Ordinance No. 2006-03

AN ORDINANCE ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY OF ATKINS, ARKANSAS

Section

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Whereas, sexually oriented businesses require special supervision from the public safety agencies of the City of Atkins, Arkansas, in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City of Atkins, Arkansas; and

Whereas, The Atkins City Council finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

Whereas, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and the downgrading of property values; and

Whereas, the Atkins City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

Whereas, the City of Atkins, Arkansas, recognizes its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

Whereas, with the passage of any ordinance, the City of Atkins, Arkansas, and the Atkins City Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Arkansas Constitutions, Arkansas Code, and the Arkansas Rules of Civil and Criminal Procedure; and

Whereas, it is not the intent of this ordinance to suppress any speech activities protected by the U. S. Constitution or the Arkansas Constitution, but to enact an ordinance to further the content-neutral governmental interests of the City of Atkins, Arkansas, to-wit, the controlling of secondary effects of sexually oriented businesses.

NOW, THEREFORE, BE IT RESOLVED AND ORDAINED by the City Council of the City of Atkins, Arkansas, on the 21st day of March, 2006, that the following ordinance be enacted:

Section 1. Rationale and findings.

(a) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the City of Atkins, Arkansas, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City of Atkins, Arkansas. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

(b) Findings and Rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Atkins City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of City of Littleton v. Z.J. Gifts D-4, L.L.C., 124 S. Ct. 2219 (June 7, 2004); City of Los Angeles v. Alameda Books, Inc., 535 U. S. 425 (2002); Pap's A.M. v. City of Erie, 529 U. S. 277 (2000); City of Renton v. Playtime Theatres, Inc., 475 U. S. 41 (1986), Young v. American Mini Theatres, 426 U. S. 50 (1976), Barnes v. Glen Theatre, Inc., 501 U. S. 560 (1991); California v. LaRue, 409 U. S. 109 (1972); and

World Wide Video of Washington, Inc.
v. City of Spokane, 368 F. 3d 1186 (9th Cir. 2004); Ben's Bar, Inc. v. Village of Somerset, 316 F. 3d 702 (7th Cir. 2003);

And based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to Austin, Texas - 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Houston, Texas – 1983, 1997; Phoenix, Arizona – 1979, 1995-98; Chattanooga, Tennessee – 1999-2003; Minneapolis, Minnesota – 1980; Los Angeles, California – 1977; Whittier, California – 1978; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Littleton, Colorado 2004; Oklahoma City, Oklahoma – 1986; Dallas, Texas – 1997; Greensboro, North Carolina – 2003; Amarillo, Texas – 1977; New York, New York Times Square – 1994; and Report of the Attorney General's Working Group On The Regulation of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota),

The Atkins City Council finds:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
(2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented business, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
(3) Each of the foregoing negative secondary effects constitutes a harm which the City of Atkins, Arkansas has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City of Atkins, Arkansas's rationale for this ordinance, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the City of Atkins,

Arkansas's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the City of Atkins, Arkansas finds that the cases and documentation relied on in this ordinance are reasonably believed to be relevant to said secondary effects.

SECTION 2. Definitions.

For the purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings herein respectively ascribed to them unless a different meaning is clearly indicated by the context.

"Enforcement-Officer" means the City of Atkins, Arkansas's Police Chief.

"*Adult Bookstore or Adult Video Store*" means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of "specified sexual activities: or specified anatomical areas."

A "*principal purpose*": means that the commercial establishment:

(a) has a substantial portion of its displayed merchandise which consists of said items, or

(b) has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or

(c) has a substantial portion of the retail value of its displayed merchandise which consists of said items, or

(d) derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items; or

(e) maintains a substantial section of its interior business space for the sale or rental or said items; or

(f) maintains an "adult arcade," which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting "specified sexual activities" or specified anatomical areas."

"*Adult Cabaret*" means a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

"*Adult Motel*" means a motel, hotel, or similar commercial establishment which:

(a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
(b) offers a sleeping room for rent for a period of time that is less than 10 hours; or
(c) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

"*Adult Motion Picture Theater*" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of "specified sexual activities" or specified anatomical areas: are regularly shown to more than five persons for any form of consideration.

"*Municipality Body*" means the City Council of the City of Atkins, Arkansas.

"*Characterized by*" means describing the essential character or quality of an item. As applied in this ordinance, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-18 or R by the Motion Picture Association of America.

"*Municipality Type*" means City of Atkins, Arkansas.

"*Employ, Employee, and Employment*" describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

"*Establish or Establishment*": shall mean and include any of the following:

(a) The opening or commencement of any sexually oriented business as a new business;
(b) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
(c) The addition of any sexually oriented business to any other existing sexually oriented business.

