

CHAPTER 19

SEXUALLY ORIENTED BUSINESSES

19-1 PURPOSE AND INTENT

- A. The purpose of this Ordinance is to regulate Sexually Oriented Businesses which sell, display, or distribute indecent materials, or which sponsor, exhibit or engage in conduct, which is indecent, but which is not obscene such as to be prohibited by state law.
- B. It is also the purpose and intent of this Ordinance to regulate Sexually Oriented Businesses to promote the health, safety, morals, and general welfare of the citizens of the County/City and to establish reasonable and uniform regulations to prevent any deleterious location and concentration of Sexually Oriented Businesses within the County/City, thereby reducing or eliminating the adverse secondary effects from such Sexually Oriented Businesses.
- C. 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 the Ordinance to condone or legitimize the distribution of obscene material.

19-2 DEFINITIONS. For the purposes of this chapter, certain terms and words are defined as follows:

SEXUALLY ORIENTED BUSINESSES: "Sexually Oriented Businesses" are those businesses defined as follows:

- A. "Adult Arcade" means an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, computers, or other similar image producing machines, for viewing by five or fewer persons each, are regularly used to show films, motion pictures, video cassettes, DVD's, CD-ROMs, slides, computer-generated images, or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas".
- B. "Adult Bookstore", "Adult Novelty Store" or "Adult Video Store" means a commercial establishment which has 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 to the sale, rental for any form of consideration, of any one or more of the following:
 - 1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, DVD's, CD-ROMs, or other visual representations which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas".
 - 2. 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.

3. An establishment may have other principal business purposes that do not involve the offering for sale rental or viewing of materials depicting or describing "Specified Sexual Activities" or "Specified Anatomical Areas", and still be categorized as adult bookstore, adult novelty store, or adult video store. Such other business purposes will not serve to exempt such establishments from being categorized as an adult bookstore, adult novelty store or adult video store so long as one of its business purposes is offering for sale or rental, for some form of consideration, the specified materials which depict or describe "Specified Anatomical Areas" or "Specified Sexual Activities." For the purpose determining whether a significant or substantial portion of the stock in trade or revenues consist of or is derived from the sale of materials which depict or describe "Specified Sexual Activities" or "Specified Anatomical Areas", the amount of such stock in trade or revenues shall be compared to the aggregate amount of revenues derived from the sale of all such materials sold or displayed and the revenues or amount of stock in trade derived from or consisting of all materials described in Section 19-2, SEXUALLY ORIENTED BUSINESSES, Subsection B, items 1 and 2 hereof, over a period of at least one month.
- C. "Adult Cabaret" means a nightclub, bar, restaurant "bottle club", juice bar or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features: (a) persons who appear nude or in a state of nudity or semi-nude; (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 depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas".
- D. "Adult Motel" means a motel, hotel or similar commercial establishment which: (a) offers public accommodations, for any form of consideration, which provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, DVD's, CD-ROMs, or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" and which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television, or (b) offers a sleeping room for rent for a period of time less than ten (10) hours; or (c) for any form of consideration, allows a tenant or occupant to sub-rent the sleeping room for a time period of less than ten (10) hours.
- E. "Adult Motion Picture Theater" means a commercial establishment where films, motion pictures, video cassettes, slides, DVD's, CD-ROMs, or similar photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas" are shown for any form of consideration.
- F. "Adult Theater" means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities."
- G. "Escort" means a person who, for any form of consideration, agrees or offers to act as a companion or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for or dance with another person.

- H. "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.
- I. "Massage Parlor" means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentations, electric or magnetic treatments, or any other treatment manipulation of the human body which occurs as a part of or in connection with "Specified Sexual Activities", or where any person providing such treatment, manipulation, or service related thereto, exposes his or her "Specified Anatomical Areas". The definition of Sexually Oriented Businesses shall not include the practice of massage in any licensed hospital, nor by a licensed hospital, nor by a licensed physician, surgeon, chiropractor or osteopath, massage therapist, nor by any nurse or technician working under the supervision of a licensed physician, surgeon, chiropractor or osteopath, nor by trainers for any amateur, semi-professional or professional athlete or athletic team or school athletic program.
- J. "Nude Model Studio" means any place where a person, who regularly appears in a state of nudity or displays "Specified Anatomical Areas" is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.
- K. "Sexual Encounter Establishment" means a business or commercial establishment, that as one of its primary 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" or the exposure of "Specified Anatomical Areas" or activities when one or more of the persons is in a state of nudity or semi-nude. The definition of 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.

COUCH OR STRADDLE DANCE: "Couch" or "Straddle" dance is defined as an employee of the establishment intentionally touching or coming within ten (10) feet of any patron while engaged in the display or exposure of any "Specified Anatomical Area", or any "Specified Sexual Activity".

EMPLOYEE: A person who works or performs in and/or for a Sexually Oriented Business, regardless of whether or not said person is paid a salary, wage or other compensation by the operator of said business.

ESTABLISHMENT: "Establishment" means and includes any of the following:

- A. The opening or commencement of any such business as a new business;
- B. The conversion of an existing business, whether or not a Sexually Oriented Business, to any of the Sexually Oriented Businesses defined in this chapter;
- C. The addition of any of the Sexually Oriented Businesses defined in this chapter to any other existing Sexually Oriented Business; or
- D. The relocation of any such Sexually Oriented Business.

LIVE ADULT ENTERTAINMENT: Any exhibition, dance, or performance for consideration by a person who appears nude or semi-nude, or a performance, which is characterized

by the exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities", including the performance of a "Straddle" or "Couch" dance.

NUDITY OR STATE OF NUDITY: The appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast; or a state of dress which fails to opaquely and fully cover a human buttocks, anus, male or female genitals, pubic region or areola or nipple of the female breast.

OPERATOR: The owner, permit holder, custodian, manager, operator or person in charge of any permitted or licensed premises.

