ADULT-ORIENTED BUSINESSES

Sec. 16A-112. Purpose and intent.

- (a) It is the purpose of this article to regulate adult-oriented businesses, to promote the public health, safety, and general welfare of the citizens of the city, and to avoid and mitigate the detrimental secondary effects of adult-oriented businesses through content neutral regulations.
- (b) It is not the purpose of this article to impose a limitation or restriction on the content of any communicative materials, including sexually oriented materials, or 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.
- (c) This article is not intended to interfere with or suppress legitimate expression or any speech activities protected by the First Amendment to the United States Constitution nor is it intended to permit any use or activity which is otherwise prohibited or made punishable by law.

Sec. 16A-113. Definitions.

For the purpose of this article, the following terms shall have the meaning respectively ascribed to them in this section unless the context clearly requires otherwise:

- (1) Adult cabaret means a nightclub, bar, restaurant, or similar commercial business which regularly features:
 - a. Persons who appear in a "state of nudity";
 - 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".
- (2) Adult motel means a hotel, motel or similar commercial establishment that:
 - a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions that depict or describe "specified sexual activities" or "specified anatomical areas" as one of its principal business purposes;
 - b. Offers a sleeping room for a period of time that is less than ten (10) hours; or
 - 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.
- (3) Adult motion picture theater means a commercial business where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown

which are predominantly characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

- (4) Adult-oriented business means the opening or commencement of, or the conversion of an existing business to, or the addition to any other existing business of, or the relocation of any of the following: "adult arcade", "adult retail store", "adult motion picture theater", "adult theater", "adult cabaret", "adult motel", "nude model studio", "adult service", "adult service business" and "adult video facility".
- (5) Adult-oriented business manager means a person on the premises of an adult-oriented business who has overall supervisory authority over the operation of the business.
- (6) Adult retail store in this article, means a commercial establishment which devotes more than one-third (1/3) of its total retail sales floor area to any of the following:
 - a. The sale or rental, for any form of consideration, books, magazines, periodicals, photographs, films, motion pictures, video cassettes or video reproductions, slides, or other printed or visual matter that predominantly depict or describe "specified sexual activities" or "specified anatomical areas":
 - b. The sale or rental of instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities", excluding condoms and other birth control and disease prevention products; or
 - c. The regular exclusion of all minors from the premises because of the sexually explicit nature of the items sold, rented or displayed therein.

For the purpose of determining one-third (1/3) of the total retail sales floor area, display items shall be clearly separate from the remaining merchandise and shall not be visible from the remaining two-thirds (2/3) of the retail sales floor area, separated by a solid non-transparent partition, and shall not be visible from the exterior of the business.

- (7) Adult service means a dance, performance or other activity, including, but not limited to, service of food or beverages, modeling, posing, wrestling, singing, reading, talking, or listening conducted for any consideration in an adult service business by a person who is nude during all or part of the time that the person is providing the service.
- (8) Adult service business means a commercial establishment where any adult service is provided to patrons in the regular course of business and as one of the principal business purposes of the establishment, and includes, but is not limited to, a nude model studio as defined in this code.
- (9) Adult-oriented service provider means any person who provides an adult service.
- (10) Adult video facility, adult theater or adult arcade, referred to as adult video facility in this article, means a commercial establishment where, for any consideration, the public is permitted or invited wherein films, motion pictures, video cassette projections, slides, photographs or other visual media predominantly characterized by depiction of "specified sexual activities" or "specified anatomical areas" are shown electrically, mechanically or by other means in the regular course of business and as a business

purpose of the establishment. Adult video facility does not include a theater where all viewing occurs in a common area with seating for fifty (50) or more persons.

