

ORDINANCE NO. 2026-09

AN ORDINANCE OF THE CITY OF BRECKENRIDGE, TEXAS AMENDING CHAPTER 13 “OCCUPATIONAL LICENSES AND REGULATIONS” OF THE BRECKENRIDGE CODE OF ORDINANCES BY ADDING ARTICLE II “SEXUALLY ORIENTED BUSINESS REGULATIONS” TO ESTABLISH REGULATIONS REGARDING SEXUALLY ORIENTED BUSINESSES; PROVIDING A PENALTY; PROVIDING REPEALER AND SEVERABILITY CLAUSES; PROVIDING FOR PUBLICATION; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City of Breckenridge, Texas (the “City”) is a home-rule city operating pursuant to its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution;

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

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

WHEREAS, as a result of numerous studies that have determined that sexually oriented businesses reduce nearby private property values and increase crime, a majority of cities in Texas have adopted ordinances regulating such businesses;

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

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

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

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

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF BRECKENRIDGE, TEXAS THAT:

I. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

II. Findings. After due deliberations, the City Commission has concluded that the adoption of this Ordinance is in the best interest of the City of Breckenridge, Texas, and of the public health, safety, morals, and welfare of its citizens.

III. Addition of Chapter 13, Article II. Chapter 13 “Occupational Licenses and Regulations” of the Breckenridge Code of Ordinances is hereby amended by the addition of Article II “Sexually Oriented Business Regulations” to read as follows, and all articles, chapters, sections, paragraphs, sentences, phrases, and words not expressly amended hereby are hereby ratified and affirmed.

ARTICLE II. SEXUALLY ORIENTED BUSINESS REGULATIONS

Sec. 13-20. Purpose; 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 concentration of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by distributors and exhibitors of sexually oriented entertainment to their intended market.

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

Sec. 13-21. 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:

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

(b) Adult audio or video center. Any place at which any of the following activities regularly occurs:
(1) Inbound or outbound telephone or other audio communications in which a topic or purpose of the communication between an occupant of the premises and a third party is the discussion or description of specified sexual activities or specified anatomical areas for consideration;

- (2) Video or audio broadcasting, whether live, delayed, by film, by tape recording or otherwise, of specified sexually activities or specified anatomical areas for consideration; or
 - (3) Filming, taping or otherwise creating video or audio recordings of specified sexually activities or specified anatomical areas, including but not limited to, films, movies, video tapes, DVDs, audio tapes or compact disks, of specified sexually activities or specified anatomical areas that are broadcast, sold, manufactured or distributed for consideration.
- (c) Adult bookstore, adult novelty store or adult video store. A commercial establishment for which the primary business is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer, including:
- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, DVDs, videocassettes or video reproductions, slides, or other visual representations, that depict or describe specified sexual activities or specified anatomical areas; or
 - (2) Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities, but not including items for birth control or for the prevention of sexually transmitted diseases.
- (d) Adult cabaret. A nightclub, bar, restaurant, or similar commercial establishment which regularly features:
- (1) Persons who appear in a state of nudity or semi-nudity;
 - (2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
 - (3) Films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- (e) Adult motel. A hotel, motel or similar commercial establishment which:
- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions;
 - (2) Offers a sleeping room for rent for a period of time that is less than ten hours; or
 - (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.
- (f) Adult motion picture theater. A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.
- (g) Adult theater. A theater, concert hall, auditorium or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of specified sexual activities or specified anatomical areas.
- (h) Applicant.
- (1) A person or entity in whose name a license to operate a sexually oriented business will be issued;

- (2) Each individual who signs an application for a sexually oriented business license as required by section 13-25;
- (3) Each individual who is an owner or operator of a sexually oriented business for which a license application is made under section 13-25, regardless of whether the individual's name or signature appears on the application;
- (4) Each individual who has a 20 percent or greater ownership interest in a sexually oriented business for which a license application is made under section 13-25, regardless of whether the individual's name or signature appears on the application; and
- (5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license application is made under section 13-25, regardless of whether the individual's name or signature appears on the application.

(i) City manager. The city manager for the City of Breckenridge or the city manager's designated agent.

(j) Chief of police. The chief of police of the City of Breckenridge or the chief of police's designated agent.

(k) Classification. The type of sexually oriented business, which may be one of the following:

- (1) Adult arcades;
- (2) Adult audio or video centers;
- (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 modeling studios; and
- (10) Sexual encounter centers.

(l) Customer. Any person who:

- (1) Is allowed to enter a sexually oriented business or any portion of a sexually oriented business in return for the payment of an admission fee, membership fee or any other form of consideration or gratuity;
- (2) Enters a sexually oriented business or any portion of a sexually oriented business and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or
- (3) Is a member of and on the premises of a sexually oriented business operating as a private or membership club or a sexually oriented business that reserves any portion of the premises of the sexually oriented business as a private or membership club.

