

ARTICLE IX.

SEXUALLY ORIENTED BUSINESSES*

* Editors Note: Ord. No. 9903, § 1, adopted July 11, 1996, amended Art. IX, sexually oriented businesses, in its entirety to read as herein set out in §§ 14-240--14-267. Prior to amendment, former Art. IX contained similar provisions and derived from Ord. No. 9538, § 1, adopted July 9, 1992.

Sec. 14-240. Purpose and intent.

It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the unregulated operation of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor the 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 market.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-241. Definitions.

The following words and phrases, whenever used in this article, shall be construed as defined in this section unless in context it appears that a different meaning is intended:

- (a) Applicant. The term applicant shall include each member of a partnership when the applicant is a partnership. If a member of the applicant partnership is not a person, the applicant shall include those persons holding a ten (10) percent or greater interest in the entity which constitutes that member of the partnership applicant. The term applicant shall include each officer, director and holder of a ten (10) percent or greater interest of a corporation, firm or association when the applicant is a corporation, firm or association. If the holder of a ten (10) percent or greater interest in a corporation, firm or association applicant is not a person, the applicant shall include those persons holding a ten (10) percent or greater interest in the entity which holds a ten (10) percent or greater interest in the corporation, firm or association which is the applicant. When a permit is issued under this article, the applicant becomes the permit holder.
- (b) Chief of police. Chief of police means the chief of police of the City of Lubbock or his designated agent.
- (c) Customer. Customer means any person who:

- (1) Is allowed to enter an establishment in return for the payment of an admission fee or any form of consideration or gratuity; or
- (2) Enters an establishment for the purpose of purchasing or renting a commodity or services therein.
- (d) Employee. Employee means every owner, partner, manager, supervisor, agent, independent contractor[,], employee, entertainment person or worker who renders personal services of any nature in the conduct of a sexually oriented business. It includes any person who renders any service whatsoever to the customers of an establishment regulated by this section or who works in or about such an establishment and who receives compensation or consideration for such service or work from the operator or owner of such establishment or from the customers therein.
- (e) Nude, nudity or a state of nudity. Nude, nudity or a state of nudity means appearing while any of the following portions of the human body are less than completely and opaquely covered:
 - (1) Genitals, whether or not in a state of sexual arousal;
 - (2) Pubic region or pubic hair;
 - (3) Buttock(s);
 - (4) The portions of the female breast(s) beginning from a point immediately above the top of the areola and continuing downward to the lowest portion of the breast(s); or
 - (5) Any combination of the above.
- (f) Operate or cause to operate. Operate or cause to operate means to permit or 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 applicant as defined herein, an owner, part owner, licensee or manager of the venture.
- (g) Primary business activity. Primary business or primary business activity for purposes of determining whether a business is subject to regulation shall mean and include:
 - (1) Any live performance or entertainment as described at section [14-241](#)(i) of this article; or
 - (2) Any nonlive, sexually oriented retail sale, service or rental business activity when, on a calendar day, thirty-five (35) percent or more of either inventory held for sale, rent or display; or display space; or exhibition time; or sales include sexually explicit entertainment, materials or items that are intended to provide sexual stimulation or gratification and the entertainment, materials or items are distinguished by or characterized by an emphasis on subject matter depicting, describing or related to specified sexual activities and/or specified anatomical areas.
 - (3) The operation of a commercial venture may include more than one primary business activity.

(h) Seminude and simulated nudity.

(1) Seminude or seminudity means a state of dress in which clothing covers only the genitals, anus, and pubic region.

(2) Simulated nudity means a state of dress in which any artificial device or covering is worn on a person and exposed to view so as to simulate an actual "state of nudity."

(i) Sexually oriented business. Sexually oriented business shall mean and include any commercial venture whose operations on any calendar day include: The providing, featuring or offering of employees or entertainment personnel who appear in a state of nudity, semi-nude or simulated nudity and provide live performances or entertainment intended to provide sexual stimulation or sexual gratification to customers and which is offered as a feature of a primary business activity of the venture; or, the providing, featuring or offering, as a primary business activity as defined herein, of nonlive, sexually-explicit entertainment materials, or items for sale or rental to customers, or the providing or offering of a service or exhibition of materials or items which are intended to provide sexual stimulation or sexual gratification to its customers, said materials, items or services being distinguished by or characterized by an emphasis on subject matter depicting, describing or relating to specified sexual activities and/or specified anatomical areas.