- (11) Applicant means a person or persons who has applied for an adult-oriented business license, an adult-oriented manager license or an adult-oriented service provider license.
- (12) Business day means any day of the week when the license officer's office is open for the public to conduct the license officer's business.
- (13) Community development director means the director of the community development department or designee.
- (14) Employ, employee or employment describe and pertain to any person who performs any service on the premises of an adult-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.
- (15) Licensing officer means the director of the finance and technology department of the city or designee.
- (16) License means the license required by this article as a condition to operating an adult-oriented business or to engage in the activities of an adult-oriented service provider or adult-oriented business manager.
- (17) Licensee means a person in whose name a license to operate an adult-oriented business has been issued, as well as each individual listed as an applicant on the application for a license.
- (18) Manager's station means an area within an adult service business or an adult video facility where an adult-oriented business manager is located in the normal course of operations.
- (19) Nude model studio means a place where the primary use involves a person who regularly appears in a "state of nudity", displays "specified sexual activities" or the exposure of "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who transfer any form of consideration.
- (20) Nudity/state of nudity means without opaque non-flesh colored fabric fully covering the human anus, pubic region, male genitals, female genitals, and female breasts below the top of the areola.
- (21) Operate or causes to be operated means to cause to function or to put or keep in operation. Operator means any person who causes to function or who puts or keeps in operation an adult-oriented business. A person may be found to be operating or causing to be operated an adult-oriented business whether or not that person is an owner, part owner, or licensee of the business.
- (22) Patron means a person invited or permitted to enter and remain upon the premises of an adultoriented business, whether or not for a consideration.

- (23) Person means an individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, or broker, or any other form of legal entity.
- (24) Police chief means the chief of police or designee.
- (25) Specified anatomical areas means the human anus, pubic region, male genitals, female genitals, or female breast below the top of the areola that are less than completely and opaquely covered by non-flesh colored fabric; or human genitals in a state of sexual arousal, even if completely and opaquely covered.
- (26) Specified sexual activities means actual or simulated sexual intercourse, masturbation, oral copulation, sodomy, flagellation, bestiality, fondling or other erotic touching of human genitals, pubic region, buttocks, anus or the female breast, or any combination thereof. As well as, human genitals in a state of sexual arousal or excretory functions as part of or in connection with any of the activities set forth herein.

Sec. 16A-114. Classification.

An adult-oriented business shall be classified as follows:

- (1) Adult retail store;
- (2) Adult service business;
- (3) Adult video facility, adult theater or arcade;
- (4) Adult motel;
- (5) Adult cabaret;
- (6) Adult motion picture theater;
- (7) Nude model studio: or
- (8) Any combination of classifications set forth in paragraphs (1) through (7) above or similar ancillary activity.

Sec. 16A-115. Administration.

- (a) The administration of this article, including the duty of prescribing forms, is vested in the licensing officer, except as otherwise specifically provided. The police chief and the community development director shall render assistance in the administration and enforcement of this article as follows:
 - (1) Police chief shall make police department facilities and personnel available to fingerprint an applicant for a license. The cost of fingerprinting shall be paid by the applicant at the time the service is provided. Records of fingerprints so obtained shall be maintained at the police department;
 - (2) Police chief shall have a criminal history inquiry conducted on all persons listed as applicants in a license application. The inquiry shall be limited to determining whether an applicant for a

license has a criminal conviction of the type described and for the period indicated in § 16A-117(d)(8) of this article. The police chief shall notify the licensing officer in the event such criminal conviction is found to exist;

- (3) Community development director shall notify the licensing officer whether an applicant or a licensee in a license application has failed to comply with or is in violation of applicable provisions of the Zoning and Development Code, or the building codes, development standards or other land use ordinances and regulations of the city relating to the business to be operated under the license;
- (4) Nothing herein is intended to prohibit or restrict the police chief or the community development director from providing additional assistance as may derive from their normal duties and responsibilities or as may be requested by the licensing officer. In no event shall any assistance as described herein, or the absence of such assistance, delay or extend the time period specified in § 16A-125 for the licensing officer to act on a license application; and
- (5) The licensing officer shall take photographs of each applicant. Photograph fees must be paid at the time initial application is submitted. Initial or replacement photograph fees shall be established by city council (see Appendix A).
- (b) An application for a license or for the renewal of a license made pursuant to this article shall be submitted to the licensing officer who shall grant or deny the application in accordance with the provisions of this article. The licensing officer shall also suspend or revoke a license in accordance with the provisions of this article.
- (c) A license issued pursuant to this article shall expire on December 31 of the year in and for which it is issued and may be renewed annually.
- (d) A license, if granted, shall state on its face:
 - (1) The name of the licensee:
 - (2) The name and address of the licensed premises;
 - (3) The particular classification or classifications of adult-oriented business for which the license is granted; and
 - (4) The license number.

