

# CITY of ALBUQUERQUE TWENTIETH COUNCIL

COUNCIL BILL NO.  F/S O-12-16  ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: DAN LEWIS, ISAAC BENTON, DEBBIE O'MALLEY

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## ORDINANCE

REGULATING THE OPERATION OF SEXUALLY ORIENTED BUSINESSES.

BE IT ORDAINED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

SECTION 1. The “Sexually Oriented Business Ordinance” is hereby adopted to read as follows:

“Section 1. SHORT TITLE. This Ordinance shall be known and may be cited as the ‘Sexually Oriented Business Ordinance.’

### Section 2. PURPOSE AND INTENT.

(A) It is the purpose of this Ordinance to regulate the operation of sexually oriented businesses that provide live entertainment in order to promote the health, safety, and general welfare of the citizens of the city and to minimize the deleterious secondary effects of such sexually oriented businesses both inside such businesses and outside in the surrounding communities. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative performances, including sexually oriented performances. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented performances protected by the First Amendment, or to deny access by exhibitors of sexually oriented entertainment to their intended market.

(B) This Ordinance is in addition to other provisions in the Revised Ordinances of the City of Albuquerque that deal with related but separate matters; specifically, the provisions of the Zoning Code regarding zoning regulations for Adult Amusement Establishments, the provisions of Chapter

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1 11, Article 2 regarding viewing booths, and the provisions of Chapter 11,  
2 Article 6 regarding the distribution of obscene material.

3 (C) This Ordinance is promulgated pursuant to the city’s home rule  
4 authority and Article I and Article IV § 8 of the City Charter.

5 (D) Any approvals granted under this ordinance do not authorize or  
6 legalize any conduct, activity, or business that is illegal under city, state or  
7 federal law.

8 Section 3. DEFINITIONS.

9 For the purpose of this Ordinance the following definitions shall apply  
10 unless the context clearly indicates or requires a different meaning:

11 ADULT AMUSEMENT ESTABLISHMENT. For the purposes of this  
12 Ordinance, an establishment such as an auditorium, bar, cabaret, concert hall,  
13 nightclub, restaurant, theater, or other commercial establishment that  
14 provides amusement or entertainment featuring one or more of the following:

15 A live performance or act distinguished or characterized by an emphasis  
16 on the depiction, description, exposure, or representation of specified  
17 anatomical areas or the conduct or simulation of specified sexual activities.

18 ADULT CABARET. A type of Adult Amusement Establishment that  
19 regularly features live entertainment that is intended to provide sexual  
20 stimulation or sexual gratification.

21 ADULT CABARET ENTERTAINER. An employee of a sexually oriented  
22 business who engages in or performs adult cabaret entertainment, or an  
23 independent contractor who engages in or performs adult cabaret  
24 entertainment.

25 ADULT CABARET ENTERTAINMENT. Live entertainment that is intended  
26 to provide sexual stimulation or sexual gratification and is distinguished or  
27 characterized by an emphasis on specified anatomical areas or specified  
28 sexual activities that are not prohibited by this Ordinance.

29 APPLICANT.

30 (1) A person in whose name a license to operate a sexually oriented  
31 business will be issued;

32 (2) Each individual who signs an application for a sexually oriented  
33 business license;

1           (3) Each individual who is an officer of a sexually oriented business  
2 for which a license application is made regardless of whether the individual's  
3 name or signature appears on the application;

4           (4) Each individual who has a 20 percent or greater ownership  
5 interest in a sexually oriented business for which a license application is made  
6 regardless of whether the individual's name or signature appears on the  
7 application; and

8           (5) Each individual who exercises substantial de facto control over  
9 a sexually oriented business for which a license application is made  
10 regardless of whether the individual's name or signature appears on the  
11 application.

12           **CONVICTION.** A conviction, including a plea agreement, in a federal  
13 court or a court of any state or foreign nation or political subdivision of a state  
14 or foreign nation that has not been reversed, vacated, or pardoned.

15 "Conviction" includes disposition of charges against a person by probation or  
16 deferred adjudication.

