

ORDINANCE NO. 98-01

AN ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESS IN ORDER TO PROMOTE THE HEALTH, SAFETY, MORALS, AND GENERAL WELFARE OF THE CITIZENS OF THE CITY OF MERCEDES, TEXAS, AND TO ESTABLISH REASONABLE AND UNIFORM REGULATIONS TO PREVENT THE CONCENTRATION OF SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY; PROVIDING FOR SEVERABILITY AND ORDAINING OTHER PROVISIONS RELATING TO THE SUBJECT MATTER THEREOF.

WHEREAS, on the 20th day of January, 1998, a public hearing was held for the purpose of presenting for consideration certain regulations regarding the operation and regulation of businesses of a sexually-oriented nature; and

WHEREAS, the City Commission is of the opinion that the proposed restrictions and regulations are in the best interest of the City of Mercedes, Texas.

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

SECTION 1: PURPOSE AND INTENT.

1.01. It is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City of Mercedes, Texas (hereinafter referred to as the "City"), and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

1.02. It is the intent of the City Commission that the locational regulations of §13 of this Ordinance are promulgated pursuant to Chapter 243 of the Texas Local Government Code.

SECTION 2: DEFINITIONS

2.01. In this Ordinance, the following definitions will apply:

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

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

- (1) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes 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."

(C) Adult Cabaret means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

- (1) persons who appear in a state of nudity or semi-nudity, including topless dancers, nude dancers or strippers, male or female; or
- (2) live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
- (3) films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

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

- (1) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this type of photographic reproductions; or
- (2) offers a sleeping room for rent for a period of time that is less than ten (10) 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 (10) hours.
- (E) Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or other photographic reproductions are shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (F) Adult Theater means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified sexual activities" or "specified anatomical areas."
- (G) Child Care Facility means a building used as a day nursery, children's boarding home, child placement agency, religious or charitable encampment for children or any other place for the care or custody of children under sixteen (16) years of age.
- (H) Church means a building in which persons regularly assemble to worship, intended primarily for purposes connected with faith, or for propagating a particular form of belief.
- (I) Director of Planning means the Director of Planning for the City of Mercedes, Texas, or his designated agent.
- (J) Escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (K) Escort Agency means a person who, or business association that, furnishes, offers to furnish, or advertises to furnish escorts as one of its business purposes, for a fee, tip, or other consideration.
- (L) Establishment means and includes any of the following:
- (1) the opening or commencement of any sexually oriented business as a new business;
 - (2) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (3) the addition of any sexually oriented business to any other existing sexually oriented business; or
 - (4) the relocation of any sexually oriented business.

- (M) Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.
- (N) Nude Model Studio means any place where a person who appears in a state of nudity or semi-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.
- (O) Nudity or a State of Nudity means:
- (1) the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or
 - (2) a state of dress that fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.
- (P) Operates or Causes to be Operated means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.
- (Q) Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (R) Residential District means a single family, duplex, townhouse, multiple family or mobile home district or area so designated by such uses.
- (S) Residential Use means property used for single family, duplex, multiple family, mobile home park, mobile home subdivision, or campground purposes.
- (T) School means any public or private learning center, elementary school, secondary school, junior college, community college, university or other center for post-secondary education.
- (U) Semi-Nude means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breasts, as well as portions of the body covered by supporting straps or devices.
- (V) Sexual Encounter Center means a business or commercial enterprise that, as one of its primary 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.
- (W) Sexually Oriented Business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
- (X) Specified Anatomical Areas means human genitals in a state of sexual arousal.
- (Y) Specified Sexual Activities means and includes any of the following:
 - (1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
 - (2) sex acts, normal or perverted, actual or simulated, including 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 (1) through (3) above.
- (Z) Substantial Enlargement of a sexually oriented business means the increase in floor area occupied by the business by more than twenty percent (20%), as the floor area existed on the date of the enactment of this Ordinance.
- (AA) Transfer of Ownership or Control of a sexually oriented business means and includes any of the following:
 - (1) the sale, lease, or sublease of the business;
 - (2) the transfer of securities that 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 that 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.

SECTION 3: CLASSIFICATION OF SEXUALLY ORIENTED BUSINESSES.

3.01. Sexually oriented business are classified as follows:

- (A) adult arcades;
- (B) adult bookstores or adult video stores;
- (C) adult cabarets;
- (D) adult motels;
- (E) adult motion picture theaters;
- (F) adult theaters;
- (G) escort agencies;
- (H) nude model studios; and
- (I) sexual encounter centers.

