

SUMMARY: This ordinance limits the location of Adult Entertainment businesses in Wendover, Utah, to an area designed as a Restricted Commercial district, establishes licensing provisions for sexually oriented businesses, employees of sexually oriented businesses, regulates matters related to the operation of such businesses, and penalties for violations.

WENDOVER, TOOELE COUNTY ORDINANCE No. 90-02

ORDINANCE OF WENDOVER CITY, TOOELE COUNTY, UTAH: CREATING A NEW ZONING DISTRICT ENTITLED RESTRICTED COMMERCIAL DISTRICT (RC) FOR ADULT ENTERTAINMENT BUSINESSES AND MATTERS RELATED THERETO; A NEW CODE ENTITLED SEXUALLY ORIENTED BUSINESS LICENSES; REQUIRING BUSINESS LICENSES FOR SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES; ESTABLISHING LICENSING FEES; RULES FOR OPERATION OF THE BUSINESSES; GROUNDS FOR REVOCATION OF LICENSES AND PROCEDURES; PENALTIES FOR VIOLATIONS; AND MATTERS RELATED THERETO.

WHEREAS, the City Council of Wendover, Utah, wish to control the location of Adult Entertainment businesses in Wendover, Utah, and believes it is in the best interests of the health, welfare and morals of the residents of Wendover, Utah;

WHEREAS, the City Council of Wendover, Utah, believes it is in the best interests of the citizens of Wendover, Utah to adopt a licensing regulation for sexually oriented businesses.

NOW, THEREFORE, the City Council of Wendover, Utah, do ordain this ordinance as Wendover Adult Entertainment Business Zoning and Business Licensing Regulations, which shall read in its entirety as follows:

1-1: General Provisions:

- (A) Rules and Regulations: The following rules and regulations are applicable to the operation of Adult Entertainment businesses in Wendover, Utah.
- (B) Purpose: This ordinance is intended to establish reasonable and uniform regulations for the location of Adult Entertainment business; regulate the signage of such businesses and to prevent inappropriate exposure of such businesses to the community consistent with limitations allowed by law.

1-2: Adult Entertainment Business defined:

An Adult Entertainment business means any store, theater, establishment, tavern, or club having ten percent (10%) or more of its stock and trade in books, magazines or other periodicals or video movies, films, photographs, live appearances or performances which are distinguished or characterized by their emphasis on matters depicting, describing or related to specific anatomical areas of the human body or specified sexual activities between human beings or between human beings and animals. This definition includes nude modeling services and nude dancing clubs.

1-3: Restricted Commercial District (RC):

It shall be unlawful to locate or relocate any Adult Entertainment business in Wendover, Utah except within the following restricted commercial district:

The property located between 11th East and 12th East and between 500 South and 700 South with the inclusion of Building 2638

1-4: Other Permitted Uses:

Any activities permitted within Commercial Districts as defined in Wendover City Zoning Regulations are additional permitted uses in an RC District.

1-5: Sign Restrictions:

Adult Entertainment business signs shall be limited as follows:

- (A) No more than one sign shall be allowed on any Adult Entertainment business premises;
- (B) No sign on the sexually oriented business premises shall be allowed to exceed eighteen square feet;
- (C) No animation shall be permitted on or around any sexually oriented business sign, or on the exterior walls or roof of the premises;
- (D) No descriptive art or designs depicting any activity related to, or inferring, the nature of the business shall be allowed on any Adult Entertainment business sign;

- (E) Only flat wall signs shall be permitted for any sexually oriented business;
- (F) Painted signs or painted wall advertising shall not be allowed;
- (G) Other than the signs specifically allowed by this ordinance, an Adult Entertainment business shall not use any other sign, banner, light or other device designed to draw attention to the business location within the City of Wendover, Utah.

1-6: Specific Regulations:

- (A) The outdoor storage or exhibition of goods or materials connected with an Adult Entertainment business is prohibited.
- (B) Activities conducted within the structure of the Adult Entertainment business must be conducted in such a manner so as to preclude observation from the general public located outside the structure.

