

MILLVILLE CITY CODE
TITLE 5 - BUSINESS LICENSES AND REGULATIONS
CHAPTER 5.16 - SEXUALLY ORIENTED BUSINESSES

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5.16.010: TITLE FOR CITATION

The provisions codified in this chapter shall be known and may be referred to as the sexually oriented business and employee licensing ordinance. (Ord. 2000-6 § 3)

5.16.020: PURPOSE OF PROVISIONS

It is the purpose and object of this chapter that the city establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses or their location in areas deleterious to the city, regulate the signage of such businesses, control the adverse effects of such signage, and prevent inappropriate exposure of such businesses to the community. This chapter is to be construed as a regulation of the time, place, and manner of operation of sexually oriented businesses and their employees in the city. This chapter shall be construed to protect the governmental interests recognized by this chapter in a manner consistent with constitutional protections provided by the United States and Utah constitutions. (Ord. 2000-6 § 3)

5.16.030: APPLICATION OF PROVISIONS

This chapter 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. Except where the context or specific provisions require, this chapter does not supersede or nullify any other related ordinances. (Ord. 2000-6 § 3)

5.16.040: DEFINITIONS

Terms involving sexually oriented business which are not defined in this title shall have the meanings set forth in the Utah code. For the purpose of this chapter, the following words shall have the following meanings:

ADULT BOOKSTORE OR ADULT VIDEO STORE: A commercial establishment:

- A. Which excludes minors from more than fifteen percent (15%) of the retail floor or shelf space of the premises; or
- B. Which, as one of its principal purposes, offers for sale or rental, for any form of consideration, any one or more of the following: books, magazines, periodicals, or other printed matter; or photographs, films, motion pictures, video cassettes, or video reproductions, slides, or other visual representations, the central theme of which depicts or describes "specified sexual activities" or "specified anatomical areas"; or instruments,

devices, or paraphernalia which are designated for use in connection with "specified sexual activities", except for legitimate medically recognized contraceptives.

ADULT BUSINESS: An adult motion picture theater, adult bookstore or adult video store.

ADULT MOTION PICTURE THEATER: A commercial establishment which:

- A. Excludes minors from the showing of two (2) consecutive exhibitions (repeated showings of any single presentation shall not be considered a consecutive exhibition); or
- B. 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".

ADULT THEATER: A theater, concert hall, auditorium, or similar commercial establishment which:

- A. Holds itself out as such a business; or
- B. Excludes minors from the showing of two (2) consecutive exhibitions (repeated performance of the same presentation shall not be considered a consecutive exhibition); or
- C. As its principal business, features persons who appear in live performances in a state of seminudity or which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

EMPLOY: 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.

ESCORT: 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 whose relationship with their patron is characterized by a bona fide contractual relationship having a duration of more than twelve (12) hours and 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 a duration not longer than one hour.

ESCORT SERVICE: An individual or entity who, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce patrons to escorts.

ESCORT SERVICE RUNNER: 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 the city, whether or not such third person is employed by such escort service, escort, patron, or by another business, or is an independent contractor or self-employed.

NUDITY: A 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 "seminude".

OPERATOR: The manager or other natural person principally in charge of a sexually oriented business.

OUTCALL SERVICES: Services of a type performed by a sexually oriented business employee outside of the premises of the licensed sexually oriented business, including, but not limited to, escorts, models, dancers and other similar employees.

PATRON: Any person who contracts with or employs any escort services or escort or the customer of any business licensed pursuant to this chapter.

PECUNIARY COMPENSATION: Any commission, fee, salary, tip, gratuity, hire, profit, reward, or any other form of consideration.

PERSON: Any person, unincorporated association, corporation, partnership, or other legal entity.

SEMINUDE: 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 shall be fully covered by an opaque covering no narrower than four inches (4") wide in the front and five inches (5") wide in the back, which shall not taper to less than one inch (1") wide at the narrowest point.

SEMINUDE DANCING AGENCY: Any person, agency, firm, corporation, partnership, or any other entity or individual which furnishes, books, or otherwise engages or offers to furnish, book, or otherwise engage the service of a professional dancer licensed pursuant to this chapter for performance or appearance at a business licensed for adult theaters.

SEMINUDE ENTERTAINMENT BUSINESS: A business, including adult theater, where employees perform or appear in the presence of patrons of the business in a state of seminudity. A business shall also be presumed to be a seminude entertainment business if the business holds itself out as such a business.

SEXUALLY ORIENTED BUSINESS: Seminude entertainment businesses, sexually oriented outcall services, adult businesses, and seminude dancing agencies, as defined by this chapter.

