

CHAPTER 18 SEXUALLY ORIENTED BUSINESSES

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Article 18-1: PURPOSE AND FINDINGS

- A. Purpose: It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the Town, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the Town. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or 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 material.

- B. Findings: Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), and *Barnes v. Glenn Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas, Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the Council finds:
1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
 2. Certain employees of sexually oriented businesses defined in this chapter as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
 3. Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semiprivate booths or cubicles for viewing films, videos, or live sex shows.
 4. Offering and providing such space encourages such activities, which creates unhealthy conditions.
 5. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
 6. At least 50 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 B, Non A, Non B amebiasis, salmonella infections and shigella infections.
 7. Since 1981 and to the present, there have been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States – 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985 and 253,448 through December 31, 1992.

8. As of November 1, 1997, there have been 5,278 reported cases of AIDS in the State, and 63 reported cases in Yavapai County, Arizona, 37 of which have died.
9. Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Yavapai County.
10. The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990.
11. The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.
12. The Surgeon General of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
13. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
14. 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.
15. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.
16. The findings noted in subsection (B)1 through (B)15 of this Article raise substantial governmental concerns.
17. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

18. 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.
19. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.
20. Requiring licensees of sexually oriented business to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
21. 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.
22. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this chapter is designed to prevent or who are likely to be witnesses to such activity.
23. The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this chapter.
24. The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.
25. The general welfare, health, morals and safety of the citizens of the Town will be promoted by the enactment of this chapter.

Article 18-2: DEFINITIONS:

ADULT ARCADE

Any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five (%) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the exhibiting of Specified Sexual Activities or Specified Anatomical areas.

ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE:

A commercial establishment which offers sexually explicit material for sale or rental for any form of consideration, and meets any one or more of the following criteria:

- A. That has thirty percent (30%) or more of its inventory, stock or merchandise on hand at any time that is comprised of sexually explicit material; or
- B. That derives thirty percent (30%) or more of its gross income for any one calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or
- C. That at any time displays sexually explicit material either in a display area that is thirty percent (30%) or more of its total display area or on a floor area equally to at least 200 square feet. For purposes of calculating the floor area, the business premises shall be viewed from above in two dimensions and all areas that are reserved for foot traffic shall be included; or
- D. That regularly excludes minors from the premises because of the sexually explicit nature of the items sold, rented or displayed on the business premises.

ADULT CABARET:

A nightclub, bar, topless bar, restaurant or similar commercial establishment which during any part of any two (2) or more days within any thirty (30) day period features, exhibits or displays:

- A. Persons who appear in a state of nudity or semi-nudity; or
- B. Live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities; or
- C. Films, motion pictures, videocassettes, video reproductions, slides or other reproductions offered in photographic, electronic, magnetic, digital or other imaging medium or other visual representations which are characterized by an emphasis on matters that depict or exhibit Specified Sexual Activities or Specified Anatomical Areas.

ADULT MOTEL:

A hotel, motel or similar commercial establishment which:

- A. Offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, video reproductions, slides, or other reproductions offered in photographic, electronic, magnetic, digital or other imaging medium or other visual presentations which are distinguished or characterized by Specified Sexual Activities or Specified Anatomical Areas; and has a sign visible from the public right of way which advertises the availability of “adult”, “nude”, “sex”, or “XXX” movies, videos, films or similar reproductions; 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 sub-rent the room for a period of time that is less than ten (10) hours.

ADULT MOTION PICTURE THEATER:

A commercial establishment that features, exhibits, or displays during any part of any two (2) or more days within any continuous thirty (30) day period, for any form of consideration, films, motion pictures, videocassettes, video reproductions, slides, or similar reproductions offered in photographic, electronic, magnetic, digital or other imaging medium or other visual representations that distinguished or characterized by an emphasis on matters that depict or exhibit Specified Sexual Activities or Specified Anatomical Areas.

