

CHAPTER 16

SEXUALLY ORIENTED BUSINESSES

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6-16-1: DEFINITIONS:

ADULT ARCADE (ALSO KNOWN AS "PEEP SHOW"): Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed exhibit "specified sexual activities" or "specified anatomical areas." (2618,3740)

ADULT BOOKSTORE, ADULT NOVELTY STORE, OR ADULT VIDEO STORE: A commercial establishment which offers sexually explicit material for sale or rental, for any form of consideration, and meets any one (1) or more of the following criteria: (2618,3740)

- (A) That has thirty percent (30%) or more of its inventory, stock, or merchandise on hand at any time that is comprised of sexually explicit material; or (2618,3740)
- (B) That has a substantial or significant portion of its inventory, stock, or merchandise on hand at any time that is comprised of sexually explicit material; or (2618,3740)

- (C) That derives thirty percent (30%) or more of its gross income for any one (1) calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or (3740)
- (D) That derives a substantial or significant portion of its gross income for any one (1) calendar month from the sale or rental, for any form of consideration, of sexually explicit material; or (3740)
- (E) That at any time displays sexually explicit material either in a display area that is thirty percent (30%) or more of its total display area or on a floor area equal to at least two hundred (200) square feet. For purposes of calculating the floor area, the business premises shall be viewed from above in two (2) dimensions and all areas that are reserved for foot traffic shall be included; or (3740)
- (F) That displays a substantial or significant amount of sexually explicit material in its display area. (3740)

ADULT CABARET: A nightclub, bar, restaurant, or other commercial establishment which during any part of any two (2) or more days within any continuous thirty- (30-) day period features, exhibits, or displays: (2618,3740)

- (A) Persons who appear in a state of nudity or semi-nude; or (2618)
- (B) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or (2618)
- (C) Films, motion pictures, videocassettes, video reproductions, slides, or other reproductions offered in photographic, electronic, magnetic, digital, or other imaging medium or other visual representations that are distinguished or characterized by an emphasis on matters which depict or describe "specified sexual activities" or "specified anatomical areas." (2618,3740)

ADULT MOTEL: A hotel, motel, or similar commercial establishment that: (2618)

- (A) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, video reproductions, slides, or other reproductions offered in photographic, electronic, magnetic, digital, or other imaging medium or other visual representations that are distinguished or characterized by an emphasis on matters that depict or describe "specified sexual activities" or "specified anatomical areas" and has a sign visible from the public right-of-way which advertises the availability of adult, nude, sex, or "XXX" movies, videos, films, or other similar reproductions; or (2618,3740)
- (B) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or (2618)
- (C) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours. (2618)

ADULT MOTION PICTURE THEATER: A commercial establishment that features, exhibits, or displays during any part of two (2) or more days within any continuous thirty- (30-) day period for any form of consideration films, motion pictures, videocassettes, video reproductions, slides, or other reproductions offered in photographic, electronic, magnetic, digital, or other imaging medium or other visual representations that are distinguished or characterized by an emphasis on matters that exhibit "specified sexual activities" or "specified anatomical areas." (2618,3740)

ADULT THEATER: A theater, concert hall, auditorium, or similar commercial establishment which during any part of any two (2) or more days within any continuous thirty- (30-) day period features, exhibits, or displays persons who appear in a state of nudity or semi-nude or live performances that expose or exhibit "specified anatomical areas" or "specified sexual activities." (2618,3470)

BOARD OF ADJUSTMENT: The board established pursuant to ARS §9-462.06 and Mesa City Code Section 11-18-5. (2618)

CHIEF OF POLICE: The Chief of Police of the City of Mesa or the designated agent of the Chief of Police. (2618)

EMPLOY, EMPLOYEE, AND EMPLOYMENT: Describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises. (2618)

ESTABLISHMENT: Means and includes any of the following: (2618)