SEXUALLY ORIENTED BUSINESS EMPLOYEES: Those employees who work on the premises of a sexually oriented business in activities related to the sexually oriented portion of the business. This includes all managing employees, dancers, escorts, models, and other similar employees, whether or not hired as employees, agents, or as independent contractors. Employees shall not include individuals whose work is unrelated to the sexually oriented portion of the business, such as janitors, bookkeepers, and similar employees. Sexually oriented business employees shall not include cooks, serving persons, and similar employees, except where they may be managers or supervisors of the business. All persons making outcall meetings under this chapter, including escorts, models, guards, escort runners, drivers, chauffeurs, and other similar employees, shall be considered sexually oriented business employees.

SPECIFIED ANATOMICAL AREAS: The human male or female pubic area or anus with less than a full opaque covering, or the human female breast below a point immediately above the top of the areola, with less than full opaque covering.

SPECIFIED SEXUAL ACTIVITIES:

A. Acts of:

1. Masturbation,
2. Human sexual intercourse,
3. Sexual copulation between a person and a beast,
4. Fellatio,
5. Cunnilingus,
6. Bestiality,
7. Pederasty,
8. Buggery, or

9. Any anal copulation between a human male and another human male, human female, or beast;
- B. Manipulating, caressing or fondling by any person of:
1. The genitals of a human,
 2. The pubic area of a human,
 3. The breast or breasts of a human female;
- C. Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed. (Ord. 2000-6 § 3)

5.16.050: OBSCENITY AND LEWDNESS; STATUTORY PROVISIONS

- A. Notwithstanding anything contained in this chapter, nothing in this chapter shall be deemed to permit or allow the showing or display of any matter which is contrary to applicable federal or state statutes prohibiting obscenity.
- B. Notwithstanding anything contained in this chapter, nothing in this chapter shall be deemed to permit or allow the showing or display of any matter which is contrary to the provisions of section 9.24.110, "Lewdness; Public Urination", of this code. Provided, however, that for the purpose of sexually oriented businesses the definition of "private parts" shall be construed to mean "nudity" as defined in this chapter. (Ord. 2000-6 § 3)

5.16.060: LOCATION AND ZONING RESTRICTIONS

It is unlawful for any sexually oriented business to do business at any location within the city not zoned for such business. Sexually oriented businesses licensed as adult businesses or seminude entertainment businesses pursuant to this chapter shall only be allowed in areas zoned for their use pursuant to title 17 of this code.

- A. Outcall services shall be permitted in areas zoned CM;

B. Sexually oriented businesses shall only be permitted in areas zoned CM under **title 17** of this code, subject to the following additional restrictions:

1. No sexually oriented business shall be located:
 - a. Within one thousand feet (1,000') of any school, public park, library, or religious institution,
 - b. Within six hundred feet (600') of any residential use or any residential zoning boundary,
 - c. Within six hundred feet (600') of any other sexually oriented business, except outcall services,
 - d. Within three hundred fifty feet (350') of any gateway corridor. The distance shall be measured from the right of way boundary;

C. Distance requirements between structures and uses specified in this section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the property boundaries of the school, public park, religious or cultural activity, residential use, or other sexually oriented business, or from the right of way line of a gateway to the structure of the sexually oriented business;

D. Distance requirements from zoning districts for this section shall be measured in a straight line, without regard to intervening structures or zoning districts, from the closest zoning boundary of a residential district to the sexually oriented business structure. (Ord. 2013-2, 2013: Ord. 2000-6 § 3)

5.16.070: BUSINESS LICENSE REQUIRED

It is unlawful for any person to operate a sexually oriented business, as specified herein, without first obtaining a general business license and a sexually oriented business license. The sexually oriented business license shall specify the type of business for which it is obtained. (Ord. 2000-6 § 3)

5.16.080: EXEMPTIONS FROM LICENSE REQUIREMENTS

The provisions of this chapter shall not apply to any sex therapist or similar individual licensed by the state to provide bona fide sexual therapy or counseling, licensed medical practitioner,

licensed nurse, psychiatrist, psychologist, nor shall it apply to any educator licensed by the state for activities in the classroom. (Ord. 2000-6 § 3)

5.16.090: LEGITIMATE ARTISTIC MODELING

- A. The 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. The city does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling. Notwithstanding the provisions of section 5.16.220 of this chapter, a licensed outcall employee may appear in a state of nudity before a customer or patron, providing that a written contract for such appearance was entered into between the customer or patron and the employee and signed at least twenty four (24) hours before the nude appearance. All of the other applicable provisions of this chapter shall still apply to such nude appearance.

