

Print

The Dallas City Code

CHAPTER 41A

SEXUALLY ORIENTED BUSINESSES

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SEC. 41A-1. PURPOSE AND INTENT.

(a) It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city; to establish reasonable and uniform regulations to prevent the continued concentration of sexually oriented businesses within the city; and to minimize the deleterious secondary effects of sexually oriented businesses both inside such businesses and outside in the surrounding communities. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials or performances, including sexually oriented materials and performances. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials and performances protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

(b) It is the intent of the city council that this chapter is promulgated pursuant to Chapter 243 of the Texas Local Government Code, as amended.

(c) A license, permit, or decal granted under this chapter or under any other city ordinance does not authorize or legalize any conduct, activity, or business that is illegal under state or federal law. (Ord. Nos. 19196; 24440; 24699; 25296; 27139)

SEC. 41A-2. DEFINITIONS.

In this chapter:

(1) **ACHROMATIC** means colorless or lacking in saturation or hue. The term includes, but is not limited to, grays, tans, and light earth tones. The term does not include white, black, or any bold coloration that attracts attention.

(2) **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."

(3) **ADULT BOOKSTORE** or **ADULT VIDEO STORE** means a commercial establishment that as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

(A) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, DVD's, video cassettes or video reproductions, slides, or other visual representations, that depict or describe "specified sexual activities" or "specified anatomical areas"; or

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

(4) ADULT CABARET means a commercial establishment that regularly features the offering to customers of adult cabaret entertainment.

(5) ADULT CABARET ENTERTAINER means an employee of a sexually oriented business who engages in or performs adult cabaret entertainment.

(6) ADULT CABARET ENTERTAINMENT means live entertainment that:

(A) is intended to provide sexual stimulation or sexual gratification; and

(B) is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to "specified anatomical areas" or "specified sexual activities."

(7) ADULT MOTEL means a hotel, motel, or similar commercial establishment that:

(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 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

(B) offers a sleeping room for rent for a period of time that is less than 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 10 hours.

(8) 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 that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(9) APPLICANT means:

(A) a person in whose name a license to operate a sexually oriented business will be issued;

(B) each individual who signs an application for a sexually oriented business license as required by Section 41A-4(d);

(C) each individual who is an officer of a sexually oriented business for which a license application is made under Section 41A-4, regardless of whether the individual's name or signature appears on the application;

(D) each individual who has a 20 percent or greater ownership interest in a sexually oriented business for which a license application is made under Section 41A-4, regardless of whether the individual's name or signature appears on the application; and

(E) each individual who exercises substantial de facto control over a sexually oriented business for which a license application is made under Section 41A-4, regardless of whether the individual's name or signature appears on the application.

(10) CHIEF OF POLICE means the chief of police of the city of Dallas or the chief's designated agent.

(11) CHILD-CARE FACILITY has the meaning given that term in Section 51A-4.204 of the Dallas Development Code, as amended.

(12) CHURCH has the meaning given that term in Section 51A-4.204 of the Dallas Development Code, as amended.

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

(14) DESIGNATED OPERATOR means the person or persons identified in the license application, or in any supplement or amendment to the license application, as being a designated operator of the sexually oriented business.

(15) EMPLOYEE means any individual who:

(A) is listed as a part-time, full-time, temporary, or permanent employee on the payroll of an applicant, licensee, or sexually oriented business; or

(B) performs or provides entertainment on the sexually oriented business premises for any form of compensation or consideration.

(16) 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.

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

(18) ESTABLISHMENT means and includes any of the following:

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

(B) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(C) the addition of any sexually oriented business to any other existing sexually oriented business; or

(D) the relocation of any sexually oriented business.

(19) HISTORIC DISTRICT means an historic overlay zoning district as defined in the Dallas Development Code, as amended.

(20) HOSPITAL has the meaning given that term in Section 51A-4.204 of the Dallas Development Code, as amended.

(21) LICENSEE means:

(A) a person in whose name a license to operate a sexually oriented business has been issued;

(B) each individual listed as an applicant on the application for a license;

(C) each individual who is an officer of 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;

(D) each individual who has a 20 percent or greater ownership interest in 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; and

(E) each individual 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.

(22) MINOR means a person under the age of 18 years.

(23) NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

(24) NUDITY or a STATE OF NUDITY means:

(A) the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or

(B) a state of dress that fails to completely and opaquely cover a human buttock, anus, male genitals, female genitals, or any part of the female breast or breasts that is situated below a point immediately above the top of the areola.

(25) 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.

(26) OPERATOR means any person who has managerial control of the on-site, day-to-day operations of a sexually oriented business, regardless of whether that person is a designated operator of the sexually oriented business.

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

(28) PUBLIC PARK has the meaning given that term in Section 51A-4.208 of the Dallas Development Code, as amended.

(29) RESIDENTIAL DISTRICT means a single family, duplex, townhouse, multiple family, or mobile home zoning district as defined in the Dallas Development Code, as amended.

(30) RESIDENTIAL USE means a single family, duplex, multiple family, or "mobile home park, mobile home subdivision, and campground" use as defined in the Dallas Development Code, as amended.

(31) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency, nude model studio, 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.