The term sexually oriented business shall include, but not be limited to the following:

(1) Sexually oriented cabaret. A sexually oriented cabaret is an establishment whose business is the offering to customers of live entertainment which is intended to provide sexual stimulation or sexual gratification to such customers, and which is distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities, specified anatomical areas, nudity, simulated nudity, or any combination thereof.

(2) Sexually oriented modeling studio. A sexually oriented modeling studio is an establishment whose business is the providing to customers, figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and to display specified anatomical areas while being observed, painted, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

(3) Sexually oriented bookstore, film or video store. A sexually oriented bookstore, film or video store is an establishment having a primary business activity of marketing, selling, displaying or dispensing stock in trade, books, films, videos, magazines, periodicals, computer imaging products or other reproductions which are intended to provide sexual stimulation or sexual gratification to customers, and which are distinguished or characterized by an emphasis on depicting or describing "specified sexual activity" or "specified anatomical areas."

(4) Sexually oriented viewing booth or arcade. A sexually oriented viewing booth or arcade is an establishment or commercial venture which has within its structure any coin-operated or slug-operated or electrical or mechanical device, which projects or displays any image into a viewing area or other enclosure which is designed for presenting material intended to provide sexual stimulation or sexual gratification to customers, and which are distinguished or characterized by

a predominant emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas."

(5) Sexually oriented theater or sexually oriented motion picture theater. A sexually oriented theater or sexually oriented motion picture theater is an establishment or commercial venture which is conducted within an enclosed building and which projects or displays for viewing by an audience material intended to provide sexual stimulation or sexual gratification to customers, and which are distinguished or characterized by a predominant emphasis on matter depicting, describing or relating to "specified anatomical areas" or "specified sexual activities" for observation by patrons.

(6) Sexually oriented lounge. A sexually oriented lounge is a "sexually oriented cabaret" as defined above which allows the consumption of alcoholic beverages on the premises.

(7) Sexually oriented retail store. A sexually oriented retail store is a retail establishment which has a primary business activity of marketing, selling, displaying or dispensing stock in trade, books, films, magazines, periodicals, instruments, devices, paraphernalia, or any other products which are intended to provide sexual stimulation or sexual gratification to customers, and which are distinguished or characterized by an emphasis on depicting, describing or related to "specified sexual activities" or "specified anatomical areas."

(8) Sexually oriented motel or adult motel. Sexually oriented motel or adult motel means a hotel, motel or similar commercial establishment which:

a. Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic or computer generated reproductions which are intended to provide sexual stimulation or sexual gratification to customers, and which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of such adult types of photographic or computer generated reproductions; or

b. Offers a sleeping room for rent on an hourly basis; or allows a tenant or occupant of a sleeping room to sub-rent the room on an hourly basis.

(9) Sexually oriented escort agency. A sexually oriented escort agency is 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. For purposes of this definition an 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.

(10) Sexually oriented encounter center. A sexually oriented encounter center is a business or commercial venture that offers for any form of consideration physical activities between persons when one or more of the persons are in a state of nudity or seminudity.

(j) Specified anatomical areas. Specified anatomical areas means the following portions of the human body:

- (1) Genitals, whether or not in a state of sexual arousal;
- (2) Pubic region or pubic hair;
- (3) Buttock or buttocks;
- (4) The portions of the female breast below a point immediately above the top of the areola;
and
- (5) Any combination of the above.

(k) Specified sexual activities. Specified sexual activities means one or more of the following:

- (1) The fondling, massaging or other erotic touching or stimulation of "specified anatomical areas."
- (2) Ultimate sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation, sodomy.
- (3) Masturbation, actual or simulated.
- (4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-242. Affirmative defense.

It is an affirmative defense to prosecution under this article that the person was practicing a profession or participating in an activity described as follows:

- (1) Physicians, surgeons, chiropractors, osteopaths, massage therapists or physical therapists who are duly licensed to practice their respective professions in the State of Texas when practicing their respective professions;
- (2) Nurses registered under the laws of the State of Texas when practicing nursing;
- (3) Trainers of any amateur, semiprofessional or professional athlete or athletic team when training or engaging in their sport;
- (4) Barbers or cosmetologists who are duly licensed under the laws of the State of Texas when practicing their profession;
- (5) Any activity conducted or sponsored by any school district or other public agency;

(6) Any activity conducted by a person pursuant to any permit issued by the State of Texas or any agency thereof or political subdivision which permits, prescribes standards for and supervises such activity or profession;

(7) Private schools providing a course of instruction in photography, or photography studios which do not provide for consideration photography equipment, models and a studio;

(8) Modeling agencies, schools or services, except those which provide live modeling services for consideration in which a customer may obtain an exclusive modeling exhibition at which he or she is the only observer.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-243. Permit required.

