



**NOTICE OF A SPECIAL MEETING
THE BRENHAM CITY COUNCIL
MONDAY, JULY 25, 2011 AT 9:30 A. M.
SECOND FLOOR CITY HALL
COUNCIL CHAMBERS
200 W. VULCAN
BRENHAM, TEXAS**

- 1. Call Meeting to Order**
- 2. Invocation and Pledges to the US and Texas Flags – City Manager Terry Roberts**

EXECUTIVE SESSION

- 3. Texas Government Code 551.071 – Consultation with City Attorney Regarding Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham’s Code of Ordinances to Provide for the Regulation of Sexually Oriented Businesses within the City Limits**

RE-OPEN REGULAR SESSION

- 4. Discuss and Possibly Act Upon Ordinance No. O-11-009 on its Second Reading Amending Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham’s Code of Ordinances to Provide for the Regulation of Sexually Oriented Businesses within the City Limits**
- 5. Discuss and Possibly Act Upon Resolution No. R-11-008 Providing for a Moratorium on the Processing, Approval, and Issuance of Sexually Oriented Business License/Permit Applications**

Adjourn

Executive Sessions: The City Council for the City of Brenham reserves the right to convene into executive session at any time during the course of this meeting to discuss any of the matters listed, as authorized by Texas Government Code, Chapter 551, including but not limited to §551.071 – Consultation with Attorney, §551.072 – Real Property, §551.073 – Prospective Gifts, §551.074 - Personnel Matters, §551.076 – Security Devices, §551.086 - Utility Competitive Matters, and §551.087 – Economic Development Negotiations.

CERTIFICATION

I certify that a copy of the July 25, 2011 agenda of items to be considered by the City of Brenham City Council was posted to the City Hall bulletin board at 200 W. Vulcan, Brenham, Texas on July 21, 2011 at _____ Am Pm.

Tammy Cook, Deputy City Secretary

Disability Access Statement: This meeting is wheelchair accessible. The accessible entrance is located at the Vulcan Street entrance to the City Administration Building. Accessible parking spaces are located adjoining the entrance. Auxiliary aids and services are available upon request (interpreters for the deaf must be requested twenty-four (24) hours before the meeting) by calling (979) 337-7567 for assistance.

I certify that the attached notice and agenda of items to be considered by the City Council was removed by me from the City Hall bulletin board on the _____ day of _____, 2011 at _____ Am Pm.

Signature

Title



AGENDA FORM

DATE OF MEETING: July 25, 2011	DATE SUBMITTED: July 22, 2011	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Jeana Bellinger	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input checked="" type="checkbox"/> 2ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Ordinance No. O-11-009 on its Second Reading Amending Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham's Code of Ordinances to Provide for the Regulation of Sexually Oriented Businesses within the City Limits		
SUMMARY STATEMENT: Upon review of the Code of Ordinances, it was determined that the City of Brenham's ordinance regulating sexually oriented businesses has not been reviewed and/or updated since 1993.		
Over the past couple of months, I have been working closely with the City Attorney to write a new ordinance. At the July 21 st council meeting, an ordinance was presented for 1 st reading that would protect our community from the negative secondary effects related to sexually oriented businesses while respecting the Constitutional Rights of sexually oriented businesses.		
As requested by the Council at first reading, the ordinance being presented has been amended to include:		
<ul style="list-style-type: none"> • A 1,320 feet buffer from protected classes; • Available areas being restricted to Industrial zoned areas of the city; and • Amending the annual license renewal fee to \$1,000 		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Redlined version of Ordinance showing changes from 1 st reading; (2) Ordinance No. O-11-009; and (3) Map of areas in which sexually oriented businesses will be allowed to operate.		

FUNDING SOURCE (Where Applicable): N/A

RECOMMENDED ACTION: Approve Ordinance No. O-11-009 on its second reading amending Chapter 16, Occupational Licenses and Business Regulations, of the City of Brenham's Code of Ordinances to provide for the regulation of sexually oriented businesses within the city limits.

APPROVALS: Terry Roberts

ORDINANCE NO. O-11-009

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE REGULATION OF SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY LIMITS OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A SEVERABILITY, REPEALER AND SAVINGS CLAUSE; AND PROVIDING FOR PROPER NOTICE AND OPEN MEETINGS.

WHEREAS, the City of Brenham (“City”) is a home rule municipality located in Washington County, Texas, acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the Texas State Legislature, in Section 243.001 of the Texas Local Government Code finds “that the unrestricted operation of certain Sexually Oriented Businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity;” and

WHEREAS, Section 243.003 of the Texas Local Government Code authorizes municipalities to adopt regulations restricting the location of Sexually Oriented Businesses, which are defined in Section 243.002 to mean a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other similar commercial enterprise, the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer; and

WHEREAS, the City, for the purpose of protecting the public health, safety and welfare, has regulated Sexually Oriented Businesses since December 2, 1993 by enactment of Ordinance No. O-93-034, and required permitting by the City of such businesses to this present date; and

WHEREAS, the City did not have a Sexually Oriented Business within its city limits on December 2, 1993 and no licenses or permits for such businesses have been reported or issued by the City from December 2, 1993 to the date of this Ordinance; and

WHEREAS, the City Council, in performance of its police power to protect the public health, safety and welfare of the City and its citizens, has determined that it is necessary and advisable to establish, implement and enforce new regulations, licensing procedures and location criteria applicable to Sexually Oriented Businesses; and

WHEREAS, the City Council intends that these regulations should have neither the purpose nor effect of imposing a limitation or restriction on the content of any speech, expression or communicative materials, including sexually oriented speech, expression and communicative materials, nor the effect of restricting or denying access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and

WHEREAS, studies, reports and findings considered by the City Council are as follows: *Survey of Texas Appraisers – Secondary Effects of Sexually Oriented Businesses on Market Values*, Texas City Attorneys Association (2008); *Report on Adult Oriented Businesses in Austin*, City of Austin, Texas (1986); *Report to City Council Regarding the Regulation of Sexually Oriented Businesses*, City of Burleson, Texas (2004); *Sexually Oriented Business Ordinance Revision Committee Legislative Report*, City of Houston, Texas (1997); and *Survey [of real estate appraisers regarding the secondary effects an adult bookstore would have on the surrounding community]*, City of Kennedale, Texas (2003); and

WHEREAS, said studies, reports and findings, which document the adverse secondary effects of Sexually Oriented Businesses, have been presented to and considered by the Mayor and each City Councilmember; and

WHEREAS, lawsuit case decisions considered by the Council are as follows: *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theaters*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S. Ct. 1382 (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); *Schultz v. City of Cumberland*, 228, F. 3d 831 (7th Cir. 2000); and

WHEREAS, said legal opinions, which provide further documentation regarding the detrimental secondary effects associated with Sexually Oriented Businesses, have been presented to and considered by the Mayor and each City Councilmember; and

WHEREAS, based on its review, the City Council finds that the presence of a Sexually Oriented Business would have detrimental secondary effects on surrounding properties; and

WHEREAS, the above referenced studies, legal opinions, reports and findings show that Sexually Oriented Businesses have a deleterious effect on surrounding businesses and residential areas, causing increased crime, a downgrading of property values, and increased incidence of sexually transmitted diseases; and

WHEREAS, the City Council finds, based on the above referenced studies, legal opinions, reports and findings, that these ancillary, unlawful and unhealthy activities will not be controlled by the operators of Sexually Oriented Businesses, and 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 or about their premises and as a consequence of their operations; and

WHEREAS, the City Council finds that based on the above cited studies, legal opinions, reports and findings, that it is reasonably likely that establishment of one or more Sexually Oriented Business within the City will give rise to adverse secondary effects; and

WHEREAS, the City Council finds that based on the above cited studies, legal opinions, reports and findings that adverse secondary effects associated with Sexually Oriented Businesses are magnified when such businesses are located within close proximity to each other; and

WHEREAS, the City has a legitimate and substantial governmental interest in limiting the adverse secondary effects associated with Sexually Oriented Businesses as a means of promoting the public health, safety and welfare of the citizens of Brenham; and

WHEREAS, the City Council finds that the institution of reasonable regulations, licensing procedures, and location criteria provides an appropriate mechanism for achieving said legitimate and substantial governmental interest; and

WHEREAS, the City Council finds, based on the above-referenced studies, legal opinions, reports and findings, that limiting the locations of Sexually Oriented Businesses as provided herein is necessary in order to minimize the adverse secondary effects of Sexually Oriented Businesses on surrounding properties; and

WHEREAS, the City Council finds that the regulations, licensing procedures and location criteria contained herein do not attempt and not intended to prohibit constitutionally protected speech, but rather, serve to mitigate the adverse secondary effects associated with Sexually Oriented Businesses; and

WHEREAS, the City Council finds that the regulations, licensing procedures and location criteria contained herein have neither the purpose, intent, nor effect of imposing a limitation or restriction on the content of any speech, expression or communicative materials, including sexually oriented speech, expression or communicative materials, nor is it the purpose or intent of this Ordinance to have the effect of restricting or denying access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and

WHEREAS, the City Council finds that the adoption of the regulations, licensing procedures and location criteria contained herein will still leave available reasonable locations for the establishment of Sexually Oriented Businesses within the city limits; and

WHEREAS, the City Council finds that the adoption of the regulations, licensing procedures, and location criteria contained herein will promote the public health, safety and general welfare of the citizens of the City;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Brenham, Texas that:

SECTION 1:

The recitals and preamble to this Ordinance together with the June 2, 2011 *Report to the City of Brenham City Council on Sexually Oriented Businesses* prepared by the City Secretary, including all appendices, are incorporated in this Ordinance by reference for all purposes as if fully set forth herein.

SECTION 2:

Section 16-16 of the Code of Ordinances of the City of Brenham, Texas is hereby repealed.

SECTION 3:

Chapter 16 of the Code of Ordinances of the City of Brenham, Texas is hereby amended by adding the following provisions:

SEXUALLY ORIENTED BUSINESSES

Sec. 16-20. Purpose and intent.

It is the purpose of this article to regulate sexually oriented businesses, to promote the health, safety, and general welfare of the citizens of the City of Brenham, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses in close proximity to each other within the City. The regulations contained herein have also been established for the purpose of limiting the well-documented, adverse secondary effects suffered by properties located within one thousand, three hundred and twenty (1,~~000~~320) feet of a sexually oriented business.

The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative speech, expression or communicative materials, including sexually oriented speech, expression or communicative materials. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

Sec. 16-21. Findings and basis for regulation.

The regulations contained herein, including those pertaining to the licensing, operation, and location of sexually oriented businesses, are based on studies, reports, findings, court case decisions, and evidence made available to and considered by the City Council. These regulations have also been established under the authority granted to municipalities by Chapter 243 of the Texas Local Government Code.

