

Ordinances Governing  
**SEXUALLY ORIENTED BUSINESS**  
in the  
CITY OF ARLINGTON  
TEXAS

Amended by Ordinance No. 08-064  
(August 19, 2008)

(Chapter Designator: SEXUALLY ORIENTED BUSINESS)

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
92-117	11/17/92	Establishing an "Adult Entertainment" Chapter, relative to adult entertainment establishments; providing findings regarding adult entertainment establishments; providing definitions; establishing locational requirements; providing for amortization of nonconforming uses; establishing a licensing procedure; providing additional regulations for adult cabaret, nude model businesses, escort agencies, adult theaters and adult motion picture theaters; establishing procedures for appointment of a license and amortization appeal board.
95-08	01/10/95	Amend Article IV, Section 4.02(B), <u>License Application</u> , relative to payment of fees; Amend Section 4.05(A), <u>Expiration of License</u> , relative to three-month licensing.
95-101	07/25/95	Amend Article IV, Section 4.10, <u>Exemption From Location Restrictions</u> , Subsections (C) through (J), relative to increasing the number of members on the license and amortization appeal board and dividing the board into three panels of three members each.
<a href="#">98-106</a>	08/25/98	Amend <b>Article II, Section 2.01, Definitions</b> , relative to the amendment of the definitions of "Adult Entertainment Establishment", "Adult Arcade", "Adult Bookstore or Adult Video Store", "Adult Cabaret", "Adult Motel", "Adult Motion Picture Theater", "Adult Theater", "Church", "Escort Agency", "Licensee", "Nude Model Business", "Operates or Causes

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
		To Be Operated", "Regularly", "Sexual Encounter Center", and "Specified Sexual Activities", the addition of the definitions of "Applicant", "Chief of Police", "Conviction" or "Convicted", "Operator", and "Premises" and the reformatting of the entire section; Amend <b>Article III</b> , <u>Location of Adult Entertainment Establishments</u> , relative to the location of adult entertainment establishments and nonconforming uses; Amend <b>Article IV</b> , <u>License for Adult Entertainment Establishment</u> , relative to licensing, issuance and denial of license, inspection and maintenance of records, expiration and renewal of license, suspension and revocation of license, appeals, transfer of license and exemption from location restrictions; Amend <b>Article V</b> , <u>Additional Regulations, Section 5.01, Additional Regulations for Adult Cabaret</u> , relative to the regulations of adult cabarets; <b>Section 5.02, Additional Regulations for Escort Agencies</b> , relative to the regulations of escort agencies; <b>Section 5.03, Additional Regulations for Nude Model Businesses</b> , relative to the regulations of nude model businesses; <b>Section 5.04, Additional Regulations for Adult Theaters and Adult Motion Picture Theaters</b> , relative to the regulations of adult theaters and adult motion picture theaters; <b>Section 5.05, Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos</b> , Subsection (A)(3), relative to the approval of the Chief of Police; <b>Section 5.05</b> , Subsections (A)(4), (A)(6), and (A)(9), relative to making the subsections gender neutral; Amend

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
		<b>Article VI, Enforcement</b> , by the deletion of <b>Section 6.02</b> .
<a href="#"><u>99-157</u></a>	12/14/99	Amend <b>Article II, Definitions, Section 2.01, Definitions</b> , relative to the amendment of the definition of "Operator"; Amend <b>Article IV, License for Adult Entertainment Establishment, Section 4.02 License Issuance and Grounds for Denial</b> by the addition of <b>Subsection (A) (12)</b> regarding the posting of an outdoor sign by an applicant; Amend <b>Section 4.03, Inspection and Maintenance of Records, Subsection (B)</b> , relative to the records required to be kept and maintained on the premises; Amend <b>Section 4.05, Suspension</b> , relative to the suspension of a license; Amend <b>Section 4.06, Grounds For Revocation</b> , by amending <b>Subsection (A) (1)</b> and adding <b>Subsection (A) (10)</b> , relative to the grounds for revoking a license; Amend <b>Section 4.08, Period of Suspension and Revocation</b> , relative to the periods of suspension; Amend <b>Article V, Additional Regulations, Section 5.01, Additional Regulations For Adult Cabaret</b> , by the addition of <b>Subsection (E)</b> , relative to the posting of signs; by the addition of <b>Subsection (F)</b> , prohibiting the employment of any person under eighteen years of age; by the addition of <b>Subsection (G)</b> , requiring training of employees; by the addition of <b>Subsection (H)</b> , requiring appointment of individual in control of premises; by the addition of <b>Subsection (I)</b> , relative to the duties of the individual in control of the premises; Amend <b>Section 5.03, Additional Regulations For Nude Model Business</b> , by the addition of

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
		<b>Subsection (H)</b> , requiring the posting of signs.
<a href="#">02-128</a>	11/26/02	Amend <b>Article IV</b> , <u>License For Adult Entertainment Establishment</u> , by amendment of <b>Section 4.11</b> , <u>Exemption from Location Restrictions</u> , relative to the procedures of the License and Amortization Appeal Board.
<a href="#">03-041</a>	04/01/03	Amend <b>Article II</b> , <u>Definitions</u> , <b>Section 2.01</b> , <u>Definitions</u> , relative to the addition of a definition for "Transfer of Ownership or Control"; Amend <b>Article IV</b> , <u>License for Adult Entertainment Establishment</u> , <b>Section 4.01</b> , <u>License Required</u> , <b>Section 4.05</b> , <u>Suspension</u> , <b>Section 4.06</b> , <u>Grounds for Revocation</u> , <b>Section 4.07</b> , <u>Denial</u> , <u>Suspension and Revocation Procedures</u> , <b>Section 4.08</b> , <u>Period of Suspension or Revocation</u> , <b>Section 4.09</b> , <u>Appeal to District Court</u> , and <b>Section 4.10</b> , <u>Transfer of License</u> , relative to Licensing, Suspension and Revocation; Add <b>Article VII</b> , <u>Enforcement</u> , relative to notices of citations and fines.
<a href="#">03-044</a>	04/15/03	Rename the <b>"Adult Entertainment"</b> Chapter to <b>"Sexually Oriented Business"</b> ; Add <b>Section 1.03</b> , <u>Findings</u> ; Amend <b>Section 2.01</b> , <u>Definitions</u> , including the Definitions of "Nudity", "Specified Anatomical Areas", and "Specified Sexual Activities"; Amend <b>Section 3.02</b> , <u>Nonconforming Uses</u> ; Amend <b>Article V</b> , <u>Additional Regulations</u> , relative to interior design, training and supervision obligations; Add <b>Section 5.06</b> , <u>Additional Regulations Pertaining to Sexually Oriented Bookstores, Sexually Oriented Novelty</u>

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
		<u>Stores and Sexually Oriented Video Stores</u> ; Add a new <b>Article VI, Miscellaneous</b> , relative to hours of operation, prohibition of persons under 18 years of age, performance stages, buffer requirements, interior signs, and demarcation lines; Delete old <b>Article VI, Enforcement</b> .
<a href="#">03-088</a>	07/29/03	Amend <b>Article I, Purpose and Intent, Section 1.03, Findings</b> , Subsections (30) and (33), relative to findings regarding customers or employees in a state of nudity; Amend <b>Article IV, License for Sexually Oriented Business, Section 4.01, License Required</b> , by the addition of Subsections (I), (J) and (K), relative to building permits; <b>Section 4.02, License Issuance and Grounds for Denial</b> , Subsections (A)(6), (A)(10), (A)(10)(c)(1), (A)(10)(c)(2), and (B), relative to changing the reference from deferred adjudication to deferred disposition; <b>Section 4.03, Inspection and Maintenance of Records</b> , Subsection (A), relative to inspection; <b>Section 4.05, Suspension</b> , Subsections (A)(1), (A)(2), and (A)(3), relative to changing the reference from deferred adjudication to deferred disposition; <b>Section 4.05</b> , Subsection (B), relative to an affirmative defense to suspension; <b>Section 4.06, Grounds for Revocation</b> , Subsection (A)(2), and <b>Section 4.07, Denial, Suspension and Revocation Procedures</b> , Subsection (B)(4)(b) and (B)(4)(c), relative to changing the reference from deferred adjudication to deferred disposition; Amend <b>Article VI, Miscellaneous, Section 6.03, Additional Regulations Concerning Public Nudity</b> , by the deletion of the contents of Subsection (A), relative to it being an offense

