

COUNCIL & STAFF PRESENT:

Martha Rowe	Mayor
Tim Crist	Mayor Pro Tem
Ralph Cupelli	Councilmember
Jeff Newton	Councilmember
Howard Hickman	City Attorney
Mari E. Macomber	City Manager
Vickie Brumbaugh	City Clerk
John Buckwalter	Public Works Director
Paul Frazier	Code Administrator
Laura Guy	Finance Director
Jim Hughes	Police Chief
Kris McKim	Assistant City Manager

The City Council of the City of Kirksville, Missouri, met in a Regular Session on Monday, February 6, 2006, at 7:00 p.m. in the City Hall Council Chambers.

INVOCATION

Pastor Aaron Rodgerson gave the Invocation

PLEDGE

The Mayor and Council led the Pledge of Allegiance.

MINUTES

Councilmember Cupelli moved to approve the minutes of the regular session of January 16, and the special session of January 23, 2006, as distributed; seconded by Mayor Pro Tem Crist. The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

ORDER OF AGENDA

City Manager Macomber asked the Council to add an Ordinance vacating a portion of an east-west alley bounded by Boundary and Walnut from Boundary on the west. There was a consensus of the Council to add this item to the agenda.

ACTION PRESENTATIONS

There were two ordinances presented to the Council marked as Option 1 – Adult Business Licensing, and an Adult Business Zoning Ordinance; and Option 2 - Adult Entertainment Business Licensing and an Adult Entertainment Business Zoning Ordinance. There was a consensus of the Council to consider Option 2 on both ordinances.

BILL NO. 2006-02

AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, AMENDING CHAPTER 14, LICENSE, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS, BY ADDING ARTICLE X, ADULT ENTERTAINMENT BUSINESSES, AND SECTIONS 14-256 TO 14-269, OF THE CODE OF ORDINANCES, CITY OF KIRKSVILLE, MISSOURI;

Councilmember Newton moved to adopt Bill No. 2006-02 on first reading; seconded by Councilmember Cupelli.

Code Administrator Paul Frazier reported that the City Attorney and the Planning and Zoning Commission have reviewed the proposed ordinance. The ordinance specifies that an adult business cannot be located in a zoning classification other than M-1, Light Industrial District, west of Industrial Road, and north of Missouri Highway 6, and those lands zoned M-2 Heavy Industrial District north of Highway 6, west.

Karl Hildebrand stated that he and the Rinehart News Agency support the ordinance.

Aaron Rodgerson presented findings from research that these type of businesses increase crime in a community, decrease property values, and people leave the community.

The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

BILL NO. 2006-03

AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, AMENDING ARTICLES I AND XIX OF APPENDIX A OF CHAPTER 25, ZONING; BY ADDING NEW DEFINITIONS AND BY ADDING SECTIONS RELATING TO ADULT ENTERTAINMENT BUSINESSES;

Councilmember Cupelli moved to adopt Bill No. 2006-03 on first reading; seconded by Mayor Pro Tem Crist.

Code Administrator Paul Frazier reported this ordinance provides the zoning area for the adult entertainment businesses. Councilmember Cupelli stated that the Planning and Zoning Commission voted unanimously to approve the zoning, with the City Attorney's review of the ordinance.

Karl Hildebrand, said he was speaking as a private individual, reported that by creating this type of district, the city is declaring community standards.

Tom Bedford said it is in the best interest of the community for the Council to approve this ordinance to zone these businesses.

The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

BILL NO. 2006-04

RESOLUTION NO. R2-6-532

A RESOLUTION OF THE CITY COUNCIL OF KIRKSVILLE, MISSOURI PROVIDING FOR THE TENTATIVE AWARD OF A CONTRACT FOR THE CONSTRUCTION OF THE WATER PURIFICATION PLANT IMPROVEMENTS PHASE I, PURSUANT TO THE MISSOURI DEPARTMENT OF NATURAL RESOURCES SRF LOW INTEREST LOAN PROGRAM SUBJECT TO REGULATORY APPROVAL, PROVIDING FOR SUBSEQUENT EXECUTION OF THE CONTRACT DOCUMENTS BY THE MAYOR, FOR PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Kirksville wishes to utilize funds from the Missouri Department of Natural Resources SRF Low Interest Loan Program to construct the Water Purification Plant Improvements Phase I; and

WHEREAS, the City of Kirksville, has heretofore advertised for bids for construction of the project known as Water Purification Plant Improvements Phase I; and

WHEREAS, on January 31, 2006, bids were duly received, publicly opened and read aloud for the Water Purification Plant Improvements Phase I; and

WHEREAS, Benton & Associates, Inc. , the City's Engineer for the project, has recommended tentative award of the Contract for the Water Purification Plant Improvements Phase 1 to PAR General Contractors, Inc.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF KIRKSVILLE:

Section 1. The City of Kirksville tentatively awards the contract for the construction of the Water Purification Plant Improvements Phase I to PAR General Contractors, Inc. in the amount of One Million One Hundred Sixty One Thousand Dollars and 00/100, (\$1,161,000), subject to the City of Kirksville securing financing for the project, and approval by the Missouri Department of Natural Resources and authorizes subsequent execution of the Contract Documents by the Mayor of the City Council of Kirksville, Missouri.

