RESOLUTION ESTABLISHING ZONING DISTRICT NO. 2

WHEREAS, the Board of County Commissioners by resolution, dated March 17, 1955, did establish the Ward County Zoning Commission, and

WHEREAS, for the purpose of promoting the Health, Safety, Morals, Public Convenience, General Prosperity, and Public Welfare of the County; and

WHEREAS, the United States Air Force has indicated its intention to establish an Air Base in Ward County and in order to permit the orderly development of the County in and around said Air Base, so as to prevent large congestions of population and as to prevent undesirable buildings, structures, businesses, or the conduct of undesirable activities around said Air Base, and in order to meet the requirements as set forth by the United States Air Force regarding heights of buildings and types of obstructions which would interfere with the operations of said Air Base,

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of Ward County that there be established Ward County Zoning District No. 2, which shall include all the following described lands:

Kirkelie Township (T156N, R84W): Sections 1, 2, 3, 12, 17, 20,21, 22, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36 of McKinley Township (T156N, R82W); St. Mary's Township (T157N R84W) except section 1; the East half (E 1/2) of Tatman Township (T157N,R82W); Vang Township (T153N, R85W), and Hilton Township (T152N, R84W).

Township 151-81 (Greely Township)
Township 151-82 (Iota Flat Township)
Township 151-83 (Rushville Township)
Township 151-84 (Spring Lake Township)
Township 151-85 (Cameron Township)
Township 151-86 (Ryder Township)
Township 151-87 (Hiddenwood Township)
Township 152-81 (Brillian Township)
Township 152-82 (Newman Township)
Township 152-83 (Gasman Township)
Township 152-84 (Rice Lake Township)
Township 152-86 (Anna Township)
Township 152-87 (Orlien Township)
Township 156-81 (Maryland Township)
Township 156-85 (Foxholm Township)
Township 153-81 (Sawyer Township)
Township 156-86 (Berthold Township)
Township 156-87 (Passport Township)
Township 157-81 (Margaret Township)
Township 157-85 (Mayland Township)
Township 157-86 (Carpio Township)
Township 157-87 (Ree Township)
Township153-82(Willis Township)
Township153-84(Torning Township)
Township 153-86 (Linton Township)
Township 153-87 (Lund Township)
Township 154-81 (New Prairie Township
Township 154-84 (Burt Township)
Township 154-85 (Rolling Green Township)
Township 154-86 (Tolgen Township)
Township 154-87 (Shealy Township)
Township 155-81 (Surrey Township)
Township 155-85 (Des Lacs Township)
Township 155-86 (Mandan Township)
Township 155-87 (Evergreen Township)
Township 158-87 (Carbondale Township)
Township 159-87 (Greenbush Township)
Township 159-88 (Baden Township)
Township 159-89 (Spencer Township)
Township 160-87 (Sauk Prairie Township)
Township 160-88 (Kenmare Township)
Township 160-89 (Elmdale Township)
Township 161-88 (Denmark Township)

BE IT FURTHER RESOLVED that in said Zoning District No. 2 there shall be established the following regulations:

SECTION I. - LAND USAGE

A. Rural Zone - All lands described as included in this Resolution shall be classified as a "Rural Zone". Land within the Rural Zone may be used for agricultural, single-family residential and commercial purposes as defined and described in Ward County Zoning Resolution No. 6 under "A-1, Agricultural District"; "R-1 and R-2, Single Family Residence District"; and "C-1, Neighborhood Commercial District". All other uses are prohibited except as may be allowed by Special Use Permit or as a pre-existing, non-conforming use as provided for in this Resolution.

B. Special Use Permits - All uses of land and structures not provided for in the definition of a Rural Zone may be considered for a Special Use Permit. Upon receipt of an application for a Special Use Permit, the County Planning Commission shall schedule and conduct a public hearing on the special use applied for.

