

ARTICLE III. - SEXUALLY ORIENTED BUSINESSES⁴

DIVISION 1. - GENERALLY

Sec. 10-81. - Purpose and intent.

- (a) It is the purpose of this article to regulate sexually oriented businesses to promote the health, safety, morals and general welfare of the citizens of the county, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the county. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. The promotion of obscene material (not protected by the First Amendment) is enforceable through separate criminal sanctions under the state penal code.
- (b) It is the intent of the commissioners court that the locational regulations of this article are promulgated pursuant to V.T.C.A., Local Government Code § 243.001 et seq., as they apply to sexually oriented business.

(Ord. No. 95-1012, § 1A-1, 6-20-1995)

Sec. 10-82. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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

Adult bookstore and *adult video store* mean a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs or video reproductions, slides, or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

Adult cabaret means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

- (1) Persons who appear in a state of nudity;
- (2) Live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- (3) Films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

⁴ **State Law reference**— Sexually oriented businesses, V.T.C.A., Local Government Code § 243.001 et seq.

Adult motel means a hotel, motel or similar commercial establishment which:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, film, motion pictures, video cassettes, compact discs, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas;
- (2) Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

Adult motion picture theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, compact discs, slides or similar photographic reproductions are regularly shown and are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

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

Applicant means a person who must apply for a license by this article.

Child care facility means a building used as a day nursery, children's boardinghome, child placing agency or other place for the care or custody of children under 15 years of age.

Church and *place of religious worship* mean a building in which persons regularly assemble for worship, intended primarily for purposes connected with faith, or for propagating a particular form of belief.

County director of public works means the county director of public works or his designated agent.

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

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

Establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business;
- (4) The relocation of any sexually oriented business; or
- (5) A location and place of business.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license on a person licensed under this article.

Nude model studio means any place where a person who appears in a state of nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by other persons who pay money or any form of consideration.

Nudity and a *state of nudity* mean:

- (1) The appearance of human bare buttocks, anus, male genitals, female genitals, pubic region or female breasts; or
- (2) A state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, pubic region or areola of the female breast.

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

Public park means a tract of land maintained by the federal, state or local government for the recreation and enjoyment of the general public.

Residential district means a single-family, duplex, townhouse, multiple-family or mobile home district.

Residential use means a single-family, duplex, multiple-family, or mobile home park, mobile home subdivision and campground use as a residence.

Seminude means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

Sexual encounter center means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

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

Sexually oriented business means a sex parlor, nude studio, nude modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other 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.

Sheriff means the sheriff of the county or his designated agent.

Specified anatomical areas means human genitals in a state of sexual arousal.

Specified sexual activities means and includes any of the following:

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

Substantial enlargement of a sexually oriented business means the increase in floor area occupied by the business by more than 25 percent, as the floor area exists on July 15, 1995.

Transfer of ownership and control of a sexually oriented business means and include any of the following:

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

(Ord. No. 95-1012, § 1A-2, 6-20-1995)

Sec. 10-83. - Classification.

Sexually oriented businesses are classified as follows:

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

(Ord. No. 95-1012, § 1A-3, 6-20-1995)

Secs. 10-84—10-110. - Reserved.

DIVISION 2. - LICENSE

Sec. 10-111. - Required.

The following persons are required to be licensed:

- (1) All owners, clerks and employees of a sexually oriented business are required to be licensed to operate or work in such business.
- (2) All corporations, stockholders, directors and officers of any sexually oriented business and their employees.
- (3) All partners in any sexually oriented business and their employees.

(Ord. No. 95-1012, § 1A-4(a), 6-20-1995)

Sec. 10-112. - Identification card required.

No person may work for any sexually oriented business without having on his person at all times while at work at a sexually oriented business location in the unincorporated areas of the county an appropriate identification card showing that he is currently licensed. Such identification shall be available at all times for inspection and shall be worn on the left breast of the employee during working periods.

(Ord. No. 95-1012, § 1A-4(b), 6-20-1995)

Sec. 10-113. - Compliance with article provisions by potential employees and/or clerks.

All potential employees and/or clerks of sexually oriented businesses must comply with sections 10-111, 10-112, 10-117, 10-121(b), 10-123, 10-124, 10-125, 10-153, 10-154, 10-155, 10-156, and not be in violation of section 10-120(a)(1), (3), (4), (6), (8) or (10) before being issued an identification card to work at the business. Application forms will be provided by the county director of public works and the determinations of compliance must be made by him within 60 days from time of application.