Section 2. FURTHER, BE IT RESOLVED that the successful bidder for this project be notified of this tentative award of contract, and that the Bid Bonds be returned to the unsuccessful bidders by said City Clerk when a signed contract has been secured.

Section 3. Effective Date: This Resolution shall take effect immediately upon its adoption by the City Council of Kirksville, Missouri.

Councilmember Cupelli moved to adopt Bill No. 2006-04; seconded by Councilmember Newton.

Public Works Director John Buckwalter reported there were three bids received for the replacement of filter media in filters 1 and 2; replacement of under drain systems and air scour systems in filter 1 and 2, and rehab of filter area; replacement of two existing low lift pumps with three new pumps and variable frequency drives; construction of new mechanical room office and entry, and electrical updates. This is the first of three proposed phases outlined in the November 2004 facility plan.

The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

Veteran's Memorial Park Agreement

Councilmember Cupelli moved to authorize the City Manager to execute an agreement with the Adair County Commission for the maintenance of Veteran's Memorial Park; seconded by Councilmember Newton.

City Manager Macomber explained that the Council approved a similar agreement in April of 2005, but the County never signed it due to the duration period of 50 years. The County Commission has agreed to a period of 25 years under the agreement. The change has been made to the Agreement in which the City will maintain the park at the City's cost, and

improvements can be made after the Council's approval. Veteran's Memorial Park is jointly owned by the City and County.

The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

Purchasing Policy Amended

Mayor Pro Tem Crist moved to approve an amendment to Council Policy #2 – Purchasing; seconded by Councilmember Cupelli.

Laura Guy, Finance Director, explained that an amendment was necessary to clarify the sale, trading and leasing of the City's real property. Other city policies were looked at, and the City of Columbia's policy was used as a model.

The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

Police Car Bids

Councilmember Cupelli moved to approve a bid from Bentz GM Country for three police vehicles; seconded by Mayor Pro Tem Crist.

Police Chief Jim Hughes reported the total bid price of \$43,804.32, less trade-in's, was recommended.

The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

Submersible Pump Bid for Lift Station

Mayor Pro Tem Crist moved to approve a bid from Progress Environmental for a submersible pump for the West Missouri Lift Station; seconded by Councilmember Newton.

John Buckwalter explained the lift station has three pumps, and the purchase of this pump will be used when one of the three pumps would have to be sent out for repair. Bid price of \$16,600 was recommended.

The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

Fire Hydrants, Valves Bid

Mayor Pro Tem Crist moved to approve a bid for fire hydrants, extensions, valves, valve boxes and traffic repair kits from National Waterworks for \$44,688.00; seconded by Councilmember Cupelli. The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

Pipeline Bores Bid

Councilmember Cupelli moved to approve a bid for pipeline bores from Great Plains, Inc.; seconded by Councilmember Newton. The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

Rock Bid

Councilmember Newton moved to approve a bid from Fountain Trucking for rock in the amount of \$41,036.50; seconded by Mayor Pro Tem Crist. The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

Watershed Commission Membership

Mayor Pro Tem Crist moved to approve a membership amendment to the Watershed Management Commission; seconded by Councilmember Newton.

City Manager Macomber reported that individuals have asked that certain members of the Commission be changed to ex-officio members. Those ex-officio members would be: Adair County Public Water Supply, Adair County Health Department, City of Kirksville – LPRC Chair; City of LaPlata; Farm Service Administration (FSA); Natural Resource Conservation Service (NRCS); University of Missouri Extension; Missouri Department of Conservation (MDC).

The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

Liquor Licenses – Jump Oil Company (former Ice Houses)

Mayor Pro Tem Crist moved to approve liquor licenses for Jump Oil Company (former Ice House #1, #3 & #4 – B & H Petroleum); seconded by Councilmember Newton.

Laura Guy reported that Jump Oil Company purchased the three Ice House businesses, and will continue to sell liquor.

The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

BILL NO. 2006-05

AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI VACATING A PORTION OF THE EAST-WEST ALLEY IN BLOCK 5, EVANS ADDITION TO CITY OF KIRKSVILLE.

Mayor Pro Tem Crist moved to adopt Bill No. 2006-05 on first reading; seconded by Councilmember Newton.

John Buckwalter reported that an adjoining property owner has petitioned the City to vacate a portion of an alley between Boundary Street and Walnut Street extending from Boundary Street to the west lines of lots 2 and 11 of the Evans Addition. There are no utilities, and it is not developed. The property owners plan to reconfigure the lot and construct a residence.