Sec. 16A-116. Adult-oriented business license required.

- (a) It shall be unlawful for a person to operate an adult-oriented business without a valid license issued pursuant to this article for the particular classification of adult-oriented business sought to be operated.
- (b) It shall be unlawful for a person to operate an adult-oriented business under any name or designation, or under any premises name or designation, or at any premises address not specified in a valid license issued pursuant to this article. Each additional premises sought to be operated as an adult-oriented business shall require a separate license.

- (c) It shall be unlawful for any operator of an adult-oriented business to hire or engage any provider or manager who does not hold a valid license.
- (d) A valid license for the adult-oriented business being conducted shall be displayed on the premises in such manner as to be readily visible to patrons.

Sec. 16A-117. Application for adult-oriented business license.

- (a) A person who wishes to operate an adult-oriented business shall submit an application and fees for a license to the licensing officer as required by this article. The application shall be on a form prescribed by the licensing officer and obtainable from the licensing officer. The application shall include a current photograph and the fingerprints of each applicant. An application shall be deemed filed with the city when the licensing officer has received the required fees, a completed application with all information required in subsection (d), and the photograph and fingerprints of each applicant. TEMPE CODE 16A-46
- (b) The applicants shall submit a full set of fingerprints to the police department for the purpose of obtaining a state or federal, or both, criminal records check pursuant to A.R.S. § 41-1750 and Public Law (PL) 92-544. The Department of Public Safety is authorized to exchange this fingerprint data with the Federal Bureau of Investigation. Fingerprints must be submitted on fingerprint cards provided by the licensing officer.
- (c) If a person who wishes to operate an adult-oriented business is an individual, that individual must be listed in the application for the license as applicant and also as the licensee. If a person who wishes to operate an adult-oriented business is a legal entity other than an individual, each officer or general partner of the entity, and any other individual who will participate directly in decisions relating to management of the adult-oriented business, must be listed in the application as an applicant. Each applicant shall provide his photograph and fingerprints as provided in subsections (a) and (b) above and shall provide under oath the information called for in paragraphs (4) through (8) of subsection (d) below as it applies to each such applicant.
- (d) The application shall be deemed complete if it contains the following information:
 - (1) The name, premises address, business mailing address if different from the premises address, and phone number of the proposed adult-oriented business;
 - (2) The name, address and phone number of the designated applicant;
 - (3) Where the person seeking to operate the adult-oriented business is other than an individual, the state and date of formation of the business:
 - (4) Each applicant's full true name and any other names, aliases or stage names used in the preceding five (5) years;
 - (5) Each applicant's current residential mailing address and telephone number. This information shall be supplemented in writing to the licensing officer by letter postmarked not later than ten (10) days after any change in this information;