PERMITTED OR LICENSED PREMISES: Any premises that requires a license and/or permit and that is classified as a Sexually Oriented Business.

PERMITTEE AND/OR LICENSEE: A person in whose name a permit and/or license to operate a Sexually Oriented Business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.

PERSON: An individual, proprietorship, partnership, corporation, association, or other legal entity.

PUBLIC BUILDING: Any building owned, leased or held by the United States, the state, the county, the County/City, any special district, school district, or any other agency or political subdivision of the state or the United States, which building is used for governmental purposes.

PUBLIC PARK OR RECREATION AREA: Any public land 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, open space, wilderness areas, or similar public land within the County/County/City which is under the control, operation, or management of the County/County/City park and recreation authorities.

PUBLIC PLACE: All outdoor places owned by or open to the general public, and all buildings and enclosed places owned by or open to the general public, including but not limited to places of entertainment, taverns, restaurants, clubs, theaters, dance halls, banquet halls, party rooms or halls limited to specific members, restricted to adults or to patrons invited to attend, whether or not an admission is charged. The term does not include private rooms used primarily for residential purposes, hotel rooms or other private places used for human habitation or bona fide dressing rooms or restrooms.

RELIGIOUS INSTITUTION: Any church, synagogue, mosque, temple or building, which is used primarily for religious worship and related religious activities.

RESIDENTIAL USE: A single family dwelling, duplex, townhouse, multiple family, or mobile park or subdivision and campground or other use characterized by its devotion to human habitation, excluding hotels, motels, boarding establishments or similar commercial establishments.

RESIDENTIAL DISTRICT: Any district established by the Zoning Ordinance, which is characterized by residential uses.

SCHOOL: Any public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, primary 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 the facilities used primarily for another purpose and only incidentally as a school.

SEMI-NUDE: A state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

SEXUALLY ORIENTED BUSINESS: An adult arcade, adult bookstore, adult novelty shop, adult video store, adult cabaret, adult motel, adult motion picture theatre, adult theatre, massage parlor, sexual encounter establishment, escort agency or nude model studio.

SIGNIFICANT OR SUBSTANTIAL: “Significant or Substantial” means at least twenty-five percent (25%).

SPECIFIED CRIMINAL ACT: Any sexual crimes against children, sexual abuse, rape or crimes connected with another Sexually Oriented Business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations.

SPECIFIED ANATOMICAL AREAS: Means and includes any of the following:

- A. Less than completely and opaquely covered human genitals, pubic region, anus, or female breasts below a point immediately above the top of the areolae; or
- B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES: As used in this chapter, means and includes any of the following:

- A. The fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts;
- B. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- C. Masturbation, actual or simulated; or
- D. Human genitals in a state of sexual stimulation, arousal or tumescence;
- E. Excretory functions as part of or in connection with any of the activities set forth in subdivisions (1) through (4) of this subsection.

SUBSTANTIAL ENLARGEMENT OF A SEXUALLY ORIENTED BUSINESS: The increase in the floor areas occupied by the business by more than fifteen percent (15%), as the floor areas exist on the effective date of the Ordinance adopting this Chapter.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS: 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;
- C. The establishment of a trust, gift or other similar legal device which transfers ownership or control of the business, except for transfer by bequest or other operation of law upon the death of a person possessing the ownership or control.

ZONING ORDINANCE: The Minidoka County/Cities Zoning Ordinance as adopted by Minidoka County, or the Cities of Rupert, Heyburn, Paul, Acequia or Minidoka, Idaho as presently constituted or as may be amended hereafter.

19-3 ESTABLISHMENT AND CLASSIFICATION OF BUSINESSES:

- A. The establishment and operation of a Sexually Oriented Business shall be permitted only in an Industrial Light or Heavy (IL or IH) Zone, and shall be subject to the restrictions set forth in this chapter.
- B. No person shall cause or permit the establishment of a Sexually Oriented Business within 1,000 feet of another such business or within 1,500 feet of any religious institution, school, boys' club, girls' club, or similar existing youth organization, or public park or public building, or within 1,500 feet of any property zoned for residential use or used for residential purposes.
- C. Notwithstanding the distance requirements of subsection B above, the location of Sexually Oriented Businesses within retail shopping centers in such zones is permitted where such activities will have their only frontage upon enclosed malls or malls isolated from direct view from public streets, parks, schools, religious institutions, boys' clubs, girls' clubs, or similar existing youth organization, public buildings or residential districts or uses.

19-4 MEASUREMENT OF DISTANCE: As regarding Section 19-3, subsection B., distance between any two Sexually Oriented Businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any Sexually Oriented Business and any religious institution, public or private elementary or secondary school, boys club, girls club, or similar existing youth organization, or public park or public building or any properties zoned for residential use or used for residential purposes shall also be measured in a straight line, without regard to intervening structures or objects from the nearest point of the property line of the premises where the Sexually Oriented Business is conducted, to the nearest point of the property line of the premises of a religious institution, public or private elementary or secondary school, boys club, girls club, or similar existing youth organization, or public park or public building or any properties zoned for residential use or used for residential purposes.

