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Sample Ordinance:

Sexually Oriented Business

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CITY OF _____, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF _____, TEXAS, PROVIDING FOR THE LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES IN THE CITY; PROVIDING A FINE NOT TO EXCEED THREE THOUSAND DOLLARS (\$3,000.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED UPON EACH DAY DURING OR ON WHICH A VIOLATION OCCURS; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING A SEVERABILITY CLAUSE; REPEALING ALL CONFLICTING ORDINANCES; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation 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 reasonable regulations and to ensure that 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, which evidence was reviewed by the Planning and Zoning Commission as well as the City Council, 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 values; 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 area; and

WHEREAS, the City Council of the City of _____ desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry; 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, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment to the United States Constitution, but to enact a content-neutral Ordinance that addresses the secondary effects of sexually oriented businesses; and

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

WHEREAS, the City Council of the City of _____ 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 both the City of _____ and _____ County;

NOW, THEREFORE, pursuant to the authority granted by the Constitution, laws of the State of Texas and Chapter 243 of the Texas Local Government Code, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF _____, TEXAS, THAT:

SECTION 1

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of _____ and they are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

SECTION 2

Chapter 25 of the Code of Ordinances of the City of _____, Texas, is hereby amended by the addition of a new Article II entitled "Sexually Oriented Businesses": "Sec. 25--.

SEXUALLY ORIENTED BUSINESSES

(A) Purpose and Intent

(1) 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 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 by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

(2) It is the intent of the City Council of the City of _____, Texas, that the location regulations of Section (M) of this Article are promulgated pursuant to Chapter 243 of the Texas Local Government Code.

(B) Definitions

(1) *Adult Arcade* means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of “specified sexual activities” or “specified anatomical areas.”

(2) *Adult Bookstore* or *Adult Video Store* means a commercial establishment that as one of its principal business purposes offers for sale or rental for any form of consideration, any one or more of the following:

(a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, other visual representations which depict or describe “specified sexual activities” or “specified sexual areas”; or

(b) instruments, devices, or paraphernalia which are designed for use in connection with “specified sexual activities.”

(3) *Adult Cabaret* means a night club, bar, restaurant, or similar commercial establishment that regularly features:

(a) persons who appear in a state of nudity or semi-nudity;

(b) live performances which are characterized by the exposure of

“specified anatomical areas” or by “specified sexual activities”; or

(c) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(4) *Adult Motel* means a hotel, motel or similar commercial establishment that:

(a) offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic

reproductions which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”; and has a sign visible from the public right-of-way which advertises the availability of this type of photographic reproductions; or

(b) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(c) allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than ten (10) hours.

(5) *Adult Motion Picture Theater* means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(6) *Adult Theater* means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

(7) *Chief of Police* means the Chief of Police of the City of _____ or his designated agent.

(8) *Child Care Facility* means a building used as a day nursery, children's boarding home, child placement agency, religious or charitable encampment for children or any other place for the care or custody of children under sixteen (16) years of age.

(9) *Church* means a building in which persons regularly assemble for worship, intended primarily for purposes connected with faith, or for propagating a particular form of belief.

(10) *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 for another person.

(11) *Escort Agency* means a person who, or business association that, furnishes, offers or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

(12) *Establishment* means and includes any of the following:

(a) the opening or commencement of any sexually oriented business as a new business;

(b) the conversion of any existing business, whether or not a sexually oriented business, to any sexually oriented business;

(c) the addition of any sexually oriented business to any other existing sexually oriented business; or

(d) the relocation of any sexually oriented business.

(13) *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.

(14) *Nude Model Studio* means any place where a person who appears in a state of nudity or displays “specified anatomical areas” is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pays money or any form of consideration.

(15) *Nudity* or a *State of Nudity* means:

(a) the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or

(b) a state of dress that fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

(16) *Operates* or *Causes to be Operated* means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

(17) *Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(18) *Semi-Nude* means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

(19) *Sexual Encounter Center* means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(20) *Sexually Oriented Business* means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio, or sexual encounter center.

(21) *Specified Anatomical Areas* means human genitals in a state of sexual arousal.

(22) *Specified Sexual Activities* means and includes any of the following:

(a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(c) masturbation, actual or simulated; or

(d) excretory functions as part of or in connection with any of the activities set forth in (a) through (c), above.