(32) SIGN means any display, design, pictorial, or other representation that is:

(A) constructed, placed, attached, painted, erected, fastened, or manufactured in any manner whatsoever so that it is visible from the outside of a sexually oriented business; and

(B) used to seek the attraction of the public to any goods, services, or merchandise available at the sexually oriented business.

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

(33) SPECIFIED ANATOMICAL AREAS means:

(A) any of the following, or any combination of the following, when less than completely and opaquely covered:

(i) any human genitals, pubic region, or pubic hair;

(ii) any buttock; or

(iii) any portion of the female breast or breasts that is situated below a point immediately above the top of the areola; or

(B) human male genitals in a discernibly erect state, even if completely and opaquely covered.

(34) SPECIFIED SEXUAL ACTIVITIES means and includes 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, or sodomy;

(C) masturbation, actual or simulated; or

(D) excretory functions as part of or in connection with any of the activities set forth in Paragraphs (A) through (C) of this subsection.

(35) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means an increase in the floor area occupied by the business by more than 25 percent, as the floor area existed on:

(A) June 18, 1986, for any premises that were used as a sexually oriented business on or before that date, regardless of any subsequent changes in applicants, licensees, owners, or operators of the premises or the sexually oriented business;

(B) August 22, 2001, for any premises that were used as a sexually oriented business on or before August 22, 2001, but not on or before June 18, 1986, regardless of any subsequent changes in applicants, licensees, owners, or operators of the premises or the sexually oriented business; or

(C) for any premises not used as a sexually oriented business on or before August 22, 2001, the date an initial application for a license to use the premises as a sexually oriented business is received by the chief of police designating the floor area of the structure or proposed structure in which the sexually

oriented business will be conducted, regardless of any subsequent changes in applicants, licensees, owners, or operators of the premises or the sexually oriented business.

(36) 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 that 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 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.

(37) VIP ROOM means any separate area, room, booth, cubicle, or other portion of the interior of an adult cabaret (excluding a restroom and excluding an area of which the entire interior is clearly and completely visible from the exterior of the area) to which one or more customers are allowed access or occupancy and other customers are excluded. (Ord. Nos. 19196; 19377; 20291; 20552; 21838; 23137; 24440; 24699; 25296; 27139)

SEC. 41A-3. CLASSIFICATION.

Sexually oriented businesses are classified as follows:

(1) adult arcades;

(2) adult bookstores or adult video stores;

(3) adult cabarets;

(4) adult motels;

(5) adult motion picture theaters;

(6) escort agencies; and

(7) nude model studios. (Ord. Nos. 19196; 24440; 24699; 25296; 27139)

SEC. 41A-4. LICENSE AND DESIGNATED OPERATOR REQUIRED.

(a) A person commits an offense if he operates a sexually oriented business without a valid license issued by the city for the particular type of business.

(b) An application for a license must be made on a form provided by the chief of police. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with Section 41A-19 of this chapter shall submit a diagram meeting the requirements of Section 41A-19.

(c) Only a person who is an officer of or who has an ownership interest in a sexually oriented business may apply for a license for the business. Each applicant must be qualified according to the provisions of this chapter.

(d) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as the applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who is an officer of the business or who has a 20 percent or greater ownership interest in the business must sign the application for a license as an applicant. The application must be sworn to be true and correct by each applicant. Each applicant must be qualified under Section 41A-5, and each applicant shall be considered a licensee if a license is granted.

(e) The fact that a person possesses a valid dance hall license does not exempt the person from the requirement of obtaining a sexually oriented business license. A person who operates a sexually oriented business and possesses a dance hall license shall comply with the requirements and provisions of this chapter as well as the requirements and provisions of Chapter 14 of this code when applicable.

(f) In addition to identifying those persons required to sign an application under Subsection (b), the application must identify all parent and related corporations or entities of any person who will own or operate the sexually oriented business and include the names of the officers of each parent or related corporation or entity.

(g) The application must also include the name, address, and telephone number of one or more designated operators who will be present on the premises of the sexually oriented business during all hours of operation. The applicant or licensee shall maintain a current list of designated operators with the chief of police. Before a person may serve as a designated operator of the sexually oriented business, the person must be named in the license application, or a supplement or amendment to the license application, and not be disqualified to operate a sexually oriented business under this chapter.

(h) A licensee commits an offense if he fails to maintain at least one designated operator present on the premises of the sexually oriented business during all hours of operation.

(i) The application must include a current official Texas criminal history report with a fingerprint card (issued within the preceding 12 months) for the applicant, the applicant's spouse, and each designated operator showing that they are not disqualified to operate a sexually oriented business under this chapter. (Ord. Nos. 19196; 20552; 21838; 24440; 24699; 27139)

SEC. 41A-5. ISSUANCE OF LICENSE.

(a) The chief of police shall approve the issuance of a license by the special collections division of the water utilities department to an applicant within 30 days after receipt of an application unless the chief of police finds one or more of the following to be true:

(1) An applicant is a minor.

(2) An applicant or an applicant's spouse is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.

(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, an applicant's spouse, or a designated operator has been convicted of a violation of a provision of this chapter within two years immediately preceding the application.