- B. In the event of a contract for nude modeling or appearance signed more than forty eight (48) hours in advance of the modeling or appearance, the individual to appear nude shall not be required to obtain a license pursuant to this chapter. During such unlicensed nude appearance, it is unlawful to:
 - 1. Appear nude or seminude in the presence of persons under the age of eighteen (18);
 - 2. Allow, offer, or agree to any touching of the contracting party or other person by the individual appearing nude;
 - 3. Allow, offer, or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or committing activities harmful to a minor;
 - 4. Allow, offer, commit, or agree to any sex act as validly defined by city ordinances or state statute;
 - 5. Allow, offer, agree, or permit the contracting party or other person to masturbate in the presence of the individual contracted to appear nude;
 - 6. Allow, offer, or agree for the individual appearing nude to be within five feet (5') of any other person while performing or while nude or seminude. (Ord. 2000-6 § 3)

5.16.100: BUSINESS CATEGORIES; NUMBER OF LICENSES

- A. It is unlawful for any business premises to operate or be licensed for more than one category of sexually oriented business, except that a business may have a license for both outcall services and a seminude dancing agency on the same premises.
- B. The categories of sexually oriented businesses are:
 - 1. Outcall services;
 - 2. Adult businesses;
 - 3. Seminude entertainment businesses;
 - 4. Seminude dancing agency. (Ord. 2000-6 § 3)

5.16.110: EMPLOYEE LICENSES

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, unless that employee first obtains a sexually oriented business employee license. (Ord. 2000-6 § 3)

5.16.120: LICENSE; APPLICATION; DISCLOSURES REQUIRED

- A. Before any applicant may be licensed to operate a sexually oriented business or as a sexually oriented business employee pursuant to this chapter, the applicant shall submit, on a form to be supplied by the city license authority, the following:
 - 1. The correct legal name of each applicant, corporation, partnership, limited partnership, or entity doing business under an assumed name;
 - 2. If the applicant is a corporation, partnership, or limited partnership, or individual or entity doing business under an assumed name, the information required below for individual applicants shall be submitted for each partner and each principal of an applicant, and for each officer, director, and any shareholder (corporate or personal) of more than ten percent (10%) of the stock of any applicant. Any

holding company, or any entity holding more than ten percent (10%) of an applicant, shall be considered an applicant for purposes of disclosure under this chapter;

The shareholder disclosure requirements above shall only be applicable for outcall service licenses;

3. All corporations, partnerships, or noncorporate entities included on the application shall also identify each individual authorized by the corporation, partnership, or noncorporate entity to sign the checks for such corporation, partnership, or noncorporate entity;
4. For all applicants or individuals, the application must also state:
 - a. Any other names or aliases used by the individual,
 - b. The age, date, and place of birth,
 - c. Height,
 - d. Weight,
 - e. Color of hair,
 - f. Color of eyes,
 - g. Present business address and telephone number,
 - h. Present residence and telephone number,
 - i. Utah driver's license or identification number, and
 - j. Social security number;
5. Acceptable written proof that any individual is at least eighteen (18) years of age;
6. Attached to the form, as provided above, two (2) color photographs of the applicant clearly showing the individual's face and the individual's fingerprints on a form provided by the police department. For persons not residing in the city, the photographs and fingerprints may be on a form from the law enforcement jurisdiction where the person resides. Fees for the photographs and fingerprints shall be paid by the applicant directly to the issuing agency;

7. For any individual applicant required to obtain a sexually oriented business employee license as an escort or a seminude entertainer, a certificate from the Bear River health department, stating that the individual has, within thirty (30) days immediately preceding the date of the original or renewal application, been examined and found to be free of any contagious or communicable diseases;
8. A statement of the business, occupation, or employment history of the applicant for three (3) years immediately preceding the date of the filing of the application;
9. A statement detailing the license or permit history of the applicant for the five (5) year period immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate, in this or any other county, city, state, or territory, has 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 the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying jurisdiction, and state in full the reasons for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application;
10. All criminal convictions or pleas of nolo contendere, except those which have been expunged, and the disposition of all such arrests for the applicant, individual, or other entity subject to disclosure under this chapter, for five (5) years prior to the date of the application. This disclosure shall include identification of all ordinance violations, excepting minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense), stating the date, place, nature of each conviction or plea of nolo contendere, and sentence of each conviction or other disposition, identifying the convicting jurisdiction and sentencing court, and providing the court identifying case numbers or docket numbers. 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;
11. In the event the applicant is not the owner of record of the real property upon which the business or proposed business is or 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 service is or will be located;

12. 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:
 - a. The hours that the business or service will be open to the public, and the methods of promoting the health and safety of the employees and patrons and preventing them from engaging in illegal activity,
 - b. The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities,
 - c. The methods of supervising employees and patrons to prevent employees and patrons from charging or receiving fees for services or acts prohibited by this chapter or other statutes or ordinances,
 - d. 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.