19-5 LOCATION OF SEXUALLY ORIENTED BUSINESSES: Sexually Oriented Businesses shall be permitted only in the IL (Industrial Light) or IH (Industrial Heavy) Zones and shall otherwise be subject to the provisions of the Zoning Ordinance applicable to such zones, together with the provisions of this chapter. In the event of any conflict between the Zoning

Ordinance and this chapter, then the provisions of this chapter shall control. Permits for Sexually Oriented Businesses shall be required and governed by the procedures and policies specified in Section 19-9 of this chapter. In addition, any person who owns, operates or controls a Sexually Oriented Business shall be subject to the following restrictions:

- A. The person commits a misdemeanor if he operates or causes to be operated a Sexually Oriented Business except as provided in Section 19-3 of this chapter.
- B. The person commits a misdemeanor if he operates or causes to be operated a Sexually Oriented Business within 1,500 feet of the following:
 - 1. Any religious institution;
 - 2. Any school;
 - 3. The boundary of any residential zone;
 - 4. A public park adjacent to any residential zone; (e) a property line of a lot devoted to residential use; or
 - 5. A boys club, girls club, or similar existing youth organization, except as provided in Section 19-3 subsection C.
- C. A person commits a misdemeanor if he operates or causes to be operated a Sexually Oriented Business within 1,000 feet of another such business, which will include, any adult arcade, adult book store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, massage parlor or any sexual encounter establishment, except as provided in Section 19-3 subsection C.
- D. A person commits a misdemeanor if he causes or permits the operation, establishment, or maintenance of more than one Sexually Oriented Business within the same building, structure, or portion thereof, except as provided in Section 19-3 subsection C, or causes the substantial enlargement of any Sexually Oriented Business in any building, structure or portion thereof containing another Sexually Oriented Business.
- E. It is a defense to prosecution under this section if 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;
 - b. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
 - c. Where no more than one nude model is on the premises at any one time.

19-6 REGULATIONS GOVERNING EXISTING SEXUALLY ORIENTED BUSINESSES:

- A. Any Sexually Oriented Businesses lawfully operating on the effective date of this Ordinance that is in violation of Sections 19-3 and 19-5 of this Ordinance shall be deemed a non-

conforming use. A non-conforming use will be permitted to continue for a period of one year, with a possible extension of one year to be granted by the County/Cities Planning Commission only upon a convincing showing of extreme financial hardship which is defined as the recovery of the initial financial investment in the non-conforming use, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more.

Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or more Sexually Oriented Businesses are within 1,000 feet of one another and otherwise in a permissible location, the Sexually Oriented Business which was first established and continually operating at the particular location is the conforming use and the later established business(es) is non-conforming, except as provided in Section 19-3 subsection C.

- B. A Sexually Oriented Business lawfully operating as conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of a Sexually Oriented Business permit and/or license, of a church, public or private elementary or secondary school, public park, public building, residential district, or residential lot within 1,500 feet of the Sexually Oriented Business. This provision applies only to the renewal of a valid permit and/or license and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.
- C. Any establishment subject to the provision of this section shall apply for the permit provided for by Section 10 within thirty (30) days of the effective date of this Ordinance. Any establishment, existing prior to the effective date of this Ordinance, shall comply with the regulations pertaining to Sections 20, 22, and 30, within sixty (60) days of the effective date of this Ordinance, and all other applicable permit regulations within thirty (30) days of the effective date of this Ordinance.

19-7 INJUNCTION: A person who operates or causes to be operated a Sexually Oriented Business without having a valid permit due to locational restrictions is subject to a suit for injunction as well as prosecution for the criminal violation. Such violation shall be punishable by a fine of Three Hundred Dollars (\$300.00) and/or thirty (30) days imprisonment, and if an injunction must be sought, attorney's fees and costs may be assessed by the Court against the Sexually Oriented Business.

19-8 SEXUALLY ORIENTED BUSINESS PERMIT: PURPOSE AND INTENT: It is the purpose of this ordinance to regulate Sexually Oriented Businesses to promote the health, safety, morals and general welfare of the citizens of the County/City, and to establish reasonable and uniform regulations to prevent deleterious effects of Sexually Oriented Businesses within the County/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 or effect of this Ordinance to in any way condone or legitimize the distribution of obscene or harmful material to minors'.

19-9 PERMIT REQUIRED:

- A. No Sexually Oriented Business shall be permitted to operate without a valid Sexually Oriented Business permit issued by the County/City for the particular type of business. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business without said permit.
- B. The County/City Planning and Building Administrator or his/her designee is responsible for granting, denying, revoking, renewing, suspending, and canceling Sexually Oriented Business permits for proposed or existing Sexually Oriented Businesses. The County/City Planning and Building Administrator or his/her designee is also responsible for ascertaining whether a proposed Sexually Oriented Business for which a permit is being applied for complies with all locational requirements of Sections 19-3, 19-5, and 19-6 of this Ordinance, all applicable zoning laws and/or regulations now in effect or as amended or enacted subsequent to the effective date of this Ordinance in the County/City and the County/City Comprehensive Plan.
- C. The Sheriff or applicable City Police Department shall be responsible for enforcing all other provisions of this Ordinance. The applicable Law Enforcement Department shall, upon request from the County/City Planning & Building Administrator, provide information on whether an applicant has been convicted of a specified criminal act during the time period set forth.
- D. The County/City Planning and Building Administrator and the applicable Law Enforcement Department shall be jointly responsible for inspecting a proposed, permitted or non-permitted Sexually Oriented Business in order to ascertain whether it is in compliance with this Ordinance.
- E. An application for a permit must be made on a form provided by the County/City. Any person desiring to operate a Sexually Oriented Business shall file with the County/City Clerk an original and two (2) copies of a sworn permit application on the standard application form supplied by the County/City or designee.
- F. The completed application shall contain the following information and shall be accompanied by the following documents:
 - 1. If the applicant is:
 - a. An individual, the individual shall state his/her legal name and any aliases and submit satisfactory proof that he/she is eighteen (18) years of age;
 - b. A partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
 - c. A corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of Idaho the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
 - 2. If the applicant intends to operate the Sexually Oriented Business under a name other than that of the applicant; he must state:
 - a. The Sexually Oriented Business's fictitious name and
 - b. Submit documents evidencing compliance with Chapter 5, Title 53, Idaho Code.

