

CHAPTER 11. LICENSES AND BUSINESS REGULATIONS

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Article 11-1. In General

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11-1-1. Definitions.

(a) The following definitions shall be applicable throughout this Chapter, unless a different meaning is clearly intended:

(1) "Applicant" means any person applying for any license provided for in the Utah County Land Use Ordinance. If the person is a partnership or corporation, then each partner, officer, or director is considered an applicant and must qualify accordingly.

(2) "Application" means a formal written request for the issuance of any license permitted under the Utah County Land Use Ordinance.

(3) "Authorized Officers" means those persons authorized by the County or other entities to inspect businesses and enforce the provisions of this Chapter or other applicable regulations, including peace officers, ordinance enforcement officers, and employees of the Health Department, Fire Marshal Division, Planning and Zoning Division, Building Inspection Division, County Attorney's Office and the Board of County Commissioners.

(4) "Board of Business License Equalization" means the Board of County Commissioners of Utah County.

(5) "Building Division" means the Building Division of the Utah County Community Development Division.

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(6) "Business" means and includes all trades, occupations, professions, or activities engaged in within Utah County, carried on for the purpose of gain or economic profit, except that the acts of employees rendering service to employers shall not be included in the term "business" unless otherwise specifically provided.

(7) "Business Licensing Division" means the Business Licensing Division of the Utah County Community Development Division.

(8) "County" means Utah County, Utah.

(9) "County Attorney's Office" means the Utah County Attorney Department.

(10) "County Commission" means the County Legislative Body of Utah County.

(11) "Associate Director" means the Utah County Community Development Associate Director or the Associate Director's authorized representative.

(12) "Employee" means all individuals who work for an employer for salary or commission or wages and who are subject to the direction and control of such employer.

(13) "Enforcement Official" means a County employee authorized by the Associate Director to perform inspections of a business.

(14) "Engaging in Business" includes, but is not limited to, the sale of real or personal property at retail or wholesale; the bartering or trading of property or services; the manufacturing of goods or property; and the rendering of personal services for others for a consideration by persons engaged in any profession, trade, craft, business, occupation or other calling, except for the rendering of personal services by an employee to his/her employer under any contract of personal employment.

(15) "Fee Schedule" means the schedule of fees listed in Utah County Government Fee Schedule

(16) "Fire Marshal Division" means the Utah County Fire Marshal Division.

(17) "Fiscal year" means a year that begins on July 1st of a year and ends on June 30th of the following year.

(18) "Health Department" means the Utah County Health Department.

(19) "Person" means an individual, partnership, corporation, association, or other legal entity.

(20) "Place of Business" means each separate location maintained or operated by the licensee, whether or not under the same name, within the County from which business is engaged in.

(21) "Planning and Zoning Division" means the Planning and Zoning Division of the Utah County Community Development Division.

(22) "Religious or Charitable Organization" means any organization that has provided written approval from the Internal Revenue Service that the organization has been granted tax-exempt status under Section 501(c) (3) of the Internal Revenue Code or its successor statute.

(23) "Sheriff Department" means the Utah County Sheriff's Department

(24) "Violated" or "Violating" means that there exists reasonable cause to believe that any ordinance, code, statute, or law has been or is being violated, and is not limited to pleas of guilty or convictions for violating said ordinances, codes, statutes, or laws. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10) (Ord. 2017-3; 2-21-17).

11-1-2. Business License Required.

(a) Unless otherwise provided, it shall be unlawful for any person to engage in any business

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within the County without first having obtained a business license pursuant to this Chapter. A separate license shall be required for each type of business defined in the Utah County Land Use Ordinance and for each place of business. Each day of noncompliance shall constitute a separate violation.

(b) In addition to any criminal prosecution or civil proceedings, if any person found violating this Section later applies for a license and if a license is granted, the following penalty fees shall be paid, in addition to the license fee:

(1) The penalty fee shall be 100 percent of the license fees for the first year, and the business shall pay an additional penalty for each year or portion of a year in which the business operated without a license in an amount equal to 125 percent of the current business license fees.

(2) The County Commission may reduce or waive the penalty fees to be paid by a business operating without a license one time per calendar year, for the purpose of encouraging unlicensed businesses to properly license. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10).

11-1-3. Exemptions from Business License Requirements.

(a) Any business exempt from the business license requirements as provided in this Section must comply with all other requirements of the Utah County Land Use Ordinance, Utah County Code, and State of Utah. The following activities shall be exempt from the requirement of obtaining a business license:

(1) The production and selling of fruit produce, field crops, or products grown within a greenhouse on the premises from which they are grown; approved Farmers' Market, approved produce stands; approved value added agricultural operations;

(2) The raising and selling of domestic livestock and milk produced by said livestock when raised on the premises, domestic fowl and eggs produced by said fowl when raised on the premises, apiaries and the extraction of honey when raised on the premises and sold from the same premises;

(3) The raising or sale of mink, beaver, nutria, and similar fur-bearing animals, when raised on the premises and sold from the same premises, when neither the manufacturing, nor processing of such animal feeds is included;

(4) The sorting or washing of agricultural products by the producer of the products, provided no heat process is included except pasteurization and the nature of the product is not modified;

(5) The mixing of feeds for domestic livestock and fowl for the exclusive use of the person or entity making the feeds, provided no heat process is included, no animal by-products are included, and the nature of the product is not modified;

(6) Garage and yard sales of used personal goods;

(7) A religious or charitable organization engaged in business solely for religious, charitable nonprofit purposes, provided that the organization has been determined to be tax exempt in such activities under the laws of the United States and the State of Utah;

(8) Any person engaged in a business specifically exempted from taxation and business licensing fees by the laws of the United States or the State of Utah.

