

**SAN JUAN COUNTY, NEW MEXICO
ADULT ENTERTAINMENT BUSINESSES ORDINANCE
ORDINANCE NO. 85**

AN ORDINANCE REGULATING THE LOCATION OF ADULT ENTERTAINMENT BUSINESSES AND ESTABLISHING A PROCEDURE FOR SUCH BUSINESSES TO OBTAIN A PERMIT AUTHORIZING THE LOCATION OF THE SAME.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SAN JUAN COUNTY, NEW MEXICO:

SECTION 1. PERMIT REQUIRED. --

No adult entertainment business shall be permitted within unincorporated San Juan County unless a permit has been obtained in accordance with this Ordinance.

SECTION 2. LOCATION. --

(A) **Use limitations.** Such establishments may include the following uses as defined herein: adult bookstore, adult movie theater, adult lounge, parlor, or cabaret, adult novelties, adult entertainment, and adult video. Adult modeling studios and any other type of sexual encounter center shall be prohibited.

(B) **Minimum separation distance: 1,000 feet.** The required separation distance applies to all adult entertainment establishments and to specific uses including other adult entertainment establishments and any residence, religious assembly, library, cultural service, childcare center, elementary or secondary school, community center, or public park.

(C) **Measurement.** For the purposes of this Ordinance, distances shall be measured in a straight line, without regard to intervening structures or objects, from the nearest point on the property line of the lot on which the adult entertainment establishment is located, to the nearest point on any property line of a residential property, specific use, or other adult entertainment establishment.

SECTION 3. SIGNS. --

Signs advertising an adult entertainment establishment:

(A) Shall not contain any flashing lights or moving parts;

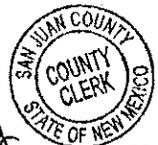
(B) Shall contain no photographs, silhouettes, drawings, or pictorial representations of any manner, and shall not advertise either graphically or verbally,



201404842 05/07/2014 09:42 AM

1 of 7 B1572 P399 R \$0.00

San Juan County, NM DEBBIE HOLMES



TA

either by explicit or literal expression, any specified sexual activities or specified anatomical areas; and

(C) May contain only the name of the enterprise and/or one or more of the following phrases: adult bookstore, adult movie theater, adult lounge, parlor, or cabaret, adult novelties, adult entertainment, and adult video.

SECTION 4. PROHIBITED ACTIVITIES. --

(A) **Explicit displays.** An adult entertainment use shall not be conducted in any manner that provides the observation of any material depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" from any public right-of-way. This provision shall apply to any display, decoration, or show window.

(B) **Private viewing areas.** It shall be a violation of this Ordinance to operate an adult arcade or adult entertainment center as a part of any adult oriented establishment unless the building is internally constructed so that the viewing areas in such arcades or establishments are visible from a continuous main aisle and are not obscured by any curtain, wall, door, or other enclosure.

SECTION 5. OTHER REQUIREMENTS. --

The Board of County Commissioners, upon request of the Community Development Administrator, may establish additional appropriate conditions, as it deems necessary, on a case-by-case basis including, but not limited to:

- (A) That the parking lot be visible from any street; and
- (B) Additional exterior lighting and/or landscaping.

SECTION 6. DEFINITIONS. --

(A) **Adult bookstore.** A bookstore having for sale or viewing by patrons on its premises a substantial and significant portion of its stock in trade, books, magazines, and other periodicals or printed matter principally characterized by their emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined in this Ordinance.

(B) **Adult cinema.** An enclosed building or open air theater used on a regular basis for presenting for observation or viewing by customers or commercial patrons pictorial material or other visual images by way of direct or indirect projections, or through coin or slug-operated or electrically, electronically or mechanically controlled still or motion pictures, video-tape machines, or other image-producing devices maintained to show images or material, a predominance of which is principally distinguished or characterized by an emphasis on the depiction of "specified sexual activities" or "specified anatomical areas" in return for the payment of any form of



consideration or gratuity, irrespective of the number of patrons who may be able to view the presentation at any one time.

