ORDINANCE U

AN ORDINANCE ADDING SECTION 5.70 TO THE MUNICIPAL CODE OF THE TOWN OF JACKSON REGARDING ADULT ENTERTAINMENT BUSINESS; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JACKSON, WYOMING, IN REGULAR SESSION DULY ASSEMBLED THAT:

SECTION I.

Section 5.70 of the Municipal Code of the Town of Jackson is hereby added as follows:

5.70 Adult Entertainment Business

5.70.010 Preamble: Intent and purpose.

It is the purpose of this section to regulate the standards of Adult Entertainment Businesses to promote the health, safety, and general welfare of the citizens of Jackson, Wyoming, and to establish reasonable and uniform regulations to address the adverse secondary effects of Adult Entertainment Businesses within the Town. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction of the content of any communication material, including sexually-explicit materials. Similarly, it is not the intent or effect of this ordinance to restrict or deny access by adults to sexually-explicit materials protected by the First Amendment to the United States Constitution, or Articles 1 & 20 of the Wyoming Constitution, or to deny access by the distributors and exhibitors of sexually-explicit entertainment to their intended market. It is not the intent or effect of this ordinance to condone or legitimize the distribution of obscene material as defined by Wyoming Statute 6.4.301(iii).

5.70.020 Legislative Findings.

This Municipal Code Chapter is based on findings concerning the adverse secondary effects of the Adult Entertainment Business on the community presented in studies, case law, and expert papers reviewed by the Town Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000); City of *Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002), and on studies in and by other communities including, but not limited to, all those in the National Law Center for Children and Families 2005 Summaries of SOB Land Use Studies; Richard McCleary, Rural Hot Spots: The Case for Adult Businesses, Criminal Justice Policy Review 19(2), 153-163 (2008); Eric Domain Kelly, et. al., Survey of Florida Appraisers: Effects of Land Uses on Market Values, (2008); Alan C. Weinstein et. al., The Association of Adult Businesses with Secondary effects: Legal Doctrine, Social Theory, and Empirical Evidence, 29 Cardozo Arts and Entertainment Law Journal 565 (2011); Richard McCleary, Do "Off-Site: Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence, Law & Policy Vol. 31, No.2 218-35 (2009).

5.70.030 Definitions.

A. Adult Entertainment Business means a business that generates a substantial or significant portion of its revenues, or devotes a substantial or significant portion of its interior business, advertising, sale floor, or display space for the exhibition, display, sale, or performance, whether presented as printed materials, live entertainment, recorded entertainment, or devices emphasizing or focusing on whole or partial exposure to view of Intimate Parts or the depiction, simulation or facilitation of Sexual Contact.
    1. Includes:
        i. "Intimate Parts" as defined by W.S. § 6-2-301, as amended.
        ii. "Sexual Contact" means touching, with the intention of sexual arousal, gratification or abuse, of the patron's intimate parts by performers, or of the performer's intimate parts by patrons, or of the clothing covering the immediate area of the patron's or performer's intimate parts;
    2. Does Not Include:
        i. This definition shall not be construed to apply to or otherwise allow any form of activity prohibited or punished by law such as exhibitions, displays, or performances deemed by law to be obscene.
        ii. This definition shall not be construed to apply to the presentation, showing, or performance of any play, drama, ballet, or other artistic work in any theater, concert hall, museum, school, institution of higher education, or similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of nudity for the purpose of advancing the economic welfare of a commercial or business enterprise.

5.70.040 Operation Standards.

A. Duty to Comply. It shall be the legal duty of the owner and his/her agents to ensure that all Operation Standards are enforced.
    1. The Adult Entertainment Business shall be configured in such a manner that there is an unobstructed view from a designated Manager's Station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. The view required in this subsection must be by direct line of sight from the Manager's Station.
B. Minors. No person under the age of 18 shall be permitted:
    1. In any Adult Entertainment Business;
    2. To purchase goods or services at an Adult Entertainment Business; or
    3. To work at an Adult Entertainment Business.
C. Public View. Adult Entertainment Business, as defined in this section, shall be obscured from public view such that the Business is not readily apparent to a reasonable observer.
D. Public Indecency. No owner or agent of any Adult Entertainment Business shall knowingly, or with reasonable cause to know, allow a patron to commit on the Business premises an act of public indecency as set forth in Wyoming Statute § 6-4-201 or Jackson Municipal Code § 9.28.030.
E. Sexual Acts. No sexual acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation, sodomy, and masturbation shall take place on the

premises of any Adult Entertainment Business by or between performers, owners, agents, and patrons.

F. Live Performance. Live performance within an Adult Entertainment Business shall only be permitted pursuant to the following standards:
    1. Patrons shall be seated no closer than 6 horizontal feet from the stage.
    2. Patrons shall not be permitted on stage at any time.
    3. All performers shall remain on the stage during the performance.
    4. Physical contact between a performer and patron shall not be permitted.

G. Viewing Booths. All Adult Entertainment Businesses which contain one or more viewing booths, whether for live or recorded performance, shall comply with the following standards:
    1. All viewing booths shall remain unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials.
    2. Physical contact between a performer and patron shall not be permitted.
    3. No video viewing booth may be occupied by more than one person at any time.
    4. No openings of any kind shall exist between video viewing booths.

5.70.050 Penalty.

Any person or business in violation of this section or any subsection hereof, upon conviction, shall be punished as provided in Section 1.12.010 of this Code. Each day during which a person or business shall operate an Adult Entertainment Business in violation of any provision of this Chapter constitutes a separate violation hereof.

SECTION II.

All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION III.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of the ordinance.

SECTION IV.

This Ordinance shall become effective after its passage, approval and publication.

PASSED 1ST READING THE ____ DAY OF _____, 2016.
PASSED 2ND READING THE ____ DAY OF_____, 2016.

PASSED AND APPROVED THE _____ DAY OF_____, 2016.

TOWN OF JACKSON

BY: _____
Sara Flitner, Mayor

ATTEST:

BY: _____
Town Clerk

ATTESTATION OF TOWN CLERK

STATE OF WYOMING)
) ss.
COUNTY OF TETON)

I hereby certify that the foregoing Ordinance No. _____ was duly published in the Jackson Hole News and Guide, a newspaper of general circulation published in the Town of Jackson, Wyoming, on the ____ day of _____, 2016.

I further certify that the foregoing Ordinance was duly recorded on page _____ of Book _____ of Ordinances of the Town of Jackson, Wyoming.

_____
Town Clerk