(9) A business which operates only occasionally and by an individual who is under 18 years of age;

(10) Public utilities; federal, state or county government entities; and communication facilities;

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(11) A child day care business which is operated within a residence that is not required by the State of Utah to obtain a State of Utah Child Care license or certificate; and

(12) Reasonable Accommodations facilities which comply with requirements of the Utah County Land Use Ordinance.

(13) A home occupation business unless the combined offsite impact of the home-based business and the primary residential use materially exceed the offsite impact of the primary residential use alone, and

(14) Horse boarding, fish hatcheries for the raising of game fish or fish for human consumption, repair of agricultural equipment and agricultural vehicles, equine/livestock reproduction and/or rehabilitation facility, commercial roping and riding arenas, livestock auctions, and commercial dog kennels. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10) (Ord. 2017-3; 2-21-17) (Ord. 2017-9; 6-13-17) (Ord. 2019-2; 1-29-19).

11-1-4. Business License Division — Duties and Responsibilities.

(a) It shall be the duty and responsibility of the Business Licensing Division to:

(1) Enforce the provisions of this Chapter;

(2) Determine business classifications and applicability of the regulations of this Chapter;

(3) Collect all business license fees;

(4) Process all applications and renewals of all licenses provided for in this Chapter;

(5) Obtain the necessary approvals from the various County departments and divisions before issuing any business license;

(6) Deny, suspend or revoke licenses as provided in this Chapter; and

(7) Maintain a current list of all business licenses. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10).

11-1-5. Business License Application.

(a) The Utah County Community Development Business Licensing Application shall be in such format and require such information as the License Officer deems necessary to enforce this Chapter. It is a violation of this Chapter to provide false or misleading information on a business license application. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10).

11-1-6. Issuance of a Business License.

(a) The procedures to receive a business license shall be the following:

(1) The applicant shall complete an application for a business license zone clearance and return it to the Business License Division. As soon as the zone clearance has been completed it shall be returned to the applicant.

(2) The Business License Division shall submit copies of the business license zone clearance application to the Building Division, Fire Marshal Division, and the Planning and Zoning Division.

(3) If the zone clearance is approved, the applicant shall complete the application for a business license in full and sign it as verification under penalty of perjury that all information contained therein is true.

(4) If the zone clearance is disapproved or conditionally approved, no business license application can be submitted until all outstanding items of disapproval have been successfully completed by the applicant to bring the proposed business location into compliance with all

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County and State laws prior to making application for a business license.

(5) The application shall be returned to the Business License Division along with full payment of all business license fees.

(6) The Business License Division shall submit copies to the Sheriff Office and Health Department.

(7) Only after receiving approval from each of the entities named in this Section, the Business License Division shall be authorized to prepare a certificate of license for issuance. The type of approval will be determined by the reviewing entity.

(8) The certificate of license shall contain the following information:

(A) The name of the person to whom the certificate is issued;

(B) The business name;

(C) The type of business licensed;

(D) The date the license was issued;

(E) The expiration date of the license;

(F) The address of the place of business licensed; and

(G) The business license number.

(H) If the business is licensed to conduct more than one type of business, as defined herein, the certificate of license shall state each type of business licensed. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10) (Ord. 2019-2; 1-29-19).

11-1-7. Renewals of Business Licenses.

(a) Each fiscal year, licensees shall renew their business licenses by completing an application for a license renewal signed under penalty of perjury that all information contained therein is true, and returning it, along with the proper fees, to the Business License Division within the time period set forth in this Chapter.

(b) Upon receipt of the application and fees the Business License Division shall submit copies of the applications to the Planning and Zoning Division, Health Department, Sheriff Department, and Fire Marshal Division.

(c) The Business License Division shall be authorized to prepare a certificate of license as provided in this Chapter as long as there is not a violation on file. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10).

11-1-8. Inspections.

(a) The Associate Director may designate any division employee as an enforcement official. Authorized officers shall be permitted to make an inspection to enforce any of the provisions of this Chapter, the Utah County Land Use Ordinance, or any other applicable statute or ordinance, and may enter any building or may enter upon any premises during regular business hours; or, if there are no regular business hours, the officers or their authorized representatives shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry. If the property owner or other responsible person refuses to allow the enforcement officers to enter and inspect the property, the officer may obtain and execute a search warrant.

(b) No owner, occupant or any other person having charge, care or control of any building or premises shall fail or neglect, after proper request is made as herein provided, to properly permit entry therein by the authorized officer or his representative(s) for the purpose of inspection and

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examination to insure compliance with this Chapter and the Utah County Land Use Ordinance. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10) (Ord. 2017-3; 2-21-17).

11-1-9. Payment Dates of Business License Fees.

(a) Business license fees for new businesses shall be due and payable upon making application to the Business Licensing Division. The application shall not be processed until the fee is paid.

(b) Business license fees for renewal businesses shall be due and payable on or before July 1st of each year. If the license is not paid within a month of the due date, a penalty in the amount of 50 percent of the fee shall be added to the original amount due. If the fee is still not paid within two months of the due date, a penalty in the amount of 75 percent of the fee shall be added to the original amount due. If the fee plus penalty is still not paid within three months, then the business shall be considered to be operating without a business license in violation of this Chapter, subject to criminal prosecution for every day of operation after three months from the due date, and the license fee, if a license is granted thereafter, shall be doubled.

(c) Penalty fees may be appealed to the Associate Director who may, for good cause shown, refund all or part of the applicable penalty fee that has been paid. The decision of the Associate Director may be appealed to the Board of County Commissioners as set forth in this Chapter. The Board of County Commissioners may, upon good cause, recommend that all or part of the penalty fee be refunded. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10) (Ord. 2017-3; 2-21-17).

11-1-10. Term of Business Licenses.

