

**CITY OF LAVON, TEXAS**  
**ORDINANCE NO. 2018-03-05**

**Sexually Oriented Business Regulations**

**AN ORDINANCE OF THE CITY OF LAVON, TEXAS  
ESTABLISHING REGULATIONS OF SEXUALLY ORIENTED  
BUSINESSES; PROVIDING A REPEALER CLAUSE; PROVIDING  
A SEVERABILITY CLAUSE; PROVIDING A PENALTY CLAUSE;  
PROVIDING FOR PUBLICATION OF THIS CAPTION; AND  
PROVIDING AN EFFECTIVE DATE**

**WHEREAS**, sexually oriented businesses require special supervision from the public safety agencies of the City of Lavon, Texas (the “City”) in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City; and

**WHEREAS**, the City is expressly authorized to regulate sexually oriented business pursuant to Chapter 243 of the Texas Local Government Code; and

**WHEREAS**, the Texas City Attorneys Association (“TCAA”) commissioned a study in 2008 to determine the secondary effects of retail-only sexually oriented businesses that sell or rent goods that can be consumed off-site (i.e. adult video stores, adult book stores, adult novelty stores); and

**WHEREAS**, the 2008 TCAA commissioned study concluded that retail-only sexually oriented businesses have the negative secondary effect of reducing the market value of single family homes and community shopping centers within a half (½) mile of the sexually oriented business; and

**WHEREAS**, the 2008 TCAA commissioned study concluded that retail-only sexually oriented businesses have the negative secondary effect of increasing crime since they pose large, statistically significant ambient public safety hazards in terms of prostitution, drugs, assault, robbery, and vandalism; and

**WHEREAS**, in a 1984 Indianapolis study that polled appraisers, 80% of the respondents predicted that an adult bookstore would negatively impact residential property values and 72% of the respondents believed that commercial property value would also be negatively affected; and

**WHEREAS**, in a 1986 Oklahoma City study that polled area local estate appraisers, 74% predicted that the presence of an adult bookstore would have a negative impact on real estate value in surrounding area; and

**WHEREAS**, based on evidence concerning the adverse secondary effects of sexually oriented businesses 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 Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S.Ct. 1382 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 122 S.Ct. 1728 (2002); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *LLEH, Inc. v. Wichita County, Texas*, 289 F.3d 358 (5th Cir. 2002); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *2300, Inc. v. City of Arlington*, 888 S.W.2d 123 (Tex. App.–Fort Worth, 1994); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), cert. denied, 529 U.S. 1053 (2000); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *DLS, Inc. v. Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Jake's, Ltd., Inc. v. Coates*, 384 F.3d 884 (8th Cir. 2002); and on studies, reports and/or testimony in other communities including, but not limited to: Phoenix, Arizona; Minneapolis, Minnesota; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Dallas, Texas; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York; St. Croix County, Wisconsin; Kitsap County, Washington; Los Angeles, California Police Department (dated August 12, 2003); Arlington, Texas, License and Amortization Appeal Board hearings, 2001 and 2002; Arlington Community Health Profile (dated July 2003); a summary of land use studies compiled by the National Law Center for Children and Families; and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989), State of Minnesota), and the study entitled Survey of Texas Appraisers - Secondary Effects of Sexually Oriented Businesses on Market Values, by Cooper and Kelley, and Crime-Related Secondary Effects - Secondary Effects of "Off-Site" Sexually-Oriented Businesses, by McCleary, June 2008, the City Council of the City of Lavan, Texas (the "City Council") finds:

- (1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, absent municipal regulation aimed at reducing adverse secondary effects, there is no mechanism to make the owners of these establishments responsible for the activities that occur on the premises.
- (2) Certain employees of sexually oriented businesses, defined in this ordinance as adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center, engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts, including masturbation, prostitution, sexual contact, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles or rooms for viewing films, videos, or live sex shows.

(4) Offering and providing private or semi-private areas in sexually oriented businesses encourages such sexual activities, which creates unhealthy conditions.

(5) Persons frequent certain sexually oriented businesses, adult arcades, adult motion picture theaters and adult theaters for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(6) At least fifty (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.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS (acquired immunodeficiency syndrome) caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 cumulative through December 31, 1992. In 2007, the estimated number of persons diagnosed with AIDS in the United States and dependent areas was 37,041. Of these, 35,962 were diagnosed in the 50 states and the District of Columbia and 812 were diagnosed in the dependent areas. In the 50 states and the District of Columbia, adult and adolescent AIDS cases totaled 35,934 with 26,355 cases in males and 9,579 cases in females. The cumulative estimated number of diagnoses of AIDS through 2007 in the United States and dependent areas was 1,051,875. Of these, 1,018,428 were diagnosed in the 50 states and the District of Columbia and 32,051 were diagnosed in the dependent areas. In the 50 states and the District of Columbia, adult and adolescent AIDS cases totaled 1,009,220 with 810,676 cases in males and 198,544 cases in females. (Source: U.S. Centers for Disease Control, U.S. Dept. of Health and Human Services. February 26, 2009.)

(8) Indeed, the number of cases that were diagnosed with HIV totaled approximately 53,200 in 2007, 47,500 in 2008, 45,000 in 2009 and 47,500 in 2010 in the United States. (Source: CDC HIV Surveillance Supplemental Report 2012;17 (No. 4) December 2012.) There were an estimated 37,600 new HIV infections in 2014 alone. (Source: Singh S et al. (CDC). HIV incidence, prevalence, and undiagnosed infections in men who have sex with men. Presentation at Conference on Retroviruses and Opportunistic Infections, 2017, Seattle, WA.). It is estimated that 1,122,900 adults and adolescents were living with HIV at the end of 2015. Of those, 162,500 (15%) had not received a diagnosis. (Source: CDC. Monitoring selected national HIV prevention and care objectives by using HIV surveillance data—United States and 6 dependent areas—2015).

(9) Since the early 1980s and to the present, there has been an increasing cumulative number of persons testing positive for the HIV antibody test in Collin County, Texas and across the State of Texas. As of December 31, 2001, there had been 57,199 reported cases of AIDS in the State of Texas. In 2008, 63,019 persons were reported to be living with HIV/AIDS in Texas. This number has increased

through December 31, 2016 with 85,807 people living with HIV across the state of Texas and 137,583 reported to be living with HIV/AIDS in Texas. Collin County was listed as one of the top 25 county with reported HIV/AIDS diagnoses in 2016 alone. (Source: Tex. Dept. of State Health Services; *See also* Texas 2016 HIV Surveillance Report).

(10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982, and 45,200 through November 1990. According to department of state health services records, there were 1,175 cases of early syphilis reported in the State of Texas during 2000 and an additional 972 cases reported in 2001. Between 2007 and 2008, the number of cases of early latent syphilis reported to CDC increased 15.2 percent (from 10,768 to 12,401), while the number of cases of late and late latent syphilis increased 9.3 percent (from 18,256 to 19,945). The total number of cases of syphilis (all stages: P&S, early latent, late, late latent, and congenital syphilis) reported to CDC increased 13.1 percent (from 40,921 to 46,277) between 2007 and 2008. In 2008, P&S syphilis cases reported to CDC increased to 13,500 from 11,466 in 2007, an increase of 17.7 percent. The rate of P&S syphilis in the United States in 2008 (4.5 cases per 100,000 population) was 18.4 percent higher than the rate in 2007 (3.8 cases per 100,000 population) (Source: U.S. Centers for Disease Control, Sexually Transmitted Disease Surveillance, 2008.) Moreover, the rate of reported cases of P&S syphilis in the United States has increased from 2012 to 2016 by approximately 77%. The incidence of reported cases of P&S syphilis in 2012 was 15,979, 17,768 cases in 2013, 20,492 cases in 2014, 24,413 cases in 2015, and 28,309 cases in 2016. (Source: Division of STD Prevention, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention).

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990. Again, according to department of state health services records, there were 32,895 cases of gonorrhea reported in the State of Texas during 2000 and an additional 30,116 cases reported in 2001. During the same time period there were also 138,692 cases of chlamydia reported in the State of Texas (Arlington Community Health Profile, dated July 2003). In 2008, 336,742 cases of gonorrhea were reported in the United States, a rate of 111.6 cases per 100,000 population, reflecting a small decrease of 5.4 percent since 2007. Gonorrhea rates have remained relatively stable over the past 12 years. Texas ranked 15th in the nation in 2008 with 32,199 cases at a rate of 134.7 cases per 100,000 population. Thereafter, Texas ranked 17<sup>th</sup> in the nation in 2016 for reported cases of gonorrhea. Texas experienced a 31% increase of reported cases of gonorrhea between 2012 and 2016. In 2008, 1,210,523 chlamydial infections were reported to CDC from 50 states and the District of Columbia. This case count corresponds to a rate of 401.3 cases per 100,000 population, an increase of 9.2% compared with the rate of 367.5 in 2007. Over the past 20 years, from 1989 through 2008, the rate of reported chlamydial infection increased from 102.5 to 401.3 cases per 100,000 population. Moreover, the rate of reported chlamydial infection increased from 450.2 to 494.2 cases per 100,000 population between the years of

2012 through 2016. Texas itself experienced a 12% increase between 2012 and 2016 of reported cases of chlamydial infection. (Source: U.S. Centers for Disease Control, Sexually Transmitted Disease Surveillance, 2008, 2016; *See also* 2016 Sexually Transmitted Diseases Surveillance, Table 14, from the Division of STD Prevention, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention).

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

(13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(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 the operators of the facilities to self-regulate those activities and maintain those facilities.

(15) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view “sexually oriented” films.

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

(17) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the 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.

(18) Removal of doors on booths and requiring sufficient lighting on premises with booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult motion picture theaters.

(19) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(20) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented businesses, 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.

(21) In the prevention of the spread of communicable diseases, it is desirable to obtain a limited amount of information regarding certain employees who may engage in the conduct that this ordinance is designed to prevent, or who are likely to be witnesses to such conduct.

(22) The barring of such individuals from the management of sexually oriented businesses for a period of years serves as a deterrent to, and prevents conduct which leads to, the transmission of sexually transmitted diseases.

(23) It is reasonably believed that to better protect the public health, safety, and welfare, it is necessary to adopt this ordinance.

(24) Partially nude performances in sexually oriented businesses are also included within the purview of the regulations, since they have the same harmful secondary effects on the surrounding community as sexually oriented businesses currently regulated under the ordinance. (See *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002).)

(25) There is no constitutional right for sexually oriented business employees in a state of nudity to touch customers. (*Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995).)

(26) One court has characterized the acts of sexually oriented business employees in a state of nudity and being paid to touch or be touched by customers as prostitution. (*People v. Hill*, 2002 Ill. App. LEXIS 792 (Ill. App. 2 Dist. Sept. 4, 2002); see also Texas Penal Code secs. 43.01 (“sexual conduct” and “sexual contact”) and 43.02 (“prostitution”).)

(27) In case study, attempts by the City of Arlington to require sexually oriented businesses to advise customers and employees in a state of nudity to refrain from intentionally touching and fondling each other through signage posted at the business entrance have not been effective.

(28) Sexually oriented businesses have not complied with the “no touch” provisions, but have flagrantly disregarded them and/or have encouraged employees and customers to violate the “no touch” provision.

(29) Provocative touching between customers and employees in a sexually oriented business where at least one is in a state of nudity frequently leads to the commission

of sex crimes, illegal drug use, and increased health risks due to sexually transmitted diseases.

(30) Compelling signage at the entrances of sexually oriented businesses has not been effective in halting “no touch” violations.

(31) In case study, the City of Arlington had to expend considerable law enforcement resources to enforce the “no touch” provisions.

(32) The city council reasonably believes that requiring employees in a state of nudity to be physically separated from customers by the use of elevated stages and buffer zones is necessary to better ensure ordinance compliance while still not inhibiting constitutionally protected expressive conduct or speech. (*LLEH, Inc. v. Wichita County, Texas*, 289 F.3d 358 (5th Cir. 2002).)

(33) The city council reasonably believes that sexual activity occurring in private viewing booths at sexually oriented businesses leads to unhealthy and unsanitary conditions and to the transmission of sexually transmitted and other communicable diseases. (*Matney v. County of Kenosha*, 86 F.3d 692, 695 (7th Cir. 1996).)

(34) The city council reasonably believes that certain negative secondary effects, including prostitution, drug trafficking and assaultive offenses are associated with nude or semi-nude dancing in environments where alcohol is served or allowed. (*J.L. Spoons, Inc. v. Dragani*, 538 F.3d 379, 382 (6th Cir. 2008).)

(35) The city council reasonably believes that the licensing and permitting requirements imposed on sexually oriented businesses that offer on-site entertainment comport with the prompt judicial review and preservation of the status quo requirements enunciated by the United States Supreme Court, and thus do not constitute an unconstitutional prior restraint. (*Richland Bookmart, Inc. v. Knox County, Tenn.*, 555 F.3d 512 (6th Cir. 2009), rehearing, en banc denied, 2009 U.S. App. LEXIS 12994 (6th Cir. April 23, 2009).)

(36) The city council reasonably believes that inadequately illuminated parking lots and parking lots that are not visible from the public right-of-way by virtue of being fenced or otherwise shielded from view present increased opportunities for criminal and sexual activity.

(37) The city council reasonably believes that video monitoring the parking lots of sexually oriented businesses will deter individuals from engaging in criminal and sexual activity in the area being monitored and retaining recordings will assist law enforcement in criminal investigations should any crimes be committed in the area.

(38) It is reasonably believed by the city council that the general welfare, health, and safety of the citizens of the city will be promoted by the enactment of this ordinance.