- (6) Written proof of each applicant's age, in the form of either a current driver's license with picture or other picture identification document issued by a governmental agency;
- (7) The issuing jurisdiction and the effective date of any license relating to the operation of an adult-oriented business or relating to the provision of any adult services which is held or has been held at any time by any applicant or by the designated licensee, whether any such license has been revoked or suspended, and the reason or reasons therefor;
- (8) If less than five (5) years has elapsed since the date of the last conviction, or the date of release from confinement for the last conviction, whichever is later, of any applicant or of the licensee for a sexual offense described in A.R.S. § 13-1401 through § 13-1416, a racketeering offense as defined in A.R.S. § 13-2301.D.4, an extortion offense as defined in A.R.S. § 13-1804, a money laundering offense as defined in A.R.S. § 13-2317, a prostitution offense described in A.R.S. § 13-3201 through § 13-3214, a drug offense described in A.R.S. § 13-3401 through § 13-3416, or a sexual exploitation of children offense described in A.R.S. § 13-3551 through § 13-3556, or incest and other offenses against minors described in A.R.S. § 13-3608, A.R.S. § 13-3612 through § 13-3618 and A.R.S. § 13-3619, or for facilitation, attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any conviction in another jurisdiction for conduct which if carried out in Arizona would constitute an offense stated in this paragraph. The fact that a conviction is being appealed shall not affect the requirements of this paragraph;
- (9) The name and address of the statutory agent or other agent authorized to receive service of process;
- (10) The name(s) of the adult-oriented business manager(s) who will have actual supervisory authority over the operation of the business. This information shall be supplemented in writing to the licensing officer by letter postmarked not later than ten (10) days after any change in this information;
- (11) An accurate, to scale floor plan or diagram of the business premises clearly showing the configuration of the premises, including a statement of total floor space occupied by the business, the place at which the license will be conspicuously posted, if granted, the location of all manager's stations and overhead lighting fixtures, and clearly designating all portions of the premises in which patrons will not be permitted. Each diagram should be oriented to the north or to some designated street or object and shall 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. The licensing officer 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;
- (12) A certification that the adult-oriented business does not violate the locational requirements of § 16A-133 of this code; and
- (13) Any additional information or documentation as may be requested by the licensing officer to process the application.

Sec. 16A-118. Adult-oriented business manager license.

- (a) A person may not serve as an adult-oriented business manager unless the person has first secured an adult-oriented business manager license under this article.
- (b) Application for an adult-oriented business manager license shall be made in the same manner as an application for a adult-oriented business license, except that the applicant need provide only the information called for in paragraphs (4) through (8) of § 16A-117(d), along with current photograph, fingerprints and payment of all fees.

Sec. 16A-119. Adult service provider license.

- (a) A person may not work as an adult service provider in the city unless the person has first obtained an adult service provider license under this article.
- (b) Application for an adult service provider license shall be made in the same manner as an application for an adult-oriented business license, except that the applicant need provide only the information called for in paragraphs (4) through (8) of § 16A-117(d), along with current photograph, fingerprints, and payment of all fees.

Sec. 16A-120. Adult service provider or manager work identification card.

When a license is granted, the licensing officer shall provide to the adult service provider or adultoriented business manager a work identification card. The card shall contain the name of the licensee, a photograph of the licensee, the number of the license issued to that licensee and the year for which the license has been issued.

Sec. 16A-121. Adult service business - operating requirements.

An adult service business shall be provided in accordance with the following regulations. Knowing failure of a licensee or manager to insure compliance with the regulations on the premises is a violation of this article by the licensee or manager:

- (1) A person employed or acting as an adult service provider or manager shall have a valid license issued pursuant to the provisions of this article. A license for each manager or service provider shall be displayed on the premises at all times. Such licenses shall be available for inspection upon request by a law enforcement officer or other authorized city official;
- (2) An adult service business shall maintain a daily log of all persons providing adult services on the premises. The log shall cover the preceding twelve (12) month period and shall be available for inspection upon request by a law enforcement officer or other authorized city official;
- (3) A person under the age of eighteen (18) years may not observe or provide an adult service;
- (4) A person may not provide an adult service in an adult service business except upon a stage elevated at least eighteen (18) inches above floor level. All parts of the stage, or a clearly designated area thereof within which the adult service is provided, shall be a distance of at least three (3) feet from all parts of a clearly designated area in which patrons may be present. The stage or designated area thereof shall be

separated from the area in which patrons may be located by a solid barrier or railing the top of which is at least three (3) feet in height. A provider or patron may not extend any part of his body over or beyond the barrier or railing;