(5) Any fee required by this chapter has not been paid.

(6) Reserved.

(7) An applicant or the proposed establishment is in violation of or is not in compliance with Section 41A-7, 41A-7.1, 41A-12, 41A-13, 41A-14.1, 41A-14.2, 41A-15, 41A-16, 41A-17, 41A-18, 41A-18.1, 41A-19, 41A-20, or 41A-20.1(a).

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

(A) involving:

(i) any of the following offenses as described in Chapter 43 of the Texas Penal Code:

(aa) prostitution;

(bb) promotion of prostitution;

(cc) aggravated promotion of prostitution;

(dd) compelling prostitution;

(ee) obscenity;

(ff) sale, distribution, or display of harmful material to a minor;

(gg) sexual performance by a child; or

(hh) possession of child pornography;

(ii) any of the following offenses as described in Chapter 21 of the Texas Penal Code:

(aa) public lewdness;

(bb) indecent exposure; or

(cc) indecency with a child;

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

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

(v) criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

(B) for which:

(i) 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;

(ii) 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

(iii) 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.

(9) An applicant has been operating the proposed business as a sexually oriented business without a valid license issued under this chapter.

(10) Operation of the proposed sexually oriented business would violate the city's zoning ordinances.

(b) The fact that a conviction is being appealed has no effect on the disqualification of the applicant, the applicant's spouse, or a designated operator under Subsection (a).

(c) Except as otherwise provided in this subsection, when the chief of police denies issuance or renewal of a license, the applicant may not apply for or be issued a sexually oriented business license for one year after the date the denial became final. If, subsequent to the denial, the chief of police finds that the basis for the denial has been corrected or abated, the applicant may apply for and be granted a license if at least 90 days have elapsed since the date the denial became final. If issuance or renewal of a license is denied under Subsection (a)(7) for a violation of Section 41A-13 only, the applicant may be granted a license immediately upon compliance with Section 41A-13 of this chapter. If issuance or renewal of a license is denied under Subsection (a)(8)(A), the applicant may not apply for or be issued another sexually oriented business license until the appropriate number of years required by Subsection (a)(8)(B) has elapsed. If issuance or renewal of a license is denied under Subsection (a)(4), the applicant may not apply for or be issued another sexually oriented business license until the time period required by Subsection (a)(4) has elapsed.

(d) The chief of police, upon approving issuance of a sexually oriented business license, shall send to the applicant, by certified mail, return receipt requested, written notice of that action and state where the applicant must pay the license fee and obtain the license. The chief of police's approval of the issuance of a license does not authorize the applicant to operate a sexually oriented business until the applicant has paid all fees required by this chapter and obtained possession of the license.

(e) The license, if granted, must 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 must 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. (Ord. Nos. 19196; 19377; 20552; 21629; 21838; 24206; 24440; 24699; 27139; 27697)

SEC. 41A-6. FEES.

(a) The annual fee for a sexually oriented business license is \$808.

(b) In addition to the fees required by Subsection (a) and (c), an applicant for an initial sexually oriented business license shall, at the time of making application, pay a nonrefundable fee of \$3,175 for the city to conduct a survey to ensure that the proposed sexually oriented business is in compliance with the locational restrictions set forth in Section 41A-13.

(c) In addition to the fees required by Subsections (a) and (b), an applicant for an initial sexually oriented business license shall, at the time of making application, pay a nonrefundable fee of \$90 for the chief of police to obtain a letter of zoning verification to ensure that the proposed sexually oriented

business is permitted in the zoning district in which it will be located. The chief of police shall request and obtain the letter of zoning verification from the department of sustainable development and construction within 30 days after receipt of the license application. For any sexually oriented business holding a valid license on October 25, 2000, this subsection will apply to the first renewal of that license issued after October 25, 2000. (Ord. Nos. 19196; 20612; 21838; 22206; 24051; 24440; 24699; 25047; 25048; 25909; 27697; 29477, eff. 10/1/14)

SEC. 41A-7. INSPECTION.

(a) An applicant, licensee, operator, or employee shall permit representatives of the police department, the fire department, the department of code compliance, and the building official to inspect the premises of a sexually oriented business, for the purpose of ensuring compliance with the law, at any time it is occupied or open for business and at other reasonable times upon request.

(b) A person who operates a sexually oriented business or the person's agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the police department, the fire department, the department of code compliance, or the building official at any time the sexually oriented business is occupied or open for business and at other reasonable times upon request.

(c) The provisions of this section do not apply to areas of an adult motel that are currently being rented by a customer for use as a permanent or temporary habitation. (Ord. Nos. 19196; 19377; 22026; 23694; 24440; 24699; 27139; 27697)

SEC. 41A-7.1. IDENTIFICATION RECORDS.

(a) A person commits an offense if he operates a sexually oriented business without maintaining on the premises a current registration card or file that clearly and completely identifies all employees of the sexually oriented business as required by this section.

(b) The registration card or file must contain the following information for each employee:

- (1) Full legal name.
- (2) All aliases or stage names.
- (3) Date of birth.
- (4) Race and gender.
- (5) Hair color, eye color, height, and weight.