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
		for a person in a sexually oriented business to engage in specified sexual activities.
<a href="#">03-117</a>	11/18/03	Amend <b>Article I</b> , <u>Purpose and Intent</u> , <b>Section 1.03</b> , <u>Findings</u> , relative to the addition of cases and studies; Amend <b>Article VI</b> , <u>Miscellaneous</u> , <b>Section 6.03</b> , <u>Additional Regulations Concerning Public Nudity</u> , Subsection (B), relative to clarification of materials to be used to satisfy the requirements of an "enclosed performance stage".
<a href="#">04-002</a>	01/06/04	Amend <b>Article V</b> , <u>Additional Regulations</u> , <b>Section 5.01</b> , <u>Additional Regulations for Sexually Oriented Cabaret</u> , <b>Subsection (B)</b> , relative to touching an employee or the clothing of an employee appearing in a state of nudity; Amend <b>Section 5.05</b> , <u>Regulations Pertaining to Exhibition of Sexually Explicit Films, Photographs, Pictures or Videos</u> , <b>Subsection (A)</b> , <b>Subsections (A)(10)</b> and <b>(A)(14)</b> , relative to a viewing room or booth of less than 150 square feet; <b>Subsection (A)(15)</b> , relative to live entertainment in any viewing room or booth of less than 500 square feet of floor space; <b>Subsections (A)(16)</b> and <b>(A)(17)</b> , relative to prohibiting a person from appearing in a state of nudity on the premises if it contains a viewing or reading room of less than 500 square feet; Amend <b>Section 5.06</b> , <u>Additional Regulations Pertaining to Sexually Oriented Bookstores, Sexually Oriented Novelty Stores and Sexually Oriented Video Stores</u> , <b>Subsection (A)(14)</b> , relative to an unobstructed view of the entire interior of a

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
		viewing room or booth; <b>Subsections (A) (16) and (A) (17)</b> , relative to prohibiting a person from appearing in a state of nudity on the premises if it contains a viewing or reading room of less than 500 square feet.
<a href="#">04-032</a>	03/23/04	Amend <b>Article III, Location of Sexually Oriented Businesses, Section 3.02, Nonconforming Sexually Oriented Business</b> , Subsection (A), relative to the termination of nonconforming status; Amend <b>Article IV, License for Sexually Oriented Business, Section 4.09, Appeal to District Court</b> , relative to the issuance of a provisional license; <b>Section 4.11, Exemption From Location Restrictions</b> , Subsection (B), relative to License and Amortization Appeal Board hearings; Add <b>Section 4.12, Administrative Review Relating to Request for Provisional License</b> .
<a href="#">04-036</a>	04/13/04	Amend <b>Article III, Location of Sexually Oriented Businesses, Section 3.02, Nonconforming Sexually Oriented Business</b> , Subsection (A), relative to the termination of nonconforming status.
<a href="#">07-023</a>	04/10/07	Amend <b>Article II, Definitions, Section 2.01, Definitions</b> , by the amendment of the definitions of "Church," "Residential District" and "Residential Use."
<a href="#">08-030</a>	05/06/08	Amend <b>Article IV, License for Sexually Oriented Business, Section 4.11, Exemption from Location Restrictions, Subsection (D)</b> , and by the addition of <b>Subsection (J)</b> .

SEXUALLY ORIENTED BUSINESS  
History

ORDINANCE HISTORY

<u>Number</u>	<u>Date of Adoption</u>	<u>Comments</u>
<a href="#">08-064</a>	08/19/08	Amend <b>Article II</b> , <u>Definitions</u> , <b>Section 2.01</b> , <u>Definitions</u> , by the amendment of the definition of "Entertainment District."



SEXUALLY ORIENTED BUSINESS  
Contents

Section 5.04	Additional Regulations for Sexually Oriented Theaters and Sexually Oriented Motion Picture Theaters
Section 5.05	Regulations Pertaining to Exhibition of Sexually Explicit Films, Photographs, Pictures or Videos
Section 5.06	Additional Regulations Pertaining to Sexually Oriented Bookstores, Sexually Oriented Novelty Stores and Sexually Oriented Video Stores

**ARTICLE VI MISCELLANEOUS**

Section 6.01	Hours of Operation
Section 6.02	Prohibition Against Children in a Sexually Oriented Business
Section 6.03	Additional Regulations Concerning Public Nudity
Section 6.04	Conspicuous Signage and Markings Required

**ARTICLE VII ENFORCEMENT**

Section 7.01	Violation a Misdemeanor
Section 7.02	Notice of Violation

**ARTICLE I****PURPOSE AND INTENT****Section 1.01 Adoption of Preamble**

The findings contained in the preamble of this ordinance are determined to be true and correct and are adopted as a part of this ordinance.

**Section 1.02 Purpose and Intent**

It is the purpose of this Chapter 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 continued concentration of Sexually Oriented Businesses within the City. The provisions of this Chapter 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 not the intent nor effect of this Chapter 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.

**Section 1.03 Findings**

Based on evidence concerning the adverse secondary effects of Sexually Oriented Businesses on the community presented in hearings and in reports made available to the Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S. Ct. 1382 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728 (2002); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *LLEH, Inc. v. Wichita County, Texas*, 289 F.3d 358 (5th Cir. 2002); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); 2300,

SEXUALLY ORIENTED BUSINESS

1.03

*Inc. v. City of Arlington*, 888 S.W.2d 123 (Tex. App. - Fort Worth, 1994); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), cert denied, 529 U.S. 1053 (2000); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *DLS, Inc. v. Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Jake's, Ltd., Inc. v. Coates*, 384 F.3d 884 (8th Cir. 2002); and on studies, reports and/or testimony in other communities including, but not limited to: Phoenix, Arizona; Minneapolis, Minnesota; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Dallas, Texas; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York; St. Croix County, Wisconsin; Kitsap County, Washington; Los Angeles, California Police Department (dated August 12, 2003); Arlington, Texas, License and Amortization Appeal Board hearings, 2001 and 2002; Arlington Community Health Profile (dated July 2003); a summary of land use studies compiled by the National Law Center for Children and Families; and also on findings from the *Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses* (June 6, 1989, State of Minnesota), the Council finds:

1. Sexually Oriented Businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, absent municipal regulation aimed at reducing adverse secondary effects there is no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
2. Certain employees of Sexually Oriented Businesses, defined in this Ordinance as Sexually Oriented Theater, Nude Model Business, Escort Agency, and Sexually Oriented Cabaret, engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
3. Sexual acts, including masturbation, prostitution, sexual contact, and oral and anal sex, occur at Sexually Oriented Businesses, especially those which provide private or semi-private booths or cubicles, or rooms for viewing films, videos, or live sex shows.

4. Offering and providing private or semi-private areas in Sexually Oriented Businesses encourages such sexual activities, which creates unhealthy conditions.
5. Persons frequent certain Sexually Oriented Theaters, Sexually Oriented Arcades, and other Sexually Oriented Businesses for the purpose of engaging in sex within the premises of such Sexually Oriented Businesses.
6. At least 50 communicable diseases may be spread by activities occurring in Sexually Oriented Businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
7. Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS (acquired immunodeficiency syndrome) caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982; 2,200 in 1983; 4,600 in 1984; 8,555 in 1985, and 253,448 through December 31, 1992.
8. As of December 31, 2001, there have been 57,199 reported cases of AIDS in the State of Texas.
9. Since the early 1980s and to the present, there has been an increasing cumulative number of persons testing positive for the HIV antibody test in Tarrant County, Texas and across the State of Texas.
10. The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982, and 45,200 through November, 1990. According to Texas Department of Health records there were 1,175 cases of early syphilis reported in the State of Texas during 2000 and an additional 972 cases reported in 2001.
11. The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990. Again, according to Texas Department of Health records there were 32,895 cases of gonorrhea reported in the State of Texas during 2000 and an additional 30,116 cases reported in 2001. During the same time period there were also 138,692 cases of chlamydia reported in the State of Texas. [Arlington Community Health Profile (dated July 2003)]

SEXUALLY ORIENTED BUSINESS

1.03

12. In his report of October 22, 1986, the Surgeon General of the United States has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
13. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
14. Sanitary conditions in some Sexually Oriented Businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
15. Numerous studies and reports have determined that semen is found in the areas of Sexually Oriented Businesses where persons view "sexually oriented" films.
16. Sexually Oriented Businesses have operational characteristics which should be reasonably regulated in order to protect substantial governmental concerns.
17. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the Sexually Oriented Businesses. Further, such a licensing procedure will place an incentive on the operators to see that the Sexually Oriented Business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the Sexually Oriented Business, fully in possession and control of the premises and activities occurring therein.
18. Removal of doors on booths and requiring sufficient lighting on premises with booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in Sexually Oriented Theaters.
19. Requiring licensees of Sexually Oriented Businesses to keep information regarding current employees and certain past employees will help reduce the incidence

- of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
20. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the Sexually Oriented Business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.
  21. In the prevention of the spread of communicable diseases, it is desirable to obtain a limited amount of information regarding certain employees who may engage in the conduct that this Ordinance is designed to prevent, or who are likely to be witnesses to such conduct.
  22. The fact that an applicant for a Sexually Oriented Business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this Ordinance. There is a correlation between Sexually Oriented Businesses, specifically their hours of operation and the type of people which such businesses attract, and higher crime rates. [*Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002)].
  23. The barring of such individuals from the management of Sexually Oriented Businesses for a period of years serves as a deterrent to, and prevents conduct which leads to, the transmission of sexually transmitted diseases.
  24. It is reasonably believed that to better protect the public health, safety, and welfare, it is necessary to adopt additional amendments to this chapter.
  25. It is reasonably believed that to prevent the exploitation of a loophole in the Ordinance (which would have permitted such businesses to avoid the location restrictions), partially nude performances in such businesses are also included within the purview of the regulations, since they have the same harmful secondary effects on the surrounding community as Sexually Oriented Businesses currently regulated under

