

ORDINANCE NO. 18-97

ROLL CALL

VOTING	YES	NO
MAYOR MARIE W. HUFF <i>(votes only in case of tie)</i>		
SHERMAN E. HUFF <i>Councilmember</i>	X	
MATTHEW D. BARBER <i>Councilmember</i>	X	
THORA L. SHAW <i>Councilmember</i>	X	
CLYDE A. SWENSON <i>Councilmember</i>	X	
REX WOODHOUSE <i>Councilmember</i>	X	

I MOVE this ordinance be adopted: Councilmember Swenson

I SECOND the foregoing motion: Councilmember Woodhouse

ORDINANCE 18-97

AN ORDINANCE ENACTING A SEXUALLY ORIENTED BUSINESS AND EMPLOYEE LICENSING ORDINANCE

WHEREAS, the City licensing department has received inquiry concerning sexually oriented businesses; and

WHEREAS, neighboring cities have had sexually oriented businesses locate there in areas which are not conducive to such business; and

WHEREAS, Spanish Fork City community standards do not tolerate sexually oriented businesses; and

WHEREAS, the United States Supreme Court has ruled that person exposing themselves

in a sexually oriented way is a manner of free expression guaranteed by the First Amendment; and

WHEREAS, these First Amendment Rights can be restricted according to time, place, and manner restrictions; and

WHEREAS, studies indicate that sexually oriented businesses mixed with alcoholic beverages are components which tend to increase crime and a risk of prostitution; and

WHEREAS, experience from neighboring Cities has shown that escort services are typically a front for prostitution; and

WHEREAS, it is best to locate sexually oriented businesses away from residential areas, away from main entrances into the City, and away from establishments which serve alcohol, and away from churches and schools; and

WHEREAS, in order to protect the health, safety, and welfare of the residents of the City, it is necessary to enact a sexually oriented business and employee licensing ordinance;

NOW THEREFORE, be it ordained and enacted by the Spanish Fork City Council as follows:

I.

A sexually oriented business and employee licensing act is hereby created to read as follows:

**CHAPTER 5.28 SEXUALLY ORIENTED BUSINESS
AND EMPLOYEE LICENSING ACT**

5.28.010. Title for citation.

The ordinance codified in this article shall be known, and may be referred to, as the “Sexually Oriented Businesses and Employee Licensing Ordinance.”

5.28.020. Purpose.

The purpose and object of this Chapter is to establish reasonable and uniform regulations governing the time, place and manner of the operation of sexually oriented businesses and their employees in the city. This Chapter, by its terms, is designed to prevent crime, protect the city's retail trade, maintain property values, and generally protect and preserve the quality of the City's neighborhoods, commercial districts, and the quality of urban life. The provisions of this Chapter have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative material or speech protected by the First Amendment. This Chapter shall be construed to protect the governmental interest recognized by this Chapter in a manner consistent with constitutional provisions provided by the United States and Utah Constitutions

5.28.030. Application.

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 when the context or specific provisions require, this chapter does not supersede or nullify any other related ordinances.

5.28.040. Definitions.

For purposes of this chapter, the following words shall have the following meanings:

A. Adult bookstore or Adult video store means a commercial establishment:

1. Which excludes minors from more than fifteen percent (15%) of the retail floor or shelf space of the premises; or
2. 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, 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,” except for legitimate medically recognized contraceptives.

B. Adult Business means an adult motion picture theater, adult bookstore or adult video store.

C. Adult motion picture theater means a commercial establishment which regularly 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.”

D. Adult theater means a theater, concert hall, auditorium, or similar commercial establishment which regularly features person who appear in a state of a “semi-nudity.”

E. Business license authority means the City’s business license supervisor or designee.

F. Customer means any person who patronizes of any business licensed pursuant to this chapter.

G. Employ means 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.

H. Escort means a 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 or

who agrees or offers to privately model lingerie or to privately perform a striptease for another person. Escort shall not be construed to include persons who provide business or personal services such as licensed private nurses, aids for the elderly or handicapped, social secretaries or similar service personnel whose relationship with their patron is characterized by a bonafide contractual relationship having a duration of more than twenty-four (24) 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 (1) hour.