(a) It shall be an offense for any person to operate a sexually oriented business without a valid permit, issued by the city for the particular type of sexually oriented business activity conducted.

(1) A person, partnership, firm, association or corporation may not operate a sexually oriented business without a valid permit issued by the city for that particular type of sexually oriented business activity.

(2) An application must be made on a form provided by the city secretary's office. 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 must be drawn to a designated scale with the dimensions of interior walls indicated.

(3) The fact that an applicant possesses other types of state or city permits does not exempt him from the requirement of obtaining a sexually oriented business permit.

(b) The provisions of this article shall apply to existing sexually oriented businesses beginning ninety (90) days after the effective date of Ordinance No. 9903.

(c) Any person, partnership, firm, association or corporation operating or doing business as a sexually oriented business permitted under this article shall include and prominently display their permit number on all printed or written advertising used by said business.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-244. Permit application.

(a) Any person, partnership, firm, association or corporation desiring to obtain a sexually oriented business permit shall apply to the city secretary, who shall refer each application to the chief of police for appropriate investigation.

(b) Each application shall be accompanied by the bond required by this article and a nonrefundable application fee of six hundred fifty dollars (\$650.00) which is required to defray the actual costs of processing said permit application, and which fee reflects the actual cost of

processing the permit application in accordance with Section 243.009 of the Local Government Code. The application fee required by this section and the permit required by this article shall be in addition to any other business permits which may be required by the Code of Ordinances, City of Lubbock. The granting of a permit under this article shall not be deemed evidence or proof that the permit holder has complied with requirements and provisions of any other ordinances.

(c) (1) The permit fee for a sexually oriented business may be adjusted annually commencing October 1, 1996, and each year thereafter, to correspond to the actual cost of providing the applicable services. The base level for said fee shall be the amount of said fee on the date of the passage of Ordinance No. 9903.

(2) On each October 1 thereafter, the finance director of the City of Lubbock may adjust the fees provided for by this Code and such other fees as may be charged by the City of Lubbock in accordance with this section and shall file with the city secretary a list setting forth the adjusted fees.

(3) The list filed with the city secretary as above provided shall be the basis upon which all fees shall be charged except those set by state law or other authority, and such list shall be a public record and open to inspection by the public during all normal business hours of the city.

(d) No portion of any fee collected under this section shall be returned after a permit has been issued or refused. Each permit shall be effective when issued and shall expire one year from the date of issue as shown on the face of the permit.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-245. Permit application contents.

(a) An applicant for a sexually oriented business permit shall file with the city secretary a typed and fully completed application, including all attachments or submissions as may be required. The application shall contain the following information and material:

(1) The date of birth and full legal name, including any and all name(s) by which the person has been known during the last five (5) years, of the applicant and of each person included within the definition of applicant as set forth at section [14-241](#)(a) of this article.

(2) If the applicant is a corporation, the exact corporate name, state of incorporation and principal place of business for the corporation.

(3) The current residence address of the applicant and of each person included within the definition of applicant as set forth at section [14-241](#)(a) of this article.

(4) The applicant's two (2) residence addresses immediately preceding the applicant's present residence address, and the dates of residency at each address.

(5) The street address at which the applicant will conduct the sexually oriented business activity, and the name under which the business will be conducted.

