

ORDINANCE NO. 120406 - A

AN ORDINANCE OF THE CITY OF NIEDERWALD, TEXAS, PROVIDING FOR LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES; PRESCRIBING DEFINITIONS OF SEXUALLY ORIENTED BUSINESSES AND OTHER TERMS; DISPERSING SEXUALLY ORIENTED BUSINESSES AND LIMITING THEM TO LIGHT INDUSTRIAL AND HEAVY INDUSTRIAL ZONING DISTRICTS BY CONDITIONAL USE PERMIT; PROVIDING FOR ADDITIONAL MISCELLANEOUS REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR REGULATIONS REGARDING NUDITY IN COMMERCIAL ESTABLISHMENTS WHERE ALCOHOL IS SERVED OR CONSUMED; PROVIDING FOR PENALTIES INCLUDING A FINE NOT TO EXCEED \$2,000.00 AND A CIVIL PENALTY NOT TO EXCEED \$1,000.00 PER OFFENSE AND INJUNCTIVE RELIEF, AND PROVIDING FOR INCONSISTENT PROVISIONS; SEVERABILITY; OPEN MEETINGS; AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Texas Local Government Code Chapter 243, the City of Niederwald (City) has authority to adopt regulations regarding sexually oriented businesses as necessary to promote the public health, safety, or welfare; and

WHEREAS, pursuant to Texas Local Government Code section 215.032, the City has authority to regulate the conduct of theaters and other places of public exhibition, shows, and amusements; and

WHEREAS, pursuant to Texas Local Government Code sections 215.033 and 215.034, the City has authority to license lawful businesses and occupations and suspend and revoke such licenses under specified circumstances; and

WHEREAS, pursuant to Texas Local Government Code Chapter 211, the City has authority to adopt zoning regulations that govern, among other things, the location and use of buildings and land; and

WHEREAS, pursuant to Texas Local Government Code section 51.012, the City has authority to adopt ordinances and regulations, that are necessary for the government, interest, welfare, or good order of the City; and

WHEREAS, pursuant to Texas Local Government Code section 51.001, the City has authority to adopt ordinances and regulations that are for the good government, peace and order of the City and the trade and commerce of the City; and

WHEREAS, the City has no information indicating there are currently sexually oriented businesses located in the City; and

WHEREAS, the City is not required to suffer the well-documented negative secondary effects of sexually oriented businesses before regulating such businesses, but instead can be proactive in preempting such negative secondary effects; and

WHEREAS, the City Council of the City of Niederwald (City Council) finds that sexually oriented businesses (SOBs) require special supervision from public safety agencies in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as citizens; and

WHEREAS, the City Council finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that owners, operators and employees of sexually oriented businesses comply with reasonable regulations and to ensure that owners and operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and a reduction in property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the City Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of the City; and

WHEREAS, the City Council desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, Ordinance No. 120466-A, adopted on December 4, 2006, authorizes sexually oriented businesses in Light Industrial and Heavy Industrial zoning districts of the City; and

WHEREAS, as of the date of adoption of this ordinance, it was determined there is an adequate amount of vacant land classified as Light Industrial and Heavy Industrial in the City that permits sexually oriented businesses by conditional use permit and that can accommodate sexually oriented businesses notwithstanding locational criteria; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NIEDERWALD, TEXAS, THAT:

SECTION I. PREAMBLE, PURPOSE, APPLICABILITY, AND FINDINGS.

(A) Preamble Incorporation. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council.

(B) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

(C) Applicability. This ordinance shall apply within the corporate boundaries of the City of Niederwald, Texas.

(D) Findings. Based on evidence concerning the adverse secondary effects of sexually oriented businesses on the community presented in public hearings held by the City on December 4th, 2006 and _____, 20____ and in reports made available to the City Council, and on findings incorporated in case law including, but not limited to, *City of Los Angeles v. Alameda Books, Inc.* 121 S. Ct. 1223 (2001), *City of Erie v. Pap's A.M.*, TDA "Kandyland", 529 U.S. 277 (2000), *Barnes*

