

## CHAPTER 11. LICENSES AND BUSINESS REGULATIONS

### Article 11-1. In General

#### Article 11-2. Board of License Equalization

- 11-1-1. Definitions.
- 11-1-2. Authority.
- 11-1-3. Intent and purpose.
- 11-1-4. Severability.
- 11-1-5. Jurisdiction.
- 11-1-6. Civil action—Nuisance.
- 11-1-7. Civil action—Fee recovery.
- 11-1-8. Criminal penalties.
- 11-1-9. Required.
- 11-1-10. Conditions of license.
- 11-1-11. Exemptions.
- 11-1-12. Business ineligible for license.
- 11-1-13. Application for license.
- 11-1-14. Required information and fee.
- 11-1-15. Application approval process, new business.
- 11-1-16. License renewal process.
- 11-1-17. Two or more licenses.
- 11-1-18. Late charge.
- 11-1-19. Refunding of fees.
- 11-1-20. Display of certificate.
- 11-1-21. Transfer of certificate.
- 11-1-22. Misuse of certificate.
- 11-1-23. Consent to inspect.
- 11-1-24. Revocation after notice and hearing.
- 11-1-25. Temporary Uses.

#### 11-1-1. Definitions.

For the purposes of this Chapter, “business” means any enterprise carried on for the purpose of gain or economic profit, except that the acts of employees rendering services to employers are not included in this definition. (Ord. 2006-22; 5-30-06).

#### 11-1-2. Authority.

This Chapter is enacted under the authority of Section 17-53-216 Utah Code Annotated, 1953 as amended, and other applicable authority. (Ord. 2006-22; 5-30-06).

#### 11-1-3. Intent and purpose.

In enacting this Chapter, it is the intent and purpose of the Board of County Commissioners to secure the health, safety, morals, and general welfare of the persons patronizing, working at, or otherwise coming in contact with the businesses regulated herein, and to fund the expense of inspection, administration, and regulation by charging a

business license fee. (Ord. 2006-22; 5-30-06).

#### 11-1-4. Severability.

If any part of this Chapter is adjudged to be unconstitutional or invalid, it is hereby declared that the remainder shall not be affected thereby, but that the Board of County Commissioners would have enacted this Chapter and each part thereof notwithstanding that any part be declared invalid. (Ord. 2006-22; 5-30-06).

#### 11-1-5. Jurisdiction.

This Chapter shall apply to all businesses in the unincorporated area of the County. (Ord. 2006-22; 5-30-06).

#### 11-1-6. Civil action—Nuisance.

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 Section 12-1-2(l) of this Code. Following the administrative procedure and notification requirements of Chapter 12 of this Code for nuisances, the County Attorney may, in addition to any civil action to recover any 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).

#### 11-1-7. Civil action - Fee recovery.

Where the required license fee has not been paid in the full amount, at the time required, or otherwise in the manner provided in this Chapter, a civil action may be brought by the County Attorney against the person or entity failing to pay such fee, in any court having jurisdiction to recover the unpaid amount and/or any unpaid penalties which may attach. (Ord. 2006-22; 5-30-06).

#### 11-1-8. Criminal penalties.

Each act done which is prohibited by this Chapter, or each failure to act where required herein, is unlawful and a violation which may be punished by a fine of less than one thousand dollars (\$1,000.00), or by imprisonment not to exceed six (6) months, or by both such fine and imprisonment. Each day of such violative act or failure to perform shall constitute a separate offense and shall be punished as hereinabove provided. (Ord. 2006-22; 5-30-06).

