

ORDINANCE 06-06

ROLL CALL

VOTING	YES	NO
MAYOR JOE L THOMAS <i>(votes only in case of tie)</i>		
G. WAYNE ANDERSEN <i>Councilmember</i>	X	
MATTHEW D. BARBER <i>Councilmember</i>	X	
STEVE LEIFSON <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 Andersen
 I SECOND the foregoing motion: Councilmember Sorensen

ORDINANCE 06_06

**AN ORDINANCE AMENDING TITLE 5, CHAPTER 28 OF THE SPANISH FORK MUNICIPAL CODE
 CONCERNING SEXUALLY ORIENTED BUSINESSES**

WHEREAS, Spanish Fork City has previously adopted business license regulations concerning sexually oriented businesses, as codified at Title 5, Chapter 28 (the “*Ordinance*”) of the Spanish Fork Municipal Code (the “*Code*”); and

WHEREAS, there is convincing documented evidence that sexually-oriented businesses have a deleterious effect on both the existing businesses around them and residential areas of the City adjacent to them, causing increased crime, urban blight, the downgrading of property values, the downgrading of quality of life, and other harmful effects; and

WHEREAS, the City Council desires to amend the Ordinance to better minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizens of the City,

protect the citizens from increased crime, preserve the quality of life, preserve the property values and character of neighborhoods, and deter the spread of urban blight;

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

I.

Spanish Fork Municipal Code, Section 5.28.040 is hereby amended to add or amend the following definitions to read as follows:

5.28.040. Definitions.

“Adult arcade” means any place to which the public is permitted or invited wherein coin-operated, 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 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.

“Adult bookstore” or **“adult video store”** means a commercial establishment 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, compact discs, digital video discs, slides or simulated display, or other visual representations which are characterized by their emphasis on the display of specified sexual activities or specified anatomical areas. For purposes of this definition, “principal purpose” means:

1. at least 15% of the commercial establishment’s displayed merchandise consists of such items,
2. at least 15% of the wholesale or retail value of the commercial establishment’s displayed merchandise consists of such items;
3. the commercial establishment derives at least 15% of its revenues from the sale or rental, for any form of consideration, of such items;
4. the commercial establishment maintains at least 15% of its interior business space for the sale or rental of such items;
5. the commercial establishment regularly features such items and prohibits access by minors to all or part of the premises; or
6. the commercial establishment offers “adult”, “xxx”, “x-rated”, “erotic”, “sexual”, “sensual”, “pornographic”, or any other similar type of material; or advertises itself as offering “adult”, “xxx”, “x-rated”, “erotic”, “sexual”, “sensual”, “pornographic”, or any other similar type of material on signage visible from a public right of way.

“Adult business” means an adult arcade, adult motion picture theater, adult bookstore, adult video store, or sexual device shop.

“Adult motel” means a motel, hotel, or similar commercial establishment that (a) offers public accommodations for any form of consideration, (b) regularly provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of specified sexual activities or specified anatomical areas, (c) advertises the availability of this sexually-oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, and (b) offers a sleeping room for rent for a period of time less than ten hours, or allows a tenant or occupant to sub-rent the sleeping room for a period of less than ten hours.

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

“Customer” means any person who patronizes any business licensed pursuant to this chapter.

“Nude entertainment business” means a commercial establishment that features live performances characterized by (i) specified sexual activities or (ii) the appearance of persons in a state of nudity.

“Nudity”, “nude” or “state of nudity” means the showing of the human male or female genitals, pubic area, anus, or anal cleft or cleavage with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any part of the nipple or areola.

“Outcall services” means services performed by a sexually oriented business employee, including an escort, model or dancer, outside of the premises of the sexually oriented business, that include any specified sexual activity or exposure of specified anatomical areas.

“Semi-nude” or “state of semi-nudity” means a state of dress, other than a state of nudity, in which (a) opaque clothing primarily covers only the genitals, pubic area, anus, anal cleft or cleavage, nipple and areola of the female breast, and portions of the body covered by supporting straps or devices, (b) the opaque clothing covering part of the female breast primarily covers only the nipple and areola and portions of the breast covered by supporting straps or devices, or (c) all or part of the buttocks are exposed.

