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DALLAS, TEXASORDINANCE NO. **27139**

An ordinance amending Sections 41A-1, 41A-2, 41A-3, 41A-4, 41A-5, 41A-7, 41A-7.1, 41A-8, 41A-9, 41A-10, 41A-10.1, 41A-10.2, 41A-11, 41A-15, 41A-16, 41A-17, 41A-18.1, and 41A-20 of and adding Section 41A-20.1 to CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended; prohibiting minors from being allowed to enter, perform, or work in a sexually oriented business, with violations subjecting the sexually oriented business to license revocation; requiring a sexually oriented business to name one or more designated operators who must be present at the sexually oriented business during all hours of operation; clarifying duties, responsibilities, and violations relating to operators of a sexually oriented business; requiring designated operators and adult cabaret entertainers to meet the same criminal history qualifications as licensees; enhancing identification record requirements for employees of a sexually oriented business, including the provision of criminal history reports for designated operators and adult cabaret entertainers; prohibiting VIP rooms that are not clearly and completely visible and providing for more open and visible surroundings for adult cabaret entertainment; clarifying notice requirements, appeal procedures, and effective dates relating to the suspension, revocation, or nonrenewal of a sexually oriented business license; defining terms; making certain semantic, grammatical, structural, and conforming changes; providing transitional provisions; providing for a violation of this ordinance to be punishable as a Class A misdemeanor as provided by Section 243.010(b) of the Texas Local Government Code; providing a saving clause; providing a severability clause; and providing an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That Section 41A-1, "Purpose and Intent," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 41A-1. PURPOSE AND INTENT.**

(a) It is the purpose of this chapter to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city; [~~and~~] to establish reasonable and uniform regulations to prevent the continued concentration of sexually oriented businesses within the city; and to minimize the deleterious secondary effects of sexually oriented businesses both inside such businesses and outside in the surrounding communities. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials or performances, including sexually oriented materials and performances. Similarly, it is neither [~~not~~] the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials and performances protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

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

(c) A license, permit, or decal granted under this chapter or under any other city ordinance does not authorize or legalize any conduct, activity, or business that is illegal under state or federal law."

SECTION 2. That Section 41A-2, "Definitions," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 41A-2. DEFINITIONS.**

In this chapter:

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

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

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

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

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

(4) ADULT CABARET means a commercial establishment that regularly features the offering to customers of adult cabaret ~~[live]~~ entertainment, ~~[that:~~

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

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

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

(6) ADULT CABARET ENTERTAINMENT means live entertainment that:

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

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

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

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

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

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

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

(9) ~~(7)~~ APPLICANT means:

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

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

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

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

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

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

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

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

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

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

(15) [(42)] EMPLOYEE means any individual who:

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

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

(16) [(43)] ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

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

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

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

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

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

(D) the relocation of any sexually oriented business.

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

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

(21) [(48)] LICENSEE means:

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

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

(C) each individual who is an officer of a sexually oriented business for which a license has been issued under this chapter, regardless of whether the individual's name or signature appears on the license application;

(D) each individual who has a 20 percent or greater ownership interest in a sexually oriented business for which a license has been issued under this chapter, regardless of whether the individual's name or signature appears on the license application; and

(E) each individual who exercises substantial de facto control over a sexually oriented business for which a license has been issued under this chapter, regardless of whether the individual's name or signature appears on the license application.

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

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

~~[(20) 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.]~~

(24) [(24)] NUDITY or a STATE OF NUDITY means:

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

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

(25) OPERATES OR CAUSES TO BE OPERATED means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

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

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

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

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

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

(31) [(26)] SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency, nude model studio, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

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

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

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

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

(33) [(28)] SPECIFIED ANATOMICAL AREAS means:

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

- (i) any human genitals, pubic region, or pubic hair;
- (ii) any buttock; or
- (iii) any portion of the female breast or breasts that is situated below a point immediately above the top of the areola; or

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

(34) [~~(29)~~] SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

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

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

(C) masturbation, actual or simulated; or

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

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

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

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

(C) for any premises not used as a sexually oriented business on or before August 22, 2001, the date an initial application for a license to use the premises as a sexually oriented business is received by the chief of police designating the floor area of the structure or proposed structure in which the sexually oriented business will be conducted, regardless of any subsequent changes in applicants, licensees, owners, or operators of the premises or the sexually oriented business.



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(36) [(34)] TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

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

(37) VIP ROOM means any separate area, room, booth, cubicle, or other portion of the interior of an adult cabaret (excluding a restroom and excluding an area of which the entire interior is clearly and completely visible from the exterior of the area) to which one or more customers are allowed access or occupancy and other customers are excluded.

