

Chapter 9

SEXUALLY-ORIENTED BUSINESSES

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3-9-1 **PURPOSE:** The purpose of this Chapter is to regulate sexually-oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent deleterious secondary effects of sexually-oriented businesses within the City. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of or reasonable access to any communicative materials, including sexually-oriented materials. Similarly, it is neither the intent nor effect of this Chapter to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market. Neither is it the intent nor effect of this Chapter to condone or legitimize the distribution of obscene or indecent material.

3-9-2 **DEFINITIONS:** For purposes of this Chapter, the following words and phrases shall have the meanings set forth below unless a different meaning is clearly indicated by the context.

- ADULT BOOKSTORE OR ADULT VIDEO STORE** a commercial establishment which, as one (1) of its principal purposes, offers for sale or rental for any form of consideration any one (1) or more of the following: books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides or simulated display, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas. For the purpose of this definition, "principal purpose" means the commercial establishment:
- (a) has a substantial portion of its displayed merchandise which consists of said items, or
 - (b) has a substantial portion of the wholesale value of its displayed merchandise which consists of said items, or
 - (c) has a substantial portion of the retail value of its displayed merchandise which consists of said items, or
 - (d) derives a substantial portion of its revenues from the sale or rental, for any form of consideration, of said items, or
 - (e) maintains a substantial section of its interior business space for the sale or rental or said items; or
 - (f) regularly features said items, and prohibits access by minors, because of age, to the premises, and advertises itself as offering "adult" or "xxx" or "x-rated" or "erotic" or "sexual" or "sensual" or "pornographic" material on signage visible from a public right of way; or
 - (g) maintains an adult arcade, which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

ADULT CABARET a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear nude and/or semi-nude.

ADULT MOTEL a motel, hotel, or similar commercial establishment which:

- (a) offers accommodations to the public for any form of consideration; provides customers with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the display or simulated display of specified

- (a) sexual activities or specified anatomical areas and which advertises the availability of such material by means of a sign visible from a public right-of-way, or by means of any on- or off premise advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
- (b) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (c) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

ADULT MOTION PICTURE THEATER a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display or simulated display of specified sexual activities or specified anatomical areas are regularly shown to more than five (5) persons for any form of consideration.

CHARACTERIZED BY describing the essential character or quality of an item. As applied in this Chapter, no business shall be classified as a sexually-oriented business solely by virtue of showing, selling, or renting materials rated "NC-17" or "R" by the Motion Picture Association of America.

CITY the City of Providence, Utah.

CITY ADMINISTRATOR the Providence City Administrator or the Administrator's designee.

CUSTOMER a patron of a business as defined in this Chapter.

EMPLOY, EMPLOYEE, AND EMPLOYMENT describe and pertain to any person who performs any service on the premises of a business, on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. 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.

ESTABLISH AND ESTABLISHMENT any of the following:

- (a) the opening or commencement of any sexually-oriented business as a new business;
- (b) the conversion of an existing business, whether or not a sexually-oriented business, to any sexually-oriented business; or
- (c) the addition of any sexually-oriented business to any other existing sexually-oriented business.

GOVERNING BODY the City Council of the City of Providence, Utah.

HEARING OFFICER means an attorney with an independent practice and not a full-time employee of Providence City, licensed to practice law in the State of Utah.

INFLUENTIAL INTEREST any of the following:

- (a) the actual power to operate a sexually-oriented business or control the operation, management or policies of a sexually oriented business or legal entity which operates a sexually oriented business,
- (b) ownership of a financial interest of twenty percent (20%) or more of a business or of any class of voting securities of a business, or
- (c) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates a sexually-oriented business.

LICENSEE a person in whose name a license to operate a sexually-oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an employee, "licensee" means the person in whose name a sexually-oriented business employee license has been issued.

NUDITY OR A STATE OF NUDITY the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

OPERATE OR CAUSE TO OPERATE to cause to function or to put or keep in a state of doing business.