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

- (n) Entertainment. Any act or performance, such as a play, skit, reading, revue, fashion show, modeling performance, pantomime, role playing, encounter session, scene, song, dance, musical rendition or striptease, that involves the display or exposure of specified sexual activities or specified anatomical areas. The term “entertainment” shall include any employee or entertainer exposing any specified anatomical areas or engaging in any specified sexual activities in the presence of customers.
- (o) Escort. A person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (p) Escort agency. A person or business association which furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes, for a fee, tip or other consideration.
- (q) License. A license issued to a licensee pursuant to this article.
- (r) Licensee.
- (1) A person in whose name a license to operate a sexually oriented business has been issued;
 - (2) Each individual listed as an applicant on the application for a license;
 - (3) Each individual who is an owner or operator of a sexually oriented business for which a license has been issued under this article, regardless of whether the individual’s name or signature appears on the license application;
 - (4) Each individual who has a 20 percent or greater ownership interest in a sexually oriented business for which a license has been issued under this article, regardless of whether the individual’s name or signature appears on the license application; and
 - (5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license has been issued under this article, regardless of whether the individual’s name or signature appears on the license application.
- (s) Manager. Any person, including an on-site manager, who supervises, directs or manages any employee or other person who conducts business on the premises of a sexually oriented business and/or performs certain services including, but not limited to, the following:
- (1) Operating a cash register, cash drawer or other depository on the premises of the sexually oriented business where cash funds or records of credit card or other credit transactions are generated in any manner by the operation of the sexually oriented business or the activities at the premises of the sexually oriented business;
 - (2) Displaying or taking orders from any customer for any merchandise, goods, entertainment or other services offered on the premises of the sexually oriented business;
 - (3) Delivering or providing to any customer any merchandise, goods, entertainment or other services offered on the premises of the sexually oriented business;
 - (4) Acting as an attendant to regulate entry, flow or traffic of customers or other persons into the premises of the sexually oriented business; or
 - (5) Supervising or managing other person(s) in the performance of any of the foregoing activities on the premises of the sexually oriented business.
- (t) Nude model studio. Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration;

however, nude modeling at or on behalf of any properly accredited institution of higher learning shall not fall within this definition.

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

(v) Opaque. Impervious to the rays of light; not transparent; impenetrable to sight.

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

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

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

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

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

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

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

(cc) Sexually oriented business. An adult arcade, adult audio or video center, adult bookstore, adult novelty store or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio or sexual encounter center, or other sexually oriented business the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. For purposes of this article, “primary business” means 25 percent or more of the items in inventory and/or floor space used for the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. Inventory shall be measured with all titles or objects available on the premises for sale or rental, including those that are identical being considered a separate title or object. The term shall also mean any commercial sexually oriented business that self-identifies as an adult arcade, adult audio or video center, adult

bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude modeling studio or sexual encounter center, regardless of whether the percentage of items in inventory and/or floor space constitute 25 percent or more of the total items in inventory and/or floor space. The term “sexually oriented business” shall not be construed to include:

- (1) Any business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed massage therapist, or licensed barber engaged in performing functions authorized under the lawful license held;
- (2) Any business operated by or employing a licensed physician or chiropractor engaged in practicing the healing arts;
- (3) Any business licensed as a tattoo studio or a body piercing studio and was engaged in practices authorized under the license; or
- (4) An activity conducted or sponsored:
 - (A) By a proprietary school licensed by the state or a college, junior college or university supported entirely or partly by taxation; or
 - (B) By a private college or university which maintains or operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;
 - (C) and any activity conducted or sponsored by an entity identified in subsection (A) or (B) must be situated in a structure: (i) which has no sign or other advertising visible from the exterior of the structure indicating a nude or semi-nude person is available for viewing; and (ii) where in order to participate in a class, a student must enroll at least three days in advance of the class; and (iii) where no more than one nude or semi-nude model is on the premises at any one time.

(dd) Specified anatomical area.

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

(ee) Specified sexual activity. Any of the following:

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

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

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

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

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

Sec. 13-22. Location; exemption from location restrictions

- (a) A person commits an offense if the person operates, or causes to be operated, a sexually oriented business in any zoning district other than as allowed by Chapter 22, Zoning, as amended.
- (b) A person commits an offense if the person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of any of the following:
 - (1) A religious institution, church, synagogue, mosque, temple or structure that is used primarily for religious worship and related religious activities or real property owned by, or for the benefit of, a religious organization that intends to use the property for such purposes if such ownership has been registered with the city;
 - (2) A public or private educational facility, including, but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuing education schools, special education schools, junior colleges, colleges and universities; school includes the school grounds and related athletic or other facilities regularly visited by students; or
 - (3) 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;
- (c) For the purposes of subsection (b), measurement must be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property line or boundary of the premises where a sexually oriented business is operated or to be operated, to the nearest portion of a property line or boundary for the uses listed in subsection (b). The presence of a city, county, or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this section.
- (d) Appeal from location restrictions.
 - (1) If the chief of police denies the issuance of a license to an applicant because the location of the sexually oriented business is in violation of this article, then the applicant may, not later than ten calendar days after receiving notice of the denial, file with the city manager a written request for an exemption of the locational restrictions of this article.
 - (2) The appeal shall follow the procedures contained in Section 13-34 except as provided in this section.
 - (3) The City Manager may, in his or her discretion, grant an exemption from the locational restrictions of this article if it finds that:
 - (A) The location of the sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
 - (B) The location of the sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;