#### 11-1-9. Required.

All other businesses and business activities are

subject to the license requirements of this Section, even if such other business or business activities are or may be related to an exempt business described in Section 11-1-11 below. By way of illustration only, and not by way of limitation, the following businesses and business activities are not exempt, and the person or entity engaged in such businesses and business activities are subject to the license requirement of this Section:

- (1) the manufacturing or processing of agricultural products;
- (2) the manufacturing or processing or feeds for domestic livestock and fowl;
- (3) the raising of mink, beaver, nutria, or similar fur-bearing animals when such activity includes the mixing, manufacturing, or processing of such animal feeds;
- (4) any sale, retail or wholesale, of feeds for mink, beaver, nutria, or similar fur-bearing animals,
- (5) the mixing, manufacturing or processing of feeds for mink, beaver, nutria, or similar fur-bearing animals;
- (6) any sale, retail or wholesale, of mixed feeds for animals;
- (7) the production of value added agricultural products, and
- (8) any business or activity which the Utah County Zoning Ordinance identifies as requiring a County business license. (Ord. 2006-22; 5-30-06).

#### 11-1-10. Conditions of license.

It shall be unlawful for any person or other entity to engage in, participate in, or carry on any business contrary to the terms and conditions upon which the license is granted or contrary to State law or County ordinance. (Ord. 2006-22; 5-30-06).

#### 11-1-11. Exemptions.

- (a) The following activities shall be exempt from the license requirement:
- (1) the production and selling of fruit or crops in the field from which they are derived or when sold at an approved Farmers' Market;
  - (2) the raising and selling of domestic livestock, domestic fowl and eggs produced by said fowl 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 mixing, 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 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, when such sales are held no more frequently than once per calendar year quarter for not more than three (3) continuous days on the premise;

(7) the activities of a religious or charitable organization;

(8) businesses located within and licensed by any other community in the State of Utah that does not have a place of business in unincorporated Utah County. Transient businesses and peddlers, however, are not exempt under this subsection, and must obtain a license and pay the requisite fees regardless of the possession of a license issued by any other community;

(9) a home business owned and operated solely by any child age 17 or under, with no other employees, representatives or agents; and

(10) public utilities and communication facilities. (Ord. 2006-22; 5-30-06).

#### 11-1-12. Business ineligible for license.

(a) A license shall not be issued, nor shall any business activity occur where a business fails to comply with the state and local laws and regulations as administered by the following County offices: Business regulations, Zoning, Health, Sheriff, Fire Marshal, and Board of License Equalization; nor shall a license be issued when due to failure to comply, the business is disapproved by one of the said offices. A license shall not be issued to any applicant who has, within the five year period immediately preceding the date of application, been convicted of a felony or a crime of moral turpitude for a crime which is substantially related to the qualifications, functions, or duties of the business for which a license is requested. Nor shall a license be issued to any applicant if the operation of the business would be a violation of the terms and conditions of the individual's probation or parole for any criminal conviction. (Ord. 2006-22; 5-30-06).

#### 11-1-13. Application for license.

Any person or entity desiring to obtain a business license shall first make written application for a business license zone clearance at the County Business Regulations Office by completing the standard application forms available therein. As soon as the zone clearance has been completed it shall be returned to the applicant. If the zone clearance is approved, the applicant may make written application for a business license by completing the standard application forms

available therein. If the zone clearance is disapproved or conditionally approved, all outstanding items must be successfully completed to bring the proposed business location into compliance with the Utah County Land Use Ordinance prior to making application for a business license. (Ord. 2006-22; 5-30-06).

#### 11-1-14. Required information and fee.

To be accepted by the Business Regulations Office staff, the completed application form shall contain all the information requested on the form; be signed by the business owner or responsible agent certifying that the information submitted with the application is accurate and agreeing to abide by the terms and conditions of the license; and be accompanied by an application fee in the current amount as set by resolution of the County Commission. The application fee for an application received after October 31st of the then current year shall be one-half of the amount of the normal fee. (Ord. 2006-22; 5-30-06).

