

CHAPTER 2 - BUSINESS AND TAX REGULATIONS

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ARTICLE 2-1 TRANSIENT MERCHANTS

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2-1-1 Definition

“Transient merchant” means any person, firm, corporation or other entity, whether as owner, agent, consignee or employee, or whether a resident of the City of Holbrook, Arizona, that engages in a temporary business of selling or delivering goods, wares, or services, or who conducts meetings open to the general public where franchises, distributorships, contracts or business opportunities are offered to participants. A transient merchant shall not include a person who sells his own property at a yard or garage sale, which property was not acquired for resale, barter or exchange, and who does not conduct such sales or act as a participant by furnishing goods for such sales more than twice during any calendar year.

2-1-2 License Required

It is unlawful for any person or other entity or for any agent, servant or employee of any person or other entity to engage in, carry on or conduct the business of a transient merchant without first obtaining from the City of Holbrook a license to do so. It is unlawful for any person or other entity owning property on which a transient merchant conducts business to allow the conduct of such business without requiring from the transient merchant a copy of a current license.

2-1-3 License Fee

The license fee for engaging in, carrying on or conducting business as a transient merchant shall be established by action of the City Council and shall be payable in advance for each quarter such business shall continue.

2-1-4 Exemptions

This section shall not apply to any person, firm, corporation or other entity holding a current

valid state sales tax license. This section does not apply to the Holbrook Chamber of Commerce, Holbrook Main Street, or other government entities that conduct periodic fund raisers.

ARTICLE 2-2 LICENSING OF SEXUALLY ORIENTED BUSINESSES

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2-2-1 Purpose and Intent.

It is the purpose and intent of this article to regulate sexually-oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the City of Holbrook and to establish reasonable and uniform regulations to reduce or eliminate the adverse secondary effects from such sexually-oriented businesses. The provisions of this article 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 article 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 article to condone or legitimize the distribution of obscene material.

2-2-2 Definitions

In this article, unless the context otherwise requires:

- A. *Employee* means a 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 as employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

- B. *Licensee* means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.
- C. *Person* means an individual, proprietorship, corporation, association, or other legal entity.
- D. *Specified criminal activity* means any of the following offenses:
1. Prostitution or promotion of prostitution, dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; sexual abuse; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states and countries;
 2. for which:
 - a. less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date; if the conviction is a misdemeanor offense; or
 - b. less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or
 - c. less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24 month period.
 - d. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or person residing with the applicant.
- E. *Transfer of ownership or control* of a sexually oriented business means and includes any of the following:
1. the sale, lease, or sublease of the business;

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 device which transfers 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.
- F. *Definitions included.* All definitions listed in Article 6-2-2 of the Zoning Ordinance relating to sexually oriented businesses are applicable to this article.

2-2-3 License Requirements.

- A. It is unlawful:
1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this article.
 2. For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the City pursuant to this article.
 3. For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this article.
- B. An application for a license must be made on a form provided by the City.
- C. All applicants must be qualified according to the provisions of this article. The application may request and the applicant shall provide such information (including fingerprints) as to enable the City to determine whether the applicant meets the qualifications established in this article.
- 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 twenty percent (20%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under this article and each applicant shall be considered a licensee if a license is granted.
- D. The completed application for a sexually oriented business license 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 proof that he/she is 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 its state of incorporation, 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.
 - d. a limited liability company, the company shall state its complete name, and the names of all members who own a twenty-percent or greater interest in the capital or profits of the limited liability company. If the management of the limited liability company is vested in a manager or managers, the company shall also state the name of each person who is a manager of the limited liability company.
2. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state the sexually oriented business's fictitious name and submit the required registration documents.
3. Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this article, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
4. Whether the applicant, or a person residing with the applicant, has had a previous license under this article 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 a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a

corporation that is licensed under this article whose license 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 a person residing with the applicant holds any other licenses under this article or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.
6. The single classification of license 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 applicant's mailing address and residential address.
9. A recent photograph of the applicant(s).
10. The applicant's driver's license number, Social Security Number, and/or his/her state or federally issued tax identification number.
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 a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 200 feet of the property to be certified and also depicting the property lines of any established use listed in Article 6-2-4 of the Zoning Ordinance within one thousand (1,000) feet of the property to be certified. For purposes of this paragraph, a use shall be considered existing or established if it is in existence at the time an application is submitted.

2-2-4

Employee license.

