



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		10/14/13		
Department:		Legal		
Department Head		Diane Wetherbee		
Agenda Coordinator (include phone #): Betsy Allen # 7545				
CAPTION				
An Ordinance of the City of Plano, Texas, repealing Chapter 17.5, Sexually Oriented Businesses, of the City of Plano Code of Ordinances and adopting a new Chapter 17.5, Sexually Oriented Businesses of the City of Plano Code of Ordinances; providing definitions, licensing and regulations for Sexually Oriented Businesses, providing a penalty clause, a severability clause, a repealer clause, a savings clause, a publication clause, and an effective date.				
FINANCIAL SUMMARY				
<input checked="" type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2013-14	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	0	0
BALANCE	0	0	0	0
FUND(S): N/A				
COMMENTS: This item has no fiscal impact. STRATEGIC PLAN GOAL: This Ordinance relates to the City's goal of a Safe Large City.				
SUMMARY OF ITEM				
SEE ATTACHED				
List of Supporting Documents: Memorandum			Other Departments, Boards, Commissions or Agencies	

M E M O R A N D U M

TO: HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: DIANE WETHERBEE, CITY ATTORNEY

SUBJECT: SEXUALLY ORIENTED BUSINESS ORDINANCE

DATE: SEPTEMBER 23, 2013

I recommend the existing Sexually Oriented Business Ordinance be replaced with a new ordinance that includes regulations that are more aligned with current standards regarding these types of adult businesses. These changes include certain separation requirements from patrons and dancers/performers, regulations restricting access by minors, revisions to the appeal processes, changes to the list of uses for which a sexually oriented business must maintain a 3000' distance, and other matters.

The original ordinance was adopted in 1993. As case law and studies emerged since that time, there are new means to address the negative effects from these businesses. The adoption of this new ordinance captures those acceptable standards and will further the City's interest in promoting the safety and health of the community as well as preserve the values of nearby properties that would otherwise be adversely affected if the adult businesses were located near such properties. Below is a summary of the key changes:

1. The definition of a sexually oriented business includes adult tanning salons. The sexual encounter center was deleted but those types of activities are covered under the general definition of a sexually oriented business. The escort agency is deleted and should be considered as a separate regulation. Adult novelty/book/video store definition has been revised to a specific percentage of the inventory (25%) devoted to items used for sexual stimulation or gratification and/or items that show sexual activity or specified anatomical areas. Items used for birth control or to prevent the spread of sexually transmitted disease are not included in this definition.
2. The application must include a list of employees and that list must be kept current. If the Chief of Police denies an application, or suspends or revokes a current licensee, that appeal is now to the City Manager instead of the Board of Adjustment. The Board of Adjustment will only consider an appeal of the distance limitation. Seventy-five percent (75%) percent of the qualified Board membership must approve of the exemption request. Thus, at least six must approve unless there are legally disqualified members. An approval is only valid for one year.
3. The current and recommended ordinance contains a 3000' distance limitation from certain uses. These uses are deemed to be ones that likely face a greater

- degree of harm from the negative secondary effects caused by a close location to a sexually oriented business. Negative secondary effects include increased crime and decreased property values. The uses that are recommended to be changed are: church to religious facility, add property designated as a historic resource district, park facility, hospital, day care, and public library. School zone is omitted from this ordinance.
4. The exterior of an adult business is prohibited from displaying merchandise that depicts sexual activities or specified anatomical areas. Signage is limited and no display of any flashing lights and/or pictorial illustrations. Building must be a single achromatic color, more akin to beige. The building must have a sign posted that it is a sexually oriented business and no one under 18 may enter. No person inside the business who is in a state of nudity may be visible to the exterior of the premises.
 5. Minors are prohibited from being employed or to have access to a sexually oriented business.
 6. No fondling, caressing, or engaging in any sexual activity with a person who is in a state of nudity. This is an offense for the customer and/or the employee.
 7. Any employee that dances or performs must be on a platform at least two feet from the level of the floor and at least ten feet from the customers. No customer may give a gratuity directly to a performer, nor may the performer solicit gratuities. Signage regarding this restriction is required.
 8. Hours of operation are prohibited between 2 am and 10 am.
 9. The penalty is recommended to be revised to a Class C misdemeanor so that the prosecution of cases remains local.

cc: Bruce Glasscock, City Manager

An Ordinance of the City of Plano, Texas, repealing Chapter 17.5, Sexually Oriented Businesses, of the City of Plano Code of Ordinances and adopting a new Chapter 17.5, Sexually Oriented Businesses of the City of Plano Code of Ordinances; providing definitions, licensing and regulations for Sexually Oriented Businesses, providing a penalty clause, a severability clause, a repealer clause, a savings clause, a publication clause, and an effective date.