17           **DESIGNATED OPERATOR.** The person or persons identified in the  
18 license application, or in any supplement or amendment to the license  
19 application, as being a designated operator of the sexually oriented business.

20           **EMPLOYEE.** Any individual who:

21           (1) Is listed as a part-time, full-time, temporary, or permanent  
22 employee on the payroll of an applicant, licensee, or sexually oriented  
23 business; or

24           (2) Performs or provides entertainment on the sexually oriented  
25 business premises for any form of compensation or consideration, including  
26 persons working as contractors or independent contractors.

27           **LICENSEE.**

28           (1) A person in whose name a license to operate a sexually oriented  
29 business has been issued;

30           (2) Each individual listed as an applicant on the application for a  
31 license;

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1           (3) Each individual who is an officer of a sexually oriented business  
2 for which a license has been issued under this Ordinance, regardless of  
3 whether the individual's name or signature appears on the license application;

4           (4) Each individual who has a 20 percent or greater ownership  
5 interest in a sexually oriented business for which a license has been issued  
6 under this Ordinance, regardless of whether the individual's name or signature  
7 appears on the license application; and

8           (5) Each individual who exercises substantial de facto control over  
9 a sexually oriented business for which a license has been issued under this  
10 Ordinance, regardless of whether the individual's name or signature appears  
11 on the license application.

12           **MAYOR.** Mayor of the City of Albuquerque or his or her authorized  
13 designee.

14           **MINOR.** A person under the age of 18 years.

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

19           **OPERATOR.** Any person who has managerial control of the on-site,  
20 day-to-day operations of a sexually oriented business, regardless of whether  
21 that person is a designated operator of the sexually oriented business.

22           **PERSON.** An individual, proprietorship, partnership, corporation,  
23 association, or other legal entity.

24           **SEXUALLY ORIENTED BUSINESS.** An Adult Amusement Establishment,  
25 or other commercial enterprise the primary business of which is the offering  
26 of a service intended to provide sexual stimulation or sexual gratification to  
27 the customer through live performances.

28           **SPECIFIED ANATOMICAL AREAS.**

29           (1) Less than completely and opaquely covered human:

30                   (a) Genitals, pubic region;

31                   (b) Buttock or anus;

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1 (c) Female breast below a point immediately above the top  
2 of the areola to and including the bottom of the breast; covering of on the the  
3 nipple and areola of the breast shall not constitute such covering;

4 (2) Human male genitals in a discernibly turgid state, even if  
5 completely and opaquely covered; and

6 (3) A covering or device that, when worn, gives the appearance of or  
7 simulates the above listed specified anatomical areas.

8 **SPECIFIED SEXUAL ACTIVITIES.**

9 (1) Human genitals in a state of sexual stimulation or arousal;

10 (2) Actual or simulated sex acts of human masturbation, sexual  
11 intercourse, sodomy, or similar acts; or

12 (3) Fondling or other erotic touching of human genitals, pubic region,  
13 buttock, anus, or female breast.

14 **TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented**  
15 **business.**

16 (1) The sale, lease, or sublease of the business;

17 (2) The transfer of securities that constitute a controlling interest in  
18 the business, whether by sale, exchange, or similar means; or

19 (3) The establishment of a trust, gift, or other similar legal device that  
20 transfers the ownership or control of the business, except for transfer by  
21 bequest or other operation of law upon the death of the person possessing the  
22 ownership or control.

23 **VIP ROOM.** Any separate area, room, booth, cubicle, or other portion of  
24 the interior of an Adult Amusement Establishment (excluding a restroom and  
25 excluding an area of which the entire interior is clearly and completely visible  
26 from the exterior of the area) to which one or more customers are allowed  
27 access or occupancy and other customers are excluded.

28 **Section 4. LICENSE AND DESIGNATED OPERATOR REQUIRED.**

29 (A) A person commits an offense if he operates a sexually oriented  
30 business without a valid license issued by the City for the particular type of  
31 business.