#### 11-1-15. Application approval process, new business.

In the case of an application for a new business which has never been licensed before in Utah County, a business whose Utah County license was revoked, or a business whose County license has not been current and valid within the nine-month period immediately prior to application, the license approval procedure shall be as follows:

(a) Prior to making application for a business license, the applicant shall obtain an approved business license zone clearance;

(b) Application for a business license shall be made to the Business Regulations Office at least ten (10) working days prior to the requested date on which the business will commence activity;

(c) The Business Regulations Office shall date and accept the application if it is properly completed and accompanied by the required fee;

(d) Before approval, and in addition to making its own review, the Business Regulations Office shall submit a copy of the application to the following offices for review: Zoning, Health, Sheriff, and Fire Marshal;

(e) Each office shall review and approve or disapprove the application based upon the applicable laws and regulations administered by such office;

(f) Any disapproval of the application, along with the reasons therefore, shall be submitted in writing by the disapproving office to the Business Regulations Office; any terms of conditional approval shall be similarly submitted;

(g) Following the review period, the Business Regulations Office shall, if the license is disapproved, mail the applicant a notification of the refusal and the reasons therefore, or, otherwise approve the license and mail the applicant an approved license certificate along with any appurtenant conditions of approval;

(h) If, at any time, it is alleged that the business is not in compliance with the laws and regulations pertaining to such business, the alleging office or person shall submit an appeal to the Board of License Equalization (re: Section 11-2-2) requesting the board to revoke the license or to cause compliance to laws and regulations within a stated period of time;

(I) Any license thus issued expires on December 31st of the year of issuance with a grace period until January 31st of the ensuing year for renewal. (Ord. 2006-22; 5-30-06).

#### 11-1-16. License renewal process.

In the case of a business operating in the same location, continuing to engage in activities of the same nature as before, and having an approved license that was valid and current during some part of the nine-month period ending immediately prior to the time of application for renewal (but any business which had its license revoked during said nine-month period, is applying or will engage in new business activities not approved on the previous license, or which will operate from one or more new locations in the County, application shall be made as for new businesses according to Section 11-1-15, above), the license renewal procedure shall be as follows:

(a) Application for renewal shall be made to the Business Regulations Office between January 1st and January 31st of the year of renewal;

(b) The Business Regulations Office shall date and accept the application if it is properly completed and accompanied by the required fee;

(c) Upon receipt of an application for renewal, the Business Regulations Office shall submit copies of the application to the Zoning, Health, Sheriff, and Fire Marshal offices;

(d) Immediately upon receipt or at any time prior to February 1st of the renewal year, the Business Regulations Office shall act on the renewal application upon examination to determine that it is complete, that it is for the same location and business activities as the prior license period, and that no unresolved statements of disapproval (from the aforesaid review offices) are on file. Action on license renewal shall be followed by sending a notice of renewal along with any conditions thereof, or disapproval along with the reasons thereof, to the applicant;

(e) At some time during the ensuing year, after receiving notification of a renewal application as in Subsection © above, the reviewing offices shall make a determination that the subject business is in compliance with the laws and regulations administered by such reviewing office, and may make on-site inspections of the business if necessary, and shall communicate any noncompliance and disapproval to the owner or agent of the business and the Office of Business Regulations;

(f) If at any time it is alleged that a currently licensed business is not in compliance with the laws and regulations pertaining thereto, the alleging person or office may submit an appeal to the Board of License Equalization (re: Section 11-2-2) requesting the Board to revoke the license or to cause compliance to laws and regulations within a stated period of time;

(g) The maximum period for which a license may be renewed is one year, and all renewals shall expire on December 31st of each year with a grace period until January 31st of the ensuing year for renewal. (Ord. 2006-22; 5-30-06).

#### 11-1-17. Two or more licenses.

Where, in addition to a business license, the applicant for a business license must also have another license, permit, bond, or franchise approval (such as a retail beer license, building permit, bond for amusement rides operation, or utility line franchise approval) such other approval must be obtained by the applicant either first or simultaneously with the business license approval. (Ord. 2006-22; 5-30-06).