SEXUALLY ORIENTED BUSINESS

1.03

- the Ordinance. [*Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002)].
26. There is no Constitutional right for Sexually Oriented Business employees in a state of nudity to touch customers. [*Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995)]
  27. One court has characterized the acts of Sexually Oriented Business employees in a state of nudity and being paid to touch or be touched by customers as prostitution. [*People v. Hill*, 2002 Ill. App. LEXIS 792 (Ill. App. 2 Dist. Sep. 4, 2002); See also, Tex. Penal Code Sections 43.01 ("sexual conduct" and "sexual contact") and 43.02 ("prostitution")].
  28. Attempts by the City of Arlington to require Sexually Oriented Businesses to advise customers and employees in a state of nudity to refrain from intentionally touching and fondling each other through signage posted at the business entrance have not been effective.
  29. Sexually Oriented Businesses have not complied with the "no touch" provisions, but have flagrantly disregarded them and/or encouraged employees and customers to violate the "no touch" provision.
  30. Provocative touching between customers and employees in a Sexually Oriented Business where at least one is in a state of nudity frequently leads to the commission of sex crimes, illegal drug use, and increased health risks due to sexually transmitted diseases.
  31. Compelling signage at the entrances of Sexually Oriented Businesses has not been effective in halting "no touch" violations.
  32. The City of Arlington has had to expend considerable law enforcement resources to enforce the "no touch" provisions.
  33. The City Council reasonably believes that requiring employees in a state of nudity to be physically separated from customers by the use of elevated stages and buffer zones is necessary to better ensure ordinance compliance while still not inhibiting constitutionally protected expressive conduct or speech. [*LLEH, Inc. v. Wichita County, Texas*, 289 F.3d 358 (5th Cir. 2002)]

34. It is reasonably believed by the City Council that the general welfare, health, and safety of the citizens of the City will be promoted by the enactment of this Ordinance.
35. The findings noted in Subsections (1) through (33) raise substantial governmental concerns. (Amend Ord 03-117, 11/18/03)

**ARTICLE II**

**DEFINITIONS**

**Section 2.01 Definitions**

Unless otherwise expressly stated, the following terms shall, for the purposes of this Chapter, have the meanings indicated in this section.

**"Applicant"** means a person or persons listed as such on an application for a license as a Sexually Oriented Business.

**"Business Days"** means the days of the week from Monday through Friday, excluding legal holidays.

**"Chief of Police"** means the Chief of Police, Assistant Chief of Police or Deputy Chief of Police. In Sections 4.01, 4.02 and 4.04 of this Ordinance, Chief of Police shall also mean a member of the Police Department Covert Operations Unit designated by the Chief of Police.

**"Church"** means a building, or portion of a building, whether situated within the city or not, in which persons regularly assemble for religious worship and said building or portion of a building is intended primarily for purposes connected with such worship or for propagating a particular form of religious belief. (Amend Ord 07-023, 4/10/07)

**"Customer"** means any person who:

1. is allowed to enter a Sexually Oriented Business in return for the payment of an admission fee or any other form of consideration or gratuity; or
2. enters 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 club.

**"Conviction" or "convicted"** means a finding of guilty by a court of record, regardless of whether an appeal is pending.

**"Day"** means, unless otherwise indicated, calendar days.

SEXUALLY ORIENTED BUSINESS

2.01

**"Employee"** means any person who renders any service whatsoever to the customers of a Sexually Oriented Business or who works in or about a Sexually Oriented Business and who receives compensation for such service or work from the operator or owner of the Sexually Oriented Business or from the customers therein.

**"Entertainment District"** means the Entertainment District, as set out in Resolution No. 92-725, or any subsequent resolutions or ordinances establishing the Entertainment District or Entertainment Overlay District, except the eastern boundary of such district for purposes of this definition shall be the west right-of-way line of State Highway 360, from the north line of Interstate 30 on the north and the south line of Division Street on the south. (Amend Ord 08-064, 8/19/08)

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

**"Escort Agency"** means a person or business association that furnishes, offers to furnish or advertises to furnish escorts as its principal business purpose, for a fee, tip or other consideration.

**"Licensee"** means a person in whose name a license to operate a Sexually Oriented Business has been issued, as well as any and all individuals listed as applicants, owners or licensees on the application for a license.

**"Licensed Day Care Center"** means a facility licensed by the State of Texas, whether situated within the City or not, that provides care, training, education, custody treatment or supervision for more than six (6) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

**"Nude Model Business"** means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided or allowed to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or give any other form of consideration. Nude model business shall not include those activities excepted from the below definition of Sexually Oriented Business.

**"Nudity or A State of Nudity"** means:

1. The appearance of a human bare buttock, vulva, anus, anal cleft with less than a full opaque covering, male genitals, female genitals or female breast; or
2. A state of dress which fails to completely and opaquely cover a human buttock, vulva, anus, male genitals, female genitals or any part of the female breast or breasts that is situated below a point immediately above the top of the areola of the female breast.

**"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, licensee or manager of the establishment.

**"Operator"** means an individual who is in control of the operations of a Sexually Oriented Business, including, but not limited to, a person designated by the licensee under Section 5.01(H) of this Chapter. This control can be either on an hourly basis, daily basis, weekly basis, or shift basis, or any combination thereof. An operator includes, but is not limited to manager, assistant manager, house mother, floor manager, or shift manager.

**"Person"** means an individual, proprietorship, partnership, corporation, association or other legal entity.

**"Premises"** means the grounds and all building, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

**"Principal"** means over fifty percent (50%) of customers, volume of sales, revenue, stock in trade, display areas, floor space, advertising, or presentation time in any three (3) month increment period beginning from the date of issuance of a certificate of occupancy. Stock in trade shall be measured with all titles or objects available on the premises for sale or rental including those that are identical, considered a separate title or object.

**"Regularly"** means featuring, promoting, permitting to occur or advertising a happening or occurrence on a recurring basis.

SEXUALLY ORIENTED BUSINESS

2.01

**"Residential District"** means a residentially zoned district. For purposes of this Chapter, a "residential use" may exist even in the absence of a corresponding "residential district." (Amend Ord 07-023, 4/10/07)

**"Residential Use"** means a single family, townhouse, duplex, mobile home or multifamily use. (Amend Ord 07-023, 4/10/07)

**"Sexual Encounter Center"** means a commercial establishment to which the public is permitted or invited, which as its principal business purpose, offers for any form of consideration:

1. physical contact in the form of specified sexual activities between persons of the same or opposite sex; or
2. activities between male and female persons and/or persons of the same sex when one (1) or more of the persons is in a state of nudity.

**"Sexually Oriented Business"** means:

1. A Sexually Oriented Arcade, Sexually Oriented Bookstore or Sexually Oriented Video Store, Sexually Oriented Cabaret, Sexually Oriented Motel, Sexually Oriented Theater, Sexually Oriented Motion Picture Theater, Escort Agency, Nude Model Business or Sexual Encounter Center; and/or
2. Any establishment whose principal business is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to its customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or whose employees or customers appear in a state of nudity.
3. The term "Sexually Oriented Business" shall not be construed to include:
  - a. Any business operated by or employing a licensed psychologist, licensed physical therapist, licensed masseuse, licensed vocational nurse, registered nurse, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing the normal and customary functions authorized under the license held;

- b. Any business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts;
- c. Any retail establishment whose principal business is the offering of wearing apparel for sale to customers and that does not exhibit merchandise on live models; or
- d. An activity conducted or sponsored:
  - (1) By a proprietary school licensed by the State of Texas or a college, junior college or university supported entirely or partly by taxation; or
  - (2) By a private college or university which maintains or operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;

And any activity conducted or sponsored by an entity identified in subparagraph (1) or (2) must be situated in a structure:

- (a) which has no sign or other advertising visible from the exterior of the structure indicating a nude person is available for viewing; and
- (b) where in order to participate in a class, a student must enroll at least three (3) days in advance of the class; and
- (c) where no more than one (1) nude model is on the premises at any one time.

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

SEXUALLY ORIENTED BUSINESS

2.01

**"Sexually Oriented Bookstore or Sexually Oriented Video Store"** means a commercial establishment to which the public is permitted or invited which, as its principal business purpose, offers for sale or rental for any form of consideration any one (1) 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 which depict or describe "specified sexual activities" or "specified anatomical areas"; or
2. instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities." This does not include items used for birth control or for prevention of sexually transmitted diseases.