32 (B) An application for a license must be made on a form provided by the  
33 Mayor. The application must be accompanied by a sketch or diagram showing

1 the configuration of the premises, including a statement of total floor space  
2 occupied by the business. The sketch or diagram need not be professionally  
3 prepared, but must be sufficient to accurately convey the layout and design of  
4 the premises and business. Before the requested license can be granted, the  
5 Mayor will perform an initial inspection of the premises and business to  
6 confirm consistency with the provided sketch or diagram.

7 (C) Only a person who is an officer of or who has an ownership interest  
8 in a sexually oriented business may apply for a license for the business. Each  
9 applicant must be qualified according to the provisions of this Ordinance.

10 (D) If a person who wishes to operate a sexually oriented business is an  
11 individual, he must sign the application for a license as the applicant. If a  
12 person who wishes to operate a sexually oriented business is other than an  
13 individual, each individual who is an officer of the business or who has a 20  
14 percent or greater ownership interest in the business must sign the  
15 application for a license as an applicant. The application must be sworn to be  
16 true and correct by each applicant.

17 (E) In addition to identifying those persons required to sign an  
18 application under Subsection (D), the application must identify all parent and  
19 related corporations or entities of any person who will own or operate the  
20 sexually oriented business and include the names of the officers of each  
21 parent or related corporation or entity.

22 (F) The application must also include the name, address, and telephone  
23 number of one or more designated operators who will be present on the  
24 premises of the sexually oriented business during all hours of operation. The  
25 applicant or licensee shall maintain a current list of designated operators with  
26 the Mayor. Before a person may serve as a designated operator of the  
27 sexually oriented business, the person must be named in the license  
28 application, or a supplement or amendment to the license application, and not  
29 be disqualified to operate a sexually oriented business under this Ordinance.

30 (G) A licensee commits an offense if he fails to maintain at least one  
31 designated operator present on the premises of the sexually oriented  
32 business during all hours of operation.

33 Section 5. ISSUANCE OF LICENSE.

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- 1 (A) The Mayor shall approve the issuance of a license within 30 days  
2 after receipt of an application unless the Mayor determines:
- 3 (1) An applicant is a minor;
- 4 (2) An applicant or an applicant's spouse is overdue in payment to the  
5 city of taxes, fees, fines, or penalties assessed against or imposed upon the  
6 applicant or the applicant's spouse in relation to a sexually oriented business;
- 7 (3) An applicant has failed to provide information reasonably  
8 necessary for issuance of the license or has falsely answered a question or  
9 request for information on the application form;
- 10 (4) An applicant, an applicant's spouse, or a designated operator has  
11 been convicted of a violation of a provision of this Ordinance within two years  
12 immediately preceding the application;
- 13 (5) Any fee required by this Ordinance has not been paid;
- 14 (6) An applicant has been operating the proposed business as a  
15 sexually oriented business without a valid license issued under this  
16 Ordinance;
- 17 (7) Operation of the proposed sexually oriented business would  
18 violate the city's zoning ordinances; or
- 19 (8) An applicant, an applicant's spouse, or a designated operator has  
20 been convicted of any of the following New Mexico crimes or comparable  
21 crimes in any other jurisdiction:
- 22 (a) Prostitution, § 30-9-2 NMSA 1974;
- 23 (b) Promoting Prostitution, § 30-9-4 NMSA 1974;
- 24 (c) Accepting Earnings of a Prostitute, § 30-9-4.1 NMSA 1974;
- 25 (d) Patronizing prostitutes, § 30-9-3 NMSA 1974;
- 26 (e) Sexual exploitation of children, § 30-6A-3 NMSA 1974;
- 27 (f) Sexual exploitation of children by prostitution, § 30-6A-4  
28 NMSA 1974;
- 29 (g) Prostitution; loitering; promoting § 60-7A-17 NMSA 1974;
- 30 (h) Criminal sexual penetration; § 30-9-11 NMSA 1974;
- 31 (i) Criminal sexual contact; § 30-9-12 NMSA 1974;
- 32 (j) Criminal sexual contact of a minor; § 30-9-13 NMSA 1974;