(a) A newly issued business license is valid from the date of issuance through June 30th of the current fiscal year.

(b) A renewed business license is valid for a fiscal year of July 1st of the then current year through June 30th of the ensuing year. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10).

11-1-11. Business License Fees.

(a) All business license fees shall be those set forth in the Utah County Government Fee Schedule.

(b) The fees are categorized in the Fee Schedule by type of business. If a particular type of business is not listed in the Fee Schedule, the Associate Director shall determine the category that most closely fits the business.

(c) The fee for an initial application received after December 31st of the then current fiscal year shall be ½ (one-half) of the annual business license fee for the specific business category. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10) (Ord. 2017-3; 2-21-17).

11-1-12. Transfer of License Restricted.

(a) Business licenses may be transferred to another person for the same location upon the new person making application and being able to qualify for such license under this Chapter and paying the business license renewal fee as set forth in the Utah County Fee Schedule. The business must currently hold a valid Utah County Business License and not be in violation with this Chapter, the Utah County Land Use Ordinance, or all other applicable Laws.

(b) A Business License may not be transferred to a new location within the County. Each

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location shall be applied for and all appropriate fees shall be paid for each location. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10).

11-1-13. DISPLAY OF LICENSES.

(a) Every certificate of license for a business shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the place of business so that the same may be easily seen. When the certificate of license has expired, it shall be removed and no certificate of license which is not in force shall be permitted to remain posted within the place of business. If the licensee's business is such that a license cannot be displayed in a secure place due to the nature of the business, then the location of the license shall be determined by the Business License official. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10).

11-1-14. Reciprocal Recognition of Business Licenses.

(a) Except as otherwise provided herein, a business license shall not be required of any person who is duly licensed in another county or another city in Utah, has no business location in the County and the county or other licensing city would also reciprocate if the same business were located in the county. Reciprocity shall not be granted to transient businesses and solicitors. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10).

11-1-15. Penalty.

(a) Any violations of this Chapter shall be a Class 'B' misdemeanor.

(b) Where applicable, each day of noncompliance shall constitute a separate violation.

(c) The business owner, and the owner of the property where the business is located, if the property owner is different than the business owner, are both responsible for compliance with this Chapter, and both may be charged with violations. Nothing in this Section shall limit the right of a property owner to seek any legal remedy from a business owner who causes or allows a violation of this Chapter on the property.

(d) The operation of an unlicensed business, or the operation of a business at variance with the terms and conditions imposed in granting the license (including the requirement that the business be operated in accord with County ordinances and State laws), is hereby declared to be a nuisance as listed in Chapter 12 of this Code. The County Attorney may, in addition to any other remedy available at law or in equity, maintain civil action to recover any a unpaid license fee or criminal action pursued as hereinafter provided, institute injunction, abatement, or any other appropriate action to enjoin, abate, or remove the offending business or activity. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10).

11-1-16. Constructive Notice of Time Periods.

(a) All businesses, owners, licensees, and applicants are obligated to be aware of and are deemed to have constructive notice of all time periods and/or deadlines and the effect of noncompliance with said time periods and/or deadlines as set forth in this Chapter relating to the application, issuance, renewal, expiration, appeal or other action relating to business licenses, or any other licensing matters set forth in this Chapter.

(b) Nothing in this Chapter shall be construed as requiring the County to take any affirmative action to notify businesses, owners, licensees, or applicants of any time periods and/or deadlines or the effect of noncompliance with said time periods and/or deadlines set forth in this Chapter

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relating to the application, issuance, renewal, expiration, appeal or other action relating to business licenses or any other licensing matters as set forth in this Chapter. (Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10).

11-1-17. Temporary Uses.

(a) A temporary use permit or Large Public Assembly permit issued pursuant to the provisions of Utah County Land Use Ordinance or Utah County Code constitutes a business license for that temporary use which license automatically expires with the temporary use permit or the Large Public Assembly permit.(Ord. 2006-22; 5-30-06) (Ord. 2010-26; 10-19-10) (Ord. 2017-3; 2-21-17).

Article 11-2. Sexually Oriented Businesses

11-2-1. Title for Citation.

11-2-2. Purpose and Findings.

11-2-3. Definitions.

11-2-4. Classification of Sexually Oriented Businesses.

11-2-5. License Requirements.

11-2-6. Issuance of Sexually Oriented Business License and Sexually Oriented Business Employee License.

11-2-7. Inspection of Sexually Oriented Business Premises

11-2-8. Expiration of License.

11-2-9. Suspension.

11-2-10. Revocation of Denial.

11-2-11. Hearing on Revocation, Suspension or Denial; Appeal.

11-2-12. Transfer of License.

11-2-13. Hours of Operation.

11-2-14. Location and Distance Requirements.

11-2-15. Live Public Nudity and Semi-nudity.

11-2-16. Interior Design Requirements Pertaining to Sexually Oriented Businesses Featuring Live Semi-nudity.

11-2-17. Regulations Pertaining to Sexually Oriented Businesses that Exhibit Sexually Explicit Films or Videos.

11-2-18. Additional Regulations for Escort Agencies.

11-2-19. Loitering and Exterior Monitoring.

11-2-20. Zoning, Exterior Design.

11-2-21. Penalties and Enforcement.

11-2-22. Applicability to Existing Businesses.

11-2-23. Persons Under 18.

11-2-24. Sale, Use or Consumption of Beer Prohibited.

11-2-25. Exemptions.

11-2-26. Severability.

11-2-1. Title for Citation.

The ordinance codified in this Article shall be known as the “Sexually Oriented Business

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Ordinance.” (Ord. 2006-26; 7-11-06).

11-2-2. Purpose and Findings.

