

## ORDINANCE NO. 1844

### Chapter 18 Article III. Sexually Oriented Businesses

#### Division 1 Generally

##### Section 18-76 Adoption of Preamble

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

##### Section 18-77 Purpose and Intent

It is the purpose of this Chapter to regulate Sexually Oriented Businesses to promote the health, safety, morals and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the concentration of Sexually Oriented Businesses within the City. The provisions of this Chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this Chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

##### Section 18-78 Findings

Based on evidence concerning the adverse secondary effects of Sexually Oriented Businesses on the community presented in hearings and in reports made available to the Council, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *City of Erie v. Pap's A.M.*, 529 U.S. 277, 120 S. Ct. 1382 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728 (2002); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *LLEH, Inc. v. Wichita County, Texas*, 289 F.3d 358 (5th Cir. 2002); *Mitchell v. Commission on Adult Entertainment*, 10 F.3d 123 (3rd Cir. 1993); *Schultz v. City of Cumberland*, 228 F.3d 831 (7th Cir. 2000); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *2300, Inc. v. City of Arlington*, 888 S.W.2d 123 (Tex. App. – Fort Worth, 1994); *Colacurcio v. City of Kent*, 163 F.3d 545 (9th Cir. 1998), cert denied, 529 U.S. 1053 (2000); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1153 (9th Cir. 2003); *DLS, Inc. v. Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Jake's, Ltd., Inc. v. Coates*, 384 F.3d 884 (8th Cir. 2002); and on studies, reports and/or testimony in other communities including, but not limited to: Phoenix, Arizona; Minneapolis, Minnesota; St. Paul, Minnesota; Houston, Texas; Indianapolis, Indiana; Dallas, Texas; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; Beaumont, Texas; Newport News, Virginia; Bellevue, Washington;

New York, New York; St. Croix County, Wisconsin; Kitsap County, Washington; Los Angeles, California Police Department (dated August 12, 2003); Arlington, Texas, License and Amortization Appeal Board hearings, 2001 and 2002; Arlington Community Health Profile (dated July 2003); a summary of land use studies compiled by the National Law Center for Children and Families; and also on findings from the *Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses* (June 6, 1989, State of Minnesota), and the study entitled *Survey of Texas Appraisers – Secondary Effects of Sexually-Oriented Businesses on Market Values* by Cooper and Kelley and *Crime-Related Secondary Effects – Secondary Effects of “Off-Site” Sexually-Oriented Businesses* by McCleary, June 2008, the Council finds:

1. Sexually Oriented Businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, absent municipal regulation aimed at reducing adverse secondary effects there is no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
2. Certain employees of Sexually Oriented Businesses, defined in this Ordinance as Sexually Oriented Theater, Nude Model Business, Escort Agency, and Sexually Oriented Cabaret, engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
3. Sexual acts, including masturbation, prostitution, sexual contact, and oral and anal sex, occur at Sexually Oriented Businesses, especially those which provide private or semi-private booths or cubicles, or rooms for viewing films, videos, or live sex shows.
4. Offering and providing private or semi-private areas in Sexually Oriented Businesses encourages such sexual activities, which creates unhealthy conditions.
5. Persons frequent certain Sexually Oriented Theaters, Sexually Oriented Arcades, and other Sexually Oriented Businesses for the purpose of engaging in sex within the premises of such Sexually Oriented Businesses.
6. At least 50 communicable diseases may be spread by activities occurring in Sexually Oriented Businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
7. Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS (acquired immunodeficiency syndrome) caused by the human immunodeficiency virus (HIV) in the United States: 600 in 1982; 2,200 in 1983; 4,600 in 1984; 8,555 in 1985, and 253,448 through December 31, 1992.
8. As of December 31, 2001, there have been 57,199 reported cases of AIDS in the State of Texas.

