

## **SECTION 23A**

### **SEXUALLY ORIENTED BUSINESSES**

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**CHAPTER 23A**  
**SEXUALLY ORIENTED BUSINESSES**

**SECTION 23A-1. Purpose and Findings.**

**(A) Purpose.** It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations applicable thereto. The provisions of this ordinance 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 nor effect of this ordinance 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 ordinance to condone or legitimize the distribution of obscene material. It is a purpose hereof to protect the citizenry from the detrimental secondary effects caused by sexually oriented businesses.

**(B) Findings.** Based on evidence concerning the adverse secondary effects of adult uses on the community, 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. Glen 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. Thus, the City desires to make the owners of these establishments responsible for activities that occur on the premises.
- (2) Certain employees of sexually oriented businesses defined in this ordinance as adult theatres and cabarets engage in higher incidence of certain types of illicit 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 semi-private 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 theatres, 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 has 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; 253,448 in 1992; and 621,329 as of August 31, 1997.

(8) As of September 26, 1997, there are 1467 reported cases of AIDS in the State of Utah.

(9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Utah.

(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 office of the surgeon general of the United States, in a report dated October 22, 1986, 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 Paragraphs (1) through (15) 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 an 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 City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, and in possession and control of the premises and activities occurring therein.

(19) Prohibiting doors or similar partitions 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 theatres.

(20) Requiring licensees of sexually oriented businesses 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 ordinance 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 ordinance.

(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 City will be promoted by the enactment of this ordinance.

## **SECTION 23A-2. Definitions.**

**“Adult Arcade”** means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or 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 depicting, or describing of “specified sexual activities” or “specified anatomical areas.”

**“Adult Bookstore, Adult Novelty Store, or Adult Video Store”** means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration, and one or more of the following:

(1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; or

(2) instruments, devices, or paraphernalia which are designed or marketed for use in connection with “specified sexual activities.”

A commercial establishment may have other principal business purposes that do not involve offering for sale or rental of material depicting or describing “specified sexual activities”

or “specified anatomical areas” and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEOS TORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.” It shall constitute a “principal business purpose” if the establishment has gross receipts of over twenty percent (20%) from such materials.

**“Adult Cabaret”** means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- (1) persons who appear in a state of dress that covers no more that the “specified anatomical areas;”
- (2) live performances or dancers whose attire covers no more than the “specified anatomical areas”; or
- (3) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

**“Adult Motion Picture Theater”** means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

**“Adult Theater”** means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of dress that covers no more than the “specified anatomical areas,” or live performances or dancers whose attire covers no more than the “specified anatomical areas.”

**“Employee”** means 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.

**“Escort”** means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

**“Escort Agency,”** also known as an **“Outcall Service,”** means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary

business purposes for a fee, tip, or other consideration. No activity or services by any Escort shall be performed on the Agency's premises.

**“Establishment”** means and includes any of the following:

- (1) the opening or commencement of any sexually oriented business as a new business;
- (2) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) the additions of any sexually oriented business to any other existing sexually oriented business; or
- (4) the relocation of any sexually oriented business.

**“Licensee”** means 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.

**“Sexually Oriented Business”** includes, but is not limited to, an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, or escort agency.

**“Specified Anatomical Areas”** means:

- (1) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
- (2) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

**“Specified Criminal Activity”** means any offense, regardless of title, involving the following:

- (1) 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 states or countries;
- (2) for which:
  - (a) less than three 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;
  - (b) less than five 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; or
  - (c) less than five 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 or more misdemeanor offenses or combination of misdemeanor offenses occurring within any thirty-six (36) month period.

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

**“Specified Sexual Activities”** means any of the following offenses:

(1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(3) excretory functions as part of or in connection with any of the activities set forth in (1) through (2) above.

**“Substantial Enlargement”** of a sexually oriented business means the increase in inventory or floor areas occupied by the business by more than ten percent (10%), as the floor areas exist on the date this ordinance takes effect.

**“Transfer of Ownership or Control”** of a sexually oriented business means and includes any of the following:

(1) the sale, lease, or sublease of the business;

(2) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, including transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

### **SECTION 23A-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 motion picture theaters;

(E) adult theaters;

(F) escort agencies.