- (6) A description of the sexually oriented business to be operated by the applicant including a description of any service to be provided or a generic description of product to be sold, rented or utilized which qualifies the business as a sexually oriented business.
- (7) The telephone number(s) of the business.
- (8) The legal description of the parcel of land on which the business is to be located. The application shall include legible and complete copies of the recorded record establishing current ownership of the parcel. If the applicant is not the owner of record of the parcel, the application shall include a complete and legible copy of the lease, if any, and such other documentation as may be necessary to show that the applicant has the legal right to occupy and use the premises for the purposes described in the application.
- (9) The date on which the applicant became owner of the business for which a permit is sought, and the date on which the business began operations at the location for which a permit is sought.
- (10) Written proof that the applicant and each person included within the definition of applicant as set forth at section [14-241\(a\)](#) of this article is at least eighteen (18) years of age, or is at least twenty-one (21) years of age when the sale or consumption of alcoholic beverages would be an aspect of the venture.
- (11) The height, weight and color of hair and eyes of the applicant and of each person included within the definition of applicant as set forth at section [14-241\(a\)](#) of this article.
- (12) Two (2) portrait photographs, at least two inches by two inches (2" × 2") in size, taken within six (6) months of the date of the application of the applicant and of each person included within the definition of applicant as set forth at section [14-241\(a\)](#) of this article.
- (13) The employment history of the applicant and of each person included within the definition of applicant as set forth at section [14-241\(a\)](#) of this article, going back five (5) years from the date of application, setting forth the name, telephone number and address for each employer, nature of employment and the dates of employment. A complete and accurate description of previous self employment shall be included.
- (14) All felony and misdemeanor convictions of the applicant and of each person included within the definition of applicant as set forth at section [14-241\(a\)](#) of this article, and the applicant's spouse, involving any of the offenses as described at section [14-247\(c\)\(5\)](#) of this article.
- (15) Complete fingerprints recorded by the Lubbock Police Department of the applicant and of each person included within the definition of applicant as set forth at section [14-241\(a\)](#) of this article.
- (16) The name, including any aliases and stage name by which the person has been known during the last five (5) years, date of birth, current residence address and clear, legible copy of

current photo identification of each person employed or intended to be employed by the applicant in the sexually oriented business.

(17) Such other information and identification as the chief of police may require in order to establish the truth of the matters required to be set forth in the application.

(18) A written statement signed by the applicant and by each person included within the definition of applicant as set forth at section [14-241](#)(a) of this article, stating that: He/she has read all of the provisions of this Code relating to the operation of a sexually oriented business; that he/she has had the opportunity to review the same with such counsel as he/she has deemed desirable and that he/she understands the same; that he/she has a continuing duty to report any change in the status of information submitted in the application as required at L.C.O. 14-246-B [section [14-246.2](#)]; and, that he/she intends to operate a sexually oriented business as defined in and regulated by this Code.

(19) The application shall be signed and verified by the applicant and by each person included within the definition of applicant as set forth at section [14-241](#)(a) of this article.

(20) The name and local address of each individual who will manage, direct, or control the premises and operations of the permitted establishment or venture.

(b) The application shall be signed and verified under oath that the information contained therein, including each attachment or enclosure, is true and correct.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-246. Permit application attachments.

An application for a permit under this article shall include the following attachments:

(a) The application fee required by [14-244](#) of this article.

(b) A surety bond, letter of credit or other approved surety in the amount of five thousand dollars (\$5,000.00). The bond shall be executed and acknowledged by the permit holder as principal and by a corporation licensed to transact fidelity and surety business in the State of Texas as surety. The bond shall be continuous in form and run concurrently with the permit period, and shall be in favor of the city for the benefit of any person injured by any act of the principal or the principals' agent or employee, and shall be subject to claim by any person injured thereby.

(c) A certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act (Texas Revised Civil Statutes Annotated, Business and Commerce Code, Chapter 36) if the applicant is to operate the business under an assumed name.

(d) If applicant is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto.

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

(f) If applicant is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes).

(g) If the applicant is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed in the office of the Secretary of State under the Texas Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes).

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-246.1. Modification of permit.

In the event a lawfully operating sexually oriented business desires to modify its operations by varying the activity, service or products provided from those as approved on the face of the permit, an application for a new permit shall be applied for and the applicant shall not modify the operation to include any sexually oriented business activity not approved on the face of the permit without first securing the new permit as required.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Editors Note: Ord. No. 9903 provided for new provisions designated as §§ 14-246-A and 14-246-B. In order to maintain the numbering style established in the Preface, §§ 14-246-A and 14-246-B have been renumbered 14-246.1 and 14-246.2 respectively, at the editor's discretion.

Sec. 14-246.2. Applicant's/permit holder's continuing duty to provide information.

(a) The applicant/permit holder shall have a continuing duty, during the term of any permit or renewal thereof, to notify the chief of police of any change in the status of any information required to be submitted on the application for permit.

(b) The applicant/permit holder shall have a continuing duty, during the term of any permit or renewal thereof, to notify the chief of police of the hiring of an employee or change of status of an employee within fifteen (15) days of the date of hire or change of status. The notice shall include a legible copy of the employee application form and the employee photo and identification as required at [14-261](#) of this article.

(c) The notices required in this section shall be given in writing, signed by the applicant, and delivered or post marked to the chief of police within thirty (30) days of the change in status, unless otherwise specifically provided for.

