

## ORDINANCE 13-05

### ROLL CALL

VOTING	YES	NO
MAYOR DALE R. BARNEY <i>(votes only in case of tie)</i>		
MATTHEW D. BARBER <i>Councilmember</i>	X	
PAUL M. CHRISTENSEN <i>Councilmember</i>	X	
EVERETT KELEPOLO <i>Councilmember</i>	X	
SETH V. SORENSEN <i>Councilmember</i>	X	
CHRIS C. WADSWORTH <i>Councilmember</i>	X	

I MOVE this ordinance be adopted: Councilmember Sorensen

I SECOND the foregoing motion: Councilmember Kelepolo

### ORDINANCE 13-05

#### AN ORDINANCE AMENDING THE SPANISH FORK MUNICIPAL CODE CONCERNING SEXUALLY ORIENTED BUSINESSES

WHEREAS, Spanish Fork City has adopted business license regulations concerning sexually oriented businesses; and

WHEREAS, numerous studies show the harmful secondary effects of sexually oriented businesses; and

WHEREAS, the harmful secondary effects dictate that sexually oriented businesses be limited to those areas where the harmful effects can be minimized; and

WHEREAS, it is necessary, from time to time, to update the ordinance regulating sexually oriented businesses in order to prevent sexually oriented businesses from appearing to be non-sexually oriented businesses and thus, being able to locate in areas where the harmful secondary effects cannot be minimized; and

WHEREAS, the City has recently adopted a new land use title of its municipal code,

which needs to be cross referenced with correct citations in the chapter regulating sexually oriented businesses; and

WHEREAS, the proliferation of sexually oriented businesses, together with surrounding communities review and amending of their ordinances increases the likelihood that a sexually oriented business would seek to do business in the City without proper licensing and location, thus necessitating immediate action to protect the health, safety, and welfare of the residents of Spanish Fork City;

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

**I.**

Spanish Fork Municipal Code Chapter 5.28 is hereby amended as follows:

**5.28.040. Definitions.**

A. "Adult bookstore" or "adult video store" means a commercial establishment which, as one of its purposes, offers for sale or rental, for any form of consideration, any one or more of the following: sexual devices, books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides or simulated display, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas. For the purpose of this definition, "purposes" means the commercial establishment:

(1) has at least fifteen percent (15%) of its displayed merchandise which consists of said items, or

(2) has at least fifteen percent (15%) of the wholesale value of its displayed merchandise which consists of said items, or

(3) has at least fifteen percent (15%) of the retail value of its displayed merchandise which consists of said items, or

(4) derives at least fifteen percent (15%) of its revenues from the sale or rental, for any form of consideration, of said items, or

(5) maintains at least fifteen percent (15%) of its interior business space for the sale or rental of said items; or

(6) regularly features said items, and prohibits access by minors, because of age, to any part of the premises; or

(7) advertises itself as offering "adult" or "xxx" or "x-rated" or "erotic" or "sexual" or "sensual" or "pornographic" or any other similar type of material on signage visible from a public right of way; or

(8) maintains an adult arcade, which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are characterized by their

emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.

B. Adult Business means an adult motion picture theater, adult bookstore, adult video store, sexual encounter center, or sexual device shop.

C.~T. [unchanged].

U. Sexual device means any three-dimensional object designed or marketed for stimulation of the male or female human genital organ or anus or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include any device primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

V. Sexual device shop means a commercial establishment which displays or sells or rents, for any form of consideration, sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to any portion of their premises by reason of age.

W. Sexual encounter center means a business or commercial enterprise that, as one of its business purposes, purports to offer, for any form of consideration, physical contact in the form of wrestling or tumbling when one or more of the persons is nude or semi-nude, or which purports to offer, for any form of consideration, a place where persons regularly appear in a state of semi-nudity in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of semi-nudity do so in a modeling class operated:

(1) by a college, junior college, or university supported entirely or partly by public tax dollars;

(2) by a private college or university which maintains and operates educational programs from which credits are transferable to a college, junior college, or university supported entirely or partly by public tax dollars.

X. Specified anatomical area means and includes:

(1) less than completely and opaquely covered human genitals, pubic region, anus, anal cleft, buttock, and female breast below a point immediately above the top of the areola; and

(2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Y. Specified sexual activity 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 undergarments, 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.

**5.28.060. 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 §§15.3.16.120(B)(2) and 15.3.24.080 of the Spanish Fork Municipal Code.

**II.**

In order to protect the health, safety, and welfare of the residents of Spanish Fork City, this ordinance shall become effective immediately upon passage.

PASSED AND ORDERED PUBLISHED BY THE CITY COUNCIL OF SPANISH FORK, UTAH, this 12th day of September, 2005.

  
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DALE R. BARNEY, Mayor

ATTEST:

  
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KENT R. CLARK, City Recorder

