

Summary of Changes to the City's Zoning Ordinance to Regulate Sexually Oriented Businesses

Change No. 1:

Add "Sexually Oriented Business **" to Appendix "A" as authorized use under the General Business (GB) Zoning District.

Add "*** Subject to special regulations under Appendix "F"

Change No. 2:

Add the following Appendix to the Zoning Ordinance:

APPENDIX F

1.1 Purpose and intent.

(a) It is the purpose of this Appendix to regulate sexually oriented businesses in order to promote health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulation to prevent the concentration of sexually oriented businesses within the city. The provisions of this Appendix have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Appendix 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.

(b) It is the intent of the city council that the locational regulations are promulgated pursuant to V.T.C.A., Local Government Code Ch. 243.

1.2 Definitions.

The following words, terms and phrases, when used in this Appendix, 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 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 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 or adult video store means a commercial establishment that as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, cassettes or video reproductions, digital recordings 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.

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

- (1) Persons who appear in a state of nudity or semi nudity, including topless dancers, nude dancers or strippers, male or female;
- (2) Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- (3) Films, motion pictures, video, digital recordings, slides, or other visual representations that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

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

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmission, film, motion pictures, video, digital recordings slides, or other visual representations that are characterized by the depiction or description of specified sexual activities or specified anatomical areas; and has a sign visible from the public right-of-way which advertises the availability of this type of activity;
- (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, digital recordings, slides, or similar visual representations are shown that 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 that regularly features persons who appear in a state of nudity or deliver performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

Child care facility means a building used as a day nursery, children's boarding home, child placement agency, religious or charitable encampment for children or any other place for the care of custody of children under 16 years of age.

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

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

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

Establishment means and includes any of the following:

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

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

Nudity and state of nudity mean:

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

Operates and causes to be operated means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operating a sexually oriented business whether or not that person is an owner, part owner, part owner, or licensee of the business.

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

Residential use means property used for single-family, duplex, multiple-family, manufactured home park, manufactured home subdivision, or campground purposes.

School means any public or private learning center, elementary school, secondary school, junior college, community college, college, university or other center for post –secondary education.

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

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 is in a state of nudity or semi nudity.

Sexually oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center or similar business.

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 section.

Substantial enlargement of a sexually oriented business means the increase in floor area occupied by the business by more than 20 percent, as the floor areas existed on the date of the enactment of the ordinance from which this Appendix is derived.

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

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

1.3 A sexually oriented business may not be located within 1, 000 feet of:

- (1) A church;
- (2) A school;
- (3) A child care facility;
- (4) A boundary of a residential district;
- (5) A public park;
- (6) The property line of a lot devoted to residential use;
- (7) Any building or structure in which alcoholic beverages are offered for sale; or
- (8) Another sexually oriented business.

1.4 (a) For the purpose of section 1.3 of this Appendix, measurement shall be made in a straight line, without regard to intervening structures of objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a church, school, child care facility or building or structure in which alcoholic beverages are offered for sale, or to the nearest boundary of an affected public park, residential district, or residential lot.

(b) For the purposes of section 1.3(8) of this Appendix, 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.

1.5 Any sexually oriented business lawfully operating on the effective date of this ordinance that is violation of section 1.3 or 1.4 of this Appendix shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed 12 months, unless sooner terminate for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use shall not be increased, enlarged, extended or altered except that the use may be changed to conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the latter-established business is nonconforming.

1.6 A sexually oriented business lawfully operated as conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, or a church school, child care facility, public park, residential district, or residential lot or any building or structure in which alcoholic beverages are offered for sale, within 1,000 feet of the sexually oriented business.