- (C) The location of the sexually oriented business in the area will neither be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and
 - (D) All other applicable provisions of this article will be observed.
- (4) In making the findings specified in subsection (3), the City Manager may consider, among other things:
- (A) Crime statistics and forecasts of the location and its 1,000-foot radius maintained by the appropriate law enforcement agency;
 - (B) Assessed property values for the location and properties within the surrounding 1,000-foot radius, considering any decline or increase in property values or rates of decrease or increase in property values in relation to otherwise comparable properties;
 - (C) Sales, leases, and vacancy rates of all property types within the surrounding 1,000-foot radius in relation to otherwise comparable properties; and
 - (D) Any evidence regarding the award or denial of any public or private grants for neighborhood conservation, urban renewal or restoration for any property located within the surrounding 1,000-foot radius.
- (7) If granted, the exemption is valid for one year from the date of the City Manager's action. Upon the 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 pursuant to this subsection.
- (8) If the City Manager denies the exemption, the applicant may not reapply for an exemption until at least 12 months have elapsed since the date of the City Manager's action.
- (9) The grant of an exemption does not exempt the applicant from any other provisions of this article other than the locational restrictions.

Sec. 13-23. Suit for injunction

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

Sec. 13-24. Penalty

- (a) Any person, firm, corporation, agent or employee who violates any of the provisions of this article shall be guilty of a Class A misdemeanor.
- (b) Each day that a violation is permitted to exist shall constitute a separate offense.
- (c) The refusal to issue a license based on ineligibility shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the refusal to issue a license based on ineligibility.
- (d) The revocation or suspension of a license shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a license.
- (e) Except where otherwise specified or as required by law, a culpable mental state is not required for the commission of an offense under this article.

Sec. 13-25. License required

- (a) A person commits an offense if the person operates, or causes to be operated, a sexually oriented business without a valid license issued by the city for the particular classification of sexually oriented

business. A separate license is required for each sexually oriented business. A sexually oriented business license shall be issued only for the one sexually oriented business use listed on the application. Any change in the type of sexually oriented business use shall invalidate the sexually oriented business license and require the licensee to obtain a new license for the change in use. The establishment or maintenance of more than one sexually oriented business in the same building, structure or portion thereof is prohibited.

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

- (1) If the applicant is:
 - (A) An individual, the individual shall state such person's legal name and any aliases and submit proof that such person is at least 18 years of age;
 - (B) A partnership, the partnership shall state its complete name; the date of its formation; evidence that the partnership is in good standing under the laws of the state, and if not a Texas partnership, its state of formation; the names and capacity of all partners and officers; whether the partnership is general, limited or otherwise; a copy of the partnership agreement or certificate of partnership, if any; and the official name and address to be used for process of service on the partnership; and/or
 - (C) A corporation, limited liability company or other legal entity, the entity shall state its complete name; the date of its incorporation or formation; evidence that the entity is in good standing under the laws of the state of formation, and if not a Texas entity, the state of incorporation or formation; the names and capacity of all officers, directors and controlling stockholders or owners; and the name of the registered agent and the address of the registered office for service of process.
- (2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the applicant must:
 - (A) State the sexually oriented business's fictitious name or business owner's fictitious name; and
 - (B) Submit the required registration and assumed name documents.
- (3) Whether the applicant has been convicted of a criminal activity listed under section 13-26, and, if so, the criminal activity involved, the date, place, and jurisdiction of each conviction, and the date of release from confinement, if applicable.
- (4) Whether the applicant 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 license 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 been previously denied, suspended or revoked, including the name and location of the sexually oriented business for which the license was denied, suspended or revoked, and the date of denial, suspension or revocation.
- (5) Whether 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 sign stating the intent to locate a sexually oriented business was posted as required by this article.
 - (8) The applicant's mailing address and residence or physical address.
 - (9) For each applicant, a copy of the valid state driver's license with photo, or a valid state identification card with photo. The originals of the required forms of identification shall be presented to the chief of police for inspection prior to the issuance of a license.
 - (10) The applicant's driver's license number and state of issuance.
 - (11) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram shall also depict the total floor space devoted to the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification as it relates to the total floor space occupied by the business, if applicable. The sketch or diagram shall also depict the manager's station and any proposed stage or performance areas, if applicable. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6").
 - (12) A current straight-line drawing prepared and certified within 30 days prior to application by a registered land surveyor depicting the property lines or boundaries of the uses and locations described in section 13-22(b) within 1,000 feet of the property where the proposed sexually oriented business will be located.
 - (13) By submitting an application for a sexually oriented business license, the applicant agrees that it shall provide access to its inventory records for the business. These records shall be made available to the city pursuant to section 13-28.
- (c) The applicant 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 in this article. 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 state 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.
- (d) An individual person who wishes to operate a sexually oriented business must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under section 13-26 and each applicant shall be considered a licensee if a license is granted.
- (e) The fact that a person possesses other types of state or city permits does not exempt that person from the requirement of obtaining a license for a sexually oriented business.
- (f) All applications for a license under this article shall be accompanied by a nonrefundable application fee in the amount established in Appendix A, Fee Schedule. An application shall not be considered to have been received as administratively complete until the fee is paid and all information required by the application form has been submitted. The application for a sexually oriented business license shall be approved or denied within the time frame, and in the manner, established by 13-26. Such application for a sexually oriented business license shall be deemed denied if not approved or denied within such time period.
- (g) Upon approval of a sexually oriented business license, an applicant for a sexually oriented business license must obtain a certificate of occupancy and any required building permits from the building official.