(d) The foregoing shall not be construed as affording to the applicant any right not otherwise specifically granted under this article.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Note: See editor's note, § 14-246.1.

Sec. 14-247. Issuance or denial of permit.

(a) The chief of police shall investigate said application and the background of the applicant. At his discretion, the chief of police shall be assisted in his investigation by the building official, environmental inspection services officer, and/or the fire marshal. Within forty-five (45) days after receipt by the city secretary of the fully completed application for permit, including all attachments or submissions as may be required, the chief of police shall report the results of the investigation to the city secretary.

(b) Within forty-five (45) days after receipt by the city secretary of the fully completed application for permit, including all attachments or submissions as may be required, the city secretary shall inform the applicant by certified mail, return receipt requested, as to the approval or denial of said permit.

(c) The city secretary shall issue a permit to the applicant which shall be valid only as to the sexually oriented business activities, services or products described in the application and approved on the face of the permit, unless one or more of the following conditions exists:

(1) The location of the sexually oriented business or enterprise is or would be in violation of [chapter 29](#) of the ordinances of the City of Lubbock, Texas.

(2) The applicant has failed to make full disclosure, or to supply all of the information requested on the application, or the application is otherwise incomplete.

(3) The applicant has provided false, fraudulent or untruthful information on the application, or is attempting to acquire the permit under false pretenses.

(4) The application or the establishment or the venture does not meet one or more of the requirements of this article.

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

a. Involving one or more of the following described offenses or of acts which would constitute one or more of the following offenses if committed in this state:

1. Any of the following offenses as described in Chapter 43 of the Texas Penal Code:

Prostitution;

Promotion of prostitution;

Aggravated promotion of prostitution;

Compelling prostitution;

Obscenity;

Sale, distribution or display of harmful material to a minor;

Sexual performance by a child;

Possession or promotion of child pornography;

2. Any of the following offenses as described in Chapter 21 of the Texas Penal Code:

Public lewdness;

Indecent exposure;

Indecency with a child;

3. Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;

4. Prohibited sexual conduct, enticing a child, or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or

5. Money laundering as described in Chapter 34 of the Texas Penal Code; or

6. Engaging in organized criminal activity as described in Chapter 71 of the Texas Penal Code; or

7. Criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses; and

b. For which:

1. Less than two (2) years have elapsed since the date of the 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;

2. Less than five (5) 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

3. Less than five (5) 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 (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four-month period.

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

d. An applicant who has been convicted or whose spouse has been convicted of an offense listed in this section may qualify for an adult entertainment establishment permit only when the time period required under this section has elapsed.

(6) The correct permit fee has not been tendered to the city and, in the case of a check or bank draft, honored with payment upon presentation.

(7) The structure, configuration or layout of the premises, as proposed by the applicant, if permitted, would not comply with all applicable laws, including, but not limited to, the city building, zoning, fire prevention and protection, and health ordinances and regulations.

(8) The applicant or the applicant's spouse has been convicted of a violation of a provision of this article within two (2) years immediately preceding the date of submission of the application to the city secretary.

(9) The applicant or the manager or any other person principally in charge of the operation of the business, is under eighteen (18) years of age, or is under twenty-one (21) years of age and the sale or consumption of alcoholic beverages would be an aspect of the venture.

(10) The applicant has not demonstrated that the applicant owns, leases or otherwise has or continues to have the lawful right to occupy and use the premises for the purpose stated in the application.

(11) The applicant has been a permit holder, owner or an employee with managerial responsibilities for a sexually oriented business when the permit for such business had been suspended on two (2) or more occasions in any twelve-month period, or had been revoked, within two (2) years preceding the date of the application.

(d) When a permit is issued to the applicant, each person included within the definition of applicant as set forth at section [14-241](#)(a) of this article, shall be considered to be a permit holder.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97; Ord. No. 10055, § 1, 3-12-98)

Sec. 14-248. Inspection.

An applicant or permit holder shall permit representatives of the police department, building inspection department, fire department and environmental inspection services of the city to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time that the premises are occupied by one or more persons.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-249. Expiration of permit.

Each permit shall expire one year from the date of issue as shown on the face of the permit. Application for renewal should be made at least forty-five (45) days before the expiration date.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-250. Suspension.