Notice of the public hearing shall be published as required when amending County zoning resolutions, and direct notice shall be mailed to the applicable township board(s) and to all adjacent land owners. Following said public hearing, recommendation for approval or denial of the permit shall be made by the Planning Commission, and such Special Use Permit shall be subsequently issued or denied by the Board of Ward County Commissioners. Special Use Permits shall be denied by the County Commissioners if significant impact is or can reasonably be expected to adversely affect the Township, the roads, therein, its people, its schools, its resources, and any other factors deemed relevant by the County Commissioners, the Township Board(s), the Planning Commission, or the adjacent land owners. All special uses must be compatible with current, neighboring land uses and be expected to remain so for the foreseeable future. The Board of County Commissioners is authorized to impose any conditions or restrictions on the granting of a Special Use Permit that may be recommended by the County Planning Commission or that it deems necessary or appropriate for protection of the health, safety or general welfare of the public.

C. Terms and Revocations of Special Use Permits - Special Use Permits shall be issued for an indefinite period, so long as the land and/or structures covered by the permit continue to be used as provided for in the permit except that, upon submission to the Board of Ward County Commissioners evidence that the land and/or structures are being used for purposes not covered, allowed, provided for or reasonably expected under provisions of any special use permit, evidence that such special use as covered by the permit has ceased for a period of at least 36 consecutive months, or evidence that the reasonable requests of neighboring land owners or tenants to cease or moderate unusually offensive aspects of the permitted operations have been ignored, the County Commissioners shall within 30 days of the presentation of such evidence hold a public hearing on continuation of the Special Use Permit. Notices shall be distributed as required for initial consideration of a Special Use Permit (See Section C). Upon completion of the public hearing and within eight days, the Commissioners shall allow such Special Use Permit to continue or shall revoke it. Revocation may be temporary until any requirements deemed appropriate by the

Board of Commissioners are met, or revocation may be permanent as determined by the Commissioners. Revocation shall be for good cause including, but not limited to use of property or buildings for purposes not provided for in the Special Use Permit; substantial and adverse effects on the Township, the roads therein, its people, its schools, its resources, or any other factors deemed relevant by the County Commissioners; cessation of the uses provided for in the Special Use Permit for a period of 36 consecutive months or longer, or failure to respond to the reasonable requests of neighboring land owners or tenants to cease or moderate any aspect of the operation of the permitted use which exceeds that which is considered normal or customary for similar operations at other sites or locations in North Dakota.

D. Adult Entertainment Center - Adult Entertainment Center is defined as: an "Adult Bookstore" or "Adult Mini-Motion Picture Theater", or both, as defined herein. Definitions applicable to this Section are:

1. "Adult Bookstore" means a bookstore having as a preponderance of its publications, books, magazines, and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas as defined in this subsection.

2. "Adult establishment" means an adult bookstore, an adult motion picture theater, an adult mini-motion picture theater or a massage business, all as defined in this subsection.

3. "Adult mini-motion picture theater" means an enclosed building with a capacity for less than fifty persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection, for observation by patrons of the theater.

4. "Adult motion picture theater" means an enclosed building with a capacity of fifty or more persons used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this subsection for observation by patrons of the theater.

5. "Massage" means the manipulation of body muscle or tissue by rubbing, stroking, kneading or tapping by hand or mechanical device.

6. "Massage business" means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios or massage parlors.

7. "Sexually oriented devices" means without limitation, any artificial or stimulated specified anatomical area or any other device or paraphernalia that is designed in whole or in part for specified sexual activities.

8. "Specified anatomical areas" means:

   a. Less than complete and opaquely covered human genitals and pubic regions, buttocks or female breasts below a point immediately above the top of the areola.

   b. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

9. "Specified sexual activities" means:

   a. Human genitals in a state of sexual stimulation or arousal;

   b. Acts of human masturbation, sexual intercourse or sodomy; or

   c. Fondling or other erotic touching of human genitals and pubic regions, buttocks or female breasts.

An adult entertainment center shall be permitted only by Special Use Permit as provided for in this Resolution and then only if the center meets the following conditions:

1. No building, premises, structure or other facility that contains any adult establishment as defined in subsection 1, shall contain any other kind of adult establishment.

2. No building, premises, structure or other facility in which sexually oriented devices as defined in subsection 1, are sold, distributed, exhibited or contained shall contain any adult establishment, as defined in subsection 1.

3. The center is located no closer than 1,250 feet from any pre-existing church, school or property zoned A-1, R-1, R-2, R-3, C-1, C-2 or C-3.