Sec. 13-26. License issuance and grounds for denial

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

- (1) The location of the sexually oriented business is or would be in violation of section 13-22.
- (2) The applicant failed to supply all of the information requested on the application.
- (3) The applicant gave false, fraudulent or untruthful information on the application.
- (4) An applicant is under 18 years of age.
- (5) An applicant or an applicant's spouse is overdue in payment to the secretary of state or the city of taxes, fees, fines or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.
- (6) An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation or community supervision for a violation of a provision of this article, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (7) The required application fee has not been paid.
- (8) The applicant has not demonstrated that the owner of the sexually oriented business owns or holds a lease for the property or the applicable portion thereof upon which the sexually oriented business will be situated or has a legally enforceable right to acquire the same.
- (9) An applicant or the proposed establishment in violation of or is not in compliance with this article.
- (10) An applicant has been convicted or placed on deferred disposition, probation, or community supervision for:
 - (A) Any offense under the laws of the United States of America, another state or the Uniform Code of Military Justice for an offense described in this subsection (a)(10); or
 - (B) Any of the below offenses of the state or criminal attempt, conspiracy, or solicitation to commit same:
 - (i) Any of the following offenses as described in Texas Penal Code ch. 43:
 - a. Prostitution;
 - b. Promotion of prostitution;
 - c. Aggravated promotion of prostitution;
 - d. Compelling prostitution;
 - e. Obscenity;
 - f. Sale, distribution or display of harmful material to a minor;
 - g. Sexual performance by a child;
 - h. Possession or promotion of child pornography;
 - (ii) Any of the following offenses as described in Penal Code ch. 21:
 - a. Public lewdness;
 - b. Indecent exposure;
 - c. Indecency with a child;
 - (iii) Sexual assault or aggravated sexual assault as described in Texas Penal Code ch. 22;
 - (iv) Incest, solicitation of a child or harboring a runaway child as described in Penal Code ch. 25; or
 - (v) Those crimes defined as "drug-defined offenses" or "drug-related offenses" by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Penal Code sec. 12.04;

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

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

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

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

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

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

(b) 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.

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

Sec. 13-27. Annual license fee

(a) The annual fee for a sexually oriented business license shall be in an amount as established in Appendix A, Fee Schedule.

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

Sec. 13-28. Inspection of premises and maintenance of records

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

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

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

Sec. 13-29. Expiration and renewal of license

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

(b) Renewal of a license may be applied for in the same manner as Section 13-25 provides for the initial license. Payment of an additional application fee, as established in Appendix A, Fee Schedule, is required.

Sec. 13-30. Grounds for suspension of license

- (a) Subject to subsection (b) of this section, the chief of police shall suspend a sexually oriented business license if the chief of police determines that a licensee, owner, operator or employee of a sexually oriented business (or any combination thereof) has, on five or more occasions within any 12-month period of time been cited for a violation of this article, and been convicted or placed on deferred disposition or probation for the violation(s).
- (b) A period of suspension will begin the first day after the decision of the chief of police has been made. If appeal is taken as provided in this article, the period of suspension begins the day after all appeals are final.
- (c) Each day in which a violation is permitted to continue shall constitute a separate violation for purposes of suspension.

Sec. 13-31. Grounds for revocation of license

- (a) The chief of police may revoke a sexually oriented business license:
 - (1) If a license has been ordered suspended by the chief of police for a 30-day period within the preceding year;
 - (2) If the chief of police determines that, on two or more occasions within any five-year time period, a licensee, owner, operator or employee (or any combination thereof) has/have been convicted of or placed on deferred disposition, probation or community supervision for conduct occurring on the premises of a sexually oriented business that constitutes any of the offenses of the state or criminal attempt, conspiracy, or solicitation to commit same for the following offenses (except the chief of police may, if he determines that the criminal offense of sexual performance of a child has occurred on a single occasion, revoke the sexually oriented business license):
 - (A) Any offenses as described in Texas Penal Code ch. 43 including:
 - (i) Prostitution;
 - (ii) Promotion of prostitution;
 - (iii) Aggravated promotion of prostitution;
 - (iv) Compelling prostitution;
 - (v) Obscenity;
 - (vi) Sale, distribution or display of harmful material to a minor;
 - (vii) Sexual performance by a child;
 - (viii) Possession or promotion of child pornography;
 - (B) Any of the following offenses as described in Penal Code ch. 21:
 - (i) Public lewdness;
 - (ii) Indecent exposure;
 - (iii) Indecency with a child;
 - (C) Sexual assault or aggravated sexual assault as described in Texas Penal Code ch. 22;
 - (D) Incest, solicitation of a child or harboring a runaway child and other offenses contained in Texas Penal Code ch. 25; or
 - (E) Those crimes defined as “drug-defined offenses” or “drug-related offenses” by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Texas Penal Code sec. 12.04;
 - (3) If a licensee, owner or operator gave false or misleading information in the material submitted to the chief of police during the application process;