9. Since the early 1980s and to the present, there has been an increasing cumulative number of persons testing positive for the HIV antibody test in Tarrant County, Texas and across the State of Texas.
10. The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982, and 45,200 through November, 1990. According to Texas Department of Health records there were 1,175 cases of early syphilis reported in the State of Texas during 2000 and an additional 972 cases reported in 2001.
11. The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990. Again, according to Texas Department of Health records there were 32,895 cases of gonorrhea reported in the State of Texas during 2000 and an additional 30,116 cases reported in 2001. During the same time period there were also 138,692 cases of Chlamydia reported in the State of Texas. [Arlington Community Health Profile (dated July 2003)]
12. In his report of October 22, 1986, the Surgeon General of the United States has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
13. According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
14. Sanitary conditions in some Sexually Oriented Businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
15. Numerous studies and reports have determined that semen is found in the areas of Sexually Oriented Businesses where persons view "sexually oriented" films.
16. Sexually Oriented Businesses have operational characteristics which should be reasonably regulated in order to protect substantial governmental concerns.
17. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the Sexually Oriented Businesses. Further, such a licensing procedure will place an incentive on the operators to see that the Sexually Oriented Business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the Sexually Oriented Business, fully in possession and control of the premises and activities occurring therein.

18. Removal of doors on booths and requiring sufficient lighting on premises with booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in Sexually Oriented Theaters.
19. Requiring licensees of Sexually Oriented Businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
20. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the Sexually Oriented Business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.
21. In the prevention of the spread of communicable diseases, it is desirable to obtain a limited amount of information regarding certain employees who may engage in the conduct that this Ordinance is designed to prevent, or who are likely to be witnesses to such conduct.
22. The fact that an applicant for a Sexually Oriented Business license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this Ordinance. There is a correlation between Sexually Oriented Businesses, specifically their hours of operation and the type of people which such businesses attract, and higher crime rates. [*Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002)].
23. The barring of such individuals from the management of Sexually Oriented Businesses for a period of years serves as a deterrent to, and prevents conduct which leads to, the transmission of sexually transmitted diseases.
24. It is reasonably believed that to better protect the public health, safety, and welfare, it is necessary to adopt additional amendments to this chapter.
25. It is reasonably believed that to prevent the exploitation of a loophole in the Ordinance (which would have permitted such businesses to avoid the location restrictions), partially nude performances in such businesses are also included within the purview of the regulations, since they have the same harmful secondary effects on the surrounding community as Sexually Oriented Businesses currently regulated under the Ordinance. [*Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002)].
26. There is no Constitutional right for Sexually Oriented Business employees in a state of nudity to touch customers. [*Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995)]

27. One court has characterized the acts of Sexually Oriented Business employees in a state of nudity and being paid to touch or be touched by customers as prostitution. [*People v. Hill*, 2002 Ill. App. LEXIS 792 (Ill. App. 2 Dist. Sep. 4, 2002); See also, Tex. Penal Code Sections 43.01 ("sexual conduct" and "sexual contact") and 43.02 ("prostitution")].
28. Attempts by the City of Arlington to require Sexually Oriented Businesses to advise customers and employees in a state of nudity to refrain from intentionally touching and fondling each other through signage posted at the business entrance have not been effective.
29. Sexually Oriented Businesses have not complied with the "no touch" provisions, but have flagrantly disregarded them and/or encouraged employees and customers to violate the "no touch" provision.
30. Provocative touching between customers and employees in a Sexually Oriented Business where at least one is in a state of nudity frequently leads to the commission of sex crimes, illegal drug use, and increased health risks due to sexually transmitted diseases.
31. Compelling signage at the entrances of Sexually Oriented Businesses has not been effective in halting "no touch" violations.
32. The City of Arlington has had to expend considerable law enforcement resources to enforce the "no touch" provisions.
33. The City Council reasonably believes that requiring employees in a state of nudity to be physically separated from customers by the use of elevated stages and buffer zones is necessary to better ensure ordinance compliance while still not inhibiting constitutionally protected expressive conduct or speech. [*LLEH, Inc. v. Wichita County, Texas*, 289 F.3d 358 (5th Cir. 2002)]
34. The City Council reasonably believes that sexual activity occurring in private viewing booths at sexually oriented businesses leads to unhealthy and unsanitary conditions and to the transmission of sexually transmitted and other communicable diseases. [*Matney v. County of Kenosha*, 86 F.3d 692, 695 (7th Cir. 1996)]
35. The City Council reasonably believes that certain negative secondary effects, including prostitution, drug trafficking and assaultive offenses are associated with nude or semi-nude dancing in environments where alcohol is served or allowed. [*J.L. Spoons, Inc. v. Dragani*, 538 F.3d 379, 382 (6th Cir. 2008)]
36. The City Council reasonably believes that the licensing and permit requirements imposed on Sexually Oriented Businesses that offer on-site entertainment comport with the *prompt judicial review* and *preservation of the status quo* requirements enunciated by the United States Supreme Court, and thus do not constitute an unconstitutional prior

restraint. [*Richland Bookmart, Inc. v. Knox County, Tenn.*, 2009 FED App. 0052P (6th Cir. 2009)]

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

38. The City Council reasonably believes that video monitoring the parking lots of Sexually Oriented Businesses will deter individuals from engaging in criminal and sexual activity in the area being monitored and retaining recordings will assist law enforcement in criminal investigations should any crimes be committed in the area.