### **SECTION 23A-4. License Required.**

(A) It is unlawful:

(1) for any person to operate a sexually oriented business without a valid sexually

oriented business license issued by the City 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 City 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 City.

(C) All applicants must be qualified according to the provisions of this Chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the City 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 individual or entity that has a twenty percent (20%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following Section 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;

(b) a partnership, the partnership shall state its complete name, and the names of all partners, 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, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

(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's fictitious name; and

(b) submit the required registration documents.

(3) Whether the applicant, or a person residing with 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, or a person residing with the applicant, has had a previous license under this Chapter, or other similar sexually oriented business ordinances from another city or county, 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, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer,

director or principal stockholder of a corporation that is licensed 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 or a person residing with the applicant holds any other licenses under this Chapter or other similar sexually oriented business ordinance 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 a 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 of 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 there 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 any accuracy of plus or minus six (6) inches.

(12) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the proper lines and the structures containing any existing sexually oriented businesses within one thousand (1,000) feet 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 (1,000) feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(13) If an applicant wishes to operate a sexually oriented business 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, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth herein.

(14) If the property on which the sexually oriented business is to be located, is owned by any person or entity other than the applicant, the applicant shall submit a letter, signed by said owner, stating that the applicant has fully disclosed to the owner that the business to be operated is a sexually oriented business, and that the type and nature of the inventory has also been disclosed.

(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 City 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. 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 this Chapter and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

#### **SECTION 23A-5. Issuance of License.**

(A) Upon the filing of said application for a sexually oriented business employee license, the application shall be referred to the appropriate city 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 City 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 Code; or

(5) The applicant has had a sexually oriented business employee license revoked by the City within three (3) years of the date of the current application. However, if the revocation was based on a criminal conviction, no application will be accepted for five (5) years from the termination of all probation, formal or informal, and all other sentencing conditions. Denial, suspension, or revocation of a license issued pursuant to this Subsection shall be subject to appeal as set forth in this chapter.

(B) A license granted pursuant to this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the City 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 the Consolidated Fee Schedule.

(C) Within thirty (30) days after receipt of a completed sexually oriented business application, the City shall approve or deny the issuance of a license to an applicant. The City 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 or a person with whom applicant is residing is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.

(3) An 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.

(4) An applicant or a person with whom the applicant is residing has been denied a license by the City to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

(5) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this Chapter.

(6) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official 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 the Cedar City Ordinance, or state law.

(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. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may easily read at any time.

(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 City.

(F) A sexually oriented business license shall issue for only one classification as set forth herein.

### **SECTION 23A-6. Fees.**

(A) Every application for a sexually oriented business license, whether for a new license or for renewal of an existing license, shall be accompanied by a non-refundable application and investigation fee.

(B) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the City an annual non-refundable license fee within thirty (30) days of license issuance or renewal.

(C) Every application for a sexually oriented business license, whether for a new license or for renewal of an existing license, shall be accompanied by an annual non-refundable application investigation, and license fee.

(D) All fees required hereunder are as follows:

(1) Regulatory yearly business regulatory license fees:

(a) Adult business and seminude dancing bars, one hundred dollars (\$100);

(b) Outcall business, two hundred dollars (\$200);

(c) Seminude dancing agencies and seminude entertainment businesses, on hundred fifty dollars (\$150);

(2) For each business applicant, an initial investigation fee of one hundred dollars (\$100) is required for each applicant directed to submit a separate disclosure application;

(3) Yearly sexually oriented business employee license fees:

(a) Any employee providing outcall business services away from the premises of the business, one hundred fifty dollars (\$150);

(b) Adult business employees, outcall business employees requiring a license but not performing any services outside the licensed premises, seminude entertainment business employees requiring a license but not individually providing seminude entertainment services to customers, seminude dancing bar employees requiring a license but who are not performers, and employees of seminude dancing agencies requiring licenses but who are not performers, fifty dollars (\$50);

(c) Employees of seminude entertainment business personally providing seminude entertainment to patrons, one hundred fifty dollars (\$150);

(d) Professional dancers performing in seminude dancing bars, one hundred dollars (\$100).

