

Chapter 5

SEXUALLY ORIENTED BUSINESSES

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3-5-1: PURPOSE AND FINDINGS:

- A. It is the objective of this chapter the town establish reasonable and uniform regulations governing the operation of sexually oriented businesses and their employees in the town. This chapter shall be construed by the town to protect the governmental interests recognized by this chapter in a manner consistent with constitutional protection provided by the United States and Utah constitutions. The purpose of these regulations is to provide for the regulation of and licensing of sexually oriented businesses within the town in a manner which will protect the property values of surrounding businesses and neighborhoods, and residents from the potential adverse secondary effects of sexually oriented businesses, while providing to those who desire to patronize sexually oriented

businesses the opportunity to do so. Sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution. Licensing of sexually oriented businesses is a legitimate and reasonable means of ensuring that operators of sexually oriented businesses comply with reasonable regulations and operators do not knowingly allow their businesses to be used for illegal sexual activity or solicitation. There is convincing documented evidence that sexually oriented businesses, because of their nature, have a deleterious effect on both the existing neighboring businesses and surrounding residential areas, causing increased crime and downgrading of property values. The purpose of this chapter is to control the adverse effects of sexually oriented businesses and thereby to protect the health, safety and welfare of the citizens and guests of the town, protect the citizens from increased crime, preserve the quality of life, preserve the property values and character of the surrounding neighborhoods, and deter the spread of urban blight.

B. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the town council, and on findings incorporated in the cases of City of Erie v. Pap's A.M., 529 U.S. 277, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 106 S.Ct. 925, 89 L.Ed.2d 29 (1986); Young v. American Mini Theatres, [Inc.], 427 U.S. 50, 96 S.Ct. 2440, 49 L.Ed.2d 310 (1976); Barnes v. Glen Theatre, Inc., 501 U.S. 560, 111 S.Ct. 2456, 115 L.Ed.2d 504 (1991); California v. La Rue, 409 U.S. 109, 93 S.Ct. 390, 34 L.Ed.2d 342 (1972); O'Connor v. City and County of Denver, 894 F.2d 1210 (10th Cir. 1990); Z.J. Gifts D-2, L.L.C. v. City of Aurora, 136 F.3d 683 (10th Cir. 1998); Dodger's Bar & Grill, Inc. v. Johnson County, 98 F.3d 1262 (10th Cir. 1996); Dodger's Bar & Grill, Inc. v. Johnson County Bd. of County Com'rs, 32 F.3d 1436 (10th Cir. 1994); American Target Advertising, Inc. v. Giani, 199 F.3d 1241 (10th Cir. 2000); MS News Co. v. Casado, 721 F.2d 1281 (10th Cir. 1983); Cortese v. Black, 87 F.3d 1327, (10th Cir. 1996); Heideman v. South Salt Lake City, 348 F.3d 1182 (10th Cir. 2003); Salt Lake City v. Wood, 1999 Utah App. 323, 991 P.2d 595 (Utah Ct. App. 1999); Midvale City Corp. v. Haltom, 73 P.3d 334 (Utah 2003); United States v. Freedberg, 724 F.Supp. 851 (D. Utah 1989); reports of the Iron County sheriff's office; and documents concerning the secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1984; Minneapolis, Minnesota - 1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio; Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington - 1998; Newport News, Virginia - 1996; New York Times Square study - 1994; Phoenix, Arizona - 1995-98; and also on findings from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence", by Kelly Holsopple, program director, freedom and justice center for prostitution resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View", by David Sherman, presented to the Michigan house committee on ethics and constitutional law, January 12, 2000; crime statistics of the city of South Salt Lake for the past seven (7) years; and the report of the attorney general's working group on the regulation of sexually oriented businesses (June 6, 1989, state of Minnesota), the Town Council finds as follows:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the unlicensed operators of the establishments. Further, there is presently no mechanism in this town to make the owners and operators of these establishments responsible for the activities that occur on their premises.

