

## CHAPTER 23. SEXUALLY ORIENTED BUSINESSES

- 5-23-1. **Title for citation.**
- 5-23-2. **Purpose.**
- 5-23-3. **Legislative finding.**
- 5-23-4. **Definitions.**
- 5-23-5. **Classification of sexually oriented businesses.**
- 5-23-6. **License requirements.**
- 5-23-7. **Issuance of sexually oriented business license and sexually oriented business employee license.**
- 5-23-8. **Inspection of sexually oriented business premises .**
- 5-23-9. **Expiration of licenses.**
- 5-23-10. **Suspension.**
- 5-23-11. **Revocation or denial.**
- 5-23-12. **Hearing on revocation, suspension or denial; appeal.**
- 5-23-13. **Transfer of license.**
- 5-23-14. **Hours of operation.**
- 5-23-15. **Location and distance requirements.**
- 5-23-16. **Live public nudity and semi-nudity.**
- 5-23-17. **Interior design requirements pertaining to sexually oriented businesses featuring live semi-nudity.**
- 5-23-18. **Regulations pertaining to sexually oriented businesses that exhibit Sexually Explicit Films or Videos.**
- 5-23-19. **Loitering and exterior monitoring.**
- 5-23-20. **Zoning, exterior design.**
- 5-23-21. **Penalties and enforcement.**
- 5-23-22. **Applicability to existing businesses.**
- 5-23-23. **Persons under 18.**
- 5-23-24. **Severability.**

### 5-23-1. **Title for Citation.**

The ordinance codified in this Chapter shall be known as the "Sexually Oriented Business Ordinance."  
(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

### 5-23-2. **Purpose.**

This Chapter establishes reasonable and uniform regulations governing the time, place, and manner of operation of sexually oriented businesses within Tooele City. Its purpose is to prevent or control the deleterious secondary effects associated with sexually oriented businesses. The provisions of this Chapter are not designed to regulate the content of constitutionally protected speech or unreasonably restrict access to legal sexually-oriented entertainment.  
(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

### 5-23-3. **Legislative finding.**

The Tooele City Council makes the following legislative findings:

(1) Sexually oriented businesses are associated with numerous secondary effects which include but are not limited to the following:

(a) increased rates of crime against persons and property (robberies, assaults, etc.) in neighborhoods and

which sexually oriented businesses are located;<sup>1</sup>

(b) increased rates of prostitution, sexual assault, and other sexually-related crimes, including the use of public and quasi-public areas such as parking lots, alleys, and alcoves for illicit sexual conduct;<sup>2</sup>

(c) the acceleration of blight within neighborhoods in which sexually oriented businesses are located;<sup>3</sup>

(d) the degradation of property values of properties surrounding sexually oriented businesses;<sup>4</sup>

(e) the appearance of commercial "dead zones" and the proliferation of vacancies in business districts surrounding sexually oriented businesses ;<sup>5</sup>

(f) unsanitary, unhealthy conditions on the premises of sexually oriented businesses and the spread of sexually transmitted diseases, including AIDS and other diseases transmitted through contact with bodily fluids;<sup>6</sup>and,

(g) the attraction of undesirable transient populations seeking opportunities to engage in illicit

---

<sup>1</sup>see Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses (1996) Adult Entertainment Businesses in Indianapolis, an Analysis (1984) Report on Adult Oriented Businesses in Austin (1986) Final Report to the City of Garden Grove: The Relationship Between Crime and Adult business Operations on Garden Grove Boulevard (1991) Adams County Nude Entertainment Study (Colorado 1991).

<sup>2</sup>Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area (1994) Adult Cabarets, Factual Record (Phoenix, Arizona 1997) Quality of Life: A Look At Successful Abatement of Adult Oriented Nuisances in Oklahoma City (Oklahoma 1984-89).

<sup>3</sup>Relationship between Crime and Adult Business Operations of Garden Grove Boulevard (1986) Des Moines (Iowa) Adult Use Study (1984) Adult Entertainment Study, City of New York (1994).

<sup>4</sup>An analysis of the Relationship Between Adult Entertainment Establishments, Crime, and Housing Values (Minneapolis 1980) The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard; Report on Adult Oriented Businesses in Austin (Texas 1986) Adult Businesses in Indianapolis (Indiana 1984).

<sup>5</sup>Study and Recommendations for Adult Entertainment Businesses in the Town of Islip (New York, 1980) Des Moines (Iowa)Adult Use Study (1984).

<sup>6</sup>Adult Cabarets, Factual Record (Phoenix, Arizona 1997).

behavior.<sup>7</sup>

(2) These negative secondary effects raise issues of substantial governmental concern.

(3) Imposing narrowly tailored licensing requirements upon sexually oriented businesses and their owners, operators, and employees is an appropriate and reasonable means of enforcing regulatory controls aimed at addressing secondary effects.

(4) Requiring owners, operators, performers, and other key employees in sexually oriented businesses to make certain disclosures which are substantially related to the government's significant interest in preventing criminal activity and controlling the spread of disease.