I. Escort service means an individual or entity who, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce customers to escorts.

J. Escort service runner means 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 customer by contacting or meeting with escort services, escorts or customers at any location within the City, whether or not such third person is employed by such escort service, escort, customer, or by another business, or is an independent contractor or self-employed.

K. Nudity or state of nudity means the appearance of a human bare buttock, cleft of buttocks, anus, pubic region, male genitals, female genitals, or full female breast.

L. Outcall services means 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.

M. Pecuniary compensation means any commission, fee, salary, tip, gratuity, hire, profit,

reward, or any other form of consideration.

N. Person means any person, unincorporated association, corporation, partnership or other legal entity.

O. Semi-nude means a state of dress in which opaque clothing covers no more than the genitals, pubic region, anus, cleft of the buttocks, the areola and nipple of the female breast as well as portions of the body covered by supporting straps or devices.

P. Semi-nude dancing agency means 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 services of a professional dancer, model, or performer licensed pursuant to this chapter for performance or appearance at a business licensed for semi-nude entertainment, or adult theaters.

Q. Semi-nude dancing bars means any business which sells or has a license which allows the consumption of any alcoholic beverage on its premises and that permits dancing, modeling, or other performance or appearance however characterized, in a state of semi-nudity.

R. Semi-nude entertainment business means a business, including adult theater, where employees dance, model, perform or appear in the presence of customers 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.

S. Sexually oriented businesses means semi-nude entertainment businesses, sexually oriented out-call services, adult businesses, semi-nude dancing bars and semi-nude dancing agencies, as defined by this chapter.

T. Sexually oriented business employees means those employees who work on the premises of the 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 independent contractors. 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 when they may be managers or supervisors of the business. All persons making outcall meetings under this chapter, including escorts, models, guards, or escort employees shall be considered sexually oriented business employees.

U. Specified anatomical areas means:

1. Acts of masturbation, human sexual intercourse, sexual copulation between a person and a beast, fellatio, cunnilingus, bestiality, pederasty, buggery, or any anal copulation between a human male and other human male, human female or beast;
2. Manipulation, caressing or fondling by any person of the genitals of a human, the pubic area of a human, the uncovered female nipple or areola; or
3. Flagellation or torture by or upon a person clad in undergarment, a mask or bizarre costume, or in the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.

5.28.050. Obscenity and Nudity,

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 the Spanish Fork City Code, or other applicable federal or state statute prohibiting obscenity or nudity.

5.28.060. 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 under this chapter shall only be allowed in areas zoned for their use pursuant to §§17.20.110(B)(2) and 17.28.050(K) of the Spanish Fork City Municipal Code.

5.28.070. Business license required.

It is unlawful for any person to operate a sexually oriented business without first obtaining a sexually oriented business license. The license shall specify the type of business for which it is obtained.

5.28.080. Exemptions from license requirements.

The provisions of this chapter shall not apply to any sex therapist or similar individual licensed to provide counseling, licensed medical practitioner, licensed nurse, psychiatrist, psychologist, nor shall it apply to any educator licensed by the State for activities in the classroom.

5.28.090. 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 protection. The City does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling.

B. In the event that a contract for nude modeling or appearance is 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 semi-nude 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 commit 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 or agree for the individual appearing nude to be within five (5) feet of any other person while performing or while nude or semi-nude.

5.28.100. 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.

B. The categories of licensed sexually oriented businesses are:

1. Adult businesses;
2. Semi-nude entertainment businesses;
3. Adult theater
4. Semi-nude dancing agency.

C. Any sexually oriented business not listed in paragraph (B) is expressly prohibited, including, but not limited to, out call services, escort services, semi-nude dancing bars or similar businesses not specifically permitted.

5.28.110. 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.