The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

Second Reading

BILL NO. 2006-02

ORDINANCE NO. 11743

AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, AMENDING CHAPTER 14, LICENSE, PERMITS AND MISCELLANEOUS BUSINESS REGULATIONS, BY ADDING ARTICLE X, ADULT ENTERTAINMENT BUSINESSES, AND SECTIONS 14-256 TO 14-269, OF THE CODE OF ORDINANCES, CITY OF KIRKSVILLE, MISSOURI; AND

WHEREAS, THE CITY COUNCIL FINDS THAT CERTAIN ACTIVITIES CARRIED ON IN PLACES OF ADULT ENTERTAINMENT BUSINESSES HAVE SECONDARY EFFECTS WHICH ARE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY AND WELFARE; AND

WHEREAS, THE CITY COUNCIL FINDS IT REASONABLE TO REGULATE ADULT ENTERTAINMENT BUSINESSES FOR THE PURPOSE OF PROTECTION AGAINST SUCH SECONDARY EFFECTS OF ADULT ENTERTAINMENT BUSINESSES;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

Section 1. That the Code of Ordinances of the City of Kirksville be amended by adding to Chapter 14, an Article X, Adult Entertainment Businesses, and Sections 14-256 to 14-269, to read as follows:

ARTICLE X. ADULT ENTERTAINMENT BUSINESSES

Sec. 14-256. Definitions.

For the purposes of this chapter and unless the context plainly requires otherwise, the following definitions are adopted:

Adult entertainment business means any enterprise to which the public, patrons or members are invited or admitted, and where providing “adult entertainment” as defined herein, is a portion of its business;

(a) *Adult motion picture theater* means an establishment containing a room with seats facing a screen or projection area, where a regular and substantial business purpose is the exhibition to customers of films, videotapes, DVDs, or motion pictures which are intended to provide sexual stimulation or sexual gratification to the customers and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas.”

(b) *Body painting studio* means an establishment where a regular and substantial business purpose is the maintaining, operating, or offering for compensation the applying of paint or other substance to or on the human body by any means of application, technique or process when the subject’s body is displaying for the customer’s view “specified anatomical areas.”

(c) *Bath house* means an enterprise where a regular and substantial business purpose is offering baths with other persons present who are nude or displaying “specified anatomical areas.”

(d) *Adult motel* means an enterprise where a regular and substantial business purpose is offering public accommodations for consideration for the purpose of viewing closed circuit television transmissions, films, motion pictures, video cassettes, DVDs, slides or other photographic reproductions which are distinguished or characterized by an emphasis on the depiction or description of "specified sexual activities" or "specified anatomical areas" and/or rents room accommodations for less than six (6) hours at a time.

(e) *Adult entertainment* can also mean any live exhibition, performance, display or dance of any type, conducted in an "adult entertainment business" including but not limited to, posing or serving food or beverages or soliciting for the sale of food, beverages or entertainment or pantomiming or modeling or removal of clothing on an adult entertainment business premises where such exhibition, performance, display or dance is intended to seek to arouse or excite the sexual desires of the entertainer, other entertainers or patrons or members, and such exhibition, performance, display or dance is characterized by emphasis on matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons or members.

Employee means any and all persons, including managers, entertainers and independent contractors, who work in or at or render any services directly related to, the operation of an adult entertainment business.

Entertainer means any person who provides adult entertainment within an adult entertainment business as defined in this section, whether or not a fee is charged or accepted for entertainment.

Manager means any person who manages, directs, administers, or is in charge of the affairs and/or conduct of any portion of an activity at an adult entertainment business.

Operator means any person operating, conducting or maintaining an adult entertainment business.

Patron means any individual who may be described as, but not limited to, the following: A customer, client, guest, member, observer or private club member, while on the premises of an adult entertainment business.

Person means any individual, partnership, corporation, trust, incorporated or unincorporated association, marital community, joint venture, governmental entity, or other entity or group of persons however organized.

Premises means any place of business of an adult entertainment business, including the entire lot and building occupied by the adult entertainment business, any tent, awning, mobile home, trailer, recreational vehicle, or other temporary structure or mobile facility occupied by the adult entertainment business, and any other property owned, leased or controlled by the adult entertainment business, including any parking areas adjacent to the business which are regularly utilized by employees, entertainers, servers, managers or customers of such business.

Public place means any area generally visible to public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, and automobiles whether moving or not.

Server means any person who serves food or drink at an adult entertainment business.

Sex Offender means any individual who has been sentenced for committing a sexual offense, has a past conviction for an offense involving sexually deviant behavior, has displayed sexually deviant behavior in the commission of any offense, or has admitted committing sexually deviant behavior.