(Ord. No. 95-1012, § 1A-4(c), 6-20-1995)

Sec. 10-114. - Application; contents.

An application for a sexually oriented business license must be made on a form provided by the county director of public works. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with section 10-157 shall submit a diagram meeting the requirements of section 10-157. All locational requirements must be approved by the county director of public works within 60 days from the time the application is filed.

(Ord. No. 95-1012, § 1A-4(d), 6-20-1995)

Sec. 10-115. - Applicant qualifications; signature requirements.

- (a) The applicant for a sexually oriented business license must be qualified according to the provisions of this article.
- (b) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as the applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has an interest in the business must sign the application for a license as an applicant and shall be considered a licensee if a license is granted.

(Ord. No. 95-1012, § 1A-4(e), (f), 6-20-1995)

Sec. 10-116. - Other valid licenses not to exempt applicant from article requirements.

The fact that a person possesses any other valid license required by law does not exempt him from the requirement of obtaining a sexually oriented business license. A person who operates a sexually oriented business and possesses another business license shall comply with the requirements and provisions of this article as well as the requirements and provisions of the laws concerning the other license.

(Ord. No. 95-1012, § 1A-4(g), 6-20-1995)

Sec. 10-117. - Applicant requirements.

- (a) *Photo*. Each applicant shall attach two copies of a recent photo to his application form.
- (b) *Signs*. Each applicant for a business license shall, upon the filing of the application and payment of the filing fee, place signs (at least 24 inches by 36 inches in size) which provide notification and information specifically stating:

"SEXUALLY ORIENTED BUSINESS
LICENSE APPLICATION PENDING"

and the date on which the application will be filed. All lettering on the signs must be at least two inches by two inches in size for each letter on the sign. Each sign must list the name and business address of the applicant. The signs must be of sufficient quantities to be placed upon the property so as to identify it as being subject to a proposed sexually oriented license. It shall be the duty of each applicant as to each particular application to erect such signs along all the property's public road or highway frontage so as to be clearly visible from the public road or highway. If a property does not have a public road or highway frontage, then signs shall be placed upon the property. One sign shall be erected for each 300-foot increment of each public road or highway frontage on such property existing or any part thereof. Such signs shall be erected not less than 60 days prior to the filing of the application for the sexually oriented business license and remain erected until the application has been approved by the county director of public works.

(c) *Notice by applicant required.* Every applicant for a sexually oriented business license shall give notice of the application by publication at his own expense in two consecutive issues of a newspaper of general circulation published in the county. The notice shall be printed in ten-point boldface type and shall include:

- (1) The fact that a sexually oriented business license has been applied for;
- (2) The exact location of the place of business for which the permit is sought;
- (3) The names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and
- (4) If the applicant is a corporation, the names and titles of all officers, directors and shareholders of ten percent or more of the corporation.

Such notice shall be printed not less than 14 days after the application is filed with the public works department.

(Ord. No. 95-1012, § 1A-4(h)—(j), 6-20-1995)

Sec. 10-118. - Notice of application to property owners.

Written notice of the application for a sexually oriented business license shall be sent to all owners of real property lying within 1,000 feet of property on which the license is requested. Such notice shall be sent not less than 14 days after the application is filed with the county director of public works. The notice of the application for a sexually oriented business license described in this section shall be given by posting such notice properly addressed and postage paid to each taxpayer as the ownership appears on the last approved county tax roll. Each property owner shall have 14 days from the mailing of the notice to advise the county director of public works of a locational restriction under section 10-151(a) or (b). It is the responsibility of the applicant for a license to send this notice.

(Ord. No. 95-1012, § 1A-4(k), 6-20-1995)

Sec. 10-119. - Renewals.

An applicant for a renewal license or a business existing on June 20, 1995, is not required to publish notice or meet the posting requirements of sections 10-117(b), (c) and 10-118.

(Ord. No. 95-1012, § 1A-4(l), 6-20-1995)

Sec. 10-120. - Issuance.