"*Hearing Body*" shall mean the City Council of the City of Atkins, Arkansas.

"*Influential Interest*" means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

"*Licensee*" shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

"*Nudity or a State of Nudity*" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

"*Operate or Cause to Operate*" shall mean to cause to function or to put or keep in a state of doing business. "Operator" means any person on the premises of a sexually oriented business who causes that business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

"*Person*" shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

"*Premises*" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to Section IV of this ordinance.

"*Regularly*" means and refers to the consistent and repeated doing of the act so described.

"*Semi-Nude or State of Semi-Nudity*" means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at the point, or the showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a

bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

"*Semi-Nude Model Studio*" means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

This definition does not apply to any place where persons appearing in a state of semi-nudity did so in a modeling class operated:

(a) By a college, junior college, or university supported entirely or partly by taxation;

(b) By a private college or university which maintains and operates educational programs in which credited are transferable to college, junior college, or university supported entirely or partly by taxation; or

(c) In a structure:

  (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

  (2) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

"*Sexual Device*" means any three (3) dimensional object designed and marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

"*Sexual Device Shop*" means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

"*Sexual Encounter Center*" shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling between persons of the opposite sex when one or more of the persons is semi-nude.

"*Sexually Oriented Business*" means an "adult bookstore or adult video store," and adult cabaret," an "adult motel," an adult motion picture theater," a semi-nude model studio," "sexual device shop," or a "sexual encounter center."

"*Specified Anatomical Areas*" means and includes:
(a) Less than completely and opaquely covered; human genitals, pubic region, buttock; and female breast below a point immediately above the top of the areola; and
(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"*Specified Criminal Activity*" means:
(a) any of the following specified crimes for which less than five years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
    (1) [Sex Crimes] as defined in A.C.A. 5-14-101 et. seq.
    (2) [Prostitution Crimes] as defined in A.C.A. 5-70-101 et. seq.
    (3) [Obscenity Crimes] as defined in A. C. A. 5-68-101 et. seq.
    (4) [Drug Crimes] as defined in A. C. A. 5-64-101 et. seq.
    (5) [Racketeering] as defined in A.C.A. 5-74-101 et. seq.

(b) any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
(c) any offense in another jurisdiction that, had the predicate act(s) been committed in Arkansas, would have constituted any of the foregoing offenses.

"*Specified Sexual Activity*" means any of the following:
(a) intercourse, oral copulation, masturbation or sodomy; or
(b) excretory functions as a part of or in connection with any of the activities described in (a) above.

"*Substantial*" means at least thirty-five percent (35%) of the item(s) so modified.

"*Transfer of Ownership or Control*" of a sexually oriented business shall mean any of the following:
(a) The sale, lease, or sublease of the business;
(b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

"*Viewing Room*" shall mean the room, booth, or area where a patrol of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

SECTION 3. Classification.

The Classifications for sexually oriented businesses shall be as follows:

(a) Adult bookstore or adult video store;
(b) Adult cabaret;
(c) Adult motel;
(d) Adult motion picture theater;
(e) Semi-nude model studio;
(f) Sexual device shop;
(g) Sexual encounter center.

SECTION 4. License required.

(a) It shall be unlawful for any person to operate a sexually oriented business in the City of Atkins without a valid sexually oriented business license.
(b) It shall be unlawful for any person to be an "employee" as defined in this Chapter, of a sexually oriented business in the City of Atkins without a valid sexually oriented business employee license.
(c) An applicant for a sexually oriented business license or sexually oriented business employee license shall be filed in person at the office of the City of Atkins Police Chief. Application will be made on a form provided by the Chief of Police. The application shall be signed as required by subsection (3) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in Paragraphs 1 through 7 below, accompanied by the appropriate fee identified in Section 6.

(1) The applicant's full true name and any other names used by the applicants in the preceding five (5) years.
(2) Current business address or another mailing address of the applicant.
(3) Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
(4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.
(5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
(6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
(7) A statement of whether any sexually oriented business in which applicant has had an influential interest, has, in the previous five (5) years (and at the time during which the applicant had the influential interest):

(i.) been declared by a court of law to be a nuisance; or
(ii.) been subject to a court order of closure or padlocking.

The information provided pursuant to Paragraphs 1 through 7 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Atkins Police Chief within ten (10) working days of change of circumstances which would render the information originally submitted false or incomplete.

(d) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and 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 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 (6) inches. Applicants who are required to comply with Sections 14 and 18 of this chapter shall submit a diagram indicating that the interior configuration meets the requirements of those sections.

(e) If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a license is granted.

(f) The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the office of the Atkins Police Chief on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by court order.

SECTION 5. Issuance of license.