2. Sexual acts, including masturbation, and oral and anal sex, occur at unregulated sexually oriented businesses, especially those which provide private or semiprivate booths or cubicles for viewing films, videos or live sex shows.
3. Offering and providing such unregulated space encourages such activities, which creates unhealthy conditions.
4. Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis, salmonella, campylobacter and shigella infections, chlamydia, mycoplasmal and ureoplasmal infections, trichomoniasis and chancroid.
5. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities, and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
6. The findings noted in subsections B1 through B5 of this section raise substantial governmental concerns.
7. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the town. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
8. The disclosure of certain information by those persons ultimately responsible for the day to day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and will prevent the further secondary effects of dissemination of illegal obscenity, child pornography, and to minors and materials harmful to them.
9. The general welfare, health, morals and safety of the citizens of the town will be promoted by the enactment of this chapter. (Ord. 09-011, 7-28-2009)

3-5-2: DEFINITIONS:

For the purpose of this chapter, the following words shall have the following meanings herein respectively ascribed to them, unless a different meaning is clearly indicated by the context:

ADULT ARCADE: 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 distinguished or characterized by their emphasis upon matter exhibiting or describing "specified sexual activities" or "specified anatomical areas".

ADULT BOOKSTORE, ADULT NOVELTY STORE, ADULT VIDEO STORE: A commercial establishment which has as a significant or substantial portion of its stock in trade, or derives a significant or substantial portion of its revenues, or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, any one or more of the following:

- A. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides or other visual representations which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas".
- B. Instruments, devices or paraphernalia that are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.

ADULT CABARET: A nightclub, bar, juice bar, restaurant bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

- A. Persons who appear seminude;
- B. Live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities"; or
- C. Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas".

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

- A. Offers public accommodations, for any form of consideration, which regularly provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas", and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right of way, or by means of any off premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; and
- B. Offers a sleeping room for rent for a period of time less than ten (10) hours; or
- C. Allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.

ADULT MOTION PICTURE THEATER: A commercial establishment where films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

ADULT THEATER: A theater, concert hall, auditorium or similar commercial establishment which, for any form of consideration, regularly features persons who appear live in a state of seminudity, or live performances which are characterized by their emphasis upon the exhibition of "specified anatomical areas" or "specified sexual activities".

BUSINESS LICENSE OFFICIAL: Brian Head Town business License Officer, or his/her designee.

CONTROLLING INTEREST: The power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The ownership, control or power to vote twenty percent (20%) or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.

DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS ON: The dominant or principal theme of the object described by such a phrase. For instance, when the phrase refers to films which are distinguished or characterized by an emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas", the films so described are those whose dominant or principal character and theme is the exhibition or description of "specified anatomical areas" or "specified sexual activities".

EMPLOY, EMPLOYEE AND EMPLOYMENT: Describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time or contract basis, whether or not the person is designated 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 or similar type of function.

ESTABLISH OR ESTABLISHMENT: Means and includes any of the following:

- A. The opening or commencement of any sexually oriented business as a new business;
- B. The conversion of any existing business; whether or not a sexually oriented business, to any sexually oriented business;
- C. The addition of any sexually oriented business to any other existing sexually oriented business; or
- D. The relocation of any sexually oriented business.

HEARING OFFICER: The Town Manager of Brian Head Town, or a designee of the Town Manager.

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 case of an "employee", it shall mean the person in whose name the employee license has been issued.

NUDITY OR STATE OF NUDITY: The showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft 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.

OPAQUE: Impervious, having capacity to block out or obstruct the visual image of an object.

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 is authorized to exercise overall operational control of the business, or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner or licensee of the business.

PARK: Any public land which has been designated for park or recreational activities, including, but not limited to, a park, playground, trails, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, open space, wilderness areas, or similar public land within the town which is under the control, operation or management of Brian Head Town.

PECUNIARY COMPENSATION: Any commission, fee, salary, tip, gratuity, profit, reward, or any other form of consideration.

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

PLACE OPEN TO PUBLIC VIEW: An area capable of observance by persons from the general community, where an expectation for privacy is not reasonably justified, and includes a dedicated roadway, sidewalk, a parking lot, any public way, a theater, a restaurant, a movie theater, any room in a hotel or motel other than a guestroom, or any other place where an expectation for privacy is not reasonably justified.

PROTECTED USES: Churches, public libraries, public parks or parkways, public recreation centers, public and private schools, and any residence or residential district.

REGULARLY FEATURED OR REGULARLY SHOWN: A consistent or substantial course of conduct such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

SEMINUDE MODEL STUDIO:

- A. Any place where a person, who regularly appears in a state of seminudity, is provided for pecuniary consideration, to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.
- B. It is a defense to prosecution for any violation of this chapter that a person appearing in a state of seminudity did so in a modeling class operated:
 1. By a college, junior college or university supported entirely or partly by taxation;
 2. 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

3. In a structure:

- a. 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
- b. Where, in order to participate in a class, a student must enroll at least three (3) days in advance of the class.