A copy of the City Secretary's report on sexually oriented businesses (dated June 2, 2011), together with the studies, reports, findings, and court case decisions (as referenced herein) are on file in the Office of the City Secretary.

Sec. 16-22. Definitions.

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

Adult bookstore, adult novelty store or adult video store. A commercial establishment for which ~~regularly the offering of~~ offers a service or ~~the selling, renting or exhibiting of~~ regularly sells, rents or exhibits devices or any other items intended to provide sexual stimulation or sexual gratification to the customer ~~constitutes twenty five percent (25%) or more of the items in inventory and/or floor space of the sexually oriented business,~~ including:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, DVD's, videocassettes or video reproductions, slides, or other visual representations, that depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities, but not including items used for birth control or for the prevention of sexually transmitted diseases.

Adult cabaret. A commercial establishment that regularly features the offering to customers of live entertainment that:

- (1) Is intended to provide sexual stimulation or sexual gratification to such customer; and
- (2) Is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to specified anatomical areas or specified sexual activities.

Adult motel. A hotel, motel, or similar commercial establishment that:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the regular depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from any public right-of-way that advertises the availability of this adult type of photographic reproductions;
- (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult motion picture theater. A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult theater. A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exposure of specified anatomical areas or by the depiction or description of specified sexual activities.

Applicant.

- (1) A person or entity in whose name a license to operate a sexually oriented business is requested to be issued;
- (2) Each individual who signs an application for a sexually oriented business license as required by Section 16-~~27~~26;
- (3) Each individual who is an officer of a sexually oriented business for which a license application is made under Section 16-~~27~~26, regardless of whether the individual's name or signature appears on the application;
- (4) Each individual who has an ~~twenty percent (20%) or greater~~ ownership interest in a sexually oriented business for which a license application is made under Section 16-~~27~~26, regardless of whether the individual's name or signature appears on the application; and

(5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license application is made under Section 16-~~2726~~, regardless of whether the individual's name or signature appears on the application.

Chief of police. The Chief of Police of the City of Brenham or the Chief's designee.

Child-care facility. A facility licensed by the State of Texas, or other governmental entity having jurisdiction, or an agency thereof, 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.

Conviction. A conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned. Conviction includes disposition or charges against a person by probation, deferred disposition or deferred adjudication.

Distinguished or characterized by an emphasis upon. The dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of specified anatomical areas or specified sexual activities.

Employee. Any individual who:

- (1) Is listed as a part-time, full-time, temporary, or permanent employee on the payroll of an applicant, licensee, or sexually oriented business; or
- (2) Performs or provides entertainment or any other services on the sexually oriented business premises for any form of compensation or consideration.

Entertainer. A person who, for consideration, entertains for others.

Escort. A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease or other live performance that is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to specified anatomical areas or specified sexual activities, for another person.

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

Establishment. Any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business;
- (4) The relocation of any sexually oriented business; or
- (5) Any building, structure or premises operated as a sexually oriented business.

Hearing officer. The City Manager, or his ~~or her~~ designee. The hearing officer shall exercise those powers authorized under applicable state law, the Charter of the City, and the Code of Ordinances of the City, as appropriate in the furtherance of his ~~or her~~ duties.

Hospital. A facility or area for providing health services primarily for human in-patient medical or surgical care for the sick or injured and including related facilities such as laboratories, out-patient departments, training facilities, central services facilities, and staff offices that are an integral part of the facilities.

Licensee.

- (1) A person in whose name a license to operate a sexually oriented business has been issued;
- (2) Each individual listed as an applicant on the application for a license;
- (3) Each individual who is an officer of a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application;
- (4) Each individual who has ~~ana twenty percent (20%) or greater~~ ownership interest in a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application;
- (5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application.

Manager. A person responsible for planning and/or directing the work of others and monitoring them when necessary.

Nude model studio. Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, viewed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration; however, nude modeling at or on behalf of any properly accredited institution of higher learning shall not fall within this definition.

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

Operates or causes to be operated. To cause to function or to put or keep in a state of doing business. Operator means any person on the premises of a sexually oriented business who is authorized to exercise operation control of the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

Person. An individual, proprietorship, partnership, corporation, association, or other legal entity.

| *Public park.* Any City park as defined by Chapter 19 of the Code of Ordinances, or any park or recreational area operated by a city/county/state government, or any park to which the general public has access.

Regularly features or regularly shown. A consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

Religious institution. A building or group of buildings in which persons regularly assemble for religious worship and activities intended primarily for purposes connected with such worship or for propagating a particular form of religious belief. For the purposes of this definition, the term religious institution shall include, but not be limited to, a church, synagogue, mosque or temple.

| *Residential district.* A single-family, duplex, townhouse, multiple-~~family~~, manufactured home, mobile home, or other residential zoning district as defined in the City's zoning ordinance.

| *Residential use.* A single-family, duplex, multiple-~~family~~, manufactured home park, manufactured home subdivision, mobile home park, mobile home subdivision, campground, or other residential use as defined in the City's zoning ordinance.

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

Sexual encounter center. A business or commercial establishment that as one of its primary business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of specified sexual activities. The definition of sexual encounter center or any sexually oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

Sexually oriented business. An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or other commercial enterprise ~~for which the regularly offering of offers~~ a service or ~~the selling, renting, or exhibiting of~~ regularly sells, rents, or exhibits devices or any other items intended to provide sexual stimulation or sexual gratification to the customer ~~constitutes twenty five percent (25%) or more of the items in inventory and/or floor space of the sexually oriented business.~~ The term "sexually oriented business" shall also mean any commercial enterprise that self-identifies as an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency or nude model studio, ~~regardless of whether the percentage of items in inventory and/or floor space constitute twenty five percent (25%) or more of the total items in inventory and/or floor space.~~

Sign. Any display, design, message, pictorial, image or other representation that is:

- (1) Constructed, placed, attached, painted, erected, fastened, or manufactured in any manner whatsoever so that it is visible from the outside of a sexually oriented business; and
- (2) Used to seek the attraction of the public to any goods, services, or merchandise available at the sexually oriented business.

The term sign also includes any representation painted on or otherwise affixed to any exterior portion of a sexually oriented business establishment or to any part of the tract upon which the establishment is situated.

Specified anatomical areas.

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

Specified sexual activities. Any of the following:

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

Transfer of ownership or control of a sexually oriented business. Any of the following:

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

Sec. 16-23. Classification.

Sexually oriented businesses are classified as follows:

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

Comment [JB1]: Do we want to include "massage parlors"? If so, we would need a corresponding definition. Or, is this something that can be added later, when we have more time.

Comment [C2]: Let's add this later

Sec. 16-24. Nonconforming uses.

Comment [JB3]: Add amortization clause?

Comment [C4]: Let's add this later

- (1) Any sexually oriented business that is in violation of Section 16-25, or any other location requirement of any other City ordinance that was legally operating at the time it was licensed, or the effective date of any amendment of such ordinance or regulation, shall be deemed a nonconforming use.
- (2) Any legally established, sexually oriented business that is in violation of this article because of annexation into the City shall be deemed to be a nonconforming use.
- (3) A sexually oriented business that is lawfully operating within the City on or after the effective date of this article shall not be rendered a nonconforming use by the subsequent location of a protected use listed in Section 16-25 within one thousand, three hundred and twenty (1,~~000~~320) feet of the sexually oriented business.
- (4) Notwithstanding anything contained in this article or in the City's zoning ordinance as amended to the contrary, a legal nonconforming sexually oriented business shall be required to meet all applicable requirements of this article except locational requirements established by Section 16-25 within sixty (60) days of the date the sexually oriented business becomes nonconforming. The Board of Adjustment may grant a nonconforming sexually oriented business an extension of time to comply with these requirements if the business shows, upon timely written application, that meeting these requirements within sixty (60) days imposes an unnecessary hardship on the business.
- (5) Legal nonconforming sexually oriented businesses shall not be increased, enlarged, extended or altered except that the use may be changed to a use other than a sexually oriented business to the extent allowed by the City's zoning ordinance. A person commits an offense if he increases, enlarges, extends or alters, or causes to be increased, enlarged, extended or altered, a nonconforming sexually oriented business.

Sec. 16-25. Location requirements.

A person commits a violation if the person operates or causes to be operated a sexually oriented business in any zoning district other than an industrial zoning district as defined in the City's zoning ordinance.

A person commits a violation if the person operates or causes to be operated a sexually oriented business within one thousand, three hundred and twenty (1,~~320~~000) feet of:

- (1) A religious institution including a church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities;
- (2) A public or private educational facility or child care facility, including but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities. The term school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

- (3) A boundary of a residential zoning district as defined in the City's zoning ordinance;
- (4) A public park or recreational area which has been designated for park or recreational activities, including but not limited to, a park, playground, nature trail, swimming pool, athletic field, basketball, or tennis court, pedestrian/bicycle path, or other similar public land within the City, or its ETJ;
- (5) The property line of a lot or parcel devoted to a residential use as defined in the City's zoning ordinance;
- (6) A family oriented recreation facility including but not limited to a roller skating rink, an ice skating rink or a facility devoted to children's athletic activities;
- (7) Any premise licensed pursuant to the alcoholic beverage control regulations of the State of Texas, or an agency thereof; or
- (8) A public library.

Comment [JB5]: I did not think we could restrict in the ETJ?

Comment [C6]: This intended to provide a buffer between an SOB in the City and a park/rec area even if the park/rec area is in the ETJ

Comment [JB7]: Definition needed.

Comment [C8]: Let's revise later

A person commits a violation if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand, three hundred and twenty (1,000320) feet of another sexually oriented business.

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

~~M~~For the purpose of subsection (b) of this section, measurement shall be made in a straight line~~g~~, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Items (1) through (8) above~~subsection (b)~~. The presence of a City, county or other political subdivision boundary shall be irrelevant for the purposes of calculating and applying the distance requirements of this section.

~~T~~For the 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 the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

Sec. 16-26. Sexually oriented business license required.

A person commits an offense if the person operates or causes to be operated a sexually oriented business without a valid license, issued by the City for the particular classification of a sexually oriented business. The person, association, firm, partnership or corporation desiring to obtain a sexually oriented business license shall make an application on a form provided by the City Secretary.

The fact that a person, association, firm, partnership, corporation or other legal entity possesses other types of state or City permits or licenses does not exempt the person from the requirement of obtaining a license for a sexually oriented business.