5.28.120. License application-Disclosures required.

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 business license authority, the following:

A. The correct legal name of each applicant, corporation, partnership, limited partnership or entity doing business under an assumed name;

B. 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 the applicant, and for each officer, director and any shareholder (corporate or personal) holding 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;

C. 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;

D. For all applicants or individuals, the application must also state:

1. Any other names or aliases used by the individual;
2. The age, date, and place of birth
3. Height, weight, and color of hair and eyes;
4. Present business address and telephone number;
5. Proposed business address and telephone number;

6. Present residence address and telephone number;
7. State drivers license or identification number; and
8. Social security number;

E. Acceptable written proof that the individual is at least eighteen (18) years of age or, in the case of employees to be employed in a business where a different age is required, proof of the required age;

F. 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 City Police Department. For persons not residing in the City, the photographs and finger prints may be on a form from the law enforcement jurisdiction where the person resides. Any fees for the photographs and fingerprints shall be paid by the applicant.

G. A statement describing the business, occupation or employment history of the applicant for three (3) years immediately preceding the date of the filing of the application;

H. A statement detailing the license or permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or sought to operate, in this or any other county, city, state or country has ever had a license, permit or authorization to do business denied, revoked or suspended, or 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 describe 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;

I. List all criminal convictions and the disposition of all arrests of 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, except minor traffic offenses (any traffic offense designated as a felony, Class A or Class B misdemeanor shall not be construed as a minor traffic offense), stating the date, place, nature of each conviction, and sentence of each conviction or other disposition; identifying the convicting jurisdiction and sentencing court and providing court identifying case numbers or docket numbers. Applications for a sexually oriented business or employee license shall constitute a waiver of disclosure or any criminal conviction or plea of nolo contendere for the purposes of any proceeding involving the business or employee license;

J. In the event the applicant is not the owner of record of the real property upon which the business or proposed business is 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 the notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well a copy of the lease or rental agreement pertaining to the premises in which the service is or will be located;

K. 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 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:

1. 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 customers and preventing them

from engaging in illegal activity;

2. The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities;

3. The methods of supervising employees and customers from charging or receiving fees for services or acts prohibited by this chapter or other statutes or ordinances;

4. The methods of supervising 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.

5.28.130 License - Fees.

A. Each applicant for a sexually oriented business or employee license shall be required to pay regulatory license fees pursuant to the following schedule:

1. Yearly business regulatory license fees;

a. Adult business one hundred dollars

(\$100);

b. Semi-nude dancing agencies and semi-nude entertainment

businesses, one hundred fifty dollars (\$150)

2. For each business applicant, an initial investigation fee of one hundred dollars (\$100) is required for each applicant directed to submit a separate disclosure application;

3. Yearly sexually oriented business employee license fees;

a. Adult business employees, semi-nude entertainment business employees requiring a license but not individually providing semi-nude entertainment services to customers, and employees of semi-nude dancing agencies requiring licenses but who are not performers, fifty dollars(\$50);

b. Employees of semi-nude entertainment business personally providing semi-nude entertainment to patrons, one hundred fifty dollars (\$150);

c. Professional dancers performing in semi-nude entertainment businesses, dancing bars, one hundred dollars (\$100).

B. Any individual applying for more than one license at the same time shall pay the higher of any applicable fee, plus an additional twenty dollars (\$20) for each additional license requested.

C. These fees shall be in addition to the other licenses and fees required to do business in the City.

5.28.140. License-Bond

Each application for sexually oriented business license shall post with the City Recorder a cash bond in the amount of two thousand dollars(\$2000). 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 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 bond to pay such fines the bond shall be replenished to two thousand dollars (\$2000) within fifteen days of the date of notice of any draw against it. In the event the bond is not replenished within the fifteen days, the license granted by this chapter shall automatically be suspended until such time as the bond is replenished.

5.28.150. License-premises location and name,

A. It is unlawful to conduct a business under a license issued pursuant to this chapter at any location to which telephone calls are automatically forwarded and 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 name specified in the application.