(5) Imposing interior design requirements upon sexually oriented businesses will assist managers in supervising the activities of patrons and employees, thereby helping prevent illicit behavior from occurring on the premises.

(6) Studies have shown that when multiple sexually oriented businesses are located in close proximity to each other, the impact of secondary effects on the surrounding neighborhood is intensified and multiplied.<sup>8</sup>

(7) Imposing reasonable distance requirements between sexually oriented business locations is an appropriate means of preventing the concentration of secondary effects.

(8) It is appropriate and reasonable to limit sexually oriented businesses to zones in which they are least likely to negatively impact residential neighborhoods, children, or retail commercial activities; zoning restrictions should be crafted in such a way as to minimize the impact of secondary effects upon vulnerable populations without unreasonably restricting access to those seeking legal sexually oriented entertainment or materials.

(9) Sexual acts, including masturbation and oral sex, frequently occur in booths and other unregulated spaces within sexually oriented businesses; this results in the accumulation of semen and creates unsanitary conditions.

(10) AIDS, syphilis, and gonorrhea are spread primarily through sexual contact.

(11) Prohibiting sexual acts, regulating other forms of physical contact between employees and patrons, and requiring the elimination of certain closed spaces within sexually oriented businesses will reduce risks to the public health.

(12) The following cases establish parameters for the

regulation of sexually oriented businesses:

Young v. American Mini Theatres, 427 US 50 (1976) City of Renton v. Playtime Theatres, 475 US 41 (1986) FW/PBS, Inc. v. City of Dallas, 493 US 215 (1990) Barnes v. Glen Theatre, Inc., 501 US 560 (1991) City of Erie v. Pap's A.M., 529 U.S. 277 (2000) American Target Advertising, Inc. v. Giani, 199 F.3d 1241 (10th cir. 2000) Dodgers Bar & Grill v. Johnson County, 32 F.2d 1281 (10<sup>th</sup> Cir. 1994). (Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-4. Definitions.**

(1) "Adult Arcade" shall mean any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing "specified sexual activities" or "specified anatomical areas."

(2) "Adult Bookstore, Adult Novelty Store or Adult Video Store" shall mean any commercial establishment which has a significant or substantial portion of its stock-in-trade, derives a significant or substantial portion of its revenues, devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale or rental of any one or more of the following in exchange for any form of consideration:

(a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas;"

(b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use.

(3) "Adult Cabaret" shall mean any club, bar, juice bar, restaurant, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features any of the following:

(a) persons who appear in a state of semi-nudity;

(b) live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities";

(c) films, motion pictures videocassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas."

(4) "Adult Motel" shall mean any motel, hotel, or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, and which regularly provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, digital recordings, photographic reproductions, or other similar materials which are characterized by their emphasis upon the exhibition or description of "specified sexual

---

<sup>7</sup>Report on Adult Oriented Businesses in Austin, Texas (1986) Report on the Secondary Effects of the Concentration of Adult Use Establishments in the Times Square Area (1999) Proposed Land Use Code Text Amendments, Adult Cabarets (Seattle, 1989), *citing* City of Bothel Police Dept. Investigations (1984) Report To: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses (1996).

<sup>8</sup>Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (Minnesota 1989).

activities” or “specified anatomical areas” and which regularly advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including but not limited to newspapers, magazines, pamphlets or leaflets, radio or television, and (b) offers a sleeping room or rooms for rent for a period of time less than ten (10) hours.

(5) “Adult Theater” shall mean a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of “semi nudity” as defined herein or live performances which are characterized by their emphasis upon the exposure of “specified anatomical areas” or “specified sexual activities.”

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

(7) “Distinguished or Characterized by an Emphasis Upon” shall mean the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films which are “distinguished or characterized by an emphasis upon the exhibition or description of ‘specified anatomical areas’ or ‘specified sexual activities,’” the films so described are those whose dominant or principal character and theme are the exhibition or description of “specified anatomical areas” or “specified sexual activities.”

(8) “Employ, Employee, and Employment” shall describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

(9) “Establish” or “Establishment” shall mean and include 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 a 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.

(10) “Administrative Hearing Officer” shall mean a person designated by the Mayor under Chapter 1-28 of this Code.

(11) “Licensee” shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as any individual listed as an applicant on the application for a sexually oriented business license. In the case of an “employee,” it shall mean the person whose name

the sexually oriented business employee license has been issued.

(12) “Nude, Nudity, or State of Nudity” shall mean a state of dress or undress in which any portion of a person’s genitals, vulva, pubic area, anus, cleft of the buttocks, or any portion of the nipple or areola of the female breast is exposed to view or is covered with a covering which is less than fully opaque.

(13) “Operate” or “cause to operate” shall mean to cause to function or to put or keep in a state of doing business.

(14) “Operator” means any person or persons on the premises of a sexually oriented business who is authorized to exercise overall operational control of the business or who causes it to function; a person may be an operator of a sexually oriented business regardless of whether the person is an owner, part owner, or licensee of the business.