SEMINUDE OR STATE OF SEMINUDITY: A state of dress in which any opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUALLY ORIENTED BUSINESS: An adult arcade, adult bookstore, adult motion picture theater, adult novelty store, adult theater, adult video store, adult cabaret, seminude model studio, or adult motel.

SPECIFIED ANATOMICAL AREAS:

- A. Human male genitals in a state of sexual arousal; or
- B. Less than completely and opaquely covered buttocks, anus, anal cleft or cleavage, male or female genitals, or a female breast.

SPECIFIED CRIMINAL ACTIVITY:

- A. Any of the following offenses as they are defined by applicable Utah state statute: prostitution or promotion of prostitution; dissemination of obscenity or illegal pornographic materials; sale, distribution or display of harmful material to a minor; sexual abuse; sexual abuse of a child; sexual exploitation of children; sexual performance by a child; possession or distribution of child pornography; sexual battery; rape; indecent exposure; indecency with a child; the crimes of criminal pandering, tax violations, embezzlement or racketeering, if such crimes are directly related to the operation of a sexually oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving the same elements from any jurisdiction if the offenses were committed in the state of Utah, regardless of the exact title of the offense, for which:
 1. Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
 2. Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
 3. Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty four (24) month period.

B. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

SPECIFIED SEXUAL ACTIVITY: Acts of, or simulating:

A. Masturbation;

B. Sexual intercourse;

C. Sexual copulation with a person or a beast;

D. Fellatio;

E. Cunnilingus;

F. Bestiality;

G. Pederasty;

H. Buggery;

I. Sodomy;

J. Excretory functions as part of or in connection with any of the activities set forth in subsections A through I of this definition.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS:

Any of the following:

A. The sale, lease or sublease of the business;

B. The transfer of securities which constitutes a controlling 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 the 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: A room, booth or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, video cassette or other video production. (Ord. 09-011, 7-28-2009)

3-5-3: APPLICABILITY:

A. General Applicability: This chapter imposes regulatory standards and license requirements on certain business activities which are characterized as sexually oriented businesses, and certain employees of those businesses characterized as sexually oriented business

employees. Except where the context or specific provisions require, this chapter does not supersede or nullify any other related ordinances.

B. Applicability Of Regulations To Existing Businesses:

1. The provisions of this chapter shall be applicable to all persons and businesses described in this chapter, whether the described business or activities were established or commenced before, on or after the effective date hereof, and regardless of whether such persons and businesses are currently licensed to do business in the town.
2. Upon adoption, the provisions of this chapter shall apply to the activities of all sexually oriented businesses and sexually oriented business employees described herein, whether such businesses or activities were established or commenced before, on, or after the effective date hereof. All existing sexually oriented businesses and sexually oriented business employees are hereby granted a de facto temporary license to continue operation or employment for a period of ninety (90) days following the effective date hereof. Within said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must make application for a license pursuant to this chapter. Within said ninety (90) days, sexually oriented businesses must make any necessary changes to the interior configurations of the regulated business premises to conform to this chapter. (Ord. 09-011, 7-28-2009)

3-5-4: OBSCENITY:

Notwithstanding anything contained in this chapter, nothing in this chapter shall be deemed to permit or allowing the showing or display of any material which is contrary to the provisions of this code, or other applicable federal or state statutes prohibiting obscenity. (Ord. 09-011, 7-28-2009)

3-5-5: BUSINESS CATEGORIES:

The categories of sexually oriented business are:

- A. Adult arcade;
- B. Adult bookstore, adult novelty store, adult video store;
- C. Adult cabaret;
- D. Adult motel;
- E. Adult motion picture theater;
- F. Adult theater; and
- G. Seminude model studio. (Ord. 09-011, 7-28-2009)

3-5-6: LICENSE REQUIRED:

It is unlawful:

- A. Business License: For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the town pursuant to this chapter. The license shall specify the type of sexually oriented business for which it is obtained.
- B. Employee License: For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the town pursuant to this chapter.
- C. Work Permit: For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business work permit pursuant to this chapter. (Ord. 09-011, 7-28-2009)

3-5-7: APPLICATION FOR LICENSE; DISCLOSURE:

