

ORDINANCE NO. 12

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF  
ALAMOSA, COLORADO CREATING AN ORDINANCE LIMITING THE  
OPERATION OF ADULT ENTERTAINMENT ESTABLISHMENTS

WHEREAS, it has been brought to the attention of the Board of County Commissioners of Alamosa County that there is an interest in creating commercial establishments in the unincorporated portion of Alamosa County in which persons may appear in a state of nudity for the purpose of entertaining the patrons of such establishments; and,

WHEREAS, commercial establishments of this nature are not currently subject to any comprehensive regulations imposed on nude entertainment; and,

WHEREAS, commercial establishments of this nature would adversely impact the adjacent residential neighborhoods in which they are located and other nearby land uses, including churches, schools, parks and other recreation areas; and,

WHEREAS, these adverse impacts include attraction of transients, parking and traffic problems, increased crime and noise, decreased property values, increased safety hazards to neighborhood children, and overall deterioration of neighborhood quality; and

WHEREAS, it is the intent of the Board of County Commissioners to serve a substantial government interest by attempting to preserve the quality and vitality of residential neighborhoods, parks and recreational areas, and areas around schools and churches in Alamosa County; and

WHEREAS, alternative avenues of communication are not unreasonably limited for "speech" of this nature; and,

WHEREAS, the Colorado State Legislature has enacted Section 30-15-401(L)(I), C.R.S.; and,

WHEREAS, Section 30-15-401(L)(I), C.R.S., authorizes the Board of County Commissioners to adopt by ordinance those regulations necessary for the operation of establishments open to the public in which persons appear in a state of nudity for the purpose of entertaining such establishment's patrons.

NOW, THEREFORE BE IT ORDAINED by the Board of County Commissioners of Alamosa County, State of Colorado, that operation of establishments open to the public in which persons appear in a state of nudity for the purpose of entertaining the patrons of such establishments shall be subject to the following regulations:

(I) These regulations shall apply to any establishment open to the public in which persons appear in a state of nudity for the purpose of entertaining the patrons of such

establishments, irrespective of whether such establishments are licensed to serve alcohol or fermented malt beverages. Such establishments are hereinafter referred to as "Adult Entertainment Establishments." These regulations shall not apply to any establishment otherwise exempted under 30-15-40I(L)(III), C.R.S., as it currently exists or may be amended in the future.

(2) A person appears in a "state of nudity" when such person is unclothed or in such attire, costume or clothing as to expose to view any portion of the female breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks, vulva or genitals.

(3) No one under 21 years of age shall be admitted to any Adult Entertainment Establishment. This minimum age limitation also applies to any employees, agents, servants or independent contractors working on the premises during hours when nude entertainment is being presented.

(4) Nude entertainment shall only be available at Adult Entertainment Establishments from the hours of 6:00 p.m. to 12:00 midnight, Monday through Saturday of each week.

(5) (a) It shall be unlawful to operate or cause to be operated an Adult Entertainment Establishment in any location other than an Industrial district as defined in Article 2, Section 2.7 of the Zoning Regulations of Alamosa County, Colorado. An Adult Entertainment Establishment shall be deemed to be a conditional use and shall require review under Article 3 of the Zoning Regulations of Alamosa County, Colorado.

(b) No person shall operate or maintain an Adult Entertainment Establishment within one thousand five hundred (1,500) feet of any church, school, daycare center or preschool, residence, park or recreational facility or another adult entertainment establishment. For the purposes of this ordinance, the one thousand five hundred (1,500) foot distance shall be measured from any point of access to the structure housing the Adult Entertainment Establishment to the closest property line of the property containing the church, school, daycare center or preschool, residence, park or recreational facility or adult entertainment establishment.

(c) In the event the application of provision 5(a) and 5(b) of this Section, at a time when no Adult Entertainment Establishment is located in the County of Alamosa, would require denial of an application under this Section 5 on the basis that no location in the County of Alamosa fits the restricted location criteria, the distance from protected uses may be reduced to less than one thousand five hundred (1,500) feet, but in no event shall the distance be reduced to less than one thousand (1,000) feet.

(6) No person shall appear in a state of nudity except within the fully enclosed portions of the structure housing the Adult Entertainment Establishment.

(7)(a) Notwithstanding any other ordinance, code, or regulation to the contrary, it shall be unlawful for the operator of any Adult Entertainment Establishment 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.

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

- (1) not contain any flashing lights;
- (2) be a flat plane, rectangular in shape;
- (3) not exceed seventy-five (75) square feet in area; and
- (4) not exceed ten (10) feet in length.

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

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

(e) Secondary signs shall have only one (1) display surface, shall

- (1) be a flat plane, rectangular in shape;
- (2) not exceed twenty (20) square feet in area;
- (3) not exceed five (5) feet in height and four (4) feet in width; and
- (4) be affixed or attached to a wall or door of the Adult Entertainment Establishment.

(f) The provisions of paragraphs 7(b)(1), 7(c) and 7(d) hereof shall also apply to secondary signs.

