

**Ordinance No. 636**

**“Repeals and replaces the current chapter of the Code of Ordinances regulating sexually oriented businesses”**

**AN ORDINANCE OF THE CITY OF GRANITE SHOALS, TEXAS, CHAPTER 10, ARTICLE III (SEXUALLY ORIENTED BUSINESSES) OF THE CITY OF GRANITE SHOALS CODE OF ORDINANCES; AND PROVIDING FOR THE FOLLOWING: FINDINGS OF FACT; A SAVINGS CLAUSE; SEVERABILITY; REPEALER; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.**

**WHEREAS**, the City Council of the City of Granite Shoals, Texas (“Council”) seeks to provide for the health, safety and welfare of the citizens generally and to foster a sense of civic pride; and

**WHEREAS**, the Council has considered evidence concerning the adverse secondary effects of sexually oriented businesses on the community presented in reports and judicial opinions made available to the Council, including the study entitled, “Survey of Texas Appraisers - Secondary Effects of Sexually-Oriented Businesses on Market Values by Cooper and Kelley and Crime-Related Secondary Effects - Secondary Effects of ‘Off-Site’ Sexually-Oriented Businesses” by McCleary, June 2008; and

**WHEREAS**, sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, absent municipal regulation aimed at reducing adverse secondary effects, there is no mechanism to make the owners of these establishments responsible for the activities that occur on their premises; and

**WHEREAS**, certain employees of sexually oriented businesses, defined in this Ordinance as adult video arcades, adult bookstores, adult video stores, adult cabarets, adult motels, adult motion picture theaters, adult theaters, escort agencies, massage parlors, sex parlors, love parlors, nude studios, sexual encounter centers, or other commercial enterprises of which the primary business is the offering of a service or selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments; and

**WHEREAS**, sexual acts, including masturbation, prostitution, sexual contact, and oral and anal sex, may occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles, or rooms for viewing films, videos, or live sex shows; and

**WHEREAS**, offering and providing private or semi-private areas in sexually oriented businesses encourages such sexual activities, which creates unhealthy conditions; and

**WHEREAS**, persons frequent certain sexually oriented theaters, sexually oriented arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses; and

**WHEREAS**, 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; and

**WHEREAS**, since the early 1980s and to the present, there has been an increasing cumulative number of persons testing positive for the HIV antibody test across the State of Texas; and

**WHEREAS**, according to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts; and

**WHEREAS**, 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; and

**WHEREAS**, sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect substantial governmental concerns; and

**WHEREAS**, a reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein; and

**WHEREAS**, removal of doors on booths and requiring sufficient lighting on premises with booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in Sexually Oriented Theaters; and

**WHEREAS**, requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments, and

**WHEREAS**, 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; and

**WHEREAS**, in the prevention of the spread of communicable diseases, it is desirable to obtain a limited amount of information regarding certain employees who may engage in the conduct that this Ordinance is designed to prevent, or who are likely to be witnesses to such conduct; and

**WHEREAS**, the fact that an applicant for a sexually oriented business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this Ordinance. There is a correlation between sexually oriented businesses, specifically their hours of operation and the type of people which such businesses attract, and higher crime rates. *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); and

**WHEREAS**, the barring of such individuals from the management of sexually oriented businesses for a period of years serves as a deterrent to, and prevents conduct which leads to, the transmission of sexually transmitted diseases; and

**WHEREAS**, it is reasonably believed that to better protect the public health, safety, and welfare, it is necessary to adopt additional amendments to this chapter; and

**WHEREAS**, there is no Constitutional right for sexually oriented business employees in a state of nudity to touch customers. *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); and

**WHEREAS**, the acts of sexually oriented business employees in a state of nudity and being paid to touch or be touched by customers have been found to be acts of prostitution. *People v. Hill*, 776 N.E.2d 828 (Ill. App. 2 Dist. 2002); *See also*, Tex. Penal Code Sections 43.01 ("sexual conduct" and "sexual contact") and 43.02 ("prostitution"); and

**WHEREAS**, provocative touching between customers and employees in a sexually oriented business where at least one is in a state of nudity frequently leads to the commission of sex crimes, illegal drug use, and increased health risks due to sexually transmitted diseases; and