- A. Signature: If a person who wishes to operate a sexually oriented business is an individual, they shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, the application shall include the full legal name, address and state of incorporation of the business. Each officer, director, general partner, or other person who owns a controlling interest in the business, or who will participate directly in decisions relating to management and control of the business, shall sign the license application as an applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.
- B. Temporary License Issued: Upon filing a completed application for a sexually oriented business license or sexually oriented business work permit, the Business License Official shall issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the town to deny or grant the license.
- C. Complete Application; Required Information: An application shall be considered complete when it contains the information required in this subsection as follows:
 - 1. The full legal name and any other names or aliases used by the applicant;
 - 2. The applicant's date and place of birth;
 - 3. Present business address and telephone number;
 - 4. Identification issued by a federal or state governmental agency with the individual's colored photograph, signature and physical description;
 - 5. Fingerprints on a form provided by the public safety department;
 - 6. The identity of each individual authorized by the corporation, partnership or non-corporate entity to receive service of process.

7. If the application is for a sexually oriented business license, the application shall be accompanied by a sketch or diagram showing the interior 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 inches ($\pm 6''$).
- D. Specified Criminal Activity: Each applicant must provide a statement of whether the applicant has been convicted of, or has pled guilty or nolo contendere to, a "specified criminal activity", as defined in section [3-5-2](#) of this chapter, and if so, the specified criminal activity involved, and the date, place and jurisdiction of each.
- E. Notarized Statement From Property Owner: In the event the applicant is not the owner of record of the real property upon which the sexually oriented business or proposed sexually oriented business is or is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of sexually oriented business for which the applicant seeks a license to operate a sexually oriented business on the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well as the copy of the lease or rental agreement pertaining to the premises on which the sexually oriented business is or will be located.
- F. License Additional: A license or permit required by this chapter is in addition to any other licenses or permits required by the town, county or state to engage in the business or occupation. Persons engaged in the operation of a sexually oriented business or in employment in a sexually oriented business shall comply with all other applicable local, state and federal laws, ordinances and statutes, including zoning ordinances, as may be required.
- G. Confidentiality Of Information: The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the town on a confidential basis, except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order. The information provided by a sexually oriented business license applicant in connection with the application for a license under this chapter shall be maintained by the town. (Ord. 09-011, 7-28-2009)

3-5-8: FEES FOR APPLICATION:

- A. Each applicant for a sexually oriented business license shall be required to pay a regulatory license fee as set forth in the consolidated fee schedule adopted by resolution.
- B. This fee shall be in addition to the other licenses and fees required to do business in the town. (Ord. 09-011, 7-28-2009)

3-5-9: ISSUANCE OF LICENSE:

- A. Time Limit For Issuance: Under no circumstances shall the total time for the town to issue a license or issue a written intent to deny an application for a license exceed thirty (30) days from the receipt of a completed application.
- B. Conditions For Denial: The business license official shall issue a license to the applicant unless the official finds one or more of the following to be true by a preponderance of the evidence:
1. The applicant is under eighteen (18) years of age or any higher age, if the license sought requires a higher age.
 2. The applicant is overdue in payment to the town of taxes, fees, fines or penalties assessed against the applicant or imposed on the applicant in relation to a sexually oriented business.
 3. The applicant has falsely answered a material question or request for information specifically authorized by this chapter.
 4. The license fees required by this chapter have not been paid.
 5. All applicable sales and use taxes have not been paid.
 6. Each applicant must provide a statement of whether the applicant has been convicted of or has pled guilty or nolo contendere to a "specified criminal activity", as defined in section [3-5-2](#) of this chapter, and if so, the specified criminal activity involved, the date, place and jurisdiction of each. The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section.
- C. Content Of License; Display Required: 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, 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 easily read at any time. (Ord. 09-011, 7-28-2009)

3-5-10: CHANGE IN LICENSE INFORMATION:

The licensee shall submit, in writing, any change in the information required to be submitted under this chapter for either a sexually oriented business license or sexually oriented business work permit to the business license official within fourteen (14) days after such change. (Ord. 09-011, 7-28-2009)

3-5-11: LOCATION REGULATIONS AND RESTRICTIONS:

- A. Zoning: It is unlawful for any sexually oriented business to do business at any location within the town not zoned for such business. Businesses regulated by this chapter shall not be located closer than six hundred feet (600') to each other and not closer than six hundred feet (600') to protected uses.
- B. Additional Location Requirements: It is unlawful for any business licensed as a sexually oriented business to be located within six hundred feet (600') of a business licensed for the sale or consumption of alcohol or liquor.
- C. Method Of Measurement: The six hundred foot (600) limitation is measured from the nearest property line of the business regulated by the chapter to the nearest property line of the other sexually oriented business or business licensed for the sale or consumption of alcohol, or area of protected use.
- D. Single Location And Name:
 - 1. It is unlawful to conduct business under a license issued pursuant to this chapter at any location other than the licensed premises.
 - 2. It is unlawful for any sexually oriented business to do business in the town under any name other than the business name specified in the application.
- E. Moving Of Business Location: It is unlawful for any sexually oriented business, as regulated herein, to relocate or otherwise move its location or area of operation. A sexually oriented business wishing to relocate must submit the appropriate application for a license as required under this chapter. Such application shall be reviewed under the terms and conditions of this chapter and applicable town ordinances. (Ord. 09-011, 7-28-2009)

3-5-12: EMPLOYEE PERMIT REQUIREMENTS AND REGULATIONS:

- A. Employee Work Permit Required: It is unlawful for any person to act as a sexually oriented business employee, without first obtaining a sexually oriented business work permit, as specified in subsection B of this section.
- B. Sexually Oriented Business Employee Work Permits: It is unlawful for any sexually oriented business to employ, or for any individual to be employed as a sexually oriented business employee, unless that employee first obtains a sexually oriented business employee work permit.
- C. Application For Permit; Disclosure:
 - 1. Temporary License: Upon the filing of a completed application for a sexually oriented business employee work permit, the Business License Official shall issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the town to deny or grant the work permit.
 - 2. Complete Application; Required Information: An application shall be considered complete when it contains the information required in this subsection as follows.

- a. The correct legal name of each applicant;
 - b. Present business address and telephone number;
 - c. Identification issued by a federal or state governmental agency with the individual's date of birth, colored photograph, signature and physical description;
 - d. The individual's fingerprints on a form provided by the public safety department;
 - e. Each applicant must provide a statement of whether the applicant has been convicted of or has pled guilty or nolo contendere to a "specified criminal activity", as defined in section [3-5-2](#) of this chapter, and if so, the specified criminal activity involved, the date, place, and jurisdiction of each. The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section.
3. License Additional: A license or permit required by this section is in addition to any other licenses or permits required by the town, county or state to engage in the business or occupation. Persons engaged in the operation of a sexually oriented business or in employment in a sexually oriented business shall comply with all other applicable local, state and federal laws, ordinances and statutes, including zoning ordinances, as may be required.
 4. Confidentially Of Information: The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the town on a confidential basis, except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order. The information provide by a sexually oriented business license applicant in connection with the application for a license under this chapter shall be maintained by the business license official.
- D. State Licensing Exemption: The provisions of this chapter shall not apply to any sex therapist or similar individual licensed by the state to provide bona fide sexual therapy or counseling, a licensed medical practitioner, licensed nurse, psychiatrist or psychologist while providing professional services for which they are licensed, nor shall it apply to any educator licensed by the state for activities in the classroom.
- E. Issuance And Term Of Permit:
1. Within thirty (30) days of the initial filing date of the receipt of a completed application, the business license official shall either issue a license or issue a written notice of intent to deny a license to the applicant. The business license official shall approve the issuance of a license unless one or more of the following is found by a preponderance of evidence to be true:
 - a. The applicant is less than eighteen (18) years of age.
 - b. The applicant has failed to provide information as required by subsection C2 of this section 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 this section has not been paid.

- d. The applicant has been convicted of a "specified criminal activity", as defined in section [3-5-2](#) of this chapter, or has been shown to have committed two (2) or more violations of subsection [3-5-20A](#) of this chapter within the previous year.
- 2. Sexually oriented business employee work permits may be obtained at any time throughout the year. All employee work permits will expire on September 30 following issuance.
- 3. Sexually oriented business licenses and sexually oriented business employee work permits may be renewed only by making application and payment of a fee as provided for in this chapter. Application for renewal should be made at least ninety (90) days before the expiration date of said licenses and work permits, and when made less than ninety (90) days before the expiration date, the expiration of the license or work permit will not be affected.
- F. Change In Employee Information: Any change in the information required to be submitted under this chapter for a sexually oriented business work permit will be given, in writing, to the Business License Official within fourteen (14) days after such change.
- G. License Fees: Each applicant for a sexually oriented employee work permit shall be required to pay yearly regulatory license fees as set forth in this chapter.
- H. License Display: A sexually oriented business employee shall keep the employee's work permit on his or her person or on the premises where the licensee is then working and shall, while working on the sexually oriented business premises, produce such work permit for inspection upon request by a law enforcement officer or other town official performing functions connected with the enforcement of this chapter. (Ord. 09-011, 7-28-2009)