3. Whether the applicant or any of the other individuals listed pursuant to Section 19-9 of this Ordinance has, within the two (2) or five (5) year period as specified in Section 11 immediately preceding the date of the application, been convicted of a Specified Criminal Act, and, if so, the Specified Criminal Act involved, the date of conviction and the place of conviction.
4. Whether the applicant or any of the other individuals listed pursuant to Section 19-9 subsection F of this Ordinance has had a previous permit under this Ordinance or other similar Sexually Oriented Business ordinances from another city or county denied, suspended or revoked, including the name and location of the Sexually Oriented Business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or any other individuals listed pursuant to Section 19-9 subsection F has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is permitted under this Ordinance whose permit has previously been denied, suspended or revoked, including the name and location of the Sexually Oriented Business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.
5. Whether the applicant or any other individual listed pursuant to Section 19-9 subsection F holds any other permits and/or licenses under this Ordinance or other similar Sexually Oriented Business ordinance from another County/City or county and, if so, the names and locations of such other permitted businesses.
6. The single classification of permit for which the applicant is filing.
7. The location of the proposed Sexually Oriented Business, including a legal description of the property, street address, and telephone number(s), if any.
8. The mailing addresses and residential addresses of the applicant and each partner, member, officer, director and shareholder listed in Section 9-F hereof.
9. A recent photograph of the applicant(s) or its manager, partner, member or president.
10. The driver's permit number, Social Security number, and/or State or federally issued tax identification number of the applicant or its manager, partner, member or president.
11. 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 it must 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 (6) inches.
12. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by an Idaho registered land surveyor depicting the property lines and the structures containing any established existing uses regulated by this Ordinance within 1,500 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within 1,500 feet of the property to be certified; and the property lines of any residentially zoned area or residential property within 1,500 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence at the time an application is submitted. Sexually Oriented Businesses allowed under Section 3.C. of this Ordinance are exempt from this requirement.

13. If a person who wishes to operate a Sexually Oriented Business is an individual, he/she must sign the application for a permit as applicant. If a person who wishes to operate a Sexually Oriented Business is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a permit as applicant. If a corporation is listed as owner of a Sexually Oriented Business or as the entity, which wishes to operate such a business, each individual having a ten percent (10%) or greater interest in the corporation must sign the application for a permit as applicant.
 14. If a person wishes to operate a Sexually Oriented Business which shall exhibit on the premises films, video cassettes, DVD's, CD-ROMs, or other video reproductions which depict Specified Sexual Activities or Specified Anatomical Areas, then said person shall comply with the application requirements stated at Section 20 *et. seq.* of this Ordinance.
- G. Applicants for a permit under this section shall have a continuing duty to promptly supplement application information required by this section in the event that said information changes in any way from what is stated on the application. The failure to comply with said continuing duty within thirty (30) days from the date of such change, by supplementing the application on file with the County/City Clerk or his/her designee, shall be grounds for suspension of a permit.
 - H. In the event that the County/City Clerk or his/her designee determines or learns at any time that the applicant has improperly completed the application for a proposed Sexually Oriented Business, he/she shall promptly notify the applicant of such fact and allow the applicant ten (10) days to properly complete the application. The time period for granting or denying a permit shall be stayed during the period in which the applicant is expressly allowed an opportunity to properly complete the application.
 - I. The applicant must be qualified according to the provisions of this Ordinance and the premises must be inspected and found to be in compliance with all federal, state or County/City health, fire and building codes and laws.
 - J. The applicant shall be required to pay a non-refundable application fee of One Hundred Dollars (\$100.00) at the time of filing an application under this Ordinance.
 - K. Prior to obtaining any permit or license to operate any Sexually Oriented Business defined in this Ordinance, and as part of any application for a permit under this section, the applicant shall obtain from the Administrator of Planning and Building, or his or her designee, a certification that the proposed location of such business complies with the locational requirements of Sections 19-5 and 19-6 of this Ordinance.
 - L. The fact that a person possesses other types of State or County/City permits and/or licenses does not exempt the applicant from the requirement of obtaining a Sexually Oriented Business permit.
 - M. By applying for a permit under this Ordinance, the applicant shall be deemed to have consented to the provisions of this Ordinance and to the exercise by the Administrator of Planning and Building or his/her designee, the Heyburn Police Department and all other County/City agencies charged with enforcing the laws, ordinances and codes applicable in the County/City of their respective responsibilities under this Ordinance.

- N. The applicant shall be required to provide the County/City with the names of any and all employees who are required to be licensed pursuant to Section 19 of this Ordinance. This shall be a continuing requirement even after a permit is granted or renewed.

19-10 INVESTIGATION AND APPLICATION:

- A. Upon receipt of an application properly filed with the County/City Clerk and upon payment of the non-refundable application fee, the County/City Clerk or his/her designee, shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to the applicable Law Enforcement Department and any other County/City divisions or agencies responsible for enforcement of health, fire and building codes and laws. Each division or agency shall promptly conduct an investigation of the applicant, application and the proposed Sexually Oriented Business in accordance with its responsibilities under law and as set forth in this Ordinance. Said investigation shall be completed within twenty (20) days of receipt of the application by the County/City or its designee. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its approval or disapproval of the application, date it, sign it, and, in the event it disapproves, state the reasons therefore. The applicable Law Enforcement Department shall only be required to certify the NCIC records request check mentioned in Section 19-11. The applicable Law Enforcement Department shall not be required to approve or disapprove applications.
- B. The County/City Council shall disapprove an application if it finds that the proposed Sexually Oriented Business will be in violation of any provision of any statute, code, ordinance, regulation or other law in effect in the County/City.

19-11 ISSUANCE OF PERMIT:

- A. The County Commissioners or applicable City Council shall grant or deny an application for a permit within sixty (60) days from the date of its proper filing. Upon the expiration of the sixtieth (60th) day, unless the applicant requests and is granted a reasonable extension of time, the applicant shall be permitted to begin operating the business for which the permit is sought, unless and until the Administrator of Planning and Zoning, or his/her designee, notifies the applicant of a denial of the application and states the reasons(s) for that denial.
- B. Grant of Application for Permit
1. The County Commissioners or applicable City Council shall grant the application unless one (1) or more of the criteria set forth in Section C below is present.
 2. The permit, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the Sexually Oriented Business. The permit shall also indicate that the Sexually Oriented Business whether permitted or not may be subject to prohibitions against Public Nudity and Indecency pursuant to the United States Supreme Court decision in *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991). The permit shall be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business so that it can be read easily at any time.