(B) Any individual applying for more than one license at the same time shall pay the higher of any applicable fee, plus an additional twenty dollars (\$20) for each additional license requested.

(C) These fees shall be in addition to the other licenses and fees required to do business in the City.

(D) License and Bond. Each application for a sexually oriented business license shall post with the City's Director of Business Licenses a cash or corporate security bond payable to the City of Cedar in the amount of two thousand dollars (\$2,000).. Any fines assessed against the

business, officers or managers for violations of City ordinances shall be taken from this bond if not paid in cash within ten (10) days after notice of the fine, unless an appeal is filed as provided by this Chapter. In the event the funds are drawn against the cash or surety bond to pay such fines the bond shall be replenished to two thousand dollars (\$2,000) within fifteen days of the date of notice of any draw against it. In the event the bond is not replenished within the fifteen days, the license granted by this chapter shall automatically be suspended until such time as the bond is replenished.

**SECTION 23A-7. Inspection.**

(A) An applicant or licensee shall permit representative of the Police Department, Health Department, Fire Department or other City 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 an agent or employee thereof commits a misdemeanor if they refuse to permit such lawful inspection of the premises at any time it is occupied or open for business.

**SECTION 23A-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 herein. 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 City 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 City 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.

**SECTION 23A-9. Suspension.**

(A) The City shall suspend a license for a period of not less than ten (10) days nor more than 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 Section of this Title;
- (2) refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter.

**SECTION 23A-10. Revocation.**

(A) The City shall revoke a license if a cause of suspension occurs and the license has been suspended within the preceding twelve (12) months;

- (B) The City 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 knew, or should have known that possession, use, or sale of controlled substances occurred on the premises;

(3) a licensee knew, or should have known that prostitution occurred on the premises;

(4) a licensee knew, or should have known the sexually oriented business operated during a period of time when the licensee's license was suspended;

(5) a licensee knew, or should have known that any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act occurred in or on the licensed premises;

(6) a licensee knew or should have known that obscene materials, child pornography in any form, or any other contraband is on the licensed premises; or

(7) a licensee is delinquent in payment to the City, County, or State for any taxes or fees past due.

(C) When the City revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the City finds that there are substantial mitigating factors, or substantial corrective measures have been employed by the licensee, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. An example of substantial mitigating factors would be the wilful acts of an employee or customer disregarding the directions of the licensee. An example of substantial corrective measures would be termination of an offending employee or prohibiting the return of an offending patron.

(D) If any licensee has a license revoked three (3) times within any five (5) year period, said licensee will thereafter be precluded from regaining any such license.

(E) After denial of an application, or denial of a renewal of an application or suspension or revocation of any license, the applicant or licensee may appeal said decision to the City Manager. Any such appeal shall be in writing and submitted to the office of the City Manager within fifteen (15) days of the decision. The City Manager may review the matter on the record or may conduct a hearing. The City Manager may affirm, reverse or modify the decision. The City Manager shall issue a decision with thirty (30) days of receiving the appeal. Any appeal thereafter shall be to the District Court, which shall have plenary review. Unless either party

obtains an injunction or mandamus, the status quo ante will be maintained during the appeal process, however, additional enforcement actions will not be precluded hereby.

#### **SECTION 23A-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.

#### **SECTION 23A-12. Location of Sexually Oriented Businesses.**

It is a Class C misdemeanor for any person to operate or cause to be operated a sexually oriented business in a zoning district other than Industrial and Manufacturing 2, as recommended by the Cedar City Planning Commission.

In order to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses or their locations in areas deleterious to the City, regulate the signage of such businesses, control the adverse effects of such signage, and prevent inappropriate exposure to such businesses to the community. The City hereby establishes the following regulation of time, place, and manner of the operation of these businesses, consistent with the United States and Utah Constitutions.

(A) All sexually oriented businesses shall be subject to the following restrictions:

(1) No sexually oriented business shall be located within 1000 feet of:

(a) a church, synagog, mosque, temple or building which is used primarily for religious worship and related religious activities;

(b) a public or private educational facility including but not limited to child day-care facilities, nursery schools, pre-schools, kindergartens, elementary schools, private 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;

(c) a public park or recreation 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 City which is under the control, operation, or management of the City Park and Recreation authorities;

(d) an entertainment business which is oriented primarily towards children or family entertainment.