39. The City Council finds that pursuant to "The Airport Zoning Act," Chapter 241, Texas Local Government Code, that the City of Euless has no authority to exercise land use regulatory authority over land within its corporate city limits defined as an "airport" by the Act.

40. It is reasonably believed by the City Council that the general welfare, health, and safety of the citizens of the City will be promoted by the enactment of this Ordinance.

41. It is reasonably believed by the City Council that adequate sites are reasonably available for Sexually Oriented Businesses that meet licensing and otherwise applicable requirements to locate and operate in the City of Euless.

42. The findings noted in Subsections (1) through (40) raise substantial governmental concerns.

## **Sec 18-79 DEFINITIONS**

In this chapter:

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

**ADULT ARCADE** means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, 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 regularly depicting or describing "specified sexual activities" or "specified anatomical areas."

**ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE** means a commercial establishment for which the regular 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 constitutes twenty-five percent (25%) or more of the items in inventory and/or floor space of the Sexually Oriented Business, including:

(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," but not including items used for birth control or for the prevention of sexually transmitted diseases.

ADULT CABARET means a commercial establishment that regularly features the offering to customers of 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."

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 regular 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 sub-rent the room for a period of time that is less than 10 hours.

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."

APPLICANT means:

(A) a person or entity 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 18-81;

(C) each individual who is an officer of a Sexually Oriented Business for which a license application is made under Section 18-81, 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 18-81, regardless of whether the individual's name or signature appears on the application.

CHIEF OF POLICE means the chief of police of the City of Euless or the chief's designated agent.

CHILD-CARE FACILITY means a facility licensed by the State of Texas, whether situated within the City or not, that provides care, training, education, custody treatment or supervision for more than six (6) children under fourteen (14) years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

CHURCH means a building, whether situated within the City or not, in which persons regularly assemble for religious worship and said building is intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

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.

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.

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.

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.

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.

HEARING OFFICER shall mean the City Manager, or his or her designee. The "Hearing Officer" shall exercise those powers authorized under the Texas Local Government Code, the Charter of the City of Euless, and the Code of Ordinances of the City of Euless, as appropriate in the furtherance of his or her duties.

HOSPITAL means a facility or area for providing health services primarily for human in-patient medical or surgical care for the sick or injured and including related facilities such as laboratories, out-patient departments, training facilities, central services facilities, and staff offices that are an integral part of the facilities.

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.

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; however, nude modeling at or on behalf of any properly accredited institution of higher learning shall not fall within this definition

NUDITY or a STATE OF NUDITY means a state of dress which fails to fully and opaquely cover the; anus, genitals, pubic region, or perineum anal region, or the exposure of any device, costume or covering that gives the realistic appearance of or simulates the anus, genitals, pubic region, or perineum anal region, regardless of whether the nipple and areola of the human female breast are exposed.

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.

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

PUBLIC PARK means any city park defined by Chapter 54 of the Eules Code of Ordinances.

RESIDENTIAL DISTRICT means a single family, duplex, townhouse, multiple family, or mobile home zoning district as defined in Chapter 84 of the Eules Code of Ordinances.

RESIDENTIAL USE means a single family, duplex, multiple family, or "mobile home park, mobile home subdivision, and campground" use as defined in Chapter 84 of the Eules Code of Ordinances.

SEMI-NUDE or SEMI-NUDITY or STATE OF SEMI-NUDITY means the exposure of the post puberty female nipple or areola, or the exposure of any device, costume or covering that gives the realistic appearance of or simulates the post puberty female nipple or areola, so long as the following anatomical areas of an individual are fully and opaquely covered: the anus, genitals, pubic region and the perineum anal region of the human body. The term "semi-nude" shall not apply to an individual exposing a post puberty female nipple or areola in the process of breastfeeding a child under that person's care.