WHEREAS, based on evidence concerning the adverse secondary effects of Sexually Oriented Businesses on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen theatre, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S. Ct. 1382 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728 (2002); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *LLEH, Inc. v. Wichita County, Texas* 289 F.3d 358 (5th Cir. 2002); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir 2000); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *2300, Inc. v. City of Arlington*, 888 S.W.2d 123 (Tex App. – Fort Worth, 1994); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), cert denied, 529 U.S. 1053 (2000); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *DLS, Inc. v. Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Jake's, Ltd., Inc. v. Coates*, 384 F.3d 884 (8th Cir 2002); and on studies, reports and/or testimony in other communities including, but not limited to: Phoenix, Arizona; Minneapolis, Minnesota; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Dallas, Texas; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Newport News, Virginia; Bellevue, Washington; New York, New York; St. Croix County, Wisconsin; Kitsap County, Washington; Los Angeles, California Police Department (dated August 12, 2003); Arlington, Texas, License and Amortization Appeal Board hearings, 2001 and 2002; Arlington Community Health Profile (dated July 2003); a summary of land use studies compiled by the National Law Center for Children and Families; and also on findings from the report of the Attorney General's Working Group On The Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and 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, the Council finds:

1. Sexually Oriented Businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments. Further, absent municipal regulation aimed at reducing secondary effects, there is no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
2. Certain employees of Sexually Oriented Businesses, defined in this Ordinance as Adult Theater/Movie Theater, Adult Cabaret, Nude Modeling

Studio, and Adult Dance Hall engage in higher incidence of certain types of illicit sexually behavior than employees of other establishments.

3. Sexual acts, including masturbation, prostitution, sexual contact, and oral and anal sex, 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.

4. Offering and providing private or semi-private areas in Sexually Oriented Businesses encourages such sexual activities, which creates unhealthy conditions.

5. Persons frequent certain Sexually Oriented Businesses for the purpose of engaging in sex within the premises of such Sexually Oriented Businesses.

6. At least 50 communicable diseases may be spread by activities occurring in Sexually Oriented Businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

7. According the Texas Department of State Health services, in 2011, there were approximately 70,000 people in Texas living with HIV, and it is estimated that there are an additional 17,000 HIV infected persons who are unaware of their status. From 2005 to 2011, the number of persons known to have HIV in Texas increased 34%.

8. In his report of October 22, 1986, the Surgeon General of the United States advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

9. According to available scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

10. There are unsanitary conditions in some Sexually Oriented Businesses because: the activities conducted there are unhealthy; the lack of regulations for their activities; and the failure of the owners and/or operators of the facilities to self-regulate those activities and maintain those facilities in a sanitary condition.

11. Studies and reports from other jurisdictions have determined that semen is found in the areas of Sexually Oriented Businesses where persons view "sexually oriented" films.

12. Sexually Oriented Businesses have operational characteristics which should be reasonably regulated in order to protect substantial governmental concerns.

13. 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 assurance that the licensee is the actual operator of the Sexually Oriented Business, fully in possession and control of the premises and activities occurring therein.

14. 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.

15. 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.

16. 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.

17. 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 F3d 471 (5th Cir. 2002)].

18. 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.

19. It is reasonably believed that partially nude performances should be included within the purview of the regulations because they have the same harmful secondary effects on the surrounding community as Sexually Oriented Businesses that allow nudity. [*Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F3d 471 (5th Cir. 2002)].

20. There is no Constitutional right for Sexually Oriented Businesses employees in a state of nudity to touch customers. [Hang On, Inc. v. City of Arlington, 65 F.3d 1248 (5th Cir. 1995)].

21. One court has characterized the acts of Sexually Oriented Business employees in a state of nudity and being paid to touch or be touched by customers as prostitution. [People v. Hill, 2002 Ill. App. LEXIS 792 (Ill. App 2 Dist. Sept 4, 2002); See also, Tex. Penal Code Sections 43.01 ("sexual conduct" and "sexual contact") and 43.02 ("prostitution")].

22. According to the City of Arlington, requiring Sexually Oriented Businesses to advise customers and employees in a state of nudity to refrain from intentionally touching and fondling each other through signage posted at the business entrance had not been effective.

23. Provocative touching between customers and employees in a Sexually Oriented Business where at least one is in a state of nudity frequently is likely to lead to the commission of sex crimes, illegal drug, use, and increased health risks due to sexually transmitted diseases.

24. Compelling signage at the entrances of Sexually Oriented Businesses in other communities has not been effective in halting "no touch" violations.

25. The City Council reasonably believes that requiring employees in a state of nudity to be physically separated from customers by the use of elevated states and buffer zones is necessary to better ensure ordinance compliance while still not inhibiting constitutionally protected expressive conduct or speech. [LLEH, Inc. v. Wichita County, Texas, 289 F.3d 358 (5th Cir. 2002)].