5.28.160. License-Issuance conditions.

The City business license official shall approve the issuance of licenses to the applicant within sixty (60) days after receipt of the application, unless the official finds one or more of the following:

A. The applicant is under eighteen (18) years of age or any higher age if the license sought requires a higher 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 been convicted of a violation of a provision of this chapter within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect on the denial;

E. The premises to be used for the business has been disapproved by the County Health Department, the City Department of Public Safety, the City Building Official or the City Zoning Official 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 sixty (60) day approval or denial period the agency or department may obtain from the City business license official an extension of time for their review of no more than fifteen (15) days. The total time for the City to approve or deny a license shall not exceed seventy-five (75) days from receipt of an application. Businesses located outside 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 ten (10) days whether or not the application is complete with all items necessary for processing. Incomplete applications shall be returned to the applicant with 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 has not been disapproved within sixty (60) days, or the seventy-five (75) days allowed after an extension, the City shall issue the license.

4. Any license issued pursuant to subsection (3) above may be revoked by the city pursuant to the revocation procedures of section 5.28.370 through 390 if the completed review determines that the license should have been denied.

F. The license fees required by this chapter or by other ordinances 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;

I. An applicant has been convicted of 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; lewdness; public indecency; or crimes involving sexual abuse or exploitation of a minor, sexual assault or aggravated sexual assault; rape; rape of a child; object rape; object rape of a child; sodomy; sodomy on a child; sexual abuse of a child; aggravated sexual abuse of a child; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; criminal contempt, 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:

1. 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 or more misdemeanors within five (5) years, or less than five (5) years has elapsed from the date of the conviction if the offense was a felony;

2. The fact that a conviction is being appealed does not prevent someone from being denied a business license for that conviction.

5.28.170. License-Term

Sexually oriented business and employee licenses issued pursuant to this chapter shall be valid from the date of issuance through December 31st of that year. The license fees required under Section 12-7-13 above 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.

5.28.180. License-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 business license authority and the police department within fourteen (14) days after such change.

5.28.190. License-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 ownership 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 license 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.

5.28.200. License-Display.

It is unlawful for any sexually oriented business located 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 of this chapter to fail, at all times while engaged in licensed activities within the corporate boundaries of the City, to carry their employee license on their person. If the individual is nude or semi-nude, such license shall be visibly displayed within the same room where the employee is performing. When requested by the 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.

5.28.210. License-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.

5.28.220. 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 out call business with persons under the age of eighteen (18) years;

C. To allow, offer or agree to allow any alcohol being stored, used or consumed on or in the licensed premises;

D. Allow the outside entry 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 any customer;

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;

J. Allow, offer, commit or agree to any sex act as validly defined by City ordinances or State statute in the presence of any customer;

K. Allow, offer or agree to allow a customer to masturbate in the presence of the sexually oriented business employee or on the premises of a sexually oriented business.

5.28.230. Outcall services-Prohibited.

It is unlawful for any business or employee to offer or to provide outcall services in the City of Spanish Fork.

5.28.240. Adult business-design of premises.

A. In addition to the general requirements of disclosure for sexually oriented businesses, any applicant for a license as an adult business shall also submit a diagram, drawn to scale, of the premises of the license. The design and construction, prior to granting a license or opening or 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 customers 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 must show marked internal dimensions, all overhead lighting fixtures, and lighting for illumination capacity.

B. It shall be the duty of the licensee and the licensee's employees to insure 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 when any customer is present on the premises, and to insure that no customer is permitted access to any area of the premises which has been designated as an area in which customers 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 customers 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 insure that the illumination described above is maintained at all times when any customer is present in the premises.

5.28.250. Semi-nude entertainment business-Design of premises.

A. It is unlawful for business premises licensed for semi-nude 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 customers 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 business, except for the door to an office to which customers 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 customer or customers are alone together without separation by a solid physical barrier at least three feet high and six inches wide. The customer or customers 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

customers by a minimum of three feet, which separation shall be delineated by a physical barrier at least three feet high.

5.28.260. Semi-nude entertainment business-Location restrictions.

It is unlawful for any business licensed for semi-nude entertainment to be located within six hundred feet (600) of a different business which is licensed for the sale or consumption of alcohol.

5.28.270. Semi-nude dancing bar prohibited.

It is unlawful for any business licensed for the sale or consumption of alcohol pursuant to City ordinances or State law to allow any person on the premises to dance, model, or perform in a state of semi-nudity.