(23) *Substantial Enlargement* of a sexually oriented business means the increase in floor area occupied by business by more than twenty (20%) percent, as the floor area exists on the date of passage of this Article.

(24) *Transfer of Ownership or Control* of a sexually oriented business means and includes any of the following:

(a) the sale, lease or sublease of the business;

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

(c) the establishment of a trust, gift, or other similar legal device that transfers the ownership 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.

(C) Classification of Sexually Oriented Businesses

Sexually oriented businesses are classified as follows:

(1) adult arcades;

(2) adult bookstores or adult video stores;

(3) adult cabarets;

(4) adult motels;

(5) adult motion picture theaters;

(6) adult theaters;

(7) escort agencies;

(8) nude model studios; and

(9) sexual encounter centers.

(D) License Requirements

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

(2) An application for a license must be made on a form provided by the Chief of Police. The application form shall be sworn to and shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of the total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6").

(3) The applicant must be qualified according to the provisions of this Article and the premises must be found to be in compliance with the law by the City's Building Official.

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

(E) Issuance of License

(1) The Chief of Police shall approve the issuance of a license by the City Secretary to an applicant within thirty (30) days after receipt of an application unless he finds one or more of the following to be true:

(a) An applicant is under eighteen (18) years of age;

(b) An applicant or an applicant's spouse is overdue in his payment to the City of taxes, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business;

(c) An 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.

(d) An applicant or an applicant's spouse has been convicted of a violation of a provision of this Article, other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(e) An applicant is residing with a person who has been denied a license by the City to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

(f) The premises to be used for the sexually oriented business have not been approved by the City's Building Official as being in compliance with applicable laws and ordinances.

(g) The license fee required by this Article has not been paid.

(h) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding twelve (12) months and has demonstrated that he is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(i) An applicant for the proposed establishment is in violation of or is not in compliance with any Section of this Article.

(j) An applicant or an applicant's spouse has been convicted of a crime:

(1) involving:

(i) any of the following offenses as described in Chapter 43 of the Texas Penal Code:

- (a) prostitution;
- (b) promotion of prostitution;
- (c) aggravated promotion of prostitution;
- (d) compelling prostitution;
- (e) obscenity;
- (f) sale, distribution, or display of harmful material to a minor;
- (g) sexual performance by a child; or
- (h) possession of child pornography;

(ii) any of the following offenses as described in Chapter 21 of the Texas Penal Code:

- (a) public lewdness;
- (b) indecent exposure; or
- (c) indecency with a child;

(iii) sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;

(iv) incest, solicitation of a child, or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or

(v) criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

(2) for which:

(i) less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(ii) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(iii) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

(2) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

(3) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(F) License Fee. The annual fee for a sexually oriented business license shall be five hundred (\$500.00) dollars.

(G) Inspection

(1) An applicant or licensee shall permit representatives of the Police Department, Fire Department, and the City's Building Official to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(2) A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the Police Department at any time it is occupied or open for business.

(3) The provisions of this Section shall not apply to areas of an adult motel that are currently being rented by a customer as a permanent or temporary habitation.

(H) Expiration of License

(1) Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section(E). Application for renewal should be made as least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license shall not be affected.

(2) When the Chief of Police 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 Chief of Police finds that the basis for denial of renewal of the license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

(I) Suspension

The Chief of Police shall suspend a license for a period not to exceed thirty (30) days if he determines that a licensee or an employee of a licensee has:

1. violated or is not in compliance with any Section of this Article;
2. engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
3. refused to allow an inspection of the sexually oriented business premises as authorized by this Article;

4. knowingly permitted gambling by any person on the sexually oriented business premises; or

5. demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(J) Revocation

(1) The Chief of Police shall revoke a license if a cause of suspension in Section (I) occurs and the license has been suspended within the preceding twelve (12) months.

(2) The Chief of Police shall revoke a license if he determines that:

(a) a licensee gave false or misleading information in the material submitted to the Chief of Police during the application process;

(b) a licensee, an agent or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(c) a licensee, an agent or an employee has knowingly allowed prostitution on the premises;

(d) a licensee, an agent or an employee knowingly operated a sexually oriented business during a period of time when the licensee's license was suspended;

(e) a licensee has been convicted of an offense listed in Section (E)(1)(j)(1) for which the time period required in Section (E)(1)(j)(2) has not lapsed;

(f) on two (2) or more occasions within a twelve (12) month period, a person or persons committed an offense, occurring in or on the licensed premises, of a crime listed in Section (E)(1)(j)(1), for which a conviction has been obtained, and the person or persons where employees of the sexually oriented business at the time of offenses were committed;

(g) a licensee, an agent or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code; or

(h) a licensee is delinquent in payment to the City for hotel occupancy taxes, ad valorem taxes, sales taxes or other taxes related to the sexually oriented business.