- (4) If a licensee, owner or operator has knowingly allowed possession, use or sale of a controlled substance on the premises;
 - (5) If a licensee, owner or operator has on two (2) or more occasions knowingly allowed prostitution on the premises;
 - (6) If a licensee, owner or operator knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (7) If a licensee, owner or operator has, on one or more occasions, knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Texas Penal Code sec. 21.01;
 - (8) If a licensee is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes or sales taxes related to the sexually oriented business;
 - (9) If the licensee is required to register as a sex offender under the provisions of Texas Criminal Procedure Code ch. 62; or
 - (10) If a license is unlawfully transferred.
- (b) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (c) Subsection (a)(7) of this section does not apply to adult motels as a ground for revoking the license, unless the licensee, owner, operator or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in a public place or within public view.

Sec. 13-32. Denial, suspension and revocation procedures

- (a) If the chief of police is authorized to deny the issuance of a license, or suspend or revoke a license, the chief of police shall give written notice to the applicant or licensee of his intent to implement denial, suspension, or revocation procedures. The notice shall state:
- (1) The reason for such denial, suspension, or revocation.
 - (2) The provisions of the code which have been violated.
 - (3) The person or office with which any request for a contested case hearing must be filed and the address at which any such request must be filed.
- (b) The notice shall provide that the denial of issuance, suspension or revocation shall take effect at the expiration of the tenth calendar day after notification. The applicant or licensee shall have ten calendar days from the date notice is received to request a hearing on the denial, suspension or revocation as provided in this article.
- (c) A written request for a hearing from the applicant or licensee received by the chief of police before the expiration of the tenth (10th) calendar day does not stay the denial, suspension or revocation of the license pending a hearing before the City Manager.
- (d) In making a determination as to the denial of a license, the chief of police shall consider whether the applicant has established the applicant's entitlement to a license and/or whether the city has established a disqualifying factor under the requirements imposed by section 13-26.
- (e) In making a determination of the suspension of a license under section 13-30, the chief of police shall consider:
- (1) Whether the required number of citations under section 13-30(a) were issued to the licensee, owner, operator, or employee of the licensee within a 12-month period of time; and
 - (2) Whether the licensee, owner, operator or employee of the licensee was convicted or placed on deferred disposition or probation for the citations.
- (f) In making a determination of the revocation of a license under section 13-31, the chief of police shall consider:

- (1) Whether the required number of citations under section 13-30(a) were issued to the licensee, owner, operator or employee of the licensee within a 12-month period of time;
 - (2) Whether the licensee, owner, operator or employee of the licensee was convicted or placed on deferred disposition or probation for the citations; and
 - (3) Whether the license at issue has been ordered suspended for a 30-day period of time pursuant to section 13-33 within the preceding 12-month period of time.
- (h) In making a determination of the revocation of a license under section 13-31, the chief of police shall consider whether the evidence shows that the specified convictions, events or actions occurred as set forth in those sections of this article.

Sec. 13-33. Period of suspension or revocation

- (a) The revocation of a license as provided for in section 13-31 shall be for a period of 12 months.
- (b) The suspension of a license as provided for in section 13-30 shall be as follows:
 - (1) The first suspension of a license shall be for a period of three calendar days.
 - (2) The second suspension of a license shall be for a period of seven calendar days.
 - (3) The third suspension of a license shall be for a period of 15 calendar days.
 - (4) The fourth suspension of a license shall be for a period of 30 calendar days. Except where grounds for revocation of a license exist under section 13-31(a)(1), each subsequent suspension of a license shall be for a period of 30 calendar days.

Sec. 13-34. Appeals

- (a) An applicant or licensee shall have ten (10) calendar days from the date notice is received to request a hearing on the denial, suspension or revocation; if a hearing on the denial, suspension or revocation is not timely requested, the denial, suspension or revocation becomes final. The request shall be in writing and delivered to applicant or licensee via personal delivery, or via U.S. Postal Service, certified mail, return receipt requested. If filed by mail, the request shall be considered timely filed if the green return receipt card shows the item was properly addressed and received by the applicant or licensee on or before the tenth calendar day from the date the applicant or licensee received notice of intention to deny/revoke/suspend. Upon receipt of the request for hearing, a hearing before the City Manager shall be scheduled to take place within thirty (30) calendar days unless both parties agree to a certain date beyond the thirty (30) days. The City Manager shall consider only the testimony and evidence admitted for consideration at the hearing. The City Manager shall have five business days from the date of the hearing to notify the applicant or licensee of the decision.
- (b) Status of license during hearing. While a case is pending, and prior to the final decision of the City Manager regarding denial, revocation or suspension, a license is neither valid nor effective.
- (c) Decision of City Manager.
 - (1) If a request for a hearing has been timely filed, the City Manager shall conduct a de novo hearing and shall make one of the following findings:
 - (A) If the hearing is one for which the license is subject to suspension, the City Manager shall determine that the alleged offense occurred, and determine the severity of the offense, and shall either order a suspension pursuant to the time periods in section 13-33 or deny the suspension.
 - (B) If the City Manager finds that any of the conditions set forth in this article exist that would make the license subject to revocation, the City Manager shall, on the basis of the severity of the offense, either revoke the license, or order a suspension pursuant to section 13-33.

