

Section 9: SEXUALLY ORIENTED BUSINESSES

9.1 General Provisions

- (1) Title: This section shall be known and may be referred to as the Sexually Oriented Business and Sexually Oriented Business Employee Licensing Ordinance.
- (2) Purpose: It is the purpose and object of this section to establish reasonable and uniform regulations governing the time, place and manner of operations of sexually oriented businesses and their employees in Bear River City, Utah. This ordinance shall be construed to protect the governmental interests recognized by this ordinance in a manner consistent with constitutional protections provided by the United States and Utah Constitutions.
- (3) General applicability: This section imposes regulatory standards and license requirements on certain business activities, which are characterized as “sexually oriented businesses” and certain employees of those businesses characterized as “sexually oriented business employees”.
- (4) Obscenity: Nothing herein shall be deemed to permit or allow the showing or display of any matter which is contrary to the provisions of applicable federal or state laws prohibiting obscenity or lewdness.

9.2 Definitions

For the purpose of this ordinance the following definitions shall apply:

- (1) **Adult business** shall mean an adult motion picture theater, adult bookstore, adult video store or adult theater.
- (2) **Adult bookstore** or **adult video store** means a commercial establishment which:
 - (a) Holds itself out to be such a business;
 - (b) Excludes minors from more than fifteen percent of the retail floor or shelf space of the premises; or

(c) As one of its principal purposes, offers for sale or rent, for any form of consideration, any one or more of the following: books, magazines, periodicals, photographs, films, motion pictures, video cassettes or video reproductions, slides or other printed or visual representations, the central theme of which depicts or describes specified sexual activities or specified anatomical areas, the depiction or description of which is regulated or prohibited by this ordinance, or offers for sale or rent any instruments, devices or paraphernalia which are designated for use in connection with such sexual activities, except for legitimate medically recognized contraceptives.

(3) **Adult motion picture theater** means a commercial establishment which:

(a) Holds itself out as such business;

(b) Holds two consecutive exhibitions or performances which exclude minors. Repeated showing of any single presentation shall not be considered a consecutive exhibition; or

(c) As its principal business, shows, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions which are primarily characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(4) **Adult theater** means a theater, concert hall, auditorium, or similar commercial establishment which:

(a) Holds itself out as such a business;

(b) Holds two consecutive exhibitions or performances which exclude minors. Repeated showing of any single presentation shall not be considered a consecutive exhibition; or

(c) As its principal business, features persons who appear in live performance in a state of semi-nudity.

(5) **Business License Authority** shall mean Bear River City's business license officer or designee.

(6) **Employ** shall mean hiring an individual to work for pecuniary or any other form of compensation whether such person is hired on the payroll of the employer, as an independent contractor, as an agent or in any other form of employment relationship.

(7) **Escort** shall mean any person who, for pecuniary compensation, dates, socializes, visits, consorts with or accompanies or offers to date, consort, socialize, visit or accompany another or others to or about social affairs, entertainment or places of amusement or within any place of public or private resort or any business or commercial

establishment or any private quarters. “Escort” shall not be construed to include persons who provide business or personal services such as licensed private nurses, aides for the elderly or handicapped, social secretaries or similar service personnel:

(a) Whose relationship with their patron is characterized by a bona fide contractual relationship having a duration of more than twelve hours; or

(b) Who provide a service not principally characterized as dating or socializing. “Escort” shall also not be construed to include persons providing services such as singing telegrams, birthday greetings or similar activities characterized by appearances in a public place, contracted for by a party other than the person for whom the service is being performed and of duration of not longer than one hour.

(8) **Escort service** shall mean an individual or entity that, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce patrons to escorts.

(9) **Escort service runner** shall mean any third person, not an escort, who, for pecuniary compensation, acts in the capacity of an agent or broker for an escort service, escort or patron by contacting or meeting with escort services, escorts or patrons at any location within Bear River City, whether or not said third person is employed by such escort service, escort, patron, or by another business or is an independent contractor or self-employed.

(10) **Nude or state of nudity** shall mean the state of dress in which the areola of the female breast, or male or female genitals, pubic region, or anus are covered by less than the covering required in the definition of semi-nude.