- (A) The opening or commencement of any sexually oriented business as a new business; or (2618)
- (B) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or (2618)
- (C) The addition of any sexually oriented business to any other existing sexually oriented business; or (2618)
- (D) The relocation of any sexually oriented business. (2618)

LICENSEE: In the case of a business, a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license, and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business. (2618)

NUDE MODEL STUDIO: Any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly exhibited, before other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the State of Arizona or a college, junior college, or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or a structure: (2618,3740)

- (A) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and (2618)
- (B) Where in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and (2618)
- (C) Where no more than one (1) nude or semi-nude model is on the premises at any one time. (2618)

NUDITY OR A STATE OF NUDITY:

- (A) The appearance of a human anus, male genitals, female genitals, or female breast; or (2618)
- (B) A state of dress which fails to opaquely cover a human anus, male genitals, female genitals, or areola of the female breast. (2618)

OPERATES OR CAUSES TO BE OPERATED: To cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business. (2618)

PERSON: An individual, proprietorship, partnership, corporation, association, or other legal entity. (2618)

RESIDENTIAL DISTRICT: The Single Residence districts, the Multiple Residence districts, and the Town Center Residence districts described and defined in the Mesa Zoning Ordinance. (2618)

RESIDENTIAL USE: All uses allowed in residential districts under the Mesa Zoning Ordinance. (2618)

SEMI-NUDE: A state of dress which shows the female breast below a horizontal line across the top of the areola at its highest point, or which shows the male or female buttocks. This definition shall not include any portion of the cleavage of the female breast exhibited by a dress, blouse, leotard, bathing suit, or other wearing apparel, provided that the areola is not exposed in whole or in part. (2618,3740)

SEXUAL ENCOUNTER CENTER: A business or commercial enterprise that offers for any form of consideration or features, displays, exhibits, or permits: (3740)

- (A) Physical contact in the form of wrestling or tumbling between two (2) or more persons when one (1) or more of the persons is in a state of nudity or semi-nude; or (2618,3740)
- (B) Two (2) or more persons engaging in "specified sexual activities" or exposing "specified anatomical areas." (3740)

SEXUALLY EXPLICIT MATERIAL: Books, magazines, periodicals, or other printed matter or photographs, films, motion pictures, videocassettes, video reproductions, slides, or other products offered in photographic, electronic, magnetic, digital, or other imaging medium, or other visual representations that are distinguished or characterized by an emphasis on matters that depict, describe, or exhibit "specified sexual activities" or "specified anatomical areas," or instruments, devices, or paraphernalia, excluding condoms and other birth control and disease prevention products, that are designed for use in connection with "specified sexual activities." (3740)

SEXUALLY ORIENTED BUSINESS: An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, nude model studio, sexual encounter center, or any combination of the foregoing. (2618,3740,5367)

SPECIFIED ANATOMICAL AREAS MEANS: (a) Human genitals in a state of sexual arousal; (b) the appearance of the cleft of the buttocks, anus, male or female genitals, or areola of the female breast; or (c) a state of dress which fails to opaquely cover the cleft of the buttocks, anus, male or female genitals, or the areola of the female breast. (2618,3740)

SPECIFIED SEXUAL ACTIVITIES: Means and includes any of the following: (2618)

- (A) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, that occurs directly and not through clothing; or (2618,3740)
- (B) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; or (2618)
- (C) Masturbation, actual or simulated; or (2618)
- (D) Excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above. (2618)

SUBSTANTIAL ENLARGEMENT: Of a sexually oriented business, the increase in floor area occupied by the business by more than twenty-five percent (25%) as the floor area exists on August 1, 1991. (2618)

TAX AND LICENSING ADMINISTRATOR: The City of Mesa Tax and Licensing Administrator or the designated agent of the Tax and Licensing Administrator. (2618)

TRANSFER OF OWNERSHIP OR CONTROL: Of a sexually oriented business, means and includes any of the following: (2618)

- (A) The sale, lease, or sublease of the business; (2618)