2-1: Title for citation.

The ordinance shall be known as the "Sexually Oriented Businesses and Employee Licensing Ordinance."

2-2: Purpose of provisions.

It is the purpose and object of this ordinance to establish reasonable uniform regulations governing the time, place and manner of operation of sexually oriented businesses and their employees in the city of Wendover, Utah. This ordinance shall be construed to protect the governmental interests recognized by this ordinance in a manner consistent with constitutional protections provided by the United States and Utah Constitutions.

2-3: Application of provisions.

This ordinance 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. As it applies to sexually oriented businesses only.

2-4: Definitions.

For the purpose of this ordinance, the following words shall have the following meanings:

1. "Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which, as its principal business, features persons who appear in live performances in a state of nudity or which are characterized by the exposure of specified anatomical areas or by specified sexual activities.
2. "Council" means the Wendover City Council or its designee.
3. "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.
4. "Escort" means any person who, for pecuniary compensation, dates, socializes, visits, consorts with or accompanies or offers to date, consort, socialize, visit or accompany another or others to or about social affairs, entertainment or places of amusement, or within any place of public or private resort or any business or commercial establishment or any private quarters. "Escort" shall not be construed to include persons who provide business or personal services such as licensed private nurses, aids for the elderly or handicapped, social secretaries or similar service personnel whose relationship with their patron is characterized as a bona fide contractual relationship having a duration of more than twelve 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 duration not longer than one hour.
5. "Escort service" means an individual or entity who, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce patrons to escorts.

6. "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 patron by contacting or meeting with escort services, escorts or patrons at any location within the city, whether or not such third person is employed by such escort service, escort, patron, or by another business, or is an independent contractor or self-employed.
7. "Nude dancing agency" means any person, agency, firm, corporation, partnership, or any other entity or individual which furnishes, books or otherwise engages the service of a professional dancer licensed pursuant to this ordinance for performance or appearance at a business licensed for nude entertainment or adult theaters.
8. "Nude entertainment business" means a business, including adult theater, where the principal purposes of the employees are to perform or appear in the presence of patrons of the business in a state of nudity. A business shall also be presumed to be a nude entertainment business if the business holds itself out as such a business.
9. "Nudity" or "state of nudity" means a state of dress in which the nipple and areola of the female breast, or male or female genitals, pubic region or anus, or any portion thereof, are not covered by opaque clothing.
10. "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.
11. "Patron" means any person who contracts with or employs any escort services or escort or the customer of any business licensed pursuant to this ordinance.
12. "Pecuniary compensation" means any commission, fee, salary, tip, gratuity, hire, profit, reward, or any other form of consideration.
13. "Person" means any person, unincorporated association, corporation, partnership or other legal entity.

14. "Sexually oriented business" means nude entertainment business and sexually oriented outcall services.
15. "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 as independent contractors. Employees shall not include individuals whose work is unrelated to the sexually oriented portion of the business, such as janitors, bookkeepers and similar employees. Sexually oriented business employees shall not include cooks, serving persons, bartenders and similar employees, except where they may be managers or supervisors of the business. All persons making outcall meetings under this ordinance, including escorts, models, guards, escort runners, drivers, chauffeurs and other similar employees, shall be considered sexually oriented business employees.
16. "Sheriff" means the Sheriff of Tooele County.
17. "Police" means police officers of the Wendover City Police Department.
18. "Specified anatomical areas" means the human male or female pubic area or anus with less than a full opaque covering, or the human female breast from the beginning of the areola, papilla or nipple to the end thereof with less than full opaque covering.
19. "Specified sexual activities" means:
 - a. Acts of:
 - i. Masturbation,
 - ii. Human sexual intercourse,
 - iii. Sexual copulation between a person and a beast,
 - iv. Fellatio,
 - v. Cunnilingus,
 - vi. Bestiality,
 - vii. Pederasty,
 - viii. Any anal copulation between a human male and another human male, human female, or beast;

- b. Manipulating, caressing or fondling by any person of:
 - i. The genitals of a human,
 - ii. The pubic area of a human,
 - iii. The uncovered female nipple and areola;
- c. Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed.

