

# Prohibiting Public Nudity and Regulating Strip Dancing

WHEREAS, it is a lawful purpose of the Board of County Commissioners of the County of Brookings to enact ordinances prohibiting the sale or exhibition of obscene matters and to otherwise protect and promote the general welfare, health, safety, and morals of its citizens; and

WHEREAS, the County Commission is empowered to enact such laws pursuant to the Laws and Statutes of the State of South Dakota; and

WHEREAS, the Supreme Court of the United States has held that public nudity can be constitutionally prescribed, including so-called nude barroom dancing; and

WHEREAS, the Supreme Court has found that a substantial governmental interest exists in protecting societal order and morality, and that because of this governmental interest, a law aimed at regulating public conduct, i.e., nudity, is constitutionally permissible despite its incidental impact on nude dancing; and

WHEREAS, the Courts have found that nude dancing establishments are frequently used for unlawful sexual activities, including prostitution, and that such activity encourages prostitution, sexual assaults, and attracts other criminal activity; and

WHEREAS, nude dancing establishments present an unwholesome atmosphere and moral setting for young adults and will tend to corrupt the morals of our young people at a formative time in their lives; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, including nude dancing establishments, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, including nude dancing establishments, have serious objectionable operational characteristics, thereby downgrading the quality of life in the adjacent areas; and

WHEREAS, the County Commission desires to minimize and control the above mentioned adverse effects and thereby protect the health, safety, and welfare of its citizenry; protect the citizens from increased crime; and preserve the property values and character of surrounding neighborhoods; and

WHEREAS, the purpose or intent of this act is to regulate obscenity in public conduct and the public commercial exploitation of sex, without any express or implied intent to suppress or prohibit any legitimate speech or expression, now therefore,

## BE IT ORDAINED BY BROOKINGS COUNTY:

Section 1. It is in violation of this ordinance for any person, in a public place within Brookings County outside of the incorporated areas of the County, to knowingly or intentionally:

1. Engage in sexual intercourse; or
2. Engage in deviate sexual conduct; or
3. Appear in a state of nudity; or
4. Fondle the genitals of himself, herself, or another person.

## Section 2. As used in this Ordinance:

1. "Nudity" or "state of nudity" means the showing of the bare human male or female genitals, anus, or pubic area with less than a full opaque covering; the showing of the female breast with less than a full opaque covering of the areola; or the showing of the covered male genitals in a discernibly turgid state.

2. "Public place" means any location frequented by the public, or where the public is present or likely to be present, or where a person may reasonably be expected to be observed by members of the public. Public places include, but are not limited to, streets, sidewalks, parks, beaches, business and commercial establishments (whether for profit or not-for-profit and whether open to the public at-large or where entrance is limited by a cover charge or membership requirement), bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets, and meeting facilities utilized by any religious, social, fraternal, or similar organization. Premises used solely as a private residence, whether permanent or temporary in nature, shall not be deemed to be a public place. Public place shall not include movie theaters, enclosed single sex public rest rooms, enclosed single sex functional showers, locker and/or dressing room facilities, enclosed motel rooms and hotel rooms designed and intended for sleeping accommodations, doctor's offices, portions of hospitals, and similar places in which nudity or exposure is necessarily and customarily expected outside of the home and the sphere of privacy constitutionally protected therein; nor shall it include a person appearing in a state of nudity in a modeling class operated by: (1) a proprietary school, licensed by the State of South Dakota; a college, junior college, or university supported entirely or partly by taxation; or (2) a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation, or an accredited private college.

Section 3. It shall be unlawful for any person or entity maintaining, owning, or operating any public place to operate and knowingly, or with reason to know, permit or allow any person to appear nude in such public place or to permit unlawful touching as prohibited in Section 4 thereof.

Section 4. It shall be unlawful for any male or female dancer, stripper, or performer to engage in any physical contact with patrons or customers while dancing or performing, to include but not limited to, placing money in the dancers' or strippers' wearing apparel. All such dancers or performers shall be confined to a stage or designated area separate and apart from the seating area for patrons and customers.

Section 5. It shall be in violation of this Ordinance for any person or entity to refuse admittance without fee to any on-duty Law Enforcement Officer at any time when patrons or customers remain in said premises.

Section 6. No person under twenty-one (21) years of age shall be permitted access to any public place defined herein which shall permit nude dancing, which otherwise complies with the provisions hereof.

Section 7. The contents of this Ordinance shall constitute contemporary community standards as they pertain to public nudity and obscene live conduct.

Section 8. Penalty. A violation of the Ordinance shall be punishable by a fine of up to Two Hundred and no/100 (\$200.00) or thirty (30) days in jail, or both, for each offense.

Section 9. Operation of an establishment in violation of this Ordinance shall constitute a public nuisance and in addition to all other remedies provided herein, the States Attorney may, by civil process, seek permanent abatement of said nuisance pursuant to SDCL Chapter 21-8.

Adopted this 19<sup>th</sup> day of May, 1998.

First Reading: May 12, 1998  
Second Reading: May 19, 1998  
Published: \_\_\_\_\_

  
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Barbara Telkamp, Chairperson/  
Brookings County Commission

ATTEST:

 5-19-98  
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Sara Kneip, Brookings County Auditor