- (B) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or (2618)
- (C) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control. (2618)

6-16-2: CLASSIFICATION:

Sexually oriented businesses are classified as follows: (2618)

- (A) Adult arcades; (2618)
- (B) Adult bookstores or adult video stores; (2618)
- (C) Adult cabarets; (2618)
- (D) Adult motels; (2618)
- (E) Adult motion picture theaters; (2618)
- (F) Adult theaters; (2618)
- (G) Nude model studios; (2618, 5367)
- (H) Sexual encounter centers; (2618, 3740, 5367)
- (I) Adult novelty stores; and (3740, 5367)
- (J) Any combination of classifications set forth above. (2618, 3740, 5367)

6-16-3: LICENSE REQUIRED:

- (A) It is unlawful: (2618)
 1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Tax and Licensing Administrator pursuant to this Chapter. (2618)
 2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the Tax and Licensing Administrator pursuant to this Chapter. (2618)
 3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this Chapter. (2618)

- (B) An application for a license must be made on a form prescribed by the Chief of Police. An application for a sexually oriented business license must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but 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 inches (+/-6"). (2618)
- (C) All applicants must be qualified according to the provisions of this Chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the Chief of Police and the Tax and Licensing Administrator to determine whether the applicant meets the qualifications established in this Chapter. (2618)
- (D) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license 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 license as applicant. Each applicant must be qualified under Section 6-16-4 and each applicant shall be considered a licensee if a license is granted. (2618)

6-16-4: ISSUANCE OF LICENSE:

- (A) Within thirty (30) days after receipt of a completed application, the Tax and Licensing Administrator will approve or deny the issuance of a license to an applicant for a sexually oriented business license and to an applicant for a sexually oriented business employee license. The Tax and Licensing Administrator will approve the issuance of a license to an applicant unless the Chief of Police finds one (1) or more of the following to be true: (2618)
 - 1. An applicant is under eighteen (18) years of age. (2618)
 - 2. An applicant has been employed in a sexually oriented business in a managerial capacity in Mesa or any other jurisdiction within the preceding twelve (12) months and has demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers. (2618)
 - 3. The application and investigation fee or the license fee required by this Chapter have not been paid. (2618)
 - 4. An applicant or an applicant's spouse is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business. (2618)
 - 5. An applicant has failed to provide information required in order to determine the qualifications of the applicant under this Chapter for issuance of the license or has falsely answered a question or request for information on the application form. (2618)
 - 6. An applicant or the proposed establishment is in violation of or is not in compliance with this Chapter or the Mesa City Code. (2618)

7. An applicant or an applicant's spouse has been convicted of a violation of a provision of this Chapter, other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect. (2618)
8. An applicant or an applicant's spouse has been convicted of a crime: (2618)
 - (a) Involving: (2618)
 - (i) Any of the following offenses as described in Chapter 14 of the Arizona Criminal Code: (2618)
 - (aa) Indecent exposure; (2618)
 - (bb) Public sexual indecency; (2618)
 - (cc) Public sexual indecency to a minor; (2618)
 - (dd) Sexual abuse; (2618)
 - (ee) Sexual conduct with a minor; (2618)
 - (ff) Sexual assault; (2618)
 - (gg) Sexual assault of a spouse; (2618)
 - (hh) Molestation of a child; (2618)
 - (ii) Lewd and lascivious acts. (2618)
 - (ii) Any of the prostitution or pandering offenses described in Chapter 32 of the Arizona Criminal Code; (2618)
 - (iii) Any of the following offenses as described in Chapter 35 of the Arizona Criminal Code: (2618)
 - (aa) Production, publication, sale, possession, and presentation of obscene items; (2618)
 - (bb) Coercing acceptance of obscene articles or publications; (2618)
 - (cc) Furnishing obscene or harmful items to minors; (2618)
 - (dd) Public display of explicit sexual materials; (2618)
 - (ee) Creation, transportation, or distribution of obscene films, photographs, or motion pictures of minors; (2618)
 - (ff) Obscene or indecent telephone communications to minors for commercial purposes; (2618)