3-5-13: FEE PROVISIONS; MAXIMUM:

The initial license and annual renewal fees for a sexually oriented business license or a sexually oriented business employee license shall be set by the Town Council at an amount determined by the Town Council as sufficient to pay the cost of administering this chapter. In no event shall the fees exceed two hundred dollars (\$200.00) for the initial fee of a sexually oriented business and one hundred dollars (\$100.00) for annual renewal; and one hundred dollars (\$100.00) for the initial sexually oriented business employee license work permit and fifty dollars (\$50.00) for annual renewal. These fees shall be in addition to all other licenses and fees required to do business in the town. (Ord. 09-011, 7-28-2009)

3-5-14: TERM OF LICENSE:

A license shall be issued for a period not to exceed twelve (12) months. All sexually oriented business licensees shall expire on September 30 of each year regardless of when issued. The license fees required shall not be prorated for any portion of the year. (Ord. 09-011, 7-28-2009)

3-5-15: DISPLAY OF LICENSE:

Any sexually oriented business located wn must display the license granted pursuant to this chapter in a prominent public location within the business premises. (Ord. 09-011, 7-28-2009)

3-5-16: NONTRANSFERABLE LICENSE:

Sexually oriented business licenses granted under this chapter shall not be transferable. (Ord. 09-011, 7-28-2009)

3-5-17: HOURS OF OPERATION:

All premises licensed to operate a sexually oriented business shall only operate between the hours of ten o'clock (10:00) A.M. and two o'clock (2:00) A.M. of the following day. (Ord. 09-011, 7-28-2009)

3-5-18: EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS:

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 one hundred fifty (150) square feet of floor space, films, video cassettes/DVDs, or other video reproductions characterized by an emphasis on the display of specified sexual activities or specified anatomical areas, shall comply with the following requirements. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

- A. Diagram Of Premises: Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all manager's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, 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 inches (.6"). The business license official may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- B. Sworn Application: The application shall be sworn to be true and correct by the applicant.

- C. Alterations To Manager's Station: No alteration in the configuration or location of a manager's station or viewing room may be made without the prior approval of the business license official.
- D. Access To Non-permitted Areas: It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection A of this section.
- E. Lighting: The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- F. Sexual Activity: It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.
- G. Number Present In Viewing Room: It shall be the duty of the operator, and of any employees present on the premises, to ensure that not more than one person is present in a viewing room at any time. No person shall enter a viewing room that is occupied by another person.
- H. Openings In Viewing Room: It shall be the duty of the operator, and of any employees present on the premises, to ensure that no opening of any kind exist between viewing rooms. No person shall make an attempt to make an opening of any kind between viewing rooms.
- I. Removal Of Violators In Viewing Room: It shall be the duty of the operator, or of any employee who discovers an opening of any kind between viewing rooms, to immediately secure such rooms, and prevent entry into them by any patron until such time as the wall between the rooms has been repaired to remove the opening. Removal and repairing openings between viewing rooms shall be in a manner that is as structurally substantial as the original wall construction.
- K. Daily Inspections: It shall be the duty of the operator, at least once each business day, to inspect the walls between viewing rooms for openings of any kind.
- L. Signage: It shall be the duty of the operator to post conspicuous signs in well lighted entry areas of the business stating all of the following:
 - 1. That no loitering is permitted in viewing rooms.
 - 2. That the occupancy of viewing rooms is limited to one person.
 - 3. That sexual activity on the premises is prohibited.
 - 4. That the making of openings between viewing rooms is prohibited.
 - 5. That violators will be required to leave the premises.