(15) “Semi-nude” or “State of Semi-nudity” shall mean a state of dress in which opaque clothing covers no more than a male person’s genitals, anus, anal cleft and pubic area, and a female person’s genitals, anus, anal cleft, vulva, and breasts below a horizontal line across the top of the areolae, as well as portions of the body covered by supporting straps or devices. This definition shall not be construed to include any portion of the cleavage of the female breast exhibited by a dress, blouse, shirt, bathing suit, or other apparel, provided that no part of the areola of the breast is exposed.

(16) “Semi-nude Model Studio” shall mean any place where a person or persons regularly appear in a state of semi-nudity in exchange for money or any other form of consideration for the purpose of being observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. It shall be a defense to prosecution for violation of this ordinance that a person appearing in a state of semi-nudity did so in a modeling class operated:

(a) By a college, junior college, or university supported entirely or partly by taxation;

(b) By a private college or university which maintains and operates educational programs for academic credit, which credit is transferrable to a college, junior college, or university supported either entirely or partly by taxation; or

(c) Within a structure:

(i) which does not have a sign or other advertising that is visible from the exterior of the building that indicates that a semi-nude person is available for viewing; and,

(ii) as a condition of viewing semi-nude models, a student must enroll in a class at least three days in advance of the start of the class.

(17) “Sexual Encounter Establishment” means a business or commercial establishment that offers as one of its principal business purposes, for any form of consideration, a place in which two or more persons may congregate, associate, or consort while one or more of the persons is semi-nude, or for the purpose of engaging in “specified sexual activities”, as defined herein. This definition shall exclude establishments in which medical

practitioners, psychologists, psychiatrists, or other similar professional persons licensed by the state engage in medically approved and recognized sexual therapy.

(18) "Sexually Oriented Business" shall mean an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, or adult entertainment out-call service in the form of semi-nude dancing or exhibition, adult motion picture theater, adult theater, semi-nude model studio, or sexual encounter establishment.

(19) "Sexually Oriented Entertainment Activity" means the sale, rental, or exhibition of books, films, live performances, video cassettes, magazines, periodicals, digital images, or other similar media which are characterized by an emphasis on the exposure or display of specified sexual activity, as defined herein.

(20) "Specified Anatomical Areas" shall mean any one of the following or the collective combination of more than one of the following: the genitals, anal cleft, and anus of a male person, and the genitals, anal cleft, anus, vulva, and female breast or breasts below a horizontal line across the top of the areolae of a female person.

(21) "Specified Criminal Activity" shall mean a conviction for any of the following offenses within the periods of time indicated below:

(a) prostitution, patronizing a prostitute, aiding prostitution, exploiting prostitution, aggravated exploitation of prostitution, or sexual solicitation; distributing pornographic material, inducing acceptance of pornographic material, dealing in harmful material to a minor, distribution of a pornographic film, indecent public displays, or distribution of pornographic material through cable television; lewdness, sexual battery, lewdness involving a child, unlawful sexual activity with a minor, sexual abuse of a minor, unlawful sexual conduct with a 16 or 17 year old, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, or aggravated sexual assault; distribution of a controlled substance; or criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses, or offenses in other jurisdictions involving the same or similar elements, regardless of the exact title of the offense; and

(b) less than two 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 was a misdemeanor offense;

(c) 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 for a felony offense; or

(d) 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 for two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24 month period.

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

(22) "Specified Sexual Activity" shall mean any of the following:

(a) sex acts, including intercourse, oral copulation, masturbation, or sodomy;

(b) excretory functions as a part of or in connection with any of the activities described in (a) above;

(c) the erotic fondling or other erotic touching by one person of the genitals, pubic area, anus, or female breast or breasts of another.

(23) "Transfer of Ownership or Control" of a sexually oriented business shall mean any of the following:

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

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

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

(24) "Viewing Room" shall mean the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, video, digital recording, or other visual display.

(Ord. 2019-26, 11-20-2019) (Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-5. Classification of sexually oriented businesses.**

Sexually oriented businesses shall be classified as follows:

(1) Adult arcades;

(2) Adult bookstores, adult novelty stores, adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult theaters;

(7) Semi-nude model studios; and,

(8) Sexual encounter establishments.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-6. License requirements.**

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

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

(3) An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the Department a completed application made on a form provide by the Department. The application shall be signed by the applicant and notarized.

(4) An application shall be considered complete when it contains the information required in Paragraphs (a) through (i) as set forth below:

(a) the applicant's full legal name and any other names or aliases used in the preceding five years;

(b) current business address or other mailing address of the applicant;

(c) written proof of age, in the form of a copy of

a birth certificate or driver's license or other document containing picture identification which was issued by an official governmental agency;

(d) if the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number (if one currently exists) of the proposed sexually oriented business;

(e) if the application is for a sexually oriented business license, the name and address of the registered agent or other authorized agent;