“Semi-nude entertainment business” means a business that features persons who appear semi-nude in the presence of customers, or a business that holds itself out as such a business. This definition does not apply to any place where persons appearing in a state of semi-nudity do so as part of:

1. a modeling class operated by a college, junior college, or university supported entirely or partly by taxation;

2. a modeling class operated by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

3. a modeling class (i) in which a student must enroll at least three days in advance in order to participate, and (ii) that is operated in a building that has no sign visible from its exterior or other advertising that indicates a semi-nude person is available for viewing.

“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, including 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.

“Sexual device shop” means a commercial establishment that, as its principal purpose, sells or otherwise provides sexual devices. For purposes of this definition, “principal purpose” means:

1. at least 15% of the commercial establishment’s displayed merchandise consists of such items,

2. at least 15% of the wholesale or retail value of the commercial establishment’s displayed merchandise consists of such items;

3. the commercial establishment derives at least 15% of its revenues from the sale or rental, for any form of consideration, of such items;

4. the commercial establishment maintains at least 15% of its interior business space for the sale or rental of such items.

“Sexually oriented business” means an adult business, semi-nude entertainment business, adult theater, semi-nude dancing agency, nude entertainment business, a business that provides out-call services, escort services, adult motel, semi-nude dancing bar, a business which advertises itself or otherwise hold itself out to be a sexually oriented business, or similar business.

“Specified anatomical area” means (a) less than completely and opaquely covered buttocks, anus, anal cleft or cleavage, male or female genitals, or female breast, or (b) male genitals in a state of sexual arousal.

“Specified sexual activity” means acts of, or simulation of, masturbation, sexual intercourse, fellatio, cunnilingus, or bestiality, or the manipulation, caressing, or fondling by any person of human genitals or pubic area or the uncovered female nipple or areola.

II.

Spanish Fork Municipal Code, Section 5.28.060 is hereby amended to read as follows:

5.28.060. Location and Zoning Restrictions.

It is unlawful for any sexually oriented business to do business at any location within the City that is 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.

III.

Spanish Fork Municipal Code, Section 5.28.070 is hereby amended to read as follows:

Section 5.28.070. Business License Required.

(a) 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.

(b) Sexually oriented business licenses will be limited to one for each 8,000 residents of the City of Spanish Fork.

IV.

Spanish Fork Municipal Code, Section 5.28.090(B)(4) is hereby amended to read as follows:

4. Allow, offer, commit or agree to any specified sexual activity.

V.

Spanish Fork Municipal Code, Section 5.28.100(C) is hereby amended to read as follows:

C. Any sexually oriented business not listed in paragraph (B) is expressly prohibited, including, but not limited to, businesses that provide outcall services, semi-nude dancing bars, nude entertainment businesses, escort services, and adult motels.

VI.

Spanish Fork Municipal Code, Section 5.28.110 is hereby amended to read as follows:

5.28.110 Employee Licenses.

It is unlawful for any sexually oriented business to employ an individual, 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.

VII.

Spanish Fork Municipal Code, Section 5.28.120 (I) is hereby amended to read as follows:

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 sexually oriented business employee license shall constitute a waiver by the applicant of any protection the applicant may otherwise have against disclosure of any criminal conviction.

VIII.

Spanish Fork Municipal Code, Section 5.28.130 (A) is hereby amended to read as follows:

Section 5.28.130. License Fees.

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

1. Annual sexually oriented business regulatory license fee: \$800.
2. Annual license for sexually oriented business employee that provides semi-nude entertainment: \$300.
3. Annual license for sexually oriented business employees that do not provide semi-nude entertainment: \$100.

IX.

Spanish Fork Municipal Code, Section 5.28.195 is hereby created, to read as follows:

Section 5.28.195. Moving of Business Location.

It is unlawful for any sexually oriented business to relocate or otherwise move its location or area of operation. A sexually oriented business wishing to relocate must submit the appropriate application for a license as required under this chapter. Such application shall be reviewed under the terms and conditions of this chapter and applicable City ordinances.

X.

