

## Chapter 5.50

## SEXUALLY ORIENTED BUSINESSES

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**5.50.010 Purpose and Intent.**

It is the purpose of this chapter to regulate sexually oriented businesses and related activities to promote health, safety, morals, and general welfare of the citizens of the City of Tumwater, and to establish reasonable and uniform regulations to prevent the deleterious location of sexually oriented businesses within the City. The provisions of this chapter 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 chapter to restrict or deny access by adults to sexually oriented materials protected by the State or Federal Constitutions, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene materials.

(O94-020, Added, 05/03/1994)

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### 5.50.020 Definitions.

For the purposes of this chapter certain terms and words are defined as follows:

A. "SEXUALLY ORIENTED BUSINESSES" shall mean those businesses defined as follows:

1. "Adult Arcade" shall mean an establishment where, for any form of consideration, one or more still or motion picture projectors, slide projectors, or similar machines, or other image producing machines, for viewing by five (5) or fewer persons each, are used to show 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."

2. "Adult Bookstore", "Adult Novelty Store", or "Adult Video Store" shall mean a commercial establishment which has as a significant or substantial portion of its stock-in-trade or a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising to the sale or rental for any form of consideration, of any one or more of the following:

a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; or

b. An establishment may have other principal business purposes that do not involve the offering for sale or rental of materials depicting or describing specified sexual activities or specified anatomical areas, and still be categorized as an 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 principal 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.

c. Video stores that sell and/or rent only video tapes or other photographic reproductions and associated equipment shall come within this definition if twenty percent (20%) or more of its stock-in-trade or revenues comes from the rental or sale of video tapes or other photographic reproductions or associated equipment which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

3. "Adult Cabaret" shall mean a nightclub, bar, restaurant, or similar commercial establishment, whether or not alcoholic beverages are served, which features:

a. Persons who appear nude 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.

4. "Adult motel" means a hotel, motel, or similar commercial establishment which:

a. Offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, 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; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

b. Offers a sleeping room for rent for a period of time that is less than twenty (20) hours; or

c. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twenty (20) hours.

5. "Adult Motion Picture Theater" shall mean a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions characterized by the depiction or description of specified anatomical areas or specified sexual activities are regularly shown for any form of consideration.

6. "Adult Theater" shall mean a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities.

7. "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.

8. "Nude or Semi-Nude Model Studio" shall mean any place where a person, who appears nude or semi-nude 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.

B. "City" means the City of Tumwater, Washington.

C. "Director" means the City's Finance Director of the Department of Finance, or designee.

D. "Employee" means any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any business offering adult entertainment, adult theater, or adult use establishments, whether or not such person is paid compensation by the operator of said business.

E. "Entertainer" means any person who provides sexually oriented entertainment in an adult cabaret whether or not an employee of the operator and whether or not a fee is charged or accepted for such entertainment.

F. "Manager" means any person who manages, directs, administers, or is in charge of, the affairs and/or the conduct of an adult cabaret.

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

H. "Establishment" shall mean and include any of the following:

1. The opening or commencement of any sexually oriented business as a new business;
- or
2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented businesses defined herein.
3. The addition of any of the sexually oriented businesses defined herein to any other existing sexually oriented business; or
4. The relocation of any such sexually oriented business.

I. "Nude or State of Nudity" shall mean the appearance of human bare buttock, anus, male genitals, female genitals, or the areola or nipple of the female breast.

J. "Operator" shall mean and include the owner, permit holder, custodian, manager, operator, or person in charge of any permitted or licensed premises.

K. "Permitted and/or Licensed Premises" shall mean any premises that requires a license and/or permit and that is classified as a sexually oriented business.

L. "Permittee and/or Licensee" shall mean 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.

M. "Person" shall mean any individual, firm, joint venture, co-partnership, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver or any other group or combination acting as a unit.

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N. "Semi-Nude" shall mean a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

O. "Sexually Oriented Business" shall mean an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motion picture theater, adult theater, sexual encounter establishment, semi-nude model studio, escort agency, or adult motel.

P. "Specified Anatomical Areas" shall mean and include any of the following:

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

Q. "Specified Criminal Acts" shall mean any conviction or 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 or pandering.