(f) a statement disclosing whether the applicant has been convicted of an offense which constitutes specified criminal activity, as defined under this Chapter, including disclosure of the specific offense or offenses involved, and the date, place, time, and jurisdiction in which each offense occurred; the applicant must also disclose whether the applicant currently holds or has previously held a sexually oriented business license or sexually oriented business employee license, whether in Tooele City or in another jurisdiction or state, which has been denied, suspended, or revoked within the past two years; if so, the applicant shall disclose the name and location of the business, the jurisdiction which imposed the penalty, the date of the violation(s) and the grounds for the revocation, suspension, or denial; the applicant shall make the same disclosures as a licensee if the applicant is or was a partner, officer, director, or stockholder with a controlling interest in a sexually oriented business which was the subject of a sexually oriented business license suspension, revocation, or denial within the last two years;

(g) if the application is for a sexually oriented business license, a certification signed by the applicant certifying that the location of the proposed sexually oriented business is not located within 500 feet of any church, synagogue, mosque, temple, or other building used primarily for religious worship, or any public or private educational facility, including child day care facilities, pre-schools, elementary schools, intermediate schools, high schools, vocational schools, colleges, or universities, or any public recreational facility, including public parks, playgrounds, picnic areas, athletic fields, libraries, or other similar facilities.

(h) a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business; the sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches, showing all doors, windows, walls, partitions and other features; and

(i) the signature of the applicant if the proposed sexually oriented business will be operated by an individual, or the signatures of each officer, director, general partner, and other individuals who will participate directly in decisions relating to the management and control of the business if the proposed business will be operated by an entity other than an individual.

(5) The information provided pursuant to paragraphs (a) through (i) of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Department within ten working days of any change of

circumstances which would render the information originally submitted false or incomplete.

(6) A license or permit required by this article is in addition to any other licenses or permits required by Tooele City, Tooele County, or the State of Utah. Persons engaged in the operation of sexually oriented businesses or employed as sexually oriented business employees shall comply with all applicable local, state, and federal laws, ordinances and statutes, including zoning ordinances and other land use restrictions.

(Ord. 2019-26, 11-20-2019) (Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-7. Issuance of sexually oriented business license and sexually oriented business employee license.**

(1) Upon the filing of a completed sexually oriented business license application, as set forth in §5-23-6, the Department shall immediately issue a temporary license to the applicant. The temporary license shall expire upon the final decision of the Department to deny or grant the sexually oriented business license. Within forty days of the initial filing date of the completed application, the Department shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Department shall approve the issuance of the license unless one or more of the following is found by a preponderance of the evidence to be true:

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

(b) an applicant has failed to provide information as required under §5-23-6 of this Chapter or has falsely answered a question or otherwise provided false information on the sexually oriented business license application form;

(c) the required application fee has not been paid;

(d) an applicant has been convicted of an offense which constitutes specified criminal activity, as defined in this Chapter, or has failed to comply with §5-23-7(1) or has committed a violation of §5-23-10(2) within the last year;

(e) the sexually oriented business premises is not in compliance with interior configuration requirements as set forth in this Chapter.

(2) The sexually oriented business license shall state in a conspicuous place on the front of the license the legal name of the business, the issuance date, the expiration date, the category of sexually oriented business as designated under this Chapter, and the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business premises so that it is easily readable at all times to those entering the premises. Lighting shall be adequate in the area in which the license is located or the license shall be illuminated so that it is easily readable.

(3) Each applicant for a sexually oriented business license shall pay an initial administrative fee of \$200. Licensees shall pay a renewal fee of \$100 in connection with the annual renewal of the sexually oriented business license.

(4) Upon the filing of a completed application for a sexually oriented business employee license, the Department shall issue a temporary license to the applicant. The temporary license shall expire upon the final decision of the

Department to deny or grant the sexually oriented business employee license. Within forty days of the date that a completed application is filed, the Department shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Department shall approve the issuance of a license unless one or more of the following is found by a preponderance of the evidence to be true:

- (a) the applicant is less than eighteen years of age;
- (b) the applicant has failed to provide information required under §5-23-6 or has answered a question falsely or otherwise provided false information on the application form;
- (c) the license application fee has not been paid;
- (d) the applicant has been convicted of specified criminal activity, as defined in this Chapter, or has failed to comply with §5-23-7(1) or has violated §5-23-10(2) within the last year.

(5) A sexually oriented business employee license which is granted pursuant to this Chapter shall state the name of the individual for whom it is issued in a conspicuous manner on the front of the license. The issuance date and expiration date shall also appear in a conspicuous place on the license. A sexually oriented business employee shall keep the sexually oriented business employee license on his or her person or on the premises where he or she is performing or working and shall produce the license upon request of a law enforcement official or Department official charged with compliance enforcement.

(6) Each applicant for a sexually oriented business employee license shall pay an initial administrative fee of \$100. Licensees shall pay a renewal fee of \$50 in connection with the annual renewal of the sexually oriented business employee license.

(Ord. 2019-26, 11-20-2019) (Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-8. Inspection of sexually oriented business premises.**

(1) Sexually oriented business operators and sexually oriented business employees shall permit law enforcement officers and agents of Tooele City who are performing functions connected with the enforcement of this Chapter to inspect the portions of the sexually oriented business premises in which patrons are permitted for the purpose of ensuring compliance with this Chapter. Inspections shall be permitted at any time the sexually oriented is occupied by patrons or open for business. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this section.