- (a) The county director of public works shall approve the issuance of a license to an applicant within 60 days after receipt of an application unless he finds one or more of the following to be true:
 - (1) An applicant is under 18 years of age.
 - (2) An applicant or an applicant's spouse is overdue in his payment to the county of taxes, fees, fines or penalties assessed against him or imposed upon him in relation to a sexually oriented business. The county tax assessor shall make this determination and report his findings to the county director of public works within 60 days from the time the application is filed.
 - (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
 - (4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this article, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed

shall have no effect. The county sheriff shall make this determination and report his findings to the county director of public works within 60 days from the time the application is filed.

- (5) The premises to be used for the sexually oriented business have not been approved by the county director of public works as being in compliance with this article. Reports of compliance or noncompliance with this article must be completed by the county director of public works within 60 days from the time the application is filed.
- (6) The license fee required by this article has not been paid.
- (7) An applicant has failed to comply with the requirements of section 10-117(b), (c) or 10-118 unless exempt under this article.
- (8) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated that he is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.
- (9) An applicant or the proposed establishment is in violation of or is not in compliance with section 10-122, 10-127, 10-151, 10-153, 10-154, 10-155, 10-156 or 10-157.
- (10) An applicant or an applicant's spouse has been convicted of a crime:
 - a. Involving:
 1. Any of the following offenses as described in V.T.C.A., Penal Code ch. 43:
 - 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 minor;
 - vii. Sexual performance by a child;
 - viii. Possession of child pornography;
 2. Any of the following offenses as described in V.T.C.A., Penal Code ch. 21:
 - i. Public lewdness;
 - ii. Indecent exposure;
 - iii. Indecency with a child;
 3. Sexual assault or aggravated sexual assault as described in V.T.C.A., Penal Code ch. 22.
 4. Prohibited sexual conduct or harboring a runaway child as described in V.T.C.A., Penal Code ch. 25;
 5. Criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses;
 - b. For which:
 1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
 2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

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

(11) An applicant or an applicant's spouse has been convicted of a felony.

- (b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant's spouse.
- (c) For purposes of this section, a sentence of deferred adjudication for any period of time or amount of fine is considered the same as a conviction.
- (d) An applicant who has been convicted or whose spouse has been convicted of an offense listed in subsection (a)(10) of this section may qualify for a sexually oriented business license only when the time period required by subsection (b) of this section has elapsed.
- (e) The license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.
- (f) It shall be the duty of the sheriff to report the findings under subsections (a)(10) and (c) of this section to the county director of public works within 60 days from the time the application is filed.

(Ord. No. 95-1012, § 1A-5, 6-20-1995)

Sec. 10-121. - Fees.

- (a) The annual fee for a sexually oriented business license is \$500.00.
- (b) Each individual applicant shall pay a \$50.00 fee with each application.

(Ord. No. 95-1012, § 1A-6, 6-20-1995)

Sec. 10-122. - Inspection.

- (a) An applicant or licensee shall permit representatives of the sheriff's department and county public works department to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.
- (b) A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the sheriff's department at any time it is occupied or open for business.
- (c) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

(Ord. No. 95-1012, § 1A-7, 6-20-1995)

Sec. 10-123. - Expiration.

- (a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in this division. Application for renewal should be made at least 60 days before the expiration date, and when made less than 60 days before the expiration date, the expiration of the license will not be affected.

- (b) When the county director of public works denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the county director of public works finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

(Ord. No. 95-1012, § 1A-8, 6-20-1995)

Sec. 10-124. - Suspension.

The county director of public works shall suspend a license for a period not to exceed 30 days if he determines that a licensee has:

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

(Ord. No. 95-1012, § 1A-9, 6-20-1995)

Sec. 10-125. - Revocation.

- (a) The county director of public works shall revoke a license if a cause of suspension in section 10-124 occurs and the license has been suspended within the preceding 12 months.
- (b) The county director of public works shall revoke a license if he determines that:
 - (1) A licensee gave false or misleading information in the material submitted to the county director of public works during the application process;
 - (2) A licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;
 - (3) A licensee or an employee has knowingly allowed prostitution on the premises;
 - (4) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (5) A licensee or employee has been convicted of an offense listed in section 10-120(a)(10)a for which the time period required in section 10-120(a)(10)b has not elapsed or for which conviction the licensee or employee still remains on probation (community supervision) or deferred adjudication;
 - (6) On two or more occasions within a 12-month period, a person committed an offense occurring in or on the licensed premises of a crime listed in section 10-120(a)(10)a, for which a conviction has been obtained, and the person was an employee of the sexually oriented business at the time the offense was committed;
 - (7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in V.T.C.A., Penal Code § 21.01; or

- (8) A licensee is delinquent in payment to the county for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the sexually oriented business.
- (c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (d) Subsection (b)(7) of this section 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.
- (e) When the county director of public works revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the county director of public works finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under subsection (b)(5) of this section, an applicant may not be granted another license until the appropriate number of years required under section 10-120(a)(10)b has elapsed.