- B. It is unlawful to knowingly submit false or materially misleading information on or with a sexually oriented business license application or to fail to disclose or omit information for the purpose of obtaining a sexually oriented business or employee license. (Ord. 2000-6 § 3)

5.16.130: FEES

Each applicant for a sexually oriented business or employee license shall be required to pay regulatory license fees as set forth by resolution. An application is not complete until all appropriate fees have been paid. (Ord. 2000-6 § 3)

5.16.140: BOND

Each applicant for a sexually oriented business license shall post, with the city's treasurer, a cash or corporate surety bond payable to the city in the amount of two thousand dollars (\$2,000.00). Any fines assessed against the business, officers, or managers for violations of city ordinances shall be taken from this bond if not paid in cash within ten (10) days after notice of

the fine, unless an appeal is filed as provided by this chapter. In the event the funds are drawn against the cash or surety bond to pay such fines, the bond shall be replenished to two thousand dollars (\$2,000.00) within fifteen (15) days of the date of notice of any draw against it. (Ord. 2000-6 § 3)

5.16.150: PREMISES' LOCATION AND NAME

- A. It is unlawful to conduct business under a license issued pursuant to this chapter at any location other than the licensed premises. Any location to which telephone calls are automatically forwarded by such business shall require a separate license.
- B. It is unlawful for any sexually oriented business to do business in the city under any name other than the business name specified in the application. (Ord. 2000-6 § 3)

5.16.160: ISSUANCE CONDITIONS

The city council shall approve the issuance of a license to the applicant within thirty (30) days after receipt of a completed application, unless the council finds one or more of the following:

- A. The applicant is under eighteen (18) years of age;
- B. The applicant is overdue in payment to the city of taxes, fees, fines, or penalties assessed against the applicant or imposed on the applicant in relation to a sexually oriented business;
- C. The applicant has falsely answered a material question or request for information as authorized by this chapter;
- D. The applicant has violated a provision of this chapter or similar provisions found in statutes or ordinances from any jurisdiction within two (2) years immediately preceding the application; a criminal conviction for a violation of a provision of this chapter or similar provisions from any jurisdiction, whether or not it is being appealed, is conclusive evidence of a violation, but a conviction is not necessary to prove a violation;
- E. The premises to be used for the business have been disapproved by the Bear River health department, the fire department, the police department, the building officials, or the zoning officials as not being in compliance with applicable laws and ordinances of the city. If any of the foregoing reviewing agencies cannot complete their review within the thirty (30) day approval or denial period, the agency or department may obtain from

the city council an extension of time of no more than fifteen (15) days for their review. The total time for the city to approve or deny a license shall not exceed forty five (45) days from the receipt of a completed application and payment of all fees. Businesses located outside of the corporate boundaries of the city, but requiring a license under this chapter, may be denied a license pursuant to this chapter if the business does not have a valid business license to conduct business at the business location from the appropriate jurisdiction for that location:

1. Upon receipt of an application, all departments required to review the application shall determine within seven (7) days whether or not the application is incomplete in items needed for processing. Incomplete applications shall immediately be returned to the applicant with a specification of the items which are incomplete,
 2. The time for processing applications specified in this section shall begin to run from the receipt of a complete application,
 3. In the event that a license for seminude entertainment, seminude dancing agencies, adult businesses, or seminude entertainment businesses has not been disapproved within thirty (30) days or the forty five (45) days allowed after an extension, the city shall issue the license pending completion of the city's review,
 4. Any license issued pursuant to subsection E3 of this section may be revoked by the city, pursuant to the revocation procedures provided for herein, if the completed review determines that the license should have been denied;
- F. The required license fees have not been paid;
- G. All applicable sales and use taxes have not been paid;
- H. An applicant for the proposed business is in violation of or not in compliance with this chapter or similar provisions found in statutes or ordinances from any jurisdiction;
- I. An applicant has been convicted or pled nolo contendere to a crime:
1. 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; 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:

- a. Less than two (2) years have elapsed from the date of conviction, if the conviction is of a misdemeanor offense, or less than five (5) years if the convictions are of two (2) or more misdemeanors within the five (5) years, or
 - b. Less than five (5) years have elapsed from the date of conviction, if the offense is of a felony;
2. The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section. (Ord. 2000-6 § 3)