OPERATOR any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may operate or cause to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

PERSON an individual, proprietorship, partnership, corporation, association, or other legal entity.

PREMISES the real property upon which a sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually-oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the

ownership, control, or supervision of the licensee, as described in an application for a business license pursuant to Section 3-9-4 of this Chapter.

REGULARLY the consistent and repeated doing of the act so described.

SEMI-NUDE OR STATE OF SEMI-NUDITY the showing or the simulated showing of a female breast with less than a fully opaque covering below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition includes the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

SEMI-NUDE MODEL STUDIO means a place where persons regularly appear in a state of semi-nudity for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity do so in a modeling class operated:

- (a) by a college, junior college, or university supported entirely or partly by taxation;
- (b) by a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or
- (c) in a structure: which has no sign visible from the exterior of the structure and no other advertising that indicates a seminude person is available for viewing; and where, in order to participate in a class a student must enroll at least three (3) days in advance of the class.

SEXUAL DEVICE any three-dimensional object designed or marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include any device primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

SEXUAL DEVICE SHOP a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing

medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

SEXUAL ENCOUNTER CENTER a business or commercial enterprise that, as one (1) of its principal business purposes, purports to offer for any form of consideration, physical contact in the form of wrestling or tumbling when one (1) or more of the persons is seminude.

SEXUALLY-ORIENTED BUSINESS an adult bookstore or adult video store, an adult cabaret, an adult motel, an adult motion picture theater, a semi-nude model studio, sexual device shop, or a sexual encounter center.

SIMULATED SHOWING OR SIMULATED DISPLAY the utilization of a device or covering, exposed to view, that realistically appears to be any part of a specified anatomical area.

SPECIFIED ANATOMICAL AREA means and includes:

- (a) less than completely and opaquely covered human genitals, pubic region, anus, anal cleft, buttock and female breast below a point immediately above the top of the areola; and
- (b) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED CRIMINAL ACTIVITY means:

- (a) any of the following specified crimes for which less than five (5) years elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:
 - (i) dissemination or distribution of obscenity or pornographic material;
 - (ii) distribution of a controlled substance;
 - (iii) engaging in organized criminal activity relating to a sexually-oriented business;
 - (iv) indecency with a child, including:
 - (A) unlawful sexual activity with a minor,
 - (B) sexual abuse of a minor, and
 - (C) lewdness involving a child;
 - (v) indecent exposure or lewdness;
 - (vi) molestation of a child, including:
 - (A) rape of a child,
 - (B) object rape of a child,
 - (C) sodomy of a child;
 - (D) sexual abuse of a child, and
 - (E) aggravated sexual abuse of a child;

- (vii) sexual exploitation of a minor;
- (viii) prostitution or promotion of prostitution, including:
 - (A) patronizing a prostitute,
 - (B) aiding prostitution,
 - (C) exploiting prostitution, and
 - (D) aggravated exploitation of prostitution;
- (ix) rape, including,
 - (A) object rape,
 - (B) forcible sodomy, and
 - (C) forcible sexual abuse;
- (x) sale, distribution or display of harmful material to a minor, including:
 - (A) indecent public displays, and
 - (B) dealing in harmful material to a minor;
- (xi) sexual assault or aggravated sexual assault;
- (xii) sexual performance by a child;
- (xiii) criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or
- (xiv) any offense in another jurisdiction that, had the predicate act(s) been committed in Utah, would constitute any of the foregoing offenses; or
- (b) any attempt, solicitation, or conspiracy to commit one (1) of the foregoing offenses.

SPECIFIED SEXUAL ACTIVITY any of the following:

- (a) actual or simulated intercourse, oral copulation, masturbation or sodomy; or
- (b) actual or simulated excretory functions as a part of or in connection with any of the activities described in (a) above. "Substantial" means at least thirty-five percent (35%) of the item(s) or word(s) so modified.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY-ORIENTED BUSINESS

means any of the following:

- (a) the sale, lease, or sublease of the business;
- (b) the transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
- (c) the establishment of a trust, gift, or other similar legal device which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

VIEWING ROOM the room, booth, or area where a customer of a sexually-oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

3-9-3 **CLASSIFICATION:** The classifications for sexually-oriented businesses shall be as follows:

- (1) adult bookstore or adult video store;
- (2) adult cabaret;
- (3) adult motel;
- (4) adult motion picture theater;
- (5) semi-nude model studio;
- (6) sexual device shop; or
- (7) sexual encounter center.