(2) The provisions of this Section do not apply to areas of an adult motel which are occupied by a tenant for use as a residence or habitation.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-9. Expiration of licenses.**

Each license issued pursuant to this Chapter shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such licenses may be renewed only by making application and paying the requisite fee as provided in §5-23-7. Application

for renewal shall be made prior to the expiration of the license. If a license expires before a completed renewal application is submitted, the applicant shall pay the initial application renewal fee and the applicant shall be otherwise processed as an initial application.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-10. Suspension.**

(1) If the Director determines that a licensed sexually oriented business has violated a provision of this Chapter or allowed a sexually oriented business employee to violate a provision of this Chapter while upon the business premises, the Department shall issue a written notice of intent to suspend the sexually oriented business license for a period not to exceed thirty days. The Department shall state the basis for seeking to suspend the license in the notice of intent.

(2) If the Director determines that a licensed sexually oriented business employee has violated a provision of this Chapter, the Department shall issue a written notice of intent to suspend the sexually oriented business employee license for a period not to exceed thirty days. The Department shall state the basis for seeking to suspend the license in the notice of intent.

(Ord. 2019-26, 11-20-2019) (Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-11. Revocation or denial.**

(1) If the Director determines that a licensed sexually oriented business has violated a provision of this Chapter or allowed a sexually oriented business employee to violate a provision of this Chapter, and the business's sexually oriented business license has been suspended within twelve months preceding the date of the violation, the Department shall issue a written notice of intent to revoke the sexually oriented business license. The Department shall state the basis for seeking to revoke the license in the notice of intent.

(2) If the Director determines that a licensed sexually oriented business employee has violated a provision of this Chapter, and the employee's sexually oriented business employee license has been suspended within twelve months preceding the date of the violation, the Department shall issue a written notice of intent to revoke the sexually oriented business employee license. The Department shall state the basis for seeking to revoke the license in the notice of intent.

(3) The Department shall issue written notice of intent to revoke or deny a sexually oriented business license or sexually oriented business employee license if he or she determines that:

(a) the licensee has knowingly given false information on the license application or license renewal application;

(b) the sexually oriented business licensee has knowingly allowed possession, use, or sale of controlled substances on the premises, or in the case of a licensed sexually oriented business employee, the employee has illegally possessed, used, or sold controlled substances on the premises;

(c) the sexually oriented business licensee has

knowingly allowed prostitution on the premises, or in the case of a licensed sexually oriented business employee, the employee has engaged in prostitution while licensed as a sexually oriented business employee;

(d) any owner, officer, partner, operator, or other person with a controlling interest in a licensed sexually oriented business has knowingly engaged in the business of prostitution;

(e) the sexually oriented business licensee operated the sexually operated business during a period of time when the sexually oriented business license was suspended;

(f) the holder of a sexually oriented business employee license has worked as a sexually oriented business employee during a period when the licence was suspended;

(g) the sexually oriented business licensee has committed an act in violation of 18 U.S.C. §2257 upon the business premises; or

(h) the sexually oriented business licensee has knowingly allowed any specified sexual activity to occur in or on the premises.

(2) For purposes of this section, an act by any employee that constitutes grounds for revocation of that employee's license shall also be imputed to the sexually oriented business for purposes of revocation proceedings if the Administrative Hearing Officer determines by a preponderance of the evidence that an officer, director, or general partner, or an employee who managed, supervised, or controlled the operation of the business knowingly allowed such an act to occur on the premises.

(3) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license.

(4) Once the Administrative Hearing Officer revokes a license, the revocation shall continue for one year and a licensee shall not be issued a sexually oriented business license or sexually oriented business employee licence for one year from the date that revocation becomes effective. (Ord. 2019-26, 11-20-2019) (Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-12. Hearing on revocation, suspension or denial; appeal.**

(1) Once the Director has made the determination that grounds exist to suspend or revoke a sexually oriented business license or sexually oriented business employee license, or to deny a license application for a sexually oriented business license or sexually oriented business employee license, the Department shall notify the applicant or licensee in writing of its intent to revoke or suspend the license or deny the application. The notice shall include the following:

(a) a written statement which specifies the grounds for the Department's action; and

(b) a statement that the licensee or applicant shall have ten business days from the date that notice is received to contest the Department's intended action by submitting a written statement explaining why the license should not be revoked, suspended, or denied.

(2) Notice of intent to deny, suspend, or revoke a

sexually oriented business license or sexually oriented business employee license shall be sent by certified mail to the licensee's or applicant's most current address on file in the Department, or by personal service upon the applicant or licensee, or in the case of a sexually oriented business, upon an employee, operator, officer or other appropriate representative who is present upon the business premises at the time of service. If the licensee or applicant cannot be served after reasonable efforts or the certified mail receipt is returned to the City unsigned, the notice shall be published twice a week for two weeks in a newspaper of general circulation. Once publication is complete, the licensee or applicant shall be deemed notified for purposes of this Chapter.