(39) It is reasonably believed by the city council that adequate sites are reasonably available for sexually oriented businesses that meet licensing and otherwise applicable requirements to locate and operate in the city.

(40) The fact that an applicant for a sexually oriented business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance. There is correlation between sexually oriented businesses, specifically their hours of operation and the type of people which such businesses attract, and higher crime rates. (*Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); and

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

**WHEREAS**, the concern over sexually transmitted diseases is a legitimate health concern of the city that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

**WHEREAS**, permitting and/or licensing is a legitimate means of accountability to ensure that operators, licensees, employees, and customers 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**, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

**WHEREAS**, it is recognized that sexually oriented businesses, as a category of establishments, have serious objectionable operational characteristics, particularly when they are located in proximity to each other or in or near locations that are licensed to sell alcohol, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

**WHEREAS**, certain employees of sexually oriented businesses, defined in this ordinance as adult arcades, adult bookstores or adult video stores, adult cabarets, adult motels, adult motion picture theaters, escort agencies, adult model studios, and sexual encounter centers, engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

**WHEREAS**, sexual acts, including masturbation, prostitution, sexual contact, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles, or rooms for viewing films, videos, or live sex shows; and

**WHEREAS**, offering and providing private or semi-private areas in sexually oriented businesses encourages such sexual activities, which creates unhealthy conditions; and



**WHEREAS**, persons frequent certain sexually oriented theaters, sexually oriented arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of the sexually oriented businesses; and

**WHEREAS**, the managers or owners of sexually oriented businesses fail to monitor or are unable to monitor the patron of said places and allow these patrons to engage in specified sexual activity while on the premises of said places; and

**WHEREAS**, sexually oriented businesses offering a public place where a state of nudity, semi-nudity or specified sexual acts occur or exist pose public health risks by engaging in unsanitary disposition of bodily secretion there by posing a threat of spreading infection or disease; and

**WHEREAS**, sanitary conditions in some sexually oriented businesses are unhealthy in part, because the activities conducted therein are unhealthy and in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities; and

**WHEREAS**, numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view 'sexually oriented' films; and

**WHEREAS**, sexually oriented businesses have operational characteristics, which should be reasonably regulated in order to protect substantial governmental concerns; and

**WHEREAS**, a reasonable licensing procedure is an appropriate mechanism to place the burden on the owners and the operators of the sexually oriented businesses. Further such a licensing procedure will place an incentive on the operators to see that the sexually oriented businesses 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 license is the actual operator of the sexually oriented businesses, fully in possession and control of the premises and activities occurring therein; and

**WHEREAS**, requiring the operators of sexually oriented businesses to keep information regarding employees as well as perform criminal background checks on all prospective employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential employees with past pertinent criminal behavior and by preventing minors from working in such establishments; and

**WHEREAS**, the disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented businesses, 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

**WHEREAS**, in the prevention of the spread of communicable diseases, it is desirable to obtain a limited amount of information regarding certain employees who may engage in the

conduct that this ordinance is designed to prevent, or who are likely to be witnesses to such conduct; and

**WHEREAS**, the fact that an applicant Specialized Certificate of Occupancy for a Sexually Oriented Businesses has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this Ordinance. There is a correlation between Sexually Oriented Businesses, specifically their hours of operation and the type of people, which such businesses attract, and higher crime rates [*See Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5<sup>th</sup> Cir. 2002)]; and

**WHEREAS**, the barring of such individuals the management of sexually oriented businesses serves as a deterrent to, and prevents conduct, which leads to, the transmission of sexually transmitted diseases; and

**WHEREAS**, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

**WHEREAS**, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, *see, e.g., FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10<sup>th</sup> Cir. 2003) (“On its face, the Ordinance applies to all ‘sexually oriented businesses,’ which include establishments such as ‘adult motels’ and ‘adult novelty stores,’ which are not engaged in expressive activity.”); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual devices); and

**WHEREAS**, there is documented evidence of sexually oriented businesses, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially “adult” nature, *see, e.g., Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that “the non-adult video selections appeared old and several of its display cases were covered with cobwebs”); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001) (finding retail adult store’s “argument that it is not an adult entertainment establishment” to be “frivolous at best”); *People ex rel. Deters v. The Lion’s Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that “the accuracy and credibility” of the evidence on inventory in adult retail store was suspect, and that testimony was “less than candid” and “suggested an intention to obscure the actual amount of sexually explicit material sold”); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999) (documenting manipulation of inventory to avoid adult classification); and.

**WHEREAS**, the manner in which an establishment holds itself out to the public is a reasonable consideration in determining whether the establishment is a sexually oriented business, *see, e.g., FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 261 (1991) (Scalia, J.,

concurring in part and dissenting in part) (“[I]t is most implausible that any enterprise which has as its constant intentional objective the sale of such [sexual] material does not advertise or promote it as such.”); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360, 365 (6th Cir. 2009) (“A prominent display advertising an establishment as an ‘adult store,’ moreover, is a more objective indicator that the store is of the kind the Act aims to regulate, than the mere share of its stock or trade comprised of adult materials.”); *see also Johnson v. California State Bd. Of Accountancy*, 72 F.3d 1427 (9th Cir. 1995) (rejecting First Amendment challenge to statute which used the phrase “holding out” to identify conduct indicative of the practice of public accountancy, but did not ban any speech); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010) (O’Scannlain, J., concurring) (concluding that whether an entity “holds itself out” as religious is a neutral factor and that factor helps to ensure that the entity is a bona fide religious entity); and

**WHEREAS**, the City intends to regulate such businesses as sexually oriented businesses through a narrowly tailored ordinance designed to serve the substantial government interest in preventing the negative secondary effects of sexually oriented businesses; and

**WHEREAS**, the City’s regulations shall be narrowly construed to accomplish this end; and

**WHEREAS**, the City recognizes its constitutional duty to interpret and construe its laws to comply with constitutional requirements as they are announced; and

**WHEREAS**, with the passage of any ordinance, the City and the City Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Texas Constitutions, Texas Code, and the Texas Rules of Civil and Criminal Procedure; and

**WHEREAS**, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the Texas Constitution, but to enact legislation to further the content neutral governmental interests of the City, to wit, the controlling of secondary effects of sexually oriented businesses; and

**WHEREAS**, the City Council has determined it is in the best interest of the citizens to adopt regulations governing the development and conduct of sexually oriented businesses within the City; and

**WHEREAS**, the City Council has further determined the following regulations would provide for and would be in the best interest of the safety, health and general welfare of its citizens.

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LAVON, TEXAS, THAT:**

**Section 1. Findings Incorporated.** The findings set forth above are incorporated as if fully set forth herein.

**Section 2. Amendment.** The regulations attached hereto as Exhibit “A” shall be incorporated into the Code of Regulations of the City of Lavon, Texas, as amended.

**Section 3. Amendment to City’s Master Fee Schedule.** The City’s Master Fee Schedule establishing various fees related to Business Regulations and permitting, is amended to add the following fees as set forth below:

Sexually oriented businesses:

- (a) Nonrefundable license application fee: \$500.00 or as may be amended.
- (b) Nonrefundable application processing fee: \$60.00 or as may be amended.
- (c) Replacement of personal card or on-site card: \$35.00 or as may be amended.
- (d) Reinstatement fee in lieu of suspension: \$500.00 or as may be amended.

**Section 4. Cumulative/Repealer Clause.** This ordinance shall be cumulative of all provisions of state or federal law and all ordinances of the City of Lavon, Texas, except where the provisions of this ordinance are in direct conflict with the provisions of such other ordinances, in which event the conflicting provisions of such ordinances are hereby repealed to the extent of such conflict.

**Section 5. Severability.** Should any section, subsection, sentence, clause, phrase of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this ordinance shall remain in full force and effect. The City of Lavon, Texas hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

**Section 6. Open Meeting.** It is hereby officially found and determined that all notice required by law has been given and notice of this Ordinance was posted and the Ordinance passed in accordance with the Open Meeting Act.

**Section 7. Effective Date.** This Ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law in such cases provides.

**DULY PASSED and APPROVED** by the City Council of the City of Lavon, Texas, on the 20<sup>th</sup> day of March, 2018.

  
\_\_\_\_\_  
Charles A. Teske, Jr., Mayor

ATTEST:

  
\_\_\_\_\_  
Kim Dobbs, City Administrator | City Secretary



## **EXHIBIT A**

### **CITY OF LAVON, TEXAS ORDINANCE NO. 2018-03-05**

#### **SEXUALLY ORIENTED BUSINESS REGULATIONS**

##### **Division 1. Generally**

###### **Sec. 1 Purpose; intent**

(a) It is the purpose of this ordinance to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the city and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the city. The provisions of this ordinance 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 ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market.

(b) It is the intent of the city council that the locational regulations of this ordinance are promulgated pursuant to Local Government Code Ch. 243, as amended.

(c) A license granted under this ordinance or under any other city ordinance does not authorize or legalize any conduct, activity or business that is illegal under state or federal law.

###### **Sec. 2 Findings**

Based on evidence concerning the adverse secondary effects of sexually oriented businesses 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 Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S.Ct. 1382 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 122 S.Ct. 1728 (2002); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *LLEH, Inc. v. Wichita County, Texas*, 289 F.3d 358 (5th Cir. 2002); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *2300, Inc. v. City of Arlington*, 888 S.W.2d 123 (Tex. App.—Fort Worth, 1994); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), cert. denied, 529 U.S. 1053 (2000); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *DLS, Inc. v. Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Jake's, Ltd., Inc. v. Coates*, 384 F.3d 884 (8th Cir. 2002); and on studies, reports and/or testimony in other communities including, but not limited to: Phoenix, Arizona; Minneapolis, Minnesota; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Dallas, Texas; Amarillo,

Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York; St. Croix County, Wisconsin; Kitsap County, Washington; Los Angeles, California Police Department (dated August 12, 2003); Arlington, Texas, License and Amortization Appeal Board hearings, 2001 and 2002; Arlington Community Health Profile (dated July 2003); a summary of land use studies compiled by the National Law Center for Children and Families; and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989), State of Minnesota), and the study entitled Survey of Texas Appraisers - Secondary Effects of Sexually Oriented Businesses on Market Values, by Cooper and Kelley, and Crime-Related Secondary Effects - Secondary Effects of "Off-Site" Sexually-Oriented Businesses, by McCleary, June 2008, the city council finds:

- (1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, absent municipal regulation aimed at reducing adverse secondary effects, there is no mechanism to make the owners of these establishments responsible for the activities that occur on the premises.
- (2) Certain employees of sexually oriented businesses, defined in this ordinance as adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center, engage in a higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts, including masturbation, prostitution, sexual contact, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles or rooms for viewing films, videos, or live sex shows.
- (4) Offering and providing private or semi-private areas in sexually oriented businesses encourages such sexual activities, which creates unhealthy conditions.
- (5) Persons frequent certain sexually oriented businesses, adult arcades, adult motion picture theaters and adult theaters for the purpose of engaging in sex within the premises of such sexually oriented businesses.
- (6) At least fifty (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.
- (7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS (acquired immunodeficiency syndrome) caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, and 253,448 cumulative through December 31,

1992. In 2007, the estimated number of persons diagnosed with AIDS in the United States and dependent areas was 37,041. Of these, 35,962 were diagnosed in the 50 states and the District of Columbia and 812 were diagnosed in the dependent areas. In the 50 states and the District of Columbia, adult and adolescent AIDS cases totaled 35,934 with 26,355 cases in males and 9,579 cases in females. The cumulative estimated number of diagnoses of AIDS through 2007 in the United States and dependent areas was 1,051,875. Of these, 1,018,428 were diagnosed in the 50 states and the District of Columbia and 32,051 were diagnosed in the dependent areas. In the 50 states and the District of Columbia, adult and adolescent AIDS cases totaled 1,009,220 with 810,676 cases in males and 198,544 cases in females. (Source: U.S. Centers for Disease Control, U.S. Dept. of Health and Human Services. February 26, 2009.)

(8) Indeed, the number of cases that were diagnosed with HIV totaled approximately 53,200 in 2007, 47,500 in 2008, 45,000 in 2009 and 47,500 in 2010 in the United States. (Source: CDC HIV Surveillance Supplemental Report 2012;17 (No. 4) December 2012.) There were an estimated 37,600 new HIV infections in 2014 alone. (Source: Singh S et al. (CDC). HIV incidence, prevalence, and undiagnosed infections in men who have sex with men. Presentation at Conference on Retroviruses and Opportunistic Infections, 2017, Seattle, WA.). It is estimated that 1,122,900 adults and adolescents were living with HIV at the end of 2015. Of those, 162,500 (15%) had not received a diagnosis. (Source: CDC. Monitoring selected national HIV prevention and care objectives by using HIV surveillance data—United States and 6 dependent areas—2015).

(9) Since the early 1980s and to the present, there has been an increasing cumulative number of persons testing positive for the HIV antibody test in Collin County, Texas and across the State of Texas. As of December 31, 2001, there had been 57,199 reported cases of AIDS in the State of Texas. In 2008, 63,019 persons were reported to be living with HIV/AIDS in Texas. This number has increased through December 31, 2016 with 85,807 people living with HIV across the state of Texas and 137,583 reported to be living with HIV/AIDS in Texas. Collin County was listed as one of the top 25 county with reported HIV/AIDS diagnoses in 2016 alone. (Source: Tex. Dept. of State Health Services; *See also* Texas 2016 HIV Surveillance Report).