#### 11-1-18. Late charge.

In addition to the business license fee required by Section 11-1-4 above, a notification and special handling late charge fee of five dollars (\$5.00) shall be assessed at the beginning of each month (February 1st, March 1st, April 1st, and May 1st), for a total of up to twenty dollars (\$20.00). The late charge is assessed to defray the added administrative expense for any business for which the license or

license renewal application, and attendant fee payment, are not remitted within the time required by this Chapter. Said charge shall be paid in advance along with the regular application fee at the time of application for a license or license renewal. If the business is found to still be operating and all fees are not paid in full by May 1st, the business shall be referred to the attorney's office for processing. (Ord. 2006-22; 5-30-06).

#### 11-1-19. Refunding of fees.

No license fee or late charge, nor any part thereof, shall be refunded once the license has been approved and issued; when a license or license renewal is disapproved and not issued, \$20 of the fee shall be retained to cover the cost of processing the application and the balance of the fee shall be returned to the applicant. (Ord. 2006-22; 5-30-06).

#### 11-1-20. Display of certificate.

Every certificate of license issued under the provisions of this Chapter shall be posted by the licensee in a conspicuous place upon the wall of the building, room or office of the store or place in which such licensed business is carried on, so that the same may be easily seen. Exception: When the Business Regulations Office finds that no secure place is available to post the business license, the Business Regulations Office can authorize the posting of the license at another designated location. When such certificates of license have expired, the licensee shall remove the same from the place in which it has been posted. It shall be a violation of this Chapter to operate a business, or carry on any business activities (except those exempted under Section 11-1-11) in a building or other site wherein a current business license is not so posted or in which the posted license has expired. (Ord. 2006-22; 5-30-06).

#### 11-1-21. Transfer of certificate.

No business license or renewal certificate shall be exchangeable, assignable, or otherwise transferable, but shall be valid only for the business location, licensee, and business activity that is specifically listed on the license certificate when issued. (Ord. 2006-22; 5-30-06).

#### 11-1-22. Misuse of certificate.

It shall be unlawful for any person to counterfeit a license certificate, or to deface, change, or mutilate a validly issued license certificate, or to post or display such counterfeited or changed certificate. It shall be unlawful to post or display a validly issued license certificate at any place other than the place of business stated thereon at the time of issuance. (Ord. 2006-22; 5-30-06).

## 11-1-23. Consent to inspect.

(a) It shall be unlawful for the owner, his agent, any employee or other person to refuse permission to enter a place of business for inspection purposes, or to charge a fee to enter and inspect, when such inspection is being undertaken in the regular conduct of his duties by an officer of the Business Regulations, Zoning, Health, Sheriff, Fire Marshal, or Board of License Equalization offices, or an expert assisting such officer and in his company.

(b) Any application for a business license or license renewal shall constitute an irrevocable consent of the owner and his agent(s) for such entry and inspection at reasonable times until the license is disapproved, revoked, or expired.

(c) In the course of an inspection, the inspecting officer may demand the exhibition of the license certificate during the period of the license's validity. (Ord. 2006-22; 5-30-06).

## 11-1-24. Revocation after notice and hearing.

Revocation after notice and hearing. Any license issued under this Chapter may be revoked by the Board of License Equalization after notice of the hearing to the licensee, upon specific findings by the Board that the subject business is not in compliance with this Chapter (re: Section 11-2-2). (Ord. 2006-22; 5-30-06).

## 11-1-25. Temporary Uses

A temporary use permit issued pursuant to the provisions of Section 3-34 of the Utah County Zoning Ordinance constitutes a business license for that temporary use which license automatically expires with the temporary use permit. (Ord. 2006-22; 5-30-06).

## 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 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.

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.

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

9. "Director" means the Utah County Community Development Director and such employee(s) of the Community Development Department as he/she may

designate to perform the duties of the 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 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 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).