6. That violations of subsections L2, L3 and L4 of this section are unlawful.
- M. Flooring: It shall be the duty of the operator to ensure that floor coverings in viewing rooms are nonporous, easily cleanable surfaces, with no rugs or carpeting.
- N. Wall Surfaces: It shall be the duty of the operator to ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of, or permanently covered by, nonporous, easily cleanable material.
- O. Sanitation, Cleaning: It shall be the duty of the operator to ensure that premises is clean and sanitary. Such duty shall be fulfilled if the operator complies with the following cleaning procedures:
1. The operator shall maintain a regular cleaning schedule of at least two (2) cleanings per day, documented by appropriate logs.
 2. The operator shall provide an employee to check all areas for garbage, trash, bodily fluids and excrement and to remove and clean all areas with a disinfectant. All solid waste generated by the business shall be collected from the premises for disposal at a lawful solid waste disposal facility at least once each week. Prior to collection, solid waste shall be stored in a manner that prevents access by animals or members of the public and which will not facilitate the creation of a health nuisance.
 3. Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video cameras, and windows and other surfaces.
- P. Unobstructed View: The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises in which patrons are permitted, including the interior of each viewing room, but excluding restrooms, to which any patron is permitted access for any purpose. A manager's station shall not exceed forty (40) square feet of floor area. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this subsection remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises. (Ord. 09-011, 7-28-2009)

3-5-19: STAGE REQUIREMENTS:

It shall be a violation of this chapter for an employee to knowingly or intentionally, in a sexually oriented business, appear in a state of seminudity unless the employee is at least three feet (3')

from patrons and customers and on a stage at least two feet (2') from the floor. (Ord. 09-011, 7-28-2009)

3-5-20: PROHIBITED CONDUCT AND ACTIVITIES:

A. Sexually Oriented Business Licensee And Employee Conduct: It is unlawful for any sexually oriented business licensee or sexually oriented business employee to knowingly or intentionally:

1. Allow persons under the age of eighteen (18) years, or the age of twenty one (21) years if required by any applicable alcohol ordinance, on the business premises;
2. Allow, offer or agree to gambling on the business premises;
3. Allow, offer or agree to the illegal possession, use, sale or distribution of controlled substances on the licensed premises;
4. Permit, commit, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor or commit activities harmful to the minor to occur on the licensed premises;
5. Permit, commit, offer or agree to permit any live "specified sexual activity", as defined by town ordinances or state statutes in the presence of any customer or patron;
6. Permit, offer or agree to a patron or customer to masturbate within or upon the premises of a sexually oriented business;
7. Appear in a state of nudity before a patron on the premises of a sexually oriented business;
8. Refuse to permit officers or agents of the town who are performing functions connected with the enforcement of this chapter to inspect the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with this chapter, at any time the sexually oriented business is occupied by patrons or open for business. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this subsection. The provisions of this subsection 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.

B. Unlawful Activities Of Patrons: It is unlawful for any patron to knowingly or intentionally:

1. Touch in any manner a sexually oriented business employee while the sexually oriented business employee is seminude;
2. Place any money or object on or within the costume or person of any sexually oriented business employee while the sexually oriented business employee is seminude; or
3. Appear in a state of nudity before another person on the premises of a sexually oriented business. (Ord. 09-011, 7-28-2009)

3-5-21: INJUNCTION:

An entity or individual who, without a valid license, operates or causes to be operated a sexually oriented business, or who employs or is employed as an employee of a sexually oriented business, or who operates such a business or functions as such an employee in violation of the provisions of this chapter, is subject to a suit for injunction in addition to the civil and criminal violations provided in this chapter, and any other remedy available at law or in equity. (Ord. 09-011, 7-28-2009)

3-5-22: SUSPENSION:

The town shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if it is determined that he sexually oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this chapter. The town shall issue a written letter of intent to suspend a sexually oriented employee work permit if it is determined that the employee has knowingly violated this chapter. (Ord. 09-011, 7-28-2009)

3-5-23: REVOCATION:

- A. The Business License Official shall issue a written intent to revoke a sexually oriented business license or a sexually oriented business employee work permit if a cause of suspension in section [3-5-22](#) of this chapter occurs and the license has been suspended within the preceding twelve (12) months.
- B. The Business License Official shall issue a written intent to revoke a sexually oriented business license or a sexually oriented business employee work permit if the official determines that a licensee or an employee, with the knowledge of the licensee:
 1. Knowingly gave false or misleading information in the application or in any document or diagram related to the operation of the sexually oriented business.
 2. Knowingly allowed possession, use, or sale of controlled substances on the premises.
 3. Knowingly allowed prostitution on the premises.
 4. Knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended.
 5. A licensee has been convicted, pled guilty or nolo contendere to a "specified criminal activity", as defined in section
- C. The fact that any conviction is being appealed shall have no effect on the revocation of the license.