26. The City Council reasonably believes that sexual activity occurring in private viewing booths or like facilities 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)].

27. 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)].

28. The City Council reasonably believes that licensing and permit requirements imposed on Sexually Oriented Businesses 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 3rd 512 (6th Cir. 2009).

29. 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.

30. 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 Plano.

31. The Council finds that the current Sexually Oriented Business Ordinance, which was adopted as Ordinance No. 93-2-18, later amended by Ordinance No. 2004-6-8, does not sufficiently address the concerns that may result by the operations of such businesses including types of land uses from which a Sexually Oriented Business must maintain a specified distance requirement, and thus, the Ordinance should be replaced with a new ordinance addressing those concerns.

32. The findings noted in Subsections (1) through (31) raise substantial governmental concerns.

WHEREAS, the findings contained in the preamble of this ordinance are determined to be true and correct and are adopted as part of this ordinance.

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

Section I. The existing Chapter 17.5, Sexually Oriented Businesses, of the Code of Ordinances of the City of Plano, is hereby repealed and a new Chapter 17.5, Sexually Oriented Businesses is adopted in its entirety as follows:

**"Chapter 17.5
SEXUALLY ORIENTED BUSINESSES**

Section 17.5-1. Purpose and Intent.

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, and to establish reasonable and uniform regulations to prevent the concentration of Sexually Oriented Businesses within the City. The provisions of this Chapter 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 or effect of this Chapter 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 markets.

Section 17.5-2. Definitions.

As used in this Chapter, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning.

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.

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

Adult Bookstore, Adult Novelty Store or Adult Video Store means a commercial establishment that sells, displays, or rents items that are intended to provide sexual stimulation or sexual gratification and such items constitute twenty-five percent (25%) or more of all the items for sale, display or rental in the area of the commercial establishment that is open to the public, including:

- (1) 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
- (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.

Adult Cabaret means a commercial establishment that regularly features:

- (1) Persons who appear live in a state of nudity; or
- (2) Live performances which are characterized by exposure of specified anatomical areas or specified sexual activities.

Adult Motel means a motel, hotel or similar commercial establishment which offers accommodations for any form of consideration and:

- (1) Rents a room for a period of time less than ten (10) hours; or
- (2) Allows a tenant or occupant to sub-rent a room for a time period of less than ten (10) hours.

Adult Movie 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.

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

Adult Dance Hall means any place:

- (1) Where dancing is permitted one (1) day a week or more by a person in a state of nudity; or
- (2) That is advertised either on or off the premises:
 - a. As topless;
 - b. As a gentlemen's club, bar, or saloon;
 - c. As adult entertainment;
 - d. As X-rated; or
 - e. By any other term calculated to attract patrons by offering entertainment that includes nudity or simulated nudity.

Adult Tanning Salon means a commercial establishment which provides facilities for tanning the human skin, such as tanning beds, suntan lights, or other similar facilities, and regularly features for the entertainment of its clientele:

- (1) Persons who appear in a state of nudity; or
- (2) Live performances or style shows of lingerie performed by persons who appear in a state of nudity or which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

Applicant means:

- (1) A person or entity in whose name a license to operate a Sexually Oriented Business will be issued;
- (2) Each individual who signs an application for a Sexually Oriented Business license as required by Section 17.5-4; or
- (3) Each individual who is an officer of a Sexually Oriented Business for which a license application is made under Section 17.5-5 regardless of whether the individual's name or signature appears on the application.

Board of Adjustment means the Board of Adjustment of the City of Plano.

Chief of Police means the Chief of Police of the City of Plano or the Chief's designee.

Child Care Facility means a facility licensed by the State of Texas, that provides care, training, education, custody treatment or supervision for more than six (6) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers. This definition shall not include a child care facility that is an accessory use on the property.

Employee means any individual who:

- (1) Is listed as part-time, full-time, temporary, or permanent employee on the payroll of an applicant, licensee, or Sexually Oriented Business; or
- (2) Performs or provides entertainment on the Sexually Oriented Business premises for any form of compensation or consideration.

Establishment means and includes any of the following:

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

Heritage Resource Designation means a property that has been designated as a Heritage Resource as provided for in Article 4.400 Heritage Resource Designation in the Zoning Ordinance and Article VI of Chapter 16 of the Code of Ordinances of the City of Plano, as amended.

Heritage Resource District means that term as defined as "Heritage resource district" in section 16-103, Definitions., of Article VI. Heritage Resource Preservation of Chapter 16 of the City of Plano Code of Ordinance, as amended.

Hospital means an institution that falls within the definition of "Hospital" contained in Article I General Regulations of the City of Plano Zoning Ordinance, as amended.

Licensee means:

- (1) A person in whose name a license to operate a Sexually Oriented Business has been issued;
- (2) Each individual listed as an applicant on the application for a license;
- (3) 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; or
- (4) 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.