(3) If the licensee/applicant submits a written response within the time prescribed in subsection (2), the Department shall schedule a hearing and notify the licensee/applicant of the hearing date within five business days of receiving the written response. The Administrative Hearing Officer shall conduct the hearing no more than fifteen business days from the date that the written response is received. At the hearing, the Administrative Hearing Officer shall allow the Department the opportunity to present evidence with respect to the Department's intended action. The Administrative Hearing Officer shall then provide the licensee/applicant with the opportunity to present evidence, call witnesses, and make arguments pertaining to the basis for the Department's intended action.

(4) If the licensee/applicant does not submit a written response to the Department within the time period prescribed in subsection (2), the Department shall immediately send written notice by certified mail to the licensee's last known address to inform the licensee or applicant that the license has been suspended, revoked, or denied. The suspension, revocation, or denial shall take effect five business days after mailing. Suspension, revocation, or denial shall take effect regardless of whether the licensee or applicant accepts service of the notice.

(5) If after a hearing the Administrative Hearing Officer determines by a preponderance of the evidence that grounds exist, as set forth in this Chapter, to suspend, revoke, or deny a license, the Administrative Hearing Officer shall prepare a written opinion which sets forth the Administrative Hearing Officer's findings. The Administrative Hearing Officer shall send by certified mail a copy of the written opinion to the last known address of the licensee/applicant within 5 business days of the conclusion of the hearing. The decision of the Administrative Hearing Officer to suspend, revoke, or deny a license shall take effect five business days from the date that notice is mailed, regardless of whether the licensee/applicant accepts service of the notice.

(6) If after a hearing the Administrative Hearing Officer determines by a preponderance of the evidence that grounds do not exist which justify the suspension, revocation, or denial of the license, the Administrative Hearing Officer shall prepare a written opinion which sets forth the Administrative Hearing Officer's findings. The Administrative Hearing Officer shall immediately inform the Department of the findings, and send a written copy by

certified mail to the licensee's/applicant's last known address within five business days of the hearing.

(7) Once the Administrative Hearing Officer has communicated to the Department that grounds do not exist to justify the suspension, revocation, or denial of the license, the Department shall immediately withdraw the notice of intent to suspend or revoke, or in the case of a denial, shall immediately issue a license to the applicant.

(8) An applicant or licensee whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the Department's action to suspend or revoke a license, the Department shall immediately issue a provisional license. The provisional license shall allow the party appealing the Department's action to continue to operate a sexually oriented business or work as a sexually oriented business employee until 30 calendar days after the court enters a final judgment on the case.

(Ord. 2019-26, 11-20-2019) (Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-13. Transfer of License.**

Sexually oriented business licenses and sexually oriented business employee licenses are not transferable. A sexually oriented business license does not permit the operation of a sexually oriented business at any location other than the address designated on the sexually oriented business license application form.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-14. Hours of Operation.**

It shall be unlawful to operate a sexually oriented business between the hours of 11:00 P.M. and 10:00 A.M., except that a sexually oriented business which holds a license from the State of Utah to sell alcoholic beverages may remain open to sell alcoholic beverages under the terms of the license, but shall not offer sexually oriented entertainment after 11:00 P.M.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-15. Location and Distance Requirements.**

(1) No sexually oriented business shall operate or be established with 500 feet of any of the following:

(a) churches, synagogues, mosques, temples, or other buildings used primarily for religious worship and activities;

(b) public or private educational facilities including child day-care facilities, pre-schools, elementary schools, intermediate schools, and high schools, including school grounds and athletic facilities which are used primarily in connection with school-related activities;

(c) public recreation areas or facilities including but not limited to parks, playgrounds, picnic areas, athletic fields or courts, libraries, public trail systems, community centers, and other analogous facilities;

(d) privately owned amusement parks or recreation facilities.

(2) No sexually oriented business shall operate or be

established within 200 feet of a boundary of a residential zoning district.

(3) No sexually oriented business shall be located within 500 feet of any other sexually oriented business.

(4) For purposes of this Chapter, measurements shall be made in a straight line, without regard to intervening structures, objects, or boundaries, from the nearest portion of the building or structure which houses the sexually oriented business to the nearest property line of the property in question.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-16. Live public nudity and semi-nudity.**

(1) It shall be a violation of this Chapter for any patron, sexually oriented business employee, or other person in or upon any portion of the sexually oriented business premises that is accessible to any patron to knowingly appear in a state of nudity, or otherwise render himself or herself nude by removing or manipulating clothing or otherwise exposing to view any anatomical areas that are included in the definition of nudity, as set forth herein, except exposure within public lavatory facilities that occurs incident to the use of toilets or urinals for the purpose for which they are designed.

(2) It shall be a violation of this Chapter for any person to knowingly appear in a state of semi-nudity on the business premises, unless the person is a licensed sexually oriented business employee who, while appearing in a state of semi-nudity, is upon a stage which is elevated at least three feet from the floor and remains at least three feet from any patron.

(3) It shall be a violation of this Chapter for any sexually oriented business employee to knowingly receive any pay or gratuity directly from any patron; it shall be a violation for any patron to give or attempt to give any gratuity directly to any sexually oriented business employee while the employee is in a semi-nude state upon the premises of a sexually oriented business premises.

