

ORDINANCE NO. 09-02

AN ORDINANCE OF THE CITY OF TOLAR, TEXAS ADOPTING THE LICENSING REQUIREMENTS FOR SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES OF SEXUALLY ORIENTED BUSINESSES; PROVIDING DEFINITIONS; PROVIDING CRITERIA FOR DETERMINING ELIGIBILITY; DEFINING OFFENSES; PROVIDING PROCEDURES FOR APPLICATION, REVIEW, APPROVAL AND REVOCATION OF LICENSES; PROVIDING A SAVINGS CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A REPEALING CLAUSE; PROVIDING A PENALTY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, there is the potential for the location of sexually oriented businesses in the City of Tolar and such businesses require special supervision from the public safety agencies 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 Council of the City of Tolar understands that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of the casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulations of sexually oriented businesses to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with the reasonable regulations and to ensure that the operators do not knowingly 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, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property value; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban and rural blight and downgrading the quality of life in the adjacent areas; and

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

WHEREAS, convincing documented evidence and case law acknowledging the physiological and sexual distinction between male and female breasts has been reviewed; and

WHEREAS, it is not the intent of the City Council of the City of Tolar to condone or legitimize the promotion of obscene material; and

WHEREAS, the City Council of the City of Tolar recognizes that applicable state law prohibits the promotion of obscene materials, and the City Council expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City of Tolar; and

WHEREAS, the City Council, as elected representatives of the citizens of the City of Tolar, has a duty to investigate the feasibility of adopting reasonable regulations to protect the citizens of the City from activities that have adverse effects which are harmful to the health, safety and general welfare of the citizenry; and

WHEREAS, the City Council and the City Plan Commission conducted public hearings to consider amendments to the Comprehensive Zoning Ordinance concerning sexually oriented businesses; and

WHEREAS, the City Plan Commission and the City Council received a report and heard testimony from staff and attorneys at such public hearings regarding the secondary effects of such businesses, including increased crime, prostitution, drug use and other illegal activities, and depreciation of property values; and

WHEREAS, the following studies and reports regarding the adverse secondary effects associated with sexually oriented businesses have been reviewed by City staff and presented to and made available for review by the City Plan Commission and the City Council:

- 1) A report prepared by the Amarillo, Texas Planning Department entitled "A Report on Zoning and Other Methods of Regulating Adult Entertainment in Amarillo."
- 2) A report prepared by the Beaumont, Texas Planning Department entitled "Regulation of Adult Uses."
- 3) "A Report on the Secondary Impact of Adult Use Businesses in the City of Denver," prepared by multiple city departments for Denver City Council.
- 4) "Interoffice Correspondence; Subject, Documentation of Secondary Effects of Sexually Oriented Businesses," Bruce W. McClendon, Director of Planning, Fort Worth.
- 5) A report by Richard McCleary, Ph.D., and James W. Meeker, J.D., Ph.D., entitled "Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard."

- 6) A report prepared by the Indianapolis, Indiana Department of Metropolitan Development Division of Planning entitled "Adult Entertainment Businesses in Indianapolis: An Analysis."
- 7) "A Study of Sexually Oriented Businesses in Kansas City," by Eric Damian Kelly, FAICP, and Connie B. Cooper, FAICP, Kansas City, Missouri.
- 8) A report prepared by the Los Angeles, California Department of City Planning entitled "Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles."
- 9) A report by the Newport News, Virginia Department of Planning and Development entitled "Adult Use Study."
- 10) "Adult Entertainment Study," prepared by the Department of City Planning, New York City, New York.
- 11) A report by the Oklahoma City, Oklahoma Community Development Department Planning Division entitled "Adult Entertainment Businesses in Oklahoma City: A Survey of Real Estate Appraisers."
- 12) "Adult Business Study," by City of Phoenix, Arizona Planning Department.
- 13) "Survey of Appraisers in Monroe County," New York.
- 14) "Effects on Surrounding Area of Adult Entertainment Businesses in Saint Paul," City of Saint Paul Division of Planning, Department of Planning and Management; and Community Crime Prevention Project, Minnesota Cities Crime Control Planning Board.
- 15) A report of the Seattle, Washington Department of Construction and Land Use entitled "Directors Report: Proposed Land Use Code Text Amendment-Adult Cabarets."
- 16) A memorandum from the Assistant Chief of Police of the City of Tucson, Arizona to the City Prosecutor entitled "Adult Entertainment Ordinance."
- 17) A report of the Whittier, California Planning Department Staff entitled "Amendment to Zoning Regulations; Adult Business in C-2 Zone with Conditional Use Permit."
- 18) National Law Center for Children and Families, "NLC Summaries of SOB Land Use Studies."
- 19) "Everything You Always Wanted to Know about Regulating Sex Businesses," Planning Advisory Services Report, American Planning Association, Eric Damian Kelly, FAICP and Connie B. Cooper, FAICP.

