



CITY COUNCIL ACTION FORM

DEPARTMENT	PRESENTED BY	DATE
Planning	Bill Almquist - Community Development Director	March 1, 2022

ITEM

Second Reading and Public Hearing for Ordinance 2022-01: An Ordinance of the City Council for the City of Salida, Colorado Amending Chapter 6 and Chapter 16 of the Salida Municipal Code Concerning Sexually-Oriented Businesses

BACKGROUND

Currently, the City of Salida Municipal Code does not specifically address any regulations or restrictions for sexually-oriented businesses. According to a City Attorney's office memo, this leaves the City "naked" to the threat of such businesses being established within City limits. Furthermore, according to the Attorney's office: "(T)he City may likely regulate such an ... establishment indirectly through its zoning code by denying a conditional use of the property under Section 16-4-140. However, such an approach is not optimal, as this is reactionary, *ad hoc* regulation risks exposing the City to legal challenge from business owners seeking to exercise their valid First Amendment rights. As such, direct regulation of these entities is likely warranted."

State law [inc. C.R.S. 31-15-401(1)(p)(I) and C.R.S. 31-15-501(1)(c)] allows the City to adopt regulations for such establishments and also to license such establishments. However, both the Colorado Constitution and U.S. Constitution protect freedom of expression, including "indecent" (but not obscene) sexual expression. Therefore, local governments cannot totally restrict efforts to access this type of speech, but they can regulate them in order to protect against the potentially harmful secondary effects of these entities, and the preserve the character of certain areas. There is ample case law that provides some guard rails for such regulation.

The City Attorney's Office reviewed the practices and regulations of several other Colorado municipalities and provided staff with recommended code language for the proposed text amendment. The attached draft Ordinance 2021-21, along with its proposed revisions to Chapter 6 – Business Licenses and Regulations, and Chapter 16 – Land Use and Development, would create a licensing requirement, rules and procedures, and associated fees (for adult entertainment establishments only), and establish the zoning districts where such uses are prohibited or may be conditionally approved subject to specific review standards. Such standards include:

- No sexually-oriented businesses (inc. both adult entertainment establishments, as well as adult bookstores, etc.) shall be located within two hundred (200) feet of the following protected uses, measured from the nearest exterior wall of the proposed sexually-oriented business to the



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nearest lot boundary of the protected use, provided such protected use is established on or before the date the application for the proposed sexually-oriented business is filed:

1. Day cares homes and Day care centers;
 2. Schools.
- No sexually-oriented businesses shall be located within two hundred (200) feet of the following residential zoning district boundaries: R-1, R-2, R-3, R-4, or RMU, measured from the nearest exterior wall of the proposed sexually-oriented business to the nearest edge of the zoning district boundary.
 - *Adult Entertainment Establishments* shall not be located within one thousand (1,000) feet of another *Adult Entertainment Establishment*, measured from the nearest exterior wall of the proposed Adult Entertainment Establishment to the nearest exterior wall of any other Adult Entertainment Establishment.
 - *Adult Entertainment Establishments* shall be licensed for operation.
 - All sexually-oriented businesses shall be closed to the public between the hours of 1:00 a.m. and 9:00 a.m.
 - No one under eighteen (18) years of age, inc. patrons, managers, employees, agents, and independent contractors shall be permitted in any sexually-oriented business.

A first reading was held on February 1st, 2022.

PLANNING COMMISSION RECOMMENDATION

Planning Commission considered the text amendments on January 24th and recommended their approval. There was some discussion regarding the inclusion of churches in the list of protected uses and related distance, as well as slightly adjusted operational hours (closed from 12:00 a.m. to 10:00 a.m.), but ultimately those were not included in the motion.

SUGGESTED CITY COUNCIL MOTION

"I move that the City Council approve Ordinance 2022-01."