(8)(a) It shall be unlawful for an owner or operator of an Adult Entertainment Establishment to allow the activities of the establishment to be visible from a point outside the establishment.

(b) It shall be unlawful for the owner or operator of an Adult Entertainment Establishment to allow the exterior portion of the Adult Entertainment Establishment 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 paragraph 7 of this Ordinance.

(9)(a) No Adult Entertainment Establishment shall be permitted to operate without having been first granted an adult entertainment license by the Board of County Commissioners.

(b) Any person desiring to operate an adult entertainment establishment shall file with the Zoning Administrator a sworn license application on standard application forms supplied by the Zoning Administrator.

{c) The completed application shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is:

(I) An individual, the individual shall state his legal name and any aliases and submit satisfactory proof that he is at least twenty-one (21) years of age;

(ii) A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, the name and address of at least one (1) person in Colorado who is authorized to accept service of process, and a copy of the partnership agreement; or

{iii) A corporation, the corporation shall state its complete name, state the date of its incorporation, evidence that the corporation is in good standing, provide a copy of the articles of incorporation and by-laws, state the name and capacity of all officers and directors, the name of the registered corporate agent, the address of the registered office for service of process, and the name and title or capacity of the person who makes the application on behalf of the corporation;

(2) Whether the applicant or any of the other individuals listed pursuant to subsection (1) has, within the five-year period immediately preceding the date of the application, been convicted of a specified criminal act, and, if so, the specified criminal act involved, the date of conviction and the place of conviction;

(3) Whether the applicant or any of the other individuals listed pursuant to subsection (1) has had a previous license under this ordinance suspended or revoked, including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation, and whether the applicant or any other individuals listed pursuant to subsection (I) has been a partner in a partnership or an officer or director of a corporation whose license under this chapter has previously been suspended or revoked, including the name and location of the establishment for which the license was suspended or revoked, as well as the date of the suspension or revocation;

(5) Whether the applicant or any other individuals listed pursuant to

subsection (1) holds any other licenses under this chapter and, if so, the names and locations of such other licensed establishments;

(6) The location of the proposed establishment, including a legal description of the property site, and a legal street address;

(7) The names of each person who has the right or authority to manage or control the day-to-day operation of the proposed establishment, and such person's business address and business telephone number, or, if the person is a corporation, the same information shall be provided for its officers and directors;

(8) The applicant's mailing address and business telephone number;

(d) Each application shall be accompanied by a nonrefundable fee of five hundred dollars (\$500.00), subject to adjustment from time to time by resolution of the Board of County Commissioners. Such application fee shall be used to defray the costs and expenses incurred by the various departments in reviewing the application. If the application for a license is approved and a license is granted, the fee shall be applied as a credit towards the annual license fee required for the first year as hereinafter set forth.

(e) By applying for a license under this chapter, the applicant shall be deemed to have consented to the provisions of this chapter and to the exercise by the Zoning Administrator and the departments of their respective responsibilities under this chapter.

(f) Upon receipt of an application properly filed with the Zoning Administrator under this article and upon payment of the nonrefundable application fee, the Zoning Administrator shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to the County Administrator and the Alamosa County Sheriff.

(g) The Alamosa County Sheriff shall promptly conduct an investigation of the applicant and application in accordance with this Ordinance.

(h) At the conclusion of its investigation, the Alamosa County Sheriff shall prepare a report or memorandum and forward such report or memorandum to the County Administrator and Board of County Commissioners no later than thirty (30) days from the date of the proper filing of the application with the Zoning Administrator, and state therein whether the department finds that false, incorrect or incomplete information was provided on the application.

(i) The Board of County Commissioners shall grant or deny an application for a license under this article within forty (40) days from the date of its proper filing, and shall notify the applicant within seven (7) days of the granting or denying of the application.

U) Notwithstanding the granting of an Adult Entertainment Establishment license, nothing in this ordinance exempts or excuses the licensee or applicant, whatever the case may be, from having to obtain any other required permits, licenses, or certificates needed to lawfully

operate a business, including a land use permit, building permit, occupational license, certificate of occupancy, or approved conditional use.

(k) The Board of County Commissioners shall review the findings reported by the Alamosa County Sheriff and deny the application for any of the following reasons:

(1) The application is incomplete or contains incorrect or false information;

(2) The applicant or any of the other individuals listed has a license under this chapter which is under suspension, or is an officer or director of a corporation which has a license under suspension.

(3) The applicant or any of the other individuals listed had a license under this chapter that was revoked during the previous two (2) years, or was an officer or director of a corporation which had a license under this chapter that was revoked during the previous two (2) years;

(4) A license under this chapter at the location of the proposed establishment is the subject of a pending suspension proceeding or is under suspension;

(5) A license under this chapter at the location of the proposed establishment is the subject of a pending revocation proceeding or has been revoked during the previous two (2) years;

(6) The granting of the application would violate a statute, code, or ordinance, or an order from a court of law that effectively prohibits the applicant from obtaining an adult entertainment establishment license.