2-5: Location and zoning restrictions.

It is unlawful for any nude entertainment business to do business at any location with the City except in areas zoned for adult entertainment businesses.

2-6: Business license required.

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

2-7: Exemptions from license requirements.

The provisions of this ordinance shall not apply to any sex therapists or similar individuals licensed by the state to provide bona fide sexual therapy or counseling, licensed medical practitioner, licensed nurse, psychiatrist, psychologist, nor shall it apply to any educator licensed by the state for activities in the classroom.

2-8: Business categories - Number of licenses.

- A. It is unlawful for any business premises to operate or be licensed for more than one category of sexually oriented business, except that a business may have a license for both outcall services and nude dancing agency on the same premises.
- B. The categories of sexually oriented businesses are:
 - 1. Outcall services;

2. Nude entertainment businesses;
3. Nude dancing agency.

2-9: 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.

2-10: License - Application for business license.

- A. Before any applicant can be licensed to operate a sexually oriented business, the applicant shall submit, on a form to be supplied by the Police, the following:
 1. The correct legal name of each applicant, corporation, partnership, limited partnership or entity doing business under an assumed name, including the principal place of business of the applicant;
 2. If the applicant is a corporation, partnership or limited partnership, or individual or entity doing business under an assumed name, the information required below for individual applicants shall be submitted for each partner and each principal of an applicant, and for each officer, director and any shareholder (corporate or personal) of more than ten percent of the stock of any applicant. Any holding company, or any entity holding more than ten percent of an applicant, shall be considered an applicant for purposes of disclosure under this ordinance;
 3. If the applicant is an individual or partnership, the application must also state:
 - a. Any other names or aliases used by the individual or members of the partnership,
 - b. Present business address and telephone number,
 - c. Present residence and telephone number,

- d. Drivers license or identification number, and
 - e. Social security number,
 - f. Acceptable written proof that any individual is at least eighteen years of age.
4. A statement of the business, occupation or employment history of the applicant for three years immediately preceding the date of the filing of the application;
5. A statement detailing the license or permit history of the applicant for the five-year period immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate, in this or any other county, city, state or territory, has ever had a license, permit or authorization to do business denied, revoked or suspended, or has had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the date, the name of the issuing or denying jurisdiction, and state in full the reasons for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application;
6. All criminal convictions or pleas of nolo contendere, except those which have been expunged, and the disposition of all such arrests for the applicant, individual or other entity subject to disclosure under this ordinance, for five years prior to the date of the application. This disclosure shall include identification of all ordinance violations, excepting minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense), stating the date, place, nature of each conviction or plea of nolo contendere and sentence of each conviction or other disposition; identifying the convicting jurisdiction and sentencing court and provide the court identifying case numbers or docket numbers. Application for a sexually oriented business license shall constitute a waiver of

disclosure of any criminal conviction or plea or nolo contendere for the purposes of any proceeding involving the business license;

7. In the event the applicant is not the owner of record of the real property upon which the business or proposed business is or is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of business for which the applicant seeks a license for the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well as the copy of the lease or rental agreement pertaining to the premises in which the service is or will be located;
8. A description of the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees for services to be charged by the licensee, and any rules, regulations or employment guidelines under or by which the business intends to operate. This description shall also include:
 - a. The hours that the business or service will be open to the public, and the methods of promoting the health and safety of the employees and patrons and preventing them from engaging in illegal activity,
 - b. The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities,
 - c. The methods of supervising employees and patrons to prevent employees and patrons from charging or receiving fees for services or acts prohibited by this ordinance or other statutes or ordinances,

- d. The methods of screening employees and customers in order to promote the health and safety of employees and customers and prevent the transmission of disease, and prevent the commission of acts of prostitution or other criminal activity.
- B. 1. Upon receipt of an application all departments required to review the application shall determine within seven days whether or not the application is complete. Incomplete applications shall immediately be returned to the applicant with a specification of the items which are incomplete.
 2. The time for processing applications specified in this section shall begin to run from the receipt of a complete application.