C. Denial of Application for Permit

1. The County Commissioners or applicable City Council shall deny the application for any of the following reasons:
 - a. An applicant is under eighteen (18) years of age.
 - b. An applicant or an applicant's spouse is overdue on his/her payment to the City or County of any taxes, fees, fines, or penalties assessed against him/her or imposed upon him/her in relation to a Sexually Oriented Business.
 - c. An applicant is residing with a person who has been denied a permit by the County/City to operate a Sexually Oriented Business within the preceding twelve (12) months, or residing with a person whose permit to operate a Sexually Oriented Business has been revoked by any other governmental or regulatory agency within the preceding twelve (12) months.
 - d. An applicant has failed to provide information required by this section or permit application for the issuance of the permit or has falsely answered a question or request for information on the application form.
 - e. The premises to be used for the Sexually Oriented Business have not been approved as being in compliance with health, fire and building codes by the department or agency responsible under law for investigating said compliance.
 - f. The application or permit fees required by this Ordinance have not been paid.
 - g. An applicant of the proposed business is in violation of, or is not in compliance with, any of the provisions of this Ordinance including but not limited to the zoning locational requirements for a Sexually Oriented Business under Sections 19-3, 19-5, and 19-6 hereof.
 - h. The granting of the application would violate a statute, ordinance, or court order.
 - i. The applicant has a permit under this Ordinance, which has been suspended or revoked.
 - j. An applicant has been convicted of a "specified criminal act" for which:
 - i. less than two (2) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a misdemeanor offense for the "specified criminal acts" which are sexual crimes against children, sexual abuse, rape or crimes connected with another Sexually Oriented Business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations;
 - ii. less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense; for the "specified criminal acts" which are sexual crimes against children, sexual abuse, rape or crimes connected with another Sexually Oriented Business including but not limited to distribution of obscenity or material harmful to minors, prostitution, pandering, or tax violations;
 - iii. less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses for "specified criminal acts" which are sexual crimes against children, sexual abuse, rape or crimes connected with another Sexually Oriented Business including but not limited to distribution

- of obscenity or materials harmful to minors, prostitution, pandering or tax violations; offenses occurring within any twenty-four (24) month period;
 - iv. the fact that a conviction is being appealed shall have no effect on disqualification of the applicant;
 - v. An applicant who has been convicted of the above described "specified criminal acts" may qualify for a Sexually Oriented Business permit only when the time period required above in Section 11 (j) has elapsed.
- k. An applicant knowingly has in his or her employ, an employee who does not have a valid license as required in Section 19-9 of this Ordinance.
- 2. If the County Commissioners or applicable /City Council denies the application, the County/City Clerk shall notify the applicant of the denial and state the reasons(s) for the denial within ten (10) days after the date of such denial.
 - 3. If a person applies for a permit for a particular location within a period of twelve (12) months from the date of denial of a previous application for a permit at the location, and there has not been an intervening change in the circumstances which could reasonably be expected to lead to a different decision regarding the former reasons for denial, the application shall be denied.

19-12 ANNUAL PERMIT FEE: The annual fee for a Sexually Oriented Business permit is Eight Hundred Fifty Dollars (\$850.00). Such fee shall accompany the application filed under Section 19-9 subsection F. hereof.

19-13 INSPECTION:

- A. An applicant or permittee shall permit representatives of the Planning and Building Office, the County Health Department, and the Fire Department to inspect the premises of a Sexually Oriented Business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.
- B. It shall be unlawful for a person who operates a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Ordinance, or his/her agent or employee, if he/she refuses to permit such lawful inspection of the premises at any time that it is occupied or open for business.

19-14 EXPIRATION OF PERMIT:

- A. Each permit shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 19-11 (for renewals, filing of original survey shall be sufficient) of this Ordinance. 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 permit will not be affected.
- B. When the County Commissioners or applicable City Council denies renewal of the permit, the applicant shall not be issued a permit under this Ordinance for one (1) year from the date of denial. If, subsequent to denial, the County Commissioners or applicable City Council finds that the basis for denial of the renewal of the permit has been corrected, the applicant

shall be granted a permit if at least ninety (90) days have elapsed since the date denial became final.

19-15 SUSPENSION OF PERMIT:

- A. The Administrator of Planning and Zoning and/or the Sheriff or Chief of Police of the applicable Law Enforcement Department shall suspend a permit for a period not to exceed thirty (30) days if he/she determines that a permittee, or an employee of a permittee, has:
1. Violated or is not in compliance with any section of this Ordinance; or
 2. Been under the influence of alcoholic beverages while working in the Sexually Oriented Business premises; or
 3. Refused to allow an inspection of Sexually Oriented Business premises as authorized by this Ordinance; or
 4. Knowingly permitted gambling by any person on the Sexually Oriented Business premises; or
 5. Operated the Sexually Oriented Business in violation of a building, fire, health, or zoning statute, code, ordinance or regulation, whether federal, state or local, said determination being based on investigation by the division, department or agency charged with enforcing said rules or laws. In the event of such statute, code, ordinance or regulation violation, the County/City or its designee, shall promptly notify the permittee of the violation and shall allow the permittee a seven (7) day period in which to correct the violation. If the permittee fails to correct the violation before the expiration of the seven (7) day period, the County/City or its designee, shall forthwith suspend the permit and shall notify the permittee of the suspension.
 6. Engaged in permit transfer contrary to Section 19-18 of this Ordinance. In the event that the Administrator of Planning and Zoning suspends a permit on the ground that a permittee engaged in a permit transfer contrary to Section 19-18 of this Ordinance, the Director or his/her designee shall forthwith notify the permittee of the suspension. The suspension shall remain in effect until the applicable section of this Ordinance has been satisfied.
 7. Operated the Sexually Oriented Business in violation of the hours of operation required in Section 19-23 of this Ordinance.
 8. Knowingly employs a person who does not have a valid license as required in Section 19-19 of this Ordinance.
- B. The suspension shall remain in effect until the violation of the statute, code, ordinance or regulation in question has been corrected.