Specified anatomical area means:

- (1) Human male or female genitals or pubic area with less than a fully opaque covering; or
- (2) Human buttocks including any portion of the anal cleft or cleavage of the male or female buttocks with less than a fully opaque covering; or
- (3) The female breast or breasts below a point immediately above the top of the areola encircling the nipple with less than a fully opaque covering, or any combination of the foregoing; or
- (4) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities means sexual conduct, being actual or simulated, acts of human masturbation; sexual intercourse; or physical contact, in an act of apparent sexual stimulation or gratification, with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female; or any sadomasochistic abuse or acts including animals or any latent object in an act of apparent sexual stimulation or gratification.

Sec. 14-257. License required for adult entertainment business.

- (a) It is unlawful for any person to operate or maintain an adult entertainment business in the city unless the owner, operator or lessee thereof has obtained an adult entertainment business license from the city.
- (b) It is unlawful for any entertainer, server, employee, manager, operator or owner to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed adult entertainment business.
- (c) It shall be prima facia evidence that any adult entertainment business that fails to have posted an adult entertainment business license, in the manner required by this section, has not obtained such a license. In addition, it shall be prima facia evidence that any entertainer, server, employee, manager, operator or owner who

performs any business, service or entertainment in an adult entertainment business, in which an adult entertainment business license is not posted, in the manner required by this section, has knowledge that such business was not licensed.

Sec. 14-258. License, classification and fees.

(a) The license year for all fees required under this chapter shall be from March 1 through February 28/29 of the following year. The application for a license shall be accompanied by payment in full of the fee stated in this section by certified or cashier's check, or money order; and no application shall be considered complete until such fee is paid.

(b) All licenses shall be issued for a specific location and shall be nontransferable.

(c) Refundable license fee (see section 14-31 of this code.)

(d) Gross Sales Tax (see section 14-54c of this code.)

(e) County Merchant License (see section 14-29e of this code.)

(f) The classification of licenses and fees for each shall be as follows:

(1) Adult entertainment business license fee is ten dollars (\$10.00) per year;

Sec. 14-259. License limited to one identifiable type of adult use.

All adult entertainment business licenses shall be issued only for the one (1) adult entertainment business use listed on the application. Any change in the type of adult use shall invalidate the adult entertainment business license. More than one (1) adult entertainment business use shall not be allowed at a single location.

Sec. 14-260. License application.

(a) *Adult Entertainment business license.* All persons desiring to secure a license to operate an adult entertainment business under the provisions of this chapter shall make a notarized application with the city business license clerk. All applications shall be submitted in the name of the person proposing to conduct or operate the adult entertainment business. All applications shall be submitted on a form supplied by the city business license clerk and shall require the following information:

(1) The name, resident's address, home telephone number, occupation, date and place of birth and social security number of the applicant.

(2) The name of the adult entertainment business, a description of the type of business to be performed on the licensed premises, and the name of the owner of the premises where the adult entertainment business will be located.

(3) The names, resident's addresses, social security numbers and dates of births of all partners, if the applicant is a partnership; and if the applicant is a corporation, the same information for all corporate officers and directors and stockholders who own ten (10%) percent or greater interest in the corporation.

(4) If the applicant is a corporation, a current certificate of registration issued by the Missouri Secretary of State is required.

(5) A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of this chapter regulating adult entertainment businesses.

(6) An application for an adult entertainment business license may be denied if the applicant fails to supply all the information requested on the application or if the applicant gives materially false, fraudulent or untruthful information on the application.

(b) *Manager or Owner license requirements.* All persons desiring to secure a license under the provisions of this chapter to be a manager or owner shall make a notarized application with the city business license clerk. All applications shall be submitted in the name of the person proposing to be a manager or owner. All applications shall be submitted on a form supplied by the city business license clerk and shall require the following information:

(1) The applicant's name, home address, home telephone number, date and place of birth, and social security number.

(2) Documentation that the applicant has attained the age of eighteen (18) years at the time the application is submitted. Any of the following shall be accepted as documentation of age:

a. A valid motor vehicle operator's license issued by any state, bearing this applicant's photograph and date of birth;

b. A state-issued identification card bearing the applicant's photograph and date of birth;

c. An official and valid passport issued by the United States of America;

d. An immigration card issued by the United States of America;

e. Any other form of picture identification issued by a governmental entity that is deemed reliable by the city business license clerk; or

f. Any other form of identification deemed reliable by the city business license clerk.

(3) Upon receipt of an application in proper form, receipt of the appropriate fee and appropriate proof of age as required by subsection (2) above, the city business license clerk shall issue to the applicant, the manager or owner of the adult entertainment business license as applied for.

(c) An application for an adult entertainment business license may be denied if one (1) or more of the following conditions exist:

(1) The employer for whom the applicant intends to work does not have or is ineligible to receive an adult entertainment business license for any of the reasons set forth in this Code;

(2) The applicant failed to provide all the information required on the application;

(3) The applicant gave false, fraudulent, or untruthful information on the application.

(4) The applicant is a convicted felon, or convicted of a felony and/or sex offense. (See definition sex offender.)