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v. Glen Theatre, Inc., 501 U.S. 560 (1991), *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *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); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Robinson v. City of Longview*, 936 S.W.2d 413 (Tex. App.—Tyler 1996, no writ); *2300, Inc. v. City of Arlington*, 888 S.W.2d 123 (Tex. App.—Fort Worth 1994, no writ), and on studies in other communities including, but not limited to, Phoenix, Arizona (May 1979); Tucson, Arizona (May 1990); St. Mary's, Georgia (July 1996); Indianapolis, Indiana (Feb. 1984); Minneapolis, Minnesota (Oct. 1980); Amarillo, Texas (Sept. 1977); Austin, Texas (May 1986); Beaumont, Texas (Sept. 1982); Dallas, Texas (April 1997); Houston, Texas (Jan. 1997); Newport News, Virginia (March 1996); Seattle, Washington (March 1989); and St. Croix County, Wisconsin (Sept. 1993), a summary of land use studies compiled by the National Law Center for Children and Families, a summary of land use studies compiled by the Community Defense Counsel, and on findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); and Report to the American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses (March 31, 1996) the Council finds:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are generally uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of sexually oriented businesses defined in this ordinance as adult theatres and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(5) There is a correlation between sexually oriented businesses, specifically their hours of operation and the patrons attracted to such businesses, and higher crime rates.

(6) Persons frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(7) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis,

gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

(8) The surgeon general of the United States in a 2001 report entitled "The Surgeon General's Call to Action to Promote Sexual Health and Responsible Behavior" (2001 Report) reports that 5 of the 10 most commonly reported infectious diseases in the United States are sexually transmitted diseases (STDs) and in 1995 STDs accounted for 87% percent of cases reported among those 10 most common diseases.

(9) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States -- 600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985, 253,448 in 1992 and 929,985 through December 31, 2003.

(10) The 2001 Report from the surgeon general reports that an estimated 800,000 to 900,000 persons are living with HIV in the United States, with approximately 40,000 new infections occurring every year.

(11) As of December 31, 2003, there have been 62,983 reported cases of AIDS in the State of Texas.

(12) The City of Niederwald is in Texas Public Health Region 7. The Annual Texas HIV/STD Surveillance Reports indicate that in Public Health Region 7, from 2000 to 2003, the cumulative number of reported cases of HIV rose from 563 to 1,533 and the cumulative number of reported case of AIDS rose from 4,928 to 5,660.

(13) The number of new reported cases of syphilis in the United States remains high nationally, with 32,871 new cases reported in 2002.

(14) From 2000 to 2003, the total number of syphilis cases in Texas Public Health Region 7 rose from 177 to 266. Early latent cases of syphilis for the same period of time in Region 7 rose from 62 to 91.

(15) The number of new reported cases of gonorrhea in the United States remains at a high level, with 351,852 new cases reported in 2002.

(16) In Texas Public Health Region 7 alone there were 3,005 cases of gonorrhea reported from January 1, 2003 through December 31, 2003.

(17) The 2001 Report of the surgeon general states that chlamydia and gonorrhea infections account for 15% of cases of infertility among U.S. women.

(18) The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood

and blood components, and from an infected mother to her newborn.

(19) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(20) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(21) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

(22) The findings noted in paragraphs number 1 through 21 raise substantial governmental concerns.

(23) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(24) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein. It is appropriate for the City to have information regarding who controls the daily operations of sexually oriented businesses in the City to insure that such persons are qualified.

(25) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theatres.

(26) Requiring sexually oriented businesses to provide certain information and obtain a license will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(27) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(28) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this ordinance is designed to prevent or who are likely to be witnesses to such activity.

(29) The fact that an applicant for a sexually oriented business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.

(30) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(31) Prohibiting persons from appearing nude or semi-nude in commercial establishments where alcoholic beverages are served, offered for sale for consumption on the premises or permitted to be consumed on the premises, serves to reduce the likelihood of criminal activity, such as disorderly conduct, prostitution, and assaults; reduce disturbances of the peace and good order of the City; and, promote the preservation of property values of properties adjacent to such commercial establishments.

(32) There is no First Amendment right for employees while in a state of nudity to touch customers or patrons. Similarly, there is no First Amendment right for a customer or patron to touch employees while in a state of nudity.

(33) The general welfare, health, morals and safety of the citizens of the City will be promoted by the enactment of this ordinance.

SECTION II. DEFINITIONS.

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

(2) ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

- (a) books, magazines, periodicals or other printed matter, or

photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

(b) instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as either:

(i) more than fifty percent (50%) of its gross revenue is derived from the sale or rental of specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" or

(ii) more than fifty percent (50%) of its inventory consists of materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(3) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(a) persons who appear in a state of nudity or semi-nude; or

(b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(c) 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) ADULT MOTEL means a hotel, motel or similar commercial establishment which:

(a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or

(b) offers a sleeping room for rent for a period of time that is

less than ten (10) hours; or

(c) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

(5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(7) ORDINANCE ENFORCEMENT OFFICIAL means the Ordinance Enforcement Official of the City of Niederwald, Texas or any person designated by the City Council to perform the duties of the Ordinance Enforcement Official.