An application for a sexually oriented business license shall only be considered to be complete if it contains all information specified in ~~Items~~subsections (1) through (14) below:

- (1) The applicant's full and true name along with any other names used in the preceding five (5) years. Any person with ~~a twenty percent (20%) or greater~~ interest in the business shall:
 - (a) Be considered to be an applicant and shall sign the license application form;
 - (b) Provide all information and documentation required of the applicant;
 - (c) ~~Be qualified under Section 16-24;~~
 - (d) Be considered a licensee if a license is granted.
- (2) The applicant's current address;
- (3) A set of fingerprints suitable for conducting necessary background checks pursuant to this article, and the applicant's Social Security number, to be used for the same purpose;
- (4) The business name as it is to be displayed on the premises, the company name, if different than the preceding, the property address and legal description, the business mailing address, business telephone number, and any e-mail or website addresses that are to be used in conjunction with the business;
- (5) Written proof of age, in the form of a birth certificate accompanied by a current photograph, a current driver's license, or other picture identification issued by a domestic governmental agency;
- (6) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked, or suspended, and if so, the reason or reasons therefor;
- (7) The name and address of the statutory agent or other agent authorized to receive service of process;
- (8) A diagram showing a plan of the premises. The diagram shall:
 - (a) Be oriented to the north, or to a designated street;
 - (b) Be drawn to a designated scale 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 (6) inches;
 - (c) Designate any portion of the premises in which customers will not be permitted;
 - (d) Specify the location of all manager's stations, if applicable; and

Comment [JB9]: Not sure what this is referring to.

Comment [C10]: Me either, let's delete

- (e) Designate the place at which the license, if granted, will be conspicuously displayed.
- (9) An approved City sign permit accompanied by a photograph verifying posting of notification signage required by Sec. 243.075 of the Texas Local Government Code;
- (10) A list of all employees, or prospective employees, along with copies of complete updated employment application, valid driver's license, state identification card, or passport containing a photograph of the employee;
- (11) A notarized affidavit signed by each applicant and certifying all information and documentation provided with the application to be true and correct;
- (12) A nonrefundable application fee in the amount of \$750.00;
- (13) A Certificate of Occupancy, if required, issued by the City's building inspector; and
- (14) All information, supported by any necessary documentation, required by this article.

An application submitted without all of the required information, or without the application fee, shall be deemed incomplete. Incomplete applications shall be denied and within forty-five (45) business days of its receipt by the City Secretary, be returned to the applicant, accompanied by a notice specifying the reasons for application denial.

Sec. 16-27. Issuance of sexually oriented business license.

The annual fee for a sexually oriented business license shall be \$750.00. A sexually oriented business license shall be valid from the date of issuance through January 31 of the following year. The annual fee shall not be prorated.

The Chief of Police, or his designee, shall approve the issuance of a license by the City Secretary to an applicant within ~~forty-five (45)~~~~thirty (30)~~ days after receipt of an application, unless the Chief, or his designee, 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 Section 16-25 of this article.
- (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 Secretary of State or the City of taxes, fees, fines or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.

- (6) An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation or community supervision for a violation of a provision of this article, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (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 an applicant's spouse has been convicted or placed on deferred disposition, probation, or community supervision for:
 - (a) Any offense under the laws of the United States of America, another state or the Uniform Code of Military Justice for an offense described in this subsection; or
 - (b) Any of the below offenses of the state or criminal attempt, conspiracy, or solicitation to commit same;
 - (c) Any of the following offenses as described in Chapter 43 of the Texas Penal Code:
 - (i) Prostitution;
 - (ii) Promotion of prostitution;
 - (iii) Aggravated promotion of prostitution;
 - (iv) Compelling prostitution;
 - (v) Obscenity;
 - (vi) Sale, distribution or display of harmful material to a minor;
 - (vii) Sexual performance by a child;
 - (viii) Possession of child pornography;
 - (d) Any of the following offenses as described in of the Texas Penal Code:
 - (i) Public lewdness;
 - (ii) Indecent exposure;
 - (iii) Indecency with a child;
 - (iv) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
 - (v) Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or
 - (vi) Those crimes defined as "drug-defined offenses" or "drug-related offenses" by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Section 12.04 of the Texas Penal Code;
 - (e) For which:
 - (i) 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 a misdemeanor offense; or

- (ii) 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 a felony offense; or
 - (iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.
- (10) 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.
- (11) The applicant failed to comply with any of the requirements of Sec. 243.0075 of the Texas Local Government Code regarding the posting of an outdoor sign.
- (12) The applicant of the proposed establishment is in violation of or is not in compliance with any of the requirements outlined in Section 16-27 or Section 16-25, or any other applicable law, ordinance or regulation.

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 subsection 9(c) or 9(d) above, may qualify for a sexually oriented business license only when the time period required by subsection (9)(e)(i-iii) above, has elapsed.

The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the sexually oriented business. The license shall be posted in accordance with the provisions of Section 16-26.

Sec. 16-28. Manager/Entertainer license required.

A person commits an offense if the person manages and/or or entertains in a licensed sexually oriented business without a valid manager and/or entertainer license, issued by the City.

The person desiring to obtain a manager and/or entertainer license shall make an application on a form provided by the City Secretary and provide all of the following information:

- (1) A valid copy of the current sexually oriented business license for each of the sexually oriented businesses in which the manager and/or entertainer proposes to work or perform;
- (2) Applicant's name, any aliases, mailing address for receipt of notices, home address and telephone number, date and place of birth, social security number, and, in the case of entertainers, any stage names or nicknames used in entertaining;

- (3) Name and address of each sexually oriented business where the applicant intends to work;
- (4) A statement that the applicant is eighteen (18) years or older, confirmed by provision of documentation issued by a state or federal agency bearing the applicant's date of birth and photograph;
- (5) A statement that the applicant has not been convicted of, or released from confinement or conviction of, or received an order for, deferred adjudication or disposition, of any felony or any misdemeanor (other than traffic offenses) where such felony or misdemeanor violation constitutes a specified criminal act; the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (6) A statement that the applicant has not been convicted of or released from confinement for conviction of, or received an order for, deferred adjudication or disposition, whichever event is later, of any other felony within the five (5) years or any other misdemeanor (other than traffic offenses) within the two (2) years immediately preceding the date of application; the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (7) A statement that the applicant has not had a sexually oriented business manager or entertainer license, or comparable license, of any type revoked within the past five (5) years nor one suspended within the past two (2) years, immediately preceding the date application, the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (8) A statement that the applicant has not had, within the two (2) years immediately preceding the date of application, an ownership, operational or managerial position, of a sexually oriented business that has demonstrated an inability to operate in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers;
- (9) A statement that the applicant does not owe delinquent taxes, assessments or other financial obligations to the City, or if such debts and/or obligations are owed, that arrangements satisfactory to the City Manager have been made for the payment of such debts or obligations; and
- (10) A statement signed under oath by the applicant that the information contained in the application is true and correct; that the applicant grants permission to the city to perform any necessary background checks on the applicant; and that the applicant has read all the provisions of the Chapter regulating sexually oriented businesses.

If the applicant fails to provide all of the information required by this Section, or if the information provided is false or misleading, the application shall be denied. Further, a license issued under this Section may be revoked and/or suspended after issuance if the information provided by the applicant is later found to be false or misleading.

Sec. 16-29. Issuance of manager/entertainer license.

The annual fee for a manager and/or entertainer license shall be \$150.00. A manager and/or entertainer's license shall be valid from the date of issuance through January 31 of the following year. The annual fee for a manager/entertainer license shall not be prorated.

If the applicant meets all the applicable requirements, the Chief of Police, or his designee, shall approve the issuance of a license by the City Secretary to an applicant within ~~fifteen~~forty-five (45) days after receipt of a complete application.

In the event the application is determined incomplete, the notification to the applicant shall include a written explanation of the reason(s) why the application is incomplete. The applicant may resubmit the application within ten (10) days of the City's written notice to the applicant. Once a completed application has been re-submitted, the Police Chief shall have ~~forty-five (45)~~fifteen (15) days to approve or disapprove the application.

The Chief of Police shall base his decision on the information provided by the applicant, the police department's investigation, license requirements and denial criteria, and any other information provided by other City departments or governmental agencies. The applicant shall be notified in writing within ten (10) days after the Chief's decision.

The license, if granted, shall state on its face: the license number, the name of the license holder (including any stage names), a photograph of the licensee, the date of issuance and expiration, the address of the sexually oriented business where such license is applicable.

A valid copy of the manager's license shall be posted in accordance with the provisions of Section 16-26. A valid copy of the entertainer's license shall not be posted but shall be available for inspection on the premises of the sexually oriented business at any time.

Sec. 16-30. Certificate of occupancy.

Prior to submitting an application for a sexually oriented business license, the applicant must obtain a certificate of occupancy from the City's building official.

If a building and/or other construction related permit is required under applicable City ordinances, the applicant shall submit to the building inspection department, all necessary plans and permit applications. The building official shall cause all plans and permit applications to be processed and reviewed under the terms of applicable codes and ordinances. Upon approval of a final inspection, by applicable City departments, the building official shall issue a certificate of occupancy.

Sec. 16-31. Inspection and maintenance of records.

A licensee, owner, operator and/or employee of a sexually oriented business shall be subject to regulation under this article and shall permit representatives of the City, including but not limited to the police department, health department, fire department, building inspections division and code enforcement division to inspect all portions of the premises and to inspect the records required to be maintained under this article, for the purpose of ensuring compliance with all applicable regulations, at any time it is occupied or open for business.

A licensee, owner or operator of a sexually oriented business commits an offense if:

- (1) The person operates the establishment without maintaining a current list of all employees of the business, along with a completed, 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.
- (2) The person refuses to permit a lawful inspection of the records and premises by a representative of the police department or other department of the City at any time the sexually oriented business is occupied or open for business.
- (3) The person does not maintain the required records on the premises of the licensed establishment.
- (4) The person does not permit representatives of the police department to take photographs of the licensee, owner, operator or employee of the sexually oriented business, for official police department purposes, at any time it is occupied or open for business.

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

Sec. 16-32. Expiration and renewal of licenses.

An application for renewal of a sexually oriented business license shall be submitted to the City Secretary at least thirty (30) days before the expiration date of the then current and valid license. A licensee that fails to renew a license shall forfeit the right to conduct business within the City until such time as the renewal is approved. A sexually oriented business license may be renewed by submission to the City Secretary of an application on the form prescribed by the City Secretary and payment of a nonrefundable renewal fee of ~~\$750~~\$1,000.00. Annual renewal fees shall not be prorated.

An application for renewal of a manager and/or entertainer license shall be submitted to the City Secretary at least thirty (30) days before the expiration date of the then current and valid license. A person that fails to renew their license shall forfeit the right to manage and/or entertain within the City until such time as the renewal is approved. A manager and/or entertainer license may be renewed by submission to the City Secretary of an application on the form prescribed by the City Secretary and payment of a nonrefundable renewal fee of \$75.00. Annual renewal fees shall not be prorated.

Sec. 16-33. Suspension of license.