Nude Modeling Studio means any place where a person appears in a state of nudity or displays specified anatomical areas to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other person(s) who pays money or any form of consideration except as authorized under (4)(d) of the Sexually Oriented Business definition of this Chapter.

Nudity or State of Nudity means:

- (1) The appearance of a human bare buttock, anus, male genitals, female genitals or female breast; or
- (2) A state of dress which fails to completely and opaquely cover a human buttock, anus, male genitals, female genitals or female breast or below a point immediately above the top of the areola of the female breast, or the use of any device, costume or covering that gives the realistic appearance of or simulates the post puberty female nipple or areola, female or male genitals, buttock or anus. For purposes of this definition, body paint, dyes, tattoos, liquid latex, (whether wet or dried) and other similar substances shall not be considered an opaque covering.
- (3) The definition shall not apply to an individual exposing a post puberty female nipple or areola in the process of breastfeeding a child under that person's care.

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.

Park or Park Facility means any and all land, area, building, and facilities that are owned, leased, or otherwise operated and controlled by the City of Plano for park and recreation purposes including, but not limited to: parks, recreation facilities, athletic fields, tennis courts, golf courses, swimming pools, playgrounds, pavilions, and recreation trails.

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

Religious Facility means a building used primarily for religious assembly in which persons regularly assemble for religious worship and the building is intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

Residential District means each and all of the residential zoning districts set forth under 2.100 Establishment of Zoning Districts, Article 2. Zoning Districts and Uses in the Zoning Ordinance of the City of Plano.

Residential Use means a single family, duplex, multiple family, mobile home, and mobile home/trailer park use as defined in Zoning Ordinance of the City of Plano.

Sexually Oriented Business means:

- (1) Those businesses classified in Section 17.5-3 of this Ordinance; or
- (2) Any establishment of which the principal business 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 its customers, and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas; or
- (3) A business whose employees or customers appear in a state of nudity.
- (4) The term Sexually Oriented Business shall not be construed to include:
 - (a) Any business operated by or employing a licensed psychologist, licensed physical therapist, licensed masseuse, licensed vocational nurse, registered nurse, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under the license held;

- (b) Any business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts;
 - (c) Any retail establishment whose principal business is the offering of wearing apparel for sale to customers and does not exhibit merchandise on live models; or
 - (d) In a structure that has no sign or other advertising visible from the exterior of the structure indicating a nude person is available for viewing and that activity is conducted or sponsored by: :
 - (i) A proprietary school licensed by the state or a college, junior college or university supported entirely or partly by taxation; or
 - (ii) A private college or university that maintains or operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;
- And
- (iii) A student must enroll at least three (3) days in advance of the class in order to participate; and
 - (iv) No more than one (1) nude model is on the premises at any one time.

Sign means any display, design, pictorial, or other representation that is 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 used to seek the attraction of the public to any goods, services, or merchandise available at the Sexually Oriented Business.

Specified Anatomical Areas means:

- (1) Any of the following, or any combination of the following, when less than completely and opaquely covered:
 - (a) Any human genitals, pubic region, or pubic hair;
 - (b) Any buttock; or
 - (c) Any portion of the post puberty female breast that is situated below a point immediately above the top of the areola.
- (2) Human male genitals in a discernibly erect state, even if 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 Paragraphs (1) through (3) of this definition.

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

Section 17.5-3. Classification.

Sexually Oriented Businesses are classified as follows:

- (1) Adult arcade;
- (2) Adult bookstore, adult novelty store or adult video store;
- (3) Adult cabaret;
- (4) Adult dance hall;
- (5) Adult motel;
- (6) Adult movie theater;
- (7) Adult tanning salon;
- (8) Adult theatre;
- (9) Nude modeling studio; or

(10) A business meeting the definition of a Sexually Oriented Business as defined in Section 17.5-2.

Section 17.5-4. License Required.

(1) *License requirement.* A person commits an offense if he operates or causes to be operated a Sexually Oriented Business without a valid license as required by this Chapter.

(2) *Other permits or licenses.* The fact that a person possesses other types of state or city permits or licenses does not exempt the person from the requirement of obtaining a license for a Sexually Oriented Business.

Section 17.5-5. License Application.

(1) *Form of application.* Any person desiring to obtain a Sexually Oriented Business license shall make application 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.

(2) *Individual applicants.* If a person who wishes to operate a Sexually Oriented Business is an individual, he must sign the application for a license as applicant. If a person who wishes to operate a Sexually Oriented Business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. The application must be sworn to be true and correct by each applicant. Each applicant must be qualified under Section 17.5-6 and each applicant shall be considered a licensee if a license is granted.

(3) *Corporate applicants.* In addition to identifying those persons required to sign an application under Subsection (2), 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.