5.28.280. Semi-nude dancing performer restriction.

It is unlawful for any person to perform or appear in a state of semi-nudity as a professional dancer, model, performer or otherwise on the premises of a business licensed for semi-nude dancing, either gratuitously or for compensation, unless that person is licensed as a sexually oriented business employee.

5.28.290. Semi-nude 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 semi-nudity for pecuniary compensation in, or for, any semi-nude 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 semi-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.

5.28.300. Performers-Prohibited activities.

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

- A. To touch in any manner any customer;
- B. To throw any object or clothing off the stage area;
- C. To accept any money, drink or any other object directly from any person; or
- D. To 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. For the performer to place anything within the costume or adjust or move the costume while performing so as to render the performer in a state of nudity.

5.28.310. Performers-costume requirements.

It is unlawful for performers in semi-nude entertainment business to fail to comply with the following costume requirements;

- A. Performers shall at all times be costumed during performances in a manner not to violate any City Ordinance concerning disorderly conduct or lewdness, and such performers shall not perform or conduct themselves in such a manner as to violate the provisions of any City Ordinance. No performer shall appear in any business, licensed as a semi-nude entertainment business, during a performance or appearance with less than opaque clothing which meets the definition of semi-nude, and in the case of a female performer, cover the areola and nipple of such performer in a shape and color other than the natural shape and color of the nipple and areola.

B. While on the portion of a business licensed as a semi-nude entertainment business used by customers, performers shall be dressed in an opaque clothing covering the performer's cleft of buttocks and pubic area and, in the case of female, the nipple and areola of the breast.

5.28.320. Stage requirements.

It is unlawful for any performer in a business licensed as a semi-nude entertainment business to appear in costume other than on a stage which shall be at least three feet from the portion of the premises on which customers are allowed,, and which shall be separated from the customers by a solid barrier or railing, the top of which shall be at least two feet from the floor.

5.28.330. Customers-Prohibited activities.

It is unlawful for any person, or any customer 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 objects 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.

5.28.340. 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.

5.28.350. Existing Business-Compliance time limits.

A. The provisions of this chapter shall be applicable to all persons and businesses described herein, whether the herein-described activities were established before or after the effective date of the ordinance codified in this chapter, and regardless of whether such person and businesses are currently licensed to do business in the City.

1. All semi-nude entertainment business and employees thereof requiring licenses and semi-nude dancing agency licenses shall have seventy-five (75) days from the effective date of the ordinance codified in this chapter, or until their licenses must be renewed, whichever is first, to comply with the provisions of this chapter.

2. All adult businesses shall have one hundred thirty-five (135) days from the effective date of the ordinance codified in this chapter, or until their current license must be renewed, whichever is first in time, to comply with the provisions of this chapter.

B. For the year 1997, all businesses required by this chapter to be licensed as sexually oriented businesses shall be credited against the fees required by this chapter with the regulatory license fees paid for the current 1997 license.

5.28.360. Violation-Injunction when.

An entity or individual who operates or causes to be operated a sexually oriented business, 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.

5.28.370. Violation-License suspension or revocation.

A. 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:

1. Violated or is not in compliance with this chapter;
2. Has 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;
3. Has failed to replenish the cost bond as provided in this chapter; such a suspension shall extend until the bond has been replenished;
4. A licensee or employee gave materially false or misleading information in obtaining the license;
5. A licensee or an employee 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;
6. A licensee has committed an offense which would be grounds for denial of a license for which the time period required has not elapsed;
7. On two or more occasions within a twelve-month period, a person or persons committed in or on, or solicited for on the licensed 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;
8. A licensee is delinquent in payment to the City for ad valorem taxes, or sales taxes related to the sexually oriented business.

B. Suspension or revocation shall take effect within ten days of the issuance of notice, unless an appeal is filed with the City as provided by this chapter. The revocation or suspension is stayed pending the outcome of the appeal with the City.

C. The fact that a criminal conviction is being appealed shall have no effect on the revocation of a license

5.28.380. Effect of license revocation.

When a license issued pursuant to this chapter is revoked, the revocation shall continue indefinitely, and the licensee shall not be issued a sexually oriented business or employee license for at least one year from the date of such revocation.