**"Sexually Oriented Cabaret"** means a nightclub, bar, restaurant or similar commercial establishment which regularly has:

1. persons who appear in a state of nudity; or
2. live performances which 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, closed-circuit television transmissions, cable television transmissions, subscriber programming, any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission or other method, which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

**"Sexually Oriented Motel"** means a hotel, motel or similar commercial establishment which:

1. offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, cable television transmissions, subscriber programming, any disk, diskette, or other physical medium that allows an image

- to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission or other method, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this type of material; 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.

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 business is a Sexually Oriented Motel.

**"Sexually Oriented Motion Picture Theater"** means a commercial establishment to which the public is permitted or invited where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions, any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission or other method, are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

**"Sexually Oriented Theater"** means a theater, concert hall, auditorium or similar commercial establishment to which the public is permitted or invited which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

**"Specified Anatomical Areas"** means:

1. human genitals in a state of sexual arousal or simulated to be in a state of sexual arousal, even if completely and opaquely covered; or

SEXUALLY ORIENTED BUSINESS

2.01

2. 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.

**"Specified Sexual Activities"** means and includes any of the following:

1. the fondling or other erotic touching of another's or one's own human genitals, pubic region, pubic hair, perineum, buttocks, anus or female breasts;
2. sex acts, actual or simulated, including intercourse, oral copulation, sodomy or bestiality;
3. masturbation, actual or simulated, of oneself or another; or
4. excretory functions as part of or in connection with, any of the activities set forth in (1) through (3) above.

**"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 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. (Amend Ord 03-044, 4/15/03)

ARTICLE III

LOCATION OF SEXUALLY ORIENTED BUSINESSES

Section 3.01 Location

- A. A Sexually Oriented Business shall be located within a specific zoning district as set forth in the "Zoning" Chapter of the Code of the City of Arlington, Texas.
- B. A person commits an offense if he establishes, operates or causes to be operated or expanded a Sexually Oriented Business within 1,000 feet of:
1. a church;
  2. a public or private elementary or secondary school;
  3. a boundary of a residential district;
  4. a boundary of the Entertainment District as defined in this Chapter;
  5. a licensed day care center;
  6. a public park; or
  7. the property line of a lot devoted to a residential use as defined in this Chapter.

However, if there is a controlled access highway between the district boundary/property line and the Sexually Oriented Business, the Sexually Oriented Business must be at least five hundred (500) feet from such district boundary/property line.

- C. A person commits an offense if he establishes, operates or causes to be operated or expanded a Sexually Oriented Business within 1,000 feet of any other Sexually Oriented Business.
- D. A person commits an offense if he establishes, operates or causes to be operated or expanded a Sexually Oriented Business in any building, structure or portion thereof containing another Sexually Oriented Business.
- E. For the purposes of Subsection (B), 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 tenant space occupied for a Sexually Oriented Business to the nearest property line of the premises of a church, public or private elementary or secondary school, licensed day care center, or to the nearest boundary of an affected public park, residential district, Entertainment District or residential lot.

- F. For purposes of Subsection (C) 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 business is located. If the establishment is located within a structure with multiple spaces available for occupancy, the measurement will be from the closest wall of the tenant space occupied by the Sexually Oriented Business.

**Section 3.02 Nonconforming Sexually Oriented Business**

- A. Any Sexually Oriented Business lawfully operating prior to the effective date of Ordinance No. 92-117, that is in violation of Section 3.01 and has continuously operated and maintained a valid and effective Sexually Oriented Business license at such location, shall be deemed a nonconforming Sexually Oriented Business. The nonconforming Sexually Oriented Business will be permitted to continue for a period not to exceed three (3) years from the effective date of Ordinance No. 92-117. Any nonconforming status shall terminate if the Sexually Oriented Business voluntarily discontinues operating as a Sexually Oriented Business or abandons such use at such location for thirty (30) days or more, or if there has been a final administrative determination, pursuant to Sections 4.02(A)(1) and/or 4.11, denying an application for such business at such location without further appeal, or a judicial determination upholding such denial. Such nonconforming Sexually Oriented Businesses shall not be increased, enlarged, extended or altered except that the business may be changed to a use other than a Sexually Oriented Business to the extent allowed by the Zoning Chapter of the Code of Ordinances of the City of Arlington, as amended. If two (2) or more Sexually Oriented Businesses are within 1,000 feet of one another and otherwise in a permissible location, the Sexually Oriented Business which was first established and has continuously operated and maintained a valid and effective Sexually Oriented Business license at a

- particular location is the conforming Sexually Oriented Business. The later-established business that was lawfully operating prior to the effective date of Ordinance No. 92-117 and has continuously operated and maintained a valid and effective Sexually Oriented Business license at such location is nonconforming. (Amend Ord 04-036, 4/13/04)
- B. Notwithstanding anything contained herein to the contrary, the License and Amortization Appeal Board may extend the amortization period hereinabove provided to a reasonable period of time for any nonconforming Sexually Oriented Business upon a showing by a particular business that without an extension it will be unable to recoup its investment in the nonconforming structure.
- C. Any nonconforming Sexually Oriented Business which desires an extension must register with the License and Amortization Appeal Board as a nonconforming Sexually Oriented Business no later than September 1, 1995, and must file an application for an extension of the amortization period not later than November 1, 1995. Requests for an extension of the amortization period shall be limited to one (1) application with the License and Amortization Appeal Board.
- D. A Sexually Oriented Business lawfully operating as a conforming Sexually Oriented Business after the effective date of Ordinance No. 92-117 is not rendered a nonconforming use by the location, subsequent to the commencement of operation of the Sexually Oriented Business, of a church, public or private elementary or secondary school, public park, licensed day care center, Entertainment District, residential use or residential zoning district within 1,000 feet of the Sexually Oriented Business.
- E. A person commits an offense if the person increases, enlarges, extends, or alters or causes to be increased, enlarged or extended or altered the premises of a nonconforming Sexually Oriented Business. (Amend Ord 03-044, 4/15/03)

ARTICLE IV

LICENSE FOR SEXUALLY ORIENTED BUSINESS

Section 4.01 License Required

- A. A person commits an offense if the person operates or causes to operate a Sexually Oriented Business without a valid license, issued by the City for the particular type of business.
- 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 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 marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6").
- C. The applicant must be qualified according to the provisions of this article.
- 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 twenty percent (20%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 4.02, 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. The provisions of this article shall apply to existing Sexually Oriented Businesses beginning ninety (90) days after the effective date of Ordinance No. 92-117.
- G. All applications for a license under this article shall be accompanied by a nonrefundable application fee. The

SEXUALLY ORIENTED BUSINESS

4.01

annual fee is Five Hundred Dollars (\$500.00). An application shall not be considered to have been received until the fee is paid and all information required by the application form has been submitted. The application fee shall not be prorated in the event an application is tendered before or during the licensing period.

- H. An applicant for a Sexually Oriented Business must first obtain a Certificate of Occupancy for a Sexually Oriented Business from the Building Official. The Building Official shall issue or deny a Certificate of Occupancy to a Sexually Oriented Business not more than sixty (60) business days subsequent to the date of the applicant's submission of such application to the City's Office of Building Inspections. Such application for a Certificate of Occupancy shall be deemed approved if not approved or denied within such time period.
- I. If an applicant for a Sexually Oriented Business requires a building permit under applicable city ordinances, the Building Official shall cause all building, fire, health and other necessary permits to be issued within thirty (30) business days subsequent to the date of the applicant's submission of an application to the City's Office of Building Inspections. The Building Official shall cause all necessary inspections to occur within five (5) business days of the applicant's request for an inspection made to the Building Official. Such application shall be deemed approved if not approved or denied within such time period. The applicant must specify on the face of its application that the proposed use is for a sexually oriented business and give the name and address of the applicant's contact person for all communications and notices.
- J. Notwithstanding any other ordinance, an applicant for a Sexually Oriented Business may appeal any decision of the Building Official by filing suit in the appropriate county court at law within thirty (30) calendar days after receipt of notice of decision or the expiration of the deadlines set forth in (H) or (I) above. The filing of such suit shall have the effect of staying denial of such building permit or certificate of occupancy pending a judicial determination. A provisional permit or certificate shall be granted upon the filing of a court action to appeal the denial of

such permit or certificate. The provisional permit or certificate will expire upon entry of judgment on such appeal.