1. Purpose. It is the purpose of this Article to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the unincorporated areas of the County. The provisions of this Article 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 Article 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 Article to condone or legitimize the distribution of obscene material.

2. Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Board of County Commissioners of Utah County, Utah, and on findings incorporated in the cases of *County of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *County of Erie v. Pap’s A.M.*, TDA “Kandyland”, 529 U.S. 277 (2000), and *County of Los Angeles v. Alameda Books, Inc.* 121 S. Ct. 1223 (2001) and on studies in other communities including, but not limited to, Phoenix, Arizona; Tucson, Arizona; Garden Grove, California; Los Angeles, California; Whittier, California; Adams County, Colorado; Manatee County, Florida; St. Mary’s, Georgia; Indianapolis, Indiana; Minneapolis, Minnesota; St. Paul, Minnesota; Las Vegas, Nevada; Cattaraugus County, New York; Islip, New York; New York City, New York; Times Square Area, New York; New Hanover County, New York; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Cleburne, Texas; Dallas Texas; El Paso, Texas; Houston, Texas; Newport News, Virginia; Bellevue, Washington; Des Moines, Washington; Seattle, Washington; St. Croix County, Wisconsin; and also on statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention and 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 Board of County Commissioners of Utah County, Utah finds, as follows:

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

b. Certain employees of sexually oriented businesses defined in this Article as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

c. 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.

d. Offering and providing such space encourages such activities, which creates unhealthy conditions.

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e. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

f. 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.

g. 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 and 816,149 through December 2001.

h. Through December, 2001, there have been 2,097 reported cases of AIDS in the State of Utah.

i. Since 1996 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Utah County, with a total of 19 cases through 2002.

j. The number of cases of syphilis in the United States reported in 1999 was over 35,600.

k. 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. In 1999, the rate of reported gonorrhea infections was 132.2 per 100,000 persons.

l. The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

m. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

n. 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.

o. Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

p. The findings noted in the above paragraphs raise substantial governmental concerns.

q. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

r. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the County. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

s. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

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t. 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.

u. 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.

v. 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 Article is designed to prevent or who are likely to be witnesses to such activity.

w. 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 Article.

x. 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.

y. The general welfare, health, morals and safety of the citizens of the County will be promoted by the enactment of this Article. (Ord. 2006-26; 7-11-06)

11-2-3. Definitions.

For purposes of this Article the following words and phrases shall have the meanings set forth below unless a different meaning is clearly indicated by the context.

1. "Adult Arcade" means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video players, laser disc players, digital video players, 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" mean any commercial establishment which, as one of its principal business purposes, offers for 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, digital video 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 or abuse of the user or others.

A principal business purpose exists if materials offered for sale or rental depicting or describing "specified sexual activities" or "specified anatomical areas" generate a substantial portion of the business's income, or account for a substantial portion of inventory, or occupy a substantial portion of total floor space. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or

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describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE or ADULT NOVELTY STORE or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE or 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 that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

3. "Adult Cabaret" means 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; or
- b. live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities"; or
- c. films, motion pictures videocassettes, digital videos, 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" means 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 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, or

- b. offers, or allows a tenant or occupant to subrent, a sleeping room or rooms for rent for a period of time less than ten (10) hours.

5. "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, commonly, habitually, or consistently shown that are characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

6. "Adult Theater" means 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."

7. "Child day care facilities" means a facility licensed by the State of Utah, whether situated within the unincorporated area of the County or not, that provides care, training, education, custody, treatment or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

8. "Controlling Interest" means 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

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be the power to direct the management, operation, or policies of the business.

9. “Associate Director” means the Utah County Community Development Associate Director and such employee(s) of the Community Development Department as he/she may designate to perform the duties of the Associate Director under this Article.

10. “Distinguished or Characterized by an Emphasis Upon” means 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.”

11. “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.

12. “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.

13. “Escort Agency” 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.

14. “Establish” or “Establishment” means 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.

15. “Licensee” means 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 means the person whose name the sexually oriented business employee license has been issued.

16. “Nude, Nudity, or State of Nudity” means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any part of the nipple; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

17. “Operate” or “cause to operate” means to cause to function or to put or keep in a state of doing business.

18. “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.

19. “Premises” means the real property upon which a sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually

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oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in an application for a business license pursuant to this Article.

20. "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

21. "Semi-nude" or "State of Semi-nudity" means the showing of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

22. "Semi-nude Model Studio" means 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 Article 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:

(1) 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

(2) 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.

22. "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.

23. "Sexually Oriented Business" means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, semi-nude model studio, or sexual encounter establishment.

24. "Specified Anatomical Areas" means:

a. the human male genitals in a discernibly turgid state, even if fully and opaquely covered;

b. 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.

25. "Specified Criminal Activity" means 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

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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;

b. for which:

(1) 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;

(2) 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

(3) 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.

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

26. "Specified Sexual Activity" means 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.

27. "Transfer of Ownership or Control" of a sexually oriented business means any of the following:

a. the sale, lease or sublease of the business;

b. the transfer of securities which constitute 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.

28. "Viewing Room" means 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. 2006-26; 7-11-06) (Ord. 2017-3; 2-21-17).

11-2-4. 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;

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5. Adult motion picture theaters;
6. Adult theaters;
7. Escort agencies;
8. Semi-nude model studios; and
9. Sexual encounter establishments. (Ord. 2006-26; 7-11-06).

11-2-5. License Requirements.

1. It shall be unlawful for any person to operate a sexually oriented business in the unincorporated area of Utah County without a valid sexually oriented business license issued to such person by the Associate Director pursuant to this Article.

2. It shall be unlawful for any person who operates a sexually oriented business to employ a person to be an “employee” of a sexually oriented business in the unincorporated area of Utah County, as defined in this Article, if such employee is not in possession of a valid sexually oriented business employee license (“employee license”) issued to such employee by the Associate Director pursuant to this Article.