R. "Specified Sexual Activities" shall mean and include any of the following:

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

S. "Sexually Oriented Entertainment" means a live performance at an adult cabaret which is characterized by the performer's exposure of specified anatomical areas.

T. "Transfer of Ownership or Control of a Sexually Oriented Business" shall mean and include any of the following:

1. The sale, lease or sublease of the business; or
2. The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
3. The establishment of a trust, gift or other similar legal devise which transfers the 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.

(O94-020, Added, 05/03/1994)

### **5.50.030 Regulated Uses.**

The following Sexually Oriented Businesses are subject to the regulations contained in this chapter:

- A. Adult Arcade
- B. Adult Bookstore, Adult Novelty Store, or Adult Video Store
- C. Adult Cabaret
- D. Adult Motion Picture Theater
- E. Adult Theater
- F. Semi-Nude Model Studio
- G. Escort Agency
- H. Adult Motel

(O94-020, Added, 05/03/1994)

**5.50.040 Sexually Oriented Business Permit Required.**

A. No Sexually Oriented Business shall be permitted to operate without a valid Sexually Oriented Business Permit, (SOB permit), issued by the 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 City Finance Director or his/her designee is responsible for granting, denying, revoking, renewing, suspending, and canceling Sexually Oriented Business permits and licenses. The Director of Development Services or his/her designee is responsible for ascertaining whether a proposed Sexually Oriented Business for which a permit and/or license is being applied for complies with all requirements enumerated herein and all other applicable zoning laws and/or regulations now in effect or as amended or enacted subsequent to the effective date of this chapter.

C. An application for an SOB permit shall be made on a form provided by the City. Any person desiring to operate a Sexually Oriented Business shall file with the City Finance Director an original and two copies of a sworn permit application on the application form supplied by the City.

D. 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 or previous married names 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, including their date of birth, 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 Washington, the names and capacity of all officers, directors and principal stockholders, the name of the registered corporate agent, and the address of the registered office for service of process.

As a part of the application process, each officer, director, or principal stockholder, as defined above, shall provide the Finance Director with an affidavit attesting to their identity and relationship to the corporation. Principal stockholder shall mean those persons who own ten percent (10%) or greater interest in the sexually oriented business.

2. Whether the applicant or any other individuals listed pursuant to Subsection D1 (b) and (c) above within a two (2) year period immediately preceding the date of the application has been convicted of a specified criminal act and, if so, the specified criminal act involved, the date of conviction and the place of conviction.

3. Whether the applicant or any of the other individuals listed pursuant to this Section has had a previous permit or license under this chapter or other similar ordinances from another city or county denied, suspended, or revoked, including the name and location of the sexually oriented business for which the permit or license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation.

4. Whether the applicant or any other individual listed pursuant to this Section holds any other permits and/or licenses under this chapter, et. seq. or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other permitted businesses.

5. The single classification of permit for which the applicant is filing.

6. The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

7. The applicant's mailing address and residential address.

8. Two (2) two-inch by two-inch black and white photographs of the applicant, including any corporate applicant, taken within six (6) months of the date of the application, showing only

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the full face of the applicant. The photographs shall be provided at the applicant's expense. The license, when issued, shall have affixed to it one such photograph of the applicant.

9. The applicant or corporate applicant's driver's license number, social security number, and or his/her state or federally issued tax identification number.

10. Each application shall be accompanied by a complete set of fingerprints of each person required to be a party to the application, including all corporate applicants as defined above, utilizing fingerprint forms as prescribed by the Chief of Police.

11. In the case of an adult cabaret, 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. Applicants for a permit and/or license under this chapter shall have a continuing duty to promptly supplement application information required 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 City Finance Director or his/her designee, shall be grounds for suspension of a permit and/or license.

13. In the event the City Finance Director or his/her designee determines or learns at any time that the applicant has improperly completed the application for a proposed sexually oriented business permit or license, 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 allowed an opportunity to properly complete the application).

14. The applicant must be qualified according to the provisions of this Section, must have a current City business license, and the premises must be inspected and found to be in compliance with health, fire, and building codes of the City.

15. The applicant shall be required to pay a non-refundable application fee as established by resolution of the City Council at the time of filing an application under this Section.