3-9-4 **LICENSE REQUIRED:**

(1) it shall be unlawful for any person to operate a sexually oriented business in Providence City without a valid sexually-oriented business license.

(2) It shall be unlawful for any person to be an employee, as defined in this Chapter, of a sexually-oriented business in Providence City without a valid sexually-oriented business employee license.

(3) An applicant for a sexually-oriented business license or a sexually-oriented business employee license shall file in person at the Providence City business license office a complete application made on a form provided by the City Administrator. The application shall be signed as required by Subsection (5) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in subsections (a) through (g) below, accompanied by the appropriate fee identified in Section 3-9-6 of this Chapter:

- (a) the applicant's full true name and any other names used by the applicant in the preceding five (5) years;
- (b) current business address or another mailing address of the applicant;
- (c) written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a government agency;
- (d) if the application is for a sexually-oriented business license, the business name, location, legal description, mailing address and phone number of the sexually-oriented business;
- (e) if the application is for a sexually-oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process;
- (f) a statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in Section 3-9-2 of this Chapter, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable; and
- (g) a statement of whether any sexually-oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (i) been declared by a court of law to be a nuisance; or
 - (ii) been subject to a court order of closure or padlocking.
- (h) The information provided pursuant to Subsections (a) through (g) of this Subsection

(3) shall be supplemented in writing by certified mail, return receipt requested, to the City Administrator within ten (10) working days of a change of circumstances which renders the information originally submitted false or incomplete.

(4) An application for a sexually-oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or 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 shall 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. Applicants who are required to comply with Subsections 3-9-14 and 3-9-18 of this Chapter shall submit a diagram indicating that the interior configuration meets the requirements of those Sections.

(5) If a person who wishes to operate a sexually-oriented business is an individual, the person shall sign the application for a license as the applicant. If a person who wishes to operate a sexually-oriented business is other than an individual, each person with an influential interest in the business shall sign the application for a license as the applicant. Each applicant shall be qualified under Section 3-9-5 and each applicant shall be considered a licensee if a license is granted.

(6) The information provided by an applicant in connection with an application for a license under this Chapter shall be maintained by the office of the City Administrator on a confidential basis, and such information may be disclosed only as may be required by law or court order, and only to the extent required by law or court order.

3-9-5 **ISSUANCE OF LICENSE:**

(1) Upon the filing of a complete application under Subsection 3-9-4(3) of this Chapter for a sexually-oriented business license, the City Administrator shall immediately issue a temporary license to the applicant, which temporary license shall expire upon a final decision of the City to deny or grant a business license. Within twenty (20) days of the filing date of a complete sexually-oriented business license application, the City Administrator shall issue a business license to the applicant or issue to the applicant a letter of intent to deny the application. The City Administrator shall issue a license unless:

- (a) an applicant is less than eighteen (18) years of age;
- (b) an applicant has failed to provide information required by Section 9.60.040 of this Chapter for issuance of a license or has falsely answered a question or request for information on the application form;
- (c) the license application fee required by Section 3-9-6 of this Chapter has not been paid;
- (d) the sexually-oriented business does not comply with the interior configuration requirements of this Chapter or does not comply with locational requirements set forth in Title 10, Providence City Code;
- (e) any sexually-oriented business in which the applicant has had an influential interest, has in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - (i) been declared by a court of law to be a nuisance; or

(ii) been subject to an order of closure or padlocking; or

(1) an applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity as defined in this Chapter.