5.16.170: TERM

Sexually oriented business and employee licenses issued pursuant to this chapter shall be valid from the date of issuance through July 1 of each succeeding year. The license fees as required by resolution shall not be prorated for any portion of a year, but shall be paid in full for whatever portion of the year the license is applied for. (Ord. 2000-6 § 3)

5.16.180: NOTICE OF CHANGE OF INFORMATION

Any change in the information required to be submitted under this chapter for either a sexually oriented business license or sexually oriented business employee license shall be given, in writing, to the city council and the police department within fourteen (14) days after such change. (Ord. 2000-6 § 3)

5.16.190: TRANSFER LIMITATIONS

Sexually oriented business licenses granted under this chapter shall not be transferable. It is unlawful for a license held by an individual to be transferred. It is unlawful for a license held by a corporation, partnership, or other noncorporate entity to transfer any part in excess of ten percent (10%) thereof, without filing a new application and obtaining prior city approval. If any transfer of the controlling interest in a business licensee occurs, the license is immediately null and void, and the business shall not operate until a separate new license has been properly issued by the city as provided in this chapter. (Ord. 2000-6 § 3)

5.16.200: DISPLAY

It is unlawful for any sexually oriented business location within the boundaries of the city to fail to display the license granted pursuant to this chapter in a prominent location within the business premises. It is unlawful for any individual licensed pursuant to this chapter to fail to carry, at all times while engaged in licensed activities within the corporate boundaries of the city, their employee license on their person. If the individual is nude, such license shall be visibly displayed within the same room the employee is performing. When requested by police, city licensing or other enforcement personnel or health official, it is unlawful to fail to show the appropriate licenses while engaged in licensed activities within the corporate boundaries of the city. (Ord. 2000-6 § 3)

5.16.210: STATEMENT IN ADVERTISEMENTS

It is unlawful for any advertisement by the sexually oriented business or employee to fail to state that the business or employee is licensed by the city, and shall include the city license number. (Ord. 2000-6 § 3)

5.16.220: REGULATIONS AND UNLAWFUL ACTIVITIES

It is unlawful for any sexually oriented business or sexually oriented business employee to:

- A. Allow persons under the age of eighteen (18) years on the licensed premises, except that in adult businesses which exclude minors from less than all of the business premises minors shall not be permitted in excluded areas;
- B. Allow, offer, or agree to conduct any outcall business with persons under the age of eighteen (18) years;
- C. To allow, offer, or agree to allow any alcohol to be stored, used, or consumed on or in the licensed premises;
- D. Allow the outside door to the premises to be locked while any customer is in the premises;
- E. Allow, offer, or agree to gambling on the licensed premises;

- F. Allow, offer, or agree to any sexually oriented business employee touching or being touched by any patron or customer; except that outcall employees and customers may touch, except that any touching of specified anatomical areas, whether clothed or unclothed, is prohibited;
- G. Allow, offer, or agree to illegal possession, use, sale, or distribution of controlled substances on the licensed premises;
- H. Allow sexually oriented business employees to possess, use, sell, or distribute controlled substances while engaged in the activities of the business;
- I. Allow, offer, or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or committing activities harmful to a minor to occur on the licensed premises or, in the event of an outcall employee or business, the outcall employee committing, offering, or agreeing to commit prostitution, attempting to commit prostitution, soliciting prostitution, soliciting a minor, or committing activities harmful to a minor;
- J. Allow, offer, commit or agree to any specified sexual activity as validly defined by city ordinances or state statute in the presence of any customer or patron;
- K. Allow, offer, or agree to any outcall employee appearing before any customer or patron in a state of nudity;
- L. Allow, offer, or agree to allow a patron or customer to masturbate in the presence of the sexually oriented business employee or on the premises of a sexually oriented business;
- M. Allow, offer, or agree to commit an act of lewdness as defined in this title. (Ord. 2000-6 § 3)

5.16.230: OUTCALL SERVICES; OPERATION REQUIREMENTS

It is unlawful for any business or employee providing outcall services contracted for in the city to fail to comply with the following requirements:

- A. All businesses licensed to provide outcall services pursuant to this chapter shall provide to each patron a written contract in receipt of pecuniary compensation for services. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount such services shall cost the patron, and any special terms or conditions relating to the services to be performed. The contract need not include the name of the patron. The business licensee shall keep and maintain a copy of each written contract entered into pursuant to this section for a period not less

than one year from the date of provision of services thereunder. The contracts shall be numbered and entered into a register listing the contract number, date, names of all employees involved in the contract, and pecuniary compensation paid.