(a) The chief of police may suspend a permit for a period not to exceed thirty (30) days if he determines that a permit holder or any employee of a permit holder has violated or is not in compliance with section [14-241](#), [14-243\(c\)](#), [14-246.1](#), [14-246.2](#), [14-248](#), [14-253](#), [14-254](#), [14-254.1](#), [14-254.2](#), [14-254.3](#), [14-255](#), [14-256](#), [14-257](#), [14-258](#), [14-259](#), [14-260](#), [14-261](#), [14-262](#) or [14-263](#) of this article; or that a condition exists which would be grounds for denial of an application for permit under [14-247](#) of this article.

(b) The city secretary shall inform the permit holder by certified mail, return receipt requested, of the suspension of a permit and of the permit holder's right to appeal as set forth at [14-252](#) of this article. Written notice of the suspension of a permit shall be posted in a conspicuous place on the business premises.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-251. Revocation.

(a) The chief of police shall have the authority to revoke a permit issued under this article when it is determined that:

(1) The permit has been suspended as provided at [14-250](#) herein and the basis for the suspension has not been satisfactorily corrected or abated for at least five (5) days after notice of the suspension to the permit holder;

(2) A suspension as provided at [14-250](#) herein has occurred and the time for appeal to the permit and license review board has run [out] or a final decision on appeal upholding the suspension has been obtained from the permit and license review board; and, the permit has been previously suspended at least one time in the twelve (12) months preceding the cause for the last suspension;

(3) The permit holder knowingly or with criminal negligence operated, provided or permitted a sexually oriented business activity or entertainment to occur on the premises when such activity was not within the scope of activity approved on the face of a valid permit or during a period of time when the permit was suspended;

(4) The permit holder knowingly or negligently permitted a common nuisance or public nuisance to exist on the premises as defined by the Texas Civil Practices and Remedies Code, sections 125.001 et seq.;

(5) The permit holder knowingly or with criminal negligence participated in or permitted the unlawful possession, use or sale of a controlled substance as defined by the Texas Controlled Substances Act on the premises;

- (6) The permit holder knowingly or with criminal negligence participated in or permitted prostitution, or its solicitation to take place on the premises;
- (7) The permit holder knowingly or with criminal negligence participated in or permitted a gambling offense as defined at Chapter 47 of the Texas Penal Code to take place on the premises;
- (8) The permit holder or its designated managing agent has been convicted, since the permit was issued, of a felony or misdemeanor described at section [14-247\(c\)\(5\)](#) of this article;
- (9) The permit holder or its designated managing agent has knowingly or without making a reasonable effort to determine the true age of a person, allowed a person under eighteen (18) years of age to be employed therein, or under twenty-one (21) years of age to be employed therein and the same or consumption of alcoholic beverages was an aspect of the venture; or
- (10) The permit holder or its designated managing agent has made a false or misleading statement of material fact in the application for the permit required by this article, or has submitted a false, altered or forged record or report required by this article to be submitted, produced, maintained or prepared by the permit holder.
- (b) The city secretary shall inform the permit holder by certified mail, return receipt requested, of the revocation of a permit and of the permit holder's right to appeal as set forth at [14-252](#) of this article. Written notice of the revocation of a permit shall be posted in a conspicuous place on the business premises.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-252. Appeal.

The permit holder whose application for a permit has been denied or whose permit has been suspended or revoked shall have the right of appeal to the permit and license appeal board of the city. The notice of appeal must be in writing, setting forth the specific grounds for the appeal and filed in the office of the city secretary within ten (10) days of the mailing by the city secretary of the notice of denial, suspension or revocation of permit to the permit holder as required by this article. The filing of the notice of appeal stays the suspension or revocation of a permit until the permit and license appeal board issues a decision on the appeal. The decision of the permit and license appeal board shall be final except as otherwise provided by law.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97; Ord. No. 10055, § 2, 3-12-98; Ord. No. 2007-00012, § 1, 1-25-07)

Sec. 14-253. Transfer of permit.

When issued, the permit shall remain the sole property of the city and shall be valid only as to the applicant and location for which it was originally issued. The permit may not be sold or transferred, voluntarily or involuntarily, to any other person or entity. The permit shall not be transferred to a physical location other than the premises described on the face of the permit.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-254. Premises used; access.

