

RESOLUTION NO. 02-02-2008

**A RESOLUTION ADOPTING CERTAIN FINDINGS REGARDING THE
SECONDARY EFFECTS OF SEXUALLY ORIENTED BUSINESSES**

WHEREAS, sexually oriented businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the residents and property owners of the communities where they locate, and

WHEREAS, the City Council finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the spread of sexually transmitted diseases is a legitimate health concern of the City that necessitates reasonable regulation of sexually oriented businesses in order to protect the health, safety and welfare of the residents; and

WHEREAS, licensing is a legitimate means to ensure that operators of sexually oriented businesses comply with reasonable regulations, and to ensure that operators do not allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, convincing documented evidence shows that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the residential areas adjacent to them, causing increased crime and negatively effecting property values; and

WHEREAS, numerous studies identify serious objectionable operational characteristics of sexually oriented businesses, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Santaquin City Council ("City Council") desires to prevent these adverse effects and thereby protect the health, safety and welfare of the residents; protect the residents from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of *urban* blight; and

WHEREAS, the City Council has determined that location criteria alone do not adequately protect the health, safety, and general welfare of the people of the City; and

WHEREAS, this Resolution and relevant ordinance are intended not to suppress any speech activities protected by the First Amendment, but to enact content neutral regulations that address the secondary effects of sexually oriented businesses; and

WHEREAS, the City Council does not condone or legitimize the distribution of obscene materials, and recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SANTAQUIN, UTAH AS FOLLOWS:

SECTION I. It is the purpose of this Resolution and relevant ordinances to regulate sexually oriented businesses so as to eliminate or minimize the negative secondary effects of such businesses and to promote the health, safety, morals, and general welfare of the residents of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of such businesses within the City. The provisions of this Resolution and relevant ordinances have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Resolution and relevant ordinances to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Resolution and relevant ordinances to condone or legitimize the distribution of obscene materials.

SECTION II. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the City Council, and on findings incorporated in the cases of *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *City of Newport, Ky. v. Iacobucci*, 479 U.S. 92 (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976); *United States v. O'Brien*, 391 U.S. 367 (1968); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Heideman v. South Salt Lake City*, 165 Fed.Appx. 627 (10th Cir. 2006); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *Dodger's Bar & Grill, Inc. v. Johnson County Bd. Of County Com'rs*, 98 F.3d 1262 (10th Cir. 1996); *Dodger's Bar & Grill, Inc. v. Johnson County Bd. of County Com'rs*, 32 F.3d 1436 (10th Cir. 1994); *MS News Co. v. Casado*, 721 F.2d 1281 (10th Cir. 1983); *Deja Vu of Cincinnati, L.L.C. v. Union Tp. Bd. of Trustees*, 411 F.3d 777 (6th Cir. 2005); *G.M. Enterprises, Inc. v. Town of St. Joseph, Wis.*, 350 F.3d 631 (7th Cir. 2003); *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003); *Center for Fair Public Policy v. Maricopa County, Arizona*, 336 F.3d 1153 (9th Cir. 2003); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir.1995); *South Florida Free Beaches, Inc. v. City of Miami, Fla.*, 734 F.2d 608 (11th Cir. 1984); *Salt Lake City v. Wood*, 1999 UT App 323, 991 P.2d 595; and *Salt Lake City v. Roberts*, 2000 UT App 201, 7 P.3d 789

(rev'd in part by *Salt Lake City v. Roberts*, 2002 UT 30, 44 P.3d 767), *Artistic Entertainment, Inc. v. City of Warner Robins*, 223 F.3d 1306, 1309 (11th Cir. 2000); *Sammy's Ltd. v. City of Mobile*, 140 F.3d 993, 996 (11th Cir.1998), *cert. denied*, 529 U.S. 1052, 146 L.Ed. 2d 459, 120 S.Ct. 1553 (2000)., as well as studies conducted in other cities including, but not limited to, Phoenix, Arizona; Tucson, Arizona; Garden Grove, California; Los Angeles, California; Whittier, California; Adams County, Colorado; Manatee County, Florida; Indianapolis, Indiana; Minneapolis, Minnesota; Saint Paul, Minnesota; Las Vegas, Nevada; Ellicottville, New York; Islip, New York; New York; New York, New York; Times Square, New York; New Hanover Co., North Carolina; Cleveland, Ohio; Oklahoma City, Oklahoma; Amarillo, Texas; Austin, Texas; Beaumont, Texas; Cleburne, Texas; Dallas, Texas; El Paso, Texas; Houston, Texas; Newport News, Virginia; Bellevue, Washington; Des Moines, Washington; Seattle, Washington; St. Croix County, Wisconsin, the findings reported in The American Center for Law and Justice Report on the Secondary Impacts of Sex Oriented Businesses; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group On the Regulation Of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the City Council finds that:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.

(2) Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. *See, e.g.*, Studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. *See, e.g., California v. LaRue*, 409 U.S. 109, 111 (1972); *See also* Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions. *See, e.g.*, Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

(5) Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within the premises of such sexually oriented businesses. *See, e.g., Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698 (1986); *see also* Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

(6) At least 50 communicable diseases may be spread by activities

occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections. *See, e.g.*, Study of Fort Meyers, Florida.