- K. A licensee or operator commits an offense if the licensee or operator fails to display a legible copy of the complete provisional permit or certificate described in Subsection 4.01(J), if applicable, on the exterior of the Sexually Oriented Business premises. Such copy of the provisional permit or certificate must be prominently and continuously displayed where customers enter the premises and immediately adjacent to such entrances. (Amend Ord 03-088, 7/29/03)

**Section 4.02 License Issuance and Grounds for Denial**

- A. The Chief of Police shall approve the issuance of a license to an applicant within thirty (30) days after receipt of an application, unless the Chief of Police finds one (1) or more of the following to be true:
1. The location of the Sexually Oriented Business is or would be in violation of Article III of this Chapter.
  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 eighteen (18) years of age.
  5. An applicant or an applicant's spouse is overdue in payment to 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 Chapter, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect. (Amend Ord 03-088, 7/29/03)

SEXUALLY ORIENTED BUSINESS

4.02

7. The license fee required by this Article 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 is in violation of or is not in compliance with Sections 4.03 or 4.10, or Sections 5.03(H), 5.05(A)(1), 5.05(A)(5), 5.06(A)(1), or 5.06(A)(5), as applicable.
10. An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation, or community supervision for: (Amend Ord 03-088, 7/29/03)
  - 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 Section 4.02(A)(10); or
  - b. Any of the below offenses of the State of Texas or criminal attempt, conspiracy, or solicitation to commit same:
    - (1) Any of the following offenses as described in Chapter 43 of the Texas Penal Code:
      - (a) Prostitution;
      - (b) Promotion of prostitution;
      - (c) Aggravated promotion of prostitution;
      - (d) Compelling prostitution;
      - (e) Obscenity;
      - (f) Sale, distribution or display of harmful material to a minor;

- (g) Sexual performance by a child;
  - (h) Possession of child pornography;
- (2) Any of the following offenses as described in Chapter 21 of the Texas Penal Code:
- (a) Public lewdness;
  - (b) Indecent exposure;
  - (c) Indecency with a child;
- (3) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code; or
- (4) Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code;
- c. For which:
- (1) Less than two (2) years have elapsed since the date of conviction, or the date of release from the terms of community supervision, probation, parole or deferred disposition or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; or
  - (2) Less than five (5) 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 of a felony offense; or (Amend Ord 03-088, 7/29/03)
  - (3) 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

SEXUALLY ORIENTED BUSINESS

4.02

two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (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 Section 243.0075 of the Texas Local Government Code regarding the posting of an outdoor sign.
- B. An applicant, or applicant's spouse, who has been convicted of or placed on deferred disposition, probation or community supervision for an offense listed in Section 4.02(A)(10) may qualify for a Sexually Oriented Business license only when the time period required by Section 4.02(A)(10)(c) has elapsed. (Amend Ord 03-088, 7/29/03)
  - C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the Sexually Oriented Business.
  - D. The license shall be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business, so that it is visible to the public at all times and may be easily read.

**Section 4.03 Inspection and Maintenance of Records**

- A. A licensee, operator or employee of a Sexually Oriented Business shall be subject to regulation under this Chapter and shall permit representatives of the Police Department, Health Department, Fire Department, Building Inspections Division and Code Enforcement Division to inspect all portions of the premises where customers are allowed and the records required to be maintained under this Chapter by the Sexually Oriented Business for the purpose of ensuring compliance with this Chapter at any time it is occupied or open for business. (Amend Ord 03-088, 7/29/03)

- B. A licensee or operator of a Sexually Oriented Business commits an offense if the person operates the establishment without maintaining a current list of all employees of the business, along with a complete updated employment application for each employee. A legible copy of a valid driver's license, state identification card, or passport, with a photograph, together with an original photograph accurately depicting the employee as the person appears at the time the person is hired, shall be required and maintained on the premises with the employee's application.
- C. A licensee or operator of a Sexually Oriented Business commits an offense if the person refuses to permit a lawful inspection of the records and premises by a representative of the Police Department at any time the Sexually Oriented Business is occupied or open for business.
- D. The licensee or operator of a Sexually Oriented Business shall maintain all records required to be maintained under the provisions of this Chapter on the licensed premises.
- E. The licensee or operator of a Sexually Oriented Business commits an offense if the person does not maintain the required records on the premises of the licensed establishment.
- F. A licensee, operator or employee of a Sexually Oriented Business shall permit representatives of the Police Department to take photographs of the licensee, operator or employees of the Sexually Oriented Business for the purpose of ensuring compliance with this Chapter at any time it is occupied or open for business.
- G. A licensee, operator or employee of a Sexually Oriented Business commits an offense if that person does not permit representatives of the Police Department to take photographs of the licensee, operator or employee of the Sexually Oriented Business at any time it is occupied or open for business.
- H. The provisions of this section do not apply to areas of a Sexually Oriented Motel which are currently being rented by a customer for use as a permanent or temporary habitation.

**Section 4.04    Expiration and Renewal of License**

- A. Each license shall expire one year after the date of issuance.
- B. Renewal of a license may be applied for by submission to the Chief of Police of an application on the form prescribed by such official and payment of a nonrefundable renewal processing fee of Five Hundred Dollars (\$500).
- C. Application for renewal shall be made at least thirty (30) days before the expiration date of the current license.

**Section 4.05    Suspension**

- A. Subject to Section 4.05(B), the Chief of Police shall suspend a Sexually Oriented Business license if the Chief of Police determines that a licensee(s), operator(s) or employee(s) of a licensee (or any combination thereof) has/have:
  - 1. (a) On five (5) or more occasions within any twelve (12) month period of time been cited for a violation of Sections 6.02, 6.03, 6.04 or any of the provisions of Article V of this Chapter; (b) been convicted or placed on deferred disposition or probation for the violations; and (c) the Chief of Police determines that notice of the citations has been sent to the licensee in accordance with Section 7.02 of this Chapter; or
  - 2. (a) On five (5) or more occasions within any twelve (12) month period of time been cited for a violation of Section 4.03 of this Chapter; (b) been convicted or placed on deferred disposition or probation for the violations; and (c) the Chief of Police determines that notice of the citations has been sent to the licensee in accordance with Section 7.02 of this Chapter; or
  - 3. (a) Been cited for any combination of offenses under subsections (1) or (2) above that total five (5) within any twelve (12) month period of time; (b) been convicted or placed on deferred

disposition or probation for the violations; and  
(c) the Chief of Police determines that notice of the citations has been sent to the licensee in accordance with Section 7.02 of this Chapter.  
(Amend Ord 03-088, 7/29/03)

A period of suspension will begin the first day after the decision of the Chief of Police becomes final as provided in Section 4.07, unless the licensee appeals to district court under Section 4.09. If appeal is taken under Section 4.09, the period of suspension begins the day after all appeals are final.

- B. It shall be an affirmative defense to the suspension authorized under Section 4.05(A) if such licensee shows by a preponderance of the evidence that it was powerless to prevent such violations. (Amend Ord 03-088, 7/29/03)
- C. Each day in which a violation is permitted to continue shall constitute a separate violation for purposes of suspension.

#### **Section 4.06    Grounds for Revocation**

- A. The Chief of Police may revoke a Sexually Oriented Business license:
  - 1. If a cause of suspension in Section 4.05 occurs and the license has been ordered suspended by the Chief of Police for a thirty (30) day period pursuant to Section 4.08(B)(4) within the preceding year; or
  - 2. If the Chief of Police determines that on two or more occasions within a five (5) year period of time a licensee(s) or operator(s) (or any combination thereof) has/have been convicted of or placed on deferred disposition, probation or community supervision for conduct occurring in a licensing period on the premises of a Sexually Oriented Business that constitutes any of the offenses of the State of Texas or criminal attempt, conspiracy, or solicitation to commit same for; (Amend Ord 03-088, 7/29/03)
    - 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;
  - (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;
  - (3) Indecency with a child;
- c. Sexual assault or aggravated sexual 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
3. If a licensee or operator gave false or misleading information in the material submitted to the Chief of Police during the application process;
  4. If a licensee or operator has knowingly allowed possession, use or sale of a controlled substance on the premises;
  5. If a licensee or operator has on two (2) or more occasions knowingly allowed prostitution on the premises;

6. If a licensee or operator knowingly operated the Sexually Oriented Business during a period of time when the licensee's license was suspended;
  7. If a licensee or operator has, on two (2) 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 Section 21.01, Texas Penal Code;
  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 Chapter 62 of the Texas Code of Criminal Procedure.
  10. If a license is transferred in violation of Section 4.10(A).
- B. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- C. Section 4.06(A)(7) does not apply to Sexually Oriented Motels as a ground for revoking the license, unless the licensee 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.

**Section 4.07 Denial, Suspension and Revocation Procedures**

- A. A denial, suspension, or revocation is an administrative procedure. In any hearing relating to such actions under this Section, the burden of proof shall be on the City (except for affirmative defenses), and shall be by a preponderance of the evidence.
- B. If the Chief of Police is authorized to deny the issuance of a license, or suspend or revoke a license, the Chief of Police shall give written notice to the applicant or licensee of his intent to implement denial, suspension, or revocation procedures.