(11) **Out-call services** shall mean services of a type performed by a sexually oriented business employee outside of the premises of the licensed sexually oriented businesses physical facilities including, but not limited to, escorts, models, dancers and other similar employees. Escort services and escort service runners shall be considered “out-call services” for the purposes of this ordinance.

(12) **Patron** means any person who contracts with or employs any escort services or escort or the customer of any business licenses pursuant to this ordinance.

(13) **Pecuniary compensation** means any commission, fee, salary, tip, gratuity, hire, profit, reward or any other form of consideration.

(14) **Person** shall mean any person, unincorporated association, corporation, partnership or other legal entity.

(15) **Semi-nude or state of semi-nudity** shall mean a state of dress in which opaque clothing covers no more than the areola of the female breast and the male or female genitals, pubic region, and anus with a covering no narrower than four inches wide in the

front and five inches wide in the back, which shall not taper to less than one inch wide at the narrowest point.

(16) **Semi-nude entertainment business** shall mean a business where employees perform or appear in the presence of patrons of the business in a state of semi-nudity. A business shall also be presumed to be a “semi-nude entertainment business” if the business holds itself out as such a business.

(17) **Semi-nude dancing agency** shall mean any person, agency, firm, corporation, partnership or any other entity or individual which furnishes or otherwise engages or offers to furnish or engage the service of a professional dancer licensed pursuant to this ordinance for performance or appearance at a semi-nude entertainment business.

(18) **Sexually oriented business** shall mean out-call services, adult businesses, semi-nude entertainment businesses, and semi-nude dancing agencies as defined herein.

(19) **Sexually oriented business employees** shall mean those employees who work for sexually oriented businesses in activities, which relate in any way to the sexually oriented portion of the business. This includes all managers, dancers, escorts, models and other similar employees of a sexually oriented businesses, whether hired as employees, agents or as independent contractors. “Sexually oriented business employees” shall not include individuals whose work is unrelated to the sexually oriented portion of the business such as, janitors, bookkeepers, cooks, serving persons, bartenders and similar employees except where they may be managers or supervisors of the business. All persons making out-call meetings under this ordinance, including escorts, models, dancers, guards, escort service runners, drivers, chauffeurs and other similar employees shall be considered “sexually oriented business employees”.

(20) **Specified anatomical areas** shall mean the human male or female pubic area and anus with less than a full opaque covering, and the human female breast below the top of the areola, with less than full opaque covering.

(21) **Specified sexual activities** means;

(a) Acts of:

(i) Masturbation (ii) Human sexual intercourse; (iii) Fellatio; (iv) Cunnilingus; (v) Bestiality; (vi) Pederasty; (vii) Buggery; or (viii) Anal copulation between a human male and another human male, human female or beast.

(b) Manipulating, caressing or fondling the human genitals, the human pubic area, the human anus, or the human female breast with the intent to excite or arouse the actors or any other person.

(c) Flagellation or torture by or upon a person for purposes of sexual gratification or pleasure of the actors or other persons, or the condition of being fettered, bound

or otherwise physically restrained for purposes of sexual gratification or pleasure of the actors or other persons.

9.3 Zoning.

Sexually oriented businesses licensed pursuant to this ordinance shall only be allowed in areas zoned for such use.

9.4 Business license required.

(1) It will be unlawful for any person to operate a sexually oriented business without first obtaining a sexually oriented business license. The business license shall specify the category of business for which it is obtained.

(2) Business categories of sexually oriented businesses are;

- (a) Out-call services;
- (b) Adult business;
- (c) Semi-nude entertainment businesses;
- (d) Semi-nude dancing agency.

(3) No business may be listed for more than one category of sexually oriented business, except that a business may have licensed both for out-call services and as a semi-nude dancing agency.

9.5 Employee license.

It is unlawful for any sexually oriented business to employ or for any individual to be employed by a sexually oriented business in the capacity of a sexually oriented business employee, as defined herein, unless that employee first obtains a sexually oriented business employee license.