(C) **Adult entertainment business.** Adult entertainment business shall also include any business not specifically described in this Ordinance which provides or features: (i) male or female dancers, entertainers, or contestants who feature the act of partially or totally disrobing; or (ii) an individual or individuals with less than opaque clothing covering specified anatomical areas; or (iii) provides or features an individual or individuals involved in actual or simulated specific sexual activities; or (iv) a dancer or dancers, entertainers, or contestants which emphasize and seek to arouse or excite the patrons' sexual desires; or (v) a dancer or dancers or entertainers who fondle or caress any patron.

(D) **Adult hotel or motel.** A hotel or motel which provides as a predominant part of its major business the presentation of material for viewing by patrons in exchange for any form of consideration or gratuity material which is predominantly distinguished or characterized by an emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined in this Ordinance, and which rents its facilities on an hourly or less than daily basis.

(E) **Adult video sales/rental outlet.** A video sales/rental outlet having for sale, rental, or viewing on its premise a substantial and significant portion of its stock in trade, audio/visual materials principally characterized by their emphasis on matters depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" as defined in this Ordinance.

(F) **Specified anatomical areas.** Less than completely and opaquely covered: (i) human genitals; (ii) pubic region; (iii) buttocks; (iv) female breasts below a point immediately above the top of the areola; and (v) human male genitals in a discernibly turgid state, even if completely opaquely covered.

(G) **Specified sexual activities.** (i) Human genitals in a state of sexual stimulation or arousal; (ii) acts of human masturbation, sexual intercourse, or sodomy; or (iii) fondling or erotic touching of human genitals, pubic region, buttocks, or female breasts.

SECTION 7. APPLICATION PROCEDURE. --

(A) Any person, partnership, Limited Liability Company, or corporation who operates or desires to operate an adult entertainment business must first obtain a license from the Community Development Administrator of San Juan County.

(B) The Administrator shall require the following information from the applicant:



- (i) The name, address, and business organization of the applicant and location the applicant intends to transact business, as well as the specific business to be transacted.
- (ii) If the applicant is an individual, the residence address of the applicant as well as the applicant's birthdate and social security number.
- (iii) If the applicant is a partnership, the names, residence addresses, birthdates, and social security numbers of all partners.
- (iv) If the applicant is a Limited Liability Company, the Administrator shall obtain the state of organization, the address of the resident agent in New Mexico sufficient for service of process, the name of the managing member together with residence address, birthdate, and social security number and the name, residence address, birthdate, and social security number of each member of the company.
- (v) If the company is a corporation, the Administrator shall obtain the state of incorporation, the name and address of the registered agent in New Mexico sufficient for service of process, and the name, residence address, birthdate, and social security number of each officer or director of the corporation.
- (vi) Prior to the issuance of a license, any Limited Liability Company or corporation shall provide a certificate of good standing.
- (vii) The applicant shall provide Federal and State tax identification numbers.
- (viii) The applicant shall provide evidence that the location of the proposed business meets the separation requirements of Section 2 of this Ordinance.
- (ix) Within two (2) working days of the receipt of a completed application and fee, the Community Development Administrator shall transmit the application to the Sheriff of San Juan County, or his designee, who shall perform a background check on the applicant, partners, managing member, members, officers, and directors of each applicant. If possible, the background check shall be completed within fifteen (15) working days of the transmission date. The applicant shall be notified of the date the information is transmitted to the Sheriff.

SECTION 8. DISQUALIFYING FACTORS. --

An application shall be disqualified for any one or more of the following reasons:



(A) The proposed location does not meet the criteria of Section 2 of this Ordinance.

(B) Evidence that any owner, partner, managing member, member officer, or director has been convicted of any felony or misdemeanor of moral turpitude including, but not limited to, sex offenses, child pornography laws, or any laws regulating the dissemination of adult-oriented material. The disqualifying period for sex offenses and child pornography offenses shall be lifetime. The disqualifying period for other offenses shall be ten (10) years.

(C) If applicant is a corporation or Limited Liability Company, failure to provide proof of good standing in New Mexico.

SECTION 9. ONE-YEAR LICENSE. --

If no disqualifying factor exists, the Community Development Administrator shall issue a one-year license to the applicant.

SECTION 10. ANNUAL RENEWAL. --

Every adult entertainment business shall annually renew its permit. In order to renew, the permit holder must provide current information regarding its owners in the same manner as provided for in Section 7(B) in order to permit the County to perform a new background check. If the renewal application is filed prior to the expiration of the current license, the applicant may continue business unless notified it has been denied renewal.