3. It shall be unlawful for any person to be an “employee”, as defined in this Article, of a sexually oriented business in the unincorporated area of Utah County without a valid sexually oriented business employee license issued to such employee by the Associate Director pursuant to this Article.

4. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the Associate Director a completed application made on a form provide by the Associate Director. The application shall be signed by the applicant and notarized.

5. 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, together with the applicant's Social Security number and/or his/her state or federally issued tax identification number;

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 Article, 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 Utah County 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)

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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. if the application is for a sexually oriented business license, the single classification of license for which the applicant is filing, together with 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. if a person who wishes to own or operate a sexually oriented business is an individual, he must sign the application for an operator's license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10%) percent or greater interest in the business must sign the application for an operator's license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, all corporate officers and directors must sign the application for an operator's license as applicant.

6. 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 Associate Director within ten working days of any change of circumstances which would render the information originally submitted false or incomplete; the personal information provided pursuant to paragraphs (a) through (i) of this subsection shall be confidential, and shall not be disclosed to the public except to the extent required by state or federal law.

7. A license or permit required by this article is in addition to any other licenses or permits required by Utah 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. 2006-26' 7-11-06) (Ord. 2017-3; 2-21-17).

11-2-6. 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 this Article, the Associate Director shall immediately issue a temporary license to the applicant. The temporary license shall expire upon the final decision of the Associate Director to deny or grant the sexually oriented business license. Within forty days of the initial filing date of the completed application, the Associate Director shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Associate Director shall approve the issuance of the license unless one or more of the following is found by a

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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 this Article 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 Article, or has had a sexually oriented operators license revoked by the County within two years of the date of the current application;
- e. the sexually oriented business premises is not in compliance with interior configuration requirements as set forth in this Article.

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 Article, 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 operators license shall pay an annual fee, whether new or renewal, of \$500.00.

4. Upon the filing of a completed application for a sexually oriented business employee license, the Associate Director shall issue a temporary license to the applicant. The temporary license shall expire upon the final decision of the Associate Director to deny or grant the sexually oriented business employee license. Within forty days of the date that a completed application is filed, the Associate Director shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Associate Director 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 this Article 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 Article, or has had a sexually oriented employees license revoked by the County within one year of the date of the current application.

5. A sexually oriented business employee license which is granted pursuant to this Article 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 County 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. 2006-26; 7-11-06) (Ord. 2017-3; 2-21-17).

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11-2-7. Inspection of Sexually Oriented Business Premises.

1. Sexually oriented business operators and sexually oriented business employees shall permit law enforcement officers and agents of Utah County who are performing functions connected with the enforcement of this Article to inspect the portions of the sexually oriented business premises in which patrons are permitted for the purpose of ensuring compliance with this Article. Inspections shall be permitted at any time the sexually oriented business is occupied by patrons or open for business. A licensee's knowing or intentional refusal to permit such an inspection shall constitute a violation of this 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. 2006-26; 7-11-06).

11-2-8. Expiration of Licenses.

Each license issued pursuant to this Article shall expire on the 31st day of December of the calendar year of issuance, unless otherwise suspended or revoked. Such licenses may be renewed only by making application and paying the requisite fee as provided in this Article. 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 application shall be processed as an initial application. (Ord. 2006-26; 7-11-26).

11-2-9. Suspension.

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

2. If the Associate Director determines that a licensed sexually oriented business employee has violated a provision of this Article, the Associate Director shall issue a written notice of intent to suspend the sexually oriented business employee license for a period not to exceed thirty days. The Associate Director shall state the basis for seeking to suspend the license in the notice of intent. (Ord. 2006-26; 7-11-06) (Ord. 2017-3; 2-21-17).

11-2-10. Revocation or Denial.

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

2. If the Associate Director determines that a licensed sexually oriented business employee has violated a provision of this Article, and the employee's sexually oriented business employee license has been suspended within twelve months preceding the date of the violation, the Associate Director shall issue a written notice of intent to revoke the sexually oriented business

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employee license. The Associate Director shall state the basis for seeking to revoke the license in the notice of intent.

3. The Associate Director shall issue written notice of intent to revoke or deny a sexually oriented business license or sexually oriented business employee license if it determines that:

a. the sexually oriented business licensee has knowingly or recklessly given false information on the license application or license renewal application;

b. the sexually oriented business licensee has knowingly or recklessly 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 or recklessly 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 or recklessly 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 license 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.

4. 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 Utah County Board of License Equalization 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.

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

6. Once the Utah County Board of License Equalization 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 license for one year from the date that revocation becomes effective. (Ord. 2006-26; 7-11-06) (2017-3; 2-21-17).

11-2-11. Hearing on Revocation, Suspension or Denial; Appeal.

1. Once the Associate 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 Associate Director shall notify the applicant or licensee in writing of the 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 action; and

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b. a statement that the licensee or applicant shall have ten business days from the date that notice is received to contest the 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 Associate Director's Office, 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 County 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 Article.

3. If the licensee/applicant submits a written response within the time prescribed in subsection (1)(b), the Utah County Board of License Equalization shall schedule a hearing and notify the licensee/applicant of the hearing date within five business days of receiving the written response. The Utah County Board of License Equalization shall conduct the hearing no more than fifteen business days from the date that the written response is received. At the hearing, the Utah County Board of License Equalization shall allow the County the opportunity to present evidence with respect to the County's intended action. The Utah County Board of License Equalization shall then provide the licensee/applicant with the opportunity to present evidence, call witnesses, and make arguments pertaining to the basis for the County's intended action. The Utah County Board of License Equalization shall conclude the hearing within five business days from the date that the hearing is commenced, and shall issue a written decision within five business days from the date that the hearing is concluded.