4. The center excludes from its premises those persons less than 18 years of age.

5. The center displays no signs visible from the exterior of the center, except for signs identifying the center as an adult bookstore or adult cinema.

6. No materials depicting specified sexual activities or specified anatomical areas shall be visible from the exterior of the center.

7. The manager and the owners of the center are registered with the Sheriff of Ward County and have provided him with such information as he reasonably may require with respect to their identities, including finger prints and prior criminal records, if any.

8. The business premises of the center which is generally open to its patrons is open equally at the same time without charge to the Ward County Sheriff and his deputies who may wish to enter thereon provided the entry is in the course of the discharge of the law enforcement officer's duties.

E. Adult Cabaret - Adult Cabaret is defined as: a nightclub or similar commercial establishment that features go-go dancers, exotic dancers, strippers, male or female impersonators or similar entertainers, regardless of whether liquor is served or provided.

1. Definitions applicable to this section are:

a. APPLICANT: The individual or entity seeking a sexually oriented business operator's or employee license in the county.

b. EMPLOYEE: Managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of the sexually oriented business, including any person functioning and/or dispatched as an escort. "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.

c. ENTERTAINER: Any go-go dancer, exotic dancer, stripper, male or female impersonator and other similar person.

d. ESCORT: Any person who, for a salary, fee, tip, commission, hire, profit or other consideration, makes oneself available to the public for the purpose of accompanying another person for companionship, or agreeing or offering to privately model lingerie or to privately perform erotic dancing for another person.

e. ESCORT SERVICE: Any business, agency, or person who, for a salary, fee, tip, commission, hire, profit or other consideration, furnishes, offers to furnish, advertises to furnish, or arranges for persons to accompany other persons for companionship, or who, for a salary, fee, tip, commission, hire, profit or other consideration, furnishes, offers to furnish, advertises to furnish or arranges for persons to privately model lingerie or privately perform erotic dancing for another person.

f. MANAGER: An individual who is employed by a sexually oriented business to act as a manager or supervisor or is otherwise responsible for the operation of the business.

g. NUDITY OR STATE OF NUDITY: The appearance of a human anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva with less than a fully opaque covering; or a female breast with less than a fully opaque covering of the nipple;

or human male genitals in a discernibly turgid state even if completely and opaquely covered.

h. OPERATOR: Any person owning, operating, conducting or maintaining a sexually oriented business.

i. PERSON: Any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity or other entity or group of persons, however organized.

j. SEXUALLY ORIENTED BUSINESS: An adult cabaret or an escort service.

k. SPECIFIED CRIMINAL ACTIVITY: Any of the following offenses:

(1) Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states or other countries.

(2) Other felony convictions in this state, other state or countries.

(3) For which:

(a) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(b) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a felony offense;

(c) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period;

(d) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

l. SPECIFIED SEXUAL ACTIVITIES: Includes any of the following:

(1) The fondling or other erotic touching or similar touching of human genitals, pubic region, buttocks, anus or female breasts, whether covered or uncovered;

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;

(3) Masturbation, actual or simulated; or

(4) Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

2. Licensing requirements:

a. It shall be unlawful:

(1) For any person to operate a sexually oriented business without a valid operator's license ("operator's license") issued by the county.

(2) For any person who operates a sexually oriented business to employ an employee, if such employee is not in possession of a valid employee license ("employee license") issued to such employee by the county pursuant to this division; or

(3) For any person (including an operator) to be an employee of a sexually oriented business if such person is not in possession of a valid sexually oriented employee license issued to such person by the county pursuant to this division.

3. Application process for a sexually oriented business operator’s license includes:

a. All applications for a sexually oriented business operator's license shall be submitted to the county sheriff in the name of the person or entity proposing to conduct a sexually oriented business on the business premises and shall be signed by such person and certified as true under penalty of perjury.

b. An application for a sexually oriented business operator's license must be made on a form provided by the county. The application must be accompanied by a sketch or a 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 must 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. Prior to issuance of an operator's license, the premises must be inspected by the sheriff's department and the fire department.

c. All applicants for a license must be qualified according to the provisions of this division. The application may request, and the applicant shall provide, such information reasonably necessary (including fingerprints) to enable the county to determine whether the applicant meets the qualifications established under this division. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

d. If a person who wishes to own or operate a sexually oriented business as an individual, he or she must sign the application for an operator's license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10) per cent or greater interest in the business must sign the application for an operator's license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, all corporate officers and directors must sign the application for an operator's license as applicant.