**WHEREAS**, compelling signage at the entrances of sexually oriented businesses has not been effective in halting "no touch" violations; and

**WHEREAS**, the City Council reasonably believes that sexual activity occurring in private viewing booths at sexually oriented businesses leads to unhealthy and

unsanitary conditions and to the transmission of sexually transmitted and other communicable diseases. *Matney v. County of Kenosha*, 86 F.3d 692, 695 (7th Cir. 1996); and

**WHEREAS**, the City Council reasonably believes that certain negative secondary effects, including prostitution, drug trafficking and assaultive offenses are associated with nude or semi-nude dancing in environments where alcohol is served or allowed. *J.L. Spoons, Inc. v. Dragani*, 538 F.3d 379, 382 (6th Cir. 2008); and

**WHEREAS**, the City Council reasonably believes that the licensing requirements imposed on sexually oriented businesses that offer on-site entertainment comport with the prompt judicial review and preservation of the status quo requirements enunciated by the United States Supreme Court, and thus do not constitute an unconstitutional prior restraint. *Richland Bookmart, Inc. v. Knox County, Tenn.*, 555 F.3d 512 (6th Cir. 2009); and

**WHEREAS**, the City Council reasonably believes that inadequately illuminated parking lots and parking lots that are not visible from the public right of way by virtue of being fenced or otherwise shielded from view present increased opportunities for criminal and sexual activity; and

**WHEREAS**, studies have shown that sexually oriented businesses, including off-site sexually oriented businesses, have deleterious secondary effects on crime and property values within communities in which they are located; and

**WHEREAS**, it is reasonably believed by the City Council that the general welfare, health, and safety of the citizens of the City will be promoted by the enactment of this Ordinance; and

**WHEREAS**, it is reasonably believed by the City Council that adequate sites are reasonably available for sexually oriented businesses that meet licensing and otherwise applicable requirements to locate and operate in the City of Granite Shoals.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRANITE SHOALS, TEXAS:**

**SECTION I. FINDINGS OF FACT**

All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Granite Shoals and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

**SECTION II. AMENDMENT**

Chapter 10, Article III of the Granite Shoals Code of Ordinances is hereby amended as provided in the attached Exhibit "A," which is hereby incorporated for all purposes.

### **SECTION III. SAVINGS**

The repeal of any ordinance or part of ordinances effectuated by the enactment of this ordinance shall not be construed as abandoning any action now pending under or by virtue of such ordinance or as discontinuing, abating, modifying or altering any penalty accruing or to accrue, or as affecting any rights of the City under any section or provisions of any ordinances at the time of passage of this ordinance.

### **SECTION IV. SEVERABILITY**

If any provision, section, sentence, clause or phrase of this ordinance, or the application of the same to any person or set of circumstances is for any reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of Granite Shoals in adopting, and of the Mayor in approving this ordinance, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any portion, provision or regulation.

### **SECTION V. REPEALER**

The provisions of this ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinances or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This ordinance shall not be construed to require or allow any act that is prohibited by any other ordinance.

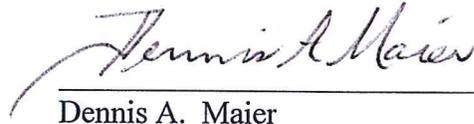
### **SECTION VI. EFFECTIVE DATE**

This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

### **SECTION VII. NOTICE AND MEETING**

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

PASSED AND APPROVED this 22<sup>nd</sup> day of April, 2014.



Dennis A. Maier  
Mayor

ATTEST:



Elaine Simpson,  
City Secretary

APPROVED AS TO FORM:

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Brad Young,  
City Attorney

## Exhibit "A"

City of Granite Shoals – sexually oriented business ordinance – Ch. 10, Art III

Sec. 10-47. Purpose and intent.

It is the purpose of this article to regulate sexually oriented businesses and related activities 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 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. Neither is it the intent nor effect of this article to condone or legitimize the distribution of obscene materials.

Sec. 10-48. 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, 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, adult novelty store, or adult video store* means a commercial establishment that, as one of its principal business purposes, regularly offers for sale or rent 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 or video reproductions, DVDs, slides, or other visual representations which depict or describe "specified sexual activities," or "specified anatomical areas;" or

(2) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities," but not including items used for birth control or for the prevention of sexually transmitted diseases.