(2) Upon the filing of a complete application under Subsection 3-9-4(3) of this Chapter for a sexually-oriented business employee license, the City Administrator shall immediately issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the City to deny or grant a business license. Within twenty (20) days of the filing date of a complete sexually oriented business employee license application, the City Administrator shall either issue a business license or issue a written notice of intent to deny a license to the applicant. The City Administrator shall approve the issuance of a license unless:

(a) the applicant is less than eighteen (18) years of age;

(b) the applicant has failed to provide information as required by Section 9.60.040 of this Chapter for issuance of a license or has falsely answered a question or request for information on the application form;

(c) the license application fee required by Section 3-9-6 of this Chapter has not been paid;

(d) any sexually-oriented business in which the applicant has had an influential interest, has in the previous five (5) years (and at a time during which the applicant had the influential interest):

(i) been declared by a court of law to be a nuisance; or

(ii) been subject to an order of closure or padlocking, or

(e) the applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity as defined in this Chapter.

(3) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually-oriented business, the address of the sexually-oriented business. The sexually-oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually-oriented business so that it may be read at any time. A sexually-oriented business employee shall have possession of the employee's license on his or her person or keep the license on the premises where the licensee is then working or performing.

3-9-6 FEES: The initial license and annual renewal fees for sexually-oriented business licenses and sexually-oriented business employee licenses shall be as shown on the Consolidated Fee Schedule adopted by the Municipal Council.

3-9-7 INSPECTION.

(1) A sexually-oriented business and any sexually-oriented business employee shall permit the City Administrator and the Director's agents to inspect, from time to time on an occasional basis, the portions of the sexually-oriented business premises where customers are permitted, for the purpose of ensuring compliance with applicable requirements of this Chapter, during those times when the sexually-oriented business is occupied by customers or is open to the public. This Section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this Chapter, but not to authorize a harassing or excessive pattern of inspections.

(2) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

3-9-8 **EXPIRATION OF LICENSE.**

(1) Except for a temporary license or as otherwise provided in this Section, the term of a license shall be as provided in Section 3-1-8, Providence City Code. unless suspended or revoked.

(2) A license may be renewed only by submitting an application as provided in Section 9.60.040 and paying the fee required by Section 3-9-6 of this Chapter.

(3) Application for renewal of a license should be made at least ninety (90) days before the expiration date pursuant to the procedures set forth in Section 3-9-4 of this Chapter. When made less than ninety (90) days before the expiration date, the expiration of the license shall not be affected.

3-9-9 **SUSPENSION:**

(1) if a sexually-oriented business licensee knowingly violates or knowingly allows an employee to violate the provisions of this Chapter, the City Administrator shall issue a letter to the licensee indicating the City's intent to suspend the licensee's sexually-oriented business license for a period of up to thirty (30) days.

(2) If an employee knowingly violates the provisions of this Chapter, the City Administrator shall issue a letter to the employee indicating the City's intent to suspend the employee's sexually oriented business employee license for a period of up to thirty (30) days.

3-9-10 **REVOCAION:**

(1) The City Administrator shall issue a letter of intent to revoke a sexually-oriented business license or a sexually-oriented business employee license, as applicable, if the licensee knowingly violates a provision of this Chapter or has knowingly allowed an employee to violate a provision of this Chapter and the licensee's license has been suspended within the previous twelve (12) month period.

(2) The City Administrator shall issue a letter of intent to revoke a sexually-oriented business license or a sexually-oriented business employee license, as applicable,

(a) the licensee has knowingly given false information in the application for the sexually-oriented business license;

(b) the licensee has knowingly or recklessly engaged in or allowed possession, use, or sale of controlled substances or alcoholic beverages on the premises;

(c) the licensee has knowingly or recklessly engaged in or allowed prostitution on the premises; or

(d) the licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises.

(3) The fact that any relevant conviction is being appealed shall have no effect on the revocation of a license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, such conviction shall be treated as null and of no effect for revocation purposes.

(4) When, after the notice and hearing procedure described in Section 3-9-11 of this

Chapter, a license is revoked, such revocation shall continue for one (1) year and the licensee shall not be issued a sexually-oriented business license or sexually-oriented business employee license for one (1) year from the date revocation becomes effective.