(4) *Application.* The application must include a current official Texas criminal history report with a fingerprint card (issued within the preceding 12 months) for the applicant and the applicant's spouse showing they are not disqualified to operate a Sexually Oriented Business under this chapter.

(5) *Application fee.* All applications for a license under this article shall be accompanied by a nonrefundable application fee. An application shall not be considered

to have been filed until the fee is paid and all information required by the application form has been submitted.

Section 17.5-6. License Issuance/Grounds for Denial.

(1) *Issuance generally.* The Chief of Police shall approve the issuance of a license to an applicant within 30 days after filing of an application unless the Chief of Police finds one or more of the following to be true:

- (a) The location of the Sexually Oriented Business is or would be in violation of Section 17.5-13.
- (b) The applicant failed to supply all of the information requested on the application.
- (c) The applicant gave false, fraudulent, or untruthful information on the application.
- (d) An applicant is under 18 years of age.
- (e) 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.
- (f) An applicant or an applicant's spouse has been convicted or placed on deferred adjudication for a violation of a provision of this article, other than the offense of operating a Sexually Oriented Business without a license, within two years immediately preceding the application.
- (g) The application or renewal fee required by this article has not been paid.
- (h) The applicant has not demonstrated that the owner of the Sexually Oriented Business owns or holds a lease for the property or the applicable portion thereof within which the Sexually Oriented Business will be situated or has a legally enforceable right to acquire the same.
- (i) An applicant or the proposed establishment is in violation of or is not in compliance with this chapter.
- (j) An applicant or an applicant's spouse has been convicted or placed on deferred adjudication for a crime involving:

- (i) Any of the following offenses as described in Chapter 43 of the 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;
 - (ii) Any of the following offenses as described in Chapter 21 of the Penal Code: continuous sexual abuse of young child or children, public lewdness, indecent exposure, indecency with a child, improper relationship between educator and student, or improper photography or visual recording;
 - (iii) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Penal Code;
 - (iv) Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Penal Code;
 - (v) Trafficking of persons or continuous trafficking of persons as described in Chapter 20A of the Penal Code;
 - (vi) Possession or distribution of a controlled substance;
or
 - (vii) Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses.
- (k) An applicant or an applicant's spouse has been convicted or placed on deferred adjudication for a crime listed in (j) above and for which:
- (i) Less than two years have elapsed since the date of conviction, or the date of release from the terms of probation, parole, or deferred adjudication, 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 the terms of probation, parole, or deferred adjudication, 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 two-year period.

(1) The applicant or the applicant's spouse is required to register as a sex offender under the provisions of Chapter 62 of the Texas Code of Criminal Procedure.

(2) *Appeal of conviction or deferred adjudication to have no effect on disqualification.* The fact that a conviction or a deferred adjudication of the applicant or applicant's spouse is being appealed shall have no effect on the disqualification.

(3) *Qualification by person convicted or placed on deferred adjudication for certain offenses.* An applicant who has been convicted or placed on deferred adjudication or whose spouse has been convicted or placed on deferred adjudication for an offense listed in Subsection (1)(j) of this section may qualify for a Sexually Oriented Business license only when the time period required by Subsection (1)(j) of this Section has elapsed.

(4) *License information.* 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.

(5) *Posting of license.* 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.

Section 17.5-7. Inspection and Maintenance of Records.

(1) *Inspection generally.* An applicant or licensee shall permit representatives of the police department or a department otherwise designated by the city manager to inspect the premises of a Sexually Oriented Business for the purpose of insuring compliance with the law, at any time during the 30-day application period or after it is occupied or open for business and at any other reasonable times upon request. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

(2) *Refusal to permit inspection.* A person who operates a Sexually Oriented Business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the police department, or a department otherwise designated by the city manager at any time during the 30-day application period or after it is occupied or open for business.

(3) *List of employees; application.* A person who operates a Sexually Oriented Business or his agent or employee commits an offense if he operates the establishment without maintaining a current list of all employees employed by the business, along with

a complete updated employment application. Each employment application shall include a copy of a valid driver's license, state identification card, or passport, all with a photo.

Section 17.5-8. Expiration of License.

(1) *Generally.* Each license shall expire one year from the date of issuance.

(2) *Renewal; fee.* A license may be renewed by submission to the Chief of Police of an application on the form prescribed by the Chief of Police and payment of a nonrefundable renewal processing fee.

(3) *Application for renewal.* Application for renewal shall be made at least 30 days before the expiration date of the license.

Section 17.5-9. Suspension.

(1) *Factors for suspension.* The Chief of Police shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee:

(a) Has violated or is not in compliance with Sections 17.5-7 or 17.5-12;

(b) Is in a state of public intoxication while on the Sexually Oriented Business premises;

(c) Refuses to allow an inspection of the Sexually Oriented Business premises as authorized by this article;

(d) Knowingly permits gambling by any person on the Sexually Oriented Business premises; or

(e) Is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the Sexually Oriented Business.