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 book store" or "adult video store." Such other business purposes will not serve to exempt such commercial establishments from

being categorized as an "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

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

- (1) Persons who appear in a state of semi-nudity;
- (2) Live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities";
- (3) Films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" or
- (4) Persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

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

- (1) Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, DVDs, slides, or other photographic reproductions 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 that advertises the availability of this adult type of photographic reproductions; or
- (2) offers a sleeping room for rent for a period of time that is less than 24 hours; or
- (3) allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than 24 hours.

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

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

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

*Child care facility* means a facility licensed, certified, or registered by the Texas Department of Family and Protective Services to provide assessment, care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers..

*Church or place of religious worship* means any building, whether situated within the City or within the City's extraterritorial jurisdiction ("ETJ"), used principally as a place wherein persons regularly assemble for religious worship, intended primarily for religious purposes connected with faith or for propagating a particular form of belief.

*City* means the City of Granite Shoals, a home-rule city.

*Employee* means a person hired by another, or by a business, to work for wages or salary, either part-time, full-time, temporarily or permanently, also to include person or persons who performs or provides entertainment on the sexually oriented business premises for any form of compensation or consideration.

*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 privately, to appear in a state of nudity or display "specified anatomical areas" for another person.

*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, tips 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 additions of any sexually oriented business to any other existing sexually oriented business; or
- (4)The relocation of any sexually oriented business.

*Licensed day care center* means a facility licensed by the state, whether situated within the city within its ETJ, that provides care at a location other than the residence of the director, owner, or operator of the child-care facility for seven or more children under 14 years of age for less than 24 hours a day, but at least two hours a day, three or more days a week.

*Massage* means any method of treating the superficial parts of a patron, including any process consisting of kneading, rubbing, stroking, tapping, pounding, vibrating, stimulating or otherwise

manipulating the skin of the body of a human being, either with the hand or by means of electrical instruments or apparatus, or other special apparatus; but shall not include:

(1) Massage therapy by duly licensed physicians, massage therapists, physical therapists or athletic trainers;

(2) Massage of the face practiced by duly licensed cosmetologists or barbers.

*Massage parlor, sex parlor, or love parlor* means any establishment where manipulated massage or manipulated exercises are practiced upon the human body for compensation by persons not exempted, whether with or without the use of mechanical, therapeutic or bathing devices, and such term shall include Turkish bathhouses.

*City Manager* means the City Manager of the city and such employee(s) of the city as the City Manager may designate to perform the duties of the City Manager 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, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration; however, nude modeling at or on behalf of any properly accredited institution of higher learning shall not fall within this definition.

*Nudity or a state of nudity* means:

(1) The appearance of a human bare buttocks, anus, male genitals, female genitals, pubic region or areola area of female breasts; or

(2) A state of dress which fails to opaquely cover a human buttocks, anus, male genitals, female genitals, pubic region, nipple, or areola of the female breasts.

*Operates or causes to be operated* means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the 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, as well as each individual who is an officer or owner of ten percent (10%) or greater interest in or who exercises substantial de facto control over a sexually oriented business for which a license has been issued under this chapter, regardless of whether the individual's name or signature appears on the license application.

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

*Semi-nude* means a state of dress in which clothing covers no more than the human bare buttocks, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

*Sexual encounter center* means a business or commercial enterprise that, as one of its principal 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-nude.

*Sexually oriented business* means an adult video arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, massage parlor, sex parlor, love parlor, nude studio, or sexual encounter center or other commercial enterprise for which the regular offering of a service or selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer constitutes twenty-five percent (25%) or more of the items in inventory and/or floor space of the sexually oriented business. This term shall also mean any commercial enterprise that self-identifies as an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency, nude model studio, or sexual encounter center regardless of whether the percentage of items in inventory and/or floor space constitute twenty-five percent (25%) or more of the total items in inventory and/or floor space.

*Specified anatomical areas* means human buttocks, anus, male genitals, female genitals, pubic region, pubic hair, or female breast or breasts that is situated below a point immediately above the top of the areola, when less than completely and opaquely covered.