e. Applications for an operator's license, whether original or renewal, shall contain the following information:

(1) The name, street address (and mailing address if different) of the applicant(s);

(2) The applicant's social security number and/or his/her state or federally issued tax identification number;

(3) The name under which the establishment is to be operated and a general description of the services to be provided;

(4) Whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in this division and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each;

(5) Whether the applicant has had a previous license under this division or other similar ordinance from another city or county denied, suspended or revoked, including the name

and location of the business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a similar ordinance whose business license has previously been denied, suspended or revoked, including the name and location of the business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;

(6) Whether the applicant holds any other licenses under this division or other similar business ordinance from another city or county and, if so, the names and locations of such other licensed businesses;

(7) The telephone number of the establishment;

(8) The address and legal description of the tract of land on which the establishment is to be located;

(9) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;

(10) If the establishment is not in operation, the expected startup date. If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same.

f. Each application for an operator's license shall be accompanied by the following:

(1) Payment of the application fee in full;

(2) A recent color photograph taken by the Ward County Sheriff’s Department of the applicant clearly showing the applicant's face and the applicant's fingerprints (if so requested) on a form provided by the sheriff’s department. The sheriff’s department may request finger printing at the time of application. Any fees for photographs and fingerprints shall be paid by the applicant.

(3) If the establishment is a state of North Dakota corporation, a copy of the articles of incorporation, together with all amendments thereto;

(4) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

(5) If the establishment is a limited partnership formed under the laws of the state of North Dakota, a certified copy of the certificate of limited partnership, together with all amendments thereto;

(6) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;

(7) Proof of the current fee ownership of the property on which the establishment is to be situated in the form of a copy of the recorded deed;

(8) If the persons identified as the fee owner(s) of the property is not also the owner of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owner(s) or proposed owner(s) of the sexually oriented business to have or obtain the use and possession of the property thereof that is to be used for the business.

4. Application process for a sexually oriented business employee license includes:

a. Applications for an employee license to work for and/or perform services in a sexually oriented business, whether original or renewal, must be made to the sheriff by the business owner or manager on behalf of the employee to whom the employee license shall issue. Each application for an employee license shall be accompanied by payment of the application fee in full. Application forms shall be supplied by the county. Each applicant shall be required to provide the following information on or with the application form:

(1) The applicant's given name and any other names by which the applicant is or has been known, including "stage" names and/or aliases;

(2) Age, and date and place of birth;

(3) Height, weight, hair color, and eye color;

(4) Present residence address and telephone number, including cell phone number;

(5) Present business address and telephone number;

(6) Copy of driver's license or other state issued photo identification card;

(7) Social security number; and

(8) Proof that the individual is at least twenty-one (21) years of age.

The personal information provided in this subsection a shall be confidential and shall not be disclosed to the public except to the extent required by state or federal law.

b. Attached to the application form shall be the following:

(1) A recent color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints (if so requested) on a form provided by the sheriff's department. The sheriff's department may request finger printing at the time of application. Any fees for photographs and fingerprints shall be paid by the applicant.

(2) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state or country, has ever had any license, permit or authorization to do business denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction and description in full of the reason(s) for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application.

(3) A statement whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in this ordinance and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each.

c. Every application for an employee license shall contain a statement under oath, signed by the employee, that the employee has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct.

5. Issuance process of employee license:

a. Upon the filing of an application for a sexually oriented business employee license, the county shall issue a temporary license to said applicant. The application shall then be referred to the appropriate departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of filing of the completed application. After the investigation, the county shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) The applicant has failed to provide the information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(2) The applicant is under the age of twenty-one (21) years.

(3) The applicant has been convicted of a "specified criminal activity" as defined in this division; or

(4) The applicant has had a sexually oriented business employee license revoked by the county within two (2) years of the date of the current application.

b. In the event that the county determines that an applicant is not eligible for a sexually oriented business employee license, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the filing of the completed application, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this division.

c. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately rendered null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as hereinafter set forth.