(3) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(4) Subsection (2)(g) does not apply to adult motels as grounds for revoking the license unless the licensee, agent or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(5) When the Chief of Police revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date 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 ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (2)(e), an applicant may not be granted another license until the appropriate number of years required under Section (E)(1)(j)(2) has elapsed since the termination of any sentence, parole or probation.

(K) Appeal

If the Chief of Police denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the applicant or licensee whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal to the state district court. An appeal to the state district court must be filed within thirty (30) days after the receipt of notice of the decision of the Chief of Police. The applicant or licensee shall bear the burden of proof in court.

(L) Transfer of License

A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

(M) Location of Sexually Oriented Business

(1) A person commits an offense if he operates or causes to be operated a sexually oriented business within one thousand five hundred (1,500') feet of:

(a) a church;

(b) a public or private elementary school or secondary school;

(c) a boundary of any residential district, as defined in the City's Zoning Ordinance;

(d) a public park adjacent to any residential district, as defined in the City's Zoning Ordinance;

(e) the property line of a lot devoted to residential use;

(f) a child care facility; or

(g) any building or structure in which alcoholic beverages are offered for sale.

(2) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand five hundred (1,500') feet of another sexually oriented business.

(3) A person commits an offense if he causes or permits the operation, establishment, or maintenance of more than one (1) 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.

(4) For the purposes of Subsection (1) of this Section, measurement shall be in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, child care facility, public or private elementary school or secondary school, or building or structure in which alcoholic beverages are offered for sale, or to the nearest boundary of an affected public park, residential district, or residential lot.

(5) For the purposes of Subsection (2) of this Section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to any intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(6) Any sexually oriented business lawful operating on the effective date of this Ordinance, that is in violation of Subsections (1), (2), or (3) of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed twelve (12) months, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming use shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within one thousand five hundred feet (1,500') of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

(7) 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 church, public or private elementary or secondary school, child care facility, public park, residential district, or residential lot, or any building or structure in which alcoholic beverages are offered for sale, within one thousand five hundred feet (1,500') 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 has been revoked.

(N) Exemption From Location Restrictions

(1) If the Chief of Police denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of any provision of this Article, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the City Secretary a written request for an exemption from the locational restrictions of this Article.

(2) If the written request is filed with the City Secretary within the ten-day limit, the City Council shall consider the request. The City Secretary shall set a date for the hearing within sixty (60) days from the date the written request is received.

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

(4) The City Council may, in its discretion, grant an exemption from the locational restriction of this Article if it makes the following findings:

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

(b) That the granting of the exemption will not violate the spirit and intent of this Article;

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

(d) That the location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and

(e) That all other applicable provisions of this Article will be observed.

(5) The City Council shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the City Council is final.

(6) If the City Council grants the exemption, the exemption is valid for one (1) year from the date of the City Council's action. Upon expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of this Article until the applicant applies for and receives another exemption.

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

(8) The grant of an exemption does not exempt the applicant from any other provisions of this Article other than the locational restrictions of Section (M).

(O) Additional Regulations For Escort Agencies

(1) An escort agency shall not employ any person under the age of eighteen (18) years.

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

(P) Additional Regulations For Nude Model Studios

(1) A nude model studio shall not employ any person under the age of eighteen (18) years.

(2) A person under the age of eighteen (18) years commits an offense if he appears in a state of nudity or semi-nudity in or on the premises of a nude model studio. It is a defense to prosecution under this Section if the person under eighteen (18) years was in a restroom not open to public view or persons of the opposite sex.

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

(4) A nude 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.

(Q) Additional Regulations For Adult Theaters And Motion Picture Theaters

(1) A person commits an offense if he knowingly allows a person under the age of eighteen (18) years to appear in a state of nudity or semi-nudity in or on the premises of an adult theater or adult motion picture theater.

(2) A person under the age of eighteen (18) years commits an offense if he knowingly appears in a state of nudity or semi-nudity in or on the premises of an adult theater or adult motion picture theater.