*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) through (3) of this definition.

*Substantial enlargement of a sexually oriented business* means the increase in floor areas occupied by the business by more than 25 percent (25%), as the floor areas exist on the effective date of the ordinance from which this article is derived.

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

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

Sec. 10-49. Classification of businesses.

The following classifications apply to sexually oriented businesses:

- (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 or escort agencies;
- (8)Nude model studios;
- (9)Sexual encounter centers;
- (10)Massage parlor, sex parlor, love parlor;
- (11)Commercial enterprise of which the primary business is the offering of a service or selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

Sec. 10-50. License required.

- (a)It shall be unlawful for a person to operate a sexually oriented business without a valid license, issued by the City, through the building official, and to be approved by the planning and zoning committee and city council.

(b)An application for a license must be made on a form provided by the City. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6”).

(c)If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as applicant and be qualified according to the provisions of this article. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten percent (10%) or greater interest in the business must sign the application for a license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such business, each individual having a ten percent (10%) or greater interest in the corporation must sign the application for a license as applicant. Each applicant shall be considered a licensee if a license is granted.

(d)The fact that a person possesses other types of State or City permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business license from the City.

(e)Applications for a license, whether original or renewal, must be made to the City Manager by the intended operator of the enterprise. Applications must be submitted by hand delivery to the office of the City Manager or the City Manager's designee during regular working hours. Application forms shall be supplied by the City Manager. All applications for a license under this article must be accompanied by a nonrefundable application fee as set out in Sec. 10-52, or as may be later adopted as part of the City's official fee schedule. An application shall not be considered to have been received as administratively complete until the fee is paid and all information required by the application form has been submitted. The application fee shall not be prorated in the event an application is tendered before or during the licensing period. The intended operator shall be required to give the following information on the application form:

(1)The name, street address (and mailing address, if different) and a state driver's license number of the intended operator; and the name and street address (and mailing address, if different) of the owner(s);

(2)The name under which the establishment is to be operated and a general description of the services to be provided;

(3)The telephone number of the establishment;

(4)The address and legal description of the tract of land on which the establishment is to be located;

(5)If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the license is sought;

(6) If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the license). If the expected startup date is to be more than ten days following the date of issuance of the license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay, and a statement of the owner's time schedule and plan for accomplishing the same.

(f) The application shall be accompanied by the following:

(1) Payment of the application fee in full;

(2) If the establishment is a state corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;

(4) If the establishment is a limited partnership formed under the laws of the state, a certified copy of the certificate of limited partnership, together with all amendments thereto;

(5) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;

(6) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;

(7) If the persons identified as the fee owner(s) of the tract of land in subsection (f)(6) of this section are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, leased option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract or portion of the operation of the establishment.

(g) All of the items in subsection (f)(2) through (7) of this section shall be required for a renewal application.

(h) The application shall contain a statement under oath that:

(1) The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and

(2) The applicant has read the provisions of this article.

(i) A separate application and license shall be required for each sexually oriented business.

Sec. 10-51. Issuance of license and grounds for denial.

(a) The City Manager shall approve the issuance of a license to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true:

(1) An applicant is under 21 years of age.

(2) An applicant or an applicant's spouse is overdue in his payment to the Texas Secretary of State or the City of taxes, fines, or penalties assessed against the applicant or the applicant's spouse 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, fraudulently, or untruthfully answered a question or request for information on the application form.

(4) An applicant is residing with a person who has been denied a license by the City to operate a sexually oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.

(5) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, building official, and zoning official as being in compliance with applicable laws and ordinances.

(6) The license fee required by this article has not been paid.

(7) An application of the proposed establishment is in violation of or is not in compliance with any of the provisions of this article.