(2) No sexually oriented business shall be located within 600 feet of:

(a) a boundary of a residential district as defined in the Cedar City Zoning code; or

(b) the property line of a lot devoted to a residential use as defined in the Cedar City Zoning code;

(B) 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 one thousand feet (1000') of another sexually oriented business.

(C) For the purpose of this Section, measurements shall be made in a straight line, without regard to the intervening structures or objects from the nearest portion of the building or structure used as part of the premises where a sexually oriented business is conducted, to the nearest property lien of the premises of a use listed above. Presence of a City, County, or other political

subdivision boundary shall be irrelevant for purposes of calculating and applying, the distance requirements of this Section.

(D) For the purpose of this Section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure which each business is located.

#### **SECTION 23A-13. Defective Nonconforming Businesses.**

Any sexually oriented business lawfully operating upon adoption of this Ordinance that is in violation hereof shall be deemed as 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 use shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use.

#### **SECTION 23A-14. Signs.**

Notwithstanding anything contrary contained within, Sign Regulations, of Cedar City, the more restrictive requirements for signs shall prevail. Signs for sexually oriented businesses shall be limited as follows:

(A) No more than one exterior sign shall be allowed.

(B) No sign shall be allowed to exceed eighteen (18) square feet.

(C) No animation shall be permitted on or around any sign or on the exterior walls or roof of such premises.

(D) No descriptive art or designs depicting any activity related to or inferring the nature of the business shall be allowed on any sign. Said signs shall contain alphanumeric copy only.

(E) Only flat wall signs and/or awning signs shall be permitted.

(F) Painted wall advertising shall not be allowed.

(G) Other than the signs specifically allowed by this Chapter, sexually oriented businesses shall not attach, construct, or allow to be attached or constructed, any temporary signs, banners, lights, or other devices designed to draw attention to the business location.

#### **SECTION 23A-15. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos in Viewing Rooms.**

(A) A person who operates or causes to be operated a sexually oriented business, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, 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 business 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 (6") inches. The City 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 City.

(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 one (1) 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 shall not contain video reproduction equipment nor shall any video be viewed from within the restrooms. If the premises has two 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 (5) 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 (1) of this Section.

(7) No viewing room may be occupied by more than one person at a 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) 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 opening 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 floor 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) It is a Class B misdemeanor for a person having a duty under Subsections (1) through (14) of Subsection (A) to fail to fulfill that duty.

#### **SECTION 23A-16. Additional Regulations for Escort Agencies.**

(A) An escort agency shall not employ any person under the age of 18 years.

(B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(C) In addition to the restrictions set forth herein applying to any escort agencies' premises, said restrictions also apply to the conduct of the employee during the period of time that the escort service is provided, regardless of location.

#### **SECTION 23A-17. Additional Regulations Concerning Licensee Employees.**

It is unlawful for any physical contact between licensees and any other person during the performance of the licensee's employment responsibilities.

#### **SECTION 23A-18. Prohibition Against Children in a Sexually Oriented Business.**

A person commits a misdemeanor if the person allows another under the age of 18 years on the premises of a sexually oriented business. A licensee has an affirmative obligation to ensure that no person on the premises is under the age of eighteen (18).

#### **SECTION 23A-19. Hours of Operation.**

No sexually oriented business may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock A.M.

#### **SECTION 23A-20. Injunction; Penalty.**

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this Ordinance is subject to a suit for injunction as well as

prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation. A violation of this Chapter is a Class B misdemeanor and is punishable as such.

**SECTION 23A-21. Severability.**

If any section, subsection, sentence, clause or phrase of this ordinance is declared invalid or unconstitutional by a court of competent jurisdiction, said portion shall be severed and such declaration shall not affect the validity of the remainder of this ordinance.

**SECTION 23A-22. Repealer.** If any provisions of the City's Ordinance heretofore adopted are inconsistent herewith they are hereby repealed.

**SECTION 23A-23. Enactment.** Chapter 23A of the Cedar City Ordinance is hereby adopted.

**(Adopted 5/98)**