- 20) Report of the Attorney General’s Working Group on the Regulation of Sexually Oriented Businesses, Hubert H. Humphrey, III, Attorney General, State of Minnesota.
- 21) Survey of Appraisers Fort Worth & Dallas, “Effects of Land Uses on Surrounding Property Values,” Duncan Associates, Eric Damien Kelly, FAICP, and Connie B. Cooper, FAICP; and

WHEREAS, such studies differentiate between the secondary effects of sexually oriented businesses that provide on-site entertainment and those that are retail facilities that sell goods intended for off-site consumption; and

WHEREAS, based on the secondary effects studies, testimony, case law and other information before it, the City Council has made the following legislative findings of fact:

A. That certain conduct occurring on the premises of sexually oriented businesses is detrimental to the public health, safety and general welfare of the citizens of the City and, therefore, such conduct must be regulated; and

B. That sexually oriented businesses are associated with and promote prostitution, illegal drug use and other criminal activity that constitute an immediate threat to the public peace, health, morals and safety; and

C. That regulation of sexually oriented businesses is necessary because in the absence of such regulation, significant criminal activity, including prostitution, illegal drug use and disruptive behavior and high-risk sexual conduct that may result in health hazards, has historically and regularly occurred; and

D. That sexually oriented businesses have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and downgrading of property values; these deleterious effects create a legitimate concern of the City to protect property values, business interests and generally protect the City from urban blight associated with sexually oriented businesses; and

E. That sexually oriented businesses have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight; and

F. That sexually oriented videos and films shown in sexually oriented video viewing booths are available for viewing, purchase or rental in other businesses which are less harmful to the health, safety and welfare of the community, and therefore sexually oriented video viewing booths should be prohibited in favor of other venues; and

G. That the secondary effects precipitated by establishment of a sexually oriented business can be substantially mitigated by requiring separation of the sexually oriented business from residential uses and places of public assembly and from one another; and

H. That retail-only sexually oriented businesses with no on-premises entertainment have deleterious effects on surrounding commercial, residential and public properties by causing increased crime and adversely affecting property values and the marketability of surrounding properties; and

I. That at the present time there is one sexually oriented business known to be operating in the City; and

J. That, as a consequence of greater visual impacts and impacts on property values, distances separating sexually oriented businesses from residential uses, places of assembly and educational institutions and other land uses should be greater than the normal distances between commercial establishments in the city; and

K. That certain sexually oriented businesses involving touching between employees and clients (sexual encounter center, sexually oriented entertainment studio, sexually oriented motels, sexually oriented video viewing arcades, bath houses, body painting studios, and massage parlors) promote prostitution and other criminal behavior and thus the touching between employees and clients of a sexually oriented business should be prohibited; and

WHEREAS, based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the 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*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M., TDA "Kandyland,"* 529 U.S. 277 (2000), and *City of Los Angeles v. Alameda Books, Inc.*, 121 S. Ct. 1223 (2001) and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; 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), the City Council makes the further legislative findings:

A. That sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are generally uncontrolled by the operators of the establishments. Further, mechanisms are needed to make the owners of these establishments responsible for the activities that occur on their premises; and

B. That certain employees of some sexually oriented businesses defined in this article engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments; and

C. That sexual acts, including, but not limited to, masturbation and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows; and

D. That offering and providing such space encourages such activities, which creates unhealthy conditions, undesirable incidental effects and increases the possibility of the spread of communicable diseases; and

E. That persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sexual activity within the premises of such sexually oriented businesses; and

F. That engaging in physical contact at a sexually oriented business is not a form of expression protected by the First Amendment; and

G. That at least 50 communicable diseases may be spread by activities that occur in sexually oriented businesses, including, but not limited to, syphilis; gonorrhea; human immunodeficiency virus infection (HIV-AIDS); genital herpes; hepatitis B, non-A, and non-B; amebiasis; salmonella infections and shigella infections; and

H. That from 1999 to 2002 there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States -- 25,174 in 1999; 25,522 in 2000; 25,643 in 2001; and 26,464 in 2002, compared to 1982 when only 600 cases were reported; and

I. That 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 of 1990; and

J. That the number of cases of gonorrhea in the United States reported annually remains at a high level, with more than one-half million cases being reported in 1990; and

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

L. That according to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts; and

M. That 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; and

N. That numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films; and

O. That numerous studies and reports have determined that areas around sexually oriented businesses experience increased criminal activity, including increased property crimes, violent crimes and sex crimes; and

P. That the findings above raise substantial governmental concerns; and

Q. That sexually oriented businesses have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns; and

R. That a reasonable licensing procedure is an appropriate mechanism to apply to 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 operated 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; and

S. That removal of doors on adult booths and requiring sufficient lighting and visibility by a manager or third party on premises with adult booths advances a substantial governmental interest in curbing the illegal and/or unsanitary sexual activity occurring therein; and

T. That 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; and

U. That the disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid with the prevention of the spread of sexually transmitted diseases; and

V. That it is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct that this article is designed to prevent or who are likely to be witnesses to such activity; and

W. That the fact that an applicant for an adult use 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 article; and

X. That the barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases and sex related crimes; and

Y. That the general welfare, health, morals and safety of the citizens of the city will be promoted by the enactment of this article; and

WHEREAS, the City Council desires to minimize and control the adverse secondary effects associated with sexually oriented businesses and thereby protect the health, safety and welfare of the citizenry, preserve the quality of life, preserve property values and the character of surrounding neighborhoods and to deter the spread of urban blight; and

WHEREAS, it is not the intent of this ordinance or any previously enacted ordinance to suppress or limit any speech activities protected by the First Amendment to the United States Constitution, but to enact a content neutral, reasonable time, place and manner regulation that effectively addresses the harmful secondary effects associated with sexually oriented businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TOLAR, TEXAS:

SECTION 1. That Chapter 12 of the Code of Ordinances of the City of Tolar, Texas is hereby amended by adding article VI to read as follows:

“ARTICLE VI. SEXUALLY ORIENTED BUSINESSES

Sec. 12-160. Purpose and intent.