- 1           (k)    Criminal sexual communication with a child; § 30-37-3.3 NMSA  
2 1974;
- 3           (l)    Indecent exposure; § 30-9-14 NMSA 1974;
- 4           (m)    Aggravated indecent exposure; § 30-9-14.3 NMSA 1974;
- 5           (n)    Retail display; § 30-37-2.1 NMSA 1974; or
- 6           (o)    Incest; § 30-10-3 NMSA 1974.
- 7           (9) Subsection 8 shall only apply if:
- 8               (a)    Less than two years has elapsed since the date of conviction or  
9 the date of release from confinement imposed for the conviction, whichever is  
10 the later date, if the conviction is for a misdemeanor offense;
- 11               (b)    Less than five years has elapsed since the date of conviction or  
12 the date of release from confinement for the conviction, whichever is the later  
13 date, if the conviction is for a felony offense; or
- 14               (c)    Less than five years has elapsed since the date of the last  
15 conviction or the date of release from confinement for the last conviction,  
16 whichever is the later date, if the convictions are of two or more misdemeanor  
17 offenses or combination of misdemeanor offenses occurring within any 24-  
18 month period.
- 19           (B) The Mayor is authorized to conduct such records background check  
20 on any applicant as is permitted by law. The actual cost of any such  
21 background check shall be charged to the applicant.
- 22           (C) The Mayor, upon approving issuance of a sexually oriented business  
23 license, shall send to the applicant, by certified mail, return receipt requested,  
24 written notice of that action and state where the applicant must pay the license  
25 fee and obtain the license. The Mayor's approval of the issuance of a license  
26 does not authorize the applicant to operate a sexually oriented business until  
27 the applicant has paid all fees required by this Ordinance and obtained  
28 possession of the license.
- 29           (D) The license, if granted, must state on its face the name of the person  
30 or persons to whom it is granted, the expiration date, and the address of the  
31 sexually oriented business. The license must be posted in a conspicuous  
32 place at or near the entrance to the sexually oriented business so that it may  
33 be easily read at any time.



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1       **Section 6. FEES.**

2       There shall be an annual fee for a sexually oriented business license to  
3 cover the cost of inspections and license approval. The fee shall be a uniform  
4 amount for all sexually oriented businesses determined by the Mayor that is  
5 based upon the annual cost to administer the program including inspections  
6 and license approvals.

7       **Section 7. INSPECTION.**

8       An applicant, licensee, operator, or employee shall permit representatives  
9 of City Departments, including, but not limited to, the Police Department, the  
10 Fire Department, the Planning Department and the Environmental Health  
11 Department, to inspect the premises of a sexually oriented business, for the  
12 purpose of ensuring compliance with the law, at any time it is occupied or  
13 open for business and at other reasonable times upon request.

14       **Section 8. IDENTIFICATION RECORDS.**

15       **(A)** A person commits an offense if he operates a sexually oriented  
16 business without maintaining on the premises a current registration card or  
17 file that clearly and completely identifies all adult cabaret entertainers who  
18 perform at a sexually oriented business as required by this section.

19       **(B)** The registration card or file must contain the following information for  
20 each adult cabaret entertainer:

- 21           **(1)** Full legal name.
- 22           **(2)** All aliases or stage names.
- 23           **(3)** Date of birth.
- 24           **(4)** Race and gender.
- 25           **(5)** Hair color, eye color, height, and weight.
- 26           **(6)** Current residence address and telephone number.
- 27           **(7)** Legible copy of a valid driver's license or other government-issued  
28 personal identification card containing the employee's photograph and date of  
29 birth.
- 30           **(8)** Date of commencement of employment or contractual relationship  
31 with the sexually oriented business.
- 32           **(9)** Original color photograph with a full face view that accurately  
33 depicts the adult cabaret entertainer's appearance at the time the adult cabaret

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1 entertainer commenced an employment or contractual relationship with the  
2 sexually oriented business; and

3 (10) Any other records and documents required under federal laws for  
4 employees or independent contractors, whichever applies.

5 (C) All records maintained on an adult cabaret entertainer in compliance  
6 with this section must be retained at the sexually oriented business for at least  
7 90 days following the date of any voluntary or involuntary termination of the  
8 adult cabaret entertainer's employment or contract with the sexually oriented  
9 business.