ADULT THEATER:

A theater, concert hall, auditorium, or similar establishment that features, exhibits, or displays during any part of any two or more days within any continuous thirty (30) day period, for any form of consideration, persons who appear in a state of nudity or semi-nudity, or live performances that expose or exhibit Specified Anatomical Areas or by Specified Sexual Activities.

Nothing in this chapter shall be construed or apply to the non-obscene presentation, showing or performance of any play, drama, or ballet in any theater, concert hall, fine arts academy, school, institution of higher education, or similar establishment as a form of expression of opinion or communication of ideas or information, as differentiated from the promotion or exploitation of sex for the purpose of advancing the economic welfare of a commercial or business enterprise.

EMPLOYEE:

A 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 denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person

exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

EROTIC ENTERTAINER:

Any employee who appears either semi-nude or in a state of nudity on the premises of a sexually oriented business.

ESCORT:

A person or business association who furnishes, offers to furnish, or advertises to furnish escorts for a fee, tip or other consideration.

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 an 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.

LICENSEE:

A person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

NUDE MODEL STUDIO:

Any place where a person who appears semi-nude, in a state of nudity, or who displays Specified Anatomical Areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly exhibited before other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Arizona or a college, community college or university supported entirely or in part by public taxation; a private college or university that maintains and operates educational programs in which credits are transferable to a college, community college, or a university supported entirely or partly by taxation; or in a structure:

- A. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude 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; and
- C. Where no more than one nude or semi-nude model is on the premises at any one time.

NUDITY OR A STATE OF NUDITY:

- A. The showing of the human anus, male genitals, female genitals, or female breasts; or
- B. A state of dress which fails to opaquely cover a human anus, male genitals, female genitals, or female breasts.

PERSON

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

SEMI-NUDE OR IN A SEMI-NUDE CONDITION:

A state of dress that shows the female breast below a horizontal line across the top of the areola at its highest point, that shows the covered male genitals in a discernibly turgid state, or that shows the male or female buttocks. This definition shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

SEXUAL ENCOUNTER CENTER:

A business or commercial enterprise that offers for any form of consideration of features, displays, exhibits, or permits:

- A. Physical contact in the form of wrestling or tumbling between two (2) or more persons when one or more of the persons is in a state of nudity or is semi-nude; or
- B. Two (2) or more persons engaging in Specified Sexual Activities or exposing Specified Anatomical Areas.

SEXUALLY EXPLICIT MATERIAL:

Books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, video cassettes, video reproductions, slides or other products offered in photographic, electronic, magnetic, digital or other imaging medium, or other visual representations that are distinguished or characterized by an emphasis on matters that depict, describe or exhibit Specified Sexual Activities or Specified Anatomical Areas, or instruments, devices, or paraphernalia, excluding

condoms and other birth control and disease prevention products, that are designed for use in connection with Specified Sexual Activities.

SEXUALLY ORIENTED BUSINESS

An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS:

- A. The human genitals in a state of arousal; or
- B. The appearance of the cleft of the buttocks, anus, male or female genitals, or areola of the female breast; or
- C. A state of dress which fails to opaquely cover the cleft of the buttocks, anus, male or female genitals, or areola of the female breast.

SPECIFIED CRIMINAL ACTIVITY:

Any of the following offences:

- A. Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other sates or countries;
- B. For which:
 - 1. Less than two (2) years have elapses 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 of 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 elapses 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.

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

SPECIFIED SEXUAL ACTIVITIES

Any of the following:

- A. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
- C. Excretory functions as part of or in connection with any of the activities set forth in subsections (A) and (B) of this definition.

SUBSTANTIAL ENLARGEMENT (of a Sexually Oriented Business):

The increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this chapter takes effect.

TRANSFER OF OWNERSHIP OR CONTROL (of a Sexually Oriented Business):

Means and includes 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 that 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.