(a) It is the purpose of this article 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 harmful location and concentration of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor the 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 article to restrict or deny access to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene material.

Sec. 12-161. Definitions.

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

Achromatic means colorless, lacking in saturation or hue. Without limitation, grays, tans and light earth tones shall be included, but white and black and any bold coloration that attracts attention shall be excluded from the definition of achromatic.

Adult arcade means 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 picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by depicting or describing specified sexual activities or specified anatomical areas.

Adult audio or video center means any place at which any of the following activities 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 or is otherwise pornographic in nature for consideration;
- (2) Video or audio broadcasting, whether live, delayed, by film, by tape recording or otherwise, of specified sexual activities, specified anatomical areas or pornographic material for consideration; or
- (3) Filming, taping or otherwise creating video or audio recordings, including but not limited to, films, movies, video tapes, DVDs, audio tapes or compact discs, that are broadcast, sold, manufactured or distributed for consideration.

Adult bookstore, adult novelty store or adult video store means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, 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 which are designed for use in connection with specified sexual activities or designed to depict specified anatomical areas.

Adult cabaret means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

- (1) Persons who appear in a state of nudity or semi-nude;
- (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 means 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 sub-rent the room for a period of time that is less than ten hours.

Adult motion picture theater means 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 means 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 that are characterized by the exposure of specified anatomical areas or by specified sexual activities.

Chief of Police means the chief of police for the city or designee.

City means the City of Tolar, Texas.

City Manager means the city manager for the city or designee.

Employee means 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 said person is paid a salary, wage or other compensation by the operator of said 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.

Entertainer means a person paid to provide entertainment to customers at a sexually oriented business; entertainment may consist of dancing, singing, modeling, acting, other forms of performing, or individual conversations with customers whereby the entertainer is paid any form of remuneration directly or indirectly for such conversations.

Escort means 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 or specified sexual activities for another person.

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

Establishment, when used as a verb, means and includes 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 additions of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

License refers to both a sexually oriented business license and a sexually oriented business employee license, unless otherwise specified.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee license, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

Manager means a person designated by the owner or operator of a sexually oriented business to be responsible for the operation of such business at a particular location at a particular time; when the owner, proprietor, or other principal in the business is present, such person may be considered the manager.

Nude model studio means any place where a person who appears semi-nude, in a state of nudity, or who displays specified anatomical areas and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the state or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

- (1) That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;

- (2) Where in order to participate in a class a student must enroll at least three days in advance of the class; and
- (3) Where no more than one nude or semi-nude model is on the premises at any one time.

Nudity or a state of nudity means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque, meaning non-translucent, covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple or areola, or the showing of the covered male genitals in a discernibly aroused state.

On-site card shall mean the personal photographic identification card for an employee issued by the Chief of Police that must be provided by the employee to the manager or on-site manager in charge of the sexually oriented business as set forth herein.

Person means an individual, a group of two or more individuals, proprietorship, partnership, corporation, limited liability company, association, or other legal entity.

Personal card means the personal photographic identification card for an employee issued by the Chief of Police that must be displayed on the employee as set forth herein.

Principal means over 35 percent of customers, volume of sales, stock in trade, display areas, or presentation time, or any combination thereof in any three-month increment period beginning from the date of issuance of a certificate of occupancy. Stock in trade 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.

Residential use means a single family, townhouse, condominium, duplex, triplex, fourplex, mobile home, manufactured home, or multiple-family dwelling.

Semi-nude or in a semi-nude condition means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the nipple or areola is not exposed in whole or in part.

Sexual encounter center means a business or commercial enterprise that offers, for any form of consideration:

- (1) Any form of physical contact, including massage, by a person with the buttock, anus, male genitals, female genitals, or female breast of another person for the primary purpose of sexual stimulation or sexual gratification and regardless of whether any of the persons is in a state of nudity or semi-nude; or

- (2) Body painting of the buttock, anus, male genitals, female genitals, or female breast of another person, whether those of the patron or employee, for the primary purpose of sexual stimulation or sexual gratification and regardless of whether any of the persons is in a state of nudity or semi-nude. Sexual encounter centers do not include any massage establishment lawfully registered under Texas Occupations Code, Chapter 455, as amended, at which services are only provided by persons registered as a massage therapist under Texas Occupations Code, Chapter 455, as amended.

Sexually oriented business means 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 model studio, or sexual encounter center or other commercial enterprise a principal 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. Sexually oriented businesses do not include: (i) a bookstore, movie theater, or video store, unless that business is an adult bookstore, or adult movie theater or adult video store; (ii) a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under the license held; or (iii) a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts. A commercial establishment may have other business purposes that are not a sexually oriented business or related to a sexually oriented business. Such other business purposes will not serve to exempt such commercial establishments from being categorized as a sexually oriented business so long as one of its business purposes is a sexually oriented business.

Specified anatomical areas means:

- (1) The human male genitals in a discernibly aroused state, even if completely and opaquely covered; or
- (2) Less than completely and opaquely covered human genitals, pubic region, vulva, anus, anal cleft, buttocks or a female breast below a point immediately above the top of the areola.