10 (D) A person who operates a sexually oriented business or the person's  
11 agent or employee shall allow immediate access to these records by  
12 representatives of the Mayor.

13 Section 9. EXPIRATION OF LICENSE.

14 Each license expires one year from the date of issuance. A license may be  
15 renewed only by making application as provided in this Ordinance.

16 Application for renewal should be made at least 30 days before the expiration  
17 date, and when made less than 30 days before the expiration date, the  
18 expiration of the license will not be affected by the pendency of the  
19 application.

20 Section 10. SUSPENSION.

21 The Mayor shall suspend a license for a period not to exceed 30 days if the  
22 Mayor determines that a licensee, an operator, or an employee has violated or  
23 is not in compliance with Sections 4(G), 8, 15, or 16 of this Ordinance;

24 Section 11. REVOCATION.

25 (A) The Mayor shall revoke a license if a cause of suspension in Section  
26 10 occurs and the license has been suspended within the preceding 12  
27 months.

28 (B) The Mayor shall revoke a license if the Mayor determines one or more  
29 of the following has occurred:

30 (1) A licensee gave false or misleading information in the material  
31 submitted to the Mayor during the application process;

32 (2) A licensee or an operator has knowingly allowed possession, use,  
33 or sale of controlled substances on the premises;

1           (3) A licensee or an operator has knowingly allowed prostitution on  
2 the premises;

3           (4) A licensee or an operator knowingly operated the sexually oriented  
4 business during a period of time when the licensee's license was suspended;

5           (5) A licensee or designated operator has been convicted of an  
6 offense listed in Section 5(A)(8) for which the time period required in Section  
7 5(A)(9) has not elapsed.

8           (6) On two or more occasions within a 12- month period, a person or  
9 persons committed an offense occurring in or on the sexually oriented  
10 business premises of a crime listed in Section 5(A)(8) for which a conviction  
11 has been obtained, and the person or persons were employees of the licensee  
12 or the sexually oriented business at the time the offenses were committed.

13           (7) A licensee or an operator has knowingly allowed any act of sexual  
14 intercourse, sodomy, oral copulation or masturbation to occur in or on the  
15 sexually oriented business premises.

16           (8) A licensee or an operator has violated Section 17 of this Ordinance.

17           (C) The fact that a conviction is being appealed has no effect on the  
18 revocation of the license.

19           (D) When the Mayor revokes a license, the revocation will continue for  
20 one year, and the licensee, for one year after the date the revocation becomes  
21 effective, shall not be issued a sexually oriented business license for the same  
22 location for which the license was revoked. If, subsequent to revocation, the  
23 Mayor finds that the basis for the revocation has been corrected or abated,  
24 the applicant may apply for and be granted a license if at least 90 days have  
25 elapsed since the date the revocation became effective. If the license was  
26 revoked under Subsection (B)(5), an applicant may not apply for or be granted  
27 another license until the appropriate number of years required under Section  
28 5(A)(9) has elapsed.

29           Section 12. DENIAL, SUSPENSION, REVOCATION, OR DENIAL OF  
30 RENEWAL OF A LICENSE FOR CRIMINAL CONVICTIONS.

31           (A) In determining whether a sexually oriented business license should  
32 be denied, suspended, revoked, or denied for renewal based on criminal  
33 convictions of an applicant or licensee of a sexually oriented business, or on

1 convictions of an operator or employee of the applicant, the licensee, or the  
2 sexually oriented business, all convictions for offenses occurring within a  
3 designated time period will be counted, regardless of whether the offenses  
4 occurred during the current license period, a prior license period, or an  
5 unlicensed period.

6 (B) Notwithstanding Subsection (A), a conviction for an offense  
7 committed during a prior license period or an unlicensed period will not be  
8 counted against a current applicant or licensee of a sexually oriented  
9 business if no person who is deemed a current applicant or licensee was an  
10 applicant, licensee, owner, or operator of the sexually oriented business  
11 during the prior license period or unlicensed period in which the offense was  
12 committed.