- (iv) Any of the following offenses described in Chapter 35.1 of the Arizona Criminal Code: (2618)
 - (aa) Commercial sexual exploitation of a minor; (2618)
 - (bb) Sexual exploitation of a minor; (2618)
 - (cc) Admitting minors to public displays of sexual conduct; (2618)
 - (v) Any of the following offenses described in Chapter 36 of the Arizona Criminal Code: (2618)
 - (aa) Incest; (2618)
 - (bb) Contributing to delinquency and dependency; (2618)
 - (cc) Permitting life, health, or morals of a minor to be imperiled by neglect, abuse, or immoral associations; (2618)
 - (vi) Any offense described in Chapter 1 of Title 6 of the Mesa City Code pertaining to obscene live performances; (2618)
 - (vii) Any similar offenses to those described above under the criminal or penal code of Arizona, other states, Mesa, other cities, or other countries; (2618)
 - (viii) Facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses; (2618)
- (b) For which: (2618)
- (i) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; (2618)
 - (ii) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or (2618)
 - (iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four- (24-) month period. (2618)

- (B) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse. (2618)
- (C) An applicant who has been convicted or whose spouse has been convicted of an offense listed above may qualify for a sexually oriented business license only when the time period required by this Section has elapsed. (2618)
- (D) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the classification or classifications of sexually oriented business for which it is granted, the expiration date, and the address of the sexually oriented business. All licenses, both those pertaining to the business as well as those applicable to employees, shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time. (2618)

6-16-5: FEES:

- (A) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a five hundred dollar (\$500.00) nonrefundable application and investigation fee. (2618)
- (B) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the Tax and Licensing Administrator an annual nonrefundable license fee of five hundred dollars (\$500.00) within thirty (30) days of license issuance or renewal. (2618)
- (C) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by a fifty dollar (\$50.00) nonrefundable application and investigation fee. (2618)
- (D) All license applications and fees shall be submitted to the Tax and Licensing Administrator. (2618)

6-16-6: INSPECTION:

- (A) A business license applicant or licensee shall permit representatives of the Police Department or any other city, county, state, or federal department, division, or agency that enforces codes, regulations, or statutes relating to human health, safety, or welfare or structural safety to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is occupied or open for business. (2618)
- (B) A person who operates a sexually oriented business or his agent or employee commits an offense if such person refuses to permit a lawful inspection of the premises by the persons designated above. (2618)
- (C) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation. (2618)

6-16-7: EXPIRATION OF LICENSE:

All licenses shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section 6-16-3. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected. (2618)

6-16-8: SUSPENSION:

The Tax and Licensing Administrator is authorized to, and will, suspend a sexually oriented business license and a sexually oriented business employee license for a period not to exceed thirty (30) days if the Chief of Police determines that a business licensee or an employee has: (2618)

- (A) Violated or is not in compliance with this Chapter or with the Uniform Codes adopted by the City in Title 4 of the Mesa City Code, including those relating to buildings, electricity, plumbing, fire safety, and mechanical equipment; or (2618)
- (B) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises; or (2618)
- (C) Refused to allow an inspection of the sexually oriented business premises as authorized by this Chapter; or (2618)
- (D) Permitted illegal gambling by any person on the sexually oriented business premises; or (2618)
- (E) Demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers. (2618)

6-16-9: REVOCATION:

- (A) The Tax and Licensing Administrator is authorized to, and will, revoke a license if a cause of suspension in Section 6-16-8 occurs and the license has been suspended within the preceding twelve (12) months. (2618)
- (B) The Tax and Licensing Administrator is authorized to, and will, revoke a sexually oriented business license and a sexually oriented business employee license if the Chief of Police determines that a business licensee or an employee: (2618)
 - 1. Gave false or misleading information in the material submitted to the City during the application process; or (2618)
 - 2. Has allowed the possession, use, or sale of controlled substances on the premises; or (2618)
 - 3. Has allowed prostitution on the premises; or (2618)
 - 4. Has operated or worked in the sexually oriented business during a period of time when the licensee's license was suspended; or (2618)