NOTE: This is a processing fee. License fees shall also be required in the event the application is approved.

16. The fact that a person possesses other types of State or City permits and/or licenses does not exempt him/her from the requirement of obtaining a Sexually Oriented Business permit.

17. The application form for licenses and permits issued under this Ordinance shall contain a provision providing that under penalty of perjury the applicant verifies that the information contained therein is true to the best of their knowledge.

(O94-020, Added, 05/03/1994; O95-047, Amended, 12/05/1995)

### **5.50.050 Investigation and Application**

A. Upon receipt of an application properly filed with the City Finance Director and upon payment of the non-refundable application fee, the Finance Director or his/her designee shall immediately stamp the application as received and shall immediately thereafter send photocopies of the application to other City departments or other agencies responsible for enforcement of health, fire, and building codes and laws. Each department or agency shall promptly conduct an investigation of the applicant's application and the proposed Sexually Oriented Business. Said investigation shall be completed within twenty (20) working days of receipt of the application by the City Finance Director or his/her designee. At the conclusion of its investigation, each department or agency shall indicate on the photocopy of the application its recommendation as to approval or disapproval of the application, date it, sign it, and in the event it recommends disapproval, state the specific reasons therefor citing applicable laws or regulations.

B. A department or agency shall recommend disapproval of 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 City. After its indication of approval or disapproval, each department or agency shall immediately return the photocopy of the application to the City Finance Director or his/her designee.  
(O94-020, Added, 05/03/1994)

**5.50.060 Issuance of permit.**

A. The City Finance Director or his/her designee shall grant or deny an application for a permit within thirty (30) days from the date of its proper filing. Upon the expiration of the thirtieth (30th) 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 City or its designee notifies the applicant of a denial of the application and states the reason(s) for that denial.

B. Grant of Application for Permit:

1. The City Finance Director or his/her designee shall grant the application unless one or more of the criteria set forth in Subsection C below (Denial of Application for Permit) 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 be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it can be easily read at any time.

3. Denial of Application for Permit: The City Finance Director or his/her designee shall deny the application for any of the following reasons:

a. An applicant is under eighteen (18) years of age.

b. An applicant is overdue on his/her payment to the City of taxes, fees, fines, or penalties assessed against him/her or imposed upon him/her in relation to a sexually oriented business.

c. 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.

d. The applicant has failed to comply with any provision or requirement of this chapter.

(O94-020, Added, 05/03/1994)

**5.50.070 Licenses required for sexually oriented businesses - Fees.**

A. No sexually oriented business shall be operated or maintained in the City of Tumwater unless the owner or operator has obtained an SOB permit as set forth above, and the applicable licenses from the City Finance Director. For Adult Cabarets the required license shall be the Adult Cabaret License set forth in subsection B below. It is unlawful for any entertainer, employee, or operator to knowingly work in or about or knowingly perform any service directly related to the operation of an unlicensed adult cabaret business.

B. The annual fee for an adult cabaret business license shall be as established by resolution of the City Council. This amount shall be used for the cost of administration of this ordinance.

C. The annual license fee for all other sexually oriented businesses described in Section 5.50.040 above shall be as established by resolution of the City Council. This amount shall be used for the cost of administration of this ordinance.

D. The above-referenced licenses expire annually on December 31st and must be renewed by January 1.

E. In cases where the license becomes effective on a date other than January 1, the license fee shall be pro-rated on a quarterly basis. The cost thereof shall be computed by pro-rating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

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F. The applicant must be 18 years of age or older.  
(O94-020, Added, 05/03/1994; O95-047, Amended, 12/05/1995)

### **5.50.080 License for managers and entertainers of adult cabarets required - Fee.**

A. No person shall work as a manager or entertainer at an adult cabaret without having first obtained an entertainer's or manager's license from the City Finance Director. Each such applicant shall not be required to obtain a sexually oriented business permit, but shall complete an application containing the information identified in Section 5.50.040 (D) above and the same procedures shall be followed as set forth in Sections 5.50.050 and 5.50.060. A non-refundable processing fee as established by resolution of the City Council shall accompany the application.

B. The annual fee for such a license shall be as established by resolution of the City Council. This amount shall be used for the cost of administration of this chapter.