- (C) If the City Manager finds that any of conditions set forth in this article exist that would be grounds for denial of the license, the City Manager shall deny the license pursuant to section 13-26.
- (2) If the City Manager does not make the requisite findings, then the decision of the police chief shall be affirmed.
- (d) Notice of denial/revocation/suspension.
 - (1) A final decision or order by the City Manager shall be issued in writing, and shall:
 - (A) Be provided to all parties via personal delivery or via United States Postal Service, certified mail, return receipt requested; and
 - (B) Be considered timely if:
 - i. For personal delivery, a party receives the notice not later than three business days from the date on which the decision is rendered; or
 - ii. For postal delivery, the decision or order is postmarked not later than three business days from the date on which the decision is rendered.
 - (2) The decision by the City Manager is effective 30 calendar days after the applicant or licensee is notified of the decision.
 - (3) Any act authorized by a license shall be unauthorized and in violation of this article upon and after the effective date of any suspension of the license until the suspension expires.
 - (4) Any act authorized by a license shall be unauthorized and in violation of this article upon and after the effective date of any revocation of the license unless and until a new license, if any, is applied for and granted pursuant to the terms of this article. If a license has been revoked because of crimes or activities occurring on the premises of a sexually oriented business, the owner/operator of the sexually oriented business is disqualified from receiving or holding any license under this article for a period of one calendar year from the effective date of the revocation.
 - (5) If a license is suspended or revoked because of crimes or activities occurring on the premises of a sexually oriented business, each and every individual, person, or association which is an owner/operator of a sexually oriented business at the time of any suspension or revocation of the sexually oriented business for that establishment shall be considered to have had a license suspended or revoked as if they held the license in their own name for purposes of determining whether they are qualified to participate in another license application under this article.

Sec. 13-35. Transfer of license; forging or altering license

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

Sec. 13-36. Provisions cumulative

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

Sec. 13-37. Nudity and semi-nudity prohibited; exceptions

- (a) It shall be unlawful for a person, individual, corporation, or association that manages or operates a sexually oriented business to intentionally or knowingly allow an individual to appear on the premises of said establishment in a state of nudity or semi-nudity.
- (b) It shall be unlawful for an owner-operator of a sexually oriented business to intentionally or knowingly allow an individual to appear on the premises of said establishment in a state of nudity or semi-nudity.
- (c) Exceptions. It is an exception to the application of this section that at the time of the state of nudity or semi-nudity the actor was an individual, person, or, in the case of subsection (b), an association that:
 - (1) Manages, operates, or appears nude in a public place that is a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed massage therapist, or licensed barber engaged in performing functions authorized under the lawful license held;
 - (2) Owns, manages, operates, or appears nude in a public place that is a business operated by or employing a licensed physician or chiropractor engaged in practicing the healing arts; or
 - (3) Owns, manages, operates, or appears nude in a public place that is a business licensed as a tattoo studio or a body piercing studio and was engaged in practices authorized under the license.

Sec. 13-38. Loitering; monitoring of parking lot

- (a) It shall be the duty of the operator of a sexually oriented business to:
 - (1) Ensure that at least two conspicuous signs, visible from a public right-of-way, stating that no loitering is permitted on the premises, are posted on the exterior of the structure;
 - (2) Designate one or more employees to monitor the parking lot of the premises by the use of video cameras and monitors, which shall operate and record continuously at all times that the premises are open for business. The monitors shall be installed within a manager's station, and the operator of a sexually oriented business shall preserve such recordings for a period of not less than one week before the recording may be erased. Recordings maintained under this section are subject to the inspection requirements set forth in section 13-28.
- (b) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the business's parking lot(s) from being visible from a public right-of-way.
- (c) It shall be unlawful for a person having a duty under this section to intentionally or knowingly fail to fulfill that duty.

Sec. 13-39. Escort agencies

- (a) A person commits an offense if the person employs at an escort agency any person under the age of 18 years.
- (b) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.
- (c) An employee of an escort agency must attend training given by the licensee concerning the requirements of this article as they pertain to escort agencies, before the employee receives any compensation for the employee's services. The licensee shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services, and at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from

each employee verifying the employee's attendance at and participation in training provided by the licensee, identifying the date on which the training was provided, and the specific topics discussed.

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

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

Sec. 13-40. Nude model studios

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

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

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

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

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

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

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

(h) A licensee commits an offense if the licensee fails to display the signs on the interior of the nude model studio premises and/or the floor markings as required in section 13-50.