(2) *Reinstatement fee.* When the Chief of Police or a person otherwise designated by the city manager is authorized to suspend a license under this section, he shall give the licensee the opportunity to pay a reinstatement fee rather than have the license suspended.

(a) Payment of this reinstatement fee shall be considered an administrative admission of the violation. However, this shall not be used as an admission of guilt in a criminal prosecution under this article.

(b) If the licensee does not pay the reinstatement fee before the expiration of the third working day after notification, the Chief of Police shall impose the suspension.

(c) Each day in which a violation is permitted to continue shall constitute a separate cause for suspension.

Section 17.5-10. Revocation.

(1) *Revocation generally.* The Chief of Police shall revoke a license if a cause of suspension in Section 17.5-9(1) occurs and the license has been suspended or a reinstatement fee paid within the preceding 12 months.

(2) *Factors for revocation.* The Chief of Police shall revoke a license if he determines that:

(a) A licensee gave false or misleading information in the material submitted to the Chief of Police during the application process;

(b) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the Sexually Oriented Business premises;

(c) A licensee or an employee has knowingly allowed prostitution on the Sexually Oriented Business premises;

(d) A licensee or an employee knowingly operated the Sexually Oriented Business during a period of time when the licensee's license was suspended;

(e) A licensee has been convicted or placed on deferred adjudication for an offense listed in Section 17.5-6(1)(j) for which the time period required has not elapsed;

(f) On two or more occasions within a 12-month period, an employee of the establishment committed in or on the licensed premises an offense listed in Section 17.5-6(1)(j) for which a conviction has been obtained or deferred adjudication has been granted; or

(g) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the Sexually Oriented Business premises. The term "sexual contact" shall have the same meaning as it is defined in § 21.01 of the Penal Code.

(3) *Appeal of conviction or deferred adjudication to have no effect on disqualification.* The fact that a conviction or deferred adjudication is being appealed shall have no effect on the revocation of the license.

(4) *Application to adult motels.* Section 17.5-10 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.

(5) *Term of revocation.* When the Chief of Police revokes a license, the revocation shall continue for one year and the licensee shall not be issued a Sexually Oriented Business license for one year from the date revocation became effective. If, subsequent to revocation, the Chief of Police 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.

Section 17.5-11. Appeal.

(1) *Notice of intention to suspend or revoke license.* If the Chief of Police is authorized to deny the issuance of a license, or suspend or revoke a license as provided in this article, the Chief of Police shall give written notice to the applicant or licensee of such intention.

(a) The notice shall provide that the denial of issuance, suspension, or revocation shall take effect at the expiration of the third working day after notification unless the licensee provides a written response to the Chief of Police before the expiration of the third working day.

(b) If a written response from the applicant or licensee is received by the Chief of Police before the expiration of the third working day, the suspension, denial of issuance or revocation will be stayed pending a decision by the Chief of Police. The Chief of Police shall review the response before the rendering of a decision.

(c) The Chief of Police shall give written notice of this decision to the applicant or licensee.

(d) The decision by the Chief of Police is effective immediately and final pending any appeal.

(e) Notice shall be deemed delivered by hand delivery to a licensee, owner, or employee of the establishment or by a posting of the notice at the usual business entrance of the establishment. Notice may also be sent by certified mail, return receipt requested. Such notice shall be mailed to the address listed in the license application for receipt of notice.

(2) *Appeal from denial or revocation of permit.* Should an applicant be denied a license or have a license suspended or revoked, the applicant may appeal that action to the city manager or his designee by submitting a letter requesting a hearing to the city secretary within ten (10) days after receiving notice. A hearing on the denial will then be scheduled before the city manager, or his designee. The city manager, or his designee, shall schedule a hearing and render a decision on the appeal within forty-five (45) days of the date of the request. The decision of the city manager, or his designee, shall be final.

Section 17.5-12. Transfer of License.

A person commits an offense if he transfers his license to another person or operates a Sexually Oriented Business under the authority of a license at any place other than the address designated in the application.

Section 17.5-13. Location Regulations.

(1) A person commits an offense if he establishes, operates or causes to operated, or expands a Sexually Oriented Business within three thousand (3000) feet of:

- (a) A religious facility;
- (b) A public or private elementary or secondary school;
- (c) A boundary of a residential or a heritage resource district;
- (d) Property devoted to residential use;
- (e) Property that has received a historic resource designation;
- (f) A public park or park facility;
- (g) A public library;
- (h) A hospital; or
- (i) A child care facility.

(2) 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 three thousand (3000) feet of another Sexually Oriented Business.

(3) 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 increases the floor area of any Sexually Oriented Business in any building, structure, or portion of a building or structure containing another Sexually Oriented Business.