The Chief of Police shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the Chief determines that a licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any section of this article; or
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this article; or
- (3) Knowingly permitted gambling by any person on the sexually oriented business premises; or
- (4) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

Sec. 16-34. Revocation of license.

The Chief of Police shall issue a written notice of intent to revoke a sexually oriented business license if:

- (1) A cause of suspension in Section 16-33 occurs and the license has been suspended one (1) other time within the preceding twelve (12) months;
- (2) On two (2) 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 adjudication or 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 or criminal attempt, conspiracy, or solicitation to commit same for:

- (a) Any of the following offenses as described in Chapter 43 of the Texas Penal Code:
 - (i) Prostitution;
 - (ii) Promotion of prostitution;
 - (iii) Aggravated promotion of prostitution;
 - (iv) Compelling prostitution;
 - (v) Obscenity;
 - (vi) Sale, distribution or display of harmful material to a minor;
 - (vii) Sexual performance by a child;
 - (viii) Possession of child pornography;
 - (b) Any of the following offenses as described in Chapter 21 of the Texas Penal Code:
 - (i) Public lewdness;
 - (ii) Indecent exposure;
 - (iii) 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
 - (e) Those crimes defined as “drug-defined offenses” or “drug-related offenses” by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in section 12.04 of the Texas Penal Code.
- (3) A licensee or operator gave false or misleading information in the material submitted to the Chief of Police during the application process;
 - (4) A licensee or operator has knowingly allowed possession, use or sale of a controlled substance on the premises;
 - (5) A licensee or operator has on two (2) or more occasions knowingly allowed prostitution on the premises;
 - (6) A licensee or operator knowingly operated the sexually oriented business during a period of time when the licensee’s license was suspended;
 - (7) 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) 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) The licensee is required to register as a sex offender under the provisions of Chapter 62 of the Texas Code of Criminal Procedure; or
 - (10) A license is transferred in violation of Section 16-36;

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

Subsection (7) above does not apply to adult 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.

Sec. 16-35. Denial, suspension and revocation procedures.

If the Chief of Police determines that facts exist for denial, suspension or revocation of a license under this article, the City Secretary shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail.

The notification shall be directed to the most current business address on file with the City. Within five (5) business days of receipt of such notice, the respondent may provide to the City Secretary, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended or revoked. Within ~~ten (10)~~ ~~five (5)~~ business days of the receipt of respondent's written response, the City Secretary shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding.

Within fifteen (15) business days of the City Secretary's receipt of respondent's written response, the City Manager shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the City Secretary in the time stated above or, if after the hearing, the City Manager finds that grounds as specified in this article exist for denial, suspension or revocation, then such denial, suspension, or revocation shall become final five (5) business days after the hearing unless within that time the City Manager sends, by certified mail, written notice that the license has been denied, suspended, or revoked or if the license will be issued or allowed to remain in effect. If the license is denied, suspended or revoked such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

If after a hearing, the City Manager finds that insufficient grounds exist for the denial, suspension or revocation of a license, then within five (5) business days after the hearing, the City Manager shall withdraw the intent to deny, suspend or revoke the license, and shall so notify the respondent in writing of such action by certified mail and shall contemporaneously issue the license or allow the license to remain in effect, as applicable.

When a decision to deny, suspend, or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application of a license has been denied, or whose license has been suspended or revoked, shall have the immediate right to appeal such action to a court of competent jurisdiction. Until the court of competent jurisdiction issues its final judgment, the decision to deny, suspend or revoke a license shall remain in effect and be enforced.

A sexually oriented business license or the ownership or control of a sexually oriented business which is directly or indirectly a part of civil litigation, ~~an administrative hearing~~, or procedures regarding the denial, suspension or revocation of the license, such license shall not be transferred, sold or given to another person during the pendency of the judicial or administrative processes.

Sec. 16-36. Transfer of license.

A person commits a violation if the person transfers a license or permits 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.

A person commits a violation if the person counterfeits, forges, changes, defaces or alters a license.

Sec. 16-37. Regulations pertaining to exhibition of sexually explicit films, videos, or live entertainment in viewing rooms.

A person who operates or causes to be operated a sexually oriented business (other than an adult motel) which exhibits on the premises, in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video, or live entertainment which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises providing all information specified in Section 16-26(8) of this article. Manager stations shown on this diagram shall be dimensioned and shall not contain in excess of thirty-two (32) square feet of floor area per station.
- (2) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City.
- (3) It is the duty of the licensee of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

- (4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more managers' stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (5) It shall be the duty of the licensee to ensure that the view area specified in subsection (4) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this section.
- (6) No viewing room may be occupied by more than one (1) person at any time.
- (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candles as measured at the floor level.
- (8) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (9) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (10) No person shall make or attempt to make an opening of any kind between viewing rooms or booths.
- (11) The licensee shall, during each business day, regularly inspect the walls between the viewing booths or rooms to determine if any openings or holes exist.
- (12) The license shall cause all floor coverings in viewing booths or rooms to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (13) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty-eight (48) inches of the floor.

A person having a duty under subsections (1) through (13) above commits a violation if he or she knowingly fails to fulfill that duty.

Sec. 16-38. Additional regulations for escort agencies.

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

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

Sec. 16.39. Additional regulations concerning public nudity.

A person commits a violation if the person knowingly and intentionally, in a sexually oriented business, appears nude or in a state of nudity or engages in specified sexual activities.

A person commits a violation if the person knowingly and intentionally, in a sexually oriented business, appears in a semi-nude state, unless the person is an employee who, while semi-nude, is at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor.

A person commits a violation if the person receives directly any pay or gratuity from any patron or customer, or if any patron or customer pays or gives any gratuity directly to the person, while the person is an employee and semi-nude in a sexually oriented business.

A person commits a violation if the person, while semi-nude, knowingly and intentionally touches a part on or the clothing of a patron or customer.

Sec. 16-40. Prohibition against children in a sexually oriented business.

A person commits a violation if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

Sec. 16-41. Hours of operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of twelve o'clock (12:00) a.m. and eight o'clock (8:00) a.m. on weekdays and Saturdays, and twelve o'clock (12:00) a.m. and noon (12:00) p.m. on Sundays.

Sec. 16.42. Exemptions.

It is a defense to prosecution under Section 16-39 that a person appearing in a state of nudity did so in a modeling class operated:

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

Sec. 16-43. Violation a misdemeanor.

Except as otherwise stated herein, any person, firm, corporation, agent or employee thereof who violates any provision of this article (a violation) shall be guilty of a Class A misdemeanor punishable by a fine not to exceed \$4,000.00 and/or confinement in jail for a term not to exceed one (1) year.

Each day that a violation exists or is permitted to exist shall constitute a separate offense.

The refusal to issue a license based on ineligibility shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the refusal to issue a license based on ineligibility.

The revocation or suspension of a license shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a license.

Sec. 16-44. Civil remedies.

The City reserves the right to seek all available civil remedies in a court of law to include, but not be limited to, injunction and civil fines for any violations of this article.

Any person, firm, corporation, agent or employee thereof who violates any provision of this article, in addition to any criminal remedies, shall be subject to a civil fine up to and including one thousand dollars (\$1,000.00) per day for each day the violation occurs.

Comment [JB11]: This section may need to be reworded to address fine and/or jail time.

Comment [C12]: Not sure I understand your comment?

Sec. 16.45. Notice of violation.

The City shall provide to a sexually oriented business written notice of each citation issued to an operator or employee of the business for an alleged violation of this article. The notice may 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, or may be personally delivered to the licensee. A failure of the City to provide such notice is not a violation of this article, and shall not affect or invalidate the citation.

Sec. 16-45 – 16.49. RESERVED.

SECTION 4.
SAVINGS CLAUSE

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violations occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5.
SEVERABILITY

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. City hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 6.
REPEALER

Any other ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

SECTION 7.
EFFECTIVE DATE

This Ordinance shall become effective upon adoption and publication as required by law.

SECTION 8.
PROPER NOTICE AND MEETINGS

It is hereby officially found and determined that the meetings at which this ordinance was passed were open to the public as required and that public notice of the time, place and purpose of said meetings were given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED, on its first reading at the meeting of the City Council held on this the _____ day of _____, 2011.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the _____ day of _____, 2011.

Milton Y. Tate, Jr., Mayor

ATTEST:

Jeana Bellinger, TRMC, City Secretary

ORDINANCE NO. O-11-009

AN ORDINANCE OF THE CITY OF BRENHAM, TEXAS AMENDING CHAPTER 16 OF THE CODE OF ORDINANCES OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR THE REGULATION OF SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY LIMITS OF THE CITY OF BRENHAM, TEXAS; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A SEVERABILITY, REPEALER AND SAVINGS CLAUSE; AND PROVIDING FOR PROPER NOTICE AND OPEN MEETINGS.

WHEREAS, the City of Brenham (“City”) is a home rule municipality located in Washington County, Texas, acting under its Charter adopted by the electorate pursuant to Article XI, Section 5 of the Texas Constitution and Chapter 9 of the Texas Local Government Code; and

WHEREAS, the Texas State Legislature, in Section 243.001 of the Texas Local Government Code finds “that the unrestricted operation of certain Sexually Oriented Businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity;” and

WHEREAS, Section 243.003 of the Texas Local Government Code authorizes municipalities to adopt regulations restricting the location of Sexually Oriented Businesses, which are defined in Section 243.002 to mean a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other similar commercial enterprise, the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer; and

WHEREAS, the City, for the purpose of protecting the public health, safety and welfare, has regulated Sexually Oriented Businesses since December 2, 1993 by enactment of Ordinance No. O-93-034, and required permitting by the City of such businesses to this present date; and

WHEREAS, the City did not have a Sexually Oriented Business within its city limits on December 2, 1993 and no licenses or permits for such businesses have been reported or issued by the City from December 2, 1993 to the date of this Ordinance; and

WHEREAS, the City Council, in performance of its police power to protect the public health, safety and welfare of the City and its citizens, has determined that it is necessary and advisable to establish, implement and enforce new regulations, licensing procedures and location criteria applicable to Sexually Oriented Businesses; and

WHEREAS, the City Council intends that these regulations should have neither the purpose nor effect of imposing a limitation or restriction on the content of any speech, expression or communicative materials, including sexually oriented speech, expression and communicative materials, nor the effect of restricting or denying access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and

WHEREAS, studies, reports and findings considered by the City Council are as follows: *Survey of Texas Appraisers – Secondary Effects of Sexually Oriented Businesses on Market Values*, Texas City Attorneys Association (2008); *Report on Adult Oriented Businesses in Austin*, City of Austin, Texas (1986); *Report to City Council Regarding the Regulation of Sexually Oriented Businesses*, City of Burleson, Texas (2004); *Sexually Oriented Business Ordinance Revision Committee Legislative Report*, City of Houston, Texas (1997); and *Survey [of real estate appraisers regarding the secondary effects an adult bookstore would have on the surrounding community]*, City of Kennedale, Texas (2003); and