- (5) An adult service provider, in the course of providing an adult service, may not perform or simulate any specified sexual activities;
- (6) Adult services may not be provided between the hours of 1:30 a.m. and 6:00 a.m. or between 1:30 a.m. and 10:00 a.m. on Sunday;
- (7) An adult service may not be provided in any location which is not visible by direct line of sight at all times from a manager's station located in a portion of the premises which is accessible to patrons of the adult service business;
- (8) An adult service shall not be provided in any location or area of a premises so as to be visible or viewable from a public right of way;
- (9) An adult service provider shall wear his adult service identification card at all times while on the premises except while providing an adult service. The card shall be affixed to clothing on the front of the person and above waist level so that the picture and license number are clearly visible to patrons;
- (10) An adult-oriented business manager shall be on the premises of an adult service business at all times during which any adult service is provided on the premises. The manager shall wear his identification card at all times while on the premises. The card shall be affixed to clothing on the front of the person and above waist level so that the picture and license number are clearly visible to patrons;
- (11) An employee may not touch the breast, buttocks, or genitals of a patron, nor may a patron touch the breast, buttocks, or genitals of an employee;
- (12) A sign, in a form prescribed by the licensing officer summarizing the provisions of paragraphs (3), (4), and (11) of this section shall be posted near the entrance of an adult service business in such a manner as to be clearly visible to patrons upon entry;
- (13) With respect to a cabaret, the requirements of this section shall apply to the extent that they are not in conflict with specific statutory or valid regulatory requirements applicable to persons licensed to dispense alcoholic beverages; and
- (14) The adult-oriented business shall comply with the operational requirements of the Zoning and Development Code.

Sec. 16A-122. Adult video facility - operating requirements.

(a) An adult video facility shall be operated in accordance with the following regulations. Knowing failure of a licensee or a manager to insure compliance with the regulations on the premises is a violation of this article by the licensee or manager.

- (1) 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 footcandle, as measured at the floor level;
- (2) The premises shall be configured in such a way that a patron, whether sitting or standing, is visible below the waist by direct line of sight from a manager's station at all times during which the patron is viewing video material or other visual media material characterized by depiction of specified anatomical areas or specified sexual activities. No more than one patron may occupy a partitioned portion, booth, stall or viewing room at the same time. The manager's station shall be located in a portion of the premises accessible to patrons and shall not exceed thirty-two (32) square feet of floor area. If the premises has 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 of the manager's stations. The view required in this paragraph must be an unobstructed view from the manager's station. It is the duty of the licensee or manager to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises;
- (3) An adult-oriented business manager shall be on the premises of an adult video facility at all times that the facility is open for business. The manager shall wear his identification card in the manner described in § 16A-121(10) above; and
- (4) The adult video facility shall comply with the operational requirements of the Zoning and Development Code.

Sec. 16A-123. Inspection of premises and records.

The manager of an adult-oriented business shall maintain on the premises business records reflecting all receipts and expenditures with respect to the business for the preceding two (2) years. Law enforcement or other authorized officers or employees of the city shall be granted entry to inspect the premises and business records of any adult-oriented business at any time it is occupied or open for business. It is an offense and grounds for suspension or revocation for a licensee, employee or agent to refuse to permit an inspection as provided herein, in addition to the penalty provisions of § 16A-134.

Sec. 16A-124. Non-transferability of license.

Licenses issued under this article are not transferable. A licensee shall not conduct a different classification of an adult-oriented business than that designated on the license or conduct an adult-oriented business at any place other than the address designated on the license. No adult-oriented business shall be conducted under any name or under any designation or classification not specified on the license for that business.

Sec. 16A-125. Grant or denial of license.

(a) Within sixty (60) days after the complete application for an adult-oriented business license is filed with the city, the licensing officer shall mail to the applicant a license or notice of license denial.