(4) For the purposes of Subsection (1), 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 religious facility, public or private elementary or secondary school, hospital, property devoted to residential

use, historic resource designated property, a child-care facility, or to the nearest boundary of a park, public library, or residential or heritage resource district.

(5) For purposes of Subsection (2) 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.

(6) 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 religious facility, public or private elementary or secondary school, public park, public library, historic resource designated property, residential district, property devoted to residential use, hospital, or child care facility within three thousand (3000) 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 been expired or has been revoked.

Section 17.5-14. Exemption from Location Restrictions.

(1) If the Chief of Police denies the issuance of a license to an applicant because the location of Sexually Oriented Business establishment is in violation of Section 17.5-13 of this chapter, then the applicant may, not later than ten (10) calendar days after notice of the denial, file with the Chief Building Official a written request for an exemption from the locational restrictions of Section 17.5-13.

(2) If the written request is filed with the Chief Building Official within the ten-day limit, the Board of Adjustment shall consider the request. A date for the hearing shall be set within sixty (60) days from the date the written request is received.

(3) The Board of Adjustment may, in its discretion, grant an exemption from the locational restrictions of Section 17.5-13 if it makes the following findings:

(a) 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;

(b) That the granting of the exemption will not violate the spirit and intent of this chapter of the City Code;

(c) 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;

(d) That the location of an additional Sexually Oriented Business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and

(e) That all other applicable provisions of this chapter will be observed.

(4) The concurring vote of seventy-five percent (75%) of the qualified membership of the Board must vote in favor of the applicant.

(5) If the Board of Adjustment grants the exemption, the exemption is valid for one (1) 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 17.5-13 until the applicant applies for and receives another exemption.

(6) If the Board of Adjustment denies the exemption, the applicant may not reapply for an exemption until at least twelve (12) months have elapsed since the date of the Board's action.

(7) The grant of an exemption does not exempt the applicant from any other provisions of this chapter other than the locational restrictions of Section 17.5-13.

Section 17.5-15. Nonconforming Sexually Oriented Business; Amortization Schedule.

(1) Any Sexually Oriented Business lawfully operating on the effective date of ordinance must file an application with the Chief of Police for a Sexually Oriented Business license within thirty (30) days of the effective date of the Ordinance.

(2) Any Sexually Oriented Business lawfully operating on the effective date of ordinance that is in violation of section 17.5-13 is a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed twelve (12) months, unless sooner terminated for any reason or voluntarily discontinued for a period of 60 days or more.

(3) 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 three thousand (3000) feet of one another and are, 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.

(4) Notwithstanding anything contained herein to the contrary, the Board of Adjustment may extend the amortization period hereinabove provided to a reasonable period of time for any nonconforming Sexually Oriented Business upon a showing by a particular business that without an extension it will be unable to recoup its investment in the nonconforming structure. The concurring vote of four (4) members of the Board of Adjustment is necessary before the amortization period can be extended.

(5) Any nonconforming Sexually Oriented Business which desires an extension of the amortization period must file an application with the Building Inspections Department no later than ninety (90) days prior to the expiration of the license. Requests for an extension of the amortization period shall be limited to one (1) application with the Board of Adjustment.

Section 17.5-16. Exterior Portions of Sexually Oriented Businesses.

(1) It is an offense if a Licensee, or its agents or employees, of a Sexually Oriented Business allows merchandise that is intended for sexual stimulation or gratification and is distinguished by or characterized by an emphasis on depicting, describing or relating to specified sexual activities or specified anatomical areas to be viewed from the exterior of the premises.

(2) It is an offense if a Licensee, or its agents or employees, of a Sexually Oriented Business allows the exterior portions 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 article.

(3) It is an offense if a Licensee, or its agents or employees, of a Sexually Oriented Business allows exterior portions of the enterprise 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:

(a) The Sexually Oriented Business 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 Sexually Oriented 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.

This section shall not apply to a Sexually Oriented Business that meets Sec. 17.5-15 of this article.

Section 17.5-17. Signage.

(1) Notwithstanding any sign regulations in Chapter 6, Article XII of the City Code of Ordinances or Article 3, Section 3.1600 of the City Zoning Ordinance, or any other regulations to the contrary, on-premise exterior signs for any Sexually Oriented Business shall comply with the following requirements:

(a) Flashing lights, reader boards, electronic or digital messages, or changeable copy are prohibited;

(b) Photographs, silhouettes, drawings or pictorial representations of any specified anatomical areas and/or specified sexual activities are prohibited; and

(c) Signs shall be a flat plane excluding the lettering.

(2) It is an offense for a Licensee, including agents and employees, of any Sexually Oriented Business to erect, construct or maintain any on-premise exterior sign for the Sexually Oriented Business in violation of this ordinance.