19-16 REVOCAION OF PERMIT:

- A. The County Commissioners or applicable City Council shall revoke a permit if a cause of suspension in Section 15 of this Ordinance occurs and the permit has been suspended within the preceding twelve (12) months.
- B. The County Commissioners or applicable City Council shall revoke a permit upon determining that:

1. A permittee gave false or misleading information in the material submitted during the application process that tended to enhance the applicant's opportunity for obtaining a permit; or
2. A permittee or an employee has knowingly allowed possession, use or sale of controlled substances in or on the premises; or
3. A permittee or an employee has knowingly allowed prostitution on the premises; or
4. A permittee or an employee knowingly operated the Sexually Oriented Business during a period of time when the permittee's permit was suspended; or
5. A permittee has been convicted of a "specified criminal act" for which the time period required in Section 19-11 of this Ordinance has not elapsed; or
6. On two (2) or more occasions within a twelve (12) month period, a person or persons committed an offense, occurring in or on the permitted premises, constituting a specified criminal act for which a conviction has been obtained, and the person or persons were employees of the Sexually Oriented Business at the time the offenses were committed. The fact that a conviction is being appealed shall have no effect on the revocation of the permit; or
7. A permittee is convicted of tax violations for any taxes or fees related to a Sexually Oriented Business; or
8. A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or any other Specified Sexual Activities to occur in or on the permitted premises.
9. A permittee has been operating more than one Sexually Oriented Business under a single roof except as provided in Section 19-3 subsection C.

C. When the County Commissioners or applicable City Council revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a Sexually Oriented Business permit for one (1) year from the date revocation became effective. If, subsequent to revocation, the County Commissioners or applicable City Council finds that the basis for revocation under Section 19-16 of this Ordinance has been corrected, the applicant shall be granted a permit if at least ninety (90) days have elapsed since the date revocation became effective. If the permit was revoked under Section 19-16 of this Ordinance, an applicant may not be granted another permit until the number of years required under Section 19-16 have elapsed.

19-17 JUDICIAL REVIEW OF PERMIT DENIAL, SUSPENSION OR REVOCATION:

After denial of an application, or denial of a renewal of an application, or suspension or revocation of a permit, the applicant or permittee may seek review of such administrative action pursuant to and within the time frames established by the Idaho Administrative Procedure Act.

19-18 TRANSFER OF PERMIT:

A. A permittee shall not operate a Sexually Oriented Business under the authority of a permit at any place other than the address designated in the application for permit.

- B. A permittee shall not transfer his/her permit to another person unless and until such other person satisfies the following requirements:
 - 1. Obtains an amendment to the permit from the County Commissioners or applicable City Council which provides that he/she is now the permittee, which amendment may be obtained only if he/she has completed and properly filed an application with the County/City Clerk or his/her designee, setting forth the information called for under Section 19-11 of this Ordinance in the application; and
 - 2. Pays a transfer fee of twenty percent (20%) of the annual permit fee set by this Ordinance.
- C. No permit may be transferred when the Administrator of Planning and Zoning, the Chief of Police or the County/City Council have notified the permittee that suspension or revocation proceedings have been or will be brought against the permittee.
- D. A permittee shall not transfer his permit to another location.
- E. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void and the permit shall be deemed revoked upon the date such transfer is made.

19-19 SEXUALLY ORIENTED BUSINESS EMPLOYEE LICENSE

- A. Each individual to be employed in a Sexually Oriented Business, as defined in Section 19-2 of this Ordinance, who engages in the services rendered by a nude model studio, escort or escort agency, sexual encounter establishment, massage parlor, or a live performer or entertainer shall be required to obtain a Sexually Oriented Business Employee License. Each applicant shall pay a permit fee of One Hundred Dollars (\$100.00). Said fee is to cover reasonable administrative costs of the licensing application process.
- B. Before any applicant may be issued a Sexually Oriented Business Employee License, the applicant shall submit on a form to be provided by the County/City Clerk or his/her designee the following information:
 - 1. The applicant's name or any other names (including "stage" names) or aliases used by the individual;
 - 2. Age, date, and place of birth;
 - 3. Height, weight, hair and eye color;
 - 4. Present residence address and telephone number;
 - 5. Present business address and telephone number;
 - 6. State driver's license or identification number;
 - 7. Social Security number; and
 - 8. Acceptable written proof that the individual is at least eighteen (18) years of age.
 - 9. Attached to the application form as provided above, a color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the applicable Law Enforcement Department. Any fees for the photographs and fingerprints shall be paid by the applicant.
 - 10. A statement detailing the license or permit history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate, in this or any other county, County/City, state, or country has ever had a license, permit, or authorization

to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the date, the name of the issuing or denying jurisdiction, and describe in full the reasons for the denial, revocation, or suspension.

A copy of any order of denial, revocation, or suspension shall be attached to the application.