Spanish Fork Municipal Code, Section 5.28.200 is hereby amended to read as follows:

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 sexually oriented business employee licensed pursuant to this chapter to fail, at any time while engaged in activities licensed under this chapter, to carry the appropriate license on the employee's person, provided, however, that, if the employee is performing in a state of semi-nudity, such license shall be visibly displayed in 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 City.

XI.

Spanish Fork Municipal Code, Section 5.28.220 is hereby amended to read as follows:

Section 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 18 on the licensed premises, except that, in adult businesses that exclude minors from less than all of the business premises, minors shall not be permitted in any area in which, or from which, it is possible to view any material depicting specified sexual activity or specified anatomical areas, but may be permitted in the other areas of the premises.

B. Allow, offer or agree to conduct any outcall services;

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

D.– I. [unchanged]

J. Allow, offer or commit any specified sexual activity on the premises of a sexually oriented business;

K. Appear, or allow a sexually oriented business employee or any other person to appear, in a state of nudity in the presence of a customer.

XII.

Spanish Fork Municipal Code, Section 5.28.390 is hereby amended to read as follows:

Section 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 Manager, by filing notice with the City Recorder.

B. The appeal must be filed within ten 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, which hearing shall be held within 20 days from the date of the appeal, unless such time shall be extended for good cause, provided, however, that such hearing shall not be held more than 35 days after the notice of appeal is filed with the City Recorder.

C. The City Manager shall hold a 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 working days, unless such period is extended for good cause, in which to render findings of fact and conclusions of law and make a decision as to the disposition of the appeal. The City shall cause notice of such decision to be filed with the City Recorder and mailed to the applicant or licensee.

F. The applicant or licensee may appeal the decision of the City Manager by filing a notice of appeal and the reasons for such appeal, in writing, within seven days after the filing of notice of the City Manager's decision with the City Recorder and the mailing of such notice to the applicant or licensee. If the City Manager's decision upholds a suspension or revocation, the license shall be immediately suspended.

G. If a notice of appeal is timely filed, as set forth in paragraph F, the City Council shall schedule a public hearing to consider the appeal. The standard by which the Council shall review the decision of the City Manager is whether substantial evidence exists on the record to support the City Manager's decision.

H. An applicant or licensee aggrieved by the Council's decision shall be permitted to 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.

XIII.

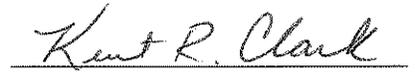
If any one or more of the provisions of this ordinance shall be contrary to law, then such provisions, or such portions thereof, shall be null and void and shall be deemed separable from the remaining provisions hereof, and shall in no way affect the validity of such other provisions.

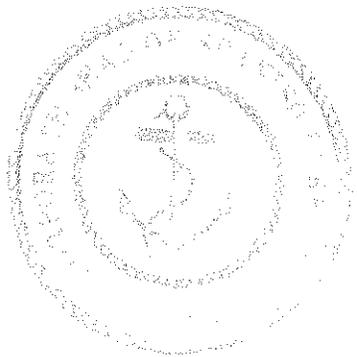
Except as amended herein, the provisions of Title 5, Chapter 28 of the Spanish Fork Municipal Code shall remain in full force and effect.

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 18th
day of July, 2006.


JOE L THOMAS, Mayor

ATTEST

KENT R. CLARK, City Recorder



Proof of Publication

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

for consecutive 1 weeks,

the first publication on the 5 day

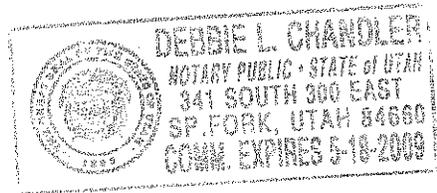
of April 2007

And the last on the 5 day

of April 2007

Eric Savage

Public Notice ORDINANCE 06-06, Amending provisions of the sexually oriented business ordinance. This ordinance clarifies definitions, location and zoning. The ordinance amends the	number of licenses permitted, clarifies prohibited conduct, re-establishes license fees and establishes an appeal procedure. Adopted on this 18th day of July 2006. A complete copy	of this ordinance is available for inspection at the Spanish Fork City Office, 40 South Main, Spanish Fork. Published in the Spanish Fork Press on April 5, 2007.
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Subscribed and sworn to before me this 6th day of April 2007

Debbie L. Chandler
Notary Public