Ely only in the M-1 Industrial District upon receipt of a site plan and approval of a special exception use permit in accordance with the procedures set forth in Section 6-13-14, and only if it meets all of the location requirements set forth below. Distances provided hereafter shall be measured by following a straight line, without regard to intervening buildings, from the nearest point of the property parcel upon which the proposed adult entertainment business is to be located, to the

nearest point of the parcel of property or zoning district boundary line from which the proposed adult entertainment business is to be separated.

- a. Adult-oriented establishments shall be prohibited in or within one thousand (1,000) feet of the borders of a residential district.
- b. Adult-oriented establishments shall be prohibited within two thousand (2,000) feet of any church, synagogue, mosque, temple, or other place of religious worship.
- c. Adult-oriented establishments shall be prohibited within two thousand (2,000) feet of any public or private school offering general education for students between the years of Kindergarten and Twelfth grade, public library or museum.
- d. Adult-oriented establishments shall be prohibited within two thousand (2,000) feet of any registered daycare home or registered daycare business.
- e. Adult-oriented establishments shall be prohibited within two thousand (2,000) feet of any public park or playground. For purposes of this section, bike paths, trails, waterways, and boat launches shall not be deemed a public park.
- f. Adult-oriented establishments shall be prohibited within one thousand (1,000) feet of any other adult entertainment business.
- g. Adult-oriented establishments shall be prohibited within one thousand (1,000) feet of any existing establishment selling alcoholic beverages for consumption on premises.

Section 4. Development Design Standards.

- a. *Exterior.* It shall be unlawful for an owner of an adult-oriented establishment:
 - i. to allow the merchandise or activities of the establishment to be visible from a any point outside the establishment
 - ii. to allow the exterior portion of the adult-oriented establishment to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representation of any manner depicting specified anatomical areas or specified sexual activities.
 - iii. to allow exterior portions of the establishment to be painted other than a single color.
- b. *Signage.* The operator shall comply with §6-13-7 of this ordinance. Additionally, the display surfaces of the sign shall not contain any flashing lights or photographs, silhouettes, drawings, or pictorial representations of any manner, except for the name of the enterprise.

Section 5. Responsibilities of the Operator. Every act or omission by an employee constituting a violation of the provisions of this ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's

conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

Section 6. Minors. It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of an adult-oriented establishment at any time that the establishment is open for business. The operator must ensure that an attendant is stationed at each public entrance at all times during regular business hours. The attendant shall prohibit any person under the age of eighteen (18) from entering the establishment. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished a valid drivers license issued by a state reflecting that person's age.

Section 7. Hours of Operation*Hours of Operation.* An adult-oriented establishment may remain open for business no longer than the hours from between 10:00 a.m. to midnight, seven days a week.

Section 8. Repealer Clause. Any ordinance, provision or part thereof, which differs or is inconsistent with this ordinance is hereby repealed, to the extent of said difference or inconsistency.

Section 9. Severability. If any section, provision or part of this Ordinance shall be adjudged invalid or unconstitutional by a court of competent jurisdiction, such adjudication shall not affect the validity of the ordinance as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional

Section 10. Effective Date. This ordinance shall be in effect from and after final passage, approval, and posting and publication of this ordinance as required by law.

Introduced this 12th day of March, 2007, and adopted by the City Council of the City of Ely, Iowa this 9th day of April, 2007.



Aaron Anderson, Clerk/Administrator


Dale Stanek, Mayor