(d) *Facilities necessary.*

(1) No adult entertainment business license to conduct a bath house or body painting studio shall be issued unless an inspection by the city inspection department, or his/her authorized representative, reveals that the premises the applicant intends to conduct business from complies with each of the following minimum requirements:

a. The walls shall be cleaned and painted with washable, mold-resistant paint in all rooms where water or steam baths are given. Floors shall be free from any accumulation of dust, dirt, or refuse. All equipment used in the business operation shall be maintained in a clean and sanitary condition. Towels, linen and items for personal use of operators and patrons shall be clean and freshly laundered. Towels, cloths, and sheets shall not be used for more than one (1) patron. Heavy, white paper may be substituted for sheets, provided that such paper is changed for every patron. No service or practice shall be carried on within any cubicle, room, booth, or any area within any permitted establishment which is fitted with a door capable of being locked.

b. Toilet facilities shall be provided in convenient locations. When five (5) or more employees and patrons of different sexes are on the premises at the same time, separate toilet facilities shall be provided.

A single water closet-per male/female gender shall be provided for each twenty (20) or more employees or patrons of that sex on the premises at any one time. Urinals may be substituted for water closets after one (1) water closet has been provided. Toilets shall be designated as to the male/female gender accommodated therein. The premises of all adult businesses shall be kept in a sanitary condition. Separate dressing rooms and restrooms for men and women shall at all times be maintained and kept in a sanitary condition.

c. Lavatories or wash basins provided with both hot and cold running water shall be installed in either the toilet room or a vestibule. Lavatories or wash basins shall be provided with soap in a dispenser and with sanitary towels.

The city inspection department, or his/her representative, shall certify that the proposed business establishment complies with all of the requirements of this section and shall give or send such certification to the city business license clerk provided however, that nothing contained herein shall be construed to eliminate other requirements of statute or ordinance concerning the maintenance of premises, nor to preclude authorized inspection thereof. The appropriate city official may recommend the issuance of a license contingent upon the compliance with any requirements in this section.

(2) All adult entertainment businesses must comply with requirements and meet the standards of the applicable health, zoning, building code, fire and property maintenance ordinances of the city.

(e) *Application processing.* Upon receipt of a complete application for an adult entertainment business license, the city business license clerk shall immediately transmit one (1) copy of the application to the chief of police for investigation of the application. In addition, the city business license clerk shall transmit a copy of the application to the code administrator.

It shall be the duty of the chief of police or his/her designee to investigate such application to determine whether the information contained in the application is accurate and whether the applicant is qualified to be issued the license applied for. The chief of police shall report the results of the investigation to the city business license clerk not later than ten (10) working days from the date the application is received by the city business license clerk.

It shall be the duty of the codes administrator to determine whether the building and/or premises where the adult entertainment business will be conducted complies with the requirements and meets the standards of the applicable health, zoning, building code, fire and property maintenance ordinances of the city. The codes administrator shall report the results of the investigation to the city business license clerk not later than ten (10) working

days from the date the application is received by the city business license clerk.

Upon receipt of the reports from the chief of police and code administrator, the city business license clerk shall submit the application and reports to the city manager for consideration, provided the license application for an adult entertainment business license shall be approved or disapproved within twenty (20) days from the date of filing of the completed application with the city finance department.

(f) *Signs required.* All adult entertainment businesses shall have conspicuously displayed in the common area at the principal entrance to the premises a sign, on which uppercase letters shall be at least one-half (1/2) inch high, and lowercase letters at least one-fourth (1/4) inch high, which shall read as follows:

THIS ADULT ENTERTAINMENT BUSINESS IS
REGULATED AND LICENSED
BY THE CITY OF KIRKSVILLE

ENTERTAINERS ARE:

Not permitted to engage in any type of sexual conduct or prostitution on the premises or to fondle, caress or touch the breasts, pubic region, buttocks or genitals of any employee, patron or other entertainer or to permit any employee, patron or other entertainer to fondle, caress or touch the breasts, pubic region, buttocks or genitals of said entertainer.

Not permitted to be nude, unclothed, or appear in less than opaque attire, costume or clothing so as to expose to view any portion of the breasts below the top of the areola, or any portion of the pubic region, buttocks and/or genitals.

Not permitted to demand or collect any payment or gratuity from any customer for entertainment, except as follows:

While such entertainer is on the stage, or platform a payment or gratuity may be placed into a box affixed no less than ten (10) feet from the stage or platform.

CUSTOMERS OR PATRONS ARE:

Required to be at least eighteen (18) years of age.

Not permitted to be closer than ten (10) feet from the stage at any time.

Not permitted to touch, caress or fondle the breasts, pubic region, buttocks or genitals of any employee, server or entertainer or engage in solicitation for prostitution.