1. The notice shall state the reason for such denial, suspension, or revocation.
2. 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, unless the licensee provides a written request for hearing to the Chief of Police before the expiration of the tenth calendar day.
3. If a written request for hearing from the applicant or licensee is received by the Chief of Police before the expiration of the tenth calendar day, the suspension, denial of issuance or revocation will be stayed pending a hearing and a decision by the Chief of Police.
4. The 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. The request shall be in writing and delivered to the Chief of Police. Upon receipt of the request for hearing, a hearing before the Chief of Police shall be scheduled to take place within thirty (30) calendar days unless both parties agree to a certain date beyond the thirty days. The Chief of Police shall consider only the testimony and evidence admitted for consideration at the hearing by the Administrative Law Judge. The Chief of Police shall have five (5) business days from the date of the hearing to notify the applicant or licensee of the decision.
  - a. In making a determination as to the denial of a license, the Chief of Police shall consider whether the applicant has established the applicant's entitlement to a license under the requirements imposed by Section 4.02 of this Chapter and/or whether the City has established a disqualifying factor under the requirements imposed by Section 4.02 of this Chapter.
  - b. In making a determination of the suspension of a license under Section 4.05 of this Chapter, the Chief of Police shall consider:
    - (1) whether the required number of citations under Section 4.05(A)(1), (2), or (3) were issued to the licensee, operator, or employee

- of the licensee within a twelve (12) month period of time; (2) whether notice of such citations was sent to the proper Sexually Oriented Business in compliance with Section 7.02 of this Chapter; (3) whether the licensee, operator, or employee of the licensee was convicted or placed on deferred disposition or probation for the citations; and (4) whether licensee was powerless to prevent violations.
- c. In making a determination of the revocation of a license under Section 4.06(A)(1) of this Chapter, the Chief of Police shall consider: (1) whether the required number of citations under Section 4.05(A)(1), (2), or (3) were issued to the licensee, operator, or employee of the licensee within a twelve (12) month period of time; (2) whether notice of such citations was sent to the proper Sexually Oriented Business in compliance with Section 7.02 of this Chapter; (3) whether the licensee, operator, or employee of the licensee was convicted or placed on deferred disposition or probation for the citations; and (4) whether the license at issue has been ordered suspended for a thirty (30) day period of time pursuant to Section 4.08(B)(4) of this Chapter within the preceding twelve (12) month period of time. (Amend Ord 03-088, 7/29/03)
- d. In making a determination of the revocation of a license under Sections 4.06(A)(2)-(10) of this Chapter, 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 Chapter.
5. All hearings under this Section will be presided over by an Administrative Law Judge appointed by the chairperson of the License and Amortization Appeal Board. The Administrative Law Judge must be licensed to practice law in Texas and have at least five (5) years experience presiding over administrative hearings, or hearings as a judge or master of a court. The hearing will be open to the public. The provisions of Texas Government

Code, Sections 2001.081-.088 shall be used as procedural and evidentiary guidelines. The Administrative Law Judge will be responsible for the procedural oversight of the hearing, including the manner and order of presentation and ruling on the admissibility of testimony and evidence and any objections thereto. In accordance with Article XI of the Administrative Chapter of the Code of Ordinances of the City of Arlington, the Administrative Law Judge may subpoena witnesses and compel the production of books, papers and other evidence material to such hearing. All such subpoenas must be signed by the Mayor prior to issuance and subject to the following:

- a. The subpoena must be issued in pursuit of an objective authorized by the Sexually Oriented Business Chapter of the Code of Ordinances of the City of Arlington;
- b. Information sought must be germane to the lawful subject of inquiry;
- c. Demands for information must be as specific as the requesting party's knowledge will permit and must not be unreasonably burdensome;
- d. The subpoena shall not purport to require privileged information which is recognized by law as such; and
- e. A subpoena will be issued only upon request of either the City or the applicant or licensee. A request for subpoena must be served on the other party at the time of the request as evidenced by a certificate of service on the request. The opposing party has three (3) business days to file a written objection to the request with the Administrative Law Judge, setting forth an objection. The Administrative Law Judge may grant the objection, overrule the objection and issue the subpoena, or give the requesting party three (3) business days to file a response to the objection, after which time the Administrative Law Judge may issue the subpoena or deny the request for subpoena in writing stating the grounds for denial.

6. The decision by the Chief of Police is effective thirty (30) calendar days after the applicant or licensee is notified of the decision, unless a reinstatement fee under Section 4.08(B)(1) of this Chapter is paid (if available), or an appeal is made to District Court in accordance with the provisions of Section 4.09 of this Chapter. Written notice of the Chief of Police's decision will be given in the manner set forth in Section 7.02 of this Chapter, unless the City and the applicant or licensee agree on a different form of notice at the hearing. Such agreement will be entered on the record.

**Section 4.08 Period of Suspension or Revocation**

- A. The revocation of a license as provided for in Section 4.06 of this Chapter shall be for a period of twelve (12) months.
- B. The suspension of a license as provided for in Section 4.05 of this Chapter shall be as follows:
  1. The first suspension of a license shall be for a period of three (3) calendar days. When the Chief of Police is authorized to suspend a license for three (3) days, he shall notify the licensee in the notice of decision of the licensee's opportunity to pay a reinstatement fee in the amount of \$1,500 in lieu of the suspension. Payment of this administrative fee shall be considered, for the purposes of this Subsection, the first suspension and an administrative admission of the violations. However, this shall not be used as an admission of guilt in a criminal prosecution under this Chapter. If the licensee does not pay the reinstatement fee before the expiration of the thirtieth calendar day after notification, the licensee loses the opportunity to pay it.
  2. The second suspension of a license shall be for a period of seven (7) calendar days.
  3. The third suspension of a license shall be for a period of fifteen (15) calendar days.

4. The fourth suspension of a license shall be for a period of thirty (30) calendar days. Except where grounds for revocation of a license exist under Section 4.06(A)(1), each subsequent suspension of a license shall be for a period of thirty (30) calendar days.

**Section 4.09 Appeal to District Court**

- A. Upon receipt of written notice of the denial, suspension or revocation of a license, the applicant whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal by filing suit in the appropriate district court within thirty (30) calendar days after the receipt of notice of the decision of the Chief of Police or decision of the License and Amortization Appeal Board, as applicable. The filing of such suit shall have the effect of staying denial, suspension or revocation for the Sexually Oriented Business licensed under this Chapter at such location, pending a judicial determination of the appeal. The City shall grant a provisional license upon the filing of a court action to appeal the denial of a Sexually Oriented Business license if the applicant is not currently licensed for such business at the subject location; provided, however, a provisional license shall not be issued under the following circumstances: (a) the location of the proposed Sexually Oriented Business is or would be in violation of Article III of this Chapter; (b) the duration of the provisional license would coincide with any period of license suspension or revocation set forth in Section 4.08; or (c) there has been a judicial determination upholding the denial of a license for such Sexually Oriented Business at such location within the previous twelve (12) calendar months. Written notice of the denial of a provisional license and the basis for the denial will be provided by the Chief of Police within ten (10) calendar days of service of the court action upon the City.
- B. Any provisional license and certificate of occupancy issued under this section will expire upon the court's entry of judgment on such appeal. The applicant shall bear the burden of proof in court. The substantial

evidence standard of review shall apply to such appeal.  
(Amend Ord 04-032, 3/23/04)

**Section 4.10 Transfer of 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.

**Section 4.11 Exemption From Location Restrictions**

- A. 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 Section 3.01, and such establishment was in operation on the effective date of Ordinance No. 92-117, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the City Secretary a written request for an exemption from the locational restrictions.
- B. If the written request is filed with the City Secretary within the ten (10) day limit, the License and Amortization Appeal Board shall consider the request. The City Secretary shall set a date for the hearing within sixty (60) days from the date the written request is filed, unless both parties agree to a certain date beyond the sixty (60) days. If a timely request is so filed, the existing license is deemed not to have expired until the decision of the Board on such request. The License and Amortization Appeal Board shall enter a written ruling on the request within five (5) days of the hearing. (Amend Ord 04-032, 3/23/04)
- C. There shall be created a License and Amortization Appeal Board. It shall have the powers described in Section 3.02(B) and (C) and the power to rule upon the appropriate disposition of applications for exemption

SEXUALLY ORIENTED BUSINESS

4.11

from the location restrictions for Sexually Oriented Businesses.