(4) It shall be a violation of this Chapter for any sexually oriented business employee, while in a state of semi-nudity, to knowingly touch any patron or any patron's clothing.

(5) It shall be a violation of this Chapter for any sexually oriented business or sexually oriented business employee to knowingly allow any specified sexual activity to occur either in or upon the premises of a sexually oriented business.

(6) A sexually oriented business featuring any live, semi-nude appearance by a sexually oriented business employee or employees shall ensure that the manager's station or stations required under this Chapter are manned at any time that a patron is present on the premises.

(7) A sexually oriented business featuring live semi-nude entertainment shall post a sign in a conspicuous place which sets forth provisions (1) through (4) of this Section; the dimensions and print of the sign shall be of a size and type that is easily readable to patrons entering the establishment.

(8) A sexually oriented business that is subject to this Section shall expel for the balance of the business day any



patron who violates the rules articulated in provisions (1) through (4).  
(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

**5-23-17. Interior design requirements pertaining to sexually oriented businesses featuring live semi-nudity.**

(1) The design and construction of all sexually oriented businesses in which any sexually oriented business employee will appear in a state of semi-nudity shall include the following elements:

(a) a performance stage or stages that are elevated at least 36 inches above the height of the patron seating area; the stage or stages shall be separated from the patron seating area by a wall, railing, or other suitable barrier that is permanently attached to the floor and that is at least 36 inches high; the barrier shall be located at least three feet from the edge of the stage so as to create a buffer zone of at least three feet between the stage and any patron seating area;

(b) a manager's station that is constructed in such a manner as to provide a clear, unobstructed view of the stage, the performers, the patrons, and every portion of the business premises that is accessible to the public, with the exception of the lavatory facilities; if the interior of the business premises is configured in such a way that a single manager cannot effectively monitor every portion of the business premises from a single vantage point, cameras and monitors shall be installed within the manager's station so that all parts of the premises can be viewed from a single location, or in the alternative, multiple managers' stations shall be constructed in such a way that the managers' stations collectively provide a view of every portion of the business premises.

(c) overhead lighting fixtures that provide sufficient lighting at an intensity of not less than one foot candle power measured at floor level in every portion of the building to which the public is admitted, including restrooms.

(2) All sexually oriented businesses in which any sexually oriented business employee will appear in a state of semi-nudity upon the business premises shall submit with the sexually oriented business license application a diagram of the premises accurately depicting the dimensions and configuration of the interior, including the location of all manager's stations, cameras, monitors, viewing areas, patron seating areas, stages, rooms, barriers, doors, exits, entry points, permanent displays, and lighting fixtures; the diagram need not be an architect or engineer prepared blueprint, but shall be drawn to scale to an accuracy of plus or minus six inches and designate the orientation of the premises toward abutting streets.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

**5-23-18. Regulations pertaining to sexually oriented businesses that exhibit Sexually Explicit Films or Videos.**

(1) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, that exhibits any motion picture recorded on film, video cassette, digital medium, or other format, and the motion picture is characterized by an emphasis on the display of specified

sexual activities or specified anatomical areas, shall comply with the following requirements if the motion picture is exhibited in any viewing room which occupies less than one hundred fifty square feet of floor space:

(a) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all manager's stations, viewing rooms, restrooms, overhead lighting fixtures, surveillance cameras and monitors, and portions of the premises which will be off limits to patrons. The diagram shall also depict the place where the sexually oriented business license will be posted. The diagram need not be a blueprint prepared by an architect or engineer, but shall be drawn to a designated scale and depict the dimensions of all interior spaces to an accuracy of plus or minus six inches. The diagram shall be oriented toward the north or toward a designated street and accurately depict the front entrance and all other points of access to the interior.

(b) No restroom shall contain monitoring or surveillance equipment.

(c) No applicant or licensee shall alter the configuration or location of a manager's station or viewing room without re-submitting an amended diagram and receiving approval through the Department.

(d) It shall be the duty of the operator and of any employees present on the premises to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons are not permitted as designated on the diagram submitted with the license application.

(e) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate all places to which patrons are permitted access at an illumination intensity of not less than one foot candle power as measured at floor level. It shall be the duty of the operator and any employees present on the premises to ensure that the required illumination is maintained at all times that the premises is occupied by patrons or open for business.

(f) The operator and any employees present shall ensure that no sexual activity occurs on the business premises.

(g) The operator and any employees present shall ensure that no openings of any kind are created or allowed to exist between viewing rooms. No person shall make or attempt to make an opening between viewing rooms.

(h) If the operator or any employee observes two or more patrons in a viewing room or discovers any person making or attempting to make an opening between viewing rooms shall immediately exclude the offending parties from the premises for the rest of the business day.

(i) If the operator or any employee discovers an opening of any kind between viewing rooms, he or she shall immediately secure the affected rooms and prevent patrons from entering until the wall has been repaired in a manner that is as substantial as the original wall construction.

(j) The operator or an employee acting on behalf of the operator shall inspect the walls for openings at least once every business day.