11. Whether the applicant has been convicted of a "specified criminal" act as defined in Section 19-2 of this Ordinance. This information shall include the date, place, nature of each conviction or plea of nolo contendere and identifying the convicting jurisdiction.
12. The County/City Clerk or his or her designee shall refer the Sexually Oriented Business Employee License Application to the applicable Law Enforcement Department for an investigation to be made of such information as is contained on the application. The application process shall be completed within ten (10) days from the date the completed application is filed. After the investigation, the County/City Clerk or his or her designee shall issue a license unless the report from the police department finds that one (1) or more of the following findings is true:
 - a. That the applicant has knowingly made any false, misleading, or fraudulent statement of a material fact in the application for a license, or in any report or record required to be filed with the sheriff's department or other County/City department;
 - b. That the applicant is under eighteen (18) years of age;
 - c. That the applicant has been convicted of a "specified criminal act" as defined in Section 19-2 of this Ordinance;
 - d. That the Sexually Oriented Business Employee License is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by particular provisions of this Ordinance;
 - e. That the applicant has had a Sexually Oriented Business Employee License revoked by the County/City or any other governmental or regulatory agency within two (2) years of the date of the current application;

C. Renewal of license:

1. A license granted pursuant to this section shall be subject to annual renewal by the County/City Clerk or his or her designee upon the written application of the applicant and a finding by the County/City Clerk or his or her designee and the applicable Law Enforcement Department that the applicant has not been convicted of any "specified criminal act" as defined in Section 19-2 of this Ordinance or committed any act during the existence of the previous license period which would be grounds to deny the initial permit application.
2. The renewal of the license shall be subject to payment of a fee of Twenty-Five Dollars (\$25.00).

19-20 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS IN VIDEO BOOTHS:

- A. A person who operates or causes to be operated a Sexually Oriented Business, other than an adult motel and regardless of whether or not a permit has been issued to said business under this Ordinance, and who exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, DVD's, CD-ROMs, 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 Business permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations, 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 with no dimension greater than eight (8) feet. The diagram shall also designate the place at which this 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 with marked dimensions sufficient to show the various internal dimension of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches. The Administrator of Planning and Zoning or his/her designee, 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 Administrator Planning and Zoning or his/her designee.
 4. It is the duty of the owners and operator of the premises to insure that at least one (1) employee is on duty and situated at 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 have two (2) 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 (1) 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 owners and operator, and it shall also be the duty of any agents and employees present on the premises to insure that the view area specified in Subsection 5 remains unobstructed by any doors, walls, merchandise, display racks or other materials or person at all times and to insure 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 A. of this section.
7. No viewing room may be occupied by more than one (1) person at any one time. No holes, commonly known as "glory holes," shall be allowed in the walls or partitions, which separate each viewing room from an adjoining viewing room or restroom.
 8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access and an illumination of not less than two (2) foot candle as measured at the floor level.
 9. It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.
- B. A person having a duty under Section 20(A)(1) - (9) of this Ordinance commits a misdemeanor if he/she knowingly fails to fulfill that duty.

19-21 PROHIBITIONS REGARDING MINORS AND SEXUALLY ORIENTED BUSINESSES: A person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Ordinance, and knowingly or with reasonable cause to know, permits, suffers, or allows:

- A. Admittance of a person under eighteen (18) years of age to the business premises unless accompanied by a parent or guardian;
- B. A person under eighteen (18) years of age to remain at the business premises unless accompanied by a parent or guardian;
- C. A person under eighteen (18) years of age to purchase goods or services at the business premises without the specific consent of a parent or guardian; or
- D. A person who is under eighteen (18) years of age to work at the business premises as an employee.

19-22 ADVERTISING AND LIGHTING REGULATIONS:

- A. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Ordinance, and advertises the presentation of any activity prohibited by any applicable State statute or local ordinance.
- B. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Ordinance, and displays or otherwise exhibits the materials and/or performances at such Sexually Oriented Business in any advertising which is visible outside the premises. This prohibition shall not extend to advertising of the existence or location of such Sexually Oriented Business.
- C. It shall be unlawful for any permittee to allow any portion of the interior premises of a Sexually Oriented Business to be visible from outside the licensed premises.
- D. All off-street parking areas and premise entries of the Sexually Oriented Business shall be illuminated from dusk to closing hours of operation with a lighting system which provides an average maintained horizontal illumination of one (1) foot candle of light on the parking surface and/or walkways. This required lighting level is established in order to provide

sufficient illumination of the parking areas and walkways serving the Sexually Oriented Business for the personal safety of patrons and employees and to reduce the incidence of vandalism and criminal conduct. The lighting shall be shown on the required sketch or diagram of the premise.

- E. Nothing contained in this section of the Ordinance shall relieve the operator(s) of a Sexually Oriented Business from complying with the requirements of the County/City Zoning Ordinance, as it may be amended from time to time, or any subsequently enacted County/City ordinances or regulations.

19-23 HOURS OF OPERATION:

- A. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Ordinance, and allows such business to remain open for business, or to permit any employee to engage in a performance, solicit a performance, make a sale, solicit a sale, provide a service, or solicit a service on Sunday between the hours of 1:00 a.m. and 9:00 a.m. of the following Monday or between the hours of 1:00 a.m. and 9:00 a.m. of any other day.
- B. It shall be unlawful and a person commits a misdemeanor if, working as an employee of a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Ordinance, said employee engages in a performance, solicits a performance, makes a sale, solicits a sale, provides a service, or solicits a service on Sunday between the hours of 1:00 a.m. and 9:00 a.m. of the following Monday or between the hours of 1:00 a.m. and 9:00 a.m. of any other day.

19-24 PUBLIC NUDITY PROHIBITED:

- A. The United States Supreme Court decision in *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S. Ct. 2456, 115 L. Ed.2d 504 (1991) and *Erie v. Pap's A.M.*, 120 S. Ct. 1382, 146 L. Ed.2d 265, upheld the rights of cities to prohibit public nudity at any Sexually Oriented Businesses, regardless of whether or not a permit has been issued to said businesses, including businesses where no alcoholic beverages are sold, served, or consumed at the premises. The County/City expressly finds that the secondary effects associated with live adult entertainment and public nudity adversely impact and threaten to impact the public health, safety and welfare by providing an atmosphere conducive to violence, sexual harassment, public intoxication, prostitution, the spread of sexually transmitted disease and other deleterious effects. Accordingly, consistent with such decisions, the County/City intends by this chapter to prohibit public nudity within the County/City.
- B. No person shall knowingly or intentionally, in a Public Place:
 - 1. Engage in sexual intercourse,
 - 2. Appear in a state of nudity,
 - 3. Fondle his or her genitals or the genitals another person, or
 - 4. Engage in specified Sexual Activities.