Attachments:

Ordinance 2022-01

CITY OF SALIDA, COLORADO
ORDINANCE NO. 01
(Series of 2022)

**AN ORDINANCE OF THE CITY COUNCIL FOR THE CITY OF SALIDA,
COLORADO AMENDING CHAPTER 6 AND CHAPTER 16 OF THE SALIDA
MUNICIPAL CODE CONCERNING SEXUALLY-ORIENTED BUSINESSES**

WHEREAS, the City of Salida, Colorado (the “City”) is a statutory city, duly organized and existing under the laws of the state of Colorado;

WHEREAS, pursuant to C.R.S. § 31-15-401, the City, by and through its City Council (the “Council”), possesses the authority to adopt laws and ordinances within its local powers in furtherance of the general health, safety, and welfare of its residents;

WHEREAS, pursuant to C.R.S. § 31-15-501, the City, by and through its Council, possesses the authority to license and regulate any lawful occupation, business, or place of amusement;

WHEREAS, pursuant to C.R.S. § 31-23-301, the City, by and through its Council, also possesses the authority to adopt and enforce zoning regulations;

WHEREAS, the First Amendment of the United States Constitution protects freedom of expression, including indecent sexual expression;

WHEREAS, sexually-oriented businesses can have a deleterious effect on both neighboring businesses and surrounding residential areas by causing an increase in crime and a decrease in property values;

WHEREAS, the Council seeks to establish reasonable and uniform regulations to prevent and mitigate the deleterious effects of sexually-oriented businesses while simultaneously not denying access to or distribution of sexually-oriented content; and

WHEREAS, the Council finds it desirable and appropriate, and in the best interest of the general health, safety, and welfare of its residents to amend Chapter 6 and Chapter 16 of the Code, as they relate to the regulation of sexually-oriented businesses.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE
CITY OF SALIDA, COLORADO AS FOLLOWS:**

Section 1. The foregoing recitals are hereby incorporated as conclusions, facts, determinations, and findings by the Council.

Section 2. Chapter 6, Article VIII of the Code, concerning the licensure and regulation of adult entertainment establishments, is hereby created to read as follows:

ARTICLE VIII. – ADULT ENTERTAINMENT ESTABLISHMENTS.

Sec. 6-8-10. – Definitions.

For the purpose of this Article the following words and terms have the following meanings, unless

the context clearly indicates otherwise.

Adult arcade means any commercial establishment where, for any form of consideration, monetary or otherwise, one or more still or motion picture projectors, slide projectors, video cassette players, 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."

Adult cabaret means a cabaret which features either persons who appear nude or in a state of nudity or semi-nudity or live performances which are characterized by the exposure of "specific anatomical areas."

Adult entertainment establishment means an entertainment or commercial establishment that is distinguished or characterized by an emphasis on material depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas," including but not limited to adult movie theaters, adult arcades, adult cabarets, adult theaters, nude model studios, and other adult services establishments.

Adult movie theater means a commercial establishment which is distinguished or characterized by the showing of films, motion pictures, video cassettes, slides, or similar photographic reproductions with an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas" which are regularly shown for any form of consideration.

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features persons who appear in a state of nudity or live performances which are characterized by an emphasis on exposure of "specified anatomical areas" or by "specified sexual activities."

Nude model studio means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided money or any form of consideration to be seen, observed, or similarly viewed by other persons, without regard to whether the person is sketched, drawn, painted, sculpted, photographed.

Specified anatomical areas as used herein means and includes 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 the areolae; or (2) human male genitals in a discernible turgid state even if completely and opaquely covered.

Specified criminal acts means sexual crimes against children, sexual abuse, sexual assault, or crimes connected with another sexually-oriented business including, but not limited to distribution of obscenity, prostitution, or pandering.

Specified sexual activities means and includes any of the following: (1) the fondling or other intentional touching of human genitals, pubic region, buttocks, anus, or female breasts; (2) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; (3) masturbation, actual or simulated; (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 subsections (1)

through (4) of this definition.

Sec. 6-8-20. – Purpose and intent.

The purpose and intent of this Article is to regulate adult entertainment establishments to promote the health, safety, and general welfare of the residents of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of adult entertainment establishments within the City, thereby reducing or eliminating the adverse secondary effects from such businesses. The provisions of this Article are not intended to impose a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. It is not the intent of this Article to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment of the United States Constitution, 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 Article to condone or legitimize the distribution of obscene material.