(6) Current residence address and telephone number, and, for designated operators and adult cabaret entertainers, all residence addresses during the 12- month period preceding commencement of an employment or contractual relationship with the sexually oriented business.

(7) Legible copy of a valid driver's license or other government-issued personal identification card containing the employee's photograph and date of birth.

(8) Date of commencement of employment or contractual relationship with the sexually oriented business.

(9) Original color photograph with a full face view that accurately depicts the employee's appearance at the time the employee commenced an employment or contractual relationship with the sexually oriented business.

(c) The licensee shall maintain a separate file on each designated operator (other than the licensee or the licensee's spouse) and on each adult cabaret entertainer, which contains, in addition to the information and documentation required in Subsection (b), the person's current official Texas criminal history report with a fingerprint card issued within the preceding 12 months.

(d) Not later than 90 days after employing or contracting with a designated operator or an adult cabaret entertainer, the licensee shall include in the file a current official criminal history report from any state other than Texas in which the designated operator or adult cabaret entertainer resided during the 12-month period preceding commencement of the employment or contractual relationship with the sexually oriented business.

(e) A licensee commits an offense if he allows a designated operator to operate a sexually oriented business without having on file, and available for inspection by representatives of the police department, all records and information required by this section for the designated operator.

(f) A licensee or an operator commits an offense if he allows an adult cabaret entertainer to perform adult cabaret entertainment at a sexually oriented business without having on file, and available for inspection by representatives of the police department, all records and information required by this section for the adult cabaret entertainer.

(g) All records maintained on an employee in compliance with this section must be retained at the sexually oriented business for at least 90 days following the date of any voluntary or involuntary termination of the employee's employment or contract with the sexually oriented business.

(h) A person who operates a sexually oriented business or the person's agent or employee shall allow immediate access to these records by representatives of the police department. (Ord. Nos. 24440; 24699; 27139)

SEC. 41A-8. EXPIRATION OF LICENSE.

Each license expires one year from the date of issuance, except that a license issued pursuant to an exemption to a locational restriction expires on the date the exemption expires. A license may be renewed only by making application as provided in Section 41A-4. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected by the pendency of the application. (Ord. Nos. 19196; 20552; 21838; 24440; 24699; 27139)

SEC. 41A-9. SUSPENSION.

The chief of police shall suspend a license for a period not to exceed 30 days if the chief of police determines that a licensee, an operator, or an employee has:

(1) violated or is not in compliance with Section 41A-4(h), 41A-7, 41A-7.1, 41A-13, 41A-14.1, 41A-14.2, 41A-15, 41A-16, 41A-17, 41A-18, 41A-18.1, 41A-19, or 41A-20 of this chapter;

(2) refused to allow an inspection of the sexually oriented business premises as authorized by this chapter; or

(3) knowingly permitted gambling by any person on the sexually oriented business premises. (Ord. Nos. 19196; 24440; 24699; 27139)

SEC. 41A-10. REVOCATION.

(a) The chief of police shall revoke a license if a cause of suspension in Section 41A-9 occurs and the license has been suspended within the preceding 12 months.

(b) The chief of police shall revoke a license if the chief of police determines that one or more of the following is true:

(1) A licensee gave false or misleading information in the material submitted to the chief of police during the application process.

(2) A licensee or an operator has knowingly allowed possession, use, or sale of controlled substances on the premises.

(3) A licensee or an operator has knowingly allowed prostitution on the premises.

(4) A licensee or an operator knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended.

(5) A licensee or designated operator has been convicted of an offense listed in Section 41A-5(a)(8)(A) for which the time period required in Section 41A-5(a)(8)(B) has not elapsed.

(6) On two or more occasions within a 12- month period, a person or persons committed an offense occurring in or on the sexually oriented business premises of a crime listed in Section 41A-5(a)(8)(A) for which a conviction has been obtained, and the person or persons were employees of the licensee or the sexually oriented business at the time the offenses were committed.

(7) A licensee or an operator has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the sexually oriented business premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code.

(8) A licensee is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the sexually oriented business.

(9) A licensee or an operator has violated Section 41A-12 of this chapter.

(10) A licensee or an operator has violated Section 41A-20.1(a) of this chapter.

(c) The fact that a conviction is being appealed has no effect on the revocation of the license.

(d) Subsection (b)(7) does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) When the chief of police revokes a license, the revocation will continue for one year, and the licensee, for one year after the date revocation becomes effective, shall not apply for or be issued a sexually oriented business license for the same location for which the license was revoked. If, subsequent to revocation, the chief of police finds that the basis for the revocation has been corrected or abated, the applicant may apply for and be granted a license if at least 90 days have elapsed since the

date the revocation became effective. If the license was revoked under Subsection (b)(5), an applicant may not apply for or be granted another license until the appropriate number of years required under Section 41A-5(a)(8)(B) has elapsed. (Ord. Nos. 19196; 19377; 21629; 24206; 24440; 24699; 27139)

SEC. 41A-10.1. DENIAL, SUSPENSION, REVOCATION, OR DENIAL OF RENEWAL OF A LICENSE FOR CRIMINAL CONVICTIONS.