WHEREAS, said studies, reports and findings, which document the adverse secondary effects of Sexually Oriented Businesses, have been presented to and considered by the Mayor and each City Councilmember; and

WHEREAS, lawsuit case decisions considered by the Council are as follows: *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (986); *Young v. American Mini Theaters*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S. Ct. 1382 (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); *Schultz v. City of Cumberland*, 228, F. 3d 831 (7th Cir. 2000); and

WHEREAS, said legal opinions, which provide further documentation regarding the detrimental secondary effects associated with Sexually Oriented Businesses, have been presented to and considered by the Mayor and each City Councilmember; and

WHEREAS, based on its review, the City Council finds that the presence of a Sexually Oriented Business would have detrimental secondary effects on surrounding properties; and

WHEREAS, the above referenced studies, legal opinions, reports and findings show that Sexually Oriented Businesses have a deleterious effect on surrounding businesses and residential areas, causing increased crime, a downgrading of property values, and increased incidence of sexually transmitted diseases; and

WHEREAS, the City Council finds, based on the above referenced studies, legal opinions, reports and findings, that these ancillary, unlawful and unhealthy activities will not be controlled by the operators of Sexually Oriented Businesses, and 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 or about their premises and as a consequence of their operations; and

WHEREAS, the City Council finds that based on the above cited studies, legal opinions, reports and findings, that it is reasonably likely that establishment of one or more Sexually Oriented Business within the City will give rise to adverse secondary effects; and

WHEREAS, the City Council finds that based on the above cited studies, legal opinions, reports and findings that adverse secondary effects associated with Sexually Oriented Businesses are magnified when such businesses are located within close proximity to each other; and

WHEREAS, the City has a legitimate and substantial governmental interest in limiting the adverse secondary effects associated with Sexually Oriented Businesses as a means of promoting the public health, safety and welfare of the citizens of Brenham; and

WHEREAS, the City Council finds that the institution of reasonable regulations, licensing procedures, and location criteria provides an appropriate mechanism for achieving said legitimate and substantial governmental interest; and

WHEREAS, the City Council finds, based on the above-referenced studies, legal opinions, reports and findings, that limiting the locations of Sexually Oriented Businesses as provided herein is necessary in order to minimize the adverse secondary effects of Sexually Oriented Businesses on surrounding properties; and

WHEREAS, the City Council finds that the regulations, licensing procedures and location criteria contained herein do not attempt and not intended to prohibit constitutionally protected speech, but rather, serve to mitigate the adverse secondary effects associated with Sexually Oriented Businesses; and

WHEREAS, the City Council finds that the regulations, licensing procedures and location criteria contained herein have neither the purpose, intent, nor effect of imposing a limitation or restriction on the content of any speech, expression or communicative materials, including sexually oriented speech, expression or communicative materials, nor is it the purpose or intent of this Ordinance to have the effect of restricting or denying access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment, or denying access by the distributors and exhibitors of sexually oriented entertainment to their intended market; and

WHEREAS, the City Council finds that the adoption of the regulations, licensing procedures and location criteria contained herein will still leave available reasonable locations for the establishment of Sexually Oriented Businesses within the city limits; and

WHEREAS, the City Council finds that the adoption of the regulations, licensing procedures, and location criteria contained herein will promote the public health, safety and general welfare of the citizens of the City;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Brenham, Texas that:

SECTION 1:

The recitals and preamble to this Ordinance together with the June 2, 2011 *Report to the City of Brenham City Council on Sexually Oriented Businesses* prepared by the City Secretary, including all appendices, are incorporated in this Ordinance by reference for all purposes as if fully set forth herein.

SECTION 2:

Section 16-16 of the Code of Ordinances of the City of Brenham, Texas is hereby repealed.

SECTION 3:

Chapter 16 of the Code of Ordinances of the City of Brenham, Texas is hereby amended by adding the following provisions:

SEXUALLY ORIENTED BUSINESSES

Sec. 16-20. Purpose and intent.

It is the purpose of this article to regulate sexually oriented businesses, to promote the health, safety, and general welfare of the citizens of the City of Brenham, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses in close proximity to each other within the City. The regulations contained herein have also been established for the purpose of limiting, the well-documented, adverse secondary effects suffered by properties located within one thousand, three hundred and twenty (1,320) feet of a sexually oriented business.

The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative speech, expression or communicative materials, including sexually oriented speech, expression or communicative materials. Similarly, it is not the intent or effect of this article to restrict or deny access by adults to sexually oriented speech, expression or communicative materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

Sec. 16-21. Findings and basis for regulation.

The regulations contained herein, including those pertaining to the licensing, operation, and location of sexually oriented businesses, are based on studies, reports, findings, court case decisions, and evidence made available to and considered by the City Council. These regulations have also been established under the authority granted to municipalities by Chapter 243 of the Texas Local Government Code.

A copy of the City Secretary's report on sexually oriented businesses (dated June 2, 2011), together with the studies, reports, findings, and court case decisions (as referenced herein) are on file in the Office of the City Secretary.

Sec. 16-22. Definitions.

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

Adult bookstore, adult novelty store or adult video store. A commercial establishment which regularly offers a service or regularly sells, rents or exhibits devices or any other items intended to provide sexual stimulation or sexual gratification to the customer including:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, DVD's, videocassettes or video reproductions, slides, or other visual representations, that depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities, but not including items used for birth control or for the prevention of sexually transmitted diseases.

Adult cabaret. A commercial establishment that regularly features the offering to customers of live entertainment that:

- (1) Is intended to provide sexual stimulation or sexual gratification to such customer; and
- (2) Is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to specified anatomical areas or specified sexual activities.

Adult motel. A hotel, motel, or similar commercial establishment that:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions that are characterized by the regular depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from any public right-of-way that advertises the availability of this adult type of photographic reproductions;
- (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

Adult motion picture theater. A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

Adult theater. A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or semi-nude, or live performances which are characterized by the exposure of specified anatomical areas or by the depiction or description of specified sexual activities.

Applicant.

- (1) A person or entity in whose name a license to operate a sexually oriented business is requested to be issued;
- (2) Each individual who signs an application for a sexually oriented business license as required by Section 16-26
- (3) Each individual who is an officer of a sexually oriented business for which a license application is made under Section 16-26, regardless of whether the individual's name or signature appears on the application;
- (4) Each individual who has an ownership interest in a sexually oriented business for which a license application is made under Section 16-26, regardless of whether the individual's name or signature appears on the application; and

- (5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license application is made under Section 16-26, regardless of whether the individual's name or signature appears on the application.

Chief of police. The Chief of Police of the City of Brenham or the Chief's designee.

Child-care facility. A facility licensed by the State of Texas, or other governmental entity having jurisdiction, or an agency thereof, 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.

Conviction. A conviction in a federal court or a court of any state or foreign nation or political subdivision of a state or foreign nation that has not been reversed, vacated, or pardoned. Conviction includes disposition or charges against a person by probation, deferred disposition or deferred adjudication.

Distinguished or characterized by an emphasis upon. The dominant or principal theme of the object referenced. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or display of specified sexual activities or specified anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or display of specified anatomical areas or specified sexual activities.

Employee. Any individual who:

- (1) Is listed as a part-time, full-time, temporary, or permanent employee on the payroll of an applicant, licensee, or sexually oriented business; or
- (2) Performs or provides entertainment or any other services on the sexually oriented business premises for any form of compensation or consideration.

Entertainer. A person who, for consideration, entertains for others.

Escort. A person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease or other live performance that is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to specified anatomical areas or specified sexual activities, for another person.

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

Establishment. Any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business;
- (4) The relocation of any sexually oriented business; or
- (5) Any building, structure or premises operated as a sexually oriented business.

Hearing officer. The City Manager or his designee. The hearing officer shall exercise those powers authorized under applicable state law, the Charter of the City, and the Code of Ordinances of the City, as appropriate in the furtherance of his duties.

Hospital. A facility or area for providing health services primarily for human in-patient medical or surgical care for the sick or injured and including related facilities such as laboratories, out-patient departments, training facilities, central services facilities, and staff offices that are an integral part of the facilities.

Licensee.

- (1) A person in whose name a license to operate a sexually oriented business has been issued;
- (2) Each individual listed as an applicant on the application for a license;
- (3) Each individual who is an officer of a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application;
- (4) Each individual who has an ownership interest in a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application;
- (5) Each individual who exercises substantial de facto control over a sexually oriented business for which a license has been issued under this article, regardless of whether the individual's name or signature appears on the license application.

Manager. A person responsible for planning and/or directing the work of others and monitoring them when necessary.

Nude model studio. Any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, viewed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration; however, nude modeling at or on behalf of any properly accredited institution of higher learning shall not fall within this definition.

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

Operates or causes to be operated. To cause to function or to put or keep in a state of doing business. Operator means any person on the premises of a sexually oriented business who is authorized to exercise operation control of the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

Person. An individual, proprietorship, partnership, corporation, association, or other legal entity.

Public park. Any City park as defined by Chapter 19 of the Code of Ordinances, or any park or recreational area operated by a city/county/state government, or any park to which the general public has access.

Regularly features or regularly shown. A consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

Religious institution. A building or group of buildings in which persons regularly assemble for religious worship and activities intended primarily for purposes connected with such worship or for propagating a particular form of religious belief. For the purposes of this definition, the term religious institution shall include, but not be limited to, a church, synagogue, mosque or temple.

Residential district. A single-family, duplex, townhouse, multiple-family, manufactured home, mobile home, or other residential zoning district as defined in the City's zoning ordinance.

Residential use. A single-family, duplex, multiple-family, manufactured home park, manufactured home subdivision, mobile home park, mobile home subdivision, campground, or other residential use as defined in the City's zoning ordinance.

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

Sexual encounter center. A business or commercial establishment that as one of its primary business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of specified sexual activities. The definition of sexual encounter center or any sexually oriented business shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

Sexually oriented business. An adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or other commercial enterprise which regularly offers a service or regularly sells, rents, or exhibits devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. The term "sexually oriented business" shall also mean any commercial enterprise that self-identifies as an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency or nude model studio.

Sign. Any display, design, message, pictorial, image or other representation that is:

- (1) Constructed, placed, attached, painted, erected, fastened, or manufactured in any manner whatsoever so that it is visible from the outside of a sexually oriented business; and
- (2) Used to seek the attraction of the public to any goods, services, or merchandise available at the sexually oriented business.