(1) An employee license shall state on its face the name of the person to whom it is granted, the expiration date and the address of the sexually oriented business. While engaged in employment or performing services on the sexually oriented business premises, an employee shall, at all times, possess the license in such manner as to be available for immediate inspection upon lawful request.

(2) An employee license shall be subject to annual renewal upon the written application of the applicant and a finding by the county that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the filing of the completed application. The renewal of a license shall be subject to the same fee as the original license. Non-renewal of a license shall be subject to appeal as hereinafter set forth.

(3) Upon application for a sexually oriented business operator's license, the county shall approve or deny issuance of the license within thirty (30) days of filing of the completed application. The county shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(a) An applicant has failed to provide the information reasonably necessary for issuance of the license or

has falsely answered a question or request for information on the application form;

(b) An applicant is under the age of twenty-one (21) years.

(c) An applicant has been denied a license by the county to operate a sexually oriented business within the preceding twelve (12) months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;

(d) An applicant is overdue in payment to the county for taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to the sexually oriented business for which license is sought, or taxes or special assessments are overdue for the property on which the sexually oriented business is located or will be located;

(e) An applicant has been convicted of a "specified criminal activity" as defined in this division;

(f) The premises to be used for the sexually oriented business have not been approved as being in compliance with applicable laws and ordinances;

(g) The license fee required under this division has not been paid;

(h) An applicant of the proposed establishment is in violation of or is not in compliance with one or more of the provisions of this division.

(4) An operator's license shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(5) If so required under other sections of this division, the sheriff’s department shall complete their certification that the premises are in compliance or not in compliance within thirty (30) days of receipt of the completed application.

(6) In the event that the county determines that an applicant is not eligible for a sexually oriented business operator's license, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the filing of the completed application, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten (10) days in order to make modifications necessary to comply with this division. Denial of a license shall be subject to appeal as hereinafter set forth.

(7) An operator's license shall be subject to annual renewal upon the written application of the applicant and a finding by the county that the applicant has not been convicted of

any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section E. Non-renewal shall be subject to appeal as hereinafter set forth.

(8) An applicant may appeal the denial or non-renewal of a license by filing a written notice of appeal with the sheriff within ten (10) days after service of the notice of the denial or non-renewal. The county shall provide the applicant(s) with written notice of the date, time, and place of the hearing. The notice shall inform the applicant(s) of the factual allegations which form the basis for denial or non-renewal. The sheriff may provide notice by mailing a copy thereof to the applicant's last known address as indicated in the applicant's application. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.

If the applicant does not appear at the hearing, or if he does not dispute the factual allegations, the factual allegations shall be deemed to be admitted. Otherwise, the county shall have the burden of going forward with the evidence and the burden of persuasion as to any disputed issues of fact.

If the applicant requests that the originally scheduled hearing date be continued, the sheriff shall grant a continuance to a mutually convenient time. The decision of the sheriff shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review, and there shall be no right of appeal.

6. Fees.

a. The annual fee for a sexually oriented business operator's license, whether new or renewal, is one hundred ($100.00) dollars. The annual fee for a sexually oriented business employee license, whether new or renewal, is thirty ($30.00) dollars. These fees are to be used to pay for the cost of the administration and enforcement of this division.

7. License term.

a. The term of a license issued pursuant to this division shall commence at 12:00 a.m. of July 1, if the license is a renewal license, or at the date and time of its issuance, if the license is an initial license, and shall expire 12:00 p.m. of the following thirtieth of June. Notwithstanding the fact that an initial license may be

issued for a term of less than one (1) year the license fee shall not be reduced or pro-rated.

b. When the county denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

8. Suspension or revocation of a license.

a. The sheriff shall have the power to suspend or revoke any license issued under the authority of this division for any of the following reasons:

(1) The licensee violates the laws of this state or of any of the provisions of this division;

(2) The licensee willfully makes a false statement or a misrepresentation as to a material fact in the application for the issuance of the license;

(3) The licensee knowingly engages in or permits the occurrence of a pattern or practice of disorderly or immoral acts upon the licensed premises;

(4) The licensee is convicted of a "specified criminal activity";

(5) A licensee has, with knowledge, engaged in or permitted prostitution on the premises;