(8) CONSPICUOUS means openly and prominently displayed, noticeable, and readily apparent to other persons.

(9) EMPLOYEE, EMPLOY, AND EMPLOYMENT describe and pertain to a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

(10) 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.

(11) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

(12) ESTABLISH OR ESTABLISHMENT means and includes any of the following:

(a) the opening or commencement of any sexually oriented business as a new business;

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- (b) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (c) the additions of any sexually oriented business to any other existing sexually oriented business; or
 - (d) the relocation of any sexually oriented business.

(13) LICENSEE means a person in whose name a license to own or operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

(14) NUDE MODEL STUDIO means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Texas or a college, junior college or university supported entirely or in part by public taxation; 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) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and
- (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 or semi-nude model is on the premises at any one time.

(15) NUDITY or a STATE OF NUDITY means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

(16) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(17) SEMI-NUDE or in a SEMI-NUDE CONDITION means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in

part.

(18) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

(a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(19) SEXUALLY ORIENTED BUSINESS means 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, sexual encounter center 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 or patron.

(20) SPECIFIED ANATOMICAL AREAS means:

(a) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(b) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola; or

(c) any combination of the foregoing.

(21) SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:

(a) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(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.

(c) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(22) SPECIFIED SEXUAL ACTIVITIES means any of the following:

(a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy;

(c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above; or

(d) any combination of the foregoing.

(23) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this ordinance takes effect.

(24) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(a) the sale, lease, or sublease of the business;

(b) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(c) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION III. 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 motion picture theaters;
- (6) adult theaters;
- (7) escort agencies;

- (8) nude model studios; and
- (9) sexual encounter centers.

SECTION IV. LICENSE REQUIRED.

(A) It is unlawful:

(1) For any person to own or operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this ordinance.

(2) For any person who owns or operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the City pursuant to this ordinance.

(3) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this ordinance.

(B) An application for a license must be made on a form provided by the City. All applications for a license shall be sworn to be true and correct and shall contain a statement that the applicant has received and read this ordinance.

(C) All applicants must be qualified according to the provisions of this ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the City to determine whether the applicant meets the qualifications established in this ordinance.

(D) A person, who wishes to own or operate a sexually oriented business, must sign the application for a license as an applicant. If a person other than an individual wishes to own or operate a sexually oriented business, all persons legally responsible for the operations of the sexually oriented business or who have power to control or direct its operations must sign the application for a license as applicant. Such persons include, but are not limited to, general partners, corporate officers, corporate directors, and controlling shareholder(s). Each applicant must be qualified pursuant to this ordinance and each applicant shall be considered a licensee if a license is granted.

(E) The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

(1) If the applicant is:

(a) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age;

(b) a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;

(c) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and controlling stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

(2) If the applicant intends to own or operate the sexually oriented business under a name other than that of the applicant, he or she must state:

- (a) the sexually oriented business's fictitious name; and,
- (b) submit the required registration documents.

(3) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each. Each applicant shall sign a waiver and authorization form authorizing the City to request, on behalf of the applicant, criminal history reports from the Texas Department of Public Safety and any appropriate federal agency.

(4) Whether the applicant, or a person residing with the applicant, has had a previous license under this ordinance or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(5) Whether the applicant or a person residing with the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.

(6) The single classification of license for which the applicant is filing.

(7) The location or proposed location of the sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

(8) Proof of the current fee ownership of the tract of land on which the sexually oriented business is to be situated in the form of a copy of the recorded deed along with the current address and telephone number of the owner(s). If the fee owner is not the owner or operator of the sexually oriented business, a copy of the lease, purchase contract, purchase option contract, lease option contract or other document evidencing

the legally enforceable right of the owners or proposed owners of the sexually oriented business to have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business.

(9) The applicant's mailing address and residential address.

(10) A recent photograph of the applicant(s).

(11) The applicant's driver's license number.

(12) 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 it 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 (6) inches.

(13) A current certificate and straight-line drawing prepared within thirty (30) calendar days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the property to be certified; the property lines of any of the uses listed in Section XII (B) within 1,000 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.

(14) If an applicant wishes to own or operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section XIV.