The term sign also includes any representation painted on or otherwise affixed to any exterior portion of a sexually oriented business establishment or to any part of the tract upon which the establishment is situated.

Specified anatomical areas.

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

Specified sexual activities. Any of the following:

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

Transfer of ownership or control of a sexually oriented business. Any of the following:

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

Sec. 16-23. Classification.

Sexually oriented businesses are classified as follows:

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

Sec. 16-24. Nonconforming uses.

- (1) Any sexually oriented business that is in violation of Section 16-25, or any other location requirement of any other City ordinance that was legally operating at the time it was licensed, or the effective date of any amendment of such ordinance or regulation, shall be deemed a nonconforming use.
- (2) Any legally established, sexually oriented business that is in violation of this article because of annexation into the City shall be deemed to be a nonconforming use.
- (3) A sexually oriented business that is lawfully operating within the City on or after the effective date of this article shall not be rendered a nonconforming use by the subsequent location of a protected use listed in Section 16-25 within one thousand, three hundred and twenty (1,320) feet of the sexually oriented business.
- (4) Notwithstanding anything contained in this article or in the City's zoning ordinance as amended to the contrary, a legal nonconforming sexually oriented business shall be required to meet all applicable requirements of this article except locational requirements established by Section 16-25 within sixty (60) days of the date the sexually oriented business becomes nonconforming. The Board of Adjustment may grant a nonconforming sexually oriented business an extension of time to comply with these requirements if the business shows, upon timely written application, that meeting these requirements within sixty (60) days imposes an unnecessary hardship on the business.
- (5) Legal nonconforming sexually oriented businesses shall not be increased, enlarged, extended or altered except that the use may be changed to a use other than a sexually oriented business to the extent allowed by the City's zoning ordinance. A person commits an offense if he increases, enlarges, extends or alters, or causes to be increased, enlarged, extended or altered, a nonconforming sexually oriented business.

Sec. 16-25. Location requirements.

A person commits a violation if the person operates or causes to be operated a sexually oriented business in any zoning district other than an industrial zoning district as defined in the City's zoning ordinance.

A person commits a violation if the person operates or causes to be operated a sexually oriented business within one thousand, three hundred and twenty (1,320) feet of:

- (1) A religious institution including a church, synagogue, mosque, temple, or building which is used primarily for religious worship and related religious activities;
- (2) A public or private educational facility or child care facility, including but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and universities. The term school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school;

- (3) A boundary of a residential zoning district as defined in the City's zoning ordinance;
- (4) A public park or recreational area which has been designated for park or recreational activities, including but not limited to, a park, playground, nature trail, swimming pool, athletic field, basketball, or tennis court, pedestrian/bicycle path, or other similar public land within the City, or its ETJ;
- (5) The property line of a lot or parcel devoted to a residential use as defined in the City's zoning ordinance;
- (6) A family oriented recreation facility including but not limited to a roller skating rink, an ice skating rink or a facility devoted to children's athletic activities;
- (7) Any premise licensed pursuant to the alcoholic beverage control regulations of the State of Texas, or an agency thereof; or
- (8) A public library.

A person commits a violation if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand, three hundred and twenty (1,320) feet of another sexually oriented business.

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

Measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in Items (1) through (8) above. The presence of a City, county or other political subdivision boundary shall be irrelevant for the purposes of calculating and applying the distance requirements of this section.

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

Sec. 16-26. Sexually oriented business license required.

A person commits an offense if the person operates or causes to be operated a sexually oriented business without a valid license, issued by the City for the particular classification of a sexually oriented business. The person, association, firm, partnership or corporation desiring to obtain a sexually oriented business license shall make an application on a form provided by the City Secretary.

The fact that a person, association, firm, partnership, corporation or other legal entity possesses other types of state or City permits or licenses does not exempt the person from the requirement of obtaining a license for a sexually oriented business.

An application for a sexually oriented business license shall only be considered to be complete if it contains all information specified in Items (1) through (14) below:

- (1) The applicant's full and true name along with any other names used in the preceding five (5) years. Any person with interest in the business shall:
 - (a) Be considered to be an applicant and shall sign the license application form;
 - (b) Provide all information and documentation required of the applicant;
 - (c) Be considered a licensee if a license is granted.
- (2) The applicant's current address;
- (3) A set of fingerprints suitable for conducting necessary background checks pursuant to this article, and the applicant's Social Security number, to be used for the same purpose;
- (4) The business name as it is to be displayed on the premises, the company name, if different than the preceding, the property address and legal description, the business mailing address, business telephone number, and any e-mail or website addresses that are to be used in conjunction with the business;
- (5) Written proof of age, in the form of a birth certificate accompanied by a current photograph, a current driver's license, or other picture identification issued by a domestic governmental agency;
- (6) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked, or suspended, and if so, the reason or reasons therefor;
- (7) The name and address of the statutory agent or other agent authorized to receive service of process;
- (8) A diagram showing a plan of the premises. The diagram shall:
 - (a) Be oriented to the north, or to a designated street;
 - (b) Be drawn to a designated scale 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 (6) inches;
 - (c) Designate any portion of the premises in which customers will not be permitted;
 - (d) Specify the location of all manager's stations, if applicable; and

- (e) Designate the place at which the license, if granted, will be conspicuously displayed.
- (9) An approved City sign permit accompanied by a photograph verifying posting of notification signage required by Sec. 243.075 of the Texas Local Government Code;
- (10) A list of all employees, or prospective employees, along with copies of complete updated employment application, valid driver's license, state identification card, or passport containing a photograph of the employee;
- (11) A notarized affidavit signed by each applicant and certifying all information and documentation provided with the application to be true and correct;
- (12) A nonrefundable application fee in the amount of \$750.00;
- (13) A Certificate of Occupancy, if required, issued by the City's building inspector; and
- (14) All information, supported by any necessary documentation, required by this article.

An application submitted without all of the required information, or without the application fee, shall be deemed incomplete. Incomplete applications shall be denied and within forty-five (45) business days of its receipt by the City Secretary, be returned to the applicant, accompanied by a notice specifying the reasons for application denial.

Sec. 16-27. Issuance of sexually oriented business license.

The annual fee for a sexually oriented business license shall be \$750.00. A sexually oriented business license shall be valid from the date of issuance through January 31 of the following year. The annual fee shall not be prorated.

The Chief of Police, or his designee, shall approve the issuance of a license by the City Secretary to an applicant within forty-five (45) days after receipt of an application, unless the Chief, or his designee, 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 Section 16-25 of this article.
- (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 Secretary of State or the City of taxes, fees, fines or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.

- (6) An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation or community supervision for a violation of a provision of this article, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (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 an applicant's spouse has been convicted or placed on deferred disposition, probation, or community supervision for:
 - (a) Any offense under the laws of the United States of America, another state or the Uniform Code of Military Justice for an offense described in this subsection; or
 - (b) Any of the below offenses of the state or criminal attempt, conspiracy, or solicitation to commit same;
 - (c) Any of the following offenses as described in Chapter 43 of the Texas Penal Code:
 - (i) Prostitution;
 - (ii) Promotion of prostitution;
 - (iii) Aggravated promotion of prostitution;
 - (iv) Compelling prostitution;
 - (v) Obscenity;
 - (vi) Sale, distribution or display of harmful material to a minor;
 - (vii) Sexual performance by a child;
 - (viii) Possession of child pornography;
 - (d) Any of the following offenses as described in of the Texas Penal Code:
 - (i) Public lewdness;
 - (ii) Indecent exposure;
 - (iii) Indecency with a child;
 - (iv) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
 - (v) Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or
 - (vi) Those crimes defined as "drug-defined offenses" or "drug-related offenses" by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Section 12.04 of the Texas Penal Code;
 - (e) For which:
 - (i) 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 a misdemeanor offense; or

- (ii) 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 a felony offense; or
 - (iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.
- (10) 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.
- (11) The applicant failed to comply with any of the requirements of Sec. 243.0075 of the Texas Local Government Code regarding the posting of an outdoor sign.
- (12) The applicant of the proposed establishment is in violation of or is not in compliance with any of the requirements outlined in Section 16-27 or Section 16-25, or any other applicable law, ordinance or regulation.

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 subsection 9(c) or 9(d) above, may qualify for a sexually oriented business license only when the time period required by subsection (9)(e)(i-iii) above, has elapsed.

The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the sexually oriented business. The license shall be posted in accordance with the provisions of Section 16-26.

Sec. 16-28. Manager/Entertainer license required.

A person commits an offense if the person manages and/or or entertains in a licensed sexually oriented business without a valid manager and/or entertainer license, issued by the City.

The person desiring to obtain a manager and/or entertainer license shall make an application on a form provided by the City Secretary and provide all of the following information:

- (1) A valid copy of the current sexually oriented business license for each of the sexually oriented businesses in which the manager and/or entertainer proposes to work or perform;
- (2) Applicant's name, any aliases, mailing address for receipt of notices, home address and telephone number, date and place of birth, social security number, and, in the case of entertainers, any stage names or nicknames used in entertaining;

- (3) Name and address of each sexually oriented business where the applicant intends to work;
- (4) A statement that the applicant is eighteen (18) years or older, confirmed by provision of documentation issued by a state or federal agency bearing the applicant's date of birth and photograph;
- (5) A statement that the applicant has not been convicted of, or released from confinement or conviction of, or received an order for, deferred adjudication or disposition, of any felony or any misdemeanor (other than traffic offenses) where such felony or misdemeanor violation constitutes a specified criminal act; the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (6) A statement that the applicant has not been convicted of or released from confinement for conviction of, or received an order for, deferred adjudication or disposition, whichever event is later, of any other felony within the five (5) years or any other misdemeanor (other than traffic offenses) within the two (2) years immediately preceding the date of application; the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (7) A statement that the applicant has not had a sexually oriented business manager or entertainer license, or comparable license, of any type revoked within the past five (5) years nor one suspended within the past two (2) years, immediately preceding the date application, the fact that the applicant has appealed such action shall have no effect on the disqualification of the applicant;
- (8) A statement that the applicant has not had, within the two (2) years immediately preceding the date of application, an ownership, operational or managerial position, of a sexually oriented business that has demonstrated an inability to operate in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers;
- (9) A statement that the applicant does not owe delinquent taxes, assessments or other financial obligations to the City, or if such debts and/or obligations are owed, that arrangements satisfactory to the City Manager have been made for the payment of such debts or obligations; and
- (10) A statement signed under oath by the applicant that the information contained in the application is true and correct; that the applicant grants permission to the city to perform any necessary background checks on the applicant; and that the applicant has read all the provisions of the Chapter regulating sexually oriented businesses.

If the applicant fails to provide all of the information required by this Section, or if the information provided is false or misleading, the application shall be denied. Further, a license issued under this Section may be revoked and/or suspended after issuance if the information provided by the applicant is later found to be false or misleading.