5. Has been convicted of an offense listed in Section 6-16-4(A)8(a) for which the time period required in Section 6-16-4(A)8(b) has not elapsed; or (2618)
 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 licensed premises of a crime listed in Section 6-16-4 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; or (2618)
 7. Has allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or oral sexual contact to occur in or on the licensed premises. The term "oral sexual contact" shall have the same meaning as defined in Section 13-1401, Arizona Criminal Code; or (2618)
 8. Is delinquent in payment to the City of hotel occupancy taxes, ad valorem taxes, sales taxes, or the annual license fee or any other fee or tax related to the sexually oriented business or other business of the licensee. (2618)
- (C) The fact that a conviction is being appealed shall have no effect on the revocation of the license. (2618)
- (D) Subsection (B)7 (above) does not apply to adult motels as a grounds for revoking the license unless the business licensee or employee allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view. (2618)
- (E) When the Tax and Licensing Administrator revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business or employee license for one (1) year from the date revocation became effective. If, subsequent to revocation, the Tax and Licensing Administrator finds that the basis for the revocation has been corrected or abated, the licensee may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (B)5 (above), an applicant may not be granted another license until the appropriate number of years required under Section 6-16-4(A)8(b) has elapsed. (2618)

6-16-10: APPEAL:

If the City denies the issuance of a license or suspends or revokes a license, the City will send to the applicant or licensee by certified mail, return receipt requested, written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the person whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal to the State Superior Court. An appeal to the Arizona Superior Court must be filed within thirty (30) days after the receipt of notice of the decision of the City. Licensee's filing of an appeal or other legal action, in good legal order, challenging the City's decision to suspend or revoke a license under this Chapter shall have the effect of maintaining the status quo until a judge hears and decides the merits of the matter. Applicant's filing of an appeal or other legal action, in good legal order, challenging the City's decision not to issue a license under this Chapter shall result in the City issuing a temporary license to applicant to operate until a judge hears and decides the merits of the matter. The licensor shall bear the burden of proof in court. (2618,3740)

6-16-11: TRANSFER OF LICENSE:

A licensee shall not transfer a license to another nor shall a business licensee operate a different classification of a sexually oriented business than that designated in the application or operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. No sexually oriented business shall be operated under any name or conducted under any designation or classification not specified in the license for that business. (2618)

6-16-12: LOCATION OF A SEXUALLY ORIENTED BUSINESS:

- (A) A person commits an offense if that person operates or causes to be operated a sexually oriented business in any zoning district other than the C-3 district (General Commercial), the M-1 district (Limited Industrial), the M-2 district (General Industrial), or the PEP district (Planned Employment Park) as defined and described in the Mesa Zoning Ordinance. (2618)
- (B) A person commits an offense if the person operates or causes to be operated a sexually oriented business within one thousand feet (1,000') of:
1. A church; or (2618)
 2. A public or private elementary or secondary school; or (2618)
 3. A public or private day care center, preschool, nursery, kindergarten, or similar use; or (2618)
 4. A boundary of a residential district as defined in this Chapter; or (2618)
 5. A public park; or (2618)
 6. The property line of a lot devoted to a residential use as defined in this Chapter; or (2618)
 7. An establishment having an Arizona Spirituous Liquor License with any of the following classifications: Bar License (Series #06), Beer and Wine Bar License (Series #07), or the equivalent of such licenses. (2618)
- (C) A person commits an offense if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand feet (1,000') of another sexually oriented business. (2618)
- (D) A person commits an offense if the person causes or permits the operation, establishment, or maintenance of more than one (1) sexually oriented business in the same building, structure, or portion thereof or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business. (2618)