(k) The operator shall post conspicuous signs in

well-lighted areas of the business stating the following:

(i) no loitering is permitted in viewing rooms;  
(ii) occupancy in viewing rooms is limited to one person;

(iii) sexually activity on the premises is prohibited;

(iv) making openings between viewing rooms is prohibited.

(v) violators will be required to leave the premises for the balance of the business day;

(vi) violations of the rules stated herein constitute criminal offenses which will be reported and prosecuted.

(l) Floor coverings in viewing rooms shall be made of nonporous, easily cleanable surfaces. Rugs or carpeting are prohibited.

(m) The operator and employees shall ensure that all wall surfaces or seating surfaces in viewing rooms are constructed of or permanently covered by nonporous, easily cleanable material; viewing rooms shall not have any exposed plywood, fiberboard, unpainted drywall, fabric, cloth upholstery, carpeting or other materials which absorb liquids or are difficult to clean.

(n) The operator shall maintain a regular cleaning schedule which shall cause viewing rooms and other places in which patrons view sexually oriented materials to be cleaned at least twice a day. The operator shall cause a cleaning log to be kept, and shall allow City Officials to inspect the log upon request. Cleaning shall include the entire interior of any viewing room with disinfectant, including the floors, walls, seats, monitors, cameras, counters, windows, and other surfaces.

(o) The interior of the premises shall be configured in such a manner that every area of the premises in which patrons are permitted can be viewed without obstruction from a manager's station, including the interior of each viewing room but excluding restrooms. If multiple manager's stations must be employed, the interior shall be configured in such a way as to provide an unobstructed view of every portion of the premises to which patrons are permitted from at least one of the manager's stations.

(p) It shall be unlawful for an operator or employee to fail to perform any of the responsibilities outlined in this Section or to operate a sexually oriented business or maintain the sexually oriented business premises in violation of this section.

(Ord. 2019-26, 11-20-2019) (Ord. 2003-23, 09-03-2003)  
(Ord. 1998-37, 11-18-1998)

#### **5-23-19. Loitering, exterior monitoring.**

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

(a) initiate and enforce a policy which prohibits loitering on or about the business premises, and which comports with the requirements of (b) and (c) below;

(b) post conspicuous signs which state that no loitering shall be permitted;

(c) designate one or more employees to monitor the activities of persons on the premises of the sexually oriented business by visually inspecting the property at least

once every ninety minutes or by continuously using video cameras which afford coverage of the entire property, including the exterior; if video surveillance is used, the monitor or monitors shall be located within a manager's station and shall be in operation at all times that the business is open for operation; and,

(d) provide lighting of the exterior premises to facilitate inspections for loitering and discourage clandestine behavior.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-20. Zoning, exterior design**

(1) Sexually oriented businesses are permitted in the industrial zone, as set forth in Title 7 of this Code, subject to the distance and location restrictions set forth in Subsection 5-23-20.

(2) All windows, doors, and other apertures to the premises shall be darkened or covered with blinds, curtains, or other suitable coverings in such a manner that people on the outside cannot see sexually oriented materials, displays, entertainment, or activities occurring within the building.

(3) The area immediately behind the entry door or doors to the sexually oriented business shall be screened with a partition, wall, or other non-transparent barrier so that people on the outside of the building cannot see into the interior when the door is open.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-21. Penalties and enforcement.**

(1) A violation of any provision of this Chapter or the failure to perform any duty imposed by this Chapter shall constitute a class B misdemeanor. Each day that a violation exists shall constitute a separate offense.

(2) The City Attorney's Office is hereby authorized to initiate legal proceedings to prosecute, enjoin, restrain, and correct violations of this Chapter.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

#### **5-23-22. Applicability to existing businesses.**

(1) Upon adoption, the provisions of this Chapter shall apply to the activities of all sexually oriented businesses, sexually oriented business employees, and sexually oriented business operators, including sexually oriented businesses which commenced operation on or before the effective date of this Chapter.

(2) All sexually oriented businesses, sexually oriented business employees, and sexually oriented business operators currently doing business within Tooele City are hereby granted a temporary license which shall continue in effect for one-hundred and eighty days from the date that this Chapter takes effect. No sexually oriented business, sexually oriented business employee, or sexually oriented business operator may continue to feature sexually oriented entertainment, perform, or otherwise engage in sexually oriented business activity once the temporary license has lapsed, without first obtaining a license as required under this Chapter.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

**5-23-23. Persons under 18.**

It shall be a violation for a sexually oriented business or any sexually oriented business employee who is employed by the sexually oriented business to recklessly or knowingly allow a person under the age of 18 years to enter into or remain within the sexually oriented business premises.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)

**5-23-24. Severability.**

This Chapter and each section, subsection, and provision thereof are independent divisions and subdivisions; it is the express intent of the legislative body that if any provision, subsection or section is declared to be invalid, the remaining provisions shall remain in effect, and shall stand independent of the any portion held to be invalid as if enacted by the legislative body without the invalidated portions.

(Ord. 2003-23, 09-03-2003) (Ord. 1998-37, 11-18-1998)