SECTION 3. That Section 41A-3, "Classification," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 41A-3. CLASSIFICATION.**

Sexually oriented businesses are classified as follows:

- (1) adult arcades;
- (2) adult bookstores or adult video stores;
- (3) adult cabarets;
- (4) adult motels;
- (5) adult motion picture theaters;
- (6) escort agencies; and
- (7) nude model studios, [~~and~~]"

SECTION 4. That Section 41A-4, "License Required," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

SECTION 5. That Section 41A-5, "Issuance of License," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 41A-5. ISSUANCE OF LICENSE.**

(a) The chief of police shall approve the issuance of a license by the office of financial services, special collections division, [assessor and collector of taxes] to an applicant within 30 days after receipt of an application unless the chief of police finds one or more of the following to be true:

- (1) An applicant is a minor ~~[under 18 years of age]~~.
- (2) An applicant or an applicant's spouse is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.
- (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
- (4) An applicant, ~~[or]~~ an applicant's spouse, or a designated operator has been convicted of a violation of a provision of this chapter within two years immediately preceding the application.
- (5) Any fee required by this chapter has not been paid.

(6) Reserved.

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

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

(A) involving:

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

(aa) prostitution;

(bb) promotion of prostitution;

(cc) aggravated promotion of prostitution;

(dd) compelling prostitution;

(ee) obscenity;

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

(gg) sexual performance by a child; or

(hh) possession of child pornography;

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

(aa) public lewdness;

(bb) indecent exposure; or

(cc) indecency with a child;

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

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

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

(B) for which:

(i) less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

(ii) less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(iii) less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

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

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

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

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

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

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

SECTION 6. That Section 41A-7, "Inspection," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 41A-7. INSPECTION.**

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

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

(c) The provisions of this section do not apply to areas of an adult motel that ~~[which]~~ are currently being rented by a customer for use as a permanent or temporary habitation."

SECTION 7. That Section 41A-7.1, "Identification Records," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

**“SEC. 41A-7.1. IDENTIFICATION RECORDS.**

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

(b) The registration card or file must contain the following information for each employee [~~required to be registered under Subsection (a)~~]:

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

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

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

(8) Date of commencement of employment or contractual relationship with the sexually oriented business [Social security number].

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

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

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

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

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

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

(h) ~~(d)~~ A person who operates a sexually oriented business or the person's agent or employee shall allow immediate access to these records by representatives of the police department."

SECTION 8. That Section 41A-8, "Expiration of License," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 41A-8. EXPIRATION OF LICENSE.**

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

SECTION 9. That Section 41A-9, "Suspension," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:



**“SEC. 41A-9. SUSPENSION.**

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

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

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

(3) knowingly permitted gambling by any person on the sexually oriented business premises.”

SECTION 10. That Section 41A-10, “Revocation,” of CHAPTER 41A, “SEXUALLY ORIENTED BUSINESSES,” of the Dallas City Code, as amended, is amended to read as follows:

**“SEC. 41A-10. REVOCATION.**

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

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

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

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

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

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

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

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

(7) A licensee or an operator [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 Section 21.01, Texas Penal Code.

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

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

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

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

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

(e) When the chief of police revokes a license, the revocation will continue for one year, and the licensee, for one year after the date revocation becomes effective, shall not apply for or be issued a sexually oriented business license for the same location for which the license was revoked [~~for one year after 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 apply for and be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (b)(5), an applicant may not apply for or be granted another license until the appropriate number of years required under Section 41A-5(a)(8)(B) has elapsed."

SECTION 11. That Section 41A-10.1, "Denial, Suspension, Revocation, or Denial of Renewal of a License for Criminal Convictions," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

## “SEC. 41A-10.1.

**DENIAL, SUSPENSION, REVOCATION, OR DENIAL OF  
RENEWAL OF A LICENSE FOR CRIMINAL  
CONVICTIONS.**

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

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

SECTION 12. That Section 41A-10.2, “Surrender of License After Suspension, Revocation, or Denial of Renewal,” of CHAPTER 41A, “SEXUALLY ORIENTED BUSINESSES,” of the Dallas City Code, as amended, is amended to read as follows:

## “SEC. 41A-10.2.

**NOTICE OF DENIAL OF ISSUANCE OR RENEWAL OF  
LICENSE OR SUSPENSION OR REVOCATION OF LICENSE;  
SURRENDER OF LICENSE [AFTER SUSPENSION,  
REVOCATION, OR DENIAL OF RENEWAL].**