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

(j) An employee of a nude model studio must attend training given by the licensee concerning the requirements of this article as they pertain to nude model studios, before the employee receives any compensation for the employee's services. The licensee or operator shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services, and at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training

provided by the licensee, identifying the date on which the training was provided, and the specific topics discussed.

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

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

Sec. 13-41. Adult theaters and adult motion picture theaters

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

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

(c) Adult theaters and adult motion picture theaters shall also comply with the requirements of section 13-46.

(d) An employee of an adult theater or adult motion picture theater must attend training given by the licensee concerning the requirements of this article as they pertain to adult theaters or adult motion picture theaters, before the employee receives any compensation for the person's services. The licensee shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services, and at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee, identifying the date on which the training was provided, and the specific topics discussed.

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

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

Sec. 13-42. Adult motels

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

Sec. 13-43. Adult cabarets

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

- (b) An employee of an adult cabaret, while appearing in a state of nudity or semi-nudity, commits an offense if the employee intentionally or knowingly touches a customer or the clothing of a customer.
- (c) A customer at an adult cabaret commits an offense if the customer intentionally or knowingly touches an employee appearing in a state of nudity or semi-nudity or the clothing of an employee appearing in a state of nudity or semi-nudity.
- (d) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly allows, in a sexually oriented business, any person to appear in a state of nudity or semi-nudity, unless the person is an employee who, while in a state of nudity or semi-nudity, is on a stage (on which no customer is present) at least 18 inches above the floor, and is:
- (i) at least six feet from any customer (hereinafter called “unenclosed performance stage”), or
 - (ii) physically separated from customers by a wall or partition composed of solid glass or light-transmitting plastic, or substantially equivalent material, extending from the floor of the performance stage to at least five feet above the level of the performance stage, but such that there are not openings in the wall or partition that would permit physical contact between customers and such employee (hereinafter “enclosed performance stage”).
- (e) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly permits any customer access to an area of the premises not visible from the manager’s station or not visible by a walk-through of the premises without entering a private, exclusive, closed, curtained, or otherwise screened area, excluding restrooms. The view required in this subsection shall be by direct line of sight. The view shall be deemed insufficient if clear visibility of such line of sight must be attained by utilizing flashlights or spotlights in addition to overhead house lighting.
- (f) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly appears in or allows another to appear in a state of nudity or semi-nudity in an area of the adult cabaret business premises which can be viewed from the public right-of-way.
- (g) A licensee, owner or operator commits an offense if the licensee, owner or operator fails to display the signs on the interior of the adult cabaret business premises and/or the floor markings as required in section 13-50.
- (h) An employee of an adult cabaret must attend training provided by the licensee, owner or operator concerning the requirements of this article as they pertain to adult cabarets, before the employee receives any compensation for the person’s services. The licensee, owner or operator shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services, and at least once a year thereafter. The licensee, owner or operator shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee’s attendance at and participation in training provided by the licensee, owner or operator, identifying the date on which the training was provided, and the specific topics discussed.
- (i) A licensee shall designate and appoint one or more individuals to operate, manage, direct, and control the premises and operations of the adult cabaret. At least one person so appointed shall be on the premises at any time the adult cabaret is open.
- (j) An operator or a person appointed under subsection (i) above shall at all times have the duty to ensure that each employee in the adult cabaret has received the training required by subsection (h) above and each employee is instructed to commit no act which would constitute a violation of this article or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this article.

Sec. 13-44. Sexual encounter centers prohibited

- (a) Sexual encounter centers are prohibited. No license shall be issued for the operation of a sexual encounter center.
- (b) A person commits an offense if the person owns, operates or causes to be operated a sexual encounter center. Any person in control or apparent control of the premises shall be presumed to be operating the sexual encounter center.

Sec. 13-45. Adult bookstores, adult novelty stores and adult video stores

- (a) A person who operates or causes to be operated an adult bookstore, adult novelty store or adult video store shall comply with the following requirements:
 - (1) An application for a sexually oriented business license for an adult bookstore, adult novelty store or adult video store shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north, or to some designated street or object, and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The building official may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since the previously submitted diagram was prepared.
 - (2) The application shall be sworn to be true and correct by the applicant.
 - (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the building official.
 - (4) A licensee, owner or operator commits an offense if the licensee, owner or operator permits a manager's station to be unattended by an employee at any time a customer is present on, in or about the premises.
 - (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any customer is permitted access for any purpose, excluding restrooms and fitting/dressing rooms (in stores that sell apparel). Restrooms and fitting/dressing rooms may not contain video reproduction equipment or any other equipment allowing for the viewing of film, videos, photographs or other video reproduction. Only one person shall be allowed in each restroom at any time, unless otherwise required by law. The operator shall ensure that not more than one person is permitted to enter a restroom, unless otherwise required by law, and that no persons engage in any specified sexual activity in the restroom. If the premises have two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any customer is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
 - (6) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly permits a customer access to any area of the premises that is not visible from the manager's station for any purpose, excluding restrooms and fitting/dressing rooms.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) An employee of an adult bookstore, adult novelty store or adult video store must attend training provided by the licensee, owner or operator concerning the requirements of this article as they pertain to such a business, before the employee receives any compensation for the person's services. The licensee, owner or operator shall provide this training to all employees at the beginning of employment

before the employee receives any compensation for services, and at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee, owner or operator, identifying the date on which the training was provided, and the specific topics discussed.