9.6 Exemptions from license requirements.

The licensing provisions of this ordinance shall not apply to any licensed sex therapist, licensed physician, licensed nurse, licensed psychologist or licensed educator acting within the scope of his or her profession or employment.

9.7 Legitimate artistic modeling.

(1) Bear River City does not intend to unreasonably or improperly prohibit legitimate modeling which may occur in a state of nudity for purposes protected by the First Amendment or similar state protections. Bear River City does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling. Notwithstanding, a licensed out-call employee may appear in a state of nudity before a customer or patron provided a written contract for such appearance was entered into between the customer or patron and the employee and signed by both the customer or

patron and the employee at least twenty-four hours before the nude appearance. All of the other applicable provisions of this ordinance shall still apply to such nude appearance.

(2) In the event of a contract for nude modeling signed more than forty-eight hours in advance of the modeling or appearance, the individual to appear nude shall not be required to obtain a license pursuant to this ordinance. During any such unlicensed nude appearance, it shall be unlawful to:

- (a) Appear nude or seminude in the presence of persons under the age of 18;
- (b) Allow or agree to allow any physical contact between the contracting party or any third party and the individual appearing nude;
- (c) Commit prostitution, solicitation of prostitution, solicitation of a minor, or activities harmful to a minor;
- (d) Perform or participate in any specified sexual activity; or
- (e) Allow or agree to allow the contracting party or any other person to masturbate in the presence of the individual appearing nude.

9.8 License - Application Disclosures.

(1) Before any applicant may be licensed to operate a sexually oriented business or as a sexually oriented business employee pursuant to this ordinance, the applicant shall submit, on a form to be provided by Bear River City, along with all appropriate attachments, all of the following information:

- (a) The correct legal name of the applicant;
- (b) Any other names or aliases used by the applicant;
- (c) The applicant's age, date and place of birth;
- (d) The applicant's height;
- (e) The applicant's weight;
- (f) The applicant's hair color;
- (g) The applicant's eye color;
- (h) The applicant's present business address and telephone number;
- (i) The applicant's present residence address and telephone number;
- (j) The applicant's Utah driver's license or identification number;
- (k) Acceptable written proof that any individual is at least 18 years of age or, in the case of employees to be employed in businesses where a different age is required, proof of the required age;
- (l) Two color photographs of the applicant clearly showing the individual's face and the applicant's fingerprints on a form provided by a local law enforcement agency. For applicants not residing in Bear River City the fingerprints shall be on a form provided by a law enforcement agency located in the jurisdiction where the applicant resides. Fees for the photographs and fingerprints shall be paid by the applicant directly to the issuing agency;

(m) For any individual required to obtain a sexually oriented business employee license to perform out-call services or as a semi-nude entertainer, a certificate from the Bear River Health Department, or other health agency or personnel designated by Bear River City stating that the individual has, within thirty days immediately preceding the date of the application, been examined and found to be free of any contagious or communicable disease;

(n) A statement of the business, occupation and employment history of the applicant for three years immediately preceding the date of the filing of the application;

(o) A statement detailing the license or permit history of the applicant for the five-year period immediately preceding the date of the filing of the application, including whether such applicant ever had a license, permit, or authorization to do business denied, revoked or suspended, or has had any professional or vocational license or permit denied, revoked or suspended in Bear River City or any other jurisdiction. In the event of any such denial, revocation or suspension, state the date, the name of issuing or denying jurisdiction and state in full the reasons for the denial, revocation or suspension. A copy of any order or denial, revocation or suspension shall be attached to the statement;

(p) A statement detailing all criminal convictions or pleas of nolo contendere, except those which have been expunged and minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense), and the disposition of all such arrests occurring within the five years immediately preceding the date of the application. The statement shall include the date, place, and nature of each conviction or plea of nolo contendere and the sentence imposed for each such conviction or plea of nolo contendere. The statement shall also identify the convicting jurisdiction and the sentencing court and provide the case numbers or docket numbers for each such incident. Application for a sexually oriented business or employee license shall constitute a waiver of disclosure of any criminal conviction or plea of nolo contendere for the purposes of any proceeding involving the business or employee license;

(q) A description of the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees for services to be charged by the licensee and any rules, regulations or employment guidelines under or by which the business intends to operate. This description shall also include:

(i) The hours that the business or service will be open to the public and the methods of promoting the health and safety of employees and patrons and preventing them from engaging in illegal activity;

(ii) The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities;

(iii) The methods of supervising employees and patrons to prevent employees and patrons from charging or receiving fees for services or acts prohibited by this ordinance or other statutes or ordinances; and

(iv) The methods of screening employees and customers in order to promote the health and safety of employees and customers and prevent the

transmission of disease, and prevent the commission of acts of prostitution or other criminal activity.