Article 18-3: CLASSIFICATION:

Sexually oriented businesses are classified as follows:

- A. Adult arcades;
- B. Adult bookstores, adult novelty stores, or adult video stores;
- C. Adult cabarets;
- D. Adult motels;
- E. Adult motion picture theaters;

- F. Adult theaters;
- G. Escort agencies;
- H. Nude model studios; and
- I. Sexual encounter centers.

Article 18-4: LICENSE REQUIRED:

- A. It is a class one misdemeanor:
 - 1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Town pursuant to this chapter.
 - 2. 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.
 - 3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.
- B. An application for a license must be made on a form provided by the Town.
- C. All applicants must be qualified according to the provisions of this chapter. Each applicant for a license pursuant to this chapter shall submit a full set of fingerprints to the Town Police Department for the purpose of obtaining a state and federal criminal records check pursuant to Arizona Revised Statutes section 41-1750 and PL 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation to determine whether the applicant meets the qualifications established in this chapter.
- D. If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each officer, director, general partner or other person who will participate directly and regularly in decisions relating to management of the business must sign the application for a license as applicant. Each applicant must be qualified under Article 8.4 of this Code and each applicant shall be considered a licensee if a license is granted.
- E. The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:
 - 1. If the applicant is:

- (a) An individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is eighteen (18) years of age or more.
 - (b) A partnership, the partnership shall state its complete name, and the names of all partners who will participate directly and regularly in decisions relative to management of the business, whether the partnership is general or limited, and a copy of the partnership agreement, if any.
 - (c) A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers and directors, and the name of the registered corporate agent and the address of the registered office for service of process.
 - (d) A limited liability company, the company shall state its complete name and the names of all members who will participate directly and regularly in decisions relative to management of the business. If the management of the limited liability company is vested in a manager or managers, the company shall also state the name of each person who is a manager of the limited liability company.
2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state: a) the sexually oriented business' fictitious name and b) submit the required registration documents.
 3. Whether the applicant has been convicted of a Specified Criminal Activity as defined in this Chapter and, if so, the Specified Criminal Activity involved, the date, place and jurisdiction of each.
 4. Whether the applicant has had a previous license under this chapter or other similar sexually oriented business ordinance from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the license or permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation and whether the applicant has been a partner In a partnership, a member of a limited liability company, or an officer, director or principal stockholder of a corporation that is licenses under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

5. Whether the applicant holds any other license under this chapter or other similar sexually oriented business ordinances from another city or county and, if so, the names and locations of such other licensed businesses.
 6. The single classification of license for which the applicant is filing.
 7. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.
 8. The applicant's mailing address and residential address.
 9. A recent photograph of the applicant(s).
 10. The applicant's driver's license number, social security number, and/or his/her state or federally issued tax identification number.
 11. 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 it must 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 (lan).
 12. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within five hundred feet (500') of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within one thousand feet (1000') of the property to be certified. For purposes of this Article, a use shall be considered existing or established if it is legally in existence at the time an application is submitted.
 13. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, videocassettes, other video reproductions, or live entertainment which depict or exhibit Specified Sexual Activities or Specified Anatomical Areas, then the applicant shall comply with the application requirements set forth in Article 8.4 of this Code.
- F. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the Town the following information:
1. The applicant's name or any other name (including "stage" names) or aliases used by the individual;

2. Age, date, and place of birth;
3. Height, weight, hair and eye color;
4. Present residence address and telephone number;
5. Present business address and telephone number;
6. date, issuing state and number of driver's permit or other identification card information;
7. Social security number; and
8. Proof that the individual is at least eighteen (18) years of age.

G. Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

1. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Police Department. Any fees for the photographs and fingerprints shall be paid by the applicant.
2. A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country has ever had a license, permit or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
3. A statement whether the applicant has been convicted of a Specified Criminal Activity as defined in the chapter and, if so, the Specified Criminal Activity involved, the date, place and jurisdiction of each.

