

FALL RIVER COUNTY

ORDINANCE NO. 96-1

AN ORDINANCE TO PROHIBIT INDECENT EXPOSURE OR THE SIMULATION THEREOF ON LICENSED PREMISES AND TO PROHIBIT CERTAIN FORMS OF PHYSICAL CONTACT ON LICENSED PREMISES BETWEEN ANY PERFORMERS PROVIDING ENTERTAINMENT AND PATRONS OF THE LICENSED PREMISES; LICENSEE'S DUTY TO PREVENT.

WHEREAS, the Commissioners of Fall River County have considered the detrimental impact public nudity has had on the order, safety and well being of the people and the communities where the same have been permitted, particularly with respect to the incidence of prostitution, sexual assault, and associated crimes; and

WHEREAS, the Codified Laws of the State of South Dakota empower the County to "prohibit the exhibition of any obscene material" (SDCL 7-8-20(9)), as well as to "regulate the transaction of business in alcoholic beverages" (SDCL 7-8-20(8)); and

WHEREAS, the Commission has further determined that the moral standards of the community reflect negatively upon public nudity;

NOW, THEREFORE, BE IT ORDAINED by Fall River County that the following Ordinance of Fall River County be enacted:

PROHIBITED ACTIVITIES ON LICENSED PREMISES

A. Definitions:

1. An "Exotic Performer or Entertainer" is one who wears the fully opaque covering required by this ordinance but who could not be described as "fully clothed" and who includes in his or her performance activities of "sexual excitement" as that term is defined in SDCL 22-24-27(15) but which are also without serious literary, artistic, political, or scientific value.
2. "Licensed Premises" are any premises which are licensed for the sale of alcoholic beverages, including low point beer.
3. "Licensee" is any person, association, partnership, corporation, club or other entity which possesses a license for the sale of alcoholic beverages, including low point beer.
4. "Patron" is any person present on Licensed Premises who is not in the employ of the Licensee. It is not necessary for a person to actually make a purchase on the premises to be a patron.

5. A "Performer" or "Entertainer" is any person who is present on Licensed Premises with the consent of the Licensee for the purpose of entertaining any patrons who may also be present. The term includes those who are paid to perform (professionals) as well as those who are not paid (amateurs).

6. The term "Stage" refers to that portion of the licensed premises in which an Entertainer may perform and which may not, during any such performance, also be occupied by any patron who has not been specifically invited on stage by the performer to participate in the performance.

7. The term "Sexual Activity" shall mean any act of masturbation, homosexuality, sexual intercourse, or any other physical contact which falls within the definition of "sexual conduct" set forth at SDCL 22-24-27(14).

B. It is unlawful for any performer or entertainer while on licensed premises and in the presence of any other person to do or perform any one or more of the following:

1. To fail to conceal, with a fully opaque covering, the sexual parts of his or her body, to include the genitals, pubic area, and anus of any person, or the nipple and areola of the female breast;

2. To expose any device, costume, or covering which gives the appearance of, or simulates, the genitals or pubic area of the male or female body, or the nipple and areola of the female breast;

3. To move in a manner which either constitutes actual sexual activity without a partner or between partners of the same or differing sexes or simulates such sexual activity;

4. To move in a manner which either constitutes actual sexual activity between a human being of either sex and any other animal species, or which simulates such sexual activity; and

5. To apply any substance, including water, to their own or any other person's clothing or costume, including a T-shirt, which, although usually opaque, is thereby rendered less than fully opaque.

C. It is unlawful for any patron to have physical contact with an entertainer during the course of a performance on licensed premises except under the following conditions:

1. The entertainer shall have invited the patron to participate in the performance; and

2. The contact which takes place does not involve any act by the patron which can be described by any one of the five (5) subsections of Section B. of this Ordinance.

D. It is unlawful for any exotic entertainer to perform on licensed premises in any area other than that which the licensee has designated as the stage or to have physical contact with a patron while performing except under the following conditions:

1. The entertainer shall have invited the patron on stage as a form of audience participation; and
2. Any contact which takes place between the entertainer and patron does not involve any act on the part of the performer which can be described by any one of the five (5) subsections of Section B. of this Ordinance.

E. All Licensees shall post in a location clearly visible to patrons a written statement indicating whether or not there is a designated stage area on the premises and, if so, the posting shall also include a diagram which clearly designates what area constitutes the stage. If a stage area is designated, it may not be larger than 200 square feet.

F. Any violation of this Ordinance shall constitute grounds upon which the Fall River County Commission may proceed to suspend or revoke the license for the sale of alcoholic beverages, including low point beer, for the premises where the violation took place.

1. It shall not be necessary for a separate ticket to be issued for a violation of any section of this Ordinance in order for the County Commission to proceed with an action to suspend or revoke a license for the sale of alcoholic beverages, including any license for the sale of low point beer.
2. It is the express intent of the County Commission that proceedings for the suspension or revocation of the license of any premises on which a violation of this Ordinance takes place may be in addition to and independent of any penalties which may be imposed under Subsection G. herein.

G. Should any section, clause or provision of this Ordinance be declared by the courts to be invalid, the same shall not effect the validity of the Ordinance as a whole or any part thereof, other than the part so declared to be invalid.

Dated this 4 day of June, 1996.

FALL RIVER COUNTY COMMISSION

By: Linda A. Mines  
Linda Mines, Chair

ATTEST:

Sherrill A. Dryden  
Sherrill Dryden  
Auditor

Passed First Reading: Sandra A. Mines 5-21-96

Passed Second Reading: Sandra A. Mines 6-4-96

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Effective Date: Upon passage by a majority of the voters in  
Fall River County voting in favor of this  
Ordinance at the November 5, 1996, General Election.