(10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982, and 45,200 through November 1990. According to department of state health services records, there were 1,175 cases of early syphilis reported in the State of Texas during 2000 and an additional 972 cases reported in 2001. Between 2007 and 2008, the number of cases of early latent syphilis reported to CDC increased 15.2 percent (from 10,768 to 12,401), while the number of cases of late and late latent syphilis increased 9.3 percent (from 18,256 to 19,945). The total number of cases of syphilis (all stages: P&S, early latent, late, late latent, and congenital syphilis) reported to CDC increased 13.1 percent (from 40,921 to 46,277) between 2007 and 2008. In 2008, P&S syphilis

cases reported to CDC increased to 13,500 from 11,466 in 2007, an increase of 17.7 percent. The rate of P&S syphilis in the United States in 2008 (4.5 cases per 100,000 population) was 18.4 percent higher than the rate in 2007 (3.8 cases per 100,000 population) (Source: U.S. Centers for Disease Control, Sexually Transmitted Disease Surveillance, 2008.) Moreover, the rate of reported cases of P&S syphilis in the United States has increased from 2012 to 2016 by approximately 77%. The incidence of reported cases of P&S syphilis in 2012 was 15,979, 17,768 cases in 2013, 20,492 cases in 2014, 24,413 cases in 2015, and 28,309 cases in 2016. (Source: Division of STD Prevention, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention).

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990. Again, according to department of state health services records, there were 32,895 cases of gonorrhea reported in the State of Texas during 2000 and an additional 30,116 cases reported in 2001. During the same time period there were also 138,692 cases of chlamydia reported in the State of Texas (Arlington Community Health Profile, dated July 2003). In 2008, 336,742 cases of gonorrhea were reported in the United States, a rate of 111.6 cases per 100,000 population, reflecting a small decrease of 5.4 percent since 2007. Gonorrhea rates have remained relatively stable over the past 12 years. Texas ranked 15th in the nation in 2008 with 32,199 cases at a rate of 134.7 cases per 100,000 population. Thereafter, Texas ranked 17<sup>th</sup> in the nation in 2016 for reported cases of gonorrhea. Texas experienced a 31% increase of reported cases of gonorrhea between 2012 and 2016. In 2008, 1,210,523 chlamydial infections were reported to CDC from 50 states and the District of Columbia. This case count corresponds to a rate of 401.3 cases per 100,000 population, an increase of 9.2% compared with the rate of 367.5 in 2007. Over the past 20 years, from 1989 through 2008, the rate of reported chlamydial infection increased from 102.5 to 401.3 cases per 100,000 population. Moreover, the rate of reported chlamydial infection increased from 450.2 to 494.2 cases per 100,000 population between the years of 2012 through 2016. Texas itself experienced a 12% increase between 2012 and 2016 of reported cases of chlamydial infection. (Source: U.S. Centers for Disease Control, Sexually Transmitted Disease Surveillance, 2008, 2016; *See also* 2016 Sexually Transmitted Diseases Surveillance, Table 14, from the Division of STD Prevention, National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, Centers for Disease Control and Prevention).

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

(13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.



(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 the operators of the facilities to self-regulate those activities and maintain those facilities.

(15) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view “sexually oriented” films.

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

(17) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the 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.

(18) Removal of doors on booths and requiring sufficient lighting on premises with booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult motion picture theaters.

(19) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(20) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented businesses, 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.

(21) In the prevention of the spread of communicable diseases, it is desirable to obtain a limited amount of information regarding certain employees who may engage in the conduct that this ordinance is designed to prevent, or who are likely to be witnesses to such conduct.

(22) The barring of such individuals from the management of sexually oriented businesses for a period of years serves as a deterrent to, and prevents conduct which leads to, the transmission of sexually transmitted diseases.

(23) It is reasonably believed that to better protect the public health, safety, and welfare, it is necessary to adopt additional amendments to this ordinance.

(24) Partially nude performances in sexually oriented businesses are also included within the purview of the regulations, since they have the same harmful secondary effects on the surrounding community as sexually oriented businesses currently regulated under the ordinance. (See *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002).)

(25) There is no constitutional right for sexually oriented business employees in a state of nudity to touch customers. (*Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995).)

(26) One court has characterized the acts of sexually oriented business employees in a state of nudity and being paid to touch or be touched by customers as prostitution. (*People v. Hill*, 2002 Ill. App. LEXIS 792 (Ill. App. 2 Dist. Sept. 4, 2002); see also Texas Penal Code secs. 43.01 (“sexual conduct” and “sexual contact”) and 43.02 (“prostitution”).)

(27) In case study, attempts by the City of Arlington to require sexually oriented businesses to advise customers and employees in a state of nudity to refrain from intentionally touching and fondling each other through signage posted at the business entrance have not been effective.

(28) Sexually oriented businesses have not complied with the “no touch” provisions, but have flagrantly disregarded them and/or have encouraged employees and customers to violate the “no touch” provision.

(29) Provocative touching between customers and employees in a sexually oriented business where at least one is in a state of nudity frequently leads to the commission of sex crimes, illegal drug use, and increased health risks due to sexually transmitted diseases.

(30) Compelling signage at the entrances of sexually oriented businesses has not been effective in halting “no touch” violations.

(31) In case study, the City of Arlington had to expend considerable law enforcement resources to enforce the “no touch” provisions.

(32) The city council reasonably believes that requiring employees in a state of nudity to be physically separated from customers by the use of elevated stages and buffer zones is necessary to better ensure ordinance compliance while still not inhibiting constitutionally protected expressive conduct or speech. (*LLEH, Inc. v. Wichita County, Texas*, 289 F.3d 358 (5th Cir. 2002).)

(33) The city council reasonably believes that sexual activity occurring in private viewing booths at sexually oriented businesses leads to unhealthy and unsanitary conditions and to the transmission of sexually transmitted and other communicable diseases. (*Matney v. County of Kenosha*, 86 F.3d 692, 695 (7th Cir. 1996).)

(34) The city council reasonably believes that certain negative secondary effects, including prostitution, drug trafficking and assaultive offenses are associated with nude or semi-nude dancing in environments where alcohol is served or allowed. (*J.L. Spoons, Inc. v. Dragani*, 538 F.3d 379, 382 (6th Cir. 2008).)

(35) The city council reasonably believes that the licensing and permitting requirements imposed on sexually oriented businesses that offer on-site entertainment comport with the prompt judicial review and preservation of the status quo requirements enunciated by the United States Supreme Court, and thus do not constitute an unconstitutional prior restraint. (*Richland Bookmart, Inc. v. Knox County*, Tenn., 555 F.3d 512 (6th Cir. 2009), rehearing, en banc denied, 2009 U.S. App. LEXIS 12994 (6th Cir. April 23, 2009).)

(36) The city council reasonably believes that inadequately illuminated parking lots and parking lots that are not visible from the public right-of-way by virtue of being fenced or otherwise shielded from view present increased opportunities for criminal and sexual activity.

(37) The city council reasonably believes that video monitoring the parking lots of sexually oriented businesses will deter individuals from engaging in criminal and sexual activity in the area being monitored and retaining recordings will assist law enforcement in criminal investigations should any crimes be committed in the area.

(38) It is reasonably believed by the city council that the general welfare, health, and safety of the citizens of the city will be promoted by the enactment of this ordinance.

(39) It is reasonably believed by the city council that adequate sites are reasonably available for sexually oriented businesses that meet licensing and otherwise applicable requirements to locate and operate in the city.

(40) The fact that an applicant for a sexually oriented business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance. There is correlation between sexually oriented businesses, specifically their hours of operation and the type of people which such businesses attract, and higher crime rates. (*Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002).)

(41) The findings noted in subsections (1) through (40) raise substantial governmental concerns.

### **Sec. 3 Definitions**

The following words, terms and phrases, when used in this ordinance, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade. Any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion pictures, projectors, or other image-producing devices are maintained to show images to one or more persons per machine at any one time, and where the images so displayed are distinguished or characterized by regularly depicting or describing specified sexual activities or specified anatomical areas.

Adult audio or video center. Any place at which any of the following activities regularly occurs:

- (1) Inbound or outbound telephone or other audio communications in which a topic or purpose of the communication between an occupant of the premises and a third party is the discussion or description of specified sexual activities or specified anatomical areas for consideration;
- (2) Video or audio broadcasting, whether live, delayed, by film, by tape recording or otherwise, of specified sexually activities or specified anatomical areas for consideration; or
- (3) Filming, taping or otherwise creating video or audio recordings of specified sexually activities or specified anatomical areas, including but not limited to, films, movies, video tapes, DVDs, audio tapes or compact disks, of specified sexually activities or specified anatomical areas that are broadcast, sold, manufactured or distributed for consideration.

Adult bookstore, adult novelty store or adult video store. A commercial establishment for which the primary business is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer, including:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, DVDs, videocassettes or video reproductions, slides, or other visual representations, that depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities, but not including items for birth control or for the prevention of sexually transmitted diseases.

Adult cabaret. A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- (1) Persons who appear in a state of nudity or semi-nudity;
- (2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- (3) Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult motel. A hotel, motel or similar commercial establishment which:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
- (2) Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

Adult motion picture theater. A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult theater. A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of specified sexual activities or specified anatomical areas.

Applicant.

- (1) A person or entity in whose name a license to operate a sexually oriented business will be issued;
- (2) Each individual who signs an application for a sexually oriented business license as required by Section 31;
- (3) Each individual who is an owner or operator of a sexually oriented business for which a license application is made under Section 31, regardless of whether the individual's name or signature appears on the application;

(4) Each individual who has a 20 percent or greater ownership interest in a sexually oriented business for which a license application is made under Section 31, regardless of whether the individual's name or signature appears on the application; and

(5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license application is made under Section 31, regardless of whether the individual's name or signature appears on the application.

Article, chapter or ordinance. Reference to "this article," "this chapter" or "this ordinance" shall mean and refer to this ordinance of the Code of Ordinances of the city, as amended.

City administrator. The city administrator for the City of Lavon or the city administrator's designated agent.

Chief of police. The chief of police of the City of Lavon or the chief of police's designated agent.

Conviction. A conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned. "Conviction" includes disposition of charges against a person by probation or deferred adjudication.

Customer. Any person who:

(1) Is allowed to enter a sexually oriented business or any portion of a sexually oriented business in return for the payment of an admission fee, membership fee or any other form of consideration or gratuity;

(2) Enters a sexually oriented business or any portion of a sexually oriented business and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or

(3) Is a member of and on the premises of a sexually oriented business operating as a private or membership club or a sexually oriented business that reserves any portion of the premises of the sexually oriented business as a private or membership club.

Employee. A person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is designated an employee, independent contractor, agent or otherwise and whether or not the person is paid a salary, wage or other compensation by an owner or operator of the sexually oriented business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

Enterprise. An adult arcade, adult audio or video center, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio or any establishment whose primary business is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide

sexual stimulation or sexual gratification to its customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas. The term “enterprise” shall include any premises for which a permit or license is required under either or both of division 2 and 3 of this ordinance. However, the term “sexually oriented business” shall not be construed to include:

- (1) Any business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers performing functions authorized under the license held;
- (2) Any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts; or
- (3) Any retail establishment whose major business is the offering of wearing apparel for sale to customers.

Entertainer. Any employee of a sexually oriented business who performs or engages in entertainment.

Entertainer’s permit. A permit issued by the chief of police to an entertainer pursuant to this ordinance.

Entertainment. Any act or performance, such as a play, skit, reading, revue, fashion show, modeling performance, pantomime, role playing, encounter session, scene, song, dance, musical rendition or striptease, that involves the display or exposure of specified sexual activities or specified anatomical areas. The term “entertainment” shall include any employee or entertainer exposing any specified anatomical areas or engaging in any specified sexual activities whatever in the presence of customers.

Escort. A person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort agency. A person or business association which furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes, for a fee, tip or other consideration.

Establishment. Any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business; or

- (4) The relocation of any sexually oriented business.

Hearing officer. The city administrator, or his or her designee. The hearing officer shall exercise those powers authorized under the Texas Local Government Code and the Code of Ordinances of the city, as appropriate in the furtherance of his or her duties.

License. A license issued to a licensee pursuant to this ordinance.

Licensee.

- (1) A person in whose name a license to operate a sexually oriented business has been issued;
- (2) Each individual listed as an applicant on the application for a license;
- (3) Each individual who is an owner or operator of a sexually oriented business for which a license has been issued under this ordinance, regardless of whether the individual's name or signature appears on the license application;
- (4) Each individual who has a 20 percent or greater ownership interest in a sexually oriented business for which a license has been issued under this ordinance, regardless of whether the individual's name or signature appears on the license application; and
- (5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license has been issued under this ordinance, regardless of whether the individual's name or signature appears on the license application.

Manager. Any person, including an on-site manager, who supervises, directs or manages any employee or other person who conducts business on the premises of a sexually oriented business and/or performs certain services including, but not limited to, the following:

- (1) Operating a cash register, cash drawer or other depository on the premises of the sexually oriented business where cash funds or records of credit card or other credit transactions are generated in any manner by the operation of the sexually oriented business or the activities at the premises of the sexually oriented business;
- (2) Displaying or taking orders from any customer for any merchandise, goods, entertainment or other services offered on the premises of the sexually oriented business;
- (3) Delivering or providing to any customer any merchandise, goods, entertainment or other services offered on the premises of the sexually oriented business;
- (4) Acting as an attendant to regulate entry, flow or traffic of customers or other persons into the premises of the sexually oriented business; or



(5) Supervising or managing other person(s) in the performance of any of the foregoing activities on the premises of the sexually oriented business.

Manager's permit. A permit issued by the chief of police to a manager pursuant to this ordinance.

Nude model studio. Any place where a person [who] appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration; however, nude modeling at or on behalf of any properly accredited institution of higher learning shall not fall within this definition.

Nudity or a state of nudity. A state of dress which fails to fully and opaquely cover the anus, genitals, pubic region, or perineum anal region, or the exposure of any device, costume or covering that gives the realistic appearance of or simulates the anus, genitals, pubic region, or perineum anal region, regardless of whether the nipple and areola of the human female breast are exposed.