(Ord. No. 95-1012, § 1A-10, 6-20-1995)

Sec. 10-126. - Appeal.

If the county director of public works denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. The aggrieved party may appeal the decision of the county director of public works to a district court in the county on a trial de novo basis. Filing an appeal in district court stays the county director of public works in suspending or revoking a license until the district court makes a final decision. All decisions of the county director of public works become final within 30 days.

(Ord. No. 95-1012, § 1A-11, 6-20-1995)

Sec. 10-127. - Transfer.

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

(Ord. No. 95-1012, § 1A-12(a), 6-20-1995)

Secs. 10-128—10-150. - Reserved.

DIVISION 3. - RESTRICTIONS AND REGULATIONS

Sec. 10-151. - Location.

- (a) A person commits an offense if he operates or causes to be operated a sexually oriented business within 1,000 feet of:
 - (1) A church or place of religious worship;
 - (2) A public or private elementary or secondary school;
 - (3) A child care facility;
 - (4) A boundary of residential district as defined in this article;
 - (5) A public park;
 - (6) A cemetery;

- (7) The property line of a lot devoted to a residential use as defined in this article; or
 - (8) Another sexually oriented business which does not have a common entrance with an already licensed or exempted sexually oriented business.
- (b) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business.
 - (c) A person commits an offense if he causes or permits the operation, establishment or maintenance of more than one sexually oriented business in the same building, structure, or its portion, or the increase of floor area of any sexually oriented business in any building, structure, or its portion, containing another sexually oriented business.
 - (d) For the purposes of subsection (a) of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or place of religious worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, a cemetery, residential district or residential lot.
 - (e) For purposes of subsection (b) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.
 - (f) Any sexually oriented business lawfully operating that is in violation of subsections (a), (b) or (c) of this section shall be deemed a nonconforming use. Such use will be permitted to continue for a period not to exceed one year unless sooner terminated for any such reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented business are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established business is nonconforming.
 - (g) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church or place of religious worship, public or private elementary or secondary school, public park, cemetery, residential district or residential lot within 1,000 feet of the sexually oriented business. This subsection applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.
 - (h) All locational requirements of this section must be approved by the county director of public works within 60 days from the time the application is filed.

(Ord. No. 95-1012, § 1A-13, 6-20-1995)

Sec. 10-152. - Exemption from location restrictions.

- (a) If the county director of public works denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of section 10-151, then the applicant may, not later than ten calendar days after receiving notice of the denial, file with the county judge a written request for an exemption from the locational restrictions of section 10-151.
- (b) If the written request is filed with the county judge within the ten-day limit, a permit and license appeal board shall consider the request. The county judge shall set a date for the hearing within 60 days from the date the written request is received. A board shall consist of five residents of the county, one from each of the commissioners' precincts as appointed by the precinct commissioners and one appointed by the county judge. Each board member will serve a two-year term beginning February 1 of odd-

numbered years, with the chairman of the board being appointed by a majority vote of the five-member board.

- (c) A hearing by the board may proceed if at least three of the board members are present. The board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.
- (d) The permit and license appeal board may, in its discretion, grant an exemption from the locational restrictions of section 10-151 if it makes all of the following findings:
 - (1) The location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare.
 - (2) The granting of the exemption will not violate the spirit and intent of this article.
 - (3) The location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban or rural blight.
 - (4) The location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation, nor will it interfere with any efforts of renewal or restoration.
 - (5) A majority of residents, businesses, churches, schools and property and building owners whose occupancy or ownership interest lie within 1,000 feet of the proposed exempted sexually oriented business have signed a petition consenting to the exemption.
 - (6) All other applicable provisions of this article will be observed.
- (e) The board shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. Decisions of the permit and license appeal board are appealable to a district court of the county. Appeals from the permit and license appeal board must be made in writing to a district court of the county within 30 days from the date of the final decision of the appeal board. After 30 days, all decisions of the permit and appeal board become final.
- (f) If the board grants the exemption, the exemption is valid for one year from the date of the board's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of section 10-151 until the applicant applies for and received another exemption.
- (g) If the board denies the exemption, the applicant may not reapply for an exemption until at least 12 months have elapsed since the date of the board's action.
- (h) The grant of an exemption does not exempt the applicant from any other provisions of this article other than the locational restrictions of section 10-151.