- C. No person who owns, operates or otherwise controls a Sexually Oriented Business shall permit, allow, hire, sponsor or employ any other person for the purpose of appearing in a state of nudity at any Public Building, Public Park or Recreation Area or Public Place.
- D. The prohibition set forth in subsections B and C above shall not apply to:
 - 1. Any child under ten (10) years of age;
 - 2. Any individual exposing a breast in the process of breast-feeding an infant less than two (2) years of age;
 - 3. Any person while performing any excretory function within a public restroom;
 - 4. Any person changing his or her clothing in a dressing room, the sole purpose of which is to provide personal privacy for such purposes; or
 - 5. Any person while receiving medical or therapeutic treatment from any physician, paramedic, nurse or other medical practitioner licensed by the State of Idaho.

19-25 PROHIBITION OF LIVE ADULT ENTERTAINMENT:

- A. No person shall perform, cause or allow the performance of Live Adult Entertainment in any Public Place within the County/City or at any private place or location where any individual admissions charge or consideration is charged to or collected from persons attending such performance.
- B. No employee of a Sexually Oriented Business shall engage in any "Specified Sexual Activity" or display or expose any "Specified Anatomical Area" while acting as a waiter, waitress, host, hostess, or bartender.

19-26 ADDITIONAL CRIMINAL PROHIBITIONS FOR THE OPERATION OF A SEXUALLY ORIENTED BUSINESS WITHOUT A VALID PERMIT:

- A. In addition to the criminal provisions in other sections of this Ordinance, the following additional criminal provisions shall also apply to Sexually Oriented Businesses.
- B. It shall be unlawful and a person commits a misdemeanor if he/she operates or causes to be operated a Sexually Oriented Business, regardless of whether or not a permit has been issued for said business under this Ordinance, and said person knows or should know that:
 - 1. The business does not have a Sexually Oriented Business permit under this Ordinance for any applicable classification;
 - 2. The business has a permit, which is under suspension;
 - 3. The business has a permit, which has been revoked; or
 - 4. The business has a permit, which has expired.

19-27 EXEMPTIONS:

- A. It is a defense to prosecution for any violation of this Ordinance that a person appearing in a state of nudity did so in a modeling class operated:
 - 1. By 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;
 - b. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
 - c. Where no more than one (1) nude model is on the premises at any one (1) time.
- B. It is a defense to prosecution for a violation of this Ordinance that an employee of a Sexually Oriented Business, regardless of whether or not it is permitted under this Ordinance, exposed any specified anatomical area during the employee's bona fide use of a restroom, or during the employee's bona fide use of a dressing room which is accessible only to employees.

19-28 CRIMINAL PENALTIES AND ADDITIONAL LEGAL, EQUITABLE, AND INJUNCTIVE RELIEF:

- A. In addition to whatever penalties are applicable under the Idaho Criminal Code, if any person fails or refuses to obey or comply with or violates any of the criminal provisions of this Ordinance, such person upon conviction of such offense, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed Three Hundred Dollars (\$300.00) or by imprisonment not to exceed six (6) days in the County/City jail, or both, in the discretion of the Court. Each violation or non-compliance shall be considered a separate and distinct offense. Further, each day of continued violation or non-compliance shall be considered as a separate offense.
- B. Nothing herein contained shall prevent or restrict the County/City from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any violation or non-compliance. Such other lawful actions shall include, but shall not be limited to, an equitable action for injunctive relief or an action at law for damages.
- C. All remedies and penalties provided for in this section shall be cumulative and independently available to the County/City and the County/City shall be authorized to pursue any and all remedies set forth in this section to the full extent allowed by law.

19-29 IMMUNITY FROM PROSECUTION: The County/City and its designee, the applicable Law Enforcement Department and all other departments and agencies, and all other County/City officers, agents and employees, charged with enforcement of State and local laws and codes shall be immune from prosecution, civil or criminal, for reasonable, good faith trespass upon property owned or controlled by a Sexually Oriented Business while acting within the scope of authority conferred by this Ordinance.

19-30 PROHIBITION OF DISTRIBUTION OF SEXUAL DEVICES: It is unlawful for any person to distribute, for commercial purposes, sell or offer for sale any device, instrument or paraphernalia designed or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others. Such devices, instruments or paraphernalia include but are not limited to; phallic shaped vibrators, dildo's, muzzles, whips, chains, bather restraints, racks, non-medical enema kits, body piercing implements (excluding earrings or other decorative jewelry) or other tools designed for sado-masochistic abuse.

19-31 SCOPE AND INTERPRETATION: Notwithstanding the other provisions of this Ordinance, nothing in this Ordinance shall apply to the sale, loan, distribution, dissemination, presentation or exhibition of material or live conduct which is obscene, as defined under Chapter 18, Title 41, Idaho Code, unless such chapter or any provision thereof, is determined to be unconstitutional or unenforceable for any reason. This Ordinance shall be interpreted to be consistent in all respects with the provisions of Idaho Code Section 18-4113 and shall be applicable only to the extent it regulates the sale, loan, distribution, dissemination presentation or exhibition of material or live conduct that is not otherwise obscene, as defined by Idaho Code Section 18-4101, provided, however, if any provision of such chapter of the Idaho Code is determined to be unconstitutional or unenforceable for any reason, then this Ordinance shall be fully enforceable notwithstanding such determination.

19-32 SEVERABILITY: If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby.

19-33 CONFLICTING ORDINANCE REPEALED: All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.