On-site manager. Any person charged by an owner or operator of a sexually oriented business with the responsibility for direct supervision of the operation of the sexually oriented business and/or responsible for monitoring and observing areas of the sexually oriented business to which customers are admitted when the sexually oriented business is open for business and/or when customers are admitted to the premises of the sexually oriented business.

Opaquely. Impervious to the rays of light; not transparent; impenetrable to sight.

Operates or causes to be operated. To cause, to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is a licensee, owner or operator of the sexually oriented business.

Operator. The individual or natural person who is principally in charge of the operations of a sexually oriented business.

Owner or owners. The proprietor, if a sole proprietorship, or all general partners if a partnership, or the corporation if a corporation, of a sexually oriented business.

Permit. A current, valid permit issued by the chief of police or building official pursuant to this ordinance.

Permit holder. A person who holds a permit pursuant to this ordinance.

Person. An individual, proprietorship, partnership, corporation, limited liability company, association or other legal entity.

Semi-nude or semi-nudity or state of semi-nudity. The exposure of the post-puberty female nipple or areola, or the exposure of any device, costume or covering that gives the realistic appearance

of or simulates the post-puberty female nipple or areola, so long as the following anatomical areas of an individual are fully and opaquely covered: the anus, genitals, pubic region and the perineum anal region of the human body. The term “semi-nude” shall not apply to an individual exposing a post-puberty female nipple or areola in the process of breastfeeding a child under that person’s care.

Separate area. Any portion of the interior of a sexually oriented business separated from any other portion of a sexually oriented business by a wall, partition or other divider.

Sexual encounter center. A business or commercial sexually oriented business that, as one of its primary business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

Sexually oriented business. An adult arcade, adult audio or video center, adult bookstore, adult novelty store or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio or sexual encounter center, or other sexually oriented business the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. For purposes of this ordinance, “primary business” means 25 percent or more of the items in inventory and/or floor space used for the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. Inventory shall be measured with all titles or objects available on the premises for sale or rental, including those that are identical being considered a separate title or object. The term shall also mean any commercial sexually oriented business that self-identifies as an adult arcade, adult audio or video center, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio or sexual encounter center, regardless of whether the percentage of items in inventory and/or floor space constitute 25 percent or more of the total items in inventory and/or floor space. The term “sexually oriented business” shall not be construed to include:

- (1) Any business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed massage therapist, or licensed barber engaged in performing functions authorized under the lawful license held;
- (2) Any business operated by or employing a licensed physician or chiropractor engaged in practicing the healing arts;
- (3) Any business licensed as a tattoo studio or a body piercing studio and was engaged in practices authorized under the license; or

- (4) An activity conducted or sponsored:
- (A) By a proprietary school licensed by the state or a college, junior college or university supported entirely or partly by taxation; or
- (B) By a private college or university which maintains or operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;

and any activity conducted or sponsored by an entity identified in subsection (A) or (B) must be situated in a structure: (i) which has no sign or other advertising visible from the exterior of the structure indicating a nude or semi-nude person is available for viewing; and (ii) where in order to participate in a class, a student must enroll at least three days in advance of the class; and (iii) where no more than one nude or semi-nude model is on the premises at any one time.

Specified anatomical area.

- (1) Any of the following, or any combination of the following, when less than completely and opaquely covered:
- (A) Any human genitals, pubic region or pubic hair;
- (B) Any buttock; or
- (C) Any portion of the female breast or breasts that is situated below a point immediately above the top of the areola; or
- (2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

Specified sexual activity. Any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) of this definition.

Substantial enlargement of a sexually oriented business. The increase in floor area occupied by the business of more than 25 percent, as the floor area exists on the date of passage of this ordinance.

Temporary entertainer. An individual who holds a temporary entertainer's permit.

Temporary entertainer's permit. An entertainer's permit that is valid for a reduced period of time, pursuant to this ordinance.

Temporary manager. An individual who holds a temporary manager's permit.

Temporary manager's permit. A manager's permit that is valid for a reduced period of time, pursuant to this ordinance.

Temporary permit. A permit that is valid for a reduced period of time, pursuant to this ordinance.

Transfer of ownership or control. Pertaining to a sexually oriented business, means and includes any of the following:

- (1) The sale, lease or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- (3) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

#### **Sec. 4 Classification**

- (a) Adult arcades;
- (b) Adult audio or video centers;
- (c) Adult bookstores, adult novelty stores or adult video stores;
- (d) Adult cabarets;
- (e) Adult motels;
- (f) Adult motion picture theaters;
- (g) Adult theaters;
- (h) Escort agencies;

- (i) Nude modeling studios; and
- (j) Sexual encounter centers.

#### **Sec. 5 Location; exemption from location restrictions**

- (a) A person commits an offense if the person operates or causes to be operated a sexually oriented business in any zoning district other than as allowed by the city's comprehensive zoning ordinance, as amended.
- (b) A person commits an offense if the person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of any of the following:
  - (1) A religious institution, church, synagogue, mosque, temple or structure that is used primarily for religious worship and related religious activities or real property owned by, or for the benefit of, a religious organization that intends to use the property for such purposes if such ownership has been registered with the city;
  - (2) A public or private educational facility, including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuing education schools, special education schools, junior colleges, colleges and universities; school includes the school grounds and related athletic or other facilities regularly visited by students;
  - (3) A boundary of a zoning district zoned for residential uses under the comprehensive zoning ordinance, an area designated as residential on the city's comprehensive plan, or a historic district as designated by the city's comprehensive zoning ordinance or comprehensive plan;
  - (4) A public park or recreational area which has been designated for park or recreational activities, including but not limited to a park, playground, nature trails, swimming pool, golf course, reservoir, athletic field, basketball or tennis courts, pedestrian/ bicycle paths, wilderness areas, or other similar public land within the city which is under the control, operation, or management of a governmental entity;
  - (5) The property line of a lot devoted to a residential use;
  - (6) An entertainment business which is oriented primarily towards children or family entertainment; or
  - (7) A licensed premises, licensed pursuant to the Texas Alcoholic Beverage Code (except premises holding a food and beverage certificate whose primary business being operated on the premises is food service).

(c) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business.

(d) For the purposes of subsection (b), measurement must be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property line or boundary of the premises where a sexually oriented business is operated or to be operated, to the nearest portion of a property line or boundary for the uses listed in subsection (b). The presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

(e) For purposes of subsection (c), the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the nearest property line of each property sought to be used as a sexually oriented business. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.

(f) Any sexually oriented business lawfully operating prior to the effective date of this ordinance or the ordinance from which this ordinance is derived that is in violation of one or more subsections of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason, including but not limited to suspension or revocation of license, or voluntary discontinuance for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first lawfully established and continually operating at a particular location is the conforming use and the later established business is nonconforming.

(g) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant of a renewal of the sexually oriented business license, of a use listed in subsection (b) within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

(h) Exemption from location restrictions.

(1) If the chief of police denies the issuance of a license to an applicant because the location of the sexually oriented business is in violation of any section of this ordinance, then the applicant may, not later than ten calendar days after receiving notice of the denial, file with the city administrator a written request for an exemption of the locational restrictions of this ordinance.

(2) If the written request is filed with the city administrator within the ten calendar day limit, the city council shall consider the request. The city administrator shall set a

date for the hearing within sixty 60 days from the date the written request is received, unless both parties agree to a certain date beyond the 60 days.

(3) A hearing by the council may proceed if a quorum of the council members is present. The council shall hear and consider evidence offered by any interested person. The normal rules of evidence do not apply.

(4) The council may, in its discretion, grant an exemption from the locational restrictions of this ordinance if it makes the following findings:

(A) That the location of the sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;

(B) That the location of the sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;

(C) That the location of the sexually oriented business in the area will neither be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and

(D) That all other applicable provisions of this ordinance will be observed.

(5) In making the findings specified in subsection (4), the council may take into account among other things:

(A) Crime statistics and forecasts of the location and its 1,000-foot radius maintained by the appropriate law enforcement agency;

(B) Assessed property values for the location and properties within the surrounding 1,000-foot radius, taking into account any decline or increase in property values or rates of decrease or increase in property values in relation to otherwise comparable properties;

(C) Sales, leases, and vacancy rates of all property types within the surrounding 1,000-foot radius in relation to otherwise comparable properties; and

(D) Any evidence regarding the award or denial of any public or private grants for neighborhood conservation, urban renewal or restoration for any property located within the surrounding 1,000-foot radius.

(6) The city council shall grant or deny the exemption by a majority vote of a quorum of the city council, no later than ten days after the hearing. The failure to grant or deny the exemption no later than ten days after the hearing and/or the failure

to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the council is final.

(7) If the council grants the exemption, the exemption is valid for one year from the date of the council's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of this ordinance until the applicant applies for and receives another exemption pursuant to this subsection. If the applicant applies for another exemption within ten days following the expiration of the exemption, the city administrator shall set a date for a hearing as set out in this subsection. If a timely request is so filed, the existing license is deemed not to have expired until the decision of the council on such request.

(8) If the council denies the exemption, the applicant may not reapply for an exemption until at least 12 months have elapsed since the date of the council's action.

(9) The grant of an exemption does not exempt the applicant from any other provisions of this ordinance other than the locational restrictions.

#### **Sec. 6 Amendment of ordinance**

Locational requirements of this ordinance may be amended only after compliance with the procedure required to amend the zoning code or any applicable zoning ordinance. Other sections of this ordinance may be amended by vote of the city council.

#### **Sec. 7 Suit for injunction**

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of locational requirements of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations.

#### **Sec. 8 Penalty**

(a) Any person, firm, corporation, agent or employee who violates any of the provisions of this ordinance shall be guilty of a misdemeanor.

(b) Each day that a violation is permitted to exist shall constitute a separate offense.

(c) A fine or penalty for the violation of any provision of this ordinance shall not exceed five hundred dollars (\$500). However, a fine or penalty for the violation of a rule or regulation that governs public health and safety may not exceed two thousand dollars (\$2,000).

(d) The refusal to issue a permit based on ineligibility shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the refusal to issue a permit based on ineligibility.



(d) The revocation or suspension of a permit shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.

(f) Except where otherwise specified, a culpable mental state is not required for the commission of an offense under this ordinance.

**Secs. 9–30 Reserved**

**Division 2. Licensing**

**Sec. 31 License required**

(a) A person commits an offense if the person operates or causes to operate a sexually oriented business without a valid license, issued by the city for the particular classification of sexually oriented business. A separate license is required for each sexually oriented business. A sexually oriented business license shall be issued only for the one sexually oriented business use listed on the application. Any change in the type of sexually oriented business use shall invalidate the sexually oriented business license and require the licensee to obtain a new license for the change in use. The establishment or maintenance of more than one sexually oriented business in the same building, structure or portion thereof is prohibited.

(b) Any person, association, firm, partnership or corporation desiring to obtain a sexually oriented business license shall make application on a form provided by the chief of police. The completed application for a sexually oriented business shall contain the following information and be accompanied by the following documents:

(1) If the applicant is:

(A) An individual, the individual shall state such person's legal name and any aliases and submit proof that such person is at least 18 years of age;

(B) A partnership, the partnership shall state its complete name; the date of its formation; evidence that the partnership is in good standing under the laws of the state, and if not a Texas partnership, its state of formation; the names and capacity of all partners and officers; whether the partnership is general, limited or otherwise; a copy of the partnership agreement or certificate of partnership, if any; and the official name and address to be used for process of service on the partnership; and/or

(C) A corporation, limited liability company or other legal entity, the entity shall state its complete name; the date of its incorporation or formation; evidence that the entity is in good standing under the laws of the state of formation, and if not a Texas entity, the state of incorporation or formation; the names and capacity of all officers, directors and controlling stockholders or

owners; and the name of the registered agent and the address of the registered office for service of process.

(2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the applicant must:

(A) State the sexually oriented business's fictitious name or business owner's fictitious name; and

(B) Submit the required registration and assumed name documents.

(3) Whether the applicant, or a person residing with the applicant, has been convicted of a criminal activity listed under Section 32 of this ordinance, and, if so, the criminal activity involved, the date, place, and jurisdiction of each conviction, and the date of release from confinement, if applicable.

(4) Whether the applicant, or a person residing with the applicant, has had a previous license under this ordinance or other similar sexually oriented business provisions from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder or owner of a corporation or other legal entity that is licensed under this ordinance whose license has been previously denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, and the date of denial, suspension or revocation.

(5) Whether the applicant or a person residing with the applicant holds any other licenses under this ordinance or other similar sexually oriented business regulations from another city or county and, if so, the names and locations of such other licensed businesses.

(6) The classification of the sexually oriented business for which the applicant is seeking the license. A sexually oriented business may only have one classification to be eligible for a license.

(7) The location of the proposed sexually oriented business, including a legal description of the property, street address, telephone number, if any, and the dates a sign stating the intent to locate a sexually oriented business was posted as required by this ordinance.

(8) The applicant's mailing address and residence or physical address.

(9) For each applicant, a copy of the valid state driver's license with photo, or a valid state identification card with photo. The originals of the required forms of

identification shall be presented to the chief of police for inspection prior to the issuance of a license.

(10) The applicant's driver's license number and state of issuance.

(11) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram shall also depict the total floor space devoted to the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification as it relates to the total floor space occupied by the business, if applicable. The sketch or diagram shall also depict the manager's station and any proposed stage or performance areas, if applicable. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6").

(12) A current straight-line drawing prepared and certified within 30 days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the property where the proposed sexually oriented business will be located and the property lines or boundaries of the uses and locations described in Section 5(b) and (c) within 1,000 feet of the property where the proposed sexually oriented business will be located.