(a) In determining whether a sexually oriented business license should be denied, suspended, revoked, or denied for renewal based on criminal convictions of an applicant or licensee of a sexually oriented business, or on convictions of an operator or employee of the applicant, the licensee, or the sexually oriented business, all convictions for offenses occurring within a designated time period will be counted, regardless of whether the offenses occurred during the current license period, a prior license period, or an unlicensed period.

(b) Notwithstanding Subsection (a), a conviction for an offense committed during a prior license period or an unlicensed period will not be counted against a current applicant or licensee of a sexually oriented business if no person who is deemed a current applicant or licensee was an applicant, licensee, owner, or operator of the sexually oriented business during the prior license period or unlicensed period in which the offense was committed. (Ord. Nos. 24699; 27139)

SEC. 41A-10.2. NOTICE OF DENIAL OF ISSUANCE OR RENEWAL OF LICENSE OR SUSPENSION OR REVOCATION OF LICENSE; SURRENDER OF LICENSE.

(a) If the chief of police denies the issuance or renewal of a sexually oriented business license or suspends or revokes a sexually oriented business license, the chief of police shall deliver to the applicant or licensee, either by hand delivery or by certified mail, return receipt requested, written notice of the action, the basis of the action, and the right to an appeal.

(b) If the chief of police suspends or revokes a license or denies renewal of a license that was valid on the date the application for renewal was submitted, the chief of police may not enforce such action before the 11th day after the date the written notice required by Subsection (a) is delivered to the applicant or licensee.

(c) After suspension or revocation of a license or denial of renewal of a license that was valid on the date the application for renewal was submitted, the applicant or licensee shall discontinue operating the sexually oriented business and surrender the license to the chief of police by 11:59 p.m. of the 10th day after the date:

(1) notice required by Subsection (a) is delivered to the applicant or licensee, if no appeal is filed under Section 41A-11 of this chapter; or

(2) a final decision is issued by the permit and license appeal board upholding the action of the chief of police, if an appeal is filed under Section 41A-11 of this chapter.

(d) For purposes of this chapter, written notice is deemed to be delivered:

(1) on the date the notice is hand delivered to the applicant or licensee; or

(2) three days after the date the notice is placed in the United States mail with proper postage and properly addressed to the applicant or licensee at the address provided for the applicant or licensee in the most recent license application. (Ord. Nos. 24440; 24699; 27139)

SEC. 41A-11. APPEAL.

(a) Upon delivery of written notice of the denial, suspension, or revocation of a sexually oriented business license as required by Section 41A-10.2, the applicant or licensee whose application for a license or license renewal has been denied or whose license has been suspended or revoked has the right to appeal to either the permit and license appeal board or the state district court.

(b) An appeal to the permit and license appeal board must be in accordance with Section 2-96 of this code, except that an appeal from the denial of an initial sexually oriented business license must be heard and decided by the board within 30 days after the applicant files a written request for an appeal hearing.

(c) The filing of an appeal under this section stays the action of the chief of police in suspending or revoking a license, or in denying renewal of a license that was valid on the date the application for renewal was submitted, until a final decision is made by the permit and license appeal board. A suspension or revocation of a license, or a denial of renewal of a license that was valid on the date the application for renewal was submitted, that is upheld by the board takes effect at 11:59 p.m. on the 10th day after the board issues its decision.

(d) An appeal to the state district court must be filed within 30 days after notice of the decision of the chief of police is delivered to the applicant or licensee as required by Section 41A-10.2 or a final decision is issued by the permit and license appeal board upholding the decision of the chief of police. The applicant or licensee shall bear the burden of proof in court. The filing of an appeal to state district court stays a suspension or revocation of the license, or denial of renewal of a license that was valid on the date the application for renewal was submitted, pending a judicial determination of the appeal by the trial court. (Ord. Nos. 19196; 20552; 21838; 24440; 24699; 27139)

SEC. 41A-12. TRANSFER OF LICENSE.

A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. (Ord. Nos. 19196; 24440; 24699)

SEC. 41A-13. LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(a) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of:

- (1) a church;
- (2) a public or private elementary or secondary school;
- (3) a boundary of a residential or historic district as defined in this chapter;
- (4) a public park;
- (5) the property line of a lot devoted to a residential use as defined in this chapter;

- (6) a hospital; or
- (7) a child-care facility.

(b) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business.

(c) A person commits an offense if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion of a building or structure, or the increase of floor area of any sexually oriented business in any building, structure, or portion of a building or structure containing another sexually oriented business.

(d) For the purposes of Subsection (a), measurement must be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, public or private elementary or secondary school, hospital, or child-care facility or to the nearest boundary of an affected public park, residential district, historic district, or residential lot.

(e) For purposes of Subsection (b) of this section, the distance between any two sexually oriented businesses must be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(f) Any sexually oriented business lawfully operating on May 28, 1997 that is in violation of Subsections (a), (b), or (c) of this section is a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed six months, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. The nonconforming use may 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 that was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

(g) An owner of a nonconforming sexually oriented business who cannot recoup actual investments in the use by November 29, 1997 may request an extension of the compliance date from the board of adjustment. The request must be in writing and filed with the city building official on or before October 29, 1997. No application for an extension that is received by the building official after October 29, 1997 may be considered.