Sec. 6-8-30. – License required; fee.

(a) It shall be unlawful for any person to operate an adult entertainment establishment in the City without a valid license issued pursuant to this Article.

(b) The initial license fee, renewal license fee, and penalty for operating without a license shall be established by resolution of City Council, as may be amended from time to time.

Sec. 6-8-40. – Application.

Each application for an adult entertainment establishment license shall include the following:

(a) The name, address, and telephone number of the applicant and, if the applicant is an individual, satisfactory proof that they are twenty-one (21) years of age or older;

(b) If the applicant is a legal entity, satisfactory proof that each of the individual officers, directors, managers, partners, members, or principal owners of such entity are twenty-one (21) years of age or older;

(c) The address of the proposed adult entertainment establishment;

(d) A description of the type or types of adult entertainment establishment proposed, such as an adult cabaret or an adult movie theater;

(e) Whether the applicant or any of the other individuals required to be listed in the application have, within five (5) years from the date of the application, been convicted of a specified criminal act and, if so, the specified criminal act involved, the date and place of conviction, and the disposition of the charge or charges;

(e) Whether the applicant or any of the other individuals required to be listed in the application has had a previous license under this or any other similar sexually-oriented business ordinance from another city or county denied, suspended, or revoked and, if so, the name and location of the sexually-oriented business for which the license was denied, suspended, or revoked, as well as the date of such denial, suspension, or revocation;

(f) Whether the applicant or any of the other individuals required to be listed in the application hold any other licenses under this division or other similar sexually-oriented business ordinances

from another city or county and, if so, the names and locations of such other licensed businesses;

(g) Satisfactory proof of the applicant's ownership or right to possession of the premises wherein the adult entertainment establishment will be operated;

(h) 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 oriented to the north or to some designated street or object and shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. The licensing officer may waive the foregoing diagram for transfer and 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.

(i) A current certificate and straight-line drawing prepared within thirty (30) days prior to an initial application by a Colorado registered land surveyor depicting: (i) the property lines and the structures of the premises to be licensed; (ii) the location of the property lines of existing protected uses as set forth in Section 16-4-190(s). For purposes of this section, a use shall be considered existing if it is in existence at the time an application is submitted.

Sec. 6-8-50. – License issuance; renewal; term.

(a) Issuance. The City Administrator or City Clerk may issue an adult entertainment establishment license under this Article upon satisfaction of the following conditions:

(1) The applicant has submitted a completed application form which satisfies the application requirements set forth in Section 6-8-40 and has provided all required information regarding the adult entertainment establishment;

(2) The applicant has paid the appropriate license fee established by the City Council;

(3) The proposed adult entertainment establishment is located in an appropriate zone and is not within the proscribed radius of a protected use, pursuant to Chapter 16 of this Code; and

(4) The building in which the adult entertainment establishment is to be conducted is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with the provisions of this Article and the plans and specifications approved by the City with the application, as verified by inspection of the premises by the Fire Department and/or the Police Department.

(b) Renewal. A licensee shall apply for renewal of the license, by submitting a completed renewal application form and the required renewal license fee no later than thirty (30) days prior to the expiration of the existing term. The City Clerk shall renew the license prior to the end of the term, provided that the renewal application and fee were timely submitted, and the City Clerk is not aware of any fact that would have prevented issuance of the original license or issuance of the renewal.

(c) Term. All licenses issued under this Article shall be for a term of one (1) year from the date of the license first being issued.

(d) Expiration. A license that is not timely renewed shall expire at the end of its term. The failure

to timely obtain a renewal of a license requires submission of a new application.

Sec. 6-8-60. – License revocation and suspension.