- (a) No part of the premises used as a sexually oriented business, other than a sexually oriented motel, shall be used as living quarters or as a residence on a temporary or permanent basis.
- (b) No sexually oriented business shall use an entrance or exit that also provides a direct passageway to any other type of business, residence or living quarters.
- (c) When open for business, all entry and exit doors shall remain unlocked and no obstruction shall be placed so as to prevent or impede ingress or egress.
- (d) The permit holder or individual designated under section [14-245\(20\)](#) shall remain upon the premises and on duty at all times said business is open.
- (e) The permit holder and each person designated under section [14-245\(20\)](#) by the permit holder to manage, direct or control the business, shall remain legally responsible for the conduct of each employee subject to his control.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-254.1. Sexually oriented cabaret or lounge, additional regulations.

- (a) No employee or entertainment personnel shall appear on the premises of a sexually oriented cabaret or sexually oriented lounge while in a state of nudity. Specified sexual activities shall not be permitted in any sexually oriented cabaret or sexually oriented lounge. No customer shall appear nude or semi-nude during any activity within a sexually oriented cabaret or sexually oriented lounge; and no such customer nudity or semi-nudity shall be knowingly permitted by an employee of the venture. It is a defense to prosecution under this section if the person was in a restroom not open to public view or persons of the opposite sex.
- (b) An employee of a sexually oriented cabaret or lounge, while appearing in a state of simulated nudity or semi-nude commits an offense if he or she intentionally or knowingly touches a customer or the clothing of a customer.
- (c) A customer at a sexually oriented cabaret or lounge, commits an offense if he or she knowingly or intentionally touches an employee or the clothing of an employee, when the employee is appearing in a state of simulated nudity or semi-nude.
- (d) A permit holder for a sexually oriented cabaret or lounge commits an offense if he knowingly allows an employee to appear in a state of simulated nudity or semi-nude unless the employee is on a stage (on which no customer is present) at least eighteen (18) inches above the floor, and the employee is:
 - (1) At least six (6) feet from any customer; or

(2) Physically separated from customers by a wall or partition composed of solid glass or light-transmitting plastic, or substantially equivalent material extending from the floor of the stage to at least five (5) feet above the level of the stage.

(e) Except as otherwise herein permitted, it shall be an offense for a permit holder's employee to receive any pay or gratuity from any patron or customer of a sexually oriented cabaret or lounge, or for any patron or customer to pay or give any gratuity directly to any such employee while the employee is in a state of simulated nudity or semi-nude. Such pay or gratuity may be given to the employee in a tip receptacle located at least six (6) feet from the stage on which such employee appears in a state of simulated nudity or semi-nude.

(f) It shall be an offense for a permit holder's employee, while in a state of nudity or semi-nude, to have any physical contact with a patron or customer of a sexually oriented cabaret or lounge on such premises.

(g) It shall be an offense for a patron or customer of a sexually oriented business to have any physical contact with a permit holder's employee while in a state of nudity or semi-nude on the premises. For purposes of this subsection and subsection (f) above, the term "physical contact" is herein defined as the touching of any portion of an individual, including clothing worn by the individual.

(h) A permit holder or operator of a sexually oriented cabaret or lounge commits an offense by failing to prominently display a sign within the premises notifying patrons and customers of the prohibitions contained in subsections (d) through (g) of this section. While the cabaret or lounge is open for business, such permit holder or operator must also prominently and continuously display a two-inch wide glow-in-the-dark line on the floor of the premises marking a distance of six (6) feet from any unenclosed stage on which an employee may appear in a state of simulated nudity or semi-nude.

(Ord. No. 10020, § 1, 10-9-97; Ord. No. 2007-O0012, § 2, 1-25-07)

Sec. 14-254.2. Sexually oriented retail store, bookstore, film or video store, additional regulations.

Specified sexual activities shall not be permitted in any sexually oriented retail store, bookstore, film or video store.

(Ord. No. 10020, § 1, 10-9-97)

Sec. 14-254.3. Sexually oriented encounter center, additional regulations.

No customer shall appear nude or semi-nude during any activity within this establishment. No employee or entertainment personnel shall appear on the premises while in a state of nudity.

(Ord. No. 10020, § 1, 10-9-97)

Sec. 14-255. Sexually oriented motels, additional regulations.

(a) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the business is a sexually oriented 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 permit, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

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

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-256. 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 a sexually oriented motel, which exhibits on the premises in a viewing room a film, video cassette, video reproduction or image which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented business permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises. 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 shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the chief of police or his designee.

(4) The permit holder and operator shall maintain at least one employee on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed

view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. Viewing booths shall be open on at least one side at all times; doors or other means of closure are prohibited. Holes or pass throughs in booth walls are prohibited. No more than one person may be permitted within a viewing booth at one time.