(h) The board of adjustment shall conduct a hearing on the request for extension in accordance with applicable procedures set forth in Section 51A-4.703 of the Dallas Development Code. If the board of adjustment determines that the owner of the nonconforming sexually oriented business cannot recoup actual investments in the use by November 29, 1997, it may by written order provide a new compliance date to the owner. The board of adjustment shall consider the factors listed in Section 51A-4.704(a)(1) (D) of the Dallas Development Code in determining whether to grant the request for extension. Any extension granted by the board of adjustment must specify a date certain for closure of the sexually oriented business and is not valid for operation of the business at any other location.

(i) The board of adjustment's decision on a request for an extended compliance date is final unless appealed to the district court within 10 days in accordance with Chapter 211 of the Texas Local Government Code.

(j) A sexually oriented business that remains in operation pursuant to an extension granted under this section is not considered as having a license for purposes of measuring distances between a sexually

oriented business and a church, a public or private elementary or secondary school, a boundary of a residential or historic district, a public park, the property line of a lot devoted to a residential use, a hospital, a child-care facility, or another sexually oriented business, as required in Section 41A-13.

(k) 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, public or private elementary or secondary school, public park, residential district, historic district, residential lot, hospital, or child-care facility 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 has been revoked.

(l) Requirements for posting an intent to locate a sexually oriented business.

(1) Whenever a sign is posted at an intended location of a sexually oriented business in compliance with Section 243.0075 of the Texas Local Government Code, as amended, and the intended location of the sexually oriented business is not in violation of the locational restrictions of this section at the time the sign is posted, the sexually oriented business will qualify as a conforming use and will not be rendered nonconforming by any location, subsequent to the posting of the sign, of a church, public or private elementary or secondary school, public park, residential district, historic district, residential lot, hospital, or child-care facility within 1,000 feet of the posted location of the sexually oriented business.

(2) The operator of a proposed sexually oriented business shall notify the chief of police, by either certified mail or hand delivery, whenever a sign is posted at the intended location of the business in compliance with Section 243.0075 of the Texas Local Government Code, as amended. The notification must be in the form of a sworn statement indicating the location of the sign and the date it was posted and must be received by the chief of police within five days after the date of the sign's posting.

(3) Paragraph (1) of this subsection does not apply if:

(A) a completed license application for the proposed sexually oriented business is not filed with the chief of police within 20 days after the expiration of the 60-day posting requirement of Section 243.0075 of the Texas Local Government Code, as amended; or

(B) the notification requirements of Paragraph (2) of this subsection are not met. (Ord. Nos. 19196; 19377; 20291; 21629; 23137; 24440; 24699; 25092)

SEC. 41A-14. EXEMPTION FROM LOCATION RESTRICTIONS.

(a) If the chief of police denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 41A-13 of this chapter, then the applicant may, not later than 10 calendar days after receiving notice of the denial, file with the city secretary a written request for an exemption from the locational restrictions of Section 41A-13.

(b) If the written request is filed with the city secretary within the 10-day limit, a permit and license appeal board, selected in accordance with Section 2-95 of this code, shall consider the request. The city secretary shall set a date for the hearing within 60 days from the date the written request is received.

(c) A hearing by the board may proceed if a quorum of the board is present. The board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

(d) The permit and license appeal board may, in its discretion, grant an exemption from the locational restrictions of Section 41A-13 if it makes the following findings:

- (1) that the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
 - (2) that the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;
 - (3) that the location of the proposed sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and
 - (4) that all other applicable provisions of this chapter will be observed.
- (e) The board shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the permit and license appeal board is final.
- (f) If the board grants the exemption, the exemption is valid for one year from the date of the board's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 41A-13 until the applicant applies for and receives another exemption.
- (g) If the board denies the exemption, the applicant may not re-apply for an exemption until at least 12 months have elapsed since the date of the board's action.
- (h) The grant of an exemption does not exempt the applicant from any other provisions of this chapter other than the locational restrictions of Section 41A-13. The grant of an exemption does not exempt the applicant from the provisions of Section 41A-13 prohibiting substantial enlargement of a sexually oriented business. (Ord. Nos. 19196; 24440; 24699; 25002)

SEC. 41A-14.1. EXTERIOR PORTIONS OF SEXUALLY ORIENTED BUSINESSES.

- (a) An owner or operator of a sexually oriented business commits an offense if he allows:
- (1) the merchandise or activities of the establishment to be visible from any point outside the establishment;
 - (2) the exterior portions of the establishment to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by this chapter; or
 - (3) the exterior portions of the establishment to be painted any color other than a single achromatic color, except that this paragraph does not apply to an establishment if the following conditions are met:
 - (A) the establishment is a part of a commercial multi-unit center; and
 - (B) the exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the establishment, are painted the same color as one another or are painted in such a way as to be a component of the overall architectural style or pattern of the commercial multi-unit center.
- (b) Nothing in this section requires the painting of an otherwise unpainted exterior portion of a sexually oriented business.