H. Confidentiality. Any records or information obtained by or disclosed to the Town in connection with an application for license or license renewal under this chapter shall be treated as confidential information by the Town and shall not be available for public inspection or copying or divulged to any person, except as required by Title 39, Chapter 1, Article 2 of the Arizona Revised Statutes regarding public records, and as provided in this subsection. The Town may disclose confidential information only as follows:

1. To law enforcement officials in connection with a law enforcement or public safety function.
2. In connection with an action brought pursuant to this chapter or to Title 39, Chapter 1, Article 2 of the Arizona Revised Statutes.
3. Upon order of court of competent jurisdiction.

Article 18-5: ISSUANCE OF LICENSE:

- A. Upon the filing of said application for a sexually oriented business employee license, the Town shall issue a temporary license to said applicant. The application shall then be referred to the appropriate Town departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the Town shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
1. The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
 2. The applicant is under the age of eighteen (18) years;
 3. The applicant has been convicted of a Specified Criminal Activity as defined in this chapter;
 4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this chapter; or
 5. The applicant has had a sexually oriented business employee license revoked by the Town within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Article 18-10 of this chapter.
- B. A license granted pursuant to the article shall be subject to annual renewal upon the written application of the applicant and a finding by the Town that the applicant has not been convicted of any Specified Criminal Activity as defined in this chapter or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Article 18-6 of this chapter.

C. Within thirty (30) days after receipt of a completed sexually oriented business application, the Town shall approve or deny the issuance of a license to an applicant. The Town shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. An applicant is under eighteen (18) years of age.
2. An applicant is overdue in payment to the Town of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business activity of the applicant in the Town.
3. An applicant has failed to provide information reasonable necessary for issuance of the license, has failed to provide all information required by this chapter, or has falsely answered a question or request for information on the application form.
4. An applicant has been denied a license by the Town to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked with in the preceding twelve (12) months.
5. An applicant has been convicted of a Specified Criminal Activity defined in this chapter.
6. The premises to be used for the sexually oriented business has not been approved by the Health Department, Fire Department, and the Building Official, after due investigation, as being in compliance with applicable laws and ordinances.
7. The license fee required by this chapter has not been paid.
8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.

D. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to Article 18-3 of this chapter. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time. In the case of the sexually oriented business employee license, the license must be on the employee's person, readily available for inspection, or at the adult business premises at all times during which the employee is engaging in such licensed business activities within the Town and shall be available for inspection upon request by a law enforcement officer or any Town official whose duties are related to licensing.

- E. The Health Department, Fire Department and the Building Official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the Town.
- F. A sexually oriented business license shall issue for only one classification as found in Article 18-3 of this chapter.

Article 18-6: FEES:

- A. Every application for a sexually oriented business license or for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by a five hundred dollar (\$500.00) nonrefundable application and investigation fee.
- B. In addition to the application and investigation fee required above, every sexually oriented business and every employee of a sexually oriented business that is granted a license (new or renewal) shall pay to the Town an annual nonrefundable license fee of five hundred dollars (\$500.00) within thirty (30) days of license issuance or renewal.
- C. All license applications and fees shall be submitted to the Police Chief of the Town.

Article 18-7: INSPECTION:

- A. An applicant or licensee shall permit representatives of the Police Department, County Health Department, Fire Department, Community Development Department, or other Town departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.
- B. A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business.

Article 18-8: EXPIRATION OF LICENSE:

- A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Article 18-4 of this Chapter. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.
- B. When the Town denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Town finds that the basis for denial of the renewal license has been corrected or abated, the applicant may

be granted a license if at least ninety (90) days have elapsed since the date denial became final.