(g) *Lighting required.* The interior premises of all adult entertainment businesses shall be equipped with overhead lighting of sufficient intensity to illuminate every

place to which customers are permitted access at an illumination of not less than one (1) footcandle as measured at the floor level, and such illumination must be maintained at all times that any customer or patron is present in or on the premises.

The exterior premises of all adult entertainment businesses shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination equivalent to not less than one (1) footcandle in all parking areas and on the general grounds of the premises as measured at the ground level, and there shall be illumination to the equivalent of not less than five (5) footcandles as measured at the ground level at each entrance and doorway area, and such illumination must be maintained at all times that any customer or patron is present on the premises.

(h) *Closed booths or rooms prohibited.* The premises of all adult entertainment businesses shall be physically arranged in such manner that the entire interior portions of the premises and of any booths, cubicles, rooms or stalls are visible from a common area of the business. The use of video cameras to meet this requirement is not allowed. Visibility shall not be blocked or obscured by doors, curtains, drapes or any other obstruction whatsoever. The manager shall be required to position himself/herself so as to be able to view the entire interior portion of the premises while on duty.

Only one (1) person shall be allowed in any booth, cubicle or stall at a time. Such booths, cubicles or stalls shall be constructed out of metal or such other material that is incapable of perforation by any customer, employee, entertainer, server or manager on the premises. Other than the entryways, there shall be no openings, holes, access doors or any other manner of accessibility between any booth, cubicle, room or stall and any other booth, cubicle, room or stall.

Sec. 14-261. Examination of application, issuance of license, disapproval.

(a) If the application for an adult entertainment business license is in proper form and accompanied by the appropriate license fee, the city manager shall examine the application, and after such examination, the city manager shall, if the applicant is qualified, approve a license as provided for by law.

(b) The record of the city manager shall show the action taken on the application, and if the license is granted, the city manager shall direct the city business license clerk to issue the proper license. The license shall state that it is not transferable to other persons or entities and the license period for which it is issued. The license shall be kept posted in a conspicuous place in the place of business that is licensed.

(c) If an application for a license is disapproved, the applicant shall be immediately notified by registered or certified mail to the applicant's last known address, and the notification shall state the basis for such disapproval. An applicant aggrieved by the disapproval of a license application may seek judicial review in a manner provided by law.

Sec. 14-262. Distance and location restrictions.

No person may operate an adult entertainment business if one (1) or more of the following conditions exist:

(1) The adult entertainment business premises is located within two hundred (200) feet of any residence, school, church, public park, licensed child care center or licensed child care home. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point on the property line of the adult entertainment business to the nearest point on the property line of such residence, school, church, public park, licensed day care center, or licensed child care home.

(2) The adult entertainment business premises is located within two hundred (200) feet of any other adult entertainment business for which there is a license issued. Measurements shall be made in a straight line, without regard to intervening structures or objects, from the nearest point on the property line of the adult entertainment business to the nearest point on the property line of such other adult entertainment business.

(3) The business premises does not comply with or meet the requirements of the applicable health, zoning, building code, fire and property maintenance ordinances of the city.

(4) That the Adult Entertainment Business not be located in a zoning classification other than M-1, Light Industrial District zone, west of Industrial Road, and north of Missouri Highway 6, and those lands zoned M-2 Heavy Industrial District north of Missouri Highway 6 west.

Sec. 14-263. Standards of conduct.

The following standards of conduct shall be adhered to by all adult entertainment businesses, their employees and all managers, servers and entertainers and patrons of adult entertainment businesses, while on or about the premises of the business, whether licensed or not:

(a) *Stage or Platform.* The conduct of adult entertainment shall be confined to a stage or platform, which stage or platform shall be elevated at least two (2) feet above the elevation of the main floor of the structure and any person providing adult entertainment shall maintain a distance of not less than ten (10) feet from all patrons of the establishment; further, no patron shall be permitted to approach to a distance less than ten (10) feet from the stage upon which the adult entertainment is being presented.

(b) *Age restriction.* Only persons eighteen (18) years of age or older shall be permitted on the premises of any adult entertainment business.

(c) *Exterior observation and display.* No adult entertainment business will be

conducted in any manner that permits the observation or display of performers, servers, or entertainers engaged in an erotic depiction or dance or any material or persons, caricatures, animals, or any portion thereof depicting, describing or relating to "specified sexual activities" or "specified anatomical areas," as defined herein, or any books, cards, magazines, periodicals or other printed matter, photographs, slides, films, motion pictures, DVDs, or videotapes which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" from any exterior sources including, but not limited to, by display, decoration, sign, show window or their opening.

(d) *Nudity prohibited.* No person in an adult entertainment business, other than a patron in a licensed bath house, shall appear nude, unclothed, or in any fashion that exposes to view any "specified anatomical areas."

(e) *Certain acts prohibited.*

(1) No manager, employee, server, entertainer or patron shall perform any "specified sexual activities" as defined herein, wear or use any device or covering exposed to view which simulates any "specified anatomical areas," use artificial devices or inanimate objects to perform or depict any of the "specified sexual activities" as defined herein, or participate in any act of prostitution.