(c) The exterior of any sexually oriented business lawfully operating on May 28, 1997 is not required to comply with Subsections (a)(2) and (a)(3) of this section until alterations, repairs, remodeling, and repainting that cumulatively affect more than 50 percent of the exterior are performed on the sexually oriented business during any 12-month period. (Ord. Nos. 23137; 24440; 24699)

SEC. 41A-14.2. SIGN REQUIREMENTS.

(a) Notwithstanding any provision of the Dallas Development Code or any other city ordinance, code, or regulation to the contrary, the owner or operator of any sexually oriented business or any other person commits an offense if he erects, constructs, or maintains any sign for the establishment other than one primary sign and one secondary sign, as provided in this section.

(b) A primary sign may have no more than two display surfaces. Each display surface must:

- (1) not contain any flashing lights;
- (2) be a flat plane, rectangular in shape;
- (3) not exceed 75 square feet in area; and
- (4) not exceed 10 feet in height or 10 feet in length.

(c) A secondary sign may have only one display surface. The display surface must:

- (1) not contain any flashing lights;
- (2) be a flat plane, rectangular in shape;
- (3) not exceed 20 square feet in area;
- (4) not exceed five feet in height or four feet in width; and
- (5) be affixed or attached to a wall or door of the establishment.

(d) A primary or secondary sign must contain no photographs, silhouettes, drawings, or pictorial representations of any manner, and may contain only:

- (1) the name of the establishment; and/or
- (2) one or more of the following phrases:
 - (A) "Adult arcade."
 - (B) "Adult bookstore or adult video store."
 - (C) "Adult cabaret."
 - (D) "Adult motel."
 - (E) "Adult motion picture theater."
 - (F) "Escort agency."
 - (G) "Nude model studio."

(e) In addition to the phrases listed in Subsection (d)(2) of this section, a primary sign for an adult motion picture theater may contain the phrase, "Movie Titles Posted on Premises," and a primary sign for an adult bookstore or adult video store may contain the word "DVD's".

(f) Each letter forming a word on a primary or secondary sign must be of a solid color, and each letter must be the same print-type, size, and color. The background behind the lettering on the display surface of a primary or secondary sign must be of a uniform and solid color.

(g) Notwithstanding the sign requirements of this section and Section 41A-14.1, any sign lawfully existing on the premises of a lawfully operating sexually oriented business on May 28, 1997 may continue to be maintained on the premises, until:

(1) the sign is intentionally removed or destroyed by the owner or operator of the sexually oriented business or abandoned by the owner or operator of the sexually oriented business; or

(2) the city requires removal, relocation, or reconstruction of the sign in accordance with applicable state law. (Ord. Nos. 23137; 24440; 24699; 25296)

SEC. 41A-15. ADDITIONAL REGULATIONS FORESCORT AGENCIES.

A person commits an offense if the person acts as an escort or agrees to act as an escort for a minor. (Ord. Nos. 19196; 24440; 24699; 27139)

SEC. 41A-16. ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.

(a) Reserved.

(b) A minor commits an offense if the minor appears in a state of nudity in or on the premises of a nude model studio.

(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 that 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.

(e) An employee of a nude model studio, while exposing any specified anatomical areas, commits an offense if the employee touches a customer or the clothing of a customer.

(f) A customer at a nude model studio commits an offense if the customer touches an employee who is exposing any specified anatomical areas or touches the clothing of the employee.

(g) A licensee, an operator, or an employee of a nude model studio commits an offense if he permits any customer access to an area of the premises not visible from the manager's station or not visible by a walk through of the premises without entering a closed area, excluding a restroom. (Ord. Nos. 19196; 23137; 24440; 24699; 27139)

SEC. 41A-17. ADDITIONAL REGULATIONS FOR ADULT MOTION PICTURE THEATERS.

(a) A person commits an offense if he knowingly allows a minor to appear in a state of nudity in or on the premises of an adult motion picture theater.

(b) A minor commits an offense if the minor knowingly appears in a state of nudity in or on the premises of an adult motion picture theater. (Ord. Nos. 19196; 21838; 24440; 24699; 27139)

SEC. 41A-18. ADDITIONAL REGULATIONS FOR ADULT MOTELS.

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

(b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or subrents a sleeping room to a person and, within 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. (Ord. Nos. 19196; 24440; 24699)

SEC. 41A-18.1. ADDITIONAL REGULATIONS FOR ADULT CABARETS.

(a) A licensee or an operator of an adult cabaret commits an offense if he employs, contracts with, or otherwise allows a person to act as an adult cabaret entertainer if the person has been convicted of an offense listed in Section 41A-5(a)(8)(A) for which the time period required in Section 41A-5(a)(8)(B) has not elapsed.

(b) An employee of an adult cabaret, while exposing any specified anatomical areas, commits an offense if the employee touches a customer or the clothing of a customer.

(c) A customer at an adult cabaret commits an offense if the customer touches an employee who is exposing any specified anatomical areas or touches the clothing of the employee.

(d) An adult cabaret may not contain any VIP rooms, except that any VIP room contained in a lawfully operating adult cabaret on April 21, 2008 may continue in existence until April 21, 2009, provided that no adult cabaret entertainment occurs in the VIP room.