Article 18-9: SUSPENSION:

- A. The Town shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has:
 - 1. Violated or is not in compliance with any article of this chapter.
 - 2. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

Article 18-10: REVOCAATION:

- A. The Town shall revoke a license if a cause of suspension in Article 18-9 of this chapter occurs and the license has been suspended within the preceding twelve (12) months.
- B. The Town shall revoke a license if it determines that:
 - 1. A licensee gave false or misleading information in the material submitted during the application process;
 - 2. A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - 3. A licensee has knowingly allowed prostitution on the premises;
 - 4. A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - 5. Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;
 - 6. A licensee is delinquent in payment to the Town, county, or State for any taxes or fees past due; or
 - 7. On two (2) or more occasions within a twelve (12) month period, a person or persons while in or on the license premises committed an offense listed in Article 18-9 of this chapter, for which a conviction has been obtained, and the person or persons were managers or employees of the sexually oriented business at the time the offenses were committed

- C. When the Town 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 the revocation became effective. If, subsequent to revocation, the Town finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

- D. If the Town denies the issuance of a license or suspends or revokes a license, the Town will send to the applicant or licensee by certified mail, return receipt requested, written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension or revocation the person whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal to the Superior Court. An appeal to the Superior Court must be filed within thirty (30) days of receipt of notice of the decision of the Town. A licensee's filing of an appeal or other legal action, in good legal order and within thirty (30) days of receipt of the written notice of suspension or revocation, challenging the Town's decision to suspend or revoke a license under this chapter shall cause the license to remain in effect until a judge hears and decides the merits of the matter. An applicant's filing of an appeal or other legal action, in good legal order and within (30) days of receipt of the written notice not to issue a license, challenging the Town's decision not to issue a license under this chapter shall result in the Town issuing a temporary license to applicant to operate until a judge hears and decides the merits of the matter.

Article 18-11: TRANSFER OF LICENSE:

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

Article 18-12: LOCATION OF SEXUALLY ORIENTED BUSINESSES:

- A. A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district other than industrial, as defined and described in the Clarkdale Zoning Code. (See Town of Clarkdale Zoning Code).

- B. A person commits an offense if the person operates or causes to be operated a sexually oriented business within one thousand feet (1000') of :
 - 1. A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;

 - 2. A public or private educational facility including, but not limited to, child daycare facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, charter schools, intermediate schools, junior high

schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools,, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

3. A boundary of a residential district as defined in the Clarkdale Zoning Code;
 4. A public park or recreational area which has been designated for park or recreational activities including, but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the Town which is under the control, operation, or management of the Twin Park and Recreation authorities, or which has been designated as open space or similar space for use by the general public;
 5. The property line of a lot devoted to a residential use as defined in the Clarkdale Zoning Code;
 6. An entertainment business which is oriented primarily towards children or family entertainment; or
 7. A licenses premises, licensed pursuant to the alcoholic beverage control regulations of the State, other than the licensed premises in which the sexually oriented business is located.
- C. A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within five hundred feet (500’’) of another sexually oriented business; or within one thousand feet (1000’’) of two (2) other sexually oriented businesses.
- D. A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.
- E. For the purpose of subsection (B) of this article, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the property line containing a building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in said subsection (B). Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this article.

- F. For purposes of subsection (C) of this article, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest property line in which each business is located.
- G. Any sexually oriented business lawfully operating on February 10, 1998 that is in violation of subsections (A) through (F) of this article shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within five hundred feet (500') of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is/are non-conforming.
- H. A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in subsection (B) of this article within five hundred feet (500') of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

Article 18-13: ADDITIONAL REGULATIONS FOR ADULT MOTELS:

- A. Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an “adult motel” as that term is defined in this chapter.
- B. A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented license, he rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.
- C. For purposes of subsection (B) of this article, the term “rent” or sub-rent” mean the act of permitting a room to be occupied for any form of consideration.

Article 18-14: REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOM:

- A. 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, a film, videocassette, live entertainment, or other video reproduction which depicts Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:
1. Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. 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 should be oriented to the north or to some designated street or object and should 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 Town 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.
 2. The application shall be sworn to be true and correct by the applicant.
 3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town.
 4. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
 5. 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 to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. 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.