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 for which the regular 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 constitutes twenty-five percent (25%) or more of the items in inventory and/or floor space of the Sexually Oriented Business. The term shall also mean any commercial enterprise that self-identifies as an adult arcade, adult bookstore, adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency or nude model studio, regardless of whether the percentage of items in inventory and/or floor space constitute twenty-five percent (25%) or more of the total items in inventory and/or floor space.

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.

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.

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.

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.

## **SEC. 18-80 CLASSIFICATION**

Sexually Oriented Businesses are classified as follows:

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

## **Division 2**

### **LICENSE FOR SEXUALLY ORIENTED BUSINESS**

#### **SEC 18-81 License Required**

A. A person commits an offense if the person operates or causes to operate a Sexually Oriented Business without a valid license, issued by the City for the particular classification of Sexually Oriented Business.

- B. Any person, association, firm, partnership or corporation desiring to obtain a Sexually Oriented Business license shall make application on a form provided by the Chief of Police. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6").
- C. The applicant must be qualified according to the provisions of this article.
- D. An individual person who wishes to operate a Sexually Oriented Business must sign the application for a license as applicant. If a person who wishes to operate a Sexually Oriented Business is other than an individual, each individual who has a twenty percent (20%) or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 18-81, and each applicant shall be considered a licensee if a license is granted.
- E. The fact that a person possesses other types of State or City permits does not exempt that person from the requirement of obtaining a license for a Sexually Oriented Business.
- F. All applications for a license under this article shall be accompanied by a nonrefundable application fee. The fees shall follow the schedule set forth in Chapter 30 of the Euless Municipal Ordinance. An application shall not be considered to have been received as administratively complete until the fee is paid and all information required by the application form has been submitted. The application fee shall not be prorated in the event an application is tendered before or during the licensing period.
- G. Upon approval of a Sexually Oriented Business license, an applicant for a Sexually Oriented Business license must obtain a Certificate of Occupancy for a Sexually Oriented Business from the Building Official. The Building Official shall issue or deny a Certificate of Occupancy to a Sexually Oriented Business not more than forty five (45) business days subsequent to the date of the applicant's submission of such application for a Certificate of Occupancy to the City's Office of Building Inspections. Such application for a Certificate of Occupancy shall be deemed approved if not approved or denied within such time period.
- H. Upon approval of a Sexually Oriented Business license, if an applicant for a Sexually Oriented Business requires a building permit under applicable city ordinances, the Building Official shall cause all building, fire, health and other necessary permits to be issued within thirty (30) business days subsequent to the date of the applicant's submission of an application for said permit to the City's Office of Building Inspections. Upon receipt of administratively complete application(s), the Building Official shall cause all necessary inspections to occur within three (3) business days of the applicant's request for an inspection made to the Building Official. Such application(s) shall be deemed approved if not approved or denied within such time period. The applicant must specify on the face of its application that the proposed use is for a Sexually Oriented

Business and give the name and address of the applicant's contact person for all communications and notices.

I. Notwithstanding any other ordinance, an applicant for a Sexually Oriented Business may appeal any decision of the Building Official by appealing to the Zoning Board of Adjustment within thirty (30) calendar days after receipt of notice of decision or the expiration of the deadlines set forth in (G) or (H) above. The applicant may appeal any decision of the Zoning Board of Adjustment to the appropriate county court at law within thirty (30) calendar days of that decision. The filing of such suit will have the effect of staying denial of such building permit or Certificate of Occupancy pending a judicial determination. A provisional permit or certificate shall be granted upon the filing of a court action to appeal the denial of such permit or certificate. The provisional permit or certificate will expire upon entry of judgment on such appeal.

J. A licensee or operator commits an offense if the licensee or operator fails to display a legible copy of the complete provisional permit or certificate described in Subsection 18-81 (I), if applicable, on the exterior of the Sexually Oriented Business premises. Such copy of the provisional permit or certificate must be prominently and continuously displayed where customers enter the premises and immediately adjacent to such entrances.

K. This section shall not apply to ADULT BOOKSTORES, ADULT NOVELTY STORES and ADULT VIDEO STORES, as those terms are defined herein.