- B. All outcall businesses licensed pursuant to this chapter shall maintain an open office or telephone at which the licensee or licensee's designated agent may be personally contacted during all hours outcall employees are working. The address and phone number of the license location shall appear and be included in all patron contracts and published advertisements. For outcall businesses which premises are licensed within the corporate limits of the city, private rooms or booths where the patrons may meet with the outcall employee shall not be provided at the open office or any other location by the service, nor shall patrons meet outcall employees at the business premises.
- C. Outcall services shall not advertise in such a manner that would lead a reasonably prudent person to conclude that specified sexual activities would be performed by the outcall employee.
- D. All employees of outcall services who provide outcall services within the city shall be licensed in accordance with this chapter, regardless of the primary location of the business. (Ord. 2000-6 § 3)

5.16.240: ADULT BUSINESS; DESIGN OF PREMISES

- A. In addition to the general requirements of disclosure for a sexually oriented business, any applicant for a license for an adult business shall also submit a diagram, drawn to scale, of the premises to be licensed. The design and construction, prior to granting a license or opening for business, shall conform to the following:
 - 1. 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.
 - 2. Restrooms may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person being allowed in the restroom per stall, and only one person in any stall at a time, and requiring that patrons shall not be allowed access to manager's station areas.
 - 3. 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.

4. The diagram required shall not necessarily be a professional engineer's or architect's blueprint; however, the diagram must show marked internal dimensions, all overhead lighting fixtures, and ratings for illumination capacity.
- B. It shall be the duty of the licensee and the licensee's employees to ensure that the views from the manager's station in subsection A of this section remain unobstructed by any doors, walls, merchandise, display racks, or any other materials at all times that any patron is present in the premises, and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.
- C. The premises shall at all times be equipped and operated with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle, measured at floor level. It shall be the duty of the licensee and the licensee's employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises. (Ord. 2000-6 § 3)

5.16.250: SEMINUDE ENTERTAINMENT BUSINESS; DESIGN OF PREMISES

- A. It is unlawful for business premises licensed for seminude entertainment to:
1. Permit a bed, sofa, mattress, or similar item in any room on the premises, except that a sofa may be placed in a reception room open to the public or in any office to which patrons are not admitted, and except that in an adult theater such items may be on the stage as part of a performance;
 2. Allow any door on any room used for the business, except for the door to an office to which patrons shall not be admitted, outside doors, and restroom doors to be lockable from the inside;
 3. Provide any room in which the employee or employees and the patron or patrons are alone together without a separation by a solid physical barrier at least three feet (3') high and six inches (6") wide. The patron or patrons shall remain on one

side of the barrier and the employee or employees shall remain on the other side of the barrier.

- B. Adult theaters shall also require that the performance area shall be separated from the patrons by a minimum of three feet (3'), which separation shall be delineated by a physical barrier at least three feet (3') high. (Ord. 2000-6 § 3)

5.16.260: SEMINUDE ENTERTAINMENT BUSINESS; LOCATION RESTRICTION

It is unlawful for any business licensed for seminude entertainment to be located within three hundred thirty feet (330') of a business licensed for the sale or consumption of alcohol. (Ord. 2000-6 § 3)

5.16.270: ALCOHOL PROHIBITED

- A. It is unlawful for any business licensed pursuant to this chapter to allow the sale, storage, supply, or consumption of alcoholic beverages on the premises.
- B. It is unlawful for any person to possess or consume any alcoholic beverage on the premises of any sexually oriented business. (Ord. 2000-6 § 3)

5.16.280: SEMINUDE DANCING AGENCIES

- A. It is unlawful for any individual or entity to furnish, book, or otherwise engage the services of a professional dancer, model, or performer to appear in a state of seminudity for pecuniary compensation in or for any seminude entertainment business or adult theater licensed pursuant to this chapter, unless such agency is licensed pursuant to this chapter.
- B. It is unlawful for any individual or entity to furnish, book, or otherwise engage or permit any person to perform as a professional dancer, model, or performer in a state of seminudity or nudity, either gratuitously or for compensation, in or for any business licensed pursuant to this chapter, unless such person is licensed pursuant to this chapter. (Ord. 2000-6 § 3)

5.16.290: PERFORMERS; PROHIBITED ACTIVITIES

It is unlawful for any professional dancer, model, or performer, while performing in any business licensed pursuant to this chapter, to:

- A. Touch in any manner any other person;
- B. Throw any object or clothing off the stage area;
- C. Accept any money, drink, or any other object directly from any person; or
- D. Allow another person to touch such performer or to place any money or object on the performer or within the costume or person of the performer; or
- E. Place anything within the costume or adjust or move the costume while performing so as to render the performer in a state of nudity. (Ord. 2000-6 § 3)