(13) By submitting an application for a sexually oriented business license, the applicant agrees that it shall provide access to its inventory records for the business. These records shall be made available to the city pursuant to Section 34 of this ordinance.

(c) The applicant must be qualified according to the provisions of this ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the city to determine whether the applicant meets the qualifications in this ordinance. Each applicant shall request from the Federal Bureau of Investigations (FBI) an Identity History Summary available at <https://www.edo.cjis.gov> or another similar background check from other appropriate state and federal agencies. The applicant shall pay all fees and costs associated with such request for criminal history.

(d) An individual person who wishes to operate a sexually oriented business must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 31, and each applicant shall be considered a licensee if a license is granted.

(e) The fact that a person possesses other types of state or city permits does not exempt that person from the requirement of obtaining a license for a sexually oriented business.

(f) All applications for a license under this ordinance shall be accompanied by a nonrefundable application fee in the amount as established in the adopted fee schedule of the City. An application shall not be considered to have been received as administratively complete until the fee is paid and all information required by the application form has been submitted. The application fee shall not be prorated in the event an application is tendered before or during the licensing period. The application for a sexually oriented business license shall be approved or denied within the time frame, and in the manner, established by Section 32 of this ordinance. Such application for a sexually oriented business license shall be deemed denied if not approved or denied within such time period.

(g) Upon approval of a sexually oriented business license, an applicant for a sexually oriented business license must obtain a certificate of occupancy for a sexually oriented business from the building official. The building official shall issue or deny a certificate of occupancy to a sexually oriented business not more than 45 business days subsequent to the date of the applicant's submission of a completed and correct, including all required documentation, application for a certificate of occupancy to the city's building inspection department. Such application for a certificate of occupancy shall be deemed denied if not approved or denied within such time period.

(h) Upon approval of a sexually oriented business license, if an applicant for a sexually oriented business requires a building permit under applicable city ordinances, the building official shall cause all building, fire, health and other necessary permits to be issued within 30 business days subsequent to the date of the applicant's submission of a completed and correct application for a building permit, including all required documentation, [upon] application for said permit to the city's building inspection department. Upon receipt of administratively complete applications(s), the building official shall cause all necessary inspections to occur within three business days of the applicant's request for an inspection made to the building official. Such application(s) shall be deemed denied if not approved or denied within such time period. The applicant must specify on the face of its application that the proposed use is for a sexually oriented business and give the name and address of the applicant's contact for all communications and notices.

(i) Notwithstanding any other ordinance, an applicant for a sexually oriented business may appeal any decision of the building official by appealing to the zoning board of adjustment within 30 calendar days after receipt of a notice of decision or the expiration of the deadlines set forth in subsection (g) or (h) above. The applicant may appeal any decision of the zoning board of adjustment to the appropriate county court of record within ten calendar days of that decision. The filing of such suit will not have the effect of staying denial of such building permit or certificate of occupancy pending a judicial determination.

### **Sec. 32 License issuance and grounds for denial**

(a) The chief of police shall approve the issuance of a license to an applicant within 30 days after receipt of an application, unless the chief of police finds one or more of the following to be true:

(1) The location of the sexually oriented business is or would be in violation of Section 5 of this ordinance.

(2) The applicant failed to supply all of the information requested on the application.

(3) The applicant gave false, fraudulent or untruthful information on the application.

(4) An applicant is under 18 years of age.

(5) An applicant or an applicant's spouse is overdue in payment to the secretary of state or the city of taxes, fees, fines or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.

(6) An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation or community supervision for a violation of a provision of this ordinance, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(7) The license fee required by the ordinance has not been paid.

(8) The applicant has not demonstrated that the owner of the sexually oriented business owns or holds a lease for the property or the applicable portion thereof upon which the sexually oriented business will be situated or has a legally enforceable right to acquire the same.

(9) An applicant or the proposed establishment in violation of or is not in compliance with Section 34 or Section 41, 102(h), 107(a)(1), 107(a)(5), 108(a)(1) and 108(a)(5), as applicable.

(10) An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation, or community supervision for:

(A) Any offense under the laws of the United States of America, another state or the Uniform Code of Military Justice for an offense described in this subsection (a)(10); or

(B) Any of the below offenses of the state or criminal attempt, conspiracy, or solicitation to commit same:

(i) Any of the following offenses as described in Texas Penal Code Ch. 43:

a. Prostitution;

- b. Promotion of prostitution;
  - c. Aggravated promotion of prostitution;
  - d. Compelling prostitution;
  - e. Obscenity;
  - f. Sale, distribution or display of harmful material to a minor;
  - g. Sexual performance by a child;
  - h. Possession or promotion of child pornography;
- (ii) Any of the following offenses as described in Penal Code Ch. 21:
- a. Public lewdness;
  - b. Indecent exposure;
  - c. Indecency with a child;
- (iii) Sexual assault or aggravated sexual assault as described in Texas Penal Code Ch. 22;
- (iv) Incest, solicitation of a child or harboring a runaway child as described in Penal Code Ch. 25; or
- (v) Those crimes defined as “drug-defined offenses” or “drug-related offenses” by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Penal Code sec. 12.04;

(C) For which (regarding subsections (a)(10)(A) and (B) of this section):

- (i) Less than two years have elapsed since the date of conviction, or the date of release from the terms of community supervision, probation, parole or deferred disposition or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense;
- (ii) Less than five years have elapsed since the date of conviction, or the date of release from the terms of community supervision, probation, parole or deferred disposition or the date of release from confinement for the conviction, whichever is the later date, if the conviction is a felony offense; or

(iii) Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(11) The applicant or the applicant's spouse is required to register as a sex offender under the provisions of chapter 62 of the Texas Code of Criminal Procedure.

(12) The applicant failed to comply with any of the requirements of Local Government Code Sec. 243.0075 regarding the posting of an outdoor sign.

(b) An applicant, or applicant's spouse, who has been convicted of or placed on deferred disposition, probation or community supervision for an offense listed in subsection (a)(10) of this section may qualify for a sexually oriented business license only when the time period required by subsection (a)(10)(C) of this section has elapsed.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the sexually oriented business.

(d) The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business, so that it is visible to the public at all times and may be easily read.

### **Sec. 33 Annual license fee**

(a) The annual fee for a sexually oriented business license shall be in an amount as established in the city's adopted fee schedule, as amended.

(b) The fact that a person possesses other types of state or city permits does not exempt that person from the requirement of obtaining a license for a sexually oriented business.

### **Sec. 34 Inspection of premises and maintenance of records**

(a) A licensee, owner, operator or employee of a sexually oriented business shall be subject to regulation under this ordinance and shall permit representatives of the police department, health department, fire department, building inspections department and code enforcement department to inspect all portions of the premises where customers are allowed and the records required to be maintained under this ordinance by the sexually oriented business for the purpose of ensuring compliance with this ordinance at any time it is occupied or open for business.

(b) A licensee, owner or operator of a sexually oriented business commits an offense if the establishment operates without maintaining a current list of all employees of the sexually oriented business, along with a complete updated employment application for each employee. A legible copy of a valid driver's license, state identification card, or passport, with a photograph, together with an original photograph accurately depicting the employee as the employee appears

at the time the employee is hired, shall be required and maintained on the premises with the employee application.

(c) A licensee, owner, operator or employee of a sexually oriented business commits an offense if a licensee, owner, operator or employee refuses to permit a lawful inspection of the records and premises by a representative of the police department, health department, fire department, building inspections department and code enforcement department at any time the sexually oriented business is occupied or open for business.

(d) The licensee, owner or operator of a sexually oriented business shall maintain all records required to be maintained under the provisions of this ordinance on the licensed premises.

(e) The licensee, owner or operator of a sexually oriented business commits an offense if the licensee, owner or operator does not maintain the required records on the premises of the establishment.

(f) A licensee, owner, operator or employee of a sexually oriented business shall permit representatives of the police department, health department, fire department, building inspections department and code enforcement department to take photographs of the licensee, owner, operator or employees of the sexually oriented business for the purpose of ensuring compliance with this ordinance at any time it is occupied or open for business.

(g) A licensee, owner, operator or employee of a sexually oriented business commits an offense if the licensee, owner, operator or employee does not permit representatives of the police department, health department, fire department, building inspections department and code enforcement department to take photographs of the licensee, owner, operator or employee of the sexually oriented business at any time it is occupied or open for business.

(h) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

### **Sec. 35 Expiration and renewal of license**

(a) Each license shall expire one year after the date of issuance.

(b) Renewal of a license may be applied for by submission to the chief of police of an application on the form prescribed by such official and payment of a nonrefundable renewal processing fee in such amount as established by the city's annual fee ordinance.

(c) Application for renewal shall be made at least 30 days before the expiration date of the current license, and when made less than 30 days before the expiration date, the license will still expire on its expiration date. The grounds for denial of a renewal license shall be the same as for an original license as provided in Section 32 of this ordinance. When the city denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the city finds that the basis for denial of the renewal license has been corrected or abated, the applicant may resubmit a complete and correct renewal application and



the applicant may be granted a license within 30 days as provided in Section 32 of this ordinance.

### **Sec. 36    Grounds for suspension of license**

(a)    Subject to subsection (b) of this section, the chief of police shall suspend a sexually oriented business license if the chief of police determines that a licensee, owner, operator or employee of a sexually oriented business (or any combination thereof) has:

(1)    On five or more occasions within any 12-month period of time been cited for a violation of Sections 141, 142 and 143 or any of the provisions of Division 3 or 4 of this ordinance, and been convicted or placed on deferred disposition or probation for the violation(s);

(2)    On five or more occasions within any 12-month period of time been cited for a violation of Section 34 of this ordinance, and been convicted or placed on deferred disposition or probation for the violation(s); or

(3)    Been cited for any combination of offenses under subsection (1) or (2) above that total five within any 12-month period of time, and been convicted or placed on deferred disposition or probation for the violation(s).

(b)    A period of suspension will begin the first day after the decision of the chief of police has been made. If appeal is taken under Section 40, the period of suspension begins the day after all appeals are final.

(c)    Each day in which a violation is permitted to continue shall constitute a separate violation for purposes of suspension.

### **Sec. 37    Grounds for revocation of license**

(a)    The chief of police may revoke a sexually oriented business license:

(1)    If a cause of suspension in Section 36 occurs and the license has been ordered suspended by the chief of police for a 30-day period pursuant to Section 39(b)(4) within the preceding year;

(2)    If the chief of police determines that, on two or more occasions within any five-year time period, a licensee, owner, operator or employee (or any combination thereof) has/have been convicted of or placed on deferred disposition, probation or community supervision for conduct occurring on the premises of a sexually oriented business that constitutes any of the offenses of the state or criminal attempt, conspiracy, or solicitation to commit same for the following offenses (except the chief of police may, if he determines that the criminal offense of sexual performance of a child has occurred on a single occasion, revoke the sexually oriented business license):

(A) Any offenses as described in Texas Penal Code Ch. 43 including:

- (i) Prostitution;
- (ii) Promotion of prostitution;
- (iii) Aggravated promotion of prostitution;
- (iv) Compelling prostitution;
- (v) Obscenity;
- (vi) Sale, distribution or display of harmful material to a minor;
- (vii) Sexual performance by a child;
- (viii) Possession or promotion of child pornography;

(B) Any of the following offenses as described in Penal Code Ch. 21:

- (i) Public lewdness;
- (ii) Indecent exposure;
- (iii) Indecency with a child;

(C) Sexual assault or aggravated sexual assault as described in Texas Penal Code Ch. 22;

(D) Incest, solicitation of a child or harboring a runaway child and other offenses contained in Texas Penal Code Ch. 25; or

(E) Those crimes defined as “drug-defined offenses” or “drug-related offenses” by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Texas Penal Code Sec. 12.04;

(3) If a licensee, owner or operator gave false or misleading information in the material submitted to the chief of police during the application process;

(4) If a licensee, owner or operator has knowingly allowed possession, use or sale of a controlled substance on the premises;

(5) If a licensee, owner or operator has on two (2) or more occasions knowingly allowed prostitution on the premises;

- (6) If a licensee, owner or operator knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
  - (7) If a licensee, owner or operator has, on one or more occasions, knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Texas Penal Code Sec. 21.01;
  - (8) If a licensee is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes or sales taxes related to the sexually oriented business;
  - (9) If the licensee is required to register as a sex offender under the provisions of Texas Criminal Procedure Code Ch. 62;
  - (10) If a license is transferred in violation of Section 41(a).
- (b) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (c) Subsection (a)(7) of this section does not apply to adult motels as a ground for revoking the license, unless the licensee, owner, operator or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in a public place or within public view.

### **Sec. 38 Denial, suspension and revocation procedures**

- (a) A denial, suspension, or revocation is an administrative procedure. In any hearing relating to such actions under this section, the burden of proof shall be on the city (except for affirmative defenses), and shall be by a preponderance of the evidence.
- (b) If the chief of police is authorized to deny the issuance of a license, or suspend or revoke a license, the chief of police shall give written notice to the applicant or licensee of his intent to implement denial, suspension, or revocation procedures. The notice shall state:
- (1) The reason for such denial, suspension, or revocation.
  - (2) The provisions of the code which have been violated.
  - (3) The person or office with which any request for a contested case hearing must be filed and the address at which any such request must be filed.
- (c) The notice shall provide that the denial of issuance, suspension or revocation shall take effect at the expiration of the tenth calendar day after notification. The applicant or licensee shall have ten calendar days from the date notice is received to request a hearing on the denial, suspension or revocation as provided in Section 40(a) of this ordinance.