Any license issued pursuant to this Article may be suspended or revoked by the City Council, upon ten (10) days' written notice, to a licensee stating the contemplated action and, in general, the grounds therefor, and after a reasonable opportunity for the licensee to be heard, for any of the following reasons:

- (1) Violation by a licensee or licensee's officers, agents, or employees of any of the provisions of this Article, or any relevant or applicable laws of the United States, the State of Colorado, or ordinances of the City;
- (2) Violations of any conditions imposed by the City Clerk's office in connection with the issuance or renewal of a license;
- (3) Failure to pay State or local taxes, or the annual license fee that are related to the operation of the adult entertainment establishment;
- (4) If any fact or condition exists which, if it had existed or had been known to exist at the time of the application, would have warranted the refusal of the issuance of the license;
- (5) Failure to file any report or furnish any information that may be required by provisions relating to this Article;
- (6) Loss of right to possession of the licensed premises; or
- (7) Fraud, misrepresentation, or a false statement of material fact contained in the original or renewal license application.

Sec. 6-8-70. – Penalties.

In addition to any other remedies available at law or equity, operating an adult entertainment establishment within the City without a license shall subject the violator to a fine in an amount to be established by resolution of the City Council, as may be amended from time to time, to be collected in the manner provided for penalty assessments as provided in Chapter 1, Article VII of this Code.

Section 3. Section 16-1-80 of the Code, concerning definitions applicable to land use and development provisions, is hereby amended to read as follows:

Sec. 16-1-80. - Definitions.

This Article defines words, terms and phrases contained within this Land Use Code. The following terms shall have the following meanings when used in this Land Use Code:

...

Adult bookstore, adult novelty shop, or adult video store means a commercial establishment which devotes a significant or substantial portion of its stock-in-trade or interior floor space to the sale, rental or viewing (for any form of consideration) of 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," as defined in Chapter 6, Article VIII.

...

Adult entertainment establishment means an entertainment or commercial establishment that is distinguished or characterized by an emphasis on material depicting, describing, or relating to sexual activities or sexual anatomical areas, including but not limited to adult movie theaters, adult arcades, adult cabarets, adult theaters, and nude model studios, as defined in Chapter 6, Article VIII, and other similar adult services establishments.

Section 4. Table 16-D of Section 16-4-150 of the Code, concerning the schedule of uses and review process, is hereby amended in-part, as it relates to sexually-oriented businesses, to read as follows:

TABLE 16-D
Schedule of Uses

N = Not Permitted P = Permitted AC = Administrative Conditional Use C = Conditional Use AR = Administrative Review LR = Limited Impact Review MR = Major Impact Review									
Commercial, Personal Service and Office Uses	R-1	R-2	R-3	R-4	RMU	C-2	C-1	I	Standards
<u>Adult entertainment establishments</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>	Sec. 16-4-190(s)
<u>Adult bookstores, adult novelty shops, adult video stores</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>C</u>	<u>C</u>	<u>C</u>	Sec. 16-4-190(t)

Section 5. Subsection 16-4-190(s) of the Code, concerning review standards applicable to adult entertainment establishments, is hereby created to read as follows:

Sec. 16-4-190. – Review standards applicable to particular uses.

(s) Adult Entertainment Establishments.

(1) Design and Layout. The following limitations shall apply to the design and layout of all adult entertainment establishments.

a. Exterior doors shall remain closed during business hours.

b. All materials, projections, entertainment, or other activities involving or depicting sexual activities or sexual anatomical areas shall not be visible from off-premises areas or from portions of an establishment accessible to minors.

c. Sounds from projections, entertainment, or other activities shall not be audible from off-premises areas.

d. Advertisements, displays, or other promotional materials depicting sexual activities or sexual anatomical areas shall not be visible from any public or semi-public area.

e. All building openings, entries, and windows shall be located, covered, or screened to prevent the interior from being viewed from any public or semi-public area.

(2) Location and Access.

a. Adult entertainment establishments shall not be located within one thousand (1,000) feet of another adult entertainment establishment, measured from the nearest exterior wall of the proposed adult entertainment establishment to the nearest exterior wall of any other adult entertainment establishment.

b. Adult entertainment establishments shall not be located within two hundred (200) feet of the following protected uses, measured from the nearest exterior wall of the proposed adult entertainment establishment to the nearest lot boundary of the protected use, provided such protected use is established on or before the date the application for the proposed adult entertainment establishment is filed:

1. Day cares homes and Day care centers; or
2. Schools.

c. Adult entertainment establishments shall not be located within two hundred (200) feet of the following zoning district boundaries: R-1, R-2, R-3, R-4, or RMU measured from the nearest exterior wall of the proposed adult entertainment establishment to the nearest edge of the zoning district boundary.