(2) No manager, employee, server, entertainer or patron of an adult entertainment business shall knowingly or repeatedly touch, fondle or caress any "specified anatomical area" of another person, or knowingly permit another person to touch, fondle or caress any "specified anatomical area" of such manager, employee, server, entertainer or patron, whether such "specified anatomical areas" are clothed, unclothed, covered or exposed.

(3) No manager, employee, server or entertainer of an adult entertainment business shall be visible from the exterior of the adult entertainment business while such person is unclothed or in such attire, costume or clothing as to expose to view any "specified anatomical area."

(4) No entertainer shall solicit, demand or receive any payment or gratuity from any patron or customer for any act prohibited by this chapter, and no entertainer shall receive any payment or gratuity from any customer for any adult entertainment, except a performer or patron may place such payment or gratuity into a box affixed no less than ten (10) feet from the stage or platform.

(5) No owner, operator, manager or other person in charge of the adult entertainment business premises shall:

- a. Knowingly permit alcoholic liquor or cereal malt beverages to be brought upon or consumed on the premises, (unless otherwise permitted pursuant to Chapter 4, Alcoholic Beverages, of the City Code).
- b. Knowingly allow or permit the sale, distribution, delivery or consumption of any controlled substance or illegal drug or narcotic on the premises.
- c. Knowingly allow or permit any person under the age of eighteen (18) years of age to be in or upon the premises.
- d. Knowingly allow or permit any act of prostitution or patronizing prostitution on the premises.
- e. Knowingly allow or permit a violation of this chapter or any other city ordinance provision or state law.

(f) *Hours of operation.* No adult entertainment business may be open or in use between the hours of 1:30 am, and 6:00 am on weekdays and Saturdays, and between the hours of 1:30 am on Sunday and 6:00 am on Monday.

Sec. 14-264. License; posting or display.

(a) Every person, corporation, partnership, or association licensed under this chapter as an adult entertainment business shall post such license in a conspicuous place and manner on the adult entertainment business premises.

Sec. 14-265. Manager on premises.

(a) A manager shall be on duty at any adult entertainment business at all times the premises is open for business. The name of the manager on duty shall be prominently posted during business hours.

(b) It shall be the responsibility of the manager to ensure persons under the age of eighteen (18) years do not enter upon the premises.

Sec. 14-266. Inspector and inspections.

(a) All adult entertainment businesses shall permit city officials acting in their official capacity to inspect the premises when requested, or for cause, to insure the business is complying with all applicable regulations and laws.

(b) The adult entertainment business premises must comply with or meet the requirements of the applicable health, zoning, building code, fire and property maintenance ordinances of the city.

Sec. 14-267. Renewal.

(a) A license may be renewed by making application to the city business license clerk on application forms provided for that purpose. Licenses shall expire on February 28/29 of each calendar year, and renewal applications for such licenses shall be submitted prior to February 1 to ensure processing by March 1.

(b) Upon timely application and review as provided for a new license, a license issued under the provisions of this chapter shall be renewed by issuance of a new license in the manner provided in this chapter.

(c) If the application for renewal of a license is not made during the time provided in subsection (a) of this section, the expiration of such license shall not be affected, and a new application shall be required.

Sec. 14-268. Penalty.

Any individual, partnership, corporation or other entity violating any provision of this ordinance shall be fined not less than twenty-five dollars (\$25.00) nor more than two hundred fifty dollars (\$250.00) for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Sec. 14-269. Savings Clause, (Applicability).

The provisions of this ordinance shall apply to all matters affecting or relating to adult entertainment businesses and premises, as set forth herein. Where, in a specific case, different sections of the city ordinances specify different requirements, the most restrictive shall govern.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Kirksville, Missouri, as an addition or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

This ordinance shall be in full force and effect from and after its passage and approval.

BILL NO. 2006-03 **ORDINANCE NO. 11744**
AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, AMENDING ARTICLES I AND XIX OF APPENDIX A OF CHAPTER 25, ZONING; BY ADDING NEW DEFINITIONS AND BY ADDING SECTIONS RELATING TO ADULT ENTERTAINMENT BUSINESSES; AND

WHEREAS, THE CITY COUNCIL FINDS THAT CERTAIN ACTIVITIES CARRIED ON IN PLACES OF ADULT ENTERTAINMENT BUSINESSES HAVE SECONDARY EFFECTS WHICH ARE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY AND WELFARE; AND

WHEREAS, THE CITY COUNCIL FINDS IT REASONABLE TO REGULATE ADULT ENTERTAINMENT BUSINESSES FOR THE PURPOSE OF PROTECTION AGAINST SUCH SECONDARY EFFECTS OF ADULT ENTERTAINMENT BUSINESSES;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

Section 1. That Article I, Appendix A of Chapter 25, of the City Code, be amended to include definitions related to adult entertainment businesses, to read as follows:

ARTICLE I. IN GENERAL

Sec 25-1. Definitions

For the purposes of this chapter and unless the context plainly requires otherwise, the following definitions are adopted:

Adult entertainment business means any enterprise to which the public, patrons or members are invited or admitted, and where providing "adult entertainment" as defined herein, is a portion of its business;

(a) *Adult motion picture theater* means an establishment containing a room with seats facing a screen or projection area, where a regular and substantial business purpose is the exhibition to customers of films, videotapes, or motion pictures which are intended to provide sexual stimulation or sexual gratification to the customers and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas."