(d) A written request for a hearing from the applicant, permit holder, or licensee received by the chief of police before the expiration of the tenth (10th) calendar day does not stay the denial, suspension or revocation of the license pending a hearing before the hearing officer.

(e) In making a determination as to the denial of a license, the chief of police shall consider whether the applicant has established the applicant's entitlement to a license under the requirements imposed by Section 32 of this ordinance and/or whether the city has established a disqualifying factor under the requirements imposed by Section 32 of this ordinance.

(f) In making a determination of the suspension of a license under Section 36 of this ordinance, the chief of police shall consider:

(1) Whether the required number of citations under Section 36(a)(1), (2), or (3) were issued to the licensee, owner, operator, or employee of the licensee within a 12-month period of time; and

(2) Whether the licensee, owner, operator or employee of the licensee was convicted or placed on deferred disposition or probation for the citations.

(g) In making a determination of the revocation of a license under Section 37(a)(1) of this ordinance, the chief of police shall consider:

(1) Whether the required number of citations under Section 36(a)(1), (2), or (3) were issued to the licensee, owner, operator or employee of the licensee within a 12-month period of time;

(2) Whether the licensee, owner, operator or employee of the licensee was convicted or placed on deferred disposition or probation for the citations; and

(3) Whether the license at issue has been ordered suspended for a 30-day period of time pursuant to Section 39(b)(4) of this ordinance within the preceding 12-month period of time.

(h) In making a determination of the revocation of a license under Section 37 of this ordinance, the chief of police shall consider whether the evidence shows that the specified convictions, events or actions occurred as set forth in those sections of this ordinance.

### **Sec. 39 Period of suspension or revocation**

(a) The revocation of a license as provided for in Section 37 of this ordinance shall be for a period of 12 months.

(b) The suspension of a license as provided for in Section 36 of this ordinance shall be as follows:

(1) The first suspension of a license shall be for a period of three calendar days. When the chief of police is authorized to suspend a license for three calendar days, he shall notify the licensee in the notice of decision of the licensee's opportunity to pay a reinstatement fee in the amount established in the fee schedule adopted by the city in lieu of the suspension. Payment of this administrative fee shall be considered, for the purposes of this subsection, the first suspension and an administrative admission of the violations. However, this shall not be used as an admission of guilt in a criminal prosecution under this ordinance. If the licensee does not pay the reinstatement fee before the expiration of the thirtieth (30th) calendar day after notification, the licensee loses the opportunity to pay for it.

(2) The second suspension of a license shall be for a period of seven calendar days.

(3) The third suspension of a license shall be for a period of 15 calendar days.

(4) The fourth suspension of a license shall be for a period of 30 calendar days. Except where grounds for revocation of a license exist under Section 37(a)(1), each subsequent suspension of a license shall be for a period of 30 calendar days.

#### **Sec. 40 Administrative hearings and appeals**

(a) An applicant, permit holder or licensee shall have ten (10) calendar days from the date notice is received to request a hearing on the denial, suspension or revocation; if a hearing on the denial, suspension or revocation is not timely requested, the denial, suspension or revocation becomes final. The request shall be in writing and delivered to applicant or licensee via personal delivery, or via U.S. Postal Service, certified mail, return receipt requested. If filed by mail, the request shall be considered timely filed if the green return receipt card shows the item was properly addressed and received by the applicant, permit holder or licensee on or before the tenth calendar day from the date the applicant, permit holder or licensee received notice of intention to deny/revoke/suspend. Upon receipt of the request for hearing, a hearing before the hearing officer shall be scheduled to take place within thirty (30) calendar days unless both parties agree to a certain date beyond the thirty (30) days. The hearing officer shall consider only the testimony and evidence admitted for consideration at the hearing. The hearing officer shall have five business days from the date of the hearing to notify the applicant or licensee of the decision.

(1) Standing. Only the chief of police and the licensee, permit holder, or applicant shall have standing in an administrative revocation, suspension, or denial proceeding.

(2) Representation by counsel. Each party is entitled to:

(A) The assistance of counsel, at the party's expense, before the hearing officer; or

(B) Expressly waive the right to assistance of counsel in writing or on the record before the hearing officer.

(3) Status of license/permit during hearing. While a case is pending, and prior to the final decision of the hearing officer regarding denial, revocation or suspension, a license or permit is neither valid nor effective.

(4) Additional rules. The following additional rules shall apply to any hearing pursuant to this ordinance:

(A) The city attorney, or his designated representative shall represent the chief of police.

(B) Except upon express written agreement of all parties to the hearing, or upon showing of good cause for a period not to exceed twenty (20) days, a hearing will not be continued.

(C) Ex parte communications in connection with any issue of fact or law between any party and the hearing officer are strictly prohibited, except on notice and opportunity for each party to participate.

(D) A party may request a court reporter to transcribe the hearing. The party requesting a transcript of the hearing shall bear the cost for production of the transcript.

(5) Record. The hearing record shall include the following:

(A) A file stamped copy of notice of intention to deny/revoke/suspend the license/permit;

(B) The request for a hearing and any written response to the notice of intention to deny/revoke/suspend the license or permit;

(C) A statement of matters officially noticed;

(D) Each decision, opinion, or report prepared by the hearing officer at the hearing;

(E) All documents, data, and other evidence submitted to or considered by the hearing officer used in making his or her decision; and

(F) The record shall be filed with the city administrator.

(6) Decision of hearing officer.

(A) If a request for a hearing has been timely filed, the hearing officer shall conduct a de novo hearing and shall make one of the following findings:

(i) If the hearing is one for which the permit or license is subject to suspension, the hearing officer shall determine that the alleged offense occurred, and determine the severity of the offense, and shall either order a suspension pursuant to the time periods in Section 39, or deny the suspension.

(ii) If the hearing officer finds that any of the conditions set forth in this ordinance exist that would make the permit or license subject to revocation, the hearing officer shall, on the basis of the severity of the offense, either revoke the permit or license, or order a suspension pursuant to Section 39.

(iii) If the hearing officer finds that any of conditions set forth in this ordinance exist that would be grounds for denial of the license and/or permit, the hearing officer shall deny the permit or license pursuant to Section 32.

(B) If the hearing officer does not make the requisite findings, then the decision of the police chief shall be affirmed.

(7) Notice of denial/revocation/suspension.

(A) A final decision or order by the hearing officer shall be issued in writing, and shall:

(i) Be provided to all parties via personal delivery or via United States Postal Service, certified mail, return receipt requested; and

(ii) Be considered timely if:

a. For personal delivery, a party receives the notice not later than three business days from the date on which the decision is rendered; or

b. For postal delivery, the decision or order is postmarked not later than three business days from the date on which the decision is rendered.

(B) The decision by the hearing officer is effective 30 calendar days after the applicant or licensee is notified of the decision, unless a reinstatement fee under Section 39(b)(1) of this ordinance is paid (if applicable), or an appeal is made to district court.

(C) Any act authorized by license or permit shall be unauthorized and in violation of this ordinance upon and after the effective date of any suspension of the permit or license until the suspension expires.

(D) Any act authorized by a permit shall be unauthorized and in violation of this ordinance upon and after the effective date of any revocation of the permit unless and until a new permit, if any, is applied for and granted pursuant to the terms of this ordinance. If a permit has been revoked because of crimes or activities occurring on the premises of a sexually oriented business, the owner/operator of the sexually oriented business is disqualified from receiving or holding any license or permit under this ordinance for a period of one calendar year from the effective date of the revocation.

(E) If a permit is suspended or revoked because of crimes or activities occurring on the premises of a sexually oriented business, each and every individual, person, or association which is an owner/operator of a sexually oriented business at the time of any suspension or revocation of the sexually oriented business for that establishment shall be considered to have had a permit suspended or revoked as if they held the permit or license in their own name for purposes of determining whether they are qualified to participate in another permit application under this ordinance. If a permit is suspended or revoked because of crimes or activities of one or more permit holders which did not occur on the licensed premises, then only those individuals shall be considered to have had a permit suspended or revoked for purposes of determining whether they are eligible to participate in another permit application.

(b) (1) Upon receipt of written notice of the denial, suspension or revocation of a license or permit, the applicant whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal by filing suit in the appropriate district court within thirty (30) calendar days after the receipt of notice of the decision of the hearing officer, as applicable. The filing of such suit shall not have the effect of staying denial, suspension or revocation for the sexually oriented business license under this ordinance.

(2) If the hearing officer renders a decision adverse to the chief of police, then the chief of police shall have thirty (30) calendar days from which the notice of denial/revocation/suspension is issued in which to file suit in the appropriate district court.

(3) Failure to file suit shall waive and shall bar any appeal or cause of action if suit is not filed within thirty (30) calendar days.

#### **Sec. 41 Transfer of license; forging or altering license**

(a) A person commits an offense if the person transfers a license or permit to another person or operates a sexually oriented business under the authority of a license at any place other than the address designated on the license. A transfer of a license is deemed to have occurred if there is a transfer of more than fifty percent (50%) of the ownership or control of a sexually oriented business.



- (b) A person commits an offense if the person counterfeits, forges, changes, defaces or alters a license.

**Secs. 42–70 Reserved**

**Division 3. Employees, Conduct and Operations**

**Sec. 71 Provisions cumulative**

The provisions of this ordinance are expressly made cumulative of other applicable laws including, without limitation, to the entire ordinance.

**Sec. 72 Permit required**

- (a) It shall be unlawful for any person who does not hold a manager's permit or temporary manager's permit or to act as a manager of or in a sexually oriented business.
- (b) It shall be unlawful for any person who does not hold an entertainer's permit or temporary entertainer's permit to act as an entertainer in a sexually oriented business.
- (c) It shall be the duty of a licensee, operator and owner(s) of each sexually oriented business to ensure that no person acts as an entertainer or manager of or in the sexually oriented business unless that person holds a permit or temporary permit.

**Sec. 73 Issuance of permits**

- (a) Any person who desires to obtain an original or renewal permit shall make application to the chief of police or his designee in person at the police department between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, city-observed holidays excepted. The application shall be made under oath upon a form prescribed by the chief of police and shall include:
- (1) The name, home street address and mailing address (if different) of the applicant;
  - (2) Proof of the date of birth of the applicant and the identity of the applicant, including at least one photographic identity card issued by a governmental agency; and
  - (3) A list of any criminal charges pending, convictions, and time of service in jail or prison as related to any applicable offense that is specified in Section 32 of this ordinance.
- (b) Each application shall be accompanied by a nonrefundable processing fee established by the fee schedule adopted by the city. Each applicant shall be required to obtain from the FBI or state department of public safety a copy of their Identity History Summary or similar criminal history report, and surrender it to the police department upon making application.

(c) The chief of police shall issue the permit within three (3) business days from the date of filing of the application unless he finds that the applicant has been convicted of or spent time in jail or prison for an offense specified in Section 32 of this ordinance within the time specified therein. If the application is not granted, then the applicant shall be mailed notice of the grounds and of their right to provide evidence and request a hearing as provided by Section 40 of this ordinance, within ten (10) calendar days from the date of filing of the application.

(d) Each permit issued by the chief of police shall consist of two photographic identification cards, a personal card and an on-site card.

(e) Any applicant whose application is denied and who requests a hearing on the denial shall be granted a hearing within thirty (30) calendar days following the receipt of the request by the chief of police. The hearing shall be conducted as provided in Section 40 of this ordinance.

(f) In the event that the chief of police fails to issue or deny a permit application within the time specified in subsection (c) or to provide a hearing within the time specified in subsection (e), then the applicant shall, upon written request, be immediately issued a temporary permit which shall be valid until the third day after the applicant is given notice of the decision of the chief of police or the hearing officer.

(g) If any personal card or on-site card is lost or stolen, the holder thereof shall immediately notify the police department and request a replacement, which shall be issued for a fee as established by the fee schedule adopted by the city within three (3) days following verification of the identity of the holder.

(h) No permit application shall be accepted nor shall a permit be issued to any person who does not provide proof that he is at least 18 years old. Any permit issued by virtue of any misrepresentation or error to any person under age 18 shall be void, and the holder of such permit shall be subject to criminal prosecution.

(i) A temporary manager's permit or temporary entertainer's permit shall be issued within 24 hours of the application when:

(1) The application has been completed and submitted to the police department;

(2) The applicant supplies a copy of a valid and lawful photographic identification card that was issued to the individual by a governmental authority of the United States of America or any state, possession, commonwealth, or territory thereof;

(3) A preliminary investigation indicates that the applicant is otherwise qualified under this ordinance for the issuance of a temporary permit; and

(4) The applicant has not applied for or been granted a temporary permit in the year preceding the application.

#### **Sec. 74 Term of permit; transfer; amendment**

- (a) A permit is valid for one (1) year from the date of its issuance.
- (b) A temporary entertainer's permit or temporary manager's permit shall be valid for thirty (30) calendar days.
- (c) A permit is personal to the named permit holder and is not valid for use by any other person.
- (d) Each permit holder shall notify the police department of his new address within ten (10) days following any change of address.
- (e) Permits shall be portable from location to location, so long as each such location is a validly licensed sexually oriented business.

#### **Sec. 75 Display of permit**

- (a) Each manager or entertainer shall conspicuously display his personal card upon his person at all times while acting as an entertainer or manager of or in a sexually oriented business.
- (b) Each manager or entertainer shall provide his on-site card to the manager or on-site manager in charge of the sexually oriented business to hold while the manager or entertainer is on the premises.
- (c) In any prosecution under this section, it shall be presumed that the actor did not have a permit unless the permit was on display as required under subsection (a) of this section.