(e) Except for a restroom or an area of which the entire interior is clearly and completely visible from the exterior of the area, no area of an adult cabaret that is accessible to a customer may be separated from any other customer-accessible area by a door, wall, curtain, drape, partition, or room divider of any kind. Nothing in this subsection precludes the installation or maintenance of any wall or column that is essential to the structural integrity of the building. Any adult cabaret lawfully operating on April 21, 2008 must comply with the requirements of this subsection not later than April 21, 2009.

(f) A licensee, an operator, or an employee of an adult cabaret commits an offense if he permits any customer access to an area of the premises:

(1) not visible from the manager’s station or not visible by a walk through of the premises without entering a closed area, excluding a restroom; or

(2) not regularly open to all customers of the business.

(g) Adult cabaret entertainment must occur only in the presence of, and be visually observable by, an employee who is not an adult cabaret entertainer. A licensee or operator commits an offense if he knowingly allows adult cabaret entertainment to be performed in violation of this subsection.

(h) The purpose of Subsections (d), (e), (f), and (g) of this section is to reduce the opportunity for unlawful activity such as indecent exposure, solicitation for prostitution, and prostitution that occurs in VIP rooms and other areas of adult cabarets that are not open to the view of management personnel, law enforcement officers, and customers. By prohibiting VIP rooms and requiring adult entertainment to be performed in more open and visible surroundings, unlawful activity will be deterred because it will be more readily observable by management personnel, law enforcement officers, and customers. (Ord. Nos. 23137; 24440; 24699; 27139)

SEC. 41A-19. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

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

(1) Upon application for a sexually oriented business license, the application must 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. The diagram must 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 is not 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. The chief of police 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 must 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 chief of police or the chief's 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 must 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 must 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 Paragraph (5) of this

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

(7) The premises must 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 (1.0) footcandle as measured at the floor level.

(8) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described in Paragraph (7) of this subsection is maintained at all times that any patron is present in the premises.

(b) A person having a duty under Paragraphs (1) through (8) of Subsection (a) commits an offense if he knowingly fails to fulfill that duty. (Ord. Nos. 19196; 24440; 24699)

SEC. 41A-20. DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS.

(a) A person commits an offense if, in a business establishment open to minors, the person displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

- (1) human sexual intercourse, masturbation, or sodomy;
- (2) fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;
- (3) less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or
- (4) human male genitals in a discernibly turgid state, whether covered or uncovered.

(b) In this section “display” means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:

- (1) it is available to the general public for handling and inspection; or
- (2) the cover or outside packaging on the item is visible to members of the general public. (Ord. Nos. 19196; 24440; 24699; 27139)

SEC. 41A-20.1. PROHIBITIONS AGAINST MINORS IN SEXUALLY ORIENTED BUSINESSES.

(a) A licensee or an operator commits an offense if he knowingly:

- (1) allows a minor to enter the interior premises of a sexually oriented business;
- (2) employs, contracts with, or otherwise engages or allows a minor to perform adult cabaret entertainment; or
- (3) employs a minor in a sexually oriented business.

(b) Knowledge on the part of the licensee or operator is presumed under Paragraph (2) or (3) of Subsection (a) if identification records were not kept in accordance with the requirements of Section 41A-7.1, and properly kept records would have informed the licensee or operator of the minor's age.

(c) An employee commits an offense if the employee knowingly:

(1) allows a minor to enter the interior premises of a sexually oriented business;

(2) employs, contracts with, or otherwise engages or allows a minor to perform adult cabaret entertainment; or

(3) employs a minor in a sexually oriented business.

(d) A minor commits an offense if the minor knowingly enters the interior premises of a sexually oriented business. (Ord. 27139)

SEC. 41A-21. ENFORCEMENT.

(a) Whenever a person does an act that is forbidden, fails to perform an act that is required, or commits an act that is made an offense by any provision of this chapter, the violation is punishable as provided by Section 243.010(b) of the Texas Local Government Code, as amended. A person violating a provision of this chapter is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted.

(b) Except where otherwise specified, a culpable mental state is not required for the commission of an offense under this chapter.

(c) It is a defense to prosecution under Section 41A-4(a), 41A-13, or 41A-16(d) that a person appearing in a state of nudity did so in a modeling class operated:

(1) by a proprietary school licensed by the state of Texas; a college, junior college, or university supported entirely or partly by taxation;

(2) by a private college or university that maintains and operates educational programs in which credits are transferrable to a college, junior college, or university supported entirely or partly by taxation; or

(3) in a structure:

(A) that 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 days in advance of the class; and

(C) where no more than one nude model is on the premises at any one time.

(d) It is a defense to prosecution under Section 41A-4(a) or Section 41A-13 that each item of descriptive, printed, film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value. (Ord. Nos. 19196; 19963; 20552; 24440; 24699)

SEC. 41A-22. INJUNCTION.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 41A-13 of this chapter is subject to a suit for injunction as well as prosecution for criminal violations. (Ord. Nos. 19196; 24440; 24699)

SEC. 41A-23. AMENDMENT OF THIS CHAPTER.

Sections 41A-13 and 41A-14 of this chapter may be amended only after compliance with the procedure required to amend a zoning ordinance. Other sections of this chapter may be amended by vote of the city council. (Ord. Nos. 19196; 24440; 24699)