- A. Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the City the following information:

1. The applicant's name or any other name (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. Date, issuing state and number of driver's permit or other identification card information;
 7. Social Security number; and
 8. Proof that the individual is at least eighteen (18) years of age.
- B. Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:
1. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.
 2. A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other 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 name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
 3. A statement whether the applicant has been convicted of a specified criminal activity as defined in this article and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.
- C. Upon the filing of an application for a sexually oriented business employee

license, the city shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the City shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. The applicant has failed to provide information reasonable necessary for issuance of the license or has falsely answered a question or request for information on the application form;
2. The applicant is under the age of eighteen (18) years;
3. The applicant has been convicted of a "specified criminal activity" as defined in this article;
4. 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 a particular provision of this article;
 - a. The applicant has been denied a license by the City to operate a sexually oriented business within the preceding 12 months or has had a sexually oriented business operating license revoked by the City; or
 - b. The applicant has had a sexually oriented business employee license revoked by the City within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this section shall be subject to appeal as set forth herein.

2-2-5 Issuance and Renewal of License.

- A. Within 30 days after receipt of a completed sexually oriented business application, the City shall approve or deny the issuance of a license to an applicant. The City shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
 1. An applicant is under eighteen (18) years of age.

2. An applicant or a person with whom applicant is residing is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.
 3. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
 4. An applicant or a person with whom the applicant is residing has been denied a license by the City to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
 5. An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this article.
 6. The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.
 7. The license fee required by this article has not been paid.
 8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.
- B. The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued. All licenses 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.
- C. The health department, fire department, and the building official shall complete their certifications that the premises is in compliance or not in compliance with the requirements of this article within twenty (20) days of receipt of the application by the City.
- D. A sexually oriented business license shall issue for only one classification set forth in Article 6-2-3.
- E. A license granted pursuant to this article shall be subject to annual renewal upon the written application of the applicant and a finding by the City that the applicant has not been convicted of any specified criminal activity as defined in this article or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of

the license shall be subject to the payment of the fee as set forth herein.

2-2-6 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 \$500.00 non-refundable application and investigation fee.
- 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 City an annual non-refundable license fee of \$250.00 within thirty (30) days of license issuance or renewal.
- 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 an annual \$250.00 non-refundable application, investigation, and license fee.

2-2-7 Inspection.

- A. An applicant or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning Department, or other City departments or agencies 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. A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business.

2-2-8 Expiration of License.

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

2-2-9 Suspension.

- A. The City shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee or an employee of a licensee has committed any of the following:
1. violated or is not in compliance with any provision of this article;
 2. refused to allow an inspection of the sexually oriented business premises as authorized by this article;
 3. has violated applicable provisions of the Holbrook City Code;
 4. been on the premises of the sexually-oriented business while in an intoxicated condition or has committed disorderly conduct as defined in A.R.S. §13-2904, as amended, while on the premises of the business, or knowingly has permitted an employee to be on the business premises while the employee was in an intoxicated condition;
 5. knowingly permitted gambling by any person on the premises of the sexually-oriented business.

2-2-10 Revocation.

- A. The City shall revoke a license if a cause of suspension occurs and the license has been suspended within the preceding twelve (12) months.
- B. The City shall revoke a license if it determines any of the following:
1. a licensee gave false or misleading information in the material submitted during the application process;
 2. a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 3. a licensee has knowingly allowed prostitution on the premises;
 4. a licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 5. except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;

- 6. a licensee is delinquent in payment to the City, County, or State for any taxes or fees past due; or
 - 7. on two (2) or more occasions within a twelve (12) month period, a person or persons while in or on the licensed premises committed an offense listed herein for which a conviction has been obtained, and the person or persons were managers or employees of the sexually-oriented business at the time the offenses were committed. The license denial, suspension, or revocation shall be stayed automatically pending judicial review of such administrative action.
- C. When the City revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.
 - D. After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

2-2-11 Transfer of License.

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

2-2-12 Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of any part of this article is subject to suit for injunction as well as prosecution for a criminal violation. Each day a sexually oriented business operates in violation of any part of this article is a separate offense or violation.

ARTICLE 2-3 CITY TAX CODE - ADOPTED; PENALTY

2-3-1 Adoption and Penalty

- A. That certain document known as "The City Tax Code of the City of Holbrook,

Arizona”, three (3) copies of which are on file in the office of the City Clerk of the City of Holbrook, Arizona, which document was made a public record by Resolution NO. 98-5, is hereby adopted and referred to as Article 2-2 of the Holbrook City Code and is made a part hereof as if fully set out in the Code. The provisions shall become effective on the date the Holbrook City Code is passed.

- B. Any person found guilty of violating any provisions of the City Tax Code shall be guilty of a class 1 misdemeanor. Each day that a violation continues shall be a separate offense punishable as described above.