13 Section 13. NOTICE OF DENIAL OF ISSUANCE OR RENEWAL OF  
14 LICENSE OR SUSPENSION OR REVOCATION OF LICENSE; SURRENDER OF  
15 LICENSE.

16 (A) If the Mayor denies the issuance or renewal of a sexually oriented  
17 business license or suspends or revokes a sexually oriented business license,  
18 the Mayor shall deliver to the applicant or licensee, either by hand delivery or  
19 by certified mail, return receipt requested, written notice of the action, the  
20 basis of the action, and a notice of the right to an appeal.

21 (B) If the Mayor suspends or revokes a license or denies renewal of a  
22 license that was valid on the date the application for renewal was submitted,  
23 the Mayor may not enforce such action before the 11th day after the date the  
24 written notice required by Subsection (A) is delivered to the applicant or  
25 licensee.

26 (C) After suspension or revocation of a license or denial of renewal of a  
27 license that was valid on the date the application for renewal was submitted,  
28 the applicant or licensee shall discontinue operating the sexually oriented  
29 business and surrender the license to the Mayor by 11:59 p.m. of the 10th day  
30 after the date:

31 (1) Notice required by Subsection (A) is delivered to the applicant or  
32 licensee, if no appeal is filed; or

1           (2) A final appellate decision is issued by a hearing officer upholding  
2 the action of the Mayor.

3           (D) For purposes of this Ordinance, written notice is deemed to be  
4 delivered:

5           (1) On the date the notice is hand delivered to the applicant or  
6 licensee; or

7           (2) Three days after the date the notice is placed in the United States  
8 mail with proper postage and properly addressed to the applicant or licensee  
9 at the address provided for the applicant or licensee in the most recent license  
10 application.

11           Section 14. APPEAL.

12           (A) Upon delivery of written notice of the denial, suspension, or  
13 revocation of a sexually oriented business license the applicant or licensee  
14 whose application for a license or license renewal has been denied or whose  
15 license has been suspended or revoked has the right to appeal.

16           (B) An appeal shall be heard by a hearing officer under the authority of  
17 the City’s Independent Office of Hearings. The burden of proof shall be on the  
18 City to show that denial, suspension, or revocation is proper.

19           (C) The filing of an appeal under this section stays the action of the  
20 Mayor in suspending or revoking a license, or in denying renewal of a license  
21 that was valid on the date the application for renewal was submitted, until a  
22 final decision is made by the hearing officer.

23           (D) The decision of the hearing officer is final and may be appealed to a  
24 court of competent jurisdiction.

25           Section 15. POSTING REQUIREMENT.

26           (A) Each sexually oriented business shall post in every bathroom and  
27 dressing room of the business a notice no smaller than 8-1/2 inches by 11  
28 inches. Such notices will be available from the City and provided at the time  
29 of licensing and license renewal, and shall state:

30 ‘If you or someone you know is being forced to engage in any activity and  
31 cannot leave – whether it is commercial sex, housework, farm work, or any  
32 other activity – call the National Human Trafficking Resource Center Hotline at  
33 1-888-373-7888 to access help and services.

1 Victims of human trafficking are protected under the laws of the United  
2 States and New Mexico. The hotline is available 24 Hours a day, 7 days a  
3 week; toll-free; operated by a non-profit, non-governmental organization;  
4 anonymous and confidential; accessible in 170 languages, and able to provide  
5 help, referral to services, training, and general information.'

6 (B) Such notice shall be printed in English and Spanish. Additional  
7 languages may be included as determined by the City.

8 (C) It is the responsibility of the operator of the sexually oriented  
9 business to have the notice properly posted at all times. If a notice is  
10 damaged or removed, the operator shall cause the notice to be replaced  
11 immediately.

12 Section 16. ADDITIONAL REGULATIONS FOR ADULT CABARET.

13 (A) A licensee or an operator of an adult cabaret commits an offense if he  
14 knowingly employs, contracts with, a person who has been convicted of an  
15 offense listed in Section 5(A)(8) for which the time period required in Section  
16 5(A)(9) has not elapsed.

17 (B) An adult cabaret may not contain any VIP rooms, except that any VIP  
18 room contained in a lawfully operating adult cabaret on the date this  
19 ordinance is adopted may continue in existence for six months.