C. This license expires annually on December 31 and must be renewed by January 1.

D. In cases where the license becomes effective on a date other than January 1, the license fee shall be pro-rated on a quarterly basis. The cost thereof shall be computed by pro-rating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

E. The applicant must be 18 years of age or older.  
(O94-020, Added, 05/03/1994; O95-047, Amended, 12/05/1995)

### **5.50.090 Licenses for models and escorts.**

No person shall work as a model at a nude or semi-nude model studio or as an escort as defined herein without having first obtained a model or escort license from the City Finance Director.

A. Each such applicant shall not be required to obtain a sexually oriented business permit, but shall complete an application containing the information identified in Section 5.50.040 (D) above and the same procedures shall be followed as set forth in Sections 5.50.050 and 5.50.060. A non-refundable processing fee as established by resolution of the City Council shall accompany the application.

B. The annual fee for such a license shall be as established by resolution of the City Council. This amount shall be used for the cost of administration of this chapter.

C. This license expires annually on December 31 and must be renewed by January 1.

D. In cases where the license becomes effective on a date other than January 1, the license fee shall be pro-rated on a quarterly basis. The cost thereof shall be computed by pro-rating the annual fee on a quarterly basis rounded back to the beginning of the quarter in which the license is to be issued.

E. The applicant must be 18 years of age or older.  
(O94-020, Added, 05/03/1994; O95-047, Amended, 12/05/1995)

### **5.50.100 Due date for license fees.**

All licenses required by this chapter must be issued and the applicable fees paid to the City Finance Director at least fourteen (14) calendar days before commencing work at a Sexually Oriented Business. The SOB permit required by Section 5.50.040 above must only be renewed based on changed circumstances as set forth in Section 5.50.040 (D) (11) above.  
(O94-020, Added, 05/03/1994)

### **5.50.110 Manager on premises.**

A. A licensed manager shall be on duty at an adult cabaret business premises at all times live performances which are characterized by the exposure of specified anatomical areas or by

specified sexual activities are provided.

B. The licensed manager on duty shall not be an entertainer.

C. It shall be the responsibility of the manager to verify that any entertainer who works or appears within the premises possesses a current and valid entertainer's license posted in the manner required by this chapter.

(O94-020, Added, 05/03/1994)

#### **5.50.120 License nontransferable.**

No license or permit issued pursuant to this chapter shall be transferable.

(O94-020, Added, 05/03/1994)

#### **5.50.130 License - Posting and display.**

A. Every entertainer shall post his or her license in his or her work area so that it is readily available for public inspection.

B. Every person, corporation, partnership, or association licensed under this chapter shall display its license in a prominent place within the establishment. In the case of adult cabarets, the name of the manager on duty shall be prominently posted during business hours.

(O94-020, Added, 05/03/1994)

#### **5.50.140 Specifications - Adult cabarets.**

A. Separation of Sexually Oriented Adult Entertainment Performance Area: The portion of the Adult Cabaret premises in which sexually oriented adult entertainment is performed shall be a stage or platform at least twenty-four (24) inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least six (6) feet from all areas of the premises to which patrons have access. A continuous railing at least three (3) feet in height and located at least six (6) feet from all points of the sexually oriented adult entertainment performance area shall separate the performance area and the patron areas.

B. Lighting: Sufficient lighting shall be provided and equally distributed in and about the parts of the premises which are open to and used by patrons so that all objects are plainly visible at all times, and so that on any part of the premises which are open to and used by patrons a program, menu, or list printed in 8 point type will be readable.

C. Submittal of Plans: Building plans showing conformance with the requirements of this Section shall be included with any application for an Adult Cabaret business license.

(O94-020, Added, 05/03/1994)

#### **5.50.150 Standards of conduct and operation applicable to adult cabarets.**

A. Standards for Patrons, Employees and Entertainers: The following standards of conduct must be adhered to by patrons, entertainers and/or employees of adult cabarets at all times live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities are provided.

1. No employee or entertainer shall appear nude or semi-nude on any part of the premises open to view of members of the public, except on or in the entertainment performance area described in Section 5.50.140 (A) above.