5.28.390. Appeal procedures.

A. If the license is denied or approved with qualifications, or if a notice of suspension, revocation or citation or a civil fine is imposed, the applicant or licensee may file an appeal with the City Recorder.

B. Filing of an appeal must be within ten (10) days of the date of service of the notice of any denial, qualified approval, suspension, revocation or civil fine. Upon receiving the notice of such appeal, the City Recorder shall schedule a hearing before the City manager within twenty (20) days from the date of the appeal unless such time shall be extended for good cause.

C. The City Manager shall hold a public hearing on the record, and take such facts and evidence as necessary to determine whether the denial, qualified approval, suspension, revocation or civil fine was proper under the law.

D. The burden of proof shall be on the City.

E. After the hearing, the City Manager shall have seven (7) working days, unless extended for good cause, in which to render findings of fact, conclusions of law, and make a recommendation for the City Mayor.

F. Either party may object to the recommendation of the hearing officer by filing the party's objection and reason, in writing, to the City Mayor within seven days following the

recommendation. In the event the City Manager recommends upholding a suspension or revocation, the license shall be immediately suspended, and shall remain suspended until any subsequent appeal is decided. If no objections are received within the seven days, the City Mayor may immediately adopt the recommendation of the City Manager.

G. If objections are received, the City Mayor shall have ten (10) working days to consider such objections before issuing the final decision. The City Mayor may, in the Mayor's discretion, take additional evidence or require written memorandum on issues of fact or law. The standard by which the City Mayor shall review the decision of the hearing officer is whether substantial evidence exists in the record to support the hearing officer's recommendation.

H. An applicant aggrieved by the City Mayor decision shall have judicial review of such decision pursuant to Rule 65 (B), Utah Rules of Civil Procedure, or any other applicable ordinance, statute or rule providing for such review.

5.28.400. Violation-Penalty.

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 Recorder, require the licensee to pay a civil penalty in the amount of five hundred dollars (\$500). 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 violation shall be considered a separate offense.

5.28.410. Severability.

In the event that any provision of this chapter is declared invalid for any reason, the remaining provisions shall remain in effect.

Proof of Publication

J. Lane Henderson being first duly sworn according to law, disposes and says that he is the *Publisher* of *THE SPANISH FORK PRESS*, a weekly newspaper, printed and published at Spanish Fork, Utah County, Utah, and of general circulation therein; that the Notice, a copy of which is hereto attached, was printed and published in said paper.

ORDINANCE 18-97
AN ORDINANCE
CREATING A
SEXUALLY ORIENTED
BUSINESS AND
EMPLOYEE LICENSING
ACT

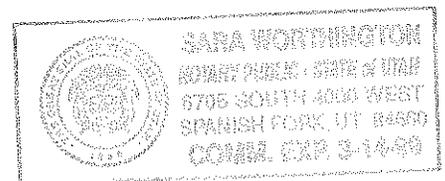
A Sexually Oriented Business and Employee Licensing Act has been created by Ordinance 18-97, a summary of which follows. A full copy is available at the Spanish Fork City Office, 40 South Main, Spanish Fork, Utah.

The Ordinance defines sexually oriented businesses and employees, regulates their conduct and where they may operate, and establishes other rules and regulations.

The Ordinance was PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK, UTAH, on 21st day of October, 1997.

Published in the Spanish Fork Press October 30, 1997.

for One consecutive weeks,
the first publication on the 30 day
of October 19 97
and the last on the 30 day of
October 19 97
Jane Henderson



Subscribed and sworn to before me this 30 day of October 19 97
Sara Worthington
Notary Public

Residing at Spanish Fork, Utah
My Commission expires 3-14-99

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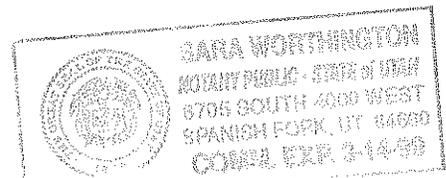
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