(6) A licensee has, with knowledge, operated the sexually oriented business during a period of time when the licensee's license was suspended;

(7) A licensee is delinquent in payment to the county or state for any taxes, fees, fines, or penalties relating to the sexually oriented business or the premises thereon;

(8) A licensee has, with knowledge, permitted a person less than twenty-one (21) years of age to enter or remain in the establishment;

(9) A licensee has attempted to sell his business license, or has sold, assigned or transferred ownership or control of the sexually oriented business to a non-licensee of the establishment;

(10) A licensee has, with knowledge, engaged in or permitted a person or persons to engage in specified sexual activities on the premises of the sexually oriented business;

(11) A licensee has, with knowledge, consumed or permitted the consumption of alcoholic beverages on the premises.

(12) The licensee does not hold a necessary permit or license issued by another governmental entity, which license or permit is required by that governmental entity as a precondition to the carrying on by the license of the activity authorized by the sheriff.

b. No license shall be suspended or revoked without providing the licensee with notice and an opportunity for hearing before the Ward County Commissioners with regard to the suspension or revocation of the license. The sheriff shall provide the licensee with written notice of the date, time, and place of the hearing. The notice shall inform the licensee that the license may be suspended or revoked and it shall set forth the factual allegations which form

the basis for doing so under this section. The sheriff may provide notice by mailing a copy thereof to the licensee's last known address as indicated in the licensee's most recent application filed with the sheriff under this division. The notice must be mailed at least five (5) days prior to the hearing, exclusive of the date of mailing and date of the hearing.

c. If the licensee does not appear at the hearing provided for in Subsection 2, or if the licensee does not dispute them, the factual allegations in the complaint shall be deemed to be admitted. Otherwise the county shall have the burden of going forward with the evidence and the burden of persuasion as to any disputed issues of fact.

d. If the licensee requests that the originally scheduled hearing date be continued, the Ward County Commissioners shall grant a continuance to a time mutually convenient to the licensee and the commission, but the committee shall have the discretion to suspend the license from the date for which the hearing was originally scheduled to the date of the continued hearing.

e. The decision of the Ward County Commissioners shall be final for purposes of the legal doctrine which requires the exhaustion of administrative remedies as a prerequisite for judicial review, and there shall be no right of appeal from the decision.

f. When a license is revoked, the revocation shall continue for one (1) year, and the licensee shall not be issued a license for one (1) year from the date revocation became effective.

9. Judicial review.

a. Within thirty (30) days of a decision denying an initial or renewal application, or suspending or revoking a license by the sheriff, the applicant or licensee may seek judicial review of such administrative action in the district court. The administrative action shall then be reviewed by the court for a prompt judicial determination. Pending the completion of the appeal process, the county shall issue a temporary license unless the licensing decision is based in whole or in part upon a finding that a condition exists upon the premises which constitutes a threat of immediate serious injury or damage to persons or property.

10. No transfer of license.

a. A licensee shall not transfer his/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 application and set forth in the operator's license.

b. An operator's license shall not be transferable from one location to another.

11. Conduct and operation.

a. No person shall appear in a state of nudity in a sexually oriented business, except in areas to which customers or patrons are not allowed to be present.

b. No patron or employee may erotically touch, caress or fondle a patron or employee or the clothing of a patron or employee, nor may an employee encourage or permit a patron or employee to erotically touch, caress or fondle any patron or employee.

c. No employee shall perform actual or simulated acts of specified sexual activities as defined in this ordinance or any act which constitutes a violation of NDCC Chapters 12.1-27.1 or 12.1-27.2.

d. It shall be unlawful for an owner or operator of a sexually oriented business to allow the activities of the establishment to be visible from a point outside the establishment or to allow an employee to violate subsections 1, 2 and 3 of this section.

e. The county may regularly inspect the premises of the sexually oriented business in order to ensure compliance with the provisions of this division.

Representatives of the sheriff's department shall be permitted to inspect the premises at any time the establishment is open for business. Such inspection shall be limited to visual assessment of the activities conducted in areas to which patrons have access or are allowed access; to requests for inspection of the licenses required under this division; and to requests for identification of those individuals who reasonably appear to be under the age of twenty-one (21).

f. This division shall not be construed to prohibit:

(1) Plays, operas, musicals, or other dramatic works that are not obscene;

(2) Classes, seminars and lectures which are held for serious scientific or educational purposes and which are not obscene; or

(3) Exhibitions, performances, expressions or dances that are not obscene.