2. No patron or customer shall go into or upon the adult entertainment performance area described in Section 5.50.140 (A) above while sexually oriented entertainment is being performed.

3. No member of the public or employee or entertainer shall allow, encourage, or knowingly permit any person upon the premises to touch, caress, or fondle the breasts, buttocks, anus, pubic area, or genitals of any other person.

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4. No member of the public or employee or entertainer shall allow, encourage, or permit physical contact between an employee or entertainer and any member of the public, which contact is intended to arouse or excite sexual desires.

5. No employee or entertainer shall perform acts of or acts which simulate:

a. Sexual intercourse, masturbation, bestiality, sodomy, oral copulation, flagellation, or any sexual acts which are prohibited by law; or

b. The touching, caressing, or fondling of the breasts, buttocks, pubic area, or genitals.

6. No employee or entertainer shall use artificial devices or inanimate objects to depict any of the prohibited activities described in this subsection.

7. No entertainer of an adult cabaret shall be visible from any public place outside the premises during the actual or apparent hours of his or her employment or performance on the premises.

8. No entertainer employed or otherwise working at an adult cabaret shall solicit, demand, accept, or receive any gratuity or other payment from a patron, customer, or member of the public.

9. It is unlawful for any entertainer, manager, or waitperson to perform more than one such function at an adult cabaret on the same business day.

10. No customer or patron of an adult cabaret shall give or otherwise provide an entertainer with a gratuity or other payment.

11. When not performing, entertainers are prohibited from being present in areas of the establishment that are open to the general public, except bathrooms.

12. Signs in both English and Spanish of sufficient size to be readable at twenty (20) feet shall be conspicuously displayed in the public area of the establishment stating the following:

THIS ADULT CABARET IS REGULATED BY THE CITY OF TUMWATER  
ENTERTAINERS ARE:

(A) Not permitted to engage in any type of sexual conduct;

(B) Not permitted to appear nude or semi-nude, except on stage;

(C) Not permitted to dance or model where patrons are congregated;

(D) Not permitted to solicit, demand, accept, or receive any gratuity or other payment from a patron.

B. Standards for Owner or Operator of Adult Cabarets: At any adult cabaret where live performances which are characterized by the exposure of "Specified Anatomical Areas" or by "Specified Sexual Activities" are provided the following are required:

1. Admission must be restricted to persons of the age of eighteen (18) years or more; and

2. Sufficient lighting shall be provided in or about the parts of the premises which are open to and used by the public so that all objects are plainly visible at all times.

(O94-020, Added, 05/03/1994)

### **5.50.160 Regulations applicable to adult arcades.**

All adult bookstores, adult novelty stores, or adult video stores having facilities for customers' viewing of depictions of human nudity and/or sexual conduct of any nature, including depictions of specified sexual activities, shall comply with the following regulations:

A. Construction/Maintenance:

1. All viewing booths shall be constructed or reconstructed so that the interior of the viewing booth is observable by persons in the aisles or other open areas of the establishment such that the lower 36" of the door is open to public view.

2. All such areas shall be maintained in a clean and sanitary condition at all times.

B. Signs:

1. Signs shall be conspicuously posted on the premises advising customers using viewing booths that:

- a. Masturbation in such booths is prohibited and unlawful.
- b. That it is unlawful for more than one (1) customer to occupy a viewing booth at any time.

C. Unlawful Conduct:

The following conduct or activity is unlawful:

1. Masturbation in viewing booths
2. Two (2) or more customers in a viewing booth at the same time
3. For the owner or manager to knowingly allow the above conduct.

(O94-020, Added, 05/03/1994)

**5.50.170 Regulations applicable to video stores not qualifying as sexually oriented businesses.**

Video stores that sell or otherwise distribute films, motion pictures, video cassettes, slides, or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas, and less than 20% of their stock-in-trade or revenues comes from the rental or sale of such items shall be subject to the following regulations:

A. All such items as are described above shall be physically segregated and closed off from other portions of the store such that these items are not visible and/or accessible from other portions of the store.

B. No advertising for such items shall be posted or otherwise visible, except where such items are authorized for display.

C. Signs readable at a distance of 20 feet in both English and Spanish shall be posted at the entrance to the area where such items are displayed stating that persons under the age of eighteen (18) are not allowed access to the area where such items are displayed.