SECTION 4: LICENSE REQUIRED.

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

4.02. An application for a license must be made on a form provided by the Director of Planning. The application form shall be sworn to and shall: (a) include the name and address of the applicant; (b) state whether the applicant meets each of the requirements set forth in §5 of this Ordinance; (c) include the name and address of each person required to sign the application pursuant to §4.04 of this Ordinance, and the name, address, and type of entity (if applicable) of each person or entity owned or controlled by such person that owns or controls an interest in the business to be license; and (d) such other matters, consistent with this Ordinance, as may be specified in the application form. The application must be accompanied by 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 need not be professionally prepared but must be drawn to a designated scale or drawn with market dimensions of the interior of the premises to an accuracy of plus or minus six inches (6"). Applicants who must comply with §19 of this Ordinance shall submit a diagram meeting the requirements of §19 of this Ordinance.

4.03. The applicant must be qualified according to the provisions of this Ordinance and the premises must be inspected and found to be in compliance with the law by the Director of Planning.

4.04. If a person who wishes to operate a sexually oriented business is an individual, he or she 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 twenty percent (20%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under §5 of this Ordinance and each applicant shall be considered a licensee if a license is granted. If the applicant is not the owner of the premises on which the sexually oriented business is to be operated, the owner of the premises must provide written permission authorizing the application.

4.05. If the applicant is not the owner of the premises upon which the sexually oriented business is to be located, then the owner(s) of the premises must provide documentation in writing to the Director of Planning that the owner has knowledge of the intended use of the premises for the purpose of a sexually oriented business and has consented to such use of the premises.

SECTION 5: ISSUANCE OF LICENSE.

5.01. The Director of Planning shall recommend approval of the issuance of a license to an applicant within thirty (30) days after receipt of a completed application unless the Director of Planning finds one or more of the following to be true:

- (A) An applicant is under eighteen (18) years of age.
- (B) An applicant, applicant's spouse, or the owner of the property is overdue in payment to the City for taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.
- (C) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
- (D) An applicant, applicant's spouse, or the owner of the property has been convicted of a violation of a provision of this Ordinance other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (E) The license fee required by this Ordinance has not been paid.
- (F) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding twelve (12) months and has demonstrated an inability to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.
- (G) An applicant or the proposed establishment is in violation of or is not in compliance with §7, §12, §13, §15, §16, §17, §18, §19 or §20 of this Ordinance.
- (H) The premises to be used for the sexually oriented business are not in compliance with all applicable City laws, regulations, and City Commission orders.
- (I) The premises are not connected to municipal water and wastewater systems.

(J) An applicant, an applicant's spouse, or the owner of the property has been convicted of a crime:

(1) involving;

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

1. prostitution;
2. promotion of prostitution;
3. aggravated promotion of prostitution;
4. compelling prostitution;
5. obscenity;
6. sale, distribution, or display of harmful material to a minor;
7. sexual performance by a child; or
8. possession of child pornography;

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

1. public lewdness;
2. indecent exposure; or
3. indecency with a child;

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

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

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

(2) for which:

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

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

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

5.02. The Mercedes Police Department shall conduct a background investigation on the applicant regarding applicant's compliance with Section 5.01 (J).

5.03. The fact that a conviction is being appealed shall have no effect on the disqualification of the application.

5.04. The application shall be brought before the Planning and Zoning Commission of the City of Mercedes within thirty (30) days of the recommendation of the Director of Planning. The Planning and Zoning Commission shall review the application and recommend approval or disapproval of the license to the City Commission of the City of Mercedes.

5.05. The application shall be brought before the City Commission of the City of Mercedes within thirty (30) days of the recommendation of the Planning and Zoning Commission. The City Commission shall review the application and shall approve or disapprove the issuance of the license to operate a sexually oriented business.

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

SECTION 6: LICENSE FEES FOR SEXUALLY ORIENTED BUSINESSES.

6.01. The annual fee for a sexually oriented business license shall be \$1,500.00. Such fee is based on the cost of processing the application and investigation of the applicant.

SECTION 7: INSPECTION.

7.01. An applicant or licensee shall permit representatives of the Police Department and the City of Mercedes, including, but not limited to, the Department of Planning, to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

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

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

SECTION 8: EXPIRATION OF LICENSE.

8.01. Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in §4 and §5. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

SECTION 9: SUSPENSION.