(r) For adult businesses and semi-nude entertainment businesses a diagram drawn to scale of the business premises. The diagram need not be a professional engineer's or architect's rendering; however, the diagram must show marked internal dimensions, all overhead lighting fixtures and ratings for illumination capacity. The design and construction shall conform to the following:

(i) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms;

(ii) For businesses which exclude minors from the entire premises all windows, doors and other apertures to the premises shall be darkened or otherwise constructed to prevent anyone outside the premises from seeing the inside of the premises. Businesses which exclude minors from less than all of the premises shall be designed and constructed so that minors may not see into the area from which they are excluded; and

(iii) For semi-nude entertainment businesses and adult theaters, a solid physical barrier at least three feet high and six inches wide shall separate all performing areas from areas where customers and patrons are permitted.

(2) In the event the applicant is not the owner of record of the real property upon which the proposed business is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of business for which the applicant seeks a license for the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well as the copy of the lease or rental agreement pertaining to the premises in which the business is to be located.

(3) If the applicant is a corporation, partnership, limited partnership, limited liability company, limited liability partnership or any other non-individual legal entity the information required for individual applicants shall be submitted for each officer, trustee and director of the applicant entity and for any partner, member or shareholder holding more than ten percent of the stock of the applicant entity. Any individual or legal entity doing business under an assumed name shall provide the required information for the principle operating under the assumed name.

(4) All corporate and other non-individual entity applicants shall identify each individual authorized to sign the checks for the entity.

9.9 License fees.

(1) Each applicant for a sexually oriented business license or a sexually oriented business employee license shall submit with the application an application and licensing fee pursuant to the schedule established in the Bear River City Fee Schedule. The application and licensing fee may include:

- (a) An annual business license fee;
- (b) A onetime, non-refundable investigation fee; and
- (c) An annual sexually oriented business employee license fee.

(2) The application and licensing fee shall not be prorated to reflect any portion of the license year but shall be paid in full without regard to the date of application.

9.10 Submission of application to reviewing agencies.

Upon receipt of an application for a sexually oriented business license the Bear River City Business License Authority shall distribute copies of the application and all relevant attached materials to the local or regional Health Department, the Bear River City Fire Department or the Box Elder County Fire District, the local law enforcement agency, the Bear River City Building Official, the Bear River City Zoning Official and the Bear River City Planning Commission for their review and approval. Each such agency or department shall limit its review of the application to those matters under its jurisdiction.

9.11 Issuance of license.

(1) The Bear River City Business License Authority shall approve the issuance of a license to an applicant within 30 days after the receipt of an application, unless one or more of the following is found:

- (a) The applicant is under 18 years of age, or any higher age if the license sought so requires;
- (b) The applicant is overdue in payment to Bear River City of taxes, fees, fines or penalties assessed against the applicant or imposed upon the applicant in relation to a sexually oriented business;
- (c) The applicant has failed to answer or has falsely answered a material question or request for information;
- (d) The applicant has been convicted of a violation of a provision of this ordinance within two years immediately preceding the application;
- (e) The business premises do not conform to the standards set forth in Section 9.8(1)(s);

(f) The proposed business premises have not received the approval of the reviewing agencies and departments enumerated in Section 9.10 of this ordinance;

(g) The license fees required by this ordinance or by other ordinances have not been paid;