2-11: License - Issuance conditions for business license.

The Council shall approve the issuance of a license to the applicant within thirty days after receipt of a completed application from the Police, unless the Council finds one or more of the following:

- A. The applicant is under eighteen 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 ordinance;
- D. The applicant has been convicted of a violation of a provision of this ordinance within two years immediately preceding the application; however, the fact that a conviction is being appealed shall have no effect on the denial;
- E. The premises to be used for the business have been disapproved by the health department, the fire department, the building officials or the zoning officials as not being in compliance with applicable laws and ordinances of the city and county.

- F. The license fees required by this ordinance 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 ordinance;
- I. An applicant has been convicted or pled nolo contendere to a crime:
 - 1. Involving prostitution; exploitation of prostitution; aggravated promotion of prostitution; aggravated exploitation of prostitution; solicitation of sex acts; sex acts for hire; compelling prostitution; aiding prostitution; sale, distribution or display of material harmful to minors; sexual performance by minors; possession of child pornography; public lewdness; indecent exposure; any crime involving sexual abuse or exploitation of a child; sexual assault or aggravated sexual assault; rape; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving similar elements from any jurisdiction regardless of the exact title of the offense; for which:
 - a. Less than two years have elapsed from the date of conviction, if the conviction is of a misdemeanor offense, or less than five years, if the convictions are of two or more misdemeanors within the five years, or
 - b. Less than five years have elapsed from the date of conviction, if the offense is of a felony;
 - 2. The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section.

2-12: License - Application for employee license.

A. Before a sexually oriented business employee may work, such person must submit, on a form to be supplied by the Police, the following:

1. Applicant's correct legal name,
2. Any other names or aliases used by the individual,
3. The age, date and place of birth,
4. Height,
5. Weight,
6. Color of hair,
7. Color of eyes,
8. Present business address and telephone number,
9. Present residence and telephone number,
10. Drivers license or identification number, and
11. Social security number,
12. Acceptable written proof that any individual is at least eighteen years of age;
13. Attached to the form as provided above, there must be two color photographs of the applicant clearly showing the individual's face and the individual's fingerprints on cards of the type and manner which are provided by law enforcement agencies. Fees for the photographs and fingerprints shall be paid by the applicant directly to the issuing agency;
14. For any individual applicant required to obtain a sexually oriented business employee license as an escort or as a nude entertainer, a certificate from a licensed medical doctor, stating that the individual has, within thirty days immediately preceding the date of the application, been examined and found to be free of any contagious or communicable diseases;

15. A statement of the business, occupation or employment history of the applicant for three years immediately preceding the date of the filing of the application;
16. A statement detailing the license or permit history of the applicant for the five-year period immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate, in this or any other county, city, state or territory, has ever had a license, permit or authorization to do business denied, revoked or suspended, or has had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the date, the name of the issuing or denying jurisdiction, and state in full the reasons for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application;
17. All criminal convictions or pleas of nolo contendere, except those which have been expunged, and the disposition of all such arrests for the applicant, individual or other entity subject to disclosure under this ordinance, for five years prior to the date of the application. This disclosure shall include identification of all ordinance violations, excepting minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense), stating the date, place, nature of each conviction or plea of nolo contendere and sentence of each conviction or other disposition; identifying the convicting jurisdiction and sentencing court and provide the court identifying case numbers or docket numbers. Application for a sexually oriented business or employee license shall constitute a waiver of disclosure of any criminal conviction or plea or nolo contendere for the purposes of any proceeding involving the business or employee license;

B. It shall be the duty of the Police:

1. To receive and process application for employee licenses provided in the ordinance;
2. To investigate the qualifications of all applicants for employee licenses and to grant or deny such applications within forty-five (45) days from the date such application is filed in a completed form.
3. To deny any application made by any applicant who does not meet the requirements of this ordinance, or who has failed to disclose, misstated or otherwise misled the Police in respect to any facts or statement contained within the application, or who has refused or neglected to comply with any of the provisions of this ordinance.
4. To deny any application if an applicant has been convicted or pled nolo contendere to a crime, described in subsection 2-11(I) of this ordinance.