(1) An Adult Entertainment Establishment license shall state the name of the licensee, the name of the owner of the real property, the name of the establishment, the street address of the establishment, the classification of the license, the date of issuance, and the date of expiration.

(m) All licenses issued under this ordinance shall be annual licenses that shall commence running on January 1st and shall expire on December 31<sup>st</sup> of the current calendar year.

(n) Licenses shall be renewed annually. Subject to other provisions of this chapter, a licensee under this chapter desiring to renew the license shall by October first (1st) present the license for the previous year, update all information and documentation required for a license application, execute and have notarized a renewal statement on an approved form, and pay the applicable license fee. If the licensee is a corporation, an officer or director shall execute the renewal statement.

(o) There is hereby levied the following annual license fee for an adult entertainment establishment is seven hundred fifty dollars (\$750.00)

(p) The annual license fee collected under this ordinance is declared to be a regulatory fee that is collected for the purpose of examination and inspection of Adult Entertainment Establishments under this ordinance and the administration thereof. These regulatory fees are in addition to and not in lieu of any other fees or taxes imposed by state law and other land development or regulatory fees associated with general commercial activities and locations.

(q) A licensee shall not transfer his license to another location.

(10) Any Adult Entertainment Establishment operating at the effective date of this ordinance in violation of Section (5) above shall be allowed to continue operating without compliance herewith for an amortization period of six (6) months. Six months after this ordinance becomes effective, all Adult Entertainment Establishments must fully comply with this ordinance, including Section (5) above or be subject to the penalty provisions set forth herein.

(11) No landowner or lessee shall knowingly permit an Adult Entertainment Establishment to be operated or maintained upon their property in violation of Section (5) above.

(12) Except for the amortization period set forth in paragraph (10) above, each day of operation in violation of any provision of this ordinance shall constitute a separate violation.

(13) Any person who violates any provision of these regulations commits a class 2 petty offense and upon conviction thereof shall be punishable by a fine of \$300 for each separate violation.

(14) The Zoning Administrator, Chief Building Official, Zoning Inspectors, Building Inspectors, other agents or employees of the county land use department, or any law enforcement officer may follow the penalty assessment procedure provided in Section 16-2-201, C.R.S., for any violation of this ordinance, or may enforce the provisions of this ordinance by filing and service of a summons and complaint in accordance with County Court procedures.

(L5) Any Adult Entertainment Establishment which engages in repeated or continuing violations of these regulations shall constitute a public nuisance. For purposes of these regulations "repeated violations" shall mean three or more violations of any provision set out herein within a one (1) year period dating from the time of any violation, and a "continuing violation" shall mean a violation of any provision set out herein lasting for three or more consecutive days.

(16) The County Attorney, acting pursuant to Section 16-13-302, C.R.S., may bring an action in the District Court for Alamosa County for an injunction against the operation of such establishments in a manner which violates any of the provisions set out herein.

(17) This ordinance is necessary to the immediate preservation of the public health and safety, due to the immediate impact upon surrounding residences, churches and schools from the attraction of transients, parking and traffic problems, increased crime and noise, increased safety hazards to neighborhood children, and overall deterioration of neighborhood quality, and therefore shall become effective immediately upon adoption.

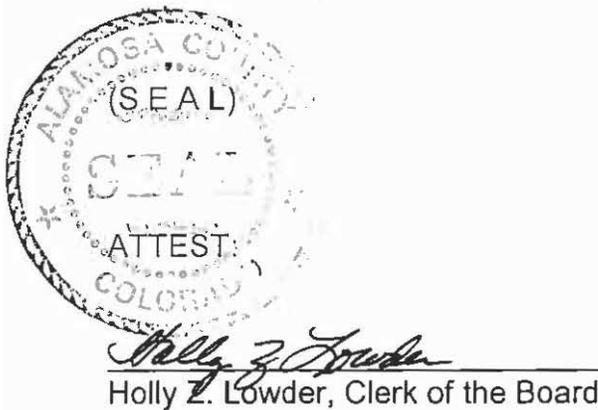
(18) If any provision of this ordinance is held invalid or unconstitutional by a court of competent jurisdiction, such decision shall not invalidate this ordinance in its entirety, and to this end the provisions of this ordinance are declared to be severable.

INTRODUCED, READ AND ORDERED published the 10th day of September, 2003, and public hearing hereon fixed for the 8th day of October, 2003, at 8:30 a.m., or as soon thereafter as the matter may be heard.

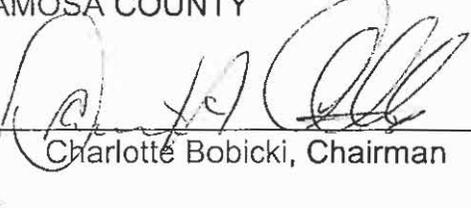
APPROVED AND ADOPTED after public hearing on October 8th, 2003.

Unanimous roll call vote.

DATED: October 8, 2003.



BOARD OF COUNTY COMMISSIONERS OF  
ALAMOSA COUNTY

By  \_\_\_\_\_  
Charlotte Bobicki, Chairman