These exemptions shall not apply to specified sexual activities as defined in this division.

12. Persons prohibited from entry.

a. It shall be unlawful to allow a person who is younger than twenty-one (21) years of age to enter or be on the premises of a sexually oriented business at any time the business is open for business.

b. It shall be the duty of the operator of each sexually oriented business to prohibit any underage person from entering.

13. Hours of operation.

No sexually oriented business may be open:

a. After 6:00 p.m. on Christmas Eve;
b. Any time on Christmas Day, or Easter Day;
c. After 1:00 a.m. on Thanksgiving Day;
d. After 1:00 a.m. and before 8:00 a.m. Monday through Saturday;
e. After 1:00 a.m. and before noon on Sunday.

14. Location.
    a. Sexually oriented business may only be located in areas of Ward County zoned as C-2, C-3, M-1 or M-2 as defined in Zoning Resolution #6 and then only if the business meets the following conditions:
        (1) May be located no closer than one thousand two hundred fifty (1,250) feet from any pre-existing church, school, daycare, park, playground or property zoned or used as residential property.
        (2) Must be located at least 1,250 feet from any establishment holding a liquor license.

15. Escort service.
    a. It shall be unlawful for an employee of an escort service to knowingly or intentionally commit, or for an operator of an escort service to knowingly or intentionally allow an employee of an escort service to commit any of the following acts:
        (1) Enter a hotel or motel for the purpose of meeting a customer, without immediately notifying the front desk, presenting a copy of their sexually oriented employee license, identifying the escort service that sent them, the name of the customer they are meeting, the location of the meeting and notifying the front desk upon leaving safely;
        (2) Distribute or post any unsolicited business cards, advertisement, or promotional material on or within the premises of any business;
        (3) Begin a meeting or service with a customer between the hours of 12:00 a.m. and 7:00 a.m. in any day;
        (4) Begin a meeting or service with a customer without first meeting said customer in a public place such as a bar or restaurant before accompanying the customer to any place which is not open and occupied by the public, such as a hotel room or residence;
        (5) To knowingly or intentionally appear in a state of nudity with a customer;
        (6) To knowingly or intentionally solicit a customer to appear in a state of nudity; or
        (7) Engage in a specified sexual activity with a customer for money or other consideration.

16. Notices.
    a. Any notice required or permitted to be given to any applicant or licensee may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested,

addressed to the most recent address as specified in the application for the license, or any notice of address change that has been received by the county. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the county shall cause it to be posted at the principal entrance to the establishment.

b. Any notice required or permitted to be given to the county by any person under this article shall not be deemed given until and unless it is received in the office of the County Sheriff.

c. It shall be the duty of each owner who is designated on the license application and each operator and employee to furnish notice to the county in writing of any change of residence or mailing address.

17. Penalties/remedies/relief.

a. Any person who knowingly violates, disobeys, omits, neglects or refuses to comply with any of the provisions of this division shall, upon conviction, be punished as provided by North Dakota law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. In addition to the penalties provided under this section, violators of this division shall be subject to any other appropriate civil or criminal action provided by law in a court of competent jurisdiction, including, but not limited to, injunctive relief. Nothing in this section shall be held to exclude prosecution or actions by any other provisions of applicable law or to exempt anyone violating this division or any other law from any penalty which may be prescribed for said violation.

F. Nelson Carlson Lakes

All lots bordering the Nelson-Carlson Lakes shall be 1 acre in size minimum and be accessed by a public road. Minimum setback for all structures shall be 50 feet from road right of way line, 10% of lot width from side lot lines and 40 feet from the lakeshore line. The lakeshore line shall be defined as 2036.36 mean see level for the North Lake. Only total containment tanks or municipal designed system will be allowed for sewage disposal and shall be setback 200 feet from the lakeshore line. All structures shall comply with the North Dakota State Building Code.

G. Rice Lake

All lots adjoining the lake shall have a minimum set-back, for all new or moved on structures, of 18 feet from the road right-of-way line.