(3) It is a defense to prosecution under Subsections (1) and (2) of this Section if the person under eighteen (18) years was in a restroom not open to the public view or persons of the opposite sex.

(R) Additional Regulations For Adult Motels

(1) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this Article.

(2) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(3) For purposes of Subsection (2) of this Section, the terms “rent” or “subrent” mean the act of permitting a room to be occupied for any form of consideration.

(S) Regulations Pertaining To Exhibition Of Sexually Explicit Films Or Videos

(1) 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 or less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(a) 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 (1) or more manager’s stations, the location of all overhead lighting fixtures, which lights are controlled by which switches and designating a portion of the premises in which patrons are not permitted. Only agents or employees shall have access to light switches. A manager’s station may not exceed thirty-two (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 (6"). The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration for the premises has not been altered since it was prepared.

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

(c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Chief of Police.

(d) It is the duty of the owners and operator of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from the 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. If the premises have two (2) 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 (1) of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station.

(f) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present on the premises to ensure that the view area specified in Subsection (1)(e) of this Section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present on the premises and 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 in the application filed pursuant to Subsection (1)(a) of this Section.

(g) 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 one (1.0) footcandle as measured at the floor level.

(h) It shall be the duty of the owners and operator and it also shall be the duty of any agents and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

(2) A person having a duty under Subsection (1)(a) through (1)(g), above, commits an offense if he or she knowingly fails to fulfill that duty.

(T) Display Of Sexually Explicit Material To Minors

(1) A person commits an offense if, in a business establishment open to persons under the age of seventeen (17) years, he displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

(a) human sexual intercourse, masturbation, or sodomy;

(b) fondling or other erotic touching of human genitals, pubic region, buttocks, or that portion of the female breast; . .

(c) less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or

(d) human male genitals in a discernibly turgid state, whether covered or uncovered;

(2) In this Section “display” means to locate an item in such a manner that, without obtaining assistance from an agent or employee or the business establishment:

(a) it is available to the general public for handling and inspection; or

(b) the cover, outside packaging on the item or contents of the item is visible to members of the general public.

(U) Enforcement

(1) Except as provided by Subsection (2) of this Section, any person violating Section (M) of this Article, upon conviction, is punishable by a fine not to exceed three thousand (\$3,000.00) dollars for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

(2) If the sexually oriented business is a nude model studio or sexual encounter center, then violation of Section (D)(1) or Section (M) of this Article is punishable as a Class A misdemeanor.

(3) Except as provided by Subsection (2) of this Section, above, any person violating a provision of this Article other than Section (M), upon conviction, is punishable by a fine not to exceed three thousand (\$3,000.00) dollars for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

(4) It is a defense to prosecution under Section (D)(1), (M) or (P)(4) of this Article that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

(a) by a proprietary school licensed by the State of Texas, a college, junior college, or university supported entirely by or partly by taxation;

(b) 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

(c) in a structure:

(1) which 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; or

(2) where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(3) where no more than one (1) nude or semi-nude model is on the premises at any time.

(4) It is a defense to prosecution under Section (D)(1) or (M) of this Article that each item of descriptive, printed film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.

(V) Injunctive Relief

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section (M) of this Article is subject to a suit for injunction as well as prosecution for criminal violations.

(W) Severability

If any section, subsection, clause, phrase or provision of this Article, or any application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Article, or any application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.”

SECTION 3

Sections 25-1, 25-2 and 25-3 of the Code of Ordinances of the City of _____ are hereby deemed to comprise Article I of Chapter 25.

SECTION 4

Any and all ordinances, orders, resolutions, rules, regulations, policies or provisions in conflict with the provisions of this Ordinance are hereby repealed and rescinded to the extent of any conflict herewith.

SECTION 5

If any section, subsection, clause, phrase or provision of this Ordinance, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unconstitutional, the remaining sections, subsections, clauses, phrases or provisions of this Ordinance, or the application thereof to any person or circumstances, shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

SECTION 6

The fact that the present ordinances, orders, resolutions, rules, regulations, policies and provisions of the City of _____, Texas, are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the inhabitants of the City of _____, Texas, creates an emergency for the immediate preservation of the public business, property, health, safety and general welfare of the public which requires that this Ordinance become effective from and after the date of its passage and publication, and it is accordingly so ordained.

PASSED, APPROVED AND ADOPTED THIS ____ DAY OF JANUARY, 200-.

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM AND LEGALITY:

City Attorney