3-9-11 **HEARING - DENIAL, REVOCATION, AND SUSPENSION –APPEAL:**

(1) When the City Administrator issues a written notice of intent to deny, suspend, or revoke a license, the City Administrator shall immediately send such notice, which shall include the specific grounds under this Chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the Providence City business license office for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which a hearing officer shall conduct a hearing on the City Administrator's intent to deny, suspend, or revoke the license.

(a) At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on the respondent's behalf and cross-examine any of the City Administrator's witnesses. The City Administrator shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) consecutive days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written decision, including specific reasons for the decision pursuant to this Chapter, to the respondent within five (5) days after concluding the hearing.

(b) a decision is to deny, suspend or revoke a license, the decision shall not become effective until the thirty (30) days after the decision is rendered. The decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction.

(i) If the Hearing Officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Officer shall, contemporaneously with the issuance of the decision, order the City Administrator to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action.

(ii) If the respondent is not yet licensed, the City Administrator shall contemporaneously therewith issue the license to the applicant.

(2) If any court action challenging the City Administrator's or Hearing Officer's decision is initiated, the City Attorney shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The City shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings.

(3) The following shall apply to any sexually-oriented business that is in operation as of the effective date of this Chapter:

(a) Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the City's enforcement of the denial, suspension, or revocation, the City shall

immediately issue the respondent a provisional license.

(b) The provisional license shall allow the respondent to continue operation of the sexually-oriented business or to continue employment as a sexually-oriented business employee and shall expire upon the court's entry of judgment on the respondent's appeal or other action to restrain or otherwise enjoin the City's enforcement.

3-9-12 **TRANSFER OF LICENSE:** A licensee shall not transfer the licensee's sexually oriented business license to another person, nor shall a licensee operate a sexually-oriented business under the authority of a license at any place other than the address designated on the license.

3-9-13 **HOURS OF OPERATION:** No sexually-oriented business shall be or remain open for business between 12:00 midnight and six (6:00) a.m. on any day.

3-9-14 **EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS:**

(1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than three hundred fifty (350) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(a) Each application for a sexually-oriented business license shall contain a diagram of the premises showing the location of each restroom, operator station, viewing room, overhead lighting fixture, video camera and monitor installed for monitoring purposes and shall designate those portions of the premises where customers will not be permitted.

(i) Restrooms shall not contain video reproduction equipment.

(ii) The diagram shall also designate the place where the license will be conspicuously posted, if granted.

(iii) A professionally prepared diagram in the nature of an architectural drawing shall not be required; however, the top of each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The City Administrator may waive the foregoing diagram for renewal applications if the applicant presents a previously submitted diagram and certifies that the configuration of the premises has not been altered since it was prepared.

(b) It shall be the duty of the operator, and of any employee present on the premises, to ensure no customer is permitted access to any area of the premises which has been designated as an area in which customers will not be permitted in the application filed pursuant to Subsection (1)(a) of this Section.

(c) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place where customers are permitted access at an illumination of not less than five (5) foot candles as measured at the floor level. The operator and any employee present on the premises shall have the duty to ensure the illumination-described

above is maintained at all times when the premises are occupied by customers or open for business.

(d) The operator and any employee present on the premises shall have the duty to ensure no sexual activity occurs in or on the licensed premises.

(e) The operator shall have the duty to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- (i) occupancy of viewing rooms is limited to one (1) person;
- (ii) sexual activity on the premises is prohibited;
- (iii) making of openings between viewing rooms is prohibited;
- (iv) violators will be required to leave the premises; and
- (v) violations of Subsections (i), (ii) and (iii) of this Section (e) are unlawful.

(f) The operator shall have the duty to enforce the regulations set forth in Subsections (e)(i) through (e)(iv) above.

(g) The interior of the premises shall be configured to provide an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room, but excluding restrooms, to which any customer is permitted access for any purpose.