(8) An applicant or an applicant's spouse has been convicted of a crime:

(A) Involving:

(i) Any of the offenses as described in V.T.C.A. Penal Code Ch. 43, as amended;

(ii) Any of the offenses as described in V.T.C.A. Penal Code Ch. 21;

(iii) Sexual assault or aggravated sexual assault as described in V.T.C.A. Penal Code Ch. 22;

(iv) Prohibited Sexual Conduct, Enticing a Child, or Harboring Runaway Child as described in V.T.C.A. Penal Code Ch. 25; or

(v) Criminal attempt, conspiracy, solicitation to commit, Engaging in Organized Criminal Activity under V.T.C.A. Penal Code Ch. 71, or Burglary involving any of the foregoing offenses:

(B) For which:

(i) The applicant or spouse is currently serving any portion of any sentence of confinement, parole, probation, community supervision, or period of deferred adjudication;

(ii) Less than two (2) years have elapsed since the date of discharge from deferred adjudication, probation, community supervision, parole, or the date of release from confinement imposed for the conviction, whichever is the later date, if the crime is a misdemeanor offense;

(iii) Less than five (5) years have elapsed since the date of discharge from deferred adjudication, probation, community supervision, parole, or the date of release from confinement for the conviction, whichever is the later date, if the crime is a felony offense; or

(iv) Less than five (5) years have elapsed since the date of the last release from confinement, discharge from community supervision, probation, or completion of a period of deferred adjudication for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period.

(C) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

(D) An applicant who has been convicted or whose spouse has been convicted of an offense listed in subsection (a)(8) may qualify for a sexually oriented business license only when the time period required by subsection (a)(8)(B) has elapsed.

(b)The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(c)Any health department, fire department, and building official shall complete their certification that the premise is in compliance or not in compliance within 20 days of receipt of the application by the City Manager. The certification shall be promptly presented to the City Manager.

#### Sec. 10-52. Fees.

(a)The annual fee for a sexually oriented business license is \$500.00, or such amount as may be later adopted as part of the City's official fee schedule. This fee is to be used to pay for the cost of the administration and enforcement of this article.

(b)Each individual employee shall pay a \$75.00 fee with each application, or such amount as may be later adopted as part of the City's official fee schedule. The individual fee shall not be prorated.

(c)Fees are not refundable.

Sec. 10-53. Additional requirements.

- (a) An off-duty police officer or licensed security guard must be on the premises at all times the business is open.
- (b) All buildings must follow International Building Code standards. These standards will be checked and approved by the city building official.
- (c) Off-street parking must follow International Building Code standards. These standards will be checked and approved by the city building official.
- (d) Noise. The business shall produce no external noise, vibration, smoke, dust, odor, heat, glare, fumes, electrical interference or waste runoff outside the business unit or on the property surrounding the business.
- (e) Lighted areas. No use, operation, facility, premises or parking area shall be lighted in such a manner as to provide direct glare into an adjoining residential district. All lighting shall be hooded or shielded so that the light source is not directly visible from surrounding areas and public streets.

Sec. 10-54. Inspections.

- (a) An applicant or licensee shall permit representatives of the City or state health department or City police or fire department to inspect all portions of the premises and the records required to be maintained under this Chapter of any business operating under this article for the purpose of ensuring compliance with these regulations, health regulations, and the penal code, at any time it is occupied or open for business.
- (b) A licensee or operator of a sexually oriented business commits an offense if the person operates the establishment without maintaining a current list of all employees of the business, along with a complete updated employment application for each employee. A legible copy of a valid driver's license, state identification card, or passport, with a photograph, together with an original photograph accurately depicting the employee as the person appears at the time the person is hired, shall be required and maintained on the premises with the employee's application.
- (c) A licensee or operator of a sexually oriented business commits an offense if the person refuses to permit a lawful inspection of the records or premises by a representative of the police department at any time the sexually oriented business is occupied or open for business.
- (d) A licensee or operator of a sexually oriented business commits an offense if the person does not maintain the required records on the premises of the licensed establishment.

Sec 10-55. Expiration and Renewal of License

- (a) Each license shall expire one year after the date of issuance.
- (b) Renewal of a license may be applied by submission to the City Manager of an application on the form prescribed and payment of a nonrefundable renewal processing fee of Five Hundred Dollars (\$500), or such amount as may be later adopted as part of the City's official fee schedule.
- (c) Application for renewal shall be made at least thirty (30) days before the expiration date of the current license.

Sec. 10-56. Suspension.