SECTION II. - SUBDIVISION AND OUTLOT APPROVAL

Final plats of outlots and subdivisions of land located within the boundaries of the

district(s) covered by this Resolution shall be approved by the Board of Ward County Commissioners in accordance with the procedures described in North Dakota Century

Code Section 11-33.2-12 and/or as it may be amended. The Ward County Planning Commission is hereby empowered to investigate and to conduct public hearings into the public use and interest proposed to be served by proposed plats and to consider the public health, safety and welfare elements of NDCC 11-33.2-12 paragraph 3 and, if relevant, the potential effect on the value of adjoining property in making a recommendation for approval or disapproval to the Board of Ward County Commissioners. No outlot or subdivision plat of land included within the boundaries of the zoning district(s) covered by this Resolution shall be recorded in the office of the Ward County Register of Deeds until approved by the Board of Ward County Commissioners.

All subdivision and outlot plats shall meet the requirements for platting provided for in article 24 of the Ward County Resolution No. 6.

A parcel of land of 40 acres or more or land to be used for farming shall not require a plat so long as it is not irregularly shaped, can easily be described, and has access to a public road.

SECTION III. - TYPES OF STRUCTURES

All structures or buildings in Zoning District No. 2 shall conform to the requirements of the State Building Code as identified in Section 54-21.3-03 of the North Dakota Century Code and amendments thereto; said Building Code with amendments thereto; incorporated by reference as a part of this resolution. The height and area and parking regulations for each use specified in Articles 6 through 14 of Ward County Zoning Resolution No. 6 shall be applicable to this Resolution and shall be determined and limited as described by Articles 15, 16 and 17 of Ward County Zoning Resolution No. 6.

SECTION IV. - BUILDING PERMITS

As a prerequisite to construction, erection, reconstruction, alteration, repair or enlargement of any building or structure in said Zoning District No. 2, there shall be secured from the Board of County Commissioners a permit which will be known as a building permit.

SECTION V. - APPLICATION FEES

Fees shall be collected from applicants for review of subdivisions of land and outlots, Special Use Permits, and building permits. Such fees will be established by the County Commissioners and may be amended from time to time as the Board deems necessary. Zoning

Such fees shall be deposited and credited to the general fund of the County.

SECTION VI. - LIMITATIONS

The provisions of this resolution regarding "types of structures" and "building permits" Shall not apply to farm buildings including farm residential structures. A "farm" is as described and defined in Article 3 of Ward County Zoning Resolution No. 6.

SECTION VII. - PRE-EXISTING, NON-CONFORMING USES

Pre-existing, non-conforming uses are hereby defined as uses of land other than as allowed in the "Rural Zone" (see Section 1, Subdivision A) which precede by more than sixty days the adoption of this section. A pre-existing, non-conforming use may continue indefinitely unless said non-conforming use is discontinued for a period of 36 consecutive months in which case the land use shall automatically and only become as allowed in the "Rural Zone".

It is the intention of this section to automatically discontinue otherwise allowable pre-existing, non-conforming uses when the non-conforming use or uses have not been operational for 36 consecutive months. In the event a pre-existing, non-conforming use is no longer allowed, resumption of that non-conforming use shall require a Special Use Permit as provided for in this Resolution. Pre-existing, non-conforming land uses shall be considered to hold a Special Use Permit for the use in operation at the time this section is adopted. Only for that use and under similar conditions shall the special use be permitted to continue. The "Special Use Permit" under which pre-existing, non-conforming uses are permitted to continue may be revoked under circumstances and by procedures provided for in this resolution. This section was adopted November 13, 1990.

STATE OF NORTH DAKOTA)
) SS
COUNTY OF WARD)

I, Devra Smestad, the County Auditor of Ward County, North Dakota do hereby certify that the foregoing is a true, correct and complete copy of a resolution adopted by the Board of County Commissioners of said County on the 9th day of June, 1955, and amended February 2, 1965, November 13, 1990, July 2, 1991, June 1, 1993, November 19, 2002, August 5, 2003, June 21, 2005, which resolutions are a part of the minutes of said Board.Wittnesseth my hand and the official seal of said County this 27th day of June, 2005.

_____
Auditor, Ward County, North Dakota

(SEAL)