Sec. 16-29. Issuance of manager/entertainer license.

The annual fee for a manager and/or entertainer license shall be \$150.00. A manager and/or entertainer's license shall be valid from the date of issuance through January 31 of the following year. The annual fee for a manager/entertainer license shall not be prorated.

If the applicant meets all the applicable requirements, the Chief of Police, or his designee, shall approve the issuance of a license by the City Secretary to an applicant within forty-five (45) days after receipt of a complete application.

In the event the application is determined incomplete, the notification to the applicant shall include a written explanation of the reason(s) why the application is incomplete. The applicant may resubmit the application within ten (10) days of the City's written notice to the applicant. Once a completed application has been re-submitted, the Police Chief shall have forty-five (45) days to approve or disapprove the application.

The Chief of Police shall base his decision on the information provided by the applicant, the police department's investigation, license requirements and denial criteria, and any other information provided by other City departments or governmental agencies. The applicant shall be notified in writing within ten (10) days after the Chief's decision.

The license, if granted, shall state on its face: the license number, the name of the license holder (including any stage names), a photograph of the licensee, the date of issuance and expiration, the address of the sexually oriented business where such license is applicable.

A valid copy of the manager's license shall be posted in accordance with the provisions of Section 16-26. A valid copy of the entertainer's license shall not be posted but shall be available for inspection on the premises of the sexually oriented business at any time.

Sec. 16-30. Certificate of occupancy.

Prior to submitting an application for a sexually oriented business license, the applicant must obtain a certificate of occupancy from the City's building official.

If a building and/or other construction related permit is required under applicable City ordinances, the applicant shall submit to the building inspection department, all necessary plans and permit applications. The building official shall cause all plans and permit applications to be processed and reviewed under the terms of applicable codes and ordinances. Upon approval of a final inspection, by applicable City departments, the building official shall issue a certificate of occupancy.

Sec. 16-31. Inspection and maintenance of records.

A licensee, owner, operator and/or employee of a sexually oriented business shall be subject to regulation under this article and shall permit representatives of the City, including but not limited to the police department, health department, fire department, building inspections division and code enforcement division to inspect all portions of the premises and to inspect the records required to be maintained under this article, for the purpose of ensuring compliance with all applicable regulations, at any time it is occupied or open for business.

A licensee, owner or operator of a sexually oriented business commits an offense if:

- (1) The person operates the establishment without maintaining a current list of all employees of the business, along with a completed, 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.
- (2) The person refuses to permit a lawful inspection of the records and premises by a representative of the police department or other department of the City at any time the sexually oriented business is occupied or open for business.
- (3) The person does not maintain the required records on the premises of the licensed establishment.
- (4) The person does not permit representatives of the police department to take photographs of the licensee, owner, operator or employee of the sexually oriented business, for official police department purposes, at any time it is occupied or open for business.

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

Sec. 16-32. Expiration and renewal of licenses.

An application for renewal of a sexually oriented business license shall be submitted to the City Secretary at least thirty (30) days before the expiration date of the then current and valid license. A licensee that fails to renew a license shall forfeit the right to conduct business within the City until such time as the renewal is approved. A sexually oriented business license may be renewed by submission to the City Secretary of an application on the form prescribed by the City Secretary and payment of a nonrefundable renewal fee of \$1,000.00. Annual renewal fees shall not be prorated.

An application for renewal of a manager and/or entertainer license shall be submitted to the City Secretary at least thirty (30) days before the expiration date of the then current and valid license. A person that fails to renew their license shall forfeit the right to manage and/or entertain within the City until such time as the renewal is approved. A manager and/or entertainer license may be renewed by submission to the City Secretary of an application on the form prescribed by the City Secretary and payment of a nonrefundable renewal fee of \$75.00. Annual renewal fees shall not be prorated.

Sec. 16-33. Suspension of license.

The Chief of Police shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the Chief determines that a licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any section of this article; or
- (2) Refused to allow an inspection of the sexually oriented business premises as authorized by this article; or
- (3) Knowingly permitted gambling by any person on the sexually oriented business premises; or
- (4) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

Sec. 16-34. Revocation of license.

The Chief of Police shall issue a written notice of intent to revoke a sexually oriented business license if:

- (1) A cause of suspension in Section 16-33 occurs and the license has been suspended one (1) other time within the preceding twelve (12) months;
- (2) On two (2) 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 adjudication or 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 or criminal attempt, conspiracy, or solicitation to commit same for:

- (a) Any of the following offenses as described in Chapter 43 of the Texas Penal Code:
 - (i) Prostitution;
 - (ii) Promotion of prostitution;
 - (iii) Aggravated promotion of prostitution;
 - (iv) Compelling prostitution;
 - (v) Obscenity;
 - (vi) Sale, distribution or display of harmful material to a minor;
 - (vii) Sexual performance by a child;
 - (viii) Possession of child pornography;
 - (b) Any of the following offenses as described in Chapter 21 of the Texas Penal Code:
 - (i) Public lewdness;
 - (ii) Indecent exposure;
 - (iii) 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
 - (e) Those crimes defined as “drug-defined offenses” or “drug-related offenses” by the Bureau of Justice Statistics Drug and Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in section 12.04 of the Texas Penal Code.
- (3) A licensee or operator gave false or misleading information in the material submitted to the Chief of Police during the application process;
 - (4) A licensee or operator has knowingly allowed possession, use or sale of a controlled substance on the premises;
 - (5) A licensee or operator has on two (2) or more occasions knowingly allowed prostitution on the premises;
 - (6) A licensee or operator knowingly operated the sexually oriented business during a period of time when the licensee’s license was suspended;
 - (7) 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) 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) The licensee is required to register as a sex offender under the provisions of Chapter 62 of the Texas Code of Criminal Procedure; or
 - (10) A license is transferred in violation of Section 16-36;

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

Subsection (7) above does not apply to adult 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.

Sec. 16-35. Denial, suspension and revocation procedures.

If the Chief of Police determines that facts exist for denial, suspension or revocation of a license under this article, the City Secretary shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds therefor, by personal delivery, or by certified mail.

The notification shall be directed to the most current business address on file with the City. Within five (5) business days of receipt of such notice, the respondent may provide to the City Secretary, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended or revoked. Within ten (10) business days of the receipt of respondent's written response, the City Secretary shall notify respondent in writing of the hearing date on respondent's denial, suspension or revocation proceeding.

Within fifteen (15) business days of the City Secretary's receipt of respondent's written response, the City Manager shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the City Secretary in the time stated above or, if after the hearing, the City Manager finds that grounds as specified in this article exist for denial, suspension or revocation, then such denial, suspension, or revocation shall become final five (5) business days after the hearing unless within that time the City Manager sends, by certified mail, written notice that the license has been denied, suspended, or revoked or if the license will be issued or allowed to remain in effect. If the license is denied, suspended or revoked such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

If after a hearing, the City Manager finds that insufficient grounds exist for the denial, suspension or revocation of a license, then within five (5) business days after the hearing, the City Manager shall withdraw the intent to deny, suspend or revoke the license, and shall so notify the respondent in writing of such action by certified mail and shall contemporaneously issue the license or allow the license to remain in effect, as applicable.

When a decision to deny, suspend, or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application of a license has been denied, or whose license has been suspended or revoked, shall have the immediate right to appeal such action to a court of competent jurisdiction. Until the court of competent jurisdiction issues its final judgment, the decision to deny, suspends or revoke a license shall remain in effect and be enforced.

A sexually oriented business license or the ownership or control of a sexually oriented business which is directly or indirectly a part of civil litigation, an administrative hearing, or procedures regarding the denial, suspension or revocation of the license, such license shall not be transferred, sold or given to another person during the pendency of the judicial or administrative processes.

Sec. 16-36. Transfer of license.

A person commits a violation if the person transfers a license or permits 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 ownership or control of a sexually oriented business.

A person commits a violation if the person counterfeits, forges, changes, defaces or alters a license.

Sec. 16-37. Regulations pertaining to exhibition of sexually explicit films, videos, or live entertainment in viewing rooms.

A person who operates or causes to be operated a sexually oriented business (other than an adult motel) which exhibits on the premises, in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video, or live entertainment which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises providing all information specified in Section 16-26(8) of this article. Manager stations shown on this diagram shall be dimensioned and shall not contain in excess of thirty-two (32) square feet of floor area per station.
- (2) No alteration in the configuration or location of a manager's station may be made without the prior approval of the City.
- (3) It is the duty of the licensee of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

- (4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more managers' stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (5) It shall be the duty of the licensee to ensure that the view area specified in subsection (4) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this section.
- (6) No viewing room may be occupied by more than one (1) person at any time.
- (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot candles as measured at the floor level.
- (8) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (9) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
- (10) No person shall make or attempt to make an opening of any kind between viewing rooms or booths.
- (11) The licensee shall, during each business day, regularly inspect the walls between the viewing booths or rooms to determine if any openings or holes exist.
- (12) The license shall cause all floor coverings in viewing booths or rooms to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (13) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within forty-eight (48) inches of the floor.

A person having a duty under subsections (1) through (13) above commits a violation if he or she knowingly fails to fulfill that duty.

Sec. 16-38. Additional regulations for escort agencies.

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

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

Sec. 16.39. Additional regulations concerning public nudity.

A person commits a violation if the person knowingly and intentionally, in a sexually oriented business, appears nude or in a state of nudity or engages in specified sexual activities.

A person commits a violation if the person knowingly and intentionally, in a sexually oriented business, appears in a semi-nude state, unless the person is an employee who, while semi-nude, is at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor.

A person commits a violation if the person receives directly any pay or gratuity from any patron or customer, or if any patron or customer pays or gives any gratuity directly to the person, while the person is an employee and semi-nude in a sexually oriented business.

A person commits a violation if the person, while semi-nude, knowingly and intentionally touches a part on or the clothing of a patron or customer.

Sec. 16-40. Prohibition against children in a sexually oriented business.

A person commits a violation if the person knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.

Sec. 16-41. Hours of operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of twelve o'clock (12:00) a.m. and eight o'clock (8:00) a.m. on weekdays and Saturdays, and twelve o'clock (12:00) a.m. and noon (12:00) p.m. on Sundays.

Sec. 16.42. Exemptions.

It is a defense to prosecution under Section 16-39 that a person appearing in a state of nudity did so in a modeling class operated:

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

Sec. 16-43. Violation a misdemeanor.

Except as otherwise stated herein, any person, firm, corporation, agent or employee thereof who violates any provision of this article (a violation) shall be guilty of a Class A misdemeanor punishable by a fine not to exceed \$4,000.00 and/or confinement in jail for a term not to exceed one (1) year.

Each day that a violation exists or is permitted to exist shall constitute a separate offense.