The City Manager shall suspend a license for a period not to exceed 30 days if he determines that licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any section of this article;
- (2) Become impaired or intoxicated through the use of alcoholic beverages or other substances 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) A period of suspension will begin the first day after the decision of the city council becomes final as provided in Section 10-58, unless the licensee appeals the decision, in which case the period of suspension begins the day after all appeals are final.

Sec. 10-57. Revocation.

- (a) The City Manager shall revoke a license if a cause of suspension in Section 10-58 occurs and the license has been suspended within the preceding twelve (12) months.
- (b) The City Manager shall also revoke a license if he determines that:
  - (1) A licensee gave false or misleading information in the material submitted 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 an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01 of the Texas Penal Code;

(6) A licensee is delinquent in payment to the City, county or state for any taxes or fees;

(7) The owner or operator of the permitted establishment knowingly allowed a person under 21 years of age to enter an establishment;

(8) That there was a change of owner or operator for which a transfer application was not timely filed;

(9) If the licensee is required to register as a sex offender under the provisions of Chapter 62 of the Texas Code of Criminal Procedure; or

(10) If a licensee or operator (or any combination thereof) of a sexually oriented business has, on two or more occasions within a five (5) year period of time been convicted of or placed on deferred disposition, probation, or community supervision for conduct occurring on the premises of a sexually oriented business that constitutes any of the offenses of the State of Texas or criminal attempt, conspiracy, or solicitation to commit same for any of the following offenses:

(A) The following offenses described in Chapter 42 of the Texas Penal Code: Prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity, sale, distribution, or display of harmful material to a minor, sexual performance by a child, or possession of child pornography;

(B) The following offenses described in Chapter 21 of the Texas Penal Code: Public lewdness, indecent exposure, indecency with a child;

(C) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;

(D) Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or

(E) Those crimes defined as "drug-defined offenses" or "drug-related offenses" by the Bureau of Justice Statistics Drug & Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Section 12.04 of the Texas Penal Code.

(c) When the City Manager revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented license for one year from the date revocation

became effective. If, subsequent to revocation, the City Manager 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.

(d) After denial of an application by the City Manager, or denial of a renewal of an application, or suspension or revocation of a license by the City Manager, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the city council.

#### Sec. 10-58. Denial, Suspension, and Revocation Procedures

(a) An owner or operator may appeal the decision of the City Manager regarding a denial, suspension, or revocation of a license to the City by filing a written request for a hearing with the City Manager within twenty (20) days after he is given written notice of such denial, suspension, or revocation. The notice will designate the time and place for a hearing, if one is requested, which will be held within thirty (30) calendar days unless both parties agree to a certain date beyond the thirty days. The hearing will occur before the city council. A majority of the members of the council shall constitute a quorum for the purposes of holding a hearing. An affirmative vote by a majority of the members of the council present at the hearing shall be required for the rendering of decisions or the issuance of orders authorized under this article. The council may establish rules and regulations for the conduct of hearings. Such rules shall be consistent with the nature of the proceedings and state law and shall ensure that each party may present evidence, cross-examine witnesses and be represented by legal counsel.

(b) The council shall render a written decision and issue notice thereof to the applicant within ten days after the conclusion of the hearing. The written decision of the council shall be final and effective as provided in this Code. The final decision of the council shall be issued in writing and include findings of fact and conclusions of law, a concise and explicit statement of the underlying facts supporting the findings, and will be provided to all parties via personal delivery or via United States Postal Service, Certified Mail, Return Receipt Requested. If council determines, based upon the nature of the violation, that the ends of justice would be served by a suspension in lieu of a revocation, it may suspend the operation of the license for a period of time to be stated in the order of suspension

(c) The hearing record shall consist of a file stamped copy of the notice of intention to deny, revoke, or suspend the license, the request for a hearing and any written response to the notice of intention to deny, revoke, or suspend the license, a statement of matters officially noticed, questions and offers of proof, objections, and rulings on them, each decision, opinion, or report prepared by the hearing examiner, and all documents, data, and other evidence submitted to or considered by the council in making its decision.

(d) The decision of the city council denying, suspending or revoking a license under this Code shall be final as of the date written notice of the council's decision is given to the owner or operator of the enterprise.