(a) Upon the filing of a completed application under Section 4 (c) sexually oriented business license, the Atkins Police Chief shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the City of Atkins, Arkansas to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business license application, the Atkins Chief of Police shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Atkins Chief of Police shall issue a license unless:
    (1) An applicant is less than eighteen (18) years of age.
    (2) An applicant has failed to provide information as required by Section 4 for issuance of a license or has falsely answered a question or request for information on the application form.
    (3) The license application fee required by this Chapter has not been paid.
    (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Chapter or is not in

compliance with locational requirements of this ordinance or the locational requirements of any other part of the City of Atkins Code.

(5) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
    (i.) been declared by a court of law to be a nuisance; or
    (ii.) been subject to an order of closure or padlocking.

(6) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.

(b) Upon the filing of a completed application under Section 4 (c) for a sexually oriented business employee license, the Atkins Police Chief shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the City of Atkins, Arkansas to deny or grant an annual license. Within twenty (20) days of the filing date of a completed sexually oriented business employee license application, the Chief of Police shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Chief of Police shall approve the issuance of a license unless:

(1) The applicant is less than eighteen (18) years of age.

(2) The applicant has failed to provide information as required by Section 4 for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Chapter has not been paid.

(4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest).
    (i) been declared by a court of law to be a nuisance; or
    (ii) been subject to an order of closure or padlocking.

(5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this ordinance.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

SECTION 6. Fees

(a) The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: three hundred dollars ($300) for the initial fee for a sexually oriented business

license and three hundred dollars ($300) for annual renewal; seventy-five dollars ($75) for the initially sexually oriented business employee license and seventy-five dollars ($75) for the annual renewal. All fees to be paid on or before January 31st of each year.

SECTION 7. Inspection.

(a) Sexually oriented businesses and sexually oriented business employees shall permit the Chief of Police and his or her agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the City of Atkins, Arkansas, to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.
(b) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

SECTION 8. Expiration of license.

(a) Each license shall remain valid for one calendar year unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in Section 4 and Section 6.
(b) Application for renewal should be made pursuant to the procedures set forth in Section 4 at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected.

SECTION 9. Suspension

(a) The City of Atkins, Arkansas shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this Chapter.
(b) The City of Atkins, Arkansas, shall issue a written letter of intent to suspend a sexually oriented business employee license if the employee has knowingly violated this Chapter.

Licensee —>

SECTION 10. Revocation.

(a) The City of Atkins, Arkansas, shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violated this chapter or has knowingly

allowed an employee to violate this chapter and the licensee's license has been suspended within the previous twelve-month (12-mo) period.

(b) The City of Atkins, Arkansas shall issue written intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:

(1) The licensee has knowingly given false information in the application for the sexually oriented business license.

(2) The licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances on the premises.

(3) The licensee has knowingly or reckless engaged in or allowed prostitution on the premises.

(4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or

(5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation pruposes.

(d) When, after the notice and hearing procedure described in Section 11, the Atkins City Council revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective.

SECTION 11. Hearing: denial, revocation, and suspension; appeal.

(a) When the Chief of Police issues a written notice of intent to deny, suspend, or revoke a license, the Chief of Police shall immediately send such notice, which shall include the specific grounds under this ordinance for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Chief of Police for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued on which the Atkins City Council shall conduct a hearing on the Chief of Police's intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the Chief of Police's witnesses. The Chief of Police shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license, The hearing shall take no longer than two (2) days, unless extended at the

request of the respondent to meet the requirements of due process and proper administration of justice. The Atkins City Council shall issue a written decision, including specific reasons for the decision pursuant to this ordinance, to the respondent within five (5) days after the hearing.

If the decision is to deny, suspend, or revoke the license, the decision shall not become effective until the thirtieth (30th) day after it is rendered, and the decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Atkins City Council's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Atkins City Council shall, contemporaneously with the issuance of the decision, order the Chief of Police to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the Chief of Police shall contemporaneously therewith issue the license to the applicant.

(b) If any court action challenging the Atkins City Council's decision is initiated, the Atkins City Council shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The Atkins City Council shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is in operation as of the effective date of this ordinance: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City of Atkins, Arkansas's enforcement of the denial, suspension or revocation, the City of Atkins, Arkansas shall immediately issue the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the City of Atkins, Arkansas's enforcement.

SECTION 12. Transfer of license.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

SECTION 13. Hours of operation.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day.

SECTION 14. Regulations pertaining to exhibition of sexually explicit films or videos.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior or the premises to an accuracy of plus or minus six (6) inches. The Chief of Police 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.

(2) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is 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 Paragraph 1 of this subsection.

(3) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

(5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

(i.) That the occupancy of viewing rooms is limited to one person.

(ii.) That sexual activity on the premises is prohibited.

(iii.) That the making of openings between viewing rooms is prohibited.