D. The manager or attendant shall take reasonable steps to monitor the area where such items are displayed to insure that persons under eighteen (18) years of age do not access the age-restricted area.

E. Rental or sale of obscene material (as defined by state law) or material harmful to minors (as defined by state law) to persons under eighteen (18) years of age is prohibited.

F. Employees of such video stores shall check identification of persons appearing to be eighteen (18) or under to insure that such items are not rented or sold to persons under the age of eighteen (18).

(O94-020, Added, 05/03/1994)

**5.50.180 Exemptions.**

The following activity is exempt from the provisions of this chapter:

A. Persons appearing in a state of nudity or semi-nudity in a modeling class operated by:

1. A proprietary school, licensed by the State of Washington; a college, junior college, or university supported entirely or partly by taxation;

2. A private college or university approved by a national accrediting association, which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;

B. The modeling of clothing or lingerie in a facility having a full-service restaurant where no consideration is charged for the entertainment either directly or indirectly and specified anatomical areas are not exposed by the model.

(O94-020, Added, 05/03/1994)

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### **5.50.190 License - Name of business and place of business.**

No person granted a permit and/or license pursuant to this chapter shall operate a sexually oriented business under a name not specified in his/her license, nor shall he/she conduct business under any designation or at a location not specified in his/her permit and/or license.

(O94-020, Added, 05/03/1994)

### **5.50.200 Inspections.**

A. All books and records required to be kept pursuant to this chapter shall be open to inspection by the Police Chief of the City of Tumwater during the hours when the licensed premises is open for business upon two (2) days' written notice to the licensee. The purpose of such inspection shall be to determine if the books and records meet the requirements of this chapter.

B. The licensed premises shall be (as an implied condition of receiving an SOB permit and/or license) open to inspection by the Police Chief during the hours when the sexually oriented business premises is open for business. The purpose of such inspection shall be to determine if the licensed premises is operated in accordance with the requirements of this chapter. It is hereby expressly declared that unannounced inspections are necessary to insure compliance with this chapter.

(O94-020, Added, 06/07/1994)

### **5.50.210 Hours of operation.**

It is unlawful for any sexually oriented business premises, except adult motels, to be conducted, operated, or otherwise open to the public between the hours of two a.m. (2:00 a.m.) and eleven-thirty a.m. (11:30 a.m.)

(O94-020, Added, 05/03/1994)

### **5.50.220 Record keeping requirements.**

A. Within thirty (30) days following each calendar quarter, each sexually oriented business licensee shall file with the Finance Director a verified report showing the licensee's gross receipts and amounts paid to entertainers, models, or escorts, if applicable, for the preceding calendar year.

B. Each sexually oriented business licensee shall maintain and retain for a period of two (2) years the names, address and ages of all persons employed or otherwise retained as entertainers, models, and escorts by the licensee.

(O94-020, Added, 05/03/1994)

### **5.50.230 Procedure for appealing a license/permit denial.**

A. When the Finance Director refuses to grant a license or permit, he/she shall notify the applicant in writing of the same, describing the reasons therefore, and shall inform the applicant of his right to appeal to the City Council within ten (10) days of the date of the written notice by filing a written notice of appeal with the City Clerk containing a statement of the specific reasons for the appeal and a statement of the relief requested.

B. Within ten (10) days of receiving a timely appeal, the Finance Director shall forward the administrative record of the licensing decision to the City Council.

C. When an applicant has timely appealed the Finance Director's decision, the City Council shall review the administrative record at the next regularly scheduled meeting for which proper notice can be given. Written notice of the date and time of the scheduled meeting will be given to the applicant by the Finance Director by mailing the same, postage prepaid, to the applicant at the address shown on the license or permit application.

D. The applicant and Finance Director or his representative shall be given an opportunity to argue the merits of the appeal before the City Council. Oral argument by each party shall not exceed ten (10) minutes and shall be limited to the administrative record before the Council. New evidence shall not be presented by the parties or accepted by the Council.

E. The City Council shall uphold the Finance Director's decision unless it finds the decision is not supported by substantial evidence in the administrative record. The applicant shall bear the burden of proof.