2-13: Revocation of work permits.

The Police may revoke any work permit issued under this ordinance when it shall appear to the satisfaction of the Police that:

- A. The holder of the employee license has, subsequent to the issuance of the employee license, been convicted of any of the crimes or offenses specified in subsection 2-11(I) of this ordinance;
- B. The holder of the employee license failed to disclose, misstated or otherwise misled the Police in respect of any fact or statement contained in his or her application for a work permit;
- C. The holder of the employee license refuses or neglects to comply with any applicable provisions of this ordinance.

2-14: 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. Outcall business, one thousand dollars, (\$1,000.00)
 - b. Nude dancing agencies and nude entertainment businesses, five hundred dollars, (\$500.00)
2. For each business applicant, an investigation fee of two hundred fifty dollars, (\$250.00) for each applicant required to submit a separate disclosure application;
3. Yearly sexually oriented business employee license fees:
 - a. Any employee providing outcall business services away from the premises of the outcall business, two hundred fifty dollars, (\$250.00)
 - b. Outcall business employees requiring a license but not performing any services outside the licensed premises, nude entertainment business employees requiring a license but not individually providing nude entertainment services to patrons, one hundred dollars, (\$100.00)
 - c. Employees of nude entertainment businesses personally providing nude entertainment to patrons, two hundred fifty dollars, (\$250.00)

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

2-15: License - Bond.

Each application for a sexually oriented business license shall post with the business license authority a cash or irrevocable letter of credit from a federally insured bank payable to the City in the amount of two thousand dollars (\$2,000.00). Any fines assessed against the business, officers or managers for violation 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 ordinance. In the event the funds are drawn against the cash or surety bond to pay such fines, the

bond shall be replenished to two thousand five hundred dollars (\$2,500.00) within fifteen days of the date of notice of any draw against it.

2-16: License - Premises location and name.

A. It is unlawful to conduct business under a license issued pursuant to this ordinance at any location other than the licensed premises. Any location to which telephone calls are automatically forwarded by such business shall require a separate license.

B. It is unlawful for any sexually oriented business to do business in the City under any name other than the business name specified in the application.

2-17: License - Term.

Sexually oriented business and employee licenses issued pursuant to this ordinance shall be valid from the date of issuance through January 1st of each succeeding year. License fees required herein shall be prorated on a semi-annual basis.

2-18: License - Notice of change of information.

Any change in the information required to be submitted under this ordinance for either a sexually oriented business license or sexually oriented business employee license shall be given, in writing, to the Police (employee licenses) or to the Council (business licenses) within fourteen days after such change.

2-19: License - Transfer limitations.

Sexually oriented business licenses granted under this ordinance 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 or partnership to transfer any part in excess of ten percent thereof, without filing a new application and obtaining prior city approval. If any transfer of an interest in a business licensee occurs in violation of this section, 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 ordinance.

2-20: Licenses - Display.

It is unlawful for any sexually oriented business location within the boundaries of the city to fail to display the license granted pursuant to this ordinance in a prominent location within the business premises. It is unlawful for any individual licensed pursuant to this ordinance to fail to, at all times while engaged in licensed activities within the corporate boundaries of the city, carry their employee license on their person. If the individual is nude, such license shall be visibly displayed within the same room in which the employee is performing. When requested by the Police, 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.

2-21: 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.

2-22: Regulations and unlawful activities.