Specified criminal activity means any of the following offenses:

- (1) Prostitution or promotion of prostitution; aggravated promotion of prostitution, compelling prostitution; obscenity, dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault or aggravated sexual assault; incest, solicitation of a child or harboring a runaway child; molestation of a child; gambling; offenses involving necrophilia or bestiality; or distribution of a controlled substance; or any similar offenses to those described above as well as criminal attempt, conspiracy or solicitation to

commit any of the foregoing offenses, under the criminal or penal statutes of the states, country, county or city; for which:

- (a) 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 of a misdemeanor offense;
 - (b) Less than five years have elapsed since the date of conviction or 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 of a felony offense; or
 - (c) 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 imposed for the 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.
- (2) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

Specified sexual activities means any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including but not limited to, intercourse, oral copulation, masturbation, or sodomy; or
- (3) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) and (2) above.

Substantial enlargement of a sexually oriented business means the increase in floor areas occupied by the business by more than 25 percent, as the floor areas exist on: (i) the date the ordinance from which this article is derived takes effect; or (ii) for any premises not used as a sexually oriented business on the date the ordinance from which this article is derived takes effect, the date an application for a license to use the premises as a sexually oriented business is received by the city designating the floor area of the structure or proposed structure in which the sexually oriented business will be conducted, regardless of any subsequent changes in applicants, licenses, owners, or operators of the premises or the sexually oriented business.

Transfer of ownership or control of 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 or ownership interests 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 to which a transfer of any 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. 12-162. Classification.

Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult audio or video center;
- (3) Adult bookstores, adult novelty stores, or adult video stores;
- (4) Adult cabarets;
- (5) Adult motels;
- (6) Adult motion picture theaters;
- (7) Adult theaters;
- (8) Escort agencies;
- (9) Nude model studios; and
- (10) Sexual encounter centers.

Sec. 12-163. Location of sexually oriented businesses.

(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 operates or causes to be operated, within the city limits, a sexually oriented business within 1,250 feet of any of the following located within the city limits or its extraterritorial jurisdiction:

- (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 Planning Guide
- (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.

(c) A person commits an offense if the person operates or causes to be operated, within the city limits, a sexually oriented business within 500 feet of the right-of-way of any of the following roadways located within the city limits or its extraterritorial jurisdiction:

- (1) U.S. Highway 377 / FM 56; and
- (2) U.S. Highway 377 / FM 51; and
- (3) U.S. Highway 377 / FM 2870

(d) A person commits an offense if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,250 feet of another sexually oriented business.

(e) A person commits an offense if that person causes or permits the operation, establishment, or maintenance of more than one classification of sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(f) For the purpose of subsections (b) and (c) of this section, measurement shall be made in a straight line, without regard to the 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 property line or boundary for the uses listed in subsection (b) or the right-of-way for the roadways listed in (c), as determined by the chief of police. 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.

(g) For purposes of subsection (d) of this section, 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 as determined by the chief of police. 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.

(h) Any sexually oriented business lawfully operating prior to the effective date of the ordinance from which this article 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 1,250 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.

(i) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in subsection (b) of this section within 1,250 feet of the sexually oriented business or a location listed in subsection (c) of this section within 500 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.

(j) A person commits an offense if that person causes or permits the operation, establishment, or maintenance of a sexually oriented business within any tax increment financing zone established by the City.

Sec. 12-164. License required.

(a) It shall be unlawful for any person to operate or maintain a sexually oriented business in the city without a valid sexually oriented business license issued by the city pursuant to this article for the premises at which the sexually oriented business is operating, or to operate such business after such license has expired or has been revoked or suspended by the city.

(b) It is unlawful for any person, entertainer, server, employee, manager, operator or owner to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed sexually oriented business.

(c) It is unlawful for any person who owns, manages or operates a sexually oriented business to have an employee or to employ a person, regardless of the nature of the employment, who works for the sexually oriented business who is not licensed as a sexually oriented business employee by the city pursuant to this article.

(d) It is unlawful for any person to obtain employment, regardless of the nature of the employment relationship, with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this article.

(e) It is unlawful for any person to fail to have a manager, who has a sexually oriented business employee license and who is responsible for ensuring compliance with this article, on-duty and working at any time the sexually oriented business is open for business.

(f) The failure to post a sexually oriented business license in the manner required herein shall be prima facie evidence that such business has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer, employee, manager or owner who performs any business, service or entertainment in a sexually oriented business in which a sexually oriented business license is not posted in the manner required herein had knowledge that such business is not licensed.

(g) 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.

(h) Each sexually oriented business license and each sexually oriented business employee license shall expire one year from the date of issuance and may be renewed only by making application for renewal. Application for renewal shall be made at least 30 business days prior to the expiration date, and when made less than 30 business days before the expiration date, the license will still expire on its expiration date. 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 be granted a license if at least 90 business days have elapsed since the date the denial became final.

(i) Sexually oriented business licenses and sexually oriented business employee licenses are nontransferable.

Sec. 12-165. License Application and Fees.

(a) An application for a sexually oriented business license or a sexually oriented business employee license shall be submitted to the chief of police on a form provided by the city and shall be sworn to as true and correct.

(b) All applicants must be qualified according to the provisions of this article. 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 established in this article.

(c) Only a person who is an officer of or who has an ownership interest in, a sexually oriented business may apply for a sexually oriented business license. An individual wishing to operate a sexually oriented business must sign the application. If a person who wishes to operate a sexually oriented business is other than an individual, each individual having the power to control or direct its operations, each individual who is an officer and/or each individual having a 20 percent or greater ownership interest in the sexually oriented business must sign the application for a license as an applicant. Such persons include, but are not limited to, general partners, officers, directors, and controlling shareholders or owners. Each applicant must be qualified under this article and each applicant shall be considered a licensee if a license is granted.