F. The City Council shall issue a written decision within ten (10) days of hearing the appeal. The Council may uphold the Finance Director's decision and deny the permit, overrule the Finance Director's decision and grant the permit, or remand the matter to the Finance Director for further review and action. The Finance Director shall complete further action or review within thirty (30) days of receiving the remand.

G. Appeal to the City Council shall constitute final administrative review.  
(O94-020, Added, 05/03/1994)

**5.50.240 Suspension or revocation of license or permit - procedures - appeal.**

A. Whenever the City Attorney has found or determined that any violation of this chapter has occurred, he shall issue a Notice of Violation and Suspension or Revocation ("Notice") to the licensee or permit holder.

B. The Notice shall include the following:

1. Name(s) of person(s) involved.
2. Description of the violation(s), including date and section of this chapter violated.
3. Description of the administrative action taken.
4. Rights of appeal as set forth above.

C. Service of the Notice shall be either personally or by mailing a copy of the Notice by certified mail, postage prepaid, return receipt requested, to the licensee at his or her last known address. Proof of personal service shall be made at the time of service by a written declaration under penalty of perjury executed by the person effecting the service, declaring the time, date and the manner by which service was made.

D. If the licensee appeals the Notice, the licensee shall be afforded a reasonable opportunity to be heard as to the violation and action taken, subject to the following:

1. The licensee shall have ten (10) days from personal service of Notice, or fifteen (15) days from date of mailing of the Notice, to file with the City Clerk a written request for hearing specifying the reason(s) for the appeal.
2. The City Attorney shall have the burden to prove, by a preponderance of the evidence, that the identified violation(s) occurred.
3. In all other respects, the procedures set forth in Section 5.50.230 above shall be followed.

E. The suspension or revocation of a license by the City Attorney shall be immediately effective unless a stay thereof is specifically requested in the written request for a hearing.

F. Either party may seek judicial review of a final decision of the City Council as provided by law.  
(O94-020, Added, 05/03/1994)

**5.50.250 Suspension or revocation of license/permit - duration.**

A. The City Attorney shall suspend any license required by this chapter for a period of thirty (30) days upon the licensee's first violation of this chapter.

B. The City Attorney shall suspend any license required by this chapter for a period of ninety (90) days upon the licensee's second violation of this chapter.

C. The City Attorney shall revoke any license required by this chapter for a period of one (1)

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year upon the licensee's third or any subsequent violation of this chapter.

D. Notwithstanding the other provisions of this chapter, the City Attorney shall revoke or deny the renewal of any license required by this chapter for one (1) year if the licensee has made any false or misleading statements or misrepresentations to the City.

E. Application for a new license may be made following the expiration of the applicable revocation period.

(O94-020, Added, 05/03/1994)

### **5.50.260 Severability.**

If any portion of this chapter as now or hereafter amended, or its application to any person or circumstance is held invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision, or part thereof not adjudged to be invalid or unconstitutional, and its application to other persons or circumstances shall not be affected. Any ordinance or regulation in conflict with this chapter is hereby repealed.

(O94-020, Added, 05/03/1994)

### **5.50.270 Limitation of liability.**

None of the provisions of this chapter are intended to create a cause of action or provide the basis for a claim against the City, its officials, or employees for the performance or the failure to perform a duty or obligation running to a specific individual or specific individuals. Any duty or obligation created herein is intended to be a general duty or obligation running in favor of the general public.

(O94-020, Added, 05/03/1994)

### **5.50.280 Penalties for violation.**

Any person violating any provision(s) of this chapter shall be guilty of a misdemeanor. Any person convicted of such a violation shall be punished by a fine of not more than one thousand dollars (\$1,000) or a jail term of not more than one year, or both. Each such person is guilty of a separate misdemeanor for each and every day which any violation of this ordinance is committed, continued, or permitted by any such person and said person shall be punished accordingly. Any persons violating any of the provisions of this chapter shall also be subject to license suspension or revocation as set forth herein.

(O94-020, Added, 05/03/1994)

### **5.50.290 Public nuisance/injunctions.**

Any sexually oriented businesses in violation of this chapter shall be deemed a public nuisance, which, in addition to all other remedies, may be abated by injunctive relief.

(O94-020, Added, 05/03/1994)