(6) It shall be the duty of the permit holder, and any agent or employee thereof present on the premises, to ensure that the view area specified in subsection (5) remains unobstructed 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 which has been designated as an area to which patrons will not be permitted access in the application. Neither specified sexual activities, nudity or seminudity shall be permitted by the permit holder or any agent or employee thereof, on the premises of the sexually oriented business.

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) footcandle as measured at the floor level.

(8) It shall be the duty of the permit holder, and any agent or employee thereof present on the business premises, to ensure that the illumination described above is maintained at all times when any patron is present in the premises.

(b) A person having a duty under subsections (1) through (8) of subsection (a) above commits an offense if he knowingly or with criminal negligence, fails to fulfill that duty.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-257. Display of sexually explicit materials to minors.

(a) A person commits an offense if in a business establishment open to persons under the age of seventeen (17) years, he 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 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, 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 outside cover on the item is visible to members of the general public.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-258. Additional regulations for escort agencies.

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

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

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-259. Additional regulations for sexually oriented modeling studios.

(a) A sexually oriented modeling studio shall not employ any person under the age of eighteen (18) years.

(b) Specified sexual activities shall not be permitted in any sexually oriented modeling studio.

(c) A person commits an offense if he appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a sexually oriented modeling studio premises which can be viewed from the public right-of-way.

(d) A sexually oriented modeling 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.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-260. Additional regulations for sexually oriented theaters and sexually oriented motion pictures theaters.

Neither specified sexual activities, nudity or seminudity shall be permitted by the permit holder or any agent or employee thereof, on the premises of a sexually oriented theater or sexually oriented motion picture theater.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-261. Required records.

(a) Every sexually oriented business permit holder shall maintain a current list of all employees employed by the business, to include current residence address and date of birth, along with a completed employee application on a form approved by the chief of police, for each employee employed by the permit holder during the term or extended term of a permit. A legible and clear copy of each employee's driver's license, state identification card, or passport, with photo, shall be maintained by the permit holder. The permit holder shall cause these employment records to be updated as necessary to keep them current at all times.

(b) The records required by subsection (a) of this section shall be kept available and open for inspection upon demand by the chief of police or his designated agent(s).

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-262. Display of permit and signs.

(a) A permit issued under this article and a copy of the diagram of the configuration of the premises submitted with the application shall be displayed at all times in an open and conspicuous place on the premises of the business for which it was issued.

(b) The permit holder shall continuously display during all hours of operation a sign posted at or about eye level, at each public entrance to the premises, of at least eighteen (18) inches in height and twenty-four (24) inches in width, with bold lettering of at least one inch in height, clearly visible and legible to all persons provided entry onto the premises, which shall state:

"THIS IS A SEXUALLY ORIENTED BUSINESS ESTABLISHMENT WHICH MAY FEATURE NUDITY OR ACTIVITY OF A SEXUAL NATURE. NO PERSON UNDER THE AGE OF 18 YEARS IS PERMITTED ENTRY OR UNDER 21 YEARS WHEN ALCOHOL IS DISPENSED."

(c) It shall be unlawful for any person to counterfeit, forge, change, deface or alter a permit.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-263. Minimum age requirements.

It shall be unlawful for a permit holder or an agent or employee of a permit holder to allow a person who is younger than eighteen (18) years of age, or under twenty-one (21) years of age if the sale or consumption of alcoholic beverages is an aspect of the venture, to enter the premises of the sexually oriented business.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-264. Notices.

All notices required hereunder shall be in writing and shall be deemed delivered three (3) days after deposited in a United States post office receptacle.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-265. Penalty.

Wherever in this article any act is prohibited or declared to be unlawful, or the doing of any act is required or the failure to do any act is declared to be unlawful, the violation of any such provision of this article is punishable by a fine of not more than two thousand dollars (\$2,000.00). Each day such violation continues shall constitute a separate offense. Revocation of a permit shall not be a defense against prosecution.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97; Ord. No. 10055, § 3, 3-12-98)

Sec. 14-266. Authority to file suit.

In addition to any criminal penalties sought, the city attorney is hereby authorized to file suit to enjoin the violation of any regulation of this article.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Sec. 14-267. Applicability of other laws.

This article shall be cumulative of all other ordinances of the city.

(Ord. No. 9903, § 1, 7-11-96; Ord. No. 10020, § 1, 10-9-97)

Secs. 14-268, 14-269. Reserved.