(3) Operation and Ownership.

a. No licensee, manager, or employee serving food or drinks or mingling with the patrons shall be nude or in a state of nudity.

b. Separate restroom facilities shall be provided for employees and independent contractors that shall only be accessible by employees and independent contractors.

c. No licensee, manager, or employee shall encourage or knowingly permit any person, including patrons, to engage in prohibited sexual activities on the premises. Such conduct is unlawful and shall be subject to penalties, as set forth in Chapter 1, Article IV of this Code.

d. Adult entertainment establishments shall be closed to the public between the hours of 1:00 a.m. and 9:00 a.m.

e. No one under eighteen (18) years of age, including patrons, licensees, managers, employees, agents, and independent contractors, shall be admitted into any adult entertainment establishment, unless alcohol is served, in which case all relevant city, state and federal liquor regulations shall apply.

f. Any person who operates or causes to be operated an adult entertainment establishment without a valid license issued pursuant to Chapter 6, Article VIII of the Code or who violates any provision of this subsection commits unlawful conduct and shall be subject

to an injunction, civil penalties, and criminal penalties, as set forth in Chapter 1, Article IV of this Code.

g. Each day of operation in violation of any provision of this subsection shall constitute a separate offense.

Section 6. Subsection 16-4-190(t) of the Code, concerning review standards applicable to adult bookstores, adult novelty shops and adult video stores, is hereby created to read as follows:

Sec. 16-4-190. – Review standards applicable to particular uses.

(t) Adult Bookstores, Adult Novelty Shops, Adult Video Stores.

(1) Design and Layout. The following limitations shall apply to the design and layout of all adult bookstores, adult novelty shops and adult video stores.

a. Exterior doors shall remain closed during business hours.

b. All materials, projections, or other activities involving or depicting sexual activities or sexual anatomical areas shall not be visible from off-premises areas or from portions of an establishment accessible to minors.

c. Advertisements, displays, or other promotional materials depicting sexual activities or sexual anatomical areas shall not be visible from any public or semi-public area.

d. All building openings, entries, and windows shall be located, covered, or screened to prevent the interior from being viewed from any public or semi-public area.

(2) Location and Access.

a. Adult bookstores, adult novelty shops and adult video stores shall not be located within two hundred (200) feet of the following protected uses, measured from the nearest exterior wall of the proposed adult bookstore, adult novelty shop and adult video store to the nearest lot boundary of the protected use, provided such protected use is established on or before the date the application for the proposed adult bookstore, adult novelty shop and adult video store is filed:

1. Day cares homes and Day care centers; or
2. Schools.

b. Adult bookstores, adult novelty shops and adult video stores shall not be located within two hundred (200) feet of the following zoning district boundaries: R-1, R-2, R-3, R-4, or RMU measured from the nearest exterior wall of the proposed adult bookstore, adult novelty shop and adult video store to the nearest edge of the zoning district boundary.

(3) Operation and Ownership.

a. Adult bookstores, adult novelty shops and adult video stores shall be closed to the public between the hours of 1:00 a.m. and 9:00 a.m.

b. No one under eighteen (18) years of age, including patrons, managers, employees, agents, and independent contractors, shall be permitted within any adult bookstore, adult novelty shop or adult video store. Should a conventional bookstore, or any retail

establishment, display printed materials or other items for sale as described within the definition of adult bookstores in section 16-1-80, such materials shall be segregated from the rest of the retail or bookstore and no one under the eighteen (18) years of age shall be permitted within in such section of the store.

Section 7. *Severability.* The provisions of this ordinance are severable and the invalidity of any section, phrase, clause, or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING on this ____ day of _____, 2022, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this ____ day of _____, 2022, and set for second reading and public hearing on the ____ day of _____, 2022.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED IN FULL, by the City Council on this ____ day of _____, 2022.

City of Salida

Mayor Dan Shore

ATTEST:

City Clerk/Deputy City Clerk