4. If the licensee/applicant does not submit a written response to the Associate Director within the time period prescribed in subsection (1)(b), the Associate Director 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 Utah County Board of License Equalization determines by a preponderance of the evidence that grounds exist, as set forth in this Article, to suspend, revoke, or deny a license, the Utah County Board of License Equalization shall prepare a written opinion which sets forth the Utah County Board of License Equalization's findings. The Utah County Board of License Equalization 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 Utah County Board of License Equalization 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 Utah County Board of License Equalization determines by a preponderance of the evidence that grounds do not exist which justify the suspension, revocation, or denial of the license, the Utah County Board of License Equalization shall prepare a written opinion which sets forth the Utah County Board of License Equalization's findings. The Utah County Board of License Equalization shall immediately inform the Associate Director of the

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findings, and send a written copy by certified mail to the licensee's/applicant's last known address within five business days of the conclusion of the hearing.

7. Once the Utah County Board of License Equalization has communicated to the Associate Director that grounds do not exist to justify the suspension, revocation, or denial of the license, the Associate Director 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. Administrative remedies shall be deemed to be exhausted once the Utah County Board of License Equalization has issued its written decision. 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 County's action to suspend, revoke, or deny a license, the Associate Director shall immediately issue a provisional license. The provisional license shall allow the party appealing the County's action to operate or 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. The administrative action shall be promptly reviewed by the court. (Ord. 2006-26; 7-11-06) (Ord. 2017-3; 2-21-17).

11-2-12. 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. 2006-26; 7-11-06).

11-2-13. Hours of Operation.

It shall be unlawful to operate a sexually oriented business between the hours of 10:00 P.M. and 10:00 A.M. on weekdays and Saturdays, or at anytime on Sunday or on any legal holiday recognized by the State of Utah; provided, however, that a sexually oriented business which holds a license from the State of Utah to sell liquor may remain open to sell liquor under the terms of the license, but shall not offer sexually oriented entertainment between the hours of 10:00 P.M. and 10:00 A.M. on weekdays and Saturdays, or at anytime on Sunday or on any legal holiday recognized by the State of Utah. (Ord. 2006-26; 7-11-06).

11-2-14. Location and Distance Requirements.

1. No sexually oriented business shall operate or be established within 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 500 feet of a boundary

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of a zoning district which allows residential use as a permitted use.

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

4. For purposes of this Article, 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. 2006-26; 7-11-06)

11-2-15. Live Public Nudity and Semi-Nudity.

1. It shall be a violation of this Article 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 Article 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 ten feet from any patron.

3. It shall be a violation of this Article 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 Article 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 Article 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 Article 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 any of the rules articulated in provisions (1) through (4) of this Section. (Ord. 2006-26; 7-11-06).

11-2-16. 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

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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 ten feet from the edge of the stage so as to create a buffer zone of at least ten 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, which may not contain video reproduction equipment; 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, multiple manager's stations shall be constructed in such a way that the manager's stations collectively provide a view of every portion of the business premises; 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 the entire 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; and

c. overhead lighting fixtures that provide sufficient lighting at an intensity of not less than five 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. 2006-26; 7-11-06).

11-2-17. Regulations Pertaining To Sexually Oriented Businesses That Exhibit Sexually Explicit Films or Videos.

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 two hundred fifty square feet of floor space:

1. 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

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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. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two 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 the entire 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.

2. No restroom shall contain monitoring or surveillance equipment.

3. 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 Associate Director's Office.

4. 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.

5. 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 five (5.0) 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.

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

7. 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.

8. 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 he or she shall immediately exclude the offending parties from the premises for the rest of the business day.

9. 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.

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

11. The operator shall post conspicuous signs in well-lighted areas of the business stating the following:

- a. no loitering is permitted in viewing rooms.
- b. occupancy in viewing rooms is limited to one person.
- c. sexually activity on the premises is prohibited.
- d. making openings between viewing rooms is prohibited.
- e. violators will be required to leave the premises for the balance of the business day.

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

12. The operator and employees shall ensure that all wall surfaces and 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. Floor coverings in viewing rooms shall be made of nonporous, easily cleanable surfaces. Rugs or carpeting are prohibited.

13. 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 County 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.

14. 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 direct line of sight view of every portion of the premises to which patrons are permitted from at least one of the manager's stations.

15. 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. 2006-26; 7-11-06) (Ord. 2017-3; 2-21-17).

11-2-18. Additional Regulations for Escort Agencies.

1. An escort agency shall not employ any person under the age of 18 years.
2. 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.
3. Violation of this Section shall constitute a Class B misdemeanor. (Ord. 2006-26; 7-11-06).

11-2-19. Loitering, Exterior Monitoring.

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

1. initiate and enforce a policy which prohibits loitering on or about the business premises, and which comports with the requirements of 3 and 4 below;
2. post conspicuous signs which state that no loitering shall be permitted;
3. 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
4. provide lighting of the exterior premises to facilitate inspections for loitering and discourage clandestine behavior. (Ord. 2006-26; 7-11-06).

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11-2-20. Zoning, Exterior Design.

1. Sexually oriented businesses are permitted in the I-1, Industrial Zone, as set forth in the Utah County Land Use Article, subject to the distance and location restrictions set forth in this Article.

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. 2006-26; 7-11-06).

11-2-21. Penalties and Enforcement.

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

2. The County Attorney's Office is hereby authorized to initiate legal proceedings to prosecute, enjoin, restrain, and correct violations of this Article. (Ord. 2006-26; 7-11-06).

11-2-22. Applicability to Existing Businesses.