(iv.) That violators will be required to leave the premises.
(v.) That violations of subparagraphs (i), (ii) and (iii) of this paragraph are unlawful.

(6) It shall be the duty of the operator to enforce the regulations articulated in (5) (i) through (iv) above.

(7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator'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 of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

SECTION 15. Loitering, exterior lighting, visibility, and monitoring requirements

(a) It shall be the duty of the operator of a sexually oriented business to: (a) post conspicuous signs stating that no loitering is permitted on such property; (b) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (c) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(c) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

SECTION 16. Penalties and enforcement

(a) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this chapter shall be gulty of a Class A Misdemeanor, and, upon conviction, shall he punishable by 0 days to 1 year in jail and/or 0 to $1,000.00 fine. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(b) The City of Atkins, Arkansas's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this ordinance to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the City of Atkins, Arkansas, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this ordinance, or any of the laws or ordinances in force in the City of Atkins, Arkansas or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

SECTION 17. Applicability of ordinance to existing businesses.

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

(a) It shall be a violation of this ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(b) It shall be a violation of this ordinance for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.

(c) It shall be a violation of this ordinance for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(d) It shall be a violation of this ordinance for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

(e) A sign in a form to be prescribed by the Chief of Police, and summarizing the provisions of Paragraphs (a), (b), (c), and (d) of this Section, shall be posted near the entrance of the sexually oriented

business in such a manner as to be clearly visible to patrons upon entry.

SECTION 19. Scienter required to prove violation or business licensee liability. This ordinance does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this ordinance. Notwithstanding anything to the contrary, for the purposes of this ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for the purposes of finding a violation of this ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

SECTION 20. Failure of the City of Atkins, Arkansas to meet deadline not to risk applicant/licensee rights.

In the event that a City of Atkins, Arkansas, official is required to take an act or do a thing pursuant to this ordinance within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the City of Atkins, Arkansas, official under this ordinance, and not completed in the time prescribed, includes approval of condition(s) necessary for approval by the City of Atkins, Arkansas, of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the City of Atkins, Arkansas's action has passed.

SECTION 21. Location of sexually oriented businesses.

(a) Sexually oriented businesses shall not be required to obtain a conditional use permit. Sexually oriented businesses shall be permitted subject to the following limitations:
(b) It shall be unlawful to establish, operate, or cause to be operated a sexually oriented business in the City of Atkins, unless said sexually oriented business is at least:
    (1) Seven hundred fifty (750) feet from any parcel occupied by another sexually oriented business or by a business licensed by the State of Arkansas to sell alcohol at the premises; and
    (2) Seven hundred fifty (750) feet from any parcel occupied by a house of worship, licensed day-care center, public or private elementary or secondary school, public bar, or any residence.
(c) For the purpose of this section, measurements shall be made in a straight line in all directions without regard to intervening structures or

objects, from the closest part of any structure, including signs and roof overhangs, used in conjunction with the sexually oriented business to the closest point on a property boundary or right of way associated with any of the land use(s) identified in subsection (a) (1) – (a) (2) above.

(d) Exterior portions of sexually oriented businesses.

(1) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment

(2) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this ordinance.

(3) It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color.

(4) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

(e) Signage.

(1) Notwithstanding any other city ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(2) Primary signs shall have no more than two (2) display surfaces. each such display surface shall:

(A) not contain any flashing lights;

(B) be a flat plane, rectangular in shape;

(C) not exceed seventy-five (75 square feet in area; and

(D) not exceed ten (10) feet in height or ten (10) feet in length.

(3) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.

(4) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the

display surface of a primary sign shall be of a uniform and solid color.

(5) Secondary signs shall have only one (1) display surface. Such display surface shall:
    (A) be a flat plane, rectangular in shape;
    (B) not exceed twenty (20) square feet in area;
    (C) not exceed five (5) feet in height and four (4) feet in width; and
    (D) be affixed or attached to any wall or door of the enterprise.

(6) The provisions of item (A) of subsection (2) and subsection (3) and (4) shall also apply to secondary signs.

SECTION 22. Severability.

This ordinance and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, not withstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this ordinance be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this ordinance.

SECTION 23. Conflicting code provisions repealed.

Any provision(s) in the City of Atkins Code of ordinances specifically in conflict with any provision in this ordinance are hereby deemed inoperative and repealed.

SECTION 24. Emergency Clause.

It has been found that the effectiveness of the ordinance is necessary for the immediate enforcement of the above mentioned purposes and, therefore, an emergency is declared and this ordinance, being necessary for the preservation of the public peace, health and safety, shall be in force upon its passage and approval.

Passed this 21st day of March, 2006.

APPROVED:

Jerry Don Barrett, Mayor

ATTEST:

Brenda Graves, Clerk/Treasurer