20 (C) Except for a restroom or an area of which the entire interior is clearly  
21 and completely visible from the exterior of the area, no area of an adult  
22 cabaret that is accessible to a customer may be separated from any other  
23 customer-accessible area by a door, wall, curtain, drape, partition, or room  
24 divider of any kind. Nothing in this subsection precludes the installation or  
25 maintenance of any wall or column that is essential to the structural integrity  
26 of the building. Any adult cabaret lawfully operating on the date this  
27 Ordinance is adopted must comply with the requirements of this subsection  
28 not later than one year from the date this Ordinance is adopted.

29 (D) A licensee, an operator, or an employee of an adult cabaret commits  
30 an offense if he permits any customer access to an area of the premises:

31 (1) Not visible from the manager's station or not visible by a walk  
32 through of the premises without entering a closed area, excluding a restroom;  
33 or

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1 (2) Not regularly open to all customers of the business.

2 (E) Adult cabaret entertainment must occur only in an open and visible  
3 area, and in the presence of, and be visually observable by, an employee who  
4 is not an adult cabaret entertainer. A licensee or operator commits an offense  
5 if he knowingly allows adult cabaret entertainment to be performed in violation  
6 of this subsection.

7 (F) The purpose of Subsections (B), (C), (D), and (E) of this section is to  
8 reduce the opportunity for unlawful activity such as indecent exposure,  
9 solicitation for prostitution, and prostitution that occurs in VIP rooms and  
10 other areas of adult cabarets that are not open to the view of management  
11 personnel, law enforcement officers, and customers. By prohibiting VIP rooms  
12 and requiring adult entertainment to be performed in more open and visible  
13 surroundings, unlawful activity will be deterred because it will be more readily  
14 observable by management personnel, law enforcement officers, and  
15 customers.

16 Section 17. PROHIBITION AGAINST MINORS IN SEXUALLY ORIENTED  
17 BUSINESSES.

18 (A) A licensee or an operator commits an offense if he knowingly:

19 (1) Allows a minor to enter the interior premises of a sexually oriented  
20 business;

21 (2) Employs, contracts with, or otherwise engages or allows a minor to  
22 perform adult cabaret entertainment; or

23 (3) Employs a minor in a sexually oriented business.

24 (B) Knowledge on the part of the licensee or operator is presumed under  
25 paragraph (2) or (3) of Subsection (A) if identification records were not kept in  
26 accordance with the requirements of this Ordinance, and properly kept  
27 records would have informed the licensee or operator of the minor's age.

28 (C) An employee of a sexually oriented business commits an offense if  
29 the employee knowingly:

30 (1) Allows a minor to enter the interior premises of a sexually oriented  
31 business;

32 (2) Employs, contracts with, or otherwise engages or allows a minor to  
33 perform adult cabaret entertainment; or

1 (3) Employs a minor in a sexually oriented business.

2 Section 18. ENFORCEMENT.

3 (A) Whenever a person does an act that is prohibited, fails to perform an  
4 act that is required, or commits an act that is made an offense by any  
5 provision of this Ordinance, the violation is punishable as provided by § 1-1-99  
6 ROA 1994.

7 (B) The remedies provided for in this Ordinance are not exclusive and  
8 the City may employ any other remedy, including but not limited to  
9 injunction.”

10 SECTION 2. SEVERABILITY CLAUSE. If any section, paragraph, sentence,  
11 clause, word or phrase of this Ordinance is for any reason held to be invalid or  
12 unenforceable by any court of competent jurisdiction, such decision shall not  
13 affect the validity of the remaining provisions of this Ordinance. The Council  
14 hereby declares that it would have passed this Ordinance and each section,  
15 paragraph, sentence, clause, word or phrase thereof irrespective of any  
16 provision being declared unconstitutional or otherwise invalid.

17 SECTION 3. COMPILATION. This Ordinance shall be incorporated in and  
18 made part of the Revised Ordinances of Albuquerque, New Mexico, 1994.

19 SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect five days  
20 after publication by title and general summary.

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