#### **SEC. 18-82 License Issuance and Grounds for Denial**

A. The Chief of Police shall approve the issuance of a license to an applicant within thirty (30) days after receipt of an application, unless the Chief of Police finds one (1) or more of the following to be true:

1. The location of the Sexually Oriented Business is or would be in violation of Article III of this Chapter.
2. The applicant failed to supply all of the information requested on the application.
3. The applicant gave false, fraudulent or untruthful information on the application.
4. An applicant is under eighteen (18) years of age.
5. An applicant or an applicant's spouse is overdue in payment to the Texas Secretary of State or 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.
6. An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation or community supervision for a violation of a provision of this

Chapter, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

7. The license fee required by this Article has not been paid.

8. The applicant has not demonstrated that the owner of the Sexually Oriented Business owns or holds a lease for the property or the applicable portion thereof upon which the Sexually Oriented Business will be situated or has a legally enforceable right to acquire the same.

9. An applicant or the proposed establishment is in violation of or is not in compliance with Sections 18-83 or 18-90, 18-112(H), 18-114(A)(1), 18-114(A)(5), 18-115(A)(1), or 18-115(A)(5), as applicable.

10. An applicant or an applicant's spouse has been convicted or placed on deferred disposition, probation, or community supervision for:

a. Any offense under the laws of the United States of America, another state or the Uniform Code of Military Justice for an offense described in this Section 18-82 (A)(10); or

b. Any of the below offenses of the State of Texas or criminal attempt, conspiracy, or solicitation to commit same:

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

- (a) Prostitution;
- (b) Promotion of prostitution;
- (c) Aggravated promotion of prostitution;
- (d) Compelling prostitution;
- (e) Obscenity;
- (f) Sale, distribution or display of harmful material to a minor;
- (g) Sexual performance by a child;
- (h) Possession of child pornography;

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

- (a) Public lewdness;
- (b) Indecent exposure;
- (c) Indecency with a child;
- (3) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
- (4) Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or
- (5) Those crimes defined as “drug-defined offenses” or “drug-related offenses” by the Bureau of Justice Statistics Drug & Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Section 12.04 of the Texas Penal Code;

c. For which:

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

(2) Less than five (5) years have elapsed since the date of conviction, or the date of release from the terms of community supervision, probation, parole or deferred disposition or the date of release from confinement for the conviction, whichever is the later date, if the conviction is 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 (24) month period.

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

12. The applicant failed to comply with any of the requirements of Section 243.0075 of the Texas Local Government Code regarding the posting of an outdoor sign.

B. An applicant, or applicant’s spouse, who has been convicted of or placed on deferred disposition, probation or community supervision for an offense listed in Section 18-82(A)(10) may qualify for a Sexually Oriented Business license only when the time period required by Section 18-82(A)(10)(c) has elapsed.

C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date and the address of the Sexually Oriented Business.

D. The license shall be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business, so that it is visible to the public at all times and may be easily read.

**SEC. 18-83 Inspection and Maintenance of Records**

A. A licensee, operator or employee of a Sexually Oriented Business shall be subject to regulation under this Chapter and shall permit representatives of the Police Department, Health Department, Fire Department, Building Inspections Division and Code Enforcement Division to inspect all portions of the premises where customers are allowed and the records required to be maintained under this Chapter by the Sexually Oriented Business for the purpose of ensuring compliance with this Chapter at any time it is occupied or open for business.

B. A licensee or operator of a Sexually Oriented Business commits an offense if the person operates the establishment without maintaining a current list of all employees of the business, along with a complete updated employment application for each employee. A legible copy of a valid driver's license, state identification card, or passport, with a photograph, together with an original photograph accurately depicting the employee as the person appears at the time the person is hired, shall be required and maintained on the premises with the employee's application.

C. A licensee or operator of a Sexually Oriented Business commits an offense if the person refuses to permit a lawful inspection of the records and premises by a representative of the Police Department at any time the Sexually Oriented Business is occupied or open for business.

D. The licensee or operator of a Sexually Oriented Business shall maintain all records required to be maintained under the provisions of this Chapter on the licensed premises.

E. The licensee or operator of a Sexually Oriented Business commits an offense if the person does not maintain the required records on the premises of the licensed establishment.

F. A licensee, operator or employee of a Sexually Oriented Business shall permit representatives of the Police Department to take photographs of the licensee, operator or employees of the Sexually Oriented Business for the purpose of ensuring compliance with this Chapter at any time it is occupied or open for business.