(7) As of June, 2001, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 793,025. *See, e.g.*, Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention at www.cdc.gov.

(8) A cumulative total of 2,272 AIDS cases have been reported in Utah through December 31, 2006. A total of 1,120 (49%) of Utah AIDS cases have died. A total of 887 HIV-positive individuals who have not progressed to AIDS have been reported, 30 of these individuals have died. *See*, Utah Department of Health, Bureau of Communicable Disease Control, UTAH HIV/AIDS Epidemiological Profile-Update-2006. <http://health.utah.gov/cdc/hivsurveillance/sp%20docs/2006EpiUpdate.pdf>

(9) In 2005, 976,445 chlamydia infections were reported to CDC from 50 states and the District of Columbia. This case count corresponds to a rate of 332.5 cases per 100,000 population, an increase of 5.1% compared with the rate of 316.5 in 2004. *See, e.g.*, Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention at www.cdc.gov. <http://www.cdc.gov/std/stats/chlamydia.htm>

(10) Between 2004 and 2005, the number of cases of early latent syphilis reported to CDC increased 5.3% (from 7,768 to 8,176). In 2005, the number of cases of late and late latent syphilis was reported as 16,049. *See, e.g.*, Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention at www.cdc.gov. <http://www.cdc.gov/std/stats/syphilis.htm>

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 2,081,522 cases reported during the period 2000-2005. *See, e.g.* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention at www.cdc.gov. <http://www.cdc.gov/std/stats/Tables/Table1.htm>

(12) The surgeon general of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.

(13) According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. *See, e.g.* Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention at www.cdc.gov.

(14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and operators of the facilities to self-regulate those activities and maintain those facilities. *See, e.g.,* Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(15) Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. *See, e.g.,* Final Report of the Attorney General's Commission on Pornography (1986) at 377.

(16) Nude dancing in sexually oriented businesses encourages prostitution, increases sexual assaults, and attracts other criminal activity. *See, e.g., Barnes v. Glen Theatre*, 501 U.S. 560, 583 (1991).

(17) Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use. *See, e.g., Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1056 (9th Cir.1986).

(18) Alcohol consumption in adult establishments increases the likelihood of crime, illegal drug use, and illegal sexual activity, and encourages undesirable behavior that is not in the interest of the public health, safety, and welfare. *See, e.g., Artistic Entertainment, Inc. v. City of Warner Robins*, 223 F.3d 1306, 1309 (11th Cir. 2000); *Sammy's Ltd. v. City of Mobile*, 140 F.3d 993, 996 (11th Cir.1998), *cert. denied*, 529 U.S. 1052, 146 L.Ed. 2d 459, 120 S.Ct. 1553 (2000).

(19) The findings noted in paragraphs numbered (1) through (18) raise substantial governmental concerns.

(20) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(21) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and operators of sexually oriented businesses. Further, such licensing procedure will place a heretofore non-existent incentive on operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(22) Prohibiting and/or requiring the removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.

(23) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.

(24) It is desirable, in the prevention of crime and the spread of communicable diseases, to obtain a limited amount of information regarding certain employees who may engage in the conduct that this Resolution and relevant ordinances are designed to prevent, or who are likely to be witnesses to such activity.

(25) The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this Resolution and relevant ordinances.

(26) The barring of such individuals from operation or employment in sexually oriented businesses for a period of two (years) for a previous misdemeanor, five (5) years for two (2) or more misdemeanors within a two (2) year period, or five (5) years for a previous felony conviction serves as a deterrent to further criminal conduct, and also aids *in* preventing conduct which leads to the transmission of sexually transmitted diseases.

(27) The general welfare, health, morals, and safety of the citizens of this City will be promoted by enactment of this Resolution and relevant ordinances.

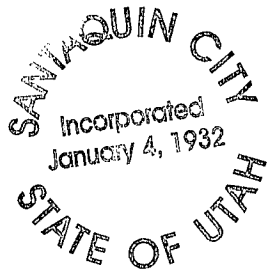
(28) When more than one sexually oriented business use occupies the same location or business address, the secondary effects caused by such businesses are increased. Secondary effects are eliminated or controlled to a greater degree when only a single sexually oriented business use is allowed to occupy the same location.

SECTION III. This Resolution applies to any and all City ordinances, and their successors, that deal in any way with sexually oriented businesses and adult-oriented businesses that deal in materials, services and/or activities not legally permissible for minors, including, but not limited to Ordinance No. 02-04-2008.

SECTION IV. The City Recorder shall keep, as part of the legislative record, a copy (in electronic format) of the studies and cases referenced in Section 2 of this Resolution, which records shall be available for public inspection.

SECTION V. This Resolution shall take effect on passage.

PASSED AND APROVED this 20 day of February, 2008.



James E. DeGraffenried
James E. DeGraffenried, Mayor

ATTEST:

Susan B. Farnsworth
Susan B. Farnsworth, City Recorder