5.16.300: PATRONS; PROHIBITED ACTIVITIES

It is unlawful for any person or any patron of any business to touch in any manner any performer; to place any money or object on or within the costume or person of any performer; or to give or offer to give to any such performer any drinks, money, or object while such performer is performing; except that money may be placed on the stage, which shall not be picked up by the performer except by hand. (Ord. 2000-6 § 3)

5.16.310: NUDITY; DEFENSES TO PROSECUTION

It is a defense to prosecution or violation under this chapter that a person appearing in a state of nudity did so in a modeling class operated:

- A. By a proprietary school licensed by the state, or 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 in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation. (Ord. 2000-6 § 3)

5.16.320: VIOLATIONS

- A. Injunction When: An entity or individual who operates or causes a sexually oriented business to be operated without a valid license, or who employs or is employed as an employee of a sexually oriented business, or who operates such a business or functions as such an employee in violation of the provisions of this chapter is subject to a suit for injunction in addition to the civil and criminal violations provided herein, and any other remedy available at law or in equity.
- B. License Suspension Or Revocation:
1. The city may issue a notice suspending or revoking a sexually oriented business or employee license granted under this chapter if a licensee or an employee of the licensee has:
 - a. Violated or is not in compliance with this chapter;
 - b. Refused to allow any inspection of the premises of the sexually oriented business specifically authorized by this chapter or by any other statute or ordinance;
 - c. Failed to replenish the cost bond as provided in this chapter (such a suspension shall extend until the bond has been replenished);
 - d. Given materially false or misleading information in obtaining the license;
 - e. Knowingly operated the sexually oriented business or worked under the employee license during the period when the business licensee or employee licensee's license was suspended;
 - f. A licensee has committed an offense which would be grounds for denial of a license for which the time period required has not elapsed;
 - g. On two (2) or more occasions within a twelve (12) month period, a person or persons committed in or on, or solicited for on the licensed premises, or an outcall employee solicited or committed on or off the premises, an offense which would be grounds for denial of a license for which a conviction has been obtained, and the person or persons were employees, whether or not licensed, of the sexually oriented business at the time the offenses were committed;

- h. A licensee is delinquent in payment to the city for ad valorem taxes, or sales taxes related to the sexually oriented business.
2. Suspension or revocation shall take effect within fifteen (15) days of the issuance of notice, unless an appeal is filed as provided by this chapter.
3. The fact that a conviction is being appealed shall have no effect on the revocation of the license. (Ord. 2000-6 § 3)

5.16.330: EFFECT OF LICENSE REVOCATION

When a license issued pursuant to this chapter is revoked, the revocation shall continue for one year from its effective date, and the licensee shall not be issued a sexually oriented business or employee license for one year from the date of such revocation. (Ord. 2000-6 § 3)

5.16.340: LICENSE HEARING BOARD

There is created the license hearing board of the city consisting of three (3) members appointed by the mayor with the advice and consent of the city council. Two (2) members of the board, one of whom must be a city employee, shall both be residents of the city, and the third member, who need not be a city resident, shall be a holder of or have a substantial interest in a current city business license. Board members shall be appointed for three (3) year terms or until their successors are appointed and shall serve without compensation. Initially, appointments shall be made for one, two (2) and three (3) year terms. Annually, thereafter, the mayor shall, with the advice and consent of the city council, appoint for three (3) year terms, board members to take the place of retiring board members. Vacancies in the board caused by removals, resignations or otherwise, shall be filled for the unexpired term in the same manner as original appointments. The license hearing board shall have authority to hear evidence in business license matters referred to the board and, after such hearing, shall submit its recommendations in writing to the mayor. Nothing herein shall prevent the mayor from serving as a member of the board. The mayor shall designate one member of the board to be chairperson and one member of the board to be vice chairperson for a period of one year. (Ord. 2000-6 § 3)

5.16.350: APPEAL PROCEDURE

- A. Appeals of the city's decision to deny, suspend or revoke a license may be made by filing a written notice of appeal with the hearing board within fifteen (15) days of receipt of the notice of denial, suspension or revocation.
- B. The notice of appeal shall be in writing and shall set forth with specificity the reasons for which the appeal is taken. (Ord. 2000-6 § 3)

