

CHAPTER 3

SEXUALLY ORIENTED BUSINESSES

SECTION:

- 3-3- 1: Purpose
- 3-3- 2: Findings
- 3-3- 3: Definitions
- 3-3- 4: Classifications
- 3-3- 5: License Required
- 3-3- 6: Issuance of License
- 3-3- 7: Fees
- 3-3- 8: Inspections
- 3-3- 9: Expiration of License
- 3-3-10: Suspension
- 3-3-11: Revocation
- 3-3-12: Hearing: License Denial. Suspension. Revocation: Appeal.
- 3-3-13: Transfer of License
- 3-3-14: Location of Sexually Oriented Businesses
- 3-3-15: Regulations Pertaining To Exhibition of Films, Videos Or Live Entertainment In Viewing Rooms.
- 3-3-16: Additional Regulations for Escort Agencies
- 3-3-17: Additional Regulations Concerning Public Nudity
- 3-3-18: Prohibition Against Children In A Sexually Oriented Business
- 3-3-19: Hours Of Operation
- 3-3-20: Exemptions
- 3-3-21: Injunction

3-3-1: **Purpose:** It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City of Victor, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

3-3-2: **Findings:** Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the City Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000), and on studies in other communities including, but not limited to, Cleburne, Texas; Newport News, Virginia; Garden Grove, California; Adams County, Colorado; Seattle, Washington; Phoenix, Arizona; Indianapolis, Indiana; Minneapolis, Minnesota; Las Vegas, Nevada; and Cleveland, Ohio, the City Council finds:

- A. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for some of the activities that occur on their premises.
- B. Investigation by the Pocatello Police Department revealed that employees of some sexually oriented businesses previously in operation in the City of Pocatello were unable to observe the activities of their customers at all times, thereby increasing the likelihood of ancillary unlawful and unhealthy activities on their premises. In one establishment, the investigation revealed holes cut into the partition separating private booths to allow for anonymous genital contact. The doors to these private booths lock from the inside which reinforces the ability to become involved in anonymous illicit sexual activity. The City of Victor finds that the prevention of the same such situation is in the best interests of its citizens.
- C. Certain employees of sexually oriented businesses defined in this ordinance as adult theatres and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- D. Sexual acts including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.
- E. Previous Investigation by the Pocatello Police Department found private booths in two sexually oriented businesses in the City of Pocatello, where there is reason to believe that sexual activity including, but not necessarily limited to masturbation, was taking place within private booths in one of those establishments. The City of Victor finds that the prevention of the same such situation is in the best interests of its citizens.
- F. Offering and providing such space encourages such activities, which creates unhealthy conditions.

- G. Persons frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- H. At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, Chlamydia, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States -- 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 733,374 through December 31, 1999.
- I. As of December 31, 2001, there have been 537 reported cases of AIDS and 446 more reported cases of HIV infection in the State of Idaho.
- J. Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in the State of Idaho.
- K. The number of cases of genital Chlamydia in the United States reported annually has risen, with 526,653 cases reported as of 1997, making Chlamydia the most reported of all notifiable infectious diseases in the United States.
- L. While the number of cases of syphilis and gonorrhea has declined, the number of cases of gonorrhea in the United States reported annually remains at a high level, with over 325,000 cases being reported in 1997, which indicates that the annual decreases in reported cases of gonorrhea may be leveling off.
- M. The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
- N. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis, Chlamydia, and gonorrhea, are principally transmitted by sexual acts.
- O. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
- P. Numerous studies and reports have determined that semen is found in

the areas of sexually oriented businesses where persons view adult” oriented films.

- Q. Investigation by the Pocatello Police Department found potentially unhealthy and unsanitary conditions, as well as the presence of semen in an adult film-viewing booth in an previously existing sexually oriented business.
- R. The findings noted in paragraphs number 1 through 18 raise substantial governmental concerns.
- S. Sexually oriented businesses have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.
- T. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the City of Victor. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
- U. Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in sexually oriented businesses.
- V. Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
- W. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, aid in preventing the spread of sexually transmitted diseases.
- X. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this ordinance is designed to prevent or who are likely to be witnesses to such activity.
- Y. The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.

- Z. The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.
- AA. The general welfare, health, morals and safety of the citizens of the City of Victor will be promoted by the enactment of this ordinance.

3-3-3: DEFINITIONS:

ADULT ARCADE 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 films, motion pictures, video cassettes, DVD's, CD-ROMS, slides, computer generated images, or other photographic reproductions to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE. ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space for the sale or rental, for any form of consideration, of any one or more of the following:

- a. books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas";
- b. instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- a. persons who appear semi-nude; or
- b. live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- c. films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas."