(d) The completed application for a sexually oriented business license 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 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 application 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 specified criminal activity, and, if so, the specified 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 article 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 article whose license has previously been 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 article 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 notice sign was posted as required by this article.
- (8) The applicant's mailing address and residence address.
- (9) For each applicant, a copy of a 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, prepared and sealed by an architect or engineer, 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.
- (12) A current certificate and straight-line drawing prepared 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 1,250 feet of the property to be certified; the property lines or boundaries of the uses and locations described in Section 12-163(b) and (c) within 1,250 feet of the property to be certified. For purposes of this section, a use shall be considered existing or established if it is in existence or owned by such type of user at the time an application is submitted.
- (13) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than 150 square feet of floor space, films, videocassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the additional application requirements set forth in section 12-174.
- (14) A statement whether the applicant or a person with whom applicant is residing is delinquent in payment to the city of taxes, fees, fines or penalties.

(e) The completed application for a sexually oriented business employee license shall contain the following information and shall be accompanied by the following documents:

- (1) The applicant's name or any other name (including "stage" names) or aliases used by the individual;

- (2) Age, date, and place of birth;
- (3) Height, weight, hair and eye color;
- (4) Present residence address and telephone number;
- (5) Present business address and telephone number;
- (6) A copy of a 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;
- (7) Proof that the individual is at least 18 years of age;
- (8) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the city. Any fees for the photographs and fingerprints shall be paid by the applicant;
- (9) A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country, has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application;
- (10) A statement whether the applicant has been convicted of a specified criminal activity as defined in this article and, if so, the specified criminal activity involved, the date, place and jurisdiction of each conviction, and the date of release from confinement, if applicable; and
- (11) A statement whether the applicant or a person with whom applicant is residing is delinquent in payment to the city of taxes, fees, fines or penalties.

(f) All employees of a sexually oriented business existing prior to the passage of the ordinance from which this article is derived must submit an application for a sexually oriented business employee license required by this article no later than 60 days from the effective date of the ordinance from which this article is derived and any employee failing to do so shall not continue to work on the premises of a sexually oriented business if he fails to submit an application within 60 days or if the application for license is denied. Any person who fails to

timely submit an application for a license as required by this subsection, or any person operating sexually oriented business who allows an employee to continue working who is not in compliance with this subsection or who fails to receive a license shall be considered to be in violation of this section.

(g) Each application for a sexually oriented business license and each application for a sexually oriented business employee license, or renewal thereof, shall be accompanied by a non-refundable application fee established by resolution of the city council. An application shall not be considered filed until the required fee is paid and the application is complete in all respects and all information and documentation required by the application form has been submitted.

(h) Each applicant shall sign a waiver and authorization form authorizing the chief of police to request on behalf of the applicant criminal history from the Texas Department of Public safety and other appropriate state and federal agencies. The applicant shall pay all fees and costs associated with such request for criminal history.

(i) Each license issued by the Chief shall include two photographic identification cards, a personal card and an on-site card.

(j) If any personal card or on-site card is lost or stolen, the holder thereof shall immediately notify the Chief of Police and request a replacement, which shall be issued for a fee established by resolution of the City Council within three days following verification of the identify of the holder.

Sec. 12-166. Sign requirements.

The following requirements apply for posting a sign concerning intent to locate sexually oriented businesses.

- (1) 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, Section 243.0075, as amended, not later than the 60th day before submitting the application for a sexually oriented business license.
- (2) The sign shall comply with the following and Texas Local Government Code, Section 243.0075, as amended:
 - (a) The sign must be at least 24 by 36 inches in size;
 - (b) All letters must be at least two inches in height and one and one-half inches in width for each letter on the sign
 - (c) The sign shall state that a sexually oriented business is intended to be located on the premises;

- (d) The sign shall provide the name and business address of the owner and operator;
 - (e) All required information must be presented in both English and Spanish;
 - (f) All required information must read horizontally from left to right; and
 - (g) The sign shall be prominently posted such that it is clearly legible from the public right-of-way.
- (3) 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, Section 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, Section 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.
- (4) 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 article 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 12-163 (b) and (c) within 1,250 feet of the posted location.
- (5) Subsection (4) of this section does not apply if:
- (a) A completed application for a license for a proposed sexually oriented business is not filed with the chief of police within 20 days after the expiration of the 60-day posting requirement under Texas Local Government Code, Section 243.0075, as amended; or
 - (b) The application for a license is withdrawn or denied; or
 - (c) The notification requirements of subsection (2) are not met.

Sec. 12-167. Issuance of license.

(a) Upon the filing of a complete application for a sexually oriented business employee license, the chief of police shall issue a temporary license, valid for 30 business days, to said applicant. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The investigation shall be completed within 25 business days from the date the completed application was filed. Upon completion of the investigation, the chief of police shall issue a license, not later than 30 business days from the date the completed application was filed, unless it is determined by a preponderance of the evidence that one or more of the following are true:

- (1) The application contains false, fictitious or fraudulent information or the applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- (2) The applicant is under the age of 18 years;
- (3) The applicant has been convicted of a specified criminal activity;
- (4) The sexually oriented business employee license is to be used for employment in a business prohibited or unlicensed by local or state law, statute, rule or regulation, or prohibited by a particular provision of this article;
- (5) The applicant has had a sexually oriented business employee license revoked by the city within two years of the date of the current application;
- (6) The license application fee and/or costs required by this article have not been paid; or
- (7) The applicant or a person with whom applicant is residing is delinquent in payment to the city of taxes, fees, fines or penalties.