- (E) For the purposes of Subsection (B) (above), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a church, a public or private elementary or secondary school, a public or private day care center, preschool, nursery, kindergarten or similar use, or establishment having the designated Spirituous Liquor License or to the nearest boundary of an affected public park, residential district, or residential lot. The presence of city, county, or other political boundaries shall be irrelevant for purposes of calculating and applying the distance requirements of this Chapter. (2618)
- (F) For purposes of Subsection (C) of this Section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located. (2618)
- (G) Any sexually oriented business that fails to comply with Subsections (A), (B), or (C) of this Section but was lawfully operating before this Chapter took effect shall not be deemed to be in violation of this Chapter when this Chapter takes effect. However, such business will only be permitted to continue in noncompliance with Subsections (A), (B), or (C) (above) for a period not to exceed three (3) years from the effective date of this Chapter, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. In addition, during those three (3) years, such business shall not be increased, enlarged, extended, or altered, except that the business may be changed so as to fully comply with this Chapter. (2618)
- (H) A sexually oriented business lawfully operating is not rendered in violation of this Chapter by the location, subsequent to the granting or renewal of the sexually oriented business license, of a church, public or private elementary or secondary school, public park, residential district, or residential lot within one thousand feet (1,000') of the sexually oriented business. This provision applies only to the renewal of a valid license and does not apply when an application for a license is submitted after a license has expired or has been revoked. (2618)

6-16-13: EXEMPTION FROM LOCATION RESTRICTIONS:

- (A) If the City denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 6-16-12 of this Chapter, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the City Clerk a written request for an exemption from the locational restrictions of Section 6-16-12. (2618)
- (B) If the written request is filed with the City Clerk within the ten- (10-) day limit, the Board of Adjustment shall hear and consider the request. The Board of Adjustment shall set a date for the hearing within sixty (60) days from the date the written request is received. (2618)
- (C) The Board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply. (2618)

- (D) The Board of Adjustment may, in its discretion, grant an exemption from the locational restrictions of Section 6-16-12 if it makes the following findings: (2618)
1. That the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare; and (2618)
 2. That the granting of the exemption will not violate the spirit and intent of this Chapter of the City Code; and (2618)
 3. That the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of blight; and (2618)
 4. That the location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of neighborhood renewal or restoration; and (2618)
 5. That all other applicable provisions of this Chapter and the Mesa City Code will be observed. (2618)
- (E) If the Board grants the exemption, the exemption is valid for one (1) year from the date of the Board's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 6-16-12 until the applicant applies for and receives another exemption. (2618)
- (F) If the Board denies the exemption, the applicant may not reapply for an exemption until at least twelve (12) months have elapsed since the date of the Board's action. (2618)
- (G) The granting of an exemption does not exempt the applicant from any provisions of this Chapter other than the locational restrictions of Section 6-16-12. (2618)

6-16-14: HOURS OF OPERATION:

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one (1:00) A.M. and six (6:00) A.M. on weekdays and Saturdays and one (1:00) A.M. and ten (10:00) A.M. on Sundays. (2618)

6-16-15: (RESERVED) (5367)

6-16-16: ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS:

- (A) A nude model studio shall not employ any person under the age of eighteen (18) years. (2618)
- (B) A person under the age of eighteen (18) years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this Subsection if the person under eighteen (18) years was in a rest room not open to public view or persons of the opposite sex. (2618)
- (C) A person commits an offense if the person appears semi-nude or in a state of nudity or knowingly allows another to appear semi-nude or in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way. (2618)
- (D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public. (2618)

6-16-17: ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS:

- (A) A person commits an offense if the person knowingly allows a person under the age of eighteen (18) years to appear semi-nude or in a state of nudity in or on the premises of an adult theater or adult motion picture theater. (2618)
- (B) A person under the age of eighteen (18) years commits an offense if the person knowingly appears semi-nude or in a state of nudity in or on the premises of an adult theater or adult motion picture theater. (2618)
- (C) It is a defense to prosecution under Subsections (A) and (B) of this Section if the person under eighteen (18) years was in a rest room not open to public view or to persons of the opposite sex. (2618)