ADULT MOTEL means a hotel, motel or similar commercial establishment which:

- a. offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the exhibition or display of “specified sexual activities” or “specified anatomical areas”; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; and either
- b. offers a sleeping room for rent for a period of time that is less than ten (10) hours, or
- c. allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

DISTINGUISHED OR CHARACTERIZED BY AN EMPHASIS UPON means the dominant or principal theme of the object referenced. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or display of Specified Sexual Activities or Specified Anatomical Areas,” the films so described are those whose dominant or principal character and theme are the exhibition or display “Specified Anatomical Areas” or “Specified Sexual Activities.”

EMPLOYEE, EMPLOY, AND EMPLOYMENT describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, agent, or other status. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

ENFORCEMENT OFFICER shall mean the Teton County Sheriff, or the sworn officers in his or her charge as he or she may designate, or the Victor City Planning and Zoning Administrator or such other person as may be designated by the City Council.

ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

ESTABLISH OR ESTABLISHMENT means and includes any of the following:

- a. the opening or commencement of any sexually oriented business as a new business;
- b. the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- c. the additions of any sexually oriented business to any other existing sexually oriented business; or
- d. the relocation of any sexually oriented business.

LICENSEE means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

NUDITY or a STATE OF NUDITY means the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

OPERATE OR CAUSE TO BE OPERATED means to cause to function or to put or keep in a state of doing business. "Operator" means any persons on the premises of a sexually oriented business who is authorized to exercise operational control of the business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

SEMI-NUDE or in a SEMI-NUDE CONDITION means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

SEMI-NUDE MODEL STUDIO means any place where a person appears semi-nude and is provided to be observed, sketched, drawn, painted, sculptured, or photographed by other persons who pay money or any form of consideration. Semi-Nude Model Studio shall not include a proprietary school licensed by the

State of Idaho or a college, junior college or university supported entirely or in part by public taxation; 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; or in a structure:

(a) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and

(b) where in order to participate in a class a student must enroll in the class; and

(c) where no more than one nude or semi-nude model is on the premises at any one time.

SEXUAL ENCOUNTER CENTER means a business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration, a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities." The definition of sexual encounter establishment or any sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, semi-nude model studio, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS means:

(a) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(b) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:

(a) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; crimes against nature; any other sexual offense prohibited by Idaho Code not otherwise specified herein; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(b) for which:

(1) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(2) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(3) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(c) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

SPECIFIED SEXUAL ACTIVITIES means any of the following:

(a) the fondling of another person's genitals, pubic region, anus, or female breasts;

(b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or

(c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this ordinance takes effect.

TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(a) the sale, lease, or sublease of the business;

(b) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(c) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

3-3-4: CLASSIFICATION:

Sexually oriented businesses are classified as follows:

- A. adult arcades;
- B. adult bookstores, adult novelty stores, or adult video stores;
- C. adult cabarets;

- D. adult motels;
- E. adult motion picture theaters;
- F. adult theaters;
- G. escort agencies;
- H. semi-nude model studios; and
- I. sexual encounter centers.

3-3-5: LICENSE REQUIRED:

- A. It is unlawful:
 - 1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this ordinance.
 - 2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the City pursuant to this ordinance.
 - 3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this ordinance.
- B. An application for a license must be made on a form provided by the City. All applicants must be qualified according to the provisions of this ordinance.
- C. An applicant for a sexually oriented business license or a sexually oriented business employee license shall file with the Enforcement Officer a completed application made on a form prescribed and provided by the City Treasurer. An application shall be considered complete if it includes the information required in this section. The applicant shall be qualified according to the provisions of this chapter. The application shall be notarized. The application shall include the information called for in Paragraphs 1 through 6 as follows:
 - 1. The full true name and any other names used in the preceding five years.
 - 2. Current business address.
 - 3. A set of fingerprints suitable for conducting necessary background checks pursuant to this Chapter and the applicant's Social Security Number to be used for the same purpose.
 - 4. If the application is for a sexually oriented business license, the name, business location, legal description, business mailing address and phone number of the proposed sexually oriented business.
 - 5. Written proof of age, in the form of either:

- a. A copy of a birth certificate and current photo,
 - b. Current driver's license with picture, or
 - c. Other picture identification document issued by a governmental agency.
6. The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, whether any such license or permit has been denied, revoked or suspended and, if so, the reason or reasons therefore.
 7. If the application is for a sexually oriented business license, the name and address of the statutory agent or other agent authorized to receive service of process. The information provided pursuant to Paragraphs 1 through 7 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Enforcement Officer within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.
- D. The application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- E. If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, such as a corporation, each officer, director, general partner or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as applicant. Each applicant must be qualified under Section V and each applicant shall be considered a licensee if a license is granted.
- F. A person who possesses a valid business license is not exempt from the requirement of obtaining any required sexually oriented business license. A person who operates a sexually oriented business and possesses a business license shall comply with the requirements and provisions of this Chapter, where applicable.
- G. The information provided by an applicant in connection with the application for a license under this chapter shall be maintained by the Enforcement Officer on a confidential basis, and may be disclosed only: (1) to other governmental agencies in connection with a law enforcement or public safety function, or (2) as may otherwise be required by law or court order.