(b) Sexually oriented business licenses and sexually oriented business employee licenses issued pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the chief of police that the applicant has not been convicted of any specified criminal activity or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of a license renewal application fee established by resolution of the city council from time to time.

(c) Upon the filing of a complete application for a sexually oriented business license, the application shall be referred to the appropriate city departments for an investigation to be

made on such information as is contained on the application. The investigation shall be completed within 25 business days from the date the completed application was filed. Upon completion of the investigation, the chief of police shall issue a license not later than 30 business days from the date the completed application was filed, unless it is determined by a preponderance of the evidence that one or more of the following are true:

- (1) An applicant is under 18 years of age;
- (2) An applicant or a person with whom applicant is residing is delinquent in payment to the city of taxes, fees, fines or penalties, including but not limited to those related to the sexually oriented business or the property on which the sexually oriented business is located;
- (3) The application contains false, fictitious or fraudulent information or the applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- (4) An applicant or a person with whom the applicant is residing has been denied a license by the city to operate a sexually oriented business within the preceding 12 calendar months or whose license to operate a sexually oriented business has been revoked within the preceding 12 calendar months;
- (5) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity;
- (6) The premises to be used for the sexually oriented business have not been approved by the police department, fire department, development services department, the building official, health department or other city department or applicable governmental agency as being in compliance with applicable laws and ordinances;
- (7) The license application fee and/or costs required by this article have not been paid; or
- (8) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article, the Comprehensive Zoning Ordinance, or any other applicable city ordinance, as may be amended.

(d) The sexually oriented business license, if issued, shall state on its face the name of the person or persons to whom it is issued, the expiration date, the address of the sexually oriented business and the classification for which the license is issued. All sexually oriented business licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time the establishment is occupied or

open for business. A sexually oriented business license is only valid for the premises for which it was issued. The sexually oriented business employee license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date and the address of the applicant. The holder of a sexually oriented business employee license shall have the license available for inspection at the premises where such person is working pursuant to the authority granted under the license. The holder of a sexually oriented business license shall be responsible for verifying that each employee holds a valid sexually oriented business employee license and for maintaining copies of such employee licenses on the premises.

- (e) A sexually oriented business license shall be issued for only one classification.

Sec. 12-168. Inspection.

(a) As a condition for the issuance of a license, an applicant or licensee shall permit representatives of the police department, health department, fire department, development services department, building inspections or other city departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business and at other reasonable times upon request.

(b) A licensee or person who operates a sexually oriented business, or their agent or employee commits an offense if such person refuses to permit a lawful inspection of the premises by representatives of the city as set forth in subsection (a) above at any time the sexually oriented business is occupied or open for business and at other reasonable times upon request.

Sec. 12-169. Suspension.

(a) The chief of police shall suspend a license for a period not to exceed 30 calendar days if the chief determines that a licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any section of this article; or
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this article.

(b) A sexually oriented business may not operate while the sexually oriented business license issued for that business is suspended. The holder of a sexually oriented business employee license may not work on the premises of a sexually oriented business while that employee's license is suspended, except as allowed by Section 12-171.

Sec. 12-170. Revocation.

(a) The chief of police shall revoke a license if a cause of suspension in Section 12-169 occurs and the license has been suspended within the preceding 12 months.

- (b) The chief of police shall revoke a license if the chief of police determines that:
- (1) A licensee gave false or misleading information in the material submitted during the application process;
 - (2) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises of the sexually oriented business or failed to report such activities to the police;
 - (3) A licensee has knowingly allowed prostitution on the premises of the sexually oriented business or failed to report such activities to the police;
 - (4) A licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (5) Except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;
 - (6) A licensee is delinquent in payment to the city of taxes, fees, fines or penalties, including but not limited to those related to the sexually oriented business or the property on which the sexually oriented business is located; or
 - (7) A manager, having a sexually oriented business employee license, responsible for ensuring compliance with this article is not on-duty and working at any time the premises is open for business.

(c) When the chief of police revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a license for one year from the date the revocation became effective. If, subsequent to revocation, the chief of police finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective.

Sec. 12-171. Appeal.

(a) Any applicant for a license who is denied a license or the holder of any license that is suspended or revoked shall have the right to appeal such decision to the city manager. The appeal may be made by filing with the city manager within ten (10) business days after notice of the denial, suspension or revocation has been received, a written statement setting forth fully the grounds for the appeal and the name, mailing address, facsimile number and/or email address and telephone number to be used by the city to provide notice of a hearing as required by subsection (b) of this section.

(b) The city manager shall provide for a hearing on such appeal and shall notify the appellant and chief of police in writing of the date, time and location of such hearing at least

seven (7) calendar days prior to the hearing, unless appellant agrees in writing to a shorter period. The appeal shall be decided on the basis of a preponderance of the evidence. For purposes of this section, notice by facsimile or hand delivery shall be considered delivered on the date of fax, or delivery, if faxed or delivered prior to 5:00 p.m., and if after 5:00 p.m. it shall be considered delivered on the next day. Notice sent by U.S. mail shall be deemed delivered on the second day following deposit in the United States mail.