- D. For the purposes of this chapter, an act by a sexually oriented business employee that constitutes grounds for revocation of that employee's work permit shall be imputed to the sexually oriented business for purposes of denial, suspension or revocation proceedings only if the Hearing Officer determines by a preponderance of evidence that an officer, director or general partner, or an employee who managed, supervised or controlled the operation of the business, knowingly allowed such act to occur on the sexually oriented business premises.
- E. Nature Of Revocation: When, after the notice and hearing procedure described in this chapter, the Business License Official revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation becomes effective; provided, that if the conditions of section [3-5-24](#) of this chapter are met, a provisional license will be granted pursuant to that section. If, subsequent to revocation, the enforcement officer finds that the basis for the revocation found in subsections B1, B4 and B7 of this section have been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under subsections B2, B3, B5 and B6 of this section, an applicant may not be granted another license until the appropriate number of years required under this chapter has elapsed. (Ord. 09-011, 7-28-2009)

3-5-24: HEARING ON DENIAL, SUSPENSION OR REVOCATION; APPEAL:

- A. Notice Requirements; Hearing Procedure: If the Business License Official determines that facts exist for denial, suspension or revocation of a license under this chapter, the town shall notify the applicant or licensee (respondent) in writing of the town's intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail.
1. The notification shall be directed to the most current business address or other mailing address on file with the Business License Official for the respondent. Within ten (10) working days of receipt of such notice, the respondent may provide to the business license official a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended or revoked.
 2. Within five (5) working days of the receipt of respondent's written response, the business license official shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding. Within ten (10) working days of the receipt of respondent's written response, the Hearing Officer shall conduct a hearing at which respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross examine any of the town witnesses. The hearing shall take no longer than two (2) working days, unless extended to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written opinion within five (5) days after the hearing. If a court action challenging the town decision is initiated, the town shall prepare and transmit to the court a transcript of the hearing within ten (10) working days after the issuance of the Hearing Officer's written opinion.

3. If a written response from the respondent is not received by the Business License Official within the time stated in subsection A1 of this section, or if after a hearing, the Hearing Officer concludes that grounds as specified in this chapter exist for denial, suspension or revocation of the license, then such denial, suspension or revocation shall become final five (5) working days after the hearing officer sends, by certified mail, written notice to the respondent that the license has been denied, suspended or revoked. Such notice shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the hearing officer finds that no grounds exist for denial, suspension or revocation of a license, then within five (5) working days after the hearing, the hearing officer shall immediately withdraw the intent to deny, suspend or revoke the license and shall notify the respondent in writing by certified mail of such action. The hearing officer shall contemporaneously therewith issue the license to the applicant.
- B. Appeal: An applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain or otherwise enjoin the town enforcement of the denial, suspension or revocation, the town shall immediately issue the aggrieved party a provisional license. The provisional license shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the aggrieved party's appeal or other action to restrain or otherwise enjoin the town enforcement.
- C. Application During Temporary Or Provisional License Periods: Sexually oriented businesses or sexually oriented business employees operating or working under temporary licenses, provisional licenses, or de facto temporary licenses shall be subject to the applicable provisions of this chapter. (Ord. 09-011, 7-28-2009)

3-5-25: REQUIREMENTS TO COME INTO COMPLIANCE:

Licenses issued prior to the adoption date hereof to operate a sexually oriented business in which persons appear nude or in a state of nudity within any public or patronized area, shall not be renewed. Such licensees, whether the license is active or expired, may apply for a sexually oriented business license under this chapter; provided, that all other provisions of this chapter are satisfied. Any sexually oriented business licensed under this chapter must comply with the provisions and operational guidelines as set forth in this chapter on or before June 1, 2009, except that all sexually oriented business shall comply with section [3-5-20](#) of this chapter immediately the effective date hereof. (Ord. 09-011, 7-28-2009)

3-5-26: PENALTY:

In addition to revocation or suspension of a license as provided in this chapter, the violation of any provision of this chapter shall be a class B [1-4-1](#) of this code. Each day of a violation shall be considered a separate offense. The prosecuting agency shall have the discretion to charge any offense under this chapter as an infraction. (Ord. 09-011, 7-28-2009; amd. 2010 Code)