#### 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;
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 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 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 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 Director a completed application made on a form provide by the 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) 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 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)

#### 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 Director shall immediately issue a temporary license to the applicant. The temporary license shall expire upon the final decision of the Director to deny or grant the sexually oriented business license. Within forty days of the initial filing date of the completed application, the Director shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Director shall approve the issuance of the license unless one or more of the following is found by a preponderance of the evidence to be true:

- a. an applicant is less than eighteen years of age;
- b. an applicant has failed to provide information as required under 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 Director shall issue a temporary license to the applicant. The temporary license shall expire upon the final decision of the Director to deny or grant the sexually oriented business employee license. Within forty days of the date that a completed application is filed, the Director shall either issue a license or issue a written notice of intent to deny a license to the applicant. The 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).

#### 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 31<sup>st</sup> 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 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 Director shall issue a written notice of intent to suspend the sexually oriented business license for a period not to exceed thirty days. The Director shall state the basis for seeking to suspend the license in the notice of intent.

2. If the Director determines that a licensed sexually oriented business employee has violated a provision of this Article, the 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 Director shall state the basis for seeking to suspend the license in the notice of intent. (Ord. 2006-26; 7-11-06).

#### 11-2-10. Revocation or Denial.

1. If the 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 Director shall issue a written notice of intent to revoke the sexually oriented business license. The Director shall state the basis for seeking to revoke the license in the notice of intent.

2. If the Director determines that a licensed

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

3. The 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).

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

1. Once the Director has made the determination that grounds exist to suspend or revoke a sexually oriented business license or sexually oriented business employee license, or to deny a license application for a sexually oriented business license or sexually oriented business employee license, the 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

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 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 Director within the time period prescribed in subsection (1)(b), the 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 Director of the findings, and send a written copy by certified mail to the licensee's/applicant's last known address within five business days of the conclusion of the hearing.

7. Once the Utah County Board of License Equalization has communicated to the Director that grounds do not exist to justify the suspension,

revocation, or denial of the license, the 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 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).

#### 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 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 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 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 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.
- 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).

#### 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).

#### 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 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. Board of License Equalization

#### 11-3-1. Designation.

#### 11-3-2. Duties.

#### 11-3-3. Meetings; records.

#### 11-3-4. Action by the Board.

#### 11-3-5. Filing costs; salaries.

#### 11-3-6. Limit of time for appeal.

#### 11-3-7. Notification of decision; recourse.

#### 11-3-1. Designation.

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)

#### 11-3-2. Duties.

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)

#### 11-3-3. Meetings; records.

Within thirty (30) days of its receipt of an application

for appeal, 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)

#### 11-3-4. 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)

#### 11-3-5. Filing costs; salaries.

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:

a. The appellant has filed a properly completed 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.

b. The application for appeal was properly filed with the Board forty-five (45) days or less after the date of the decision being appealed. The forty-five (45) 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.

c. The appellant has been adversely affected by the subject decision applying the Business Code.

d. Prior to filing the appeal with the Board, and within twenty (20) 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 thirty-five (35) 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 twenty (20) 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.

e. 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.

f. 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)

#### 11-3-6. Filing costs; salaries.

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)

#### 11-3-7. Limit of time for appeal.

All appeals shall be filed with the Board promptly after the cause or act giving rise to the appeal becomes known to the appellant; except for continuing violations of State and County laws and regulations, an appeal shall not be granted when more than forty-five (45) days have elapsed between the act (or failure to act) appealed from and the time of filing. (Ord. 2004-11, 6-15-04)

#### 11-3-8. Notification of decision; recourse.

Within fifteen (15) days after the decision has been made, the Board shall notify the parties of its decisions; any person or entity aggrieved by such decision may have and maintain a plenary action for relief from any court of competent jurisdiction but only if the petitioner for relief is filed with the court within forty-five (45) days after the decision is rendered. (Ord. 2004-11, 6-15-04)