9.01. The Director of Planning shall suspend for a period not to exceed ninety (90) days if he determines that a licensee or an agent or employee of a licensee has:

- (A) violated or is not in compliance with §7, §12, §13, §15, §16, §17, §18, §19 or §20 of this Ordinance.
- (B) engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (C) refused to allow an inspection of the sexually oriented business premises as authorized by this Ordinance;
- (D) knowingly permitted gambling by any person on the sexually oriented business premises; or
- (E) demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

SECTION 10: REVOCATION.

10.01. The Director of Planning shall revoke a license if a cause of suspension in §9 of this Ordinance occurs and the license has been suspended within the preceding twelve (12) months.

10.02. The Director of Planning shall revoke a license if he determines that:

- (A) a licensee gave false or misleading information in the material submitted to the Director of Planning during the application process;
- (B) a licensee, an agent or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

- (C) a licensee, an agent or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
- (D) a licensee has been convicted of an offense listed in §5.01(I)(1) for which time period required in §5.01(I)(2) has not elapsed;
- (E) on two (2) or more occasions within a 12-month period, a person or persons committed an offense, occurring in or on the licensed premises, of a crime listed in §5.01(J)(1) or other breach of peace, for which a conviction has been obtained, and the person or persons were agents or employees of the sexually oriented business at the time the offenses were committed;
- (F) a licensee or an agent or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code; or
- (G) a licensee is delinquent in payment to the City for any ad valorem taxes, sales or other taxes related to the sexually oriented business.

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

10.04. Subsection 10.02(G) of this section does not apply to adult motels as a ground for revoking the license unless the licensee, agent or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within the public view.

10.05. When the Director of Planning revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective. If, subsequent to revocation, the Director of Planning finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Subsection 10.02(E) of this section, an applicant may not be granted another license until the appropriate number of years required under §5.01(I)(2) has elapsed.

SECTION 11: APPEAL.

11.01. If the Director of Planning denies the issuance of a license pursuant to Section 5.01, or suspends or revokes a license, the Director of Planning shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the licensee whose application for a license has been denied or whose license has been suspended or revoked shall

have the right to appeal to the Board of Adjustment of the City of Mercedes. An appeal to the Board of Adjustment must be filed within thirty (30) days after the receipt of notice of the decision of the Director of Planning. The licensee shall bear the burden of proof before the Board of Adjustment.

SECTION 12: TRANSFER OF LICENSE.

12.01. A license is not transferrable, nor shall a licensee operate a sexually oriented business under the authority of a license at any location other than the address designated in the application.

SECTION 13: LOCATION OF SEXUALLY ORIENTED BUSINESSES.

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

- (A) a church;
- (B) a school;
- (C) a child care facility;
- (D) a boundary of a residential district;
- (E) a public park;
- (F) the property line of a lot devoted to residential use; or
- (G) any building or structure in which alcoholic beverages are offered for sale.

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

13.03. A person commits an offense if he or she causes or permits the operation, establishment, or maintenance of more than one (1) sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

13.04. For the purpose of Subsection 13.01 of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, school, child care facility or building or structure in which alcoholic beverages are offered for sale, or to the nearest boundary of an affected public park, residential district, or residential lot.

13.05. For the purposes of Subsection 13.02 of this section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each of business is located.

13.06. Any sexually oriented business lawfully operating on the effective date of this Ordinance that is in violation of Subsections 13.01, 13.02 or 13.03 of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed twelve (12) months, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming use shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within one thousand five hundred feet (1,500') of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

13.07. A sexually oriented business lawfully operated as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, school, child care facility, public park, residential district, or residential lot, or any building or structure in which alcoholic beverages are offered for sale, within one thousand five hundred feet (1,500') of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

SECTION 14: EXEMPTIONS FROM LOCATIONAL RESTRICTIONS.

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

14.02. If the written request is filed with the City Manager within the 10-day limit, the Board of Adjustment of the City of Mercedes shall consider the request. Such request shall be heard by the Board of Adjustment within sixty (60) days from the date the written request is received.

14.03. A hearing by the Board of Adjustment may proceed if a quorum of the Board of Adjustment is present. The Board of Adjustment shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

14.04. The Board of Adjustment may, in its discretion, grant an exemption from the locational restrictions of this Ordinance if it makes the following findings:

- (A) That the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
- (B) That the granting of the exemption will not violate the spirit and intent of this Ordinance;

- (C) That the location of the proposed sexually oriented business will not downgrade the location of an additional sexually oriented business in the area and will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and
- (D) That all other applicable provisions of this Ordinance will be observed.