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

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

Sec. 13-46. Exhibition of sexually explicit films, photographs, pictures or videos

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

(1) An application for a sexually oriented business license shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north, or to some designated street or object, and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The chief of police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since the previously submitted diagram was prepared.

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

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

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

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any customer is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment or any other equipment allowing for the viewing of film, videos, photographs or other video reproductions. If the premises have two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any customer

is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

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

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

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

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

(10) No viewing room or booth of less than 150 square feet of floor space shall be occupied by more than one person at any time.

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

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

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

(14) In a viewing room or booth of less than 150 square feet of floor space, the walls shall be no more than 48 inches tall. At least one wall of any such viewing room or booth shall be visible in a direct unobstructed line of sight from the manager's station. Each wall or door of any such viewing room or booth shall be constructed of clear transparent glass, plastic or substantially equivalent materials that allow an unobstructed view of the entire interior of the viewing room or booth.

(15) Live entertainment is prohibited in any viewing room or booth of less than 500 square feet of floor space, as well as any other room adjacent to or visible from any viewing room or booth.

(16) The licensee, owner or operator commits an offense if the licensee, owner or operator intentionally or knowingly allows a person to appear in a state of nudity or semi-nudity in, on or about the premises of a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 500 square feet of floor space, a film, photograph, picture, videocassette or other video reproduction which depicts specified sexual activities or specified anatomical areas.

(17) A person commits an offense if the person intentionally or knowingly appears in a state of nudity or semi-nudity in or on the premises of a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 500 square feet of floor space, a film, photograph, picture, videocassette or other video reproduction which depicts specified sexual activities or specified anatomical areas.

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

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

(c) An employee of a sexually oriented business that exhibits sexually explicit films, photographs, pictures or videos must attend training given by the licensee concerning the requirements of this article as they pertain to such a business, before the employee receives any compensation for the person's services. The licensee, owner or operator shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services, and at least once a year thereafter. The licensee, owner or operator shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee, owner or operator, identifying the date on which the training was provided, and the specific topics discussed.

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

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

Sec. 13-47. Hours of operation

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

Sec. 13-48. Prohibition against children in sexually oriented business

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

Sec. 13-49. Employees in state of nudity or semi-nudity—Restrictions

(a) A licensee, owner, operator or employee commits an offense if the licensee, owner, operator or employee intentionally or knowingly allows, in a sexually oriented business, a person to appear in a state of nudity or semi-nudity, unless the person is an employee who, while in a state of nudity or semi-nudity, is on an unenclosed performance stage or an enclosed performance stage.

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

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

Sec. 13-50. Same—Conspicuous signage and markings required

(a) A licensee, owner or operator commits an offense if the licensee, owner or operator fails to display a sign on the interior of the sexually oriented business premises notifying customers and employees of the prohibition prescribed by section 13-49. The sign must be prominently and continuously displayed where customers enter the premises, and immediately adjacent to each stage, and must state in letters at least two inches high:

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

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

(b) A licensee, owner or operator commits an offense if the licensee, owner or operator fails to prominently and continuously display a two inches wide glow-in-the-dark line on the floor of the sexually oriented business marking a distance of six feet from each unenclosed stage on which an employee in a state of nudity may appear in accordance with section 13-49(a).

Sec. 13-51. Alcoholic beverage sales and consumption prohibited

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

Sec. 13-52. Sign requirements

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

- (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 sec. 243.0075, as amended, not later than the sixtieth (60th) day before submitting the application for a sexually oriented business license.
- (2) The sign shall comply with Local Government Code sec. 243.0075, as follows:
 - (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 Local Government Code sec. 243.0075. 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 Local Government Code sec. 243.0075 shall be deemed to begin on the posting date. If the notification is received by the chief of police more than five days after the sign was posted, the 60-day posting requirement shall be deemed to begin on the date the chief of police verifies the sign has been posted.

(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 13-22(b) within 1,000 feet of the posted location.

(5) Subsection (4) above does not apply if:

- (A) A completed and correct application for a license for a proposed sexually oriented business is not filed with the chief of police within twenty (20) days after the expiration of the 60-day posting requirement under Local Government Code sec. 243.0075;
- (B) The application for a license is withdrawn or denied; or
- (C) The notification requirements of subsection (3) are not met.

V. Repeal. Any prior ordinances or ordinance provisions are hereby repealed to the extent they are in conflict with the terms of this Ordinance. Any remaining provisions of said ordinances shall remain in full force and effect.

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

VIII. Open Meetings. It is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered at such meeting, including this Ordinance was given, all as required by Chapter 551, as amended, Texas Government Code.

IX. Effective Date. This Ordinance shall become effective upon its adoption by the City Commission, and after publication as required by law.

PASSED, APPROVED, AND ADOPTED on this the 5th day of May 2026.

Bob Sims, Mayor

ATTEST:

Jessica Sutter, City Secretary

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