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

- A. Allow persons under the age of eighteen years on the licensed premises, except that in adult businesses, which exclude minors from less than all of the business premises, minors shall not be permitted in excluded areas;
- B. Allow, offer or agree to conduct any outcall business with persons under the age of eighteen years or in the presence of any persons under the age of 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 door to the premises to be locked while any customer is in the premises;
- E. Allow, offer or agree to gambling on the licensed premises;

- F. Allow, offer or agree to allow a patron to touch any specified anatomical areas or to touch any specified anatomical areas of a patron;
- 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 to occur on the licensed premises or, in the event of an outcall employee or business, the outcall employee committing, offering or agreeing to commit prostitution, attempting to commit prostitution, soliciting prostitution, soliciting a minor, or committing activities harmful to a minor;
- J. Allow, offer, commit or agree to any sexual act in the presence of any customer or patron;
- K. Allow, offer or agree to allow a patron or customer to masturbate in the presence of the sexually oriented business employee or on the premises of a sexually oriented business.

2-23: Outcall services - Operation requirements.

It is unlawful for any business or employee providing outcall services contracted to be performed in Wendover City, to fail to comply with the following requirements:

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

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

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

2-24: Design of premises.

- A. In addition to the general requirements of disclosure for a sexually oriented business, any applicant for a license as a sexually oriented 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 for business, shall conform to the following:
 - 1. The interior of the premises shall be configured in such a manner so as to allow an unobstructed view of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms.
 - 2. Restrooms may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person being allowed in the restroom per stall, and only one person in any stall at a time, and requiring that patrons shall not be allowed access to manager's station areas.

3. Except for the reception area, 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.
 4. The diagram required shall not necessarily be a professional engineer's or architect's blueprint; however, the diagram must show marked internal dimensions, all overhead lighting fixtures and ratings for illumination capacity.
- B. In addition to the other requirements herein, it is unlawful for business premises licensed for 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 patrons are not admitted;
 2. Allow any door on any room used for the business, except for the door to an office to which patrons shall not be admitted, outside doors and restroom doors, to be lockable from the inside;
 3. Provide any room in which the employee or employees and the patron or patrons are alone together without a separation by a solid physical barrier at least three feet high. The patron or patrons shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier.

2-25: Nude entertainment business - Location restriction.

It is unlawful for any business licensed for nude entertainment to be located within three hundred feet of a business licensed for the sale or consumption of alcohol.

2-26: Nude dancing agencies.

- A. It is unlawful for any individual or entity to furnish, book or otherwise engage the service of a professional dancer, model or performer to appear in a state of nudity for pecuniary compensation in, or for, any nude entertainment business or

adult theater pursuant to this ordinance unless such agency is licensed pursuant to this ordinance.

- 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 nudity, either gratuitously or for compensation, in, or for, any business licensed pursuant to this ordinance, unless such person is licensed pursuant to this ordinance.

2-27: Performers - Prohibited activities.

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

- A. To touch in any manner any other person;
- B. To throw any object or clothing off the stage area;
- C. Except as otherwise set forth herein, to accept any money, drink or any other object 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;

The foregoing prohibitions shall not prohibit two or more performers from touching each other while performing provided such touching does not involve the touching of specified anatomical areas whether clothed or unclothed.

2-28: Patrons - Prohibited activities.

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

2-29: Nudity - Defenses to prosecution.

It is a defense to prosecution or violation under this ordinance 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.

2-30: Existing businesses - Compliance time limits.

A. The provisions of this ordinance 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 ordinance, and regardless of whether such persons and businesses are currently licensed to do business in the city.

- 1. All such persons and businesses requiring outcall services licenses shall have forty-five (45) days from the effective date of the ordinance codified in this ordinance, or until their current license expires, whichever is first in time, to comply with the provisions of this ordinance.
- 2. All nude dancing agency licenses shall have seventy-five (75) days from the effective date of the ordinance codified in this ordinance, or until their license must be renewed, whichever is first, to comply with the provisions of this ordinance.
- 3. All nude entertainment businesses shall have ninety (90) days from the effective date of the ordinance codified in this ordinance, or until their current license must be renewed, whichever is first, to comply with the provisions of this chapter.

2-31: Violation - Injunction when.

An entity or individual who operated 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 ordinance, 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.