1. The City Council shall, by majority vote, appoint a Board chairperson and six (6) other members to the License and Amortization Appeal Board.
  2. Board members shall be appointed to staggered terms, with the terms of three (3) members to expire one (1) year after appointment and terms of the chairperson and three (3) members to expire after two (2) years. Thereafter, all board members shall be appointed to two (2) year terms.
  3. All Board members shall be residents of the City of Arlington, Texas.
- D. A hearing by the Board may proceed only if at least five (5) Board members are present. The Board shall adopt rules for the conduct of such hearings not inconsistent with this Chapter. (Amend Ord 08-030, 5/6/08)
- E. The License and Amortization Appeal Board may grant an exemption from the location restrictions of Section 3.01, if it makes the following findings:
1. That the location of the Sexually Oriented Business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
  2. That the location of the Sexually Oriented Business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;
  3. That the location of the Sexually Oriented Business in the area will not be contrary to any program of neighborhood conservation, nor will it interfere with any efforts of urban renewal or restoration; and
  4. That all other applicable provisions of this Chapter will be observed.
- F. In making the findings specified in Section 4.11(E), the Board may take into account among other things:

1. Crime statistics of the location and its 1,000 foot radius maintained by the appropriate law enforcement agency for the previous twelve (12) month period;
  2. Assessed values for the location and properties within the surrounding 1,000 foot radius, taking into account any decline or increase in property values or rates of decrease or increase in property values in relation to otherwise comparable properties;
  3. Sales, leases, and vacancy rates of all property types within the surrounding 1,000 foot radius in relation to otherwise comparable properties; and
  4. 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 a 1,000 foot radius.
- G. The Board shall grant or deny the appeal by a majority vote. Failure to reach a majority vote approving the appeal shall result in denial. Disputes of fact shall be decided on the basis of a preponderance of the evidence. A decision by the License and Amortization Appeal Board shall be considered a final action.
- H. If the Board grants an exemption to the location restrictions, the exemption is valid for one (1) year from the date of the Board's action. Except as provided in Section 4.11(B), the Sexually Oriented Business is in violation of the location restrictions of Section 3.01 until the applicant applies for and receives another exemption.
- I. The grant of an exemption does not exempt the applicant from any provisions of this Chapter other than the location restrictions. (Amend Ord 03-044, 4/15/03)
- J. The Board Chairperson may subpoena witnesses and compel the production of books, papers and other evidence material to such hearing subject to the following requirements:
1. The subpoena must be issued in pursuit of an objective authorized by this Chapter. The information sought must be germane to a lawful subject of inquiry. Demands for information must

be as specific as the requesting party's knowledge will permit and must not be unreasonably burdensome. The subpoena shall not purport to require privileged information which is recognized by law as such.

2. A subpoena will be issued only upon request by either the City or the Applicant. A request for subpoena shall be filed with the City Secretary's Office which shall forward a copy of the request to the Board Chairperson. A request for subpoena must be served on the other party at the time of the request, as evidenced by a certificate of service on the request. The opposing party has three working days to file a written objection to the request with the City Secretary's Office, setting forth an objection. The Chairperson may grant the objection, overrule the objection and issue the subpoena, or give the requesting party three working days to file a response to the objection, after which time the Chairperson may issue the subpoena or deny the request for subpoena in writing, stating the grounds for denial. (Amend Ord 08-030, 5/6/08)

**Section 4.12 Administrative Review Relating to Request for Provisional License**

- A. If the Chief of Police denies the issuance of a provisional license to an applicant because there has been a judicial determination upholding the denial of a license for such Sexually Oriented Business at such location within the previous twelve (12) calendar months, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the City Secretary a written request for a hearing before the License and Amortization Appeal Board to determine whether there has been a material change of circumstances during said twelve (12) calendar months that would warrant the issuance of a provisional Sexually Oriented Business license. Said request shall also contain a recitation of all evidence upon which the applicant will rely to prove the requisite material change of circumstances.

- B. If the written request is filed with the City Secretary within the ten (10) day limit, the License and Amortization Appeal Board shall consider the request. The hearing shall be held within sixty (60) days from the date the written request is filed, unless both parties agree to a certain date beyond the sixty (60) days. The License and Amortization Appeal Board shall enter a written ruling on the request within five (5) days of the hearing.
- C. The License and Amortization Appeal Board shall have the powers set forth elsewhere in this Chapter including, but not limited to, Sections 4.11(C), 4.11(D), and 4.11(G), and to prescribe rules of procedure not inconsistent with this Chapter, including the use of an Administrative Law Judge to preside over any hearings. In addition, the License and Amortization Appeal Board shall have the power to rule upon the appropriate dispositions of an applicant's request for a determination of material change of circumstances regarding the granting of a provisional license, as described in Sections 4.12(A) and 4.12(C).
- D. The License and Amortization Appeal Board shall grant the application for a provisional license if it determines that a material change of circumstances has occurred within twelve (12) calendar months of a judicial determination upholding the denial of a license for such business at such location. A material change of circumstances shall mean the disabling condition(s) which resulted in the previous denial of the license has/have been cured. The provisional license becomes effective immediately and remains effective pending a court's entry of judgment in the appeal under Section 4.09.
- E. Upon receipt of a written notice of denial of a provisional license by the License and Amortization Appeal Board, the applicant shall have the right to appeal such denial by filing suit in the appropriate district court within thirty (30) calendar days after the receipt of notice of a decision of the License and Amortization Appeal Board. The applicant shall bear the burden of proof in court. The substantial evidence standard of review shall apply to such appeal. (Amend Ord 04-032, 3/23/04)

ARTICLE V

ADDITIONAL REGULATIONS

Section 5.01 Additional Regulations for Sexually Oriented Cabaret

- A. An employee of a Sexually Oriented Cabaret, while appearing in a state of nudity, commits an offense if the employee touches a customer or the clothing of a customer.
- B. A customer at a Sexually Oriented Cabaret commits an offense if the customer touches an employee appearing in a state of nudity or the clothing of an employee appearing in a state of nudity. (Amend Ord 04-002, 1/6/04)
- C. A licensee or employee commits an offense if the licensee or employee 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.
- D. A licensee, operator or employee commits an offense if the licensee, operator or employee appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of the Sexually Oriented Cabaret business premises which can be viewed from the public right-of-way.
- E. A licensee commits an offense if the licensee fails to display the signs on the interior of the Sexually Oriented Cabaret business premises as required in Section 6.04(A) and/or the floor markings required in Section 6.04(B).
- F. A person commits an offense if the person employs at a Sexually Oriented Cabaret any person under the age of eighteen (18) years.

SEXUALLY ORIENTED BUSINESS

5.01

- G. An employee of a Sexually Oriented Cabaret must attend training given by the licensee concerning the requirements of this Chapter as they pertain to Sexually Oriented Cabarets, including but not limited to Sections 4.03, 4.05, 4.06, 5.01, 6.01, 6.02, 6.03, 6.04, and 7.01, 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.
- H. A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the Sexually Oriented Cabaret. At least one person so appointed shall be on the premises at any time the Sexually Oriented Cabaret is open.
- I. An operator or a person appointed under Subsection (H) above shall at all times have the duty to ensure that each employee in the Sexually Oriented Cabaret has received the training required by Subsection (G) above and each employee is instructed to commit no act which would constitute a violation of this Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter.

**Section 5.02 Additional Regulations for Escort Agencies**

- A. A person commits an offense if the person employs at an Escort Agency any person under the age of eighteen (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 eighteen (18) years.
- C. An employee of an Escort Agency must attend training given by the licensee concerning the requirements of this Chapter as they pertain to Escort Agencies,

including but not limited to Sections 4.03, 4.05, 4.06, 5.02, 6.01, 6.02, 6.03, 6.04, and 7.01, 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.

- D. A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and 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 a 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 Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter.

**Section 5.03 Additional Regulations for Nude Model Businesses**

- A. A person commits an offense if the person employs at a Nude Model Business any person under the age of eighteen (18) years.
- B. A person under the age of eighteen (18) years commits an offense if the person appears in a state of nudity in or on the premises of a Nude Model Business.
- C. A person commits an offense if the person appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a Nude Model Business premises which can be viewed from the public right-of-way.

SEXUALLY ORIENTED BUSINESS

5.03

- D. A person commits an offense if the person places or permits a bed, sofa or mattress in any room on the premises of a nude model business, except that a sofa may be placed in a reception room open to the public.
- E. A licensee or employee commits an offense if the person 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 Business, while appearing in a state of nudity, commits an offense if the employee touches a customer or the clothing of a customer.
- G. A customer at a Nude Model Business commits an offense if the customer 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 Business premises as required in Section 6.04(A) and/or the floor markings required in Section 6.04(B).
- I. An employee of a Nude Model Business 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 Business must attend training given by the licensee concerning the requirements of this Chapter as they pertain to Nude Model Businesses, including but not limited to Sections 4.03, 4.05, 4.06, 5.03, 6.01, 6.02, 6.03, 6.04, and 7.01, 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.
- K. A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the Nude Model Business. At least one person so appointed shall be on the premises at any time the Nude Model Business is open.
- L. An operator or a person appointed under Subsection (K) above shall at all times have the duty to ensure that each employee in the Nude Model Business 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 Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter.

**Section 5.04 Additional Regulations for Sexually Oriented Theaters and Sexually Oriented Motion Picture Theaters**

- A. A person commits an offense if the person knowingly allows a person under the age of eighteen (18) years to appear in a state of nudity in or on the premises of a Sexually Oriented Theater or Sexually Oriented Motion Picture Theater.
- B. A person under the age of eighteen (18) years commits an offense if the person knowingly appears in a state of nudity in or on the premises of a Sexually Oriented Theater or Sexually Oriented Motion Picture Theater.
- C. Sexually Oriented Theaters and Sexually Oriented Motion Picture Theaters shall also comply with the requirements of Section 5.05 of this Chapter.
- D. An employee of a Sexually Oriented Theater or Sexually Oriented Motion Picture Theater must attend training given by the licensee concerning the requirements of this Chapter as they pertain to Sexually Oriented Theaters or Sexually Oriented Motion Picture Theaters, including but not limited to Sections 4.03, 4.05, 4.06, 5.04, 6.01, 6.02, 6.03, 6.04, and 7.01, 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 Sexually Oriented Theater or Sexually Oriented Motion Picture Theater. At least one person so appointed shall be on the premises at any time the Sexually Oriented Theater or Sexually Oriented 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 Sexually Oriented Theater or Sexually Oriented 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 Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter.