- (b) Upon the filing of an application for an adult-oriented business manager license or an adult service provider license, the licensing officer shall issue to the applicant a temporary license. Within sixty (60) days after issuance of a temporary license, the licensing officer shall mail to the applicant a license or a notice of license denial.
- (c) The issuance of any license does not waive any right of revocation the city may have.
- (d) The licensing officer shall grant the license if all requirements for the application have been completed, unless the licensing officer finds any of the following conditions exist with respect to any applicant listed in the application:
 - (1) The applicant is under eighteen (18) years of age;
 - (2) The applicant must submit a signed individual application that stipulates that omission or falsification of information is sufficient grounds for denial of the application or later revocation in addition to other remedies authorized by law;
 - (3) The applicant is a corporation which is not qualified to transact business in this state;
 - (4) The applicant, the applicant's spouse, or the licensee is delinquent in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant, the applicant's spouse, or the licensee in relation to an adult-oriented business or arising out of any other business activity owned or operated by the applicant, the applicant's spouse, or the licensee and licensed by the city;
 - (5) The applicant or the licensee has failed to comply with or is in violation of applicable provisions of the zoning ordinances, or the building codes, or land use or other ordinances and regulations of the city, county, state or federal government relating to the business or activity to be conducted under the license, or the adult-oriented business violates the locational requirements of § 16A-133 of this article;
 - (6) Within the past two (2) years, the applicant or the licensee has had a license under this article revoked, or a similar license or permit in another jurisdiction has been revoked on the basis of conduct which would be grounds for revocation of a license issued under this article if committed in the city. The fact that the revocation is being appealed at the time of the decision on this application shall have no effect;
 - (7) The applicant or the licensee in the past five (5) years has been convicted of a felony violation or two (2) misdemeanor violations of one or more offenses in the categories stated in § 16A-117(d)(8). The fact that a conviction is being appealed shall have no effect; or
 - (8) The applicant or the licensee has committed an act in violation of 18 U.S.C. § 2257 within the past two (2) years.
- (e) The licensing officer may deny an application for any reason pursuant to this article or for any violations pertaining to city, county, state and federal requirements.
- (f) Licenses shall not be issued until the applicant has complied with city, county, state and federal law.

Sec. 16A-126. Suspension.

The licensing officer shall suspend a license for a period of thirty (30) days if the licensing officer determines that a licensee or employee has violated any provision of this article.

Sec. 16A-127. Revocation of license.

- (a) The licensing officer shall revoke a license issued pursuant to this article if the licensee:
 - (1) Is convicted of three (3) or more violations of this article in any twelve (12) month period;
 - (2) Is convicted of any crime or crimes on the basis of which a license may be denied under § 16A-125(d)(7);
 - (3) Gave false or misleading information in the application;
 - (4) Has knowingly operated or worked in the adult-oriented business during a period of time when the license was suspended;
 - (5) Is delinquent in payment to the city of taxes or fees related to the adult-oriented business or arising out of any other business activity owned or operated by the licensee and licensed by the city; or
 - (6) Has committed an act in violation of 18 U.S.C. § 2257.
- (b) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

Sec. 16A-128. Procedure for denial, revocation or suspension.

Applicants or licensees that wish to appeal the denial, revocation or suspension of a license are required to file such appeal to the hearing officer as follows:

- (1) If the licensing officer determines that grounds exist to deny, suspend, or revoke an application or license, the licensing officer shall notify the applicant or licensee in writing of the denial, revocation or suspension, which notice shall include a summary of the grounds therefor. The notice shall be sent by certified mail to the address of the applicant or licensee listed in the current year's license application or renewal application, and the effective date of notice shall be the date the notice is actually received or five (5) business days after the date the notice is mailed, whichever occurs first.
- (2) Within ten (10) business days after the effective date of notice, the respondent may provide to the licensing officer in writing a response which shall include a statement of reasons why the license or any renewal thereof, should not be denied, suspended, or revoked and which may include a request for a hearing. If a response is not received by the licensing officer in the time stated, the denial, suspension or revocation shall be final and notice thereof shall be sent to the applicant or licensee by certified mail; and
- (3) Within seven (7) business days after receipt of a response, the licensing officer shall schedule a hearing before the hearing officer as designated by the finance and technology director. The respondent shall be notified in writing by certified mail of the date, time and place of the hearing. The hearing shall be scheduled not less than fifteen (15) no more than thirty (30) days after receipt by the licensing officer

of the request for a hearing. The hearing shall be conducted in an informal manner. The respondent may be represented by counsel. The rules of evidence will not apply. The hearing officer shall render a written decision within five (5) business days after completion of the hearing and shall mail a copy of the decision by certified mail to the address of the respondent listed in the current year's application. In the case of a decision to deny, revoke or suspend a license, the licensee may continue to function under the license pending receipt of the final decision of the hearing officer. The decision shall be deemed final five (5) business days after it is mailed and shall constitute final administrative action.