2-32: Revocation of business license.

- A. If a licensee has acted or omitted to act in the following manner, a license may be revoked.
1. Except as otherwise set forth herein, has on two or more occasions committed an act prohibited by this Ordinance;
 2. Has refused to allow any inspection of the premises of the sexually oriented business specifically authorized by this ordinance, or by any other statute or ordinance;
 3. Has failed to replenish the cost bond as provided in this ordinance;
 4. A licensee gave materially false or misleading information in obtaining the license;
 5. A licensee is delinquent in payment to the city for ad valorem taxes, or sales taxes related to the sexually oriented business.
- B. Revocation shall take effect within ten days of the issuance of notice of revocation, unless an appeal is filed as provided by this ordinance.
- C. The fact that a conviction is being appealed shall have no effect on the revocation of the license.

2-33: Effect of license revocation.

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

2-34: Revocation procedure for business licens or employee license:

- A. The Council may, on its own motion or upon the sworn complaint in writing of any person, investigate the conduct of any licensee under these regulations to determine whether grounds for revocation of a license exist.
- B. After an investigation, if it appears that a ground for revocation exists, the Council shall issue and cause to be served on the licensee an order to show cause why his license should not be revoked. Said order shall contain:
 - 1. A statement directing the licensee or licensee's representative to appear before the Council at any time and place set out therein which shall be not less than ten (10) days from the date of service of said order to show cause on the licensee;
 - 2. A brief statement of the grounds for revocation; and
 - 3. A statement that the licensee shall have an opportunity to be heard, present witnesses and confront any witnesses against him.
- C. Service on the licensee shall be made by personally delivering a copy of the order to show cause to one of the persons whose name is on the license or by mailing a copy of the order by certified mail to the place of business of the licensee, which is specified in the license. Service by mail shall be deemed complete on the day of the mailing.
- D. At the hearing on the order to show cause, the licensee and the complainant, if there is one, may be represented by attorneys, present testimony or other evidence, and cross-examine witnesses. A majority of the Council members must be present to conduct a hearing, and if the hearing is pursuant to a complaint, the complainant must also be present.
- E. Within ten (10) days after the hearing, the Council will render its decision as to revocation and give notice thereof to the licensee. A majority of those members present at the hearing must be agreed in order to direct a revocation.

F. If after an investigation as set forth herein, it appears to the Council that no grounds for revocation exist, it shall within ten (10) days issue to the licensee an investigative report which shall contain any suggestions or recommendations which the Council determines necessary or appropriate to protect the public good, welfare, safety, health or morals.

2-35: Appeal procedure.

- A. An applicant for a business license who has been denied an application; or whose application has not been decided in accordance with the conditions of this ordinance; or who has had a license revoked by the Council shall have the right to judicial review of such decision in accordance with applicable laws of the State of Utah.
- B. Any applicant for an employee business license whose application has been denied; or whose application has not been decided in accordance with the conditions of this ordinance may appeal to the Council in writing within fifteen (15) days after any such alleged act has occurred. Any appeal filed shall be conducted in substantially the same manner as described in subsection 2-34(D) of this ordinance. In the event the Council upholds the decision of the Police, the applicant shall have the right to judicial review of such decision in accordance with applicable laws of the State of Utah.

2-36: Violation - Penalty.

In addition to the revocation or suspension of a license, as provided in this ordinance, each violation of this ordinance shall, upon citation by the city business license authority, require the licensee to pay a civil penalty in the amount of five hundred dollars (\$500.00). Such fines shall be deducted from the cost bond posted pursuant to this ordinance, unless paid within ten days of notice of the fine or the final determination after any appeal. In addition to the civil fines provided in this ordinance, the violation of any provision of this chapter shall be a misdemeanor. Each day of a violation shall be considered a separate offense.

2-37. Severabilty.

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

DATED this 18th day of July, 1990.

CITY OF WENDOVER, UTAH

Albert B. Smith
Mayor

ATTESTED:

Margaret L. Wheeler
City Recorder