1. Upon adoption, the provisions of this Article 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 Article.

2. All sexually oriented businesses, sexually oriented business employees, and sexually oriented business operators currently doing business within Utah County are hereby granted a temporary license which shall continue in effect for one-hundred and eighty days from the date that this Article 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 Article. (Ord. 2006-26; 7-11-06).

11-2-23. 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. It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business's regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

1. a valid operator's, commercial operator's, or chauffeur's driver's license; or
2. a valid personal identification certificate issued by the State of Utah reflecting that such

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person is eighteen (18) years of age or older. (Ord. 2006-26; 7-11-06).

11-2-24. Sale, Use, or Consumption of Beer Prohibited.

The sale, use, or consumption of beer on the premises of a sexually oriented business is prohibited. The County shall not provide local consent for the issuance by the State Alcoholic Beverage Control Commission for a liquor license pursuant to the Utah Alcoholic Beverage Control Act for the sale of liquor on the premises of a sexually oriented business. (Ord. 2006-26; 7-11-06).

11-2-25. Exemptions.

Notwithstanding any other provision in this Article, movies rated G, PG, PG-13, or R, by the Motion Picture Association of America (MPAA), or live theatrical performances with serious artistic, social, or political value, that depict or describe specified anatomical areas or specified sexual activities, are expressly exempted from regulation under this Article.

Notwithstanding any other provision in this Article, a woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, is expressly exempted from regulation under this Article, irrespective of whether or not the breast is covered during or incidental to feeding. (Ord. 2006-26; 7-11-06).

11-2-26. Severability.

This Article 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 any portion held to be invalid as if enacted by the legislative body without the invalidated portions. (Ord. 2006-26; 7-11-06).

Article 11-3. Denial, Suspension or Revocation of a License

- 11-3-1. Denial of a Business License.**
- 11-3-2. Reasons for Suspension or Revocation.**
- 11-3-3. Enforcement.**
- 11-3-4. Procedure for Suspension or Revocation.**
- 11-3-5. Designation.**
- 11-3-6. Duties.**
- 11-3-7. Meeting; Records**
- 11-3-8. Action by the Board.**
- 11-3-9. Appeal Requirements and Procedures**
- 11-3-10. Filing Costs; Salaries**
- 11-3-11. Notification of Decisions; Recourse**
- 11-3-12. Applicability to Sexually Oriented Business.**

11-3-1. Denial of a Business License.

(a) After a person has made application to the County for a business license, the application may be denied for any of the following reasons:

- (1) The applicant does not meet the qualifications for a licensee as provided under this

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Chapter.

- (2) Failure of the applicant to pay all fees and penalties.
- (3) One of the reviewing departments or divisions of the County provided for in this Chapter has disapproved the application pursuant to any applicable provision of the County Code.
- (4) False or incomplete information given on the application.
- (5) Noncompliance with any requirement or condition set by the Planning Commission, Board of Adjustment, Planning and Zoning Division, or County Commission, if applicable, under a conditional use permit, variance, special exception, agreement, or noncompliance with the Utah County Land Use Ordinance.
- (6) Noncompliance with any County, state or federal statutes or any Health Department regulations governing the applicant's proposed business.
- (7) Any other reason expressly provided for in this Chapter. (Ord. No. 1984-07, Pt. 3, 3-12-84; Ord. No. 2004-11, 6-15-04) (Ord. 2010-26; 10-19-10).

11-3-2. Reasons for Suspension or Revocation.

(a) An existing business license may be suspended or revoked for any of the following reasons:

- (1) The licensee fails to maintain compliance with the qualifications for a licensee as provided under this Chapter;
- (2) Failure of the licensee to pay all fees and penalties;
- (3) False or incomplete information given on an application;
- (4) The licensee has violated or is violating any provision of this Chapter or provision of the County Code, state or federal statutes or regulations governing the licensee's business.
- (5) The licensee has obtained or aided another person to obtain a license by fraud or deceit;
- (6) The licensee has failed to pay property taxes or sales tax;
- (7) The licensee has refused authorized representatives of the County to make an inspection or has interfered with such representatives while in the performance of their duty in making such inspection;
- (8) The licensee is not complying with a requirement or condition set by the Planning Commission, Board of Adjustment, Planning and Zoning Division, or County Commission under a conditional use permit, variance or special exception; by agreement;
- (9) Violation of this Chapter by the agents or employees of a licensee and violations of any other laws by the agents or employees committed while acting as an agent or employee of the licensee; or
- (10) Any other reason expressly provided for in this Chapter. (Ord. 2004-11, 6-15-04) (Ord. 2010-26; 10-19-10).

11-3-3. Enforcement.

(a) The License Officer shall have the authority, without a hearing, to deny a license for the reasons provided for in this Chapter.

(b) The License Officer shall have the authority to suspend or revoke a license without a hearing, for reasons provided for in this Chapter. However, the suspension or revocation shall not take effect until the time period for appealing the decision to the board of License

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Equalization as set forth in this Chapter below has passed, or, if a timely appeal is so filed, the Board of License Equalization has issued its decision.

(c) The License Officer may, on his or her own initiative or in response to complaints from the general public or any County department or division, investigate and gather evidence of violations of this Chapter or other circumstances which may give rise to a denial, suspension or revocation. (Ord. 2004-11, 6-15-04) (Ord. 2010-26; 10-19-10).

11-3-4. Procedure for Suspension or Revocation.

(a) The License Officer shall cause written notice to be given the applicant or licensee of the decision to deny, suspend, or revoke a license. (Ord. 2004-11, 6-15-04) (Ord. 2010-26; 10-19-10).

11-3-5. Designation.

(a) The Board of County Commissioners is hereby constituted as a Board of License Equalization. (Ord. No. 1984-07, Pt, 3, 3-12-84; Ord. No. 2004-11, 6-15-04) (Ord. 2010-26; 10-19-10).