Section 17.5-18. Minors prohibited.

(1) It is an offense for a person who is younger than 18 years of age to enter or be on the premises of a Sexually Oriented Business at any time.

(2) It is an offense for a Licensee or its employee to allow a person under the age of 18 years to enter the Sexually Oriented Business. It shall be an affirmative defense issued pursuant to this section if an employee of the Licensee asked the minor to provide and the minor furnished:

(a) A valid driver's license showing the person was at least 18 years of age; or

(b) A valid personal identification certificate issued by the Texas Department of Public Safety reflecting that such person is 18 years of age or older.

(3) Notwithstanding any other City sign regulation to the contrary, the Licensee of the Sexually Oriented Business shall maintain at least one visible and legible permanently mounted sign, printed in both English and Spanish, at each public entrance which contains a statement to the effect:

“THIS IS A SEXUALLY ORIENTED BUSINESS ESTABLISHMENT. NO PERSON UNDER 18 YEARS OF AGE ALLOWED ENTRY.”; and

[If alcoholic beverages are sold on the premises] –
"NO PERSON UNDER 21 YEARS OF AGE ALLOWED ENTRY.”

It is an offense if the Licensee fails to post the sign and maintain the sign.

Section 17.5-19. Additional Violations – Conduct of Employees and Patrons.

(1) It is an offense for a person to appear in a state of nudity in a Sexually Oriented Business and the person or any part thereof can be viewed from the exterior of the premises.

(2) It is an offense for an employee or contractor of a Sexually Oriented Business who appears in a state of nudity to fondle, caress, or engage in specified sexual activities with any patron or clientele of the Sexually Oriented Business.

(3) It is an offense for any patron or clientele of any Sexually Oriented Business to fondle, caress, or engage in specified sexual activities with any employee of a Sexually Oriented Business who appears in a state of nudity.

Section 17.5-20. Additional Regulations.

It is an offense for a person to:

(1) Allow a bed, sofa, or mattress in any room on the Sexually Oriented Business; except that a sofa may be placed in a reception room open to the public. This prohibition shall not apply to Adult Motels.

(2) Dance, perform, exhibit or show an employee in a state of nudity unless the dance, performance or exhibition is on a platform raised at least two feet from the level of the floor.

(3) Dance, perform, exhibit or show an employee in a state of nudity within ten feet to any patron or clientele.

(4) Directly pay or give any gratuity to any person, employee or otherwise, who shall dance or participate in any show, exhibition or performance while in a state of nudity.

(5) Solicit or accept any gratuity from any patron or clientele in return for dancing or participating in any show, exhibition or performance while in a state of nudity.

(6) Fail to post a minimum of two signs at least 18 inches square bearing red letters a minimum of two inches high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:

"GRATUITIES FOR PERFORMERS ARE PROHIBITED BY LAW.
(Cite Code of Ordinances Chap. 17.5 Sexually Oriented Businesses
Sec. 17.5.20.)"

Section 17.5-21. Hours of Operation.

(1) It is an offense for an employee of a Sexually Oriented Business to allow it to be open to the public or allow customers or patrons to enter or remain within the premises of a Sexually Oriented Business on any day between the hours of 2:00 a.m. and 10:00 a.m.

(2) Notwithstanding Section 17.5-21(1) above, hours of operation of a Sexually Oriented Business may not conflict with any other federal, state, or city laws, rules or regulations.

(3) This regulation shall not apply to adult motels.

Section 17.5-22. Penalty.

(1) Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with Section 1-4(a) of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

(2) A person, firm, or corporation who operates or causes to be operated a Sexually Oriented Business in violation of this ordinance is subject to a civil lawsuit, including injunctive relief, in addition to and exclusive of any other available legal remedies."

Section II. Any violation of the provisions or terms of this ordinance by any person, firm or corporation shall be a misdemeanor offense and shall be subject to a fine in accordance with of the City Code of Ordinances for each offense. Every day a violation continues shall constitute a separate offense.

Section III. All provisions of the Code of Ordinances of the City of Plano, codified or uncodified, in conflict with the provisions of this Ordinance are hereby repealed, and all other provisions of the Code of Ordinances of the City of Plano, codified or uncodified, not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section IV. It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses, and phrases of this Ordinance are severable, and if any phrase, clause, sentence, or section of this Ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any other remaining phrase, clause, sentence, paragraph or section of this Ordinance.

Section V. 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 municipality under any section or provisions at the time of passage of this Ordinance.

Section VI. This Ordinance shall become effective immediately upon its passage and publication as required by law.

DULY PASSED AND APPROVED this the 14th day of October 2013.

Harry LaRosiliere, MAYOR

ATTEST:

Diane Zucco, CITY SECRETARY

APPROVED AS TO FORM:

Diane C. Wetherbee, CITY ATTORNEY