6. It shall be the duty of the licensee to ensure that the view area specified in subsection (A)5 of this article remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, 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)1 of this article.
 7. No viewing room may be occupied by more than one person at any time.
 8. The 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 five (5.0) foot-candles as measured at the floor level.
 9. It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
 10. No licensee shall allow openings of any kind to exist between viewing rooms or booths.
 11. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.
 12. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
 13. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
 14. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48") inches of the floor.
- B. A person having a duty under subsection (A)1 through (A)14 of this article commits a misdemeanor if he knowingly fails to fulfill that duty.

Article 18-15: ADDITIONAL REGULATIONS FOR ESCORT AGENCIES:

- A. An escort agency shall not employ any person under the age of eighteen (18) years.
- B. A person commits a class one misdemeanor if the person acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years.

- C. An escort agency shall obtain a sexually oriented business license if its business or office location is in the Town of Clarkdale, or if it furnishes a person who acts as an escort in the Town.

Article 18-16: ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS:

- A. A nude model studio shall not employ any person under the age of eighteen (18) years.
- B. A person under the age of eighteen (18) years commits an offense if the person appears seminude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to public view or visible to any other person.
- C. A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.
- D. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises; except that a sofa may be placed in a reception room open to the public.

Article 18-17: ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY:

- A. It shall be a misdemeanor for a person who knowingly or intentionally, in a sexually oriented business, appears in a state of nudity or depicts Specified Sexual Activities.
- B. It shall be a misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears in a nude or semi-nude condition unless the person is an employee who, while nude or seminude, shall be at least ten feet (10') from any patron or customer and on a stage at least two feet (2') from the floor.
- C. It shall be a misdemeanor for an employee, while nude or seminude in a sexually oriented business, to solicit or accept any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is nude or semi-nude in a sexually oriented business.
- D. It shall be a misdemeanor for an employee, while nude or semi-nude, to touch a customer or the clothing of a customer.
- E. It shall be a misdemeanor for a customer of a sexually oriented business to touch an employee, while that employee is nude or semi-nude.
- F. It shall be a misdemeanor for an employee to allow a customer of a sexually oriented business to touch that employee, while that employee is nude or semi-nude.

Article 18-18: PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS:

A person commits a misdemeanor if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

Article 18-19: HOURS OF OPERATION:

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and twelve o'clock (12:00) noon on Sundays.

Article 18-20: EXEMPTIONS:

- A. Exempt from the provisions of this chapter are massage therapists who have satisfied one of the following requirements:
1. Have successfully completed the curriculum or curricula totaling a minimum of five hundred (500) hours of one or more approved massage/bodywork schools, such institutions being approved by the Arizona State Board for Private Post-secondary Education or Arizona Department of Education, or its equivalent in other states; or
 2. Hold a current license from any other state whose licensure requirements meet or exceed those defined within this article; or
 3. Have received the designation of "Nationally Certified" or "Internationally Certified" by the National Certification Board of Therapeutic Massage and Bodywork or other massage therapist agency approved by the National Commission for Certifying Agencies; or
 4. Are members in good standing of a national professional massage association that establishes standards based upon educational qualifications.
- B. It is a defense to prosecution under subsection 18-17(A) of this chapter that a person appearing in a state of nudity did so in a properly licensed adult cabaret, as a part of that person's performance; provided, however, that compliance with subsections 18-17(B) through (F) of this chapter, as well as the remainder of this chapter, shall still be required.

Article 18-21: PENALTY: (Revised 10/25/16; Resolution 1529; Ordinance 376; Effective 10/26/16)

Any person or enterprise, as defined by Title 13 of the Arizona Revised Statutes, who violates any provision of this chapter shall be punishable under Article 1-8 of this code; any violation brought as a criminal misdemeanor offense shall be a class 1 misdemeanor.