#### **Sec. 76 Revocation of permit**

In the event that the chief of police has reasonable grounds to believe that any permit holder has been convicted of or has spent time in jail or prison for any offense as specified in the applicable provision of Section 32 of this ordinance within the time specified therein, then the chief of police may revoke the permit following a notice of the grounds pursuant to Section 38. The permit holder has a right to administrative hearing pursuant to Section 40. In the event that the hearing officer determines that the permit should be revoked, he or she shall then issue or render a decision pursuant to Section 40 following the mailing of notice of the decree to the permit holder in order to allow the permit holder an opportunity before the permit must be surrendered to seek an injunction or judicial review of the decision as authorized in Section 40 of this ordinance.

#### **Sec. 77 Nudity and semi-nudity prohibited; exceptions**

- (a) It shall be unlawful for an individual to intentionally or knowingly appear in a state of nudity or semi-nudity within fifty (50) feet of a public place or establishment that serves or permits the consumption of alcohol.

(b) It shall be unlawful for a person, individual, corporation, or association that manages or operates a sexually oriented business to intentionally or knowingly allow an individual to appear on the premises of said establishment in a state of nudity or semi-nudity.

(c) It shall be unlawful for an owner-operator of a sexually oriented business to intentionally or knowingly allow an individual to appear on the premises of said establishment in a state of nudity or semi-nudity.

(d) Exceptions. It is an exception to the application of this section that at the time of the state of nudity or semi-nudity the actor was:

(1) An individual, person, or in the case of subsections (b) or (c), an association, who manages, operates, or appears nude in a public place that is a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed massage therapist, or licensed barber engaged in performing functions authorized under the lawful license held;

(2) An individual, person, or in the case of subsections (b) or (c), an association, who owns, manages, operates, or appears nude in a public place that is a business operated by or employing a licensed physician or chiropractor engaged in practicing the healing arts; or

(3) An individual, person, or in the case of subsections (b) or (c), an association, who owns, manages, operates, or appears nude in a public place that is a business licensed as a tattoo studio or a body piercing studio and was engaged in practices authorized under the license.

#### **Sec. 78 Loitering; monitoring of parking lot**

(a) It shall be the duty of the operator of a sexually oriented business to:

(1) Ensure that at least two conspicuous signs, visible from a public right-of-way, stating that no loitering is permitted on the premises, are posted on the exterior of the structure;

(2) Designate one or more employees to monitor the parking lot of the premises by the use of video cameras and monitors, which shall operate and record continuously at all times that the premises are open for business. The monitors shall be installed within a manager's station, and the operator of a sexually oriented business shall preserve the recordings of the parking lot of the premises for a period of not less than one week before the recording may be erased. Recordings maintained under this section are subject to the inspection requirements set forth in Section 34.

(b) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right-of-way.

(c) It shall be unlawful for a person having a duty under this section to intentionally or knowingly fail to fulfill that duty.

**Secs. 79–100 Reserved**

**Division 4. Additional Regulations for Other Sexually Oriented Businesses**

**Sec. 101 Escort agencies**

(a) A person commits an offense if the person employs at an escort agency any person under the age of 18 years.

(b) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(c) An employee of an escort agency must attend training given by the licensee concerning the requirements of this ordinance as they pertain to escort agencies, including but not limited to Sections 8(a), 34, 36, 37, 105, 141, 142, 143 and 144, before the employee receives any compensation for the employee's services. The licensee shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services, and at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee, identifying the date on which the training was provided, and the specific topics discussed.

(d) A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises operations of the escort agency. At least one individual person so appointed shall be on the premises at any time the escort agency is open.

(e) An operator or an individual person appointed under subsection (d) above shall at all times have the duty to ensure that each employee in the escort agency has received the training required by subsection (c) above and each employee is instructed to commit no act which would constitute a violation of this ordinance or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this ordinance.

**Sec. 102 Nude model studios**

(a) A person commits an offense if the person employs at a nude model studio any person under the age of 18 years.

(b) A person who is not an employee commits an offense if the person intentionally or knowingly appears in a state of nudity or semi-nudity in or on the premises of a nude model studio.

(c) A person commits an offense if the person intentionally or knowingly appears in a state of nudity or semi-nudity or intentionally or knowingly allows another to appear in a state of nudity or semi-nudity in an area of the nude model studio premises which can be viewed from the public right-of-way.

(d) A person commits an offense if the person intentionally or knowingly places or permits a bed, sofa or mattress in any room on the premises of a nude model studio, except that a sofa may be placed in a reception room open to the public.

(e) A licensee, owner, operator or employee commits an offense if the person intentionally or knowingly permits any customer access to an area of the premises not visible from the manager's station by direct line of sight or not visible by a walk-through of the premises without entering a private, exclusive, closed, curtained, or otherwise screened area, excluding restrooms. The view required in this subsection shall be by direct line of sight. The view shall be deemed insufficient if clear visibility of such line of sight must be attained by utilizing flashlights or spotlights in addition to overhead house lighting.

(f) An employee of a nude model studio, while appearing in a state of nudity, commits an offense if the employee intentionally or knowingly touches a customer or the clothing of a customer.

(g) A customer at a nude model studio commits an offense if the customer intentionally or knowingly touches an employee or the clothing of an employee while the employee is appearing in a state of nudity.

(h) A licensee commits an offense if the licensee fails to display the signs on the interior of the nude model studio premises as required in Section 144(a) and/or the floor markings required in Section 144(b).

(i) An employee of a nude model studio commits an offense if that employee allows, asks, directs, or suggests that a customer disrobe to a state of nudity.

(j) An employee of a nude model studio must attend training given by the licensee concerning the requirements of this ordinance as they pertain to nude model studios, including but not limited to Sections 8(a), 34, 36, 37, 105, 141, 142, 143 and 144, before the employee receives any compensation for the employee's services. The licensee or operator shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services, and at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee, identifying the date on which the training was provided, and the specific topics discussed.

(k) A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the nude model studio. At least one individual person so appointed shall be on the premises at any time the nude model studio is open.

(l) An operator or an individual person appointed under subsection (k) above shall at all times have the duty to ensure that each employee in the nude model studio has received the training required by subsection (j) above and each employee is instructed to commit no act which would constitute a violation of this ordinance or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this ordinance.

### **Sec. 103 Adult theaters and adult motion picture theaters**

(a) A person commits an offense if the person employs at an adult theater or an adult motion picture theater any person under the age of 18 years.

(b) A person commits an offense if the person intentionally or knowingly appears in a state of nudity or semi-nudity in or on the premises of an adult theater or an adult motion picture theater.

(c) Adult theaters and adult motion picture theaters shall also comply with the requirements of Section 108 of this ordinance.

(d) An employee of an adult theater or adult motion picture theater must attend training given by the licensee concerning the requirements of this ordinance as they pertain to adult theaters or adult motion picture theaters, including but not limited to Sections 8(a), 34, 36, 37, 105, 141, 142, 143 and 144, before the employee receives any compensation for the person's services. The licensee shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services, and at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee, identifying the date on which the training was provided, and the specific topics discussed.

(e) A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the adult theater or adult motion picture theater. At least one person so appointed shall be on the premises at any time the adult theater or adult motion picture theater is open.

(f) An operator or a person appointed under subsection (e) above shall at all times have the duty to ensure that each employee in the adult theater or adult motion picture theater has received the training required by subsection (d) above and each employee is instructed to commit no act which would constitute a violation of this ordinance or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this ordinance.

### **Sec. 104 Adult motels**

(a) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

(b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented business license, he rents or subrents a sleeping room to a person and, within ten hours from the time the room is rented, he rents or subrents the same sleeping room again.

(c) For purposes of subsection (b), the term “rent” or “subrent” means the act of permitting a room to be occupied for any form of consideration.

#### **Sec. 105 Adult cabarets**

(a) A person commits an offense if the person employs at an adult cabaret any person under the age of 18 years.

(b) An employee of an adult cabaret, while appearing in a state of nudity or semi-nudity, commits an offense if the employee intentionally or knowingly touches a customer or the clothing of a customer.

(c) A customer at an adult cabaret commits an offense if the customer intentionally or knowingly touches an employee appearing in a state of nudity or semi-nudity or the clothing of an employee appearing in a state of nudity or semi-nudity.

(d) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly allows, in a sexually oriented business, any person to appear in a state of nudity or semi-nudity, unless the person is an employee who, while in a state of nudity or semi-nudity, is on a stage (on which no customer is present) at least 18 inches above the floor, and is: (i) at least six feet from any customer (hereinafter called “unenclosed performance stage”), or (ii) physically separated from customers by a wall or partition composed of solid glass or light-transmitting plastic, or substantially equivalent material, extending from the floor of the performance stage to at least five feet above the level of the performance stage, but such that there are not openings in the wall or partition that would permit physical contact between customers and such employee (hereinafter “enclosed performance stage”).

(e) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly permits any customer access to an area of the premises not visible from the manager’s station or not visible by a walk-through of the premises without entering a private, exclusive, closed, curtained, or otherwise screened area, excluding restrooms. The view required in this subsection shall be by direct line of sight. The view shall be deemed insufficient if clear visibility of such line of sight must be attained by utilizing flashlights or spotlights in addition to overhead house lighting.

(f) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly appears in or allows another to appear in a state of nudity or semi-nudity in an area of the adult cabaret business premises which can be viewed from the public right-of-way.



(g) A licensee, owner or operator commits an offense if the licensee, owner or operator fails to display the signs on the interior of the adult cabaret business premises as required in Section 144(a) and/or the floor markings required in Section 144(b).

(h) An employee of an adult cabaret must attend training provided by the licensee, owner or operator concerning the requirements of this ordinance as they pertain to adult cabarets, including but not limited to Sections 8(a), 34, 36, 37, 105, 141, 142, 143 and 144, before the employee receives any compensation for the person's services. The licensee, owner or operator shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services, and at least once a year thereafter. The licensee, owner or operator shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee, owner or operator, identifying the date on which the training was provided, and the specific topics discussed.

(i) A licensee shall designate and appoint one or more individuals to operate, manage, direct, and control the premises and operations of the adult cabaret. At least one person so appointed shall be on the premises at any time the adult cabaret is open.

(j) An operator or a person appointed under subsection (i) above shall at all times have the duty to ensure that each employee in the adult cabaret has received the training required by subsection (h) above and each employee is instructed to commit no act which would constitute a violation of this ordinance or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this ordinance.

#### **Sec. 106 Sexual encounter centers prohibited**

(a) Sexual encounter centers are prohibited. No license shall be issued for the operation of a sexual encounter center.

(b) A person commits an offense if the person owns, operates or causes to be operated a sexual encounter center. Any person in control or apparent control of the premises shall be presumed to be operating the sexual encounter center.

#### **Sec. 107 Adult bookstores, adult novelty stores and adult video stores**

(a) A person who operates or causes to be operated an adult bookstore, adult novelty store or adult video store shall comply with the following requirements:

(1) An application for a sexually oriented business license for an adult bookstore, adult novelty store or adult video store shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at

which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall 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 building official 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 the previously submitted diagram was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the building official.

(4) A licensee, owner or operator commits an offense if the licensee, owner or operator permits a manager's station to be unattended by an employee at any time a customer is present on, in or about the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any customer is permitted access for any purpose, excluding restrooms and fitting/dressing rooms (in stores that sell apparel). Restrooms and fitting/dressing rooms may not contain video reproduction equipment or any other equipment allowing for the viewing of film, videos, photographs or other video reproduction. Only one person shall be allowed in each restroom at any time, unless otherwise required by law. The operator shall insure that not more than one person is permitted to enter a restroom, unless otherwise required by law, and that no persons engage in any specified sexual activity in the restroom. If the premises have two 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 customer is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly permits a customer access to any area of the premises that is not visible from the manager's station for any purpose, excluding restrooms and fitting/dressing rooms.

(7) Each and every licensee, owner, operator and employee present on the premises shall ensure that the view area specified in subsection (a)(5) of this section remains unobstructed by any doors, curtains, partitions, walls, blinds, locks or other control-type devices, merchandise, display racks or other materials at all times that any customer is present on, in or about the premises, and that no customer is permitted access to any area of the premises which has been designated as an area in which

customers will not be permitted in the application filed pursuant to subsection (a)(1) of this section.

(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one footcandle as measured as the floor level.

(9) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly permits illumination of any area of the premises to which customers have access to be less than one footcandle as measured at the floor level.

(10) No viewing room or reading room or booth, or fitting/dressing room, may be occupied by more than one person at any time.

(11) No licensee, owner, operator or employee shall allow openings or holes of any kind to exist between adjacent or adjoining viewing rooms, reading rooms or booths, or fitting/dressing rooms.

(12) No person shall make or attempt to make an opening or hole of any kind between adjacent or adjoining viewing rooms, reading rooms or booths, or fitting/dressing rooms.

(13) The licensee, owner, operator or employee shall, during each business day, regularly inspect the walls of all viewing rooms, reading rooms or booths, or fitting/dressing rooms, to determine if any openings or holes exist.

(14) The walls of any viewing room or reading room or booth shall be no more than 48 inches tall. At least one wall of any such viewing room or reading room or booth shall be visible in a direct unobstructed line of sight from the manager's station. Each wall or door of any such viewing room or reading room or booth shall be constructed of clear transparent glass, plastic or substantially equivalent materials that allow an unobstructed view of the entire interior of the viewing room or reading room or booth.

(15) Live entertainment is prohibited in any viewing room or reading room or booth, as well as any other room adjacent to or visible from any viewing room or reading room or booth.

(16) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly allows a person to appear in a state of nudity or semi-nudity in, on or about the premises of an adult bookstore, adult novelty store or adult video store.

(17) A person commits an offense if the person intentionally or knowingly appears in a state of nudity or semi-nudity in or on the premises of an adult bookstore, adult novelty store or adult video store.