(F) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the City the following information:

(1) The applicant's name or any other name (including "stage" names) or aliases used by the individual;

(2) Age, date, and place of birth;

(3) Height, weight, hair and eye color;

(4) Present residence address and telephone number;

(5) Present business address and telephone number;

(6) Date, issuing state and number of driver's permit or other identification card information; and

(7) Proof that the individual is at least eighteen (18) years of age.

(G) Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

(1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the City. Any fees for the photographs and fingerprints shall be paid by the applicant.

(2) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously owned or operated or is seeking to own or operate, in this or any other city or county a sexually oriented business or has ever had such a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(3) A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each. Each applicant shall sign a waiver and authorization form authorizing the City to request, on behalf of the applicant, criminal history reports from the Texas Department of Public Safety and any appropriate federal agency.

SECTION V. ISSUANCE OF LICENSE.

(A) Upon the filing of a sexually oriented business employee license, the Ordinance Enforcement Official of the City shall issue a temporary license to said applicant. The application shall then be referred to the appropriate City departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) calendar days from the date the completed application is filed. The application process may be extended an additional ten (10) calendar days upon written notification to the applicant that the City has been unable, after diligent effort, to complete its investigation of the application. After the investigation, the Ordinance Enforcement Official shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) The applicant has failed to provide information reasonable necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(2) The applicant is under the age of eighteen (18) years;

(3) The applicant has been convicted of a "specified criminal activity" as defined in this ordinance;

(4) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or

prohibited by a particular provision of this ordinance;

- (5) The license fee required by this ordinance has not been paid;
- (6) The applicant has had a sexually oriented business employee license revoked by the City within two (2) years of the date of the current application; or
- (7) The applicant is in violation of or is not in compliance with any of the provisions of this ordinance.

(B) If a sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued to an employee of a sexually oriented business shall be subject to appeal as set forth in Section X.

(C) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the City that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section VI.

(D) Within thirty (30) calendar days after receipt of an application for a sexually oriented business license, the Ordinance Enforcement Official shall approve or deny the issuance of a license to an applicant. The application process may be extended an additional ten (10) calendar days upon written notification to the applicant that the City has been unable, after diligent effort, to complete its investigation of the application. After the investigation, the Ordinance Enforcement Official shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

- (1) An applicant is under eighteen (18) years of age.
- (2) An applicant or a person with whom applicant is residing is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to a sexually oriented business.
- (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 a person with whom the applicant is residing has been denied a license by the City to own or operate a sexually oriented business within the preceding twelve (12) months or whose license to own or operate a sexually oriented business has been revoked within the preceding twelve (12) months.
- (5) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this ordinance.
- (6) The premises to be used for the sexually oriented business have not been approved by health, fire, and building officials as being in compliance with applicable laws and ordinances.
- (7) The license fee required by this ordinance has not been paid.
- (8) An applicant of the proposed establishment is in violation of or is

not in compliance with any of the provisions of this ordinance.

(E) A license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to Section III. All licenses to own or operate a sexually oriented business shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time. All sexually oriented business employee licenses must be conspicuous displayed upon the person to whom the license is issued at all times while acting as an employee of the business.

(F) Health, fire, and building officials shall complete their certification that the premises is in compliance with this ordinance and all other applicable laws and ordinances within twenty (20) calendar days of receipt of the application by the City.

(G) A sexually oriented business license shall issue for only one classification as found in Section III.

(H) Denial, suspension, or revocation of a sexually oriented business license shall be subject to appeal as set forth in Section X.

SECTION VI. FEES.

(A) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$2,500.00 non-refundable application and investigation fee.

(B) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the City an annual non-refundable license fee of \$1,000.00 within thirty (30) calendar days of license issuance or renewal.

(C) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual \$100.00 non-refundable application, investigation, and license fee.

(D) All license applications and fees shall be submitted to the City Secretary of the City.

SECTION VII. INSPECTION.

(A) An applicant or licensee shall permit representatives of the City, or other agencies and agents acting on behalf of the City, to inspect the premises of a sexually oriented business for the purpose of insuring compliance with this ordinance, at any time it is occupied or open for business.

(B) A person who owns or operates a sexually oriented business or an employee of a sexually oriented business commits a misdemeanor if he/she refuses to permit such lawful inspection of the premises at any time it is open for business.

SECTION VIII. EXPIRATION OF LICENSE.

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

(B) When the City denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to denial, the City 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 ninety (90) calendar days have elapsed since the date the denial became final.