3-3-6: ISSUANCE OF LICENSE:

- A. Upon the filing of a completed application for a sexually oriented business license or a sexually oriented business employee license, the Enforcement Officer shall issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the Enforcement Officer to deny or grant the license. Within (20) days after the receipt of a completed application, the Enforcement Officer shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Enforcement Officer shall approve the issuance of a license unless one or more of the following is found to be true:
1. An applicant is less than eighteen (18) years of age.
 2. An applicant is delinquent in the payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business.
 3. An applicant has failed to provide information as required by Section IV for issuance of the license.
 4. An applicant; a business entity for which the applicant had, at the time of an offense leading to a criminal conviction described herein, a management responsibility or a controlling interest, has been convicted of a specified criminal activity as defined in this chapter. The fact that a conviction is being appealed shall have no effect.
 5. The license application fee required by this section has not been paid.
 6. An applicant has falsely answered a question or request for information on the application form.
 7. The proposed sexually oriented business is located in a zoning district other than a district in which sexually oriented businesses are allowed to operate under the City of Victor's Zoning Ordinance or is not in compliance with the location restrictions established for sexually oriented businesses in the appropriate zoning district(s).
- B. An applicant ineligible for a license due to Paragraph (A)(4) of this section may qualify for a sexually oriented business license only when the time period required by the applicable paragraph has elapsed.
- C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to that applicant, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. A sexually oriented business employee license shall contain a photograph of the licensee. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing and shall produce such license for inspection upon request by

a law enforcement officer or other authorized city official.

3-3-7: FEES:

- A. The nonrefundable initial license fee and annual renewal fee for a sexually oriented business license or a sexually oriented business employee license shall be set by the City Council at an amount determined to be sufficient to pay the cost of administering this program, subject to section (B) herein.
- B. In no event shall the fees exceed two hundred fifty dollars (\$250.00) for the initial license and one hundred twenty five dollars (\$125.00) for the renewal fee for a sexually oriented business license. In no event shall the fees exceed seventy-five dollars (\$75.00) for the initial license and fifty dollars (\$50.00) for the renewal fee for a sexually oriented business employee license.

3-3-8: INSPECTION:

- A. An applicant, operator or licensee shall permit law enforcement officers, and any other federal, state, county or city agency in the performance of any function connected with the enforcement of this Chapter, normally and regularly conducted by such agencies, to inspect those portions the premises of a sexually oriented business where patrons or customers are permitted to occupy for the purpose of ensuring compliance with this chapter, at any time the business is occupied or open for business.
- B. The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

3-3-9: EXPIRATION OF LICENSE:

- A. Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section IV. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.
- B. When the City denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the City finds that the basis for denial of the renewal license has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date denial became final.

3-3-10: SUSPENSION: The City shall issue a written intent to suspend a license for a period not to exceed thirty (30) days if it determines that a licensee

or an employee of a licensee has:

1. Violated or is not in compliance with any section of this ordinance;
2. Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

3-3-11: REVOCATION:

- A. The Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if a cause of suspension in Section IX occurs and the license has been suspended within the preceding twelve (12) months.
- B. The Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if the Officer determines that:
 1. A licensee gave false or misleading information in the material submitted during the application process;
 2. A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 3. A licensee has knowingly allowed prostitution on the premises;
 4. A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 5. A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises This subsection will not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either (a) in exchange for money, or (a) in a public place or within public view.
- C. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- D. When, after the notice and hearing procedure described in Section XI, the Enforcement Officer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation becomes effective, provided that, if the conditions of Section XI(B) are met, a Provisional License will be granted pursuant to that section. If, subsequent to revocation, the Enforcement Officer finds that the basis for the revocation found in subsections (B)(1) and (B)(4) of this section has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

**3-3-12: HEARING: LICENSE DENIAL. SUSPENSION. REVOCATION:
APPEAL:**

- A. If the Enforcement Officer determines that facts exist for denial, suspension, or revocation of a license under this chapter, the Enforcement Officer shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefore, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the Enforcement Officer. Within five (5) working days of receipt of such notice, the respondent may provide to the Mayor and City Council in writing a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three (3) days of the receipt of respondent's written response, the Mayor shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding.
- B. Within ten (10) working days of the receipt of respondent's written response, the Mayor and City Council shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the Mayor and City Council in the time stated or, if after the hearing the City Council finds that grounds as specified in this resolution exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five (5) days after the Mayor sends, by certified mail, written notice that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.
- C. If the City Council finds that no grounds exist for denial, suspension, or revocation of a license, then within five (5) days after the hearing, the Mayor shall withdraw the intent to deny, suspend, or revoke the license and shall so notify the respondent in writing by certified mail of such action and shall contemporaneously therewith issue the license.
- D. When a decision to deny, suspend or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal such action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain or otherwise enjoin the City's enforcement of the denial, suspension, or revocation, the City shall immediately issue the aggrieved party a Provisional License. The Provisional License shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain or otherwise enjoin the City's enforcement.