5.16.360: HEARING

- A. The hearing shall be at a time, place, and day set by the hearing board, but not later than seven (7) working days after receipt of the notice of appeal.
- B. At the hearing, the hearing board or the city attorney shall present the reasons for the decision to deny, suspend or revoke the license.
- C. The applicant or licensee, in person or through his or her attorney, may then present any evidence showing reason why the decision was in error.
- D. All witnesses shall be sworn to testify truthfully. Either party is entitled to confront and cross examine any witnesses.
- E. Any oral or documental evidence may be received, but the hearing board shall exclude all privileged, irrelevant, immaterial, or unduly repetitious evidence.
- F. If the denial, suspension, or revocation appealed from is based on a finding by the building inspector, planning commission, fire department, Bear River health department, or police department that the business was or would be in violation of their applicable ordinances or regulations, then that finding shall be conclusive on the hearing board, and the board's decision may be based only on whether the license was properly denied, suspended, or revoked because of the building inspector's, planning commission's, fire department's, Bear River health department's, or police department's finding.
- G. If the denial, suspension, or revocation appealed from is based on a determination by the city that grounds existed pursuant to this code, the hearing board may examine the factual nature of the grounds and determine whether such grounds are sufficient to sustain the decision of the city.

- H. The license hearing board does not have the authority to waive compliance with applicable provisions of the business license ordinances, nor can the hearing board extend deadlines set forth in time ordinances or change the substance or form of the ordinances. (Ord. 2000-6 § 3)

5.16.370: DECISION OF THE HEARING BOARD

The hearing board, after hearing all the evidence, shall announce its decision within seven (7) days from the date of hearing. The hearing board may affirm or reverse the decision of the city. The decision shall be in writing and shall be based only upon findings of fact. The hearing board may designate that the prevailing party draft the findings of fact and order. If the prevailing party drafts the findings of fact and order, the opposing party shall have five (5) days from the date the draft is submitted within which to file objections to the draft. Upon resolution of all objections to the draft, the hearing board shall release the findings of fact and order. (Ord. 2000-6 § 3)

5.16.380: APPEAL OF HEARING BOARD DECISION

Any decision of the license hearing board may be appealed by the applicant, licensee, or city to the district court within thirty (30) days from when the written decision is made. (Ord. 2000-6 § 3)

5.16.390: LICENSING AFTER REVOCATION

A person, whose license has been revoked, may not be issued a license for a period of twelve (12) months after the revocation. (Ord. 2000-6 § 3)

5.16.400: VALIDITY OF BUSINESS LICENSE DURING APPEAL

Throughout the appeal process as outlined above, a licensee holding a suspended or revoked business license may continue to operate his or her business in accordance with federal, state and local laws pending final decision on the appeal, or until the time for appeal has passed, whichever occurs first. (Ord. 2000-6 § 3)

5.16.410: PENALTY; RESPONSIBILITY

- A. In addition to revocation or suspension of a license, as provided in this chapter, each violation of this chapter shall, upon citation by the city, require the licensee to pay a civil penalty in the amount of five hundred dollars (\$500.00). Such fines shall be deducted from the cost bond posted pursuant to this chapter, unless paid within ten (10) days of notice of the fine or the final determination after any appeal. In addition to the civil fines provided in this chapter, the violation of any provision of this chapter shall be a class B misdemeanor. Each day of a violation shall be considered a separate offense.
- B. Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omissions of the sexually oriented business licensee and/or operator, if such act or omission occurs either with the authorization, knowledge, or approval of the licensee and/or operator, or as a result of the licensee's and/or operator's negligent failure to supervise the conduct of the employee, and the sexually oriented business licensee shall be punishable for such act or omission in the same manner as if the licensee committed the act or caused the omission.
- C. A sexually oriented business licensee and/or operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the licensee and/or operator for the purposes of determining whether the licensee's license shall be revoked, suspended or renewed. (Ord. 2000-6 § 3)

5.16.420: SIGNS

Notwithstanding anything contrary contained in title 17 of this code, the more restrictive requirements for signs shall prevail. Signs for sexually oriented businesses shall be limited as follows:

- A. No more than one exterior sign shall be allowed.
- B. No sign shall be allowed to exceed eighteen (18) square feet.
- C. No animation shall be permitted on or around any sign or on the exterior walls or roof of such premises.
- D. No descriptive art or designs depicting any activity related to or inferring the nature of the business shall be allowed on any sign. Such signs shall contain alphanumeric copy only.
- E. Only flat wall signs and/or awning signs shall be permitted.
- F. Painted wall advertising shall not be allowed.

G. Other than the signs specifically allowed by this chapter, the sexually oriented business shall not attach, construct, or allow to be attached or constructed any temporary sign, banner, light, or other device designed to draw attention to the business location. (Ord. 2000-6 § 3)