(18) It is a defense to prosecution under subsections (a)(16) and (17) of this section if the person was in a restroom or fitting/dressing room not open to public view or persons of the opposite sex.

(b) A person having a duty under subsections (a)(1) through (17) herein commits a misdemeanor if he or she knowingly fails to fulfill that duty.

(c) An employee of an adult bookstore, adult novelty store or adult video store must attend training provided by the licensee, owner or operator concerning the requirements of this ordinance as they pertain to such a business, including but not limited to Sections 8(a), 34, 36, 37, 105, 141, 142, 143 and 144, before the employee receives any compensation for the person's services. The licensee, owner or operator shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services, and at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee, owner or operator, identifying the date on which the training was provided, and the specific topics discussed.

(d) A licensee, owner or operator shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the adult bookstore, adult novelty store or adult video store. At least one person so appointed shall be on the premises at any time the adult bookstore, adult novelty store or adult video store is open.

(e) An operator or a person appointed under subsection (d) above shall at all times have the duty to ensure that each employee in the adult bookstore, adult novelty store or adult video store has received the training required by subsection (c) above and each employee is instructed to commit no act which would constitute a violation of this ordinance or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this ordinance.

## **Sec. 108 Exhibition of sexually explicit films, photographs, pictures or videos**

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room, a film, photograph, picture, videocassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) An application for a sexually oriented business license shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A

manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall 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 chief of police 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 the previously submitted diagram was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the chief of police.

(4) The licensee, owner or operator commits an offense if the licensee, owner or operator permits a manager's station to be unattended by an employee at any time a customer is present on, in or about the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any customer is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment or any other equipment allowing for the viewing of film, videos, photographs or other video reproductions. If the premises have two 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 customer is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) The licensee, owner or operator commits an offense if the licensee, owner or operator permits a customer access to any area of the premises that is not visible from the manager's station for any purpose, excluding restrooms.

(7) The licensee, owner, operator or employee present on the premises shall ensure that the view area specified in subsection (5) of this section remains unobstructed by any doors, curtains, partitions, walls, blinds, locks or other control-type devices, merchandise, display racks or other materials at all times that any customer is present on, in or about the premises, and that no customer is permitted access to any area of the premises which has been designated as an area in which customers will not be permitted in the application filed pursuant to subsection (a)(1) of this section.

(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one footcandle as measured as the floor level.

- (9) The licensee, owner or operator commits an offense if the licensee, owner or operator permits illumination of any area of the premises to which customers have access to be less than one footcandle as measured at the floor level.
- (10) No viewing room or booth of less than 150 square feet of floor space shall be occupied by more than one person at any time.
- (11) No licensee, owner or operator shall allow openings or holes of any kind to exist between adjacent or adjoining viewing rooms or booths.
- (12) No person shall make or attempt to make an opening or hole of any kind between adjacent or adjoining viewing rooms or booths.
- (13) The licensee, owner or operator shall, during each business day, regularly inspect the walls of all viewing rooms or booths to determine if any openings or holes exist.
- (14) In a viewing room or booth of less than 150 square feet of floor space, the walls shall be no more than 48 inches tall. At least one wall of any such viewing room or booth shall be visible in a direct unobstructed line of sight from the manager's station. Each wall or door of any such viewing room or booth shall be constructed of clear transparent glass, plastic or substantially equivalent materials that allow an unobstructed view of the entire interior of the viewing room or booth.
- (15) Live entertainment is prohibited in any viewing room or booth of less than 500 square feet of floor space, as well as any other room adjacent to or visible from any viewing room or booth.
- (16) The licensee, owner or operator commits an offense if the licensee, owner or operator intentionally or knowingly allows a person to appear in a state of nudity or semi-nudity in, on or about the premises of a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 500 square feet of floor space, a film, photograph, picture, videocassette or other video reproduction which depicts specified sexual activities or specified anatomical areas.
- (17) A person commits an offense if the person intentionally or knowingly appears in a state of nudity or semi-nudity in or on the premises of a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 500 square feet of floor space, a film, photograph, picture, videocassette or other video reproduction which depicts specified sexual activities or specified anatomical areas.
- (18) It is a defense to prosecution under subsections (a)(16) and (17) of this section if the person was in a restroom not open to public view or persons of the opposite sex.

(b) A person having a duty under subsections (a)(1) through (17) herein commits a misdemeanor if he or she knowingly fails to fulfill that duty.

(c) An employee of a sexually oriented business that exhibits sexually explicit films, photographs, pictures or videos must attend training given by the licensee concerning the requirements of this ordinance as they pertain to such a business, including but not limited to Sections 8(a), 34, 36, 37, 105, 141, 142, 143 and 144, before the employee receives any compensation for the person's services. The licensee, owner or operator shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services, and at least once a year thereafter. The licensee, owner or operator shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee, owner or operator, identifying the date on which the training was provided, and the specific topics discussed.

(d) A licensee, owner or operator shall designate and appoint one or more individuals to manage, operate, direct, and control the premises and operations of the sexually oriented business. At least one person so appointed shall be on the premises at any time the sexually oriented business as described in this section is open.

(e) An operator or a person appointed under subsection (d) above shall at all times have the duty to ensure that each employee in the sexually oriented business has received the training required by subsection (c) above and each employee is instructed to commit no act which would constitute a violation of this ordinance or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this ordinance.

## **Secs. 109–140 Reserved**

### **Sec. 41 Transfer of license; forging or altering license**

(a) A person commits an offense if the person transfers a license or permit to another person or operates a sexually oriented business under the authority of a license at any place other than the address designated on the license. A transfer of a license is deemed to have occurred if there is a transfer of more than fifty percent (50%) of the ownership or control of a sexually oriented business.

(b) A person commits an offense if the person counterfeits, forges, changes, defaces or alters a license.

### **Sec. 141 Hours of operation**

No sexually oriented business, except for an adult motel, may remain open at any time except between the hours of 12:00 p.m. (noon) and 9:00 p.m. on weekdays and Saturdays, and from 2:00 p.m. until 9:00 p.m. on Sundays.

### **Sec. 142 Prohibition against children in sexually oriented business**

A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally, knowingly, or recklessly allows a person under the age of 18 years on the premises of a sexually oriented business.

#### **Sec. 143 Employees in state of nudity or semi-nudity--Restrictions**

(a) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly allows, in a sexually oriented business, a person to appear in a state of nudity or semi-nudity, unless the person is an employee who, while in a state of nudity or semi-nudity, is on a stage (on which no customer is present) at least 18 inches above the floor, and is (i) at least six feet from any customer (hereinafter called "unenclosed performance stage"), or (ii) physically separated from customers by a wall or partition composed of solid glass or light-transmitting plastic, or substantially equivalent material, extending from the floor of the performance stage to at least five feet above the level of the performance stage, but such that there are not openings in the wall or partition that would permit physical contact between customers and such employee (hereinafter "enclosed performance stage").

(b) It is an offense for an employee, while in a state of nudity or semi-nudity in a sexually oriented business, to receive directly any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to any employee, while that employee is in a state of nudity or semi-nudity in a sexually oriented business. Such gratuity or pay may be provided to such employee through a tip receptacle, located more than six feet from the nearest point of the performance stage where such employee is in a state of nudity, or may be paid to an employee that is not in a state of nudity or semi-nudity, as part of the customer's bill.

(c) It is an offense if an employee, while in a state of nudity or semi-nudity, touches a customer or the clothing of a customer.

(d) It is an offense if a customer touches an employee appearing in a state of nudity or semi-nudity or clothing of the employee.

#### **Sec. 144 Same--Conspicuous signage and markings required**

(a) A licensee, owner or operator commits an offense if the licensee, owner or operator fails to display a sign on the interior of the sexually oriented business premises notifying customers and employees of the prohibition prescribed by Section 143(a), (b), (c) and (d). The sign must be prominently and continuously displayed where customers enter the premises, and immediately adjacent to each stage, and must state in letters at least two inches high:

TOUCHING OR TIPPING AN EMPLOYEE WHO IS IN A STATE OF NUDITY OR SEMI-NUDITY IS A CRIME (MISDEMEANOR), PUNISHABLE BY FINE UP TO \$2,000. PATRONS SHALL REMAIN AT LEAST SIX (6) FEET FROM ALL UNENCLOSED PERFORMANCE STAGES WHILE A PERSON IS PERFORMING ON SAID PERFORMANCE STAGE.



The chief of police may require, at the time of issuance or renewal of the license, the licensee, owner or operator to also display the sign in a language other than English if he determines that a substantial portion of the expected customers speak the other language as their familiar language. Upon notification, a licensee, owner or operator commits an offense if the sign does not contain the language in the required language, in addition to English.

(b) A licensee, owner or operator commits an offense if the licensee, owner or operator fails to prominently and continuously display a two inches wide glow-in-the-dark line on the floor of the sexually oriented business marking a distance of six feet from each unenclosed stage on which an employee in a state of nudity may appear in accordance with Section 143(a).

#### **Sec. 145 Alcoholic beverage sales and consumption prohibited**

(a) It shall be an offense for any person to maintain, own or operate a sexually oriented business on any premises on which alcoholic beverages are served or offered for sale for consumption.

(b) It shall be an offense for any person who maintains, owns or operates any commercial establishment where alcoholic beverages are served or offered for sale for consumption on the premises to permit any person to appear in a state of nudity or semi-nudity.

#### **Secs. 046–170 Reserved**

### **Division 6. Sign Requirements**

#### **Sec. 171 Sign requirements**

(a) Posting of sign on intent to locate sexually oriented businesses.

(1) The following requirements apply for posting a sign concerning intent to locate a sexually oriented business:

(A) An applicant for a sexually oriented business license for a location for which a sexually oriented business license has not previously been issued shall post an outdoor sign at the location in compliance with Texas Local Government Code Sec. 243.0075, as amended, not later than the sixtieth (60<sup>th</sup>) day before submitting the application for a sexually oriented business license.

(B) The sign shall comply with Texas Local Government Code Sec. 243.0075, as amended.

(i) The sign must be at least 24 by 36 inches in size;

(ii) All letters must be at least two inches in height and one and one-half inches in width for each letter on the sign;

(iii) The sign shall state that a sexually oriented business is intended to be located on the premises;

(iv) The sign shall provide the name and business address of the owner and operator;

(v) All required information must be presented in both English and Spanish;

(vi) All required information must read horizontally from left to right; and

(vii) The sign shall be prominently posted such that it is clearly legible from the public right-of-way.

(C) The operator of a proposed sexually oriented business shall notify the chief of police, by certified mail or hand delivery, when a sign is posted at the intended location of the business in compliance with Texas Local Government Code Sec. 243.0075, as amended. The notification must be in the form of a sworn statement indicating the location of the sign and the date it was posted and must be received by the chief of police within five days after the posting of the sign. If the chief of police receives the notification within five days after the sign was posted, the 60-day posting period required by Texas Local Government Code Sec. 243.0075 shall be deemed to begin on the posting date. If the notification is received by the chief of police more than five days after the sign was posted, the 60-day posting requirement shall be deemed to begin on the date the chief of police verifies the sign has been posted.

(D) When a sign is posted at an intended location of a sexually oriented business and the intended location is not in violation of the distance requirements set out in this ordinance on the posting date, the sexually oriented business will qualify as a conforming use with regard to the distance requirements and will not be rendered nonconforming by any location, subsequent to the posting of the sign, of the use or location described in Section 5(b) and (c) within 1,000 feet of the posted location.

(E) Subsection (D) above does not apply if:

(i) A completed and correct application for a license for a proposed sexually oriented business is not filed with the chief of police within twenty (20) days after the expiration of the 60-day posting requirement under Texas Local Government Code Sec. 243.0075, as amended;

(ii) The application for a license is withdrawn or denied; or

(iii) The notification requirements of subsection (C) are not met.

(b) Primary and secondary signs.

(1) Notwithstanding any provision of the city's development code or any other city ordinance, code, or regulation to the contrary, the licensee, owner or operator of any sexually oriented business or any other person commits an offense if he erects, constructs, or maintains any sign for the establishment other than one primary sign and one secondary sign, as provided in this section.

(2) A primary sign may have no more than two display surfaces. Each display surface must:

- (A) Not contain any flashing lights;
- (B) Be a flat plane, rectangular in shape;
- (C) Not exceed seventy-five (75) square feet in area; and
- (D) Not exceed ten feet in height or ten feet in length.

(3) A secondary sign may have only one display surface. The display surface must:

- (A) Not contain any flashing lights;
- (B) Be a flat plane, rectangular in shape;
- (C) Not exceed twenty (20) square feet in area;
- (D) Not exceed five feet in height or four feet in length; and
- (E) Be affixed or attached to a wall or door of the establishment.

(4) A primary or secondary sign, including a temporary sign, must contain no photographs, silhouettes, drawings, or pictorial representations of any manner, and may contain only:

- (A) The name of the establishment; and/or
- (B) One or more of the following phrases:
  - (i) "Adult arcade."
  - (ii) "Adult bookstore, adult novelty store or adult video store."
  - (iii) "Adult cabaret."
  - (iv) "Adult motel."

- (v) "Adult motion picture theater."
- (vi) "Adult theater."
- (vii) "Escort agency."
- (viii) "Nude model studio."

(5) In addition to the phrases listed in subsection (b)(4)(B) of this section, a primary sign for an adult motion picture theater may contain the phrase "Movie Title Posted on Premises," and a primary sign of an adult bookstore, adult novelty store or adult video store may contain the word "DVDs."

(6) Each letter forming a word on a primary or secondary sign must be of a solid color, and each letter must be the same print-type, size, and color. The background behind the lettering on the display surface of a primary or secondary sign must be of a uniform and solid color.