3-3-13: **TRANSFER OF LICENSE:** A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

3-3-14: **LOCATION OF SEXUALLY ORIENTED BUSINESSES:**

- A. A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district other than General Business (GB), as defined and described in the zoning code.
- B. A person commits an offense if the person operates or causes to be operated a sexually oriented business within 500 feet of:
 - 1. A church, synagogue, mosque, temple or building that is used primarily for religious worship and related religious activities;
 - 2. A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;
 - 3. A boundary of a residential district as defined in the City of Victor zoning code;
 - 4. A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the city which is under the control, operation, or management of the city park and recreation authorities;
 - 5. The property line of a lot devoted to a residential use as defined in the zoning code; or
 - 6. A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State. No business licensed to sell alcohol shall be permitted to operate a sexually oriented business on the licensed premises designated for the sale of alcohol.
- C. A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 500 feet of another sexually oriented business.
- D. A person commits a misdemeanor if that person causes or permits the

operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

- E. For the purpose of subsection B of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection B. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.
- F. For purposes of subsection C of this Section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.
- G. A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in subsection B of this Section within 500 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application is made for a license after the applicant's previous license has expired or been revoked.

3-3-14: REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS. VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS:

- A. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
 - 1. Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked

dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The City may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. The application shall be sworn to be true and correct by the applicant.
3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the City.
4. It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
5. 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. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
6. It shall be the duty of the licensee to ensure that the view area specified in subsection (5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, 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 in the application filed pursuant to subsection (1) of this Section.
7. No viewing booth may be occupied by more than one person at any time.
8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
9. It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
10. No licensee shall allow openings of any kind to exist between viewing booths.
11. No person shall make or attempt to make an opening of any kind

between viewing booths.

12. The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

13. The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

14. The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48") inches of the floor.

- B. A person having a duty under Subsection (1) through (14) of Subsection (A) above commits a misdemeanor if he knowingly fails to fulfill that duty.

3-3-16: ADDITIONAL REGULATIONS FOR ESCORT AGENCIES:

- A. An escort agency shall not employ any person under the age of 18 years.
- B. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

3-3-17: ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY:

- A. It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or engages in specified sexual activities.
- B. It shall be a misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least six (6) feet from any patron or customer and on a stage at least two feet from the floor.
- C. It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to receive directly any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity directly to any employee, while said employee is semi-nude in a sexually oriented business.
- D. It shall be a misdemeanor for an employee, while semi-nude, to knowingly and intentionally touch a customer or the clothing of a customer.

3-3-18: PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED

BUSINESS: A person commits a misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

3-3-19: **HOURS OF OPERATION:** No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and noon (12:00) P.M. on Sundays.

3-3-20: **EXEMPTIONS:**

- A. It is a defense to prosecution under Section XVI that a person appearing in a state of nudity did so in a modeling class operated:
1. By a proprietary school, licensed by the State of Idaho; a college, junior college, or university supported entirely or partly by taxation;
 2. 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; or
 3. In a structure:
 - a. which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - b. where, in order to participate in a class a student must enroll in the class; and
 - c. where no more than one nude model is on the premises at any one time.

3-3-21: **INJUNCTION:** A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 12 of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be a misdemeanor punishable by a fine of up to \$300.00 and/or six (6) months incarceration. Each day a sexually oriented business so operates is a separate offense or violation.

- A. All owners of sexually oriented businesses existing on the date of publication of this ordinance and their employees shall have thirty (30) days from the date of publication of this ordinance to file their licensing applications with the Planning & Development Services Department of the City of Victor. Owners and employees of sexually oriented businesses in existence on the date of publication of this ordinance shall, upon application, be issued Temporary Licenses and permitted to continue operation of and employment by said sexually oriented businesses while their license applications are pending final decision by the Enforcement Officer in accordance with SECTION 5 (A).

- B. All owners and employees of new sexually oriented businesses that are not in existence on the date of publication of this ordinance shall not conduct business without a license issued by the Enforcement Officer.
(Ord. 06-0222-2, 02-22-2006)