6-16-18: ADDITIONAL REGULATIONS FOR ADULT MOTELS:

- (A) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this Chapter. (2618)
- (B) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, such person rents or subrents a sleeping room to another and within ten (10) hours from the time the room is rented, such person rents or subrents the same sleeping room again. (2618)
- (C) For purposes of Subsection (B) of this Section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration. (2618)

6-16-19: REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS:

- (A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space a film, video cassette, or other video reproduction which depicts "specified sexual activities" or "specified anatomical areas" shall comply with the following requirements: (2618)
1. Upon application for a sexually oriented business license, 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 and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (+/-6"). The Chief of Police 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. (2618)
 2. The application shall be sworn to be true and correct by the applicant(s). (2618)
 3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Chief of Police or his designee. (2618)
 4. It is the duty of the owners and operator of the premises to ensure that at least one (1) licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises. In the case of an adult arcade (or "peep show"), it is the duty of the owners and operator of the premises and the licensed employees who are present to ensure that no more than one (1) person occupies a viewing room or "peep" booth at any time and that all other entrances to peep booths or other viewing areas (and to the aisles, walkways, and hallways leading to peep booths or other viewing areas) are maintained free of any obstruction such as a door, curtain, panel, board, slat, ribbon, cord, rope, chain, or other device. (2618)
 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 rest rooms. Rest rooms 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. (2618)
 6. It shall be the duty of the owners and operator, and it shall also be the duty of all employees present in the premises, to ensure that the line of sight and view area specified in Subsection 5 (above) remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (1) of this Section. (2618)

7. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) footcandle as measured at the floor level. (2618)
 8. It shall be the duty of the owners and operator, and it shall also be the duty of all employees present on the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises. (2618)
 9. No operator, owner, or employee shall allow openings of any kind to exist between viewing rooms or booths. (2618)
 10. No person shall make or attempt to make an opening of any kind between viewing booths or rooms. (2618)
 11. The operator or owner shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist. (2618)
 12. The owner or operator shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting. (2618)
 13. The owner or operator shall cause all wall surfaces and seating surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty-eight inches (48") of the floor. (2618)
- (B) A person having a duty under Subsections 1 through 13 of Subsection (A) (above) commits an offense if the person fails to fulfill that duty. (2618)

6-16-20: CRIMINAL PENALTY:

Any person who violates any provision of this Chapter or of the Mesa City Code as amended by this ordinance shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed two thousand five hundred dollars (\$2,500.00) or by imprisonment for a term not to exceed six (6) months, or by both such fine and imprisonment. (2618)

6-16-21: CIVIL INJUNCTION:

Any person who violates this Chapter or the Mesa City Code as amended by this Ordinance is subject to a civil suit for injunction as well as prosecution for criminal violations and liability for licensing sanctions such as suspension or revocation. (2618)

6-16-22: LIABILITY AND LIABILITY FOR THE CONDUCT OF OTHERS: (3740)

- (A) The offenses and violations described in this Chapter require proof, direct or indirect, of culpable mental state. (2618,3740)
- (B) A licensee of a sexually oriented business is jointly and individually liable for violations of and offenses under this Chapter by the employees of the sexually oriented business and for all civil and criminal sanctions or remedies for such violations and offenses, including but not limited to, license suspension or revocation, prescribed herein, when that licensee knew, or a reasonable licensee would have known, of those violations and offenses. (2618,3740)

6-16-23: EXCLUSIONS: (5367)

The licensing requirements of this Chapter shall have no application, no effect upon, and shall not be construed as applying to escorts, escort assistants or escort bureaus with a valid, unsuspended license to operate issued pursuant to Mesa City Code Title 6, Chapter 24. (5367)