(b) *Body painting studio* means an establishment where a regular and substantial business purpose is the maintaining, operating, or offering for compensation the applying of paint or other substance to or on the human body by any means of application, technique or process when the subject's body is displaying for the customer's view "specified anatomical areas."

(c) *Bath house* means an enterprise where a regular and substantial business purpose is offering baths with other persons present who are nude or displaying "specified anatomical areas."

(d) *Adult motel* means an enterprise where a regular and substantial business purpose is offering public accommodations for consideration for the purpose of viewing closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are distinguished or characterized by an emphasis on the depiction or description of "specified sexual

activities” or ‘specified anatomical areas” and rents room accommodations for less than six (6) hours at a time.

(e) Adult entertainment can also mean any live exhibition, performance, display or dance of any type, conducted in an “adult entertainment business” including but not limited to, posing or serving food or beverages or soliciting for the sale of food, beverages or entertainment or pantomiming or modeling or removal of clothing on an adult entertainment business premises where such exhibition, performance, display or dance is intended to seek to arouse or excite the sexual desires of the entertainer, other entertainers or patrons or members, and such exhibition, performance, display or dance is characterized by emphasis on matters depicting, describing or relating to “specified sexual activities” or “specified anatomical areas” for observation by patrons or members.

Sex Offender means any individual who has been sentenced for committing a sexual offense, has a past conviction for an offense involving sexually deviant behavior, has displayed sexually deviant behavior in the commission of any offense, or has admitted committing sexually deviant behavior.

Specified anatomical area means:

- (1) Human male or female genitals or pubic area with less than a fully opaque covering; or
- (2) Human buttocks including any portion of the anal cleft or cleavage of the male or female buttocks with less than a fully opaque covering; or
- (3) The female breast or breasts below a point immediately above the top of the areola encircling the nipple with less than a fully opaque covering, or any combination of the foregoing; or
- (4) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activities means sexual conduct, being actual or simulated, acts of human masturbation; sexual intercourse; or physical contact, in an act of apparent sexual stimulation or gratification, with a person’s clothed or unclothed genitals, pubic area, buttocks, or the breast of a female; or any sadomasochistic abuse or acts including animals or any latent object in an act of apparent sexual stimulation or gratification.

Section 2. That Article XIX, Appendix A of Chapter 25, of the City Code, be amended to read as follows:

ARTICLE XIX. DISTRICT M-1 LIGHT INDUSTRIAL DISTRICT

Sec.25-95. Uses Permitted.

Add: Adult Entertainment Businesses (as limited by Article X of Chapter 14 of the Code of the City of Kirksville)

Section 3. Passage

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI, AS FOLLOWS:

This ordinance is deemed necessary for the immediate preservation of the public health, welfare, peace and safety; this ordinance shall be in full force and effect upon its passage and approval.

The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Kirksville, Missouri, as an addition or amendments thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

BILL NO. 2006-05 **ORDINANCE NO. 11745**
AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI VACATING A PORTION OF THE EAST-WEST ALLEY IN BLOCK 5, EVANS ADDITION TO CITY OF KIRKSVILLE.

WHEREAS, The adjoining property owner has requested the vacation of the following alley:

That portion of an 18 foot wide east/west alley between Boundary Street and Walnut Street from Boundary Street on the west, east to the west line of Lots 2 and 11 in Block 5, Evans Addition to the City of Kirksville,

WHEREAS, the vacation of said alley would not be detrimental to the best interests of the citizens of the City of Kirksville, Missouri.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KIRKSVILLE, MISSOURI AS FOLLOWS:

Section 1. The alley described above is hereby vacated.

Section 2. This ordinance shall be in full force and effect from and after the date of its passage.

Councilmember Cupelli moved to adopt Bill No. 2006-02, 2006-03 and 2006-05 on second reading; seconded by Mayor Pro Tem Crist. The motion carried by the following vote: Mayor Rowe – aye; Mayor Pro Tem Crist – aye; Councilmember Cupelli – aye; Councilmember Newton – aye. Nays, none.

ADJOURNMENT

There being no further business to come before the Council, Mayor Rowe adjourned the meeting at 8:04 p.m.

Vickie Brumbaugh, CMC/MRCC
City Clerk