(h) The applicant has been convicted or pled nolo contendere to a crime involving prostitution; exploitation of prostitution; aggravated promotion of prostitution; aggravated exploitation of prostitution; solicitation of sex acts; sex acts for hire; compelling prostitution; aiding prostitution; sale, distribution or display of material harmful to minors; sexual performance by minors; possession of child pornography; public lewdness; indecent exposure; any crime involving sexual abuse or exploitation of a child; sexual assault or aggravated sexual assault; rape; forcible sodomy; forcible sexual abuse, incest, harboring a runaway child; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving similar elements from any jurisdiction regardless of the exact title of the offense; for which

(i) less than two years have elapsed from the date of conviction if the conviction is for a misdemeanor offense; or

(ii) less than five years have elapsed from the date of conviction if the conviction is for a felony offense;

(i) The applicant is otherwise in violation of this ordinance.

(2) If any agency or department enumerated in Section 9.10 of this ordinance cannot complete its review of the proposed business premises within the thirty-day period, the agency or department may obtain from the Bear River City Business License Authority an extension of time for their review of no more than fifteen (15) days. The total time within which Bear River City must approve or deny a license shall not exceed forth-five days from the receipt of the application.

(3) Upon receipt of an application all departments required to review the application shall determine within seven days whether or not the application contains all of the information necessary for processing. Incomplete applications shall immediately be returned to the applicant with a specification of the items, which are incomplete.

(4) The time for processing applications specified in this section shall begin to run from the receipt of a complete application.

(5) In the event that a license for a sexually oriented business or sexually oriented business employee has not been disapproved with thirty days (or forty-five if an extension has been granted) the Bear River City Business License Authority shall issue the license pending completion of Bear River City's review.

(6) Any license issued pursuant to subsection (5) above may be revoked by the Bear River City Council if upon completion of a full review, the Bear River City Business License Authority determines that the license should have been denied.

9.12 Changes in information.

Any change in the information required to be submitted under this ordinance for a sexually oriented business license or a sexually oriented business employee license shall be provided, in writing, to the Bear River City Business License Authority within fourteen (14) days of such change.

9.13 Transfer limitations.

Sexually oriented business licenses granted under this ordinance shall not be transferable.

9.14 Bond.

Each applicant for a sexually oriented business license or a sexually oriented business employee license shall post with the Bear River City Business License Authority a cash or corporate surety bond payable to Bear River City in the amount of two thousand dollars (\$2,000.00). In the event that funds are drawn against the cash or surety bond to pay such fines the bond shall be replenished to two thousand dollars (\$2,000.00) within fifteen (15) days of the date of notice of any draw against it.

9.15 Term of license – Proration of license fees.

Sexually oriented business licenses and sexually oriented business employee licenses issued pursuant to this ordinance shall be valid from the date of issuance through January 1st of the following year and may be renewed each year by paying the required annual license fees.

9.16 Location and name.

(1) It is unlawful to conduct business under a license issued pursuant to this ordinance at any location other than the licensed premises. Any location to which telephone calls are automatically forwarded by said business shall require a separate license.

(2) It is unlawful for any sexually oriented business to do business under any name other than the business name specified in the application.

9.17 Display of license.

All sexually oriented businesses licensed pursuant to this ordinance shall display the license granted pursuant to this ordinance in a prominent location within the business premises. All individuals licensed pursuant to this ordinance shall carry their sexually oriented business employee license on their persons at all times while engaged in licensed activities within the corporate boundaries of Bear River City. If the individual is nude or semi-nude such license shall be visibly displayed in the same room in which the employee is performing. It is unlawful to fail

to show the appropriate licenses while engaged in licensed activities within the corporate boundaries of Bear River City when requested to do so by any law enforcement officer or other Bear River City official.

9.18 License in advertising.

All sexually oriented businesses advertisements shall state that the sexually oriented business or sexually oriented business employee is licensed by Bear River City and shall include the license number.

9.19 Violations.

Any violation of this ordinance not otherwise classified herein or elsewhere in the Bear River City Municipal Code shall be a Class B Misdemeanor.

9.20 Amendment.

It is hereby declared that none of the provisions contained in this ordinance shall vest any rights in any person, unincorporated association, corporation, partnership, or other legal entity, and may be amended by the Bear River City Council at anytime.