(e) Any owner, operator, or applicant of an enterprise who is aggrieved by a decision that denies, suspends, or revokes a license, and who has complied fully and timely with all applicable provisions pertaining to appeals of decisions in this article, may seek appropriate judicial relief in a court of competent jurisdiction in accordance with *City of Dallas v. Stewart*, 361 S.W.3d 562 (Tex. 2012) within thirty (30) days after the city council has rendered its decision.

Sec. 10-59. Transfer of license.

A licensee commits an offense if the licensee transfers a license to another, or operates a sexually oriented business under the authority of a license at any place other than the address designated in the application. A transfer of a license is deemed to have occurred if there is a transfer of more than fifty percent (50%) of the ownership or control of a sexually oriented business.

Sec. 10-60. Location restrictions.

(a) Sexually oriented businesses shall not be permitted in any commercial district within 300 feet of a public roadway.

(b) The sexually oriented business may not be operated within 1,500 feet of:

(1) A church, synagogue or regular place of religious worship;

(2) A public or private school;

(3) A boundary of any residential district;

(4) Any residential lot;

(5) A public park;

(6) A licensed day care center or child care facility;

(7) Another sexually oriented business;

(8) A building in which alcoholic beverages are sold;

(9) A public building;

(10) Any recreational facility; or

(11) A health care facility.

(c) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business.

(d) For the purpose of this article, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property line of a building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of properties listed in subsection (b) of this section.

#### Sec. 10-61. Nonconforming uses.

(a) Any business lawfully operating on the effective date of the ordinance from which this article is derived, that is in violation of the location or structural configuration requirements of this article, shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any 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 businesses are within 1,500 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

(b) 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, synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day care center, public park, or residential district within 1,500 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 has been revoked.

#### Sec. 10-62. Additional regulations for adult motels.

(a) Evidence that a sleeping room in a hotel, motel, or a 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 as that term is defined in this article.

(b) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, rents or sublets a sleeping room to a person and, within ten hours from the time the room is rented, he rents or sublets the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms "rent" and/or "sublet" mean the act of permitting a room to be occupied for any form of consideration.

#### Sec. 10-63. Sexually explicit films and 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, videocassette, or other video reproduction that 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 32 square feet of floor area. 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 inches.

(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 Manager 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 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.

(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 view area specified in subsection (5) of this section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application as in subsection (1) of this section.

(7) No viewing room may be occupied by more than one 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 one footcandle as measured at the floor level.

(9)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 in subsection (8) of this section is maintained at all times that any patron is present in the premises.

Sec. 10-64. Exteriors of sexually oriented businesses.

(a)It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(b)It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this Code.

(c)It shall be unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the following conditions are met:

(1)The establishment is a part of a commercial multi-unit center;

(2)The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center; or

(3)Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

Sec. 10-65. Age of patrons.

(a)It shall be unlawful to allow a person who is younger than 21 years of age to enter or be on the premises of a sexually oriented business at any time that the sexually oriented business is open for business.

(b)It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business's regular business hours. It shall be the duty of the attendant to prohibit any person under the age of 21 years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of 21 unless such attendant asked for and was furnished:

(1)A valid operator's, commercial operator's or chauffeur's driver's license; or

(2)A valid personal identification certificate issued by the State of Texas reflecting that such person is 21 years of age or older.

Sec. 10-66. Massages and baths given by person of opposite sex.

It shall be unlawful for any establishment, regardless of whether it is a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex, but shall not include massage therapy by duly licensed physicians, massage therapists, physical therapists or athletic trainers; massage therapy or treatment by a duly licensed physician or chiropractor engaged in practicing the healing arts; or massage of the face practiced by duly licensed cosmetologists or barbers.

Sec. 10-67. Exemptions.

It is a defense to prosecution under this article 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;

(2)By a college, junior college, or university supported entirely or partly by taxation;

(3)By a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

Sec. 10-68. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid permit and/or license or otherwise violates this article is subject to a suit for injunction as well as prosecution for criminal violations.

Sec. 10-69. Fines.

Any person found to be violating this chapter is guilty of a misdemeanor and, upon conviction, is subject to a fine as provided by section 1-10 of this Code.

Sec. 10-70. Jurisdiction.

The provisions of this Article apply only inside the City's corporate limits.

Secs. 10-71—10-80. Reserved.