14.05. The Board of Adjustment shall consider the facts in evidence before it and shall vote upon the requested exemption. The affirmative vote of four (4) members of the Board of Adjustment are required to grant the requested exemption. The decision of the Board of Adjustment shall be final.

14.06. If the Board of Adjustment grants the exemption, the exemption is valid for one (1) year from the date of the action by the Board of Adjustment. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of this Ordinance until the applicant applies for and receives another exemption.

14.07. If the Board of Adjustment denies the exemption, the applicant may not reapply for an exemption until at least twelve (12) months have elapsed since the date of the action of the Board of Adjustment.

14.08. The granting of an exemption does not exempt the applicant from any other provisions of this Ordinance other than the locational restrictions.

SECTION 15: ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

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

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

SECTION 16: ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.

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

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

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

16.04. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

SECTION 17: ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS.

17.01. A person commits an offense if he knowingly allows a person under the age of eighteen (18) years on the premises of an adult theater or adult motion picture theater.

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

SECTION 18: ADDITIONAL REGULATIONS FOR ADULT MOTELS.

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

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

18.03. For purposes of Subsection 18.02 of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

SECTION 19: REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

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

- (A) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations, the location of all overhead lighting fixtures, and switches, which lights are controlled by which switches and designating any portion of the premises in which patrons will not be permitted. Only agents or employees shall have access to light switches. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also

designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The Director of Planning may waive the foregoing diagram for renewal applications of the applicant adopts a diagram that was previously submitted and certifies that the configuration for the premises has not been altered since it was prepared.

- (B) The application shall be sworn to be true and correct by the applicant.
- (C) No alteration in the configuration or location of a manager's station may be made without prior approval of the Director of Planning.
- (D) It is the duty of the licensee to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (E) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises have (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (F) It shall be the duty of the licensee, and it also shall be the duty of any agents and employees present in the premises to ensure that the view area specified in Subsection 19.01(E) of this section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present on the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection 19.01(A) of this section.
- (G) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) footcandle as measured at the floor level.

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

19.02. A person having a duty under Subsections 19.01(A) through 19.01(H) above, commits an offense if he or she knowingly fails to fulfill that duty.

19.03. A person commits an offense if he knowingly allows a person under the age of eighteen (18) years on the premises of an adult theater or adult motion picture theater.

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

SECTION 20: DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS.

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

- (A) human sexual intercourse, masturbation, or sodomy;
- (B) fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;
- (C) less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or
- (D) human male genitals in a discernibly turgid state, whether covered or uncovered.

20.02. In this section "display" means to locate an item in such a manner that, without obtaining assistance from an agent or employee of the business establishment:

- (A) it is available to the general public for handling or inspection; or
- (B) the cover, outside packaging on the item or contents of the item is visible to members of the general public.

SECTION 21: ENFORCEMENT.

21.01. Except as provided by Subsection 21.02 of this section, any person violating §13 of this Ordinance, upon conviction, is punishable by a fine not to exceed \$3,000.00 for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

21.02. If the sexually oriented business involved is a nude studio or sexual encounter center, then violation of §4.01 or §13 of this Ordinance is punishable as a Class A misdemeanor.

21.03. Except as provided by Subsection 21.02 of this section above, any person violating a provision of this Ordinance other than §13, upon conviction, is punishable by a fine not to exceed \$3,000.00 for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

21.04. It is a defense to prosecution under §4.01, §13, or §16.04 of this Ordinance that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

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

21.05. It is a defense to prosecution under §4.01 or §13 of this Ordinance that each item of descriptive, printed film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.

SECTION 22: INJUNCTIVE RELIEF.

22.01. A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of §13 of this Ordinance is subject to a suit for injunction as well as prosecution for criminal violations.

SECTION 23: SEVERABILITY.

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

PASSED, APPROVED AND ADOPTED ON FIRST READING ON THIS THE 20th DAY OF JANUARY, 1998.

PASSED, APPROVED AND ADOPTED ON SECOND READING ON THIS THE 3rd DAY OF FEBRUARY, 1998.



ATTEST:

Arceia L. Felix

ARCELIA L. FELIX, City Secretary

Miguel Castillo, Jr.

MIGUEL CASTILLO, JR., Mayor

APPROVED AS TO FORM:

Barry E. Jones

BARRY E. JONES, City Attorney