(c) The decision of the city manager shall be made no later than 30 business days after receipt of notice of the appeal unless waived by the appellant. The decision of the city manager is final.

(d) If the appellant being denied a license renewal holds an un-revoked, unsuspended license for the preceding year, such person shall be permitted to continue to operate under the existing license until a final decision is made by the city manager under this section, unless the chief of police determines from evidence or information presented to it that continued operation or work by the appellant would constitute a continuing and imminent threat to the public welfare; however, if said license expired prior to the denial of the renewal, the license shall be considered expired and the appellant may not use the expired license.

(e) An appellant appealing the suspension or revocation of a license may continue to use such license until a final decision is made by the city manager, unless the city determines from evidence or information presented to it that continued operation or work by the appellant would constitute a continuing and imminent threat to the public welfare.

(f) The decision of the city manager may be appealed to the state district court of Dallas County, Texas.

Sec. 12-172. Transfer of license.

A licensee commits an offense if the licensee transfers a license to another person or entity, or operates a sexually oriented business under the authority of a license at any place other than at the address for which the license was issued.

Sec. 12-173. Additional regulations for adult motels.

(a) Evidence that a sleeping room in a hotel, motel, or a 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 article.

(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 sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the term "rent" or "sub-rent" means the act of permitting a room to be occupied for any form of consideration.

Sec. 12-174. Additional regulations pertaining to exhibition of sexually explicit films, videos or live entertainment in viewing rooms.

(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, booth, stall or partitioned portion of a room having less than 150 square feet of floor space, a film, videocassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, (herein referred to as "viewing area") shall comply with the following requirements:

- (1) Upon application for a sexually oriented business license, the application 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 permit 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 should be oriented to the north or to some designated street or object and should 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 city may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (2) No alteration in the configuration or location of a manager's station may be made without the prior written approval of the chief of police.
- (3) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises. If the premises has 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 patron 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.
- (4) 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 patron is permitted access for any purpose,

excluding restrooms. Restrooms may not contain video reproduction equipment. No viewing area shall have a door, half-door, curtain, portal partition or other divider unless at least one side is completely open to an adjacent public room and a manager's station so that the area inside is visible to persons in the adjacent public room and a manager's station.

- (5) It shall be the duty of the licensee to ensure that the viewing area specified herein remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted as set forth in the application filed pursuant to subsection (1) of this section.
- (6) No viewing area may be occupied by more than one person at any time.
- (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five foot candles as measured at the floor level.
- (8) It shall be the duty of the licensee to ensure that the illumination described in (a)(7) above is maintained at all times that any patron is present in the premises.
- (9) No licensee shall allow openings of any kind to exist between viewing areas.
- (10) No person shall make or attempt to make an opening of any kind between viewing areas. A solid metal barrier in which an opening cannot be easily made shall be used in the wall construction between viewing areas within 48 inches of the floor.
- (11) The licensee shall, during each business day, regularly inspect the walls between the viewing areas to determine if any openings or holes exist.
- (12) The licensee shall cause all floor coverings in viewing areas to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (13) The licensee shall cause all wall surfaces and ceiling surfaces in viewing areas to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within 48 inches of the floor. A person having a duty under subsection (a)(1) through (12) above commits an offense if such person knowingly fails to fulfill that duty.

Sec. 12-175. Additional regulations for escort agencies.

- (a) An escort agency shall not employ 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.

Sec. 12-176. Additional regulations for nude model studios.

- (a) A nude model studio shall not employ any person under the age of 18 years.
- (b) A person under the age of 18 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view, not open to persons of the opposite sex or visible to any other person, so long as there was not more than one person in a restroom stall.
- (c) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
- (d) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.
- (e) An employee of a nude model studio, while exposing any specified anatomical areas, commits an offense if the employee touches a patron or clothing of a patron.
- (f) A patron at a nude model studio commits an offense if he touches an employee who is exposing any specified anatomical areas or touches the clothing of the employee.
- (g) A licensee or an employee of a nude model studio commits an offense if he 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 closed area, excluding a restroom.

Sec. 12-177. 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 of the premises shall be presumed to be operating the sexual encounter center.

Sec. 12-178. Additional regulations concerning public nudity and employees.

(a) It shall be an offense for a person to knowingly and intentionally appear in a state of nudity or to depict specified sexual activities in a sexually oriented business.

(b) It shall be an offense for a person to knowingly or intentionally appear in a semi-nude condition in a sexually oriented business unless the person is an employee who, while semi-nude, shall be at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor level used by patrons.

(c) It shall be an offense for an employee to solicit any pay or gratuity from any patron while said employee is semi-nude in a sexually oriented business.

(d) It shall be an offense for any patron to pay or give any gratuity to any employee while said employee is nude or semi-nude in a sexually oriented business.

(e) It shall be an offense for an employee to touch a patron or the clothing of a patron while said employee is semi-nude in a sexually oriented business.

(f) It shall be an offense for a patron in a sexually oriented business to touch a nude or semi-nude employee, or to touch the clothing of a nude or semi-nude employee.

(g) 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.

(h) 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 of the sexually oriented business.

Sec. 12-179. Prohibition against minors in a sexually oriented business.

(a) Except as provided in subsection (b) below a person commits an offense if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business. It shall be unlawful for any person under the age of 18 years to enter or be on the premises of a sexually oriented business at anytime the sexually oriented business is open for business.