SECTION IX. SUSPENSION.

(A) The Ordinance Enforcement Official of the City shall issue a written statement of intent to suspend a license for a period not to exceed thirty (30) calendar days if he/she determines that a licensee or an employee of a licensee has:

- (1) violated/is not in compliance with any section of this ordinance; or
- (2) refused to allow an inspection of the sexually oriented business premises as authorized by this ordinance.

SECTION X. REVOCATION.

(A) The Ordinance Enforcement Official of the City shall issue a written statement of intent to revoke a license if a cause of suspension in Section IX occurs and the license has been suspended within the preceding twelve (12) months.

(B) The Ordinance Enforcement Official of the City shall issue a written statement of intent to revoke a license if he/she determines that:

- (1) a licensee gave false or misleading information in the material submitted during the application process;
- (2) a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (3) a licensee has knowingly allowed prostitution on the premises;
- (4) a licensee knowingly owned or operated the sexually oriented

business during a period of time when the licensee's license was suspended;

(5) except in the case of an adult motel, a licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact (as defined in section 21.01(2) of the Texas Penal Code) to occur in or on the licensed premises; or

(6) a licensee is delinquent in payment to the City for any taxes or fees past due and related to a sexually oriented business.

(C) When the City revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) calendar days have elapsed since the date the revocation became effective.

(D) If the Ordinance Enforcement Official of the City determines that facts exist for denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the officer shall notify the applicant or licensee in writing of the intent to deny, suspend or revoke the license, including the grounds therefore, by personal delivery or by certified mail. Such notice shall include a statement advising the applicant or licensee of the effective date of the denial, suspension or revocation and the right to appeal such decision to a court of competent jurisdiction. The notification shall be directed to the most current business address on file with the City.

(E) Within thirty (30) calendar days of receipt of written notice of a denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek judicial review of such administrative action in any court of competent jurisdiction.

(F) The filing of such suit shall have the effect of staying denial, suspension or revocation of the license until the court's entry of judgment. The City shall grant a provisional license upon the filing of a suit to appeal the denial of a license if the applicant is not currently licensed; provided, however, a provisional license shall not be issued if (1) the location of the proposed business is or would be in violation of section XII(B) or (2) there has been a judicial determination upholding the denial of a license for such sexually oriented business at such location within the previous twelve (12) calendar months. Written notice of the denial of a provisional license and the basis for the denial will be provided by the Ordinance Enforcement Official within ten (10) calendar days of service of the court action upon the City. Any provisional license will expire upon the court's entry of a judgment.

SECTION XI. TRANSFER OF LICENSE.

A licensee shall not transfer his/her/its license to another person, nor shall a licensee own or operate a sexually oriented business under the authority of a license at any place other

than the address designated in the application.

SECTION XII. LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(A) A person commits a misdemeanor if that person owns operates or causes to be owned or operated a sexually oriented business in any zoning district other than a Light Industrial or Heavy Industrial district, as defined and described in the City's Zoning Ordinance.

(B) A person commits an offense if the person owns or operates or causes to be owned or operated a sexually oriented business within 1,000 feet of a land use inconsistent with the operation of a sexually oriented business, including:

(1) A church, synagogue, mosque, temple or structure or property which is used primarily for religious worship and related religious activities including but not limited to religious education classes, prayer meetings, and social events;

(2) A public or private educational 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; 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 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 trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the City dedicated and/or maintained by the City for traditional park-like recreational purposes;

(5) The property line of a lot devoted to a residential use or mixed residential and other use as defined in the City's Zoning Ordinance;

(6) A commercial entertainment establishment which is oriented primarily towards children or family entertainment;

(7) A public or private hospital; or

(8) A public library.

(C) A person commits a misdemeanor if that person 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.

(D) A person commits a misdemeanor 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.

(E) For the purpose of subsection B of this Section, 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 part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in subsection B. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section. Distance limitations set out in subsection B of this Section are applicable regardless of whether or not the use listed in subsection B is located within the corporate limits of the City.

(F) For purposes of subsection C of this Section, the distance between any two 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. Distance limitations set out in subsection C of this Section are applicable regardless of whether or not the use listed in subsection C is located within the corporate limits of the City.

(G) Any sexually oriented business lawfully operating on the effective date of this ordinance that is in violation of subsection A through F of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) calendar 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 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 later established business(es) is/are nonconforming.

(H) 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 use listed in subsection B of this Section within 1,000 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

SECTION XIII. ADDITIONAL REGULATIONS FOR ADULT MOTELS.