**Section 5.05    Regulations Pertaining to 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 a Sexually Oriented Motel, which exhibits on the premises in a viewing room, a film, photograph, picture, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:  
(Amend Ord 04-002, 1/6/04)
  - 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 (1) 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 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 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 (6"). The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration 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 commits an offense if the licensee 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 reproduction. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any customer is permitted access for any purpose from at least one (1) of the manager's stations. The view required

SEXUALLY ORIENTED BUSINESS

5.05

in this subsection must be by direct line of sight from the manager's station.

6. The licensee commits an offense if the licensee 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, operator and any agents and employees 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, 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 (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 five (5.0) foot-candles as measured at the floor level.
9. The licensee commits an offense if the licensee permits illumination of any area of the premises to which customers have access to be less than five (5.0) foot-candles 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 (1) person at any time. (Amend Ord 04-002, 1/6/04)
11. No licensee 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 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 forty-eight (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. (Amend Ord 04-002, 1/6/04)
  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. (Amend Ord 04-002, 1/6/04)
  16. The licensee or operator commits an offense if the licensee knowingly allows a person to appear in a state of nudity in, on or about the premises of a Sexually Oriented Business, other than a Sexually Oriented Motel, which exhibits on the premises in a viewing room of less than 500 square feet of floor space, a film, photograph, picture, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas. (Amend Ord 04-002, 1/6/04)
  17. A person commits an offense if the person knowingly appears in a state of nudity in or on the premises of a Sexually Oriented Business, other than a Sexually Oriented Motel, which exhibits on the premises in a viewing room of less than 500 square feet of floor space, a film, photograph, picture, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas. (Amend Ord 04-002, 1/6/04)
  18. It is a defense to prosecution under Subsections (16) and (17) of this section if the person was in a restroom not open to public view or persons of the opposite sex.

SEXUALLY ORIENTED BUSINESS

5.05

- B. A person having a duty under Subsection (1) through (18) of Subsection (A) 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 Chapter as they pertain to such a business, including but not limited to Sections 4.03, 4.05, 4.06, 5.04, 5.05, 6.01, 6.02, 6.03, 6.04, and 7.01, 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.
- D. A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the Sexually Oriented Business as described in this Section. 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 as described in this Section 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 Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter.

**Section 5.06     Additional Regulations Pertaining to Sexually Oriented Bookstores, Sexually Oriented Novelty Stores and Sexually Oriented Video Stores**

- A. A person who operates or causes to be operated a Sexually Oriented Bookstore, Sexually Oriented Novelty

Store or Sexually Oriented Video Store 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 (1) 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 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 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 (6"). The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration 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 commits an offense if the licensee 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 reproduction. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any customer 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.

6. The licensee commits an offense if the licensee 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 owners, operator and any agents and employees 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, 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 (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 twenty (20.0) foot-candles as measured at the floor level.
9. The licensee commits an offense if the licensee permits illumination of any area of the premises to which customers have access to be less than twenty (20.0) foot-candles as measured at the floor level.
10. No viewing room or reading room may be occupied by more than one (1) person at any time.
11. No licensee shall allow openings or holes of any kind to exist between adjacent or adjoining viewing rooms or booths or reading 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 or reading rooms or booths.
13. The licensee shall, during each business day, regularly inspect the walls of all viewing rooms or booths and reading rooms or booths to determine if any openings or holes exist.
14. The walls of any viewing room or booth and any reading room or booth shall be no more than forty-eight (48) inches tall. At least one wall of any 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 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. (Amend Ord 04-002, 1/6/04)
15. Live entertainment is prohibited in any viewing room or booth and any reading room or booth as well as any other room adjacent to or visible from any reading or viewing room or booth.
16. The licensee or operator commits an offense if the licensee knowingly allows a person to appear in a state of nudity in, on or about the premises of a Sexually Oriented Bookstore, Sexually Oriented Novelty Store or Sexually Oriented Video Store that contains a viewing room or reading room of less than 500 square feet of floor space. (Amend Ord 04-002, 1/6/04)
17. A person commits an offense if the person knowingly appears in a state of nudity in, on or about the premises of a Sexually Oriented Bookstore, Sexually Oriented Novelty Store or Sexually Oriented Video Store that contains a viewing room or reading room of less than 500 square feet of floor space. (Amend Ord 04-002, 1/6/04)
18. It is a defense to prosecution under Subsections (16) and (17) of this section if the person was in a restroom not open to public view or persons of the opposite sex.

SEXUALLY ORIENTED BUSINESS

5.06

- B. A person having a duty under Subsections (1) through (18) of Subsection (A) herein commits a misdemeanor if he or she knowingly fails to fulfill that duty.
- C. An employee of a Sexually Oriented Bookstore, Sexually Oriented Novelty Store or Sexually Oriented Video Store must attend training given by the licensee concerning the requirements of this Chapter as they pertain to such a business, including but not limited to Sections 4.03, 4.05, 4.06, 5.04, 5.05, 5.06, 6.01, 6.02, 6.03, 6.04, and 7.01, 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.
- D. A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the Sexually Oriented Bookstore, Sexually Oriented Novelty Store or Sexually Oriented Video Store. At least one person so appointed shall be on the premises at any time the Sexually Oriented Bookstore, Sexually Oriented Novelty Store or Sexually Oriented 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 Sexually Oriented Bookstore, Sexually Oriented Novelty Store or Sexually Oriented 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 Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter. (Amend Ord 03-044, 4/15/03)

**ARTICLE VI**

**MISCELLANEOUS**

**Section 6.01 Hours of Operation**

No Sexually Oriented Business, except for a Sexually Oriented Motel, may remain open at any time between the hours of two o'clock (2:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and two o'clock (2:00) A.M. and noon (12:00) P.M. on Sundays.

**Section 6.02 Prohibition Against Children in a Sexually Oriented Business**

A licensee, operator or employee commits an offense if the licensee, operator or employee knowingly allows a person under the age of eighteen (18) years on the premises of a Sexually Oriented Business.

**Section 6.03 Additional Regulations Concerning Public Nudity**

- A. (blank) (Amend Ord 03-088, 7/29/03)
- B. A licensee, operator or employee commits an offense if the licensee, operator or employee knowingly allows, in a Sexually Oriented Business, another to appear in a state of nudity, unless the person is an employee who, while in a state of nudity, is on a stage (on which no customer is present) at least eighteen (18) inches above the floor, and is: (1) at least six (6) feet from any customer (hereinafter called "unenclosed performance stage"); or (2) 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 (5) feet above the level of the performance stage, but such that there are no openings in the wall or partition that would permit physical contact between customers and such employee (hereinafter called "enclosed performance stage"). (Amend Ord 03-117, 11/18/03)
- C. It is an offense for an employee, while in a state of 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 in a Sexually Oriented Business. Such gratuity or pay may be provided to such employee through a tip receptacle, located more than six (6) 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, as part of the customer's bill.

- D. It is an offense if an employee, while in a state of nudity, touches a customer or the clothing of a customer.
- E. It is an offense if a customer touches an employee appearing in a state of nudity or clothing of the employee.

**Section 6.04 Conspicuous Signage and Markings Required**

- A. A licensee or operator commits an offense if the licensee 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 Subsections 6.03(B), (C), (D) and (E), above. The sign must be prominently and continuously displayed where customers enter the premises, and immediately adjacent to each stage required by Section 6.03(B), and must state in letters at least two inches high:

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

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

- B. A licensee or operator commits an offense if the licensee, operator or employee 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 6.03(B). (Amend Ord 03-044, 4/15/03)

**ARTICLE VII**

**ENFORCEMENT**

**Section 7.01 Violation a Misdemeanor**

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

**Section 7.02 Notice of Violation**

The City shall send to a Sexually Oriented Business written notice of each citation issued to an operator or employee of the business for an alleged violation of Sections 6.02, 6.03, 6.04 or any provision of Article V of this Chapter. The notice will be sent within three (3) business days of the issuance of the citation to the operator or employee. The notice will be sent by certified mail, return receipt requested, to the business address of the Sexually Oriented Business as it appears on its license application, to the attention of the licensee, as it appears on the license application. A failure of the City to provide such notice is not a violation of this Chapter. It is not a defense to a citation issued to an employee or operator for an alleged violation of Sections 6.02, 6.03, 6.04, or any provision of Article V of this Chapter, that notice of the issuance of that citation was not given to the Sexually Oriented Business in accordance with this Section. (Amend Ord 03-044, 4/15/03)