SECTION 11. DENIAL OF APPLICATION. --

If denial of an application for a new permit or a renewal permit is deemed necessary by the Community Development Administrator, he shall provide written notice of his decision to the applicant.

SECTION 12. APPEAL OF DENIAL OF LICENSE. --

Any person or entity denied an adult business license may, within ten (10) days of the receipt of notice of the denial, file an appeal with the San Juan County Commission. The Notice of Appeal shall be delivered to the County Executive Officer and a hearing shall be scheduled within thirty (30) days of receipt of the Notice. The appeal shall be de novo and the burden of proof shall be on the applicant to establish entitlement to a license. The Commission shall make written Findings of Fact and Conclusions of Law supporting its decision. Any further appeal by applicant shall be to the District Court, in accordance with NMSA 1978, Section 39-3-1.1 and Rule 1-074 NMRA.



SECTION 13. UNDERAGE EMPLOYEES AND PATRONS PROHIBITED. --

No person under the age of 18 shall be employed in any licensed adult entertainment establishment in any capacity nor shall any person under the age of 18 be allowed to patronize the establishment or loiter about the premises.

SECTION 14. REVOCATION OF LICENSE. --

An adult entertainment license may be revoked for any of the following reasons:

(A) Subsequent conviction by any owner, member, officer, or director of any crime delineated in Section 8(B) of this Ordinance.

(B) The employment of any person under the age of 18 by the adult entertainment establishment.

(C) Failure to take reasonable steps to prohibit people under the age of 18 from coming onto the premises.

(D) Any act of prostitution on the premises.

(E) The use or sale of controlled substances on the premises.

(F) Any participation in any acts of human trafficking.

SECTION 15. REVOCATION PROCEDURE. --

The Administrator shall give written notice to the owner of an establishment indicating his intention to revoke the adult entertainment license. The owner shall have ten (10) days to notify the Administrator of its intention to terminate the license. A hearing shall be held before the Board of County Commissioners within 30 days of the receipt of such notice. The burden of proof shall be on the Administrator to establish grounds for revocation. Any appeal of the decision of the Board of County Commissioners shall be to the District Court in accordance with NMSA 1978, Section 39-3-1.1 and Rule 1-074 NMRA.

SECTION 16. EXISTING ADULT ENTERTAINMENT BUSINESSES. --

Any adult entertainment business existing as of the date of the passage of this Ordinance shall not be required to comply with the location requirements of Section 2. However, the owners of such businesses shall, within 90 days of the effective date of this Ordinance, submit an application and submit to the required background check. If no disqualifying factors are present, an annual license shall be issued.



SECTION 17. EXCEPTION FOR SUBSEQUENT USES OF NEARBY PROPERTY. --

An adult entertainment establishment, lawfully operating under this Ordinance, shall not be deemed to be in violation of the location restrictions set forth in Section 2 solely because a specific use subsequently locates within the minimum required distance of the adult entertainment establishment, or when any other lot or tract within the required minimum distance of the adult entertainment establishment subsequently becomes residential property.

SECTION 18. PENALTIES. --

Any violation of this Ordinance may be enforced in any court of competent jurisdiction. The maximum penalty per violation shall be \$300 and/or 90 days in jail. Each day during the time in which a violation occurs shall be deemed a separate violation. Nothing herein shall prevent San Juan County from seeking injunctive relief, if appropriate.

SECTION 19. FEES. --

The fee for a new adult entertainment license shall be \$250.00. The fee for an annual renewal shall be \$100.00.

SECTION 20. SAVING CLAUSE. --

Should any portion of this Ordinance be declared unenforceable after a final, non-appeal decision of a court of competent jurisdiction, the remaining provisions of this Ordinance shall, to the extent feasible, remain in full force and effect.

PASSED, APPROVED AND ADOPTED this 6th day of May, 2014.

**BOARD OF COUNTY COMMISSIONERS
OF SAN JUAN COUNTY, NEW MEXICO**

By: *Jack L. Fortner*
Jack L. Fortner, Chairman



Debbie Holmes
Debbie Holmes, County Clerk



201404842 05/07/2014 09:42 AM
7 of 7 B1572 P399 R \$0.00
San Juan County, NM DEBBIE HOLMES