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

(B) A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually

oriented business license, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

(C) For purposes of subsection (B) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

SECTION XIV. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.

(A) A person who owns or operates or causes to be owned or operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, 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 license, the application shall be accompanied by a diagram of the premises showing a plan thereof 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 thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The City may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since 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 City.

(4) It is the duty of the licensee of the premises to ensure that at least one (1) licensed 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 (1) of the manager's stations. The unobstructed view required in this subsection must be by direct line of sight

from the manager's station, without the use of a medium including but not limited to video cameras.

(6) It shall be the duty of the licensee and any employee present on the premises to ensure that the view area specified in subsection (5) 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.

(7) No viewing room may be occupied by more than one (1) person at any time.

(8) 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 (5.0) foot-candles as measured at the floor level.

(9) It shall be the duty of the licensee and any employee present on the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(10) No licensee or employee present on the premises shall allow openings of any kind to exist between viewing rooms or booths, including openings that are boarded or otherwise covered up in such a manner that a patron can remove the board or cover material.

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms, including openings that are boarded or otherwise covered up in such a manner that a patron can remove the board or cover material.

(12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist or if any openings or holes have been created and boarded or otherwise covered up in such a manner that a patron can remove the board or cover material.

(13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) 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.

(B) A person having a duty under Subsection (1) through (14) of Subsection (A) above commits a misdemeanor if he knowingly fails to fulfill that duty.

SECTION XV. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

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

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

SECTION XVI. ADDITIONAL REGULATIONS FOR 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 the person appears semi-nude or 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 visible to any other person.
- (C) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model 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.

SECTION XVII. ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY.

- (A) It shall be a misdemeanor for a licensee or employee to knowingly and intentionally allow a person in a sexually oriented business to appear in a state of nudity unless the person is an employee who, while nude, shall be (1) at least six (6) feet from any patron or customer and on a stage at least two (2) feet from the floor or (2) physically separated from customers by a wall or partition composed of solid glass or light-transmitting plastic, or substantially equivalent material with no openings in the wall or partition.
- (B) It shall be a misdemeanor for an employee, while in a state of nudity in a sexually oriented business, to receive directly any pay or gratuity from a patron or customer, or for any patron or customer to pay or give any gratuity directly to an employee, while that employee is in a state of nudity in a sexually oriented business. Such gratuity or pay may be provided to such employee through a tip receptacle located at least six (6) feet from the nearest point of the location where such employee is performing in a state of nudity, or may be paid to an employee that is not in a state of nudity, as part of the customer's bill.
- (C) It shall be a misdemeanor for an employee in a sexually oriented business, while in a state of nudity, to knowingly and intentionally touch a patron or the clothing of a patron of the sexually oriented business.
- (D) It shall be a misdemeanor for any person in a sexually oriented business to knowingly and intentionally touch an employee or the clothing of an employee while the employee is in a state of nudity.
- (E) It shall be a misdemeanor for an owner or operator of a commercial establishment at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcoholic beverages are permitted to be consumed, to knowingly

and intentionally allow any person, while on the premises of the establishment, to appear nude or semi-nude.

(F) It shall be a misdemeanor for a person, while on the premises of a commercial establishment at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcohol beverages are permitted to knowingly and intentionally appear nude or semi-nude.

SECTION XVIII. PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS.

A person commits a misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

SECTION XIX. HOURS OF OPERATION.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of one o'clock (1:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and one o'clock (1:00) A.M. and noon (12:00) P.M. on Sundays.

SECTION XX. APPLICABILITY OF REGULATIONS TO NONLICENSED BUSINESSES AND EMPLOYEES

This ordinance applies to all sexually oriented businesses and employees, regardless of whether the business or employee has obtained a license as required by this ordinance.

SECTION XXI. EXEMPTIONS.

(A) It is a defense to prosecution under Section XVII 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 of Texas; 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

(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; 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 nude model is on the premises at any one time.

SECTION XXII. PENALTIES.

This Ordinance is effective immediately upon passage, approval and publication, as may be required by law.

PASSED AND APPROVED this the 4th day of December, 2006,
by a 5 to 0 vote of the City Council of the City of Niederwald, Texas.

CITY OF NIEDERWALD

By: Shirley Whisenant
Hon. Shirley Whisenant, Mayor

ATTEST:

Angie Schulze
Angie Schulze, City Secretary

APPROVED AS TO FORM:

Cary L. Bovey, City Attorney