The refusal to issue a license based on ineligibility shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the refusal to issue a license based on ineligibility.

The revocation or suspension of a license shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a license.

Sec. 16-44. Civil remedies.

The City reserves the right to seek all available civil remedies in a court of law to include, but not be limited to, injunction and civil fines for any violations of this article.

Any person, firm, corporation, agent or employee thereof who violates any provision of this article, in addition to any criminal remedies, shall be subject to a civil fine up to and including one thousand dollars (\$1,000.00) per day for each day the violation occurs.

Sec. 16.45. Notice of violation.

The City shall provide to a sexually oriented business written notice of each citation issued to an operator or employee of the business for an alleged violation of this article. The notice may 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, or may be personally delivered to the licensee. A failure of the City to provide such notice is not a violation of this article, and shall not affect or invalidate the citation.

Sec. 16-45 – 16.49. RESERVED.

SECTION 4.
SAVINGS CLAUSE

All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violations occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5.
SEVERABILITY

Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. City hereby declares that it would have passed this Ordinance, and each section, subsection, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 6.
REPEALER

Any other ordinances or parts of ordinances in conflict with this Ordinance are hereby expressly repealed.

SECTION 7.
EFFECTIVE DATE

This Ordinance shall become effective upon adoption and publication as required by law.

SECTION 8.
PROPER NOTICE AND MEETINGS

It is hereby officially found and determined that the meetings at which this ordinance was passed were open to the public as required and that public notice of the time, place and purpose of said meetings were given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

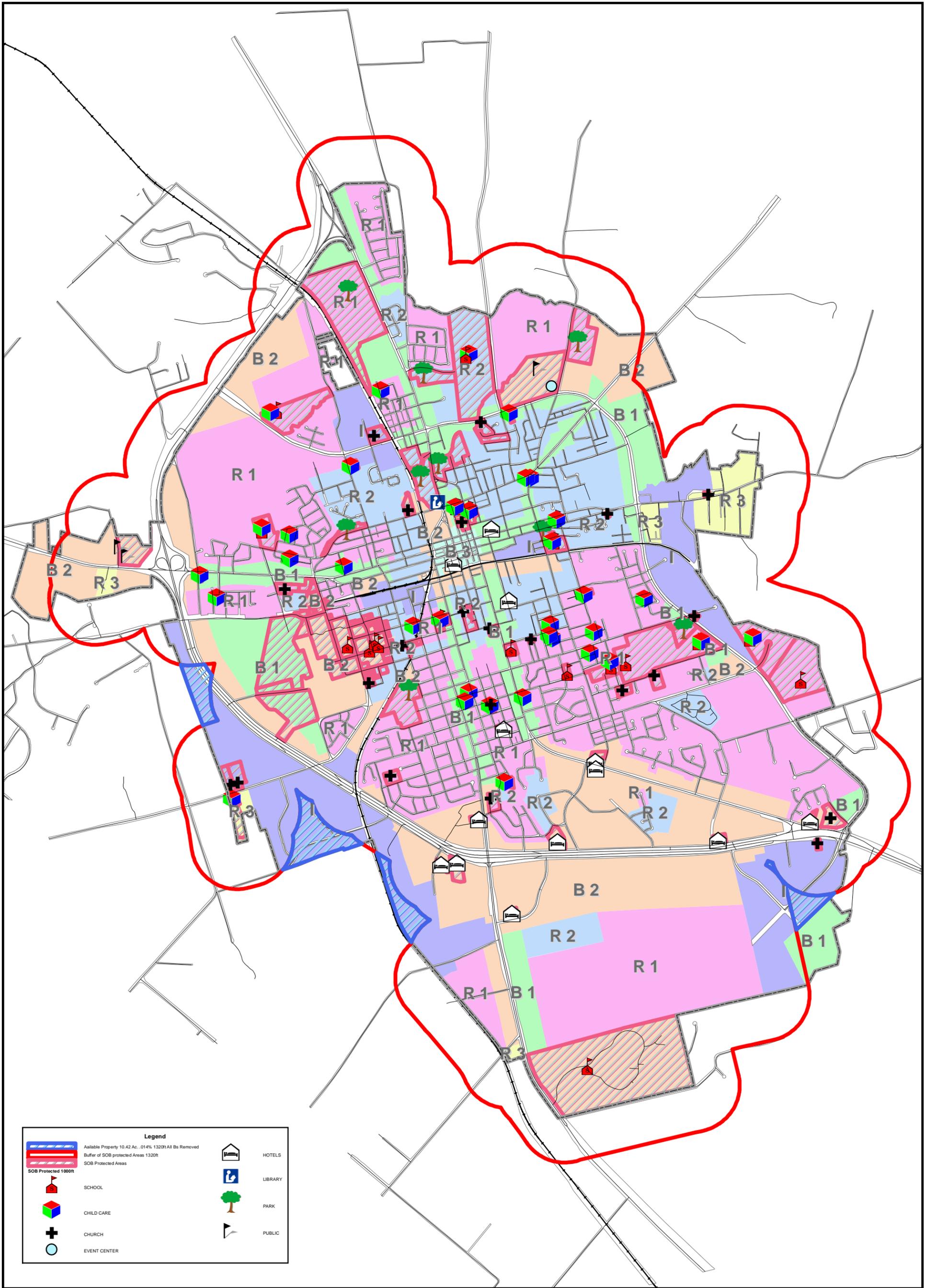
PASSED AND APPROVED, on its first reading at the meeting of the City Council held on this the _____ day of _____, 2011.

PASSED AND APPROVED, on its second reading at the meeting of the City Council held on this the _____ day of _____, 2011.

Milton Y. Tate, Jr., Mayor

ATTEST:

Jeana Bellinger, TRMC, City Secretary



1 inch = 2,525 feet



Available Properties at 1320 ft Residential Zoning & Protected Areas





AGENDA FORM

DATE OF MEETING: July 25, 2011	DATE SUBMITTED: July 22, 2011	
DEPT. OF ORIGIN: Administration	SUBMITTED BY: Jeana Bellinger	
MEETING TYPE:	CLASSIFICATION:	ORDINANCE:
<input checked="" type="checkbox"/> REGULAR	<input type="checkbox"/> PUBLIC HEARING	<input type="checkbox"/> 1ST READING
<input type="checkbox"/> SPECIAL	<input type="checkbox"/> CONSENT	<input type="checkbox"/> 2ND READING
<input type="checkbox"/> EXECUTIVE SESSION	<input checked="" type="checkbox"/> REGULAR	<input checked="" type="checkbox"/> RESOLUTION
	<input type="checkbox"/> WORK SESSION	
AGENDA ITEM DESCRIPTION: Discuss and Possibly Act Upon Resolution No. R-11-008 Providing for a Moratorium on the Processing, Approval, and Issuance of Sexually Oriented Business License/Permit Applications		
SUMMARY STATEMENT: As you know the City Attorney and I have been working through a review and update of many of the ordinances in the City of Brenham Code of Ordinances. One of the ordinances in need of review was the ordinance regulating sexually oriented businesses within the city. Up until recently, the City had never had anyone inquire about opening a sexually oriented business; therefore, the application/permit process had never been developed. I have been working closely with the City Attorney on drafting a new ordinance; however, I am requesting a moratorium on the processing, approval and issuance of any applications/permits to allow me additional time to work with other city staff members on the required application and permit forms.		
STAFF ANALYSIS (For Ordinances or Regular Agenda Items):		
A. PROS:		
B. CONS:		
ALTERNATIVES (In Suggested Order of Staff Preference):		
ATTACHMENTS: (1) Resolution No. R-11-008		
FUNDING SOURCE (Where Applicable): N/A		
RECOMMENDED ACTION: Approve Resolution No. R-11-008 providing for a 90-day moratorium on the processing, approval, and issuance of all sexually oriented business license and/or permit applications		
APPROVALS: Terry Roberts		

RESOLUTION NO. R-11-008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, PROVIDING FOR A 90-DAY MORATORIUM ON THE PROCESSING, CONSIDERATION, APPROVAL AND ISSUANCE OF SEXUALLY ORIENTED BUSINESS LICENSE/PERMIT APPLICATIONS

WHEREAS, the City of Brenham is a home-rule municipality; and

WHEREAS, a Texas home-rule municipality may adopt Resolutions that are for good government, peace, or order of the municipality; and

WHEREAS, a Texas home-rule municipality may adopt Resolutions to protect the health, safety, and welfare of its citizens and the community; and

WHEREAS, the City of Brenham, Texas, is in the process of revising its Code of Ordinances, and is considering revisions to Chapter 16, Sexually Oriented Commercial Activities, of the Code of Ordinances as part of its Code revision process; and

WHEREAS, the City Council desires to adopt a moratorium on the processing, consideration, approval and issuance of all sexually oriented business license/permit applications while the City Council considers changes to the City's sexually oriented business regulations; and

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BRENHAM, TEXAS, THAT:

I.

The processing, consideration, approval, and/or issuance of all sexually oriented business licenses/permits and applications related thereto pursuant to Chapter 16, Code of Ordinances of the City of Brenham, Texas is hereby suspended for a period of ninety (90) days after the effective date of this Resolution. Therefore, every officer, employee, or agent of the City is hereby prohibited from processing, considering, approving, and/or issuing any and all sexually oriented business licenses/permits and applications related thereto. Unless extended by the passage of an additional Resolution, this Resolution shall cease to be effective after the expiration of the ninety (90) day period provided for herein, such expiration date being the 23rd day of October, 2011. If within ninety (90) days after the effective date of this Resolution, the City Council repeals this action, this Resolution shall cease to be effective on the effective date of any such repeal.

II.

The provisions of this Resolution shall not prohibit the City of Brenham, Texas from enacting additional Resolutions extending the moratorium described herein beyond the initial ninety (90) day period established by this Resolution.

III.

The Mayor and other appropriate city officials, city staff, and agents are directed to perform an appropriate analyses, call or conduct all necessary meetings and hearings, evaluate alternatives, and prepare recommendations for the City Council regarding possible amendments to the aforementioned Chapter 16, Code of Ordinances, prior to the expiration of this Resolution, or prior to the expiration of any action taken by the City Council extending the provisions of this Resolution.

IV.

Appeals for relief of a hardship caused by this moratorium may be made in writing to the City Secretary and shall be considered by the City Council.

V.

- A. All Resolutions, parts of Resolutions, or resolutions in conflict herewith are expressly repealed.
- B. The invalidity of any section or provision of this Resolution shall not invalidate other sections or provisions thereof.

VI.

This Resolution shall take effect immediately from and after its passage.

RESOLVED on this _____ day of _____, 2011.

Milton Y. Tate, Jr.
Mayor

ATTEST:

Jeana Bellinger, TRMC
City Secretary