(i) An operator's station shall not exceed thirty-two (32) square feet of floor area.

(ii) If the premises have two (2) or more operator's stations designated, then the interior of the premises shall be configured to provide an unobstructed view of each area of the premises to which any customer is permitted access for any purpose from at least one (1) of the operator stations. The view required in this subsection shall be by direct line of sight from an operator's station.

(iii) The operator shall have the duty to ensure at least one (1) employee is on duty and situated in each operator's station at all times when a customer is on the premises, and

(iv) The operator and any employees present on the premises shall have the duty to ensure the view area specified in this Subsection remains unobstructed by any door, curtain, wall, merchandise, display rack or other material or enclosure at all times when a customer is present on the premises.

(2) It shall be unlawful for a person having a duty under this Section to knowingly fail to fulfill that duty.

3-9-15 **LOITERING, EXTERIOR LIGHTING, VISIBILITY, AND MONITORING REQUIREMENTS:**

(1) The operator of a sexually-oriented business shall have the duty to:

- (a) post conspicuous signs stating that no loitering is permitted on the premises;
- (b) designate one (1) or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and
- (c) provide lighting of the exterior portion of the premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously whenever the premises are open for business. Such monitors shall be installed within an operator's station.

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(2) It shall be unlawful for a person having a duty under this Section to knowingly fail to fulfill that duty.

(3) No sexually-oriented business licensee or other person shall erect a fence, wall, or other barrier which prevents any portion of a parking lot for employees or customers of the business from being visible from a public right of way.

3-9-16 PENALTIES AND ENFORCEMENT:

(1) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this Chapter shall be guilty of a class B misdemeanor. Each day a violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(2) The City Attorney is hereby authorized to institute civil proceedings necessary for the enforcement of this Chapter to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the City.

(3) Nothing in this Section and no action taken hereunder shall:

(a) prohibit a criminal or administrative proceeding as may be authorized by other provisions of this Chapter, the Providence City Code, or other law, or

(b) exempt any person violating this Chapter, the Providence City Code, or other law from a penalty which may be incurred.

3-9-17 APPLICABILITY OF CHAPTER TO EXISTING BUSINESSES: Any existing sexually-oriented business and sexually-oriented business employee are hereby granted a de facto temporary license to continue operation or employment for a period of ninety (90) days following the effective date of this Chapter. By the end of said ninety (90) days each sexually-oriented business and sexually-oriented business employee shall conform to and abide by the requirements of this Chapter.

3-9-18 PROHIBITED ACTIVITIES:

(1) It is unlawful for a sexually-oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

(a) It shall be a violation of this Chapter for a customer, employee, or any other person to knowingly or intentionally, in a sexually-oriented business appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(b) It shall be a violation of this Chapter for a person to knowingly or intentionally, in a sexually-oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.

(c) It shall be a violation of this Chapter for any employee who regularly appears semi-nude in a sexually-oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually-oriented business.

(d) It shall be a violation of this Chapter for any person to sell, use, or consume alcoholic beverages on the premises of a sexually-oriented business.

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(2) A sign, in a form prescribed by the City Administrator, summarizing the provisions of Subsections (a), (b), (c), and (d) of this Section shall be posted near the entrance of a sexually-oriented business in a location where it is clearly visible to customers upon entry.

3-9-19 SCIENTER REQUIRED TO PROVE VIOLATION OR BUSINESS LICENSEE LIABILITY: This Chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Chapter. Notwithstanding anything to the contrary, for the purposes of this Chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually-oriented business licensee for purposes of finding a violation of this Chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

3-9-20 EFFECT OF CITY FAILURE TO ACT: In the event a City official is required to act or do a thing pursuant to this Chapter within a prescribed time, and fails to act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the City official under this Chapter and not completed in the time prescribed includes approval of condition(s) necessary for approval by the City of an applicant's or licensee's application for a sexually-oriented business license or a sexually-oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee shall be allowed to commence operations or employment the day after the deadline for the City's action has passed.