11-3-6. Duties.

(a) The Board of License Equalization (the "Board") shall meet and hear an appeal by an aggrieved licensee or license applicant, or other party, who alleges that an error was made by a County officer or other party who alleges that a business is not in compliance with applicable State and County laws and regulations. (Ord. 2004-11, 6-15-04) (Ord. 2010-26; 10-19-10).

11-3-7. Meetings; records.

(a) The Board shall conduct a hearing wherein the appellant, and any other party having information relative to the appeal, shall be heard. Before holding such hearing, the Board shall notify the subject licensee or license applicant at least seventy-two (72) hours in advance thereof and give the time, place, and a brief statement of the allegations to be considered therein. Minutes shall be kept of the hearing, and shall include the action of the Board taken at the end of the hearing. The minutes shall be a public record. (Ord. 2004-11, 6-15-04) (Ord. 2010-26; 10-19-10).

11-3-8. Action by the Board.

The Board, at the conclusion of the hearing, shall take action to grant or deny the appeal, or continue deliberations to a time certain, based upon the applicable State and County laws and regulations and such standard rules of procedure as it may have adopted for the purpose of hearing appeals. (Ord. 2004-11, 6-15-04) (Ord. 2010-26; 10-19-10).

11-3-9. Appeal Requirements and Procedures.

(a) When the Board of License Equalization (the "Board") acts under its power to hear and decide appeals in which it is alleged that there is an error in an order, requirement, decision, or determination made in the administration or interpretation of Article 11-1 of the Utah County Code, "Licenses and Business Regulations, In General" (the "Business Code"), the Board shall not grant a reversal or any other relief appealed for unless the Board finds that all of the following standards have been met:

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(1) The appellant has filed a properly completed written application for appeal, which states with specificity the nature of the alleged error and how the appellant has been adversely affected by said alleged error.

(2) The application for appeal was properly filed with the Secretary of the Board of County Commissioners of the County within twenty (20) calendar days after the date of the decision being appealed. The twenty (20) calendar day appeal deadline is jurisdictional, and the Board shall dismiss the appeal if the Board finds that the application for appeal filing deadline has not been met.

(3) The appellant has been adversely affected by the subject decision applying the Business Code.

(4) Prior to filing the appeal with the Board, and within ten (10) calendar days after the date of the decision being appealed, the appellant has presented to the administrator, or other person or entity which made the decision in question, with a claim of error which fully sets forth a statement of the facts and the nature of the claim of error. Within fifteen (15) calendar days of the date of the decision being appealed, the administrator, or other person or entity which made the decision in question may, but is not required to, respond in writing to the claim of error. The claim of error shall be deemed denied if the administrator, or other person or entity which made the decision in question, fails to timely approve or deny the claim of error or otherwise respond. A copy of the claim of error, and any response received, shall be attached to the appeal application. The ten (10) calendar day claim of error deadline is jurisdictional, and the Board shall dismiss the appeal if the Board finds that the claim of error filing deadline has not been met.

(5) The decision in question must be one made in applying the Business Code, not some other state or county law, office policy, personnel matter, or other decision beyond the purview of the Business Code.

(6) If the Board grants the appellant's request, the result must be consistent with the provisions of the Business Code, and not waive or modify any of the terms or requirements thereof. (Ord. 2004-11, 6-15-04) (Ord. 2010-26; 10-19-10).

11-3-10. Filing costs; salaries.

(a) The Board by resolution may fix a filing fee for appeal applications to cover the administrative costs of handling the application and giving notification of hearings. The Board shall not receive a salary, other than its regular salary of office of Commissioner. (Ord. 2004-11, 6-15-04) (Ord. 2010-26; 10-19-10).

11-3-11. Notification of decision; recourse.

(a) The Board shall notify the parties of its decision.

(b) Any person adversely affected by any decision of the Board may file a petition with the 4th District Court for Utah County for a review of that decision. Any such appeal or petition shall be barred unless it is filed within twenty (20) calendar days of the date when the decision is filed with the Secretary of the Board. The petition shall be limited to the allegation that the decision of the Board was arbitrary, capricious, or illegal.

(c) The Board shall transmit to the reviewing court the complete record of its proceedings, including applications, exhibits, minutes, findings, orders, and any transcript of tape recordings which may be on file with the Board. The person or entity filing the petition for review shall

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request from the secretary to the Board a verbatim transcript of the record and such person or entity shall pay the reasonable transcript fees as set by the Board. If there is a record, the review of the District Court is limited to the record, and the Court may not accept or consider evidence outside of the record unless it determines that such evidence was offered to the Board and improperly excluded. If there is no record, the Court may call witnesses and take evidence.

(d) The Court shall affirm the decision of the Board if the decision is supported by substantial evidence in the record.

(e) Filing a petition for review with the Court does not automatically stay the decision of the Board.

(1) Before filing the petitions for review with the court, the aggrieved party may petition the Board to stay its decision. The board shall take action on any petition to stay only in a meeting where property nice was given and where a quorum is present. Upon considering such petition to stay, the Board may grant the stay if it finds such to be in the best interests of the County.

(2) After filing a petition for review with the court, the petitioner may seek an injunction staying the decision of the board.

(f) No decision of the Board shall be subject to rehearing by the Board, except when remanded from a court of competent jurisdiction. (Ord. 2010-26; 10-19-10).

11-3-12. Applicability to Sexually Oriented Business.

(a) The provisions contained in Article 11-3 shall be applicable to licenses related to Sexually Oriented Business unless a more specific provision is contained in Article 11-2, in which case the more specific provisions contained in Article 11-2 shall apply. (Ord. 2010-26; 10-19-10).