(b) No person under the age of 21 shall be permitted on the premises of a sexually oriented business where persons appear in a state of nudity or a state of semi-nudity. A person commits an offense if the person knowingly allows a person under the age of 21 years on the premises of a sexually oriented business where persons appear in a state of nudity or state of semi-nudity. It shall be unlawful for any person under the age of 21 years to enter or be on the premises of a sexually oriented business, where persons appear in a state of nudity or semi-nudity, at anytime such sexually oriented business is open for business.

Sec. 12-180. Hours of operation.

No sexually oriented business, except for an adult motel, may remain open at any time except between the hours of 10:00 a.m. and 10:00 p.m. Monday through Saturday, and 12:00 p.m. (noon) and 10:00 p.m. on Sunday.

Sec. 12-181. 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, or permitted to be consumed.

(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, or are permitted to be consumed on the premises, to permit any person to appear in a state of nudity or semi-nudity.

Sec. 12-182. Signs and exterior portions.

(a) A person commits an offense if the person allows:

- (1) The merchandise or activities of the sexually oriented business to be visible from any point outside the premises;
- (2) Any exterior portion of the premises of a sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, graphics or pictorial representations of any manner except for the words or letters allowed by subsection (b);
- (3) Any sign to exist that does not comply with the city sign ordinance as it exists or may be amended; or
- (4) Any exterior portion of the premises of a sexually oriented business to be any color other than a single achromatic color, unless the following conditions are met:
 - a. The premises is part of a commercial multi-unit development; and
 - b. The exterior portions of each premises or unit in the commercial multi-unit development, including the exterior of the sexually oriented business, are the same color as one another or are colored in such a way as to be a component of the overall architectural style or pattern of the commercial multi-unit development.

(b) Notwithstanding any provision of the city sign ordinance, as it exists or may be amended, a sexually oriented business is limited to one (1) attached sign with an area not

exceeding that calculated by multiplying the lease space frontage by two feet, and in no case greater than 100 square feet in area, and one (1) freestanding sign not exceeding (6) feet in height and 35 square feet in area. No sign visible from any point outside the premises shall contain photographs, silhouettes, drawings, or pictorial representations of any manner, and may contain only:

- (1) The name of the establishment; and/or
- (2) One of the following phrases:
 - a. "Adult arcade";
 - b. "Adult audio center" or "adult video center";
 - c. "Adult bookstore";
 - d. "Adult novelty store";
 - e. "Adult video store";
 - f. "Adult cabaret";
 - g. "Adult motel";
 - h. "Adult motion picture theater";
 - i. "Adult theater";
 - j. "Escort agency"; or
 - k. "Nude modeling studio".
- (3) A person commits an offense by installing or causing to be installed any sign in violation of this section or by allowing the continued display of an unlawful sign.

(c) No sexually oriented business shall be conducted in any manner that permits the observation of any material depicting, describing or relating to specified sexual activities or specifies anatomical areas by display, sign, show window or other opening from any public view.

(d) A sign shall be conspicuously displayed in the common area of an adult cabaret or adult theater that shall read as follows:

“THIS ADULT ENTERTAINMENT
ESTABLISHMENT IS REGULATED
BY THE CITY OF TOLAR

Entertainers and employees are:

- a. Not permitted to engage in any type of sexual conduct;
- b. Not permitted to be unclothed, clothed in less than opaque attire, or to move or remove such attire, or allow such attire to be moved or removed so as to expose to view any portion of the pubic region, anus, buttocks, vulva or genitals, or any portion of the female breast below the top of the areola except

upon a stage at least two (2) feet above the immediate floor level and removed at least six feet (6') from the nearest patron.

- c. Not permitted to demand or collect any payment or gratuity from any patron for entertainment before its completion.”

Sec. 12-183. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid license or who violates this article is subject to a suit for injunction as well as prosecution for criminal violations.

Sec. 12-184. Enforcement.

(a) Whenever a person does an act that is prohibited, fails to perform an act that is required, or commits an act that is made an offense by any provision of this article or any other ordinance regulating sexually oriented businesses, the violation is punishable by a fine not to exceed Two Thousand Dollars (\$2,000.00), or other applicable law. A person violating a provision of this article is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted.

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

(c) It is a defense to prosecution under Section 12-176 that a person appearing in a state of nudity did so in a modeling class operated:

- (1) By a proprietary school, licensed by the state; or a college, a junior college, or a university supported entirely or partly by governmental taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) In a structure:
 - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
 - b. Where, in order to participate in a class a student must enroll at least three days in advance of the class; and
 - c. Where no more than one nude model is on the premises at any one time.

SECTION 2. That all provisions of the Ordinances of the City of Tolar, Texas, in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the Ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 3. That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION 4. That any person violating any of the provisions or terms of this Ordinance shall be subject to the same penalty as provided for in the Code of Ordinances of the City of Tolar as heretofore amended and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000.00) for each offense.

SECTION 5. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Code of Ordinances, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 6. That this ordinance shall take effect immediately from and after its passage and the publication of the caption, as the law and charter in such cases provides.

PASSED AND APPROVED by the City Council of the City of Tolar, Texas this the _____ day of _____, 2009.

APPROVED:

TERRY R. JOHNSON, MAYOR

ATTEST:

JOYCE JOHNSON, CITY SECRETARY

APPROVED AS TO FORM:

J. DAVID DODD, III, CITY ATTORNEY
(34662)