(Ord. No. 95-1012, § 1A-14, 6-20-1995)

Sec. 10-153. - Escort agencies.

- (a) An escort agency shall not employ any person under the age of 18 years.
- (b) A person commits an offense if he acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(Ord. No. 95-1012, § 1A-15, 6-20-1995)

Sec. 10-154. - Nude model studios.

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

- (b) A person under the age of 18 years commits an offense if he appears in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.
- (c) A person commits an offense if he appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
- (d) A nude model studio shall not place or permit a bed, sofa or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

(Ord. No. 95-1012, § 1A-16, 6-20-1995)

Sec. 10-155. - Adult theaters and adult motion picture theaters.

- (a) A person commits an offense if he knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
- (b) A person under the age of 18 years commits an offense if he knowingly appears in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
- (c) It is a defense to prosecution under subsections (a) and (b) of this section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

(Ord. No. 95-1012, § 1A-17, 6-20-1995)

Sec. 10-156. - Adult motels.

- (a) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel and that term is defined in this article.
- (b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel or similar commercial establishment that does not have a sexually oriented business license, he rents or subrents a sleeping room to a person and, within ten hours from the time the room is rented, he rents or subrents the same sleeping room again.
- (c) For purposes of subsection (b) of this section, the terms "rent" and "subrent" mean the act of permitting a room to be occupied for any form of consideration.

(Ord. No. 95-1012, § 1A-18, 6-20-1995)

Sec. 10-157. - Exhibition of sexually explicit films or videos.

- (a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
 - (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with

marked dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The county director of public works may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certified that the configuration of the premises has not been altered since it was prepared.

- (2) The application shall be sworn to be true and correct by the applicant.
 - (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the sheriff or his designee.
 - (4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
 - (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. Viewing booths must be separated at least 12 inches from the exterior walls of any other viewing booths by open space.
 - (6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the area specified in subsection (a)(5) of this section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a)(1) of this section.
 - (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 one footcandle as measured at the floor level.
 - (8) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (b) A person having a duty under subsections (a)(1) through (a)(8) of this section commits an offense if he knowingly fails to fulfill that duty.
- (c) All locational requirement of this section must be approved by the county director of public works within 60 days from the time the application is filed.

(Ord. No. 95-1012, § 1A-19, 6-20-1995)

Sec. 10-158. - Display of sexually explicit material to minors.

- (a) A person commits an offense if, in a sexually oriented business establishment open to persons under the age of 17 years, he displays a book, pamphlet, newspaper, magazine, film or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:
 - (1) Human sexual intercourse, masturbation or sodomy;
 - (2) Fondling or other erotic touching of human genitals, pubic region, buttocks or female breasts;
 - (3) Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or

- (4) Human male genitals in a discernibly turgid state, whether covered or uncovered.
- (b) In this section the term "display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:
 - (1) It is available to the general public for handling and inspection; or
 - (2) The cover or outside packaging on the item is visible to members of the general public.

(Ord. No. 95-1012, § 1A-20, 6-20-1995)

Sec. 10-159. - Defenses.

- (a) It is a defense to prosecution under section 10-111, 10-151 or 10-154(d) 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 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
 - (3) 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;
 - b. Where in order to participate in a class a student must enroll at least three days in advance of the class; and
 - c. Where no more than one nude model is on the premises at any one time.
- (b) It is a defense to prosecution under section 10-111 or section 10-151 that each item of descriptive, printed, film or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political or scientific value.

(Ord. No. 95-1012, § 1A-21, 6-20-1995)

Sec. 10-160. - Enforcement of article provisions.

- (a) As stated in V.T.C.A., Local Government Code ch. 243, the county may sue in district court for an injunction to prohibit the violation of a regulation of this article.
- (b) As stated in V.T.C.A., Local Government Code § 243.001 et seq., an offense under this article is a class A misdemeanor.

(Ord. No. 95-1012, § 1A-22, 6-20-1995)