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

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

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

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

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

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

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

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

SECTION 13. That Section 41A-11, "Appeal," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 41A-11. APPEAL.**

(a) ~~[If the chief of police denies the issuance or renewal of a license, or suspends or revokes a license, the chief of police shall send to the applicant or licensee, by certified mail, return receipt requested, written notice of the action and the right to an appeal.~~

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

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

(c) The filing of an appeal under this [sub]section stays the action of the chief of police in suspending or revoking a license, or in denying renewal of a license that was valid on the date the application for renewal was submitted, until a final decision is made by the permit and license appeal board. A suspension or revocation of a license, or a denial of renewal of a license that was valid on the date the application for renewal was submitted, that is upheld by the board takes effect at 11:59 p.m. on the 10th day ~~[first midnight that is at least 24 hours]~~ after the board issues its decision.

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

SECTION 14. That Section 41A-15, "Additional Regulations for Escort Agencies," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

**"SEC. 41A-15. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.**

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

~~(b)]~~ A person commits an offense if the person ~~[he]~~ acts as an escort or agrees to act as an escort for a minor ~~[any person under the age of 18 years]."~~

SECTION 15. That Section 41A-16, "Additional Regulations for Nude Model Studios," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

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

(a) Reserved ~~[A nude model studio shall not employ any person under the age of 18 years].~~

(b) A minor ~~[person under the age of 18 years]~~ commits an offense if the minor ~~[he]~~ appears in a state of nudity in or on the premises of a nude model studio. ~~[It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.]~~

(c) A person commits an offense if the person ~~[he]~~ appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises that can be viewed from the public right-of-way.

(d) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

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

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

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

SECTION 16. That Section 41A-17, "Additional Regulations for Adult Motion Picture Theaters," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

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

(a) A person commits an offense if he knowingly allows a minor [~~person under the age of 18 years~~] to appear in a state of nudity in or on the premises of an adult motion picture theater.

(b) A minor [~~person under the age of 18 years~~] commits an offense if the minor [he] knowingly appears in a state of nudity in or on the premises of an adult motion picture theater.

~~[(c) — It is a defense to prosecution under Subsections (a) and (b) of this section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.]"~~

SECTION 17. That Section 41A-18.1, "Additional Regulations for Adult Cabarets," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

SECTION 18. That Section 41A-20, "Display of Sexually Explicit Material to Minors," of CHAPTER 41A, "SEXUALLY ORIENTED BUSINESSES," of the Dallas City Code, as amended, is amended to read as follows:

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

(a) A person commits an offense if, in a business establishment open to minors [~~persons under the age of 17 years~~], the person [~~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 for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

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

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

- (1) it is available to the general public for handling and inspection; or
- (2) the cover or outside packaging on the item is visible to members of the general public.”

SECTION 19. That CHAPTER 41A, “SEXUALLY ORIENTED BUSINESSES,” of the Dallas City Code, as amended, is amended adding new Section 41A-20.1, “Prohibitions against Minors in Sexually Oriented Businesses,” to read as follows:

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

- (a) A licensee or an operator commits an offense if he knowingly:
- (1) allows a minor to enter the interior premises of a sexually oriented business;
  - (2) employs, contracts with, or otherwise engages or allows a minor to perform adult cabaret entertainment; or
  - (3) employs a minor in a sexually oriented business.



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

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

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

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

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

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

SECTION 20. That any licensee of a sexually oriented business holding a valid sexually oriented business license on April 21, 2008 is not required to comply with Sections 41A-4(g), (h), and (i) and Section 41A-7.1(c) of the Dallas City Code, as set forth in this ordinance, until June 21, 2008.

SECTION 21. That a person violating a provision of this ordinance, upon conviction, is punishable as a Class A misdemeanor as provided by Section 243.010(b) of the Texas Local Government Code, as amended. A person violating a provision of this chapter is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted.

SECTION 22. That CHAPTER 41A of the Dallas City Code, as amended, will remain in full force and effect, save and except as amended by this ordinance.

SECTION 23. That the terms and provisions of this ordinance are severable and are governed by Section 1-4 of CHAPTER 1 of the Dallas City Code, as amended.

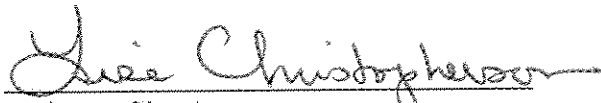
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SECTION 24. That this ordinance will take effect on April 21, 2008, and it is accordingly  
so ordained.

APPROVED AS TO FORM:

THOMAS P. PERKINS, JR., City Attorney

By   
Assistant City Attorney

Passed APR 16 2008

LC/DCC/00434A