Sec. 16A-129. Judicial appeal.

- (a) After applicant has been denied and all administrative remedies have been exhausted, the applicant may file in the superior court, by special action or other available procedure, an appeal challenging the validity of the denial.
- (b) In the event that a license is revoked or suspended, and all administrative remedies have been exhausted, the licensee may file in the superior court, by special action or other available procedure, an appeal challenging the validity of the suspension or revocation.

Sec. 16A-130. Repealed.

Sec. 16A-131. Application and license renewal fees.

- (a) The initial application shall be submitted with a nonrefundable application and photograph fee plus the annual license fee in the amount established by city council (see Appendix A).
- (b) The annual renewal application shall be submitted with a nonrefundable renewal application fee plus the annual license fee in the amounts established by city council (see Appendix A).
- (c) The annual license fee shall be refunded upon denial of the license.
- (d) Any person who fails to renew an adult business license, adult manager license or adult service provider license by December 31 of any year and who conducts activity covered by such license after such date shall be deemed operating without a license, and shall be subject to the late renewal penalty fee established by city council (see Appendix A), in addition to the penalty provisions of § 16A-134.
- (e) Renewal applications not received prior to January 31, of any year will result in the termination of such license.
- (f) Terminated licenses are not renewable and require a new application.
- (g) All fees, including penalty fees, must be paid in full prior to license issuance.

Sec. 16A-132. Other regulations applicable.

A license required by this article is in addition to any other licenses or permits required by the city, county, state, or federal government to engage in the business or occupation. Persons engaging in activities described in this article, including the operation of an adult-oriented business, shall comply with all other ordinances and laws, including the Zoning and Development Code, as may be required, to engage in the business or occupation.

Sec. 16A-133. Location requirements.

- (a) Adult-oriented businesses are allowed in the GID and HID zoning districts. No adult-oriented business shall be operated or maintained within one thousand three hundred twenty (1,320) feet from the defined provisions located in paragraphs (1) through (7) below. Measurements shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing an adult-oriented business to the nearest point on the property line of a parcel containing the following:
 - (1) Another adult-oriented business;
 - (2) Child care facility;
 - (3) Public, private or charter school;
 - (4) A church synagogue, temple or similar religious worship building;
 - (5) A library, a public playground, a public community building, a public recreational facility, or a private recreational facility where minors are permitted;
 - (6) An establishment having an Arizona spirituous liquor license with any of the following classifications: Bar (Series 06); Beer and Wine Bar (Series 07) or the equivalent of such licenses; or
 - (7) A residential district or the property line of a lot devoted to a residential use in any zoning district.
- (b) Any adult-oriented business that fails to comply with this section but which was lawfully operating before this article took effect shall not be deemed to be in violation of this article. However, such business will not be permitted to be increased, enlarged, extended or altered except the business may be changed so as to fully comply with this article. An adult-oriented business lawfully operating is not rendered in violation of this article by the location, subsequent to the grant or renewal of the license herein, of any of the premises identified in subsection (a) above.

Sec. 16A-134. Penalty.

Violation of any requirement or prohibition stated in this article is a class 1 misdemeanor, punishable upon conviction as provided in § 1-7 of this code. With respect to a violation that is continuous in nature, each day that the violation continues shall constitute a separate offense.

Sec. 16A-135. Injunction.

The operation of an adult-oriented business without a valid license in violation of this article shall constitute a nuisance and any person who operates or causes to be operated such business shall be subject to a suit for injunctive relief as well as prosecution for criminal violations.

Secs. 16A-136—16A-139. Reserved.