G. A licensee, operator or employee of a Sexually Oriented Business commits an offense if that person does not permit representatives of the Police Department to take photographs of the licensee, operator or employee of the Sexually Oriented Business at any time it is occupied or open for business.

H. The provisions of this section do not apply to areas of a Sexually Oriented Motel which are currently being rented by a customer for use as a permanent or temporary habitation.

**SEC. 18-84 Expiration and Renewal of License**

A. Each license shall expire one year after the date of issuance.

B. Renewal of a license may be applied for by submission to the Chief of Police of an application on the form prescribed by such official and payment of a nonrefundable renewal processing fee of Five Hundred Dollars (\$500).

C. Application for renewal shall be made at least thirty (30) days before the expiration date of the current license.

**SEC. 18-85 Suspension**

A. Subject to Section 18-85(B), the Chief of Police shall suspend a Sexually Oriented Business license if the Chief of Police determines that a licensee(s), operator(s) or employee(s) of a licensee (or any combination thereof) has/have:

1. (a) On five (5) or more occasions within any twelve (12) month period of time been cited for a violation of Sections 18-120, 18-122, 18-123 or any of the provisions of Division 3 or 4 of this Chapter; (b) been convicted or placed on deferred disposition or probation for the violations; and (c) the Chief of Police determines that notice of the citations has been sent to the licensee in accordance with Section 18-131 of this Chapter; or

2. (a) On five (5) or more occasions within any twelve (12) month period of time been cited for a violation of Section 18-83 of this Chapter; (b) been convicted or placed on deferred disposition or probation for the violations; and (c) the Chief of Police determines that notice of the citations has been sent to the licensee in accordance with Section 18-131 of this Chapter; or

3. (a) Cited for any combination of offenses under subsections (1) or (2) above that total five (5) within any twelve (12) month period of time; (b) convicted or placed on deferred disposition or probation for the violations; and (c) the Chief of Police determines that notice of the citations has been sent to the licensee in accordance with Section 18-131 of this Chapter.

B. A period of suspension will begin the first day after the decision of the Chief of Police becomes final as provided in Section 18-86, unless the licensee appeals to district court under Section 18-89. If appeal is taken under Section 18-89, the period of suspension begins the day after all appeals are final.

C. Each day in which a violation is permitted to continue shall constitute a separate violation for purposes of suspension.

**SEC. 18-86 Grounds for Revocation**

A. The Chief of Police may revoke a Sexually Oriented Business license:

1. If a cause of suspension in Section 18-85 occurs and the license has been ordered suspended by the Chief of Police for a thirty (30) day period pursuant to Section 18-85(B)(4) within the preceding year; or

2. If the Chief of Police determines that on two or more occasions within a five (5) year period of time a licensee(s) or operator(s) (or any combination thereof) has/have been convicted of or placed on deferred disposition, probation or community supervision for conduct occurring in a licensing period on the premises of a Sexually Oriented Business that constitutes any of the offenses of the State of Texas or criminal attempt, conspiracy, or solicitation to commit same for:

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

- (1) Prostitution;
- (2) Promotion of prostitution;
- (3) Aggravated promotion of prostitution;
- (4) Compelling prostitution;
- (5) Obscenity;
- (6) Sale, distribution or display of harmful material to a minor;
- (7) Sexual performance by a child;
- (8) Possession of child pornography;

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

- (1) Public lewdness;
- (2) Indecent exposure;
- (3) Indecency with a child;

- c. Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
  - d. Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or
  - e. Those crimes defined as “drug-defined offenses” or “drug-related offenses” by the Bureau of Justice Statistics Drug & Crime Data Fact Sheet, 1994, for which punishment would be classified as a felony as set forth in Section 12.04 of the Texas Penal Code.
- 3. If a licensee or operator gave false or misleading information in the material submitted to the Chief of Police during the application process;
  - 4. If a licensee or operator has knowingly allowed possession, use or sale of a controlled substance on the premises;
  - 5. If a licensee or operator has on two (2) or more occasions knowingly allowed prostitution on the premises;
  - 6. If a licensee or operator knowingly operated the Sexually Oriented Business during a period of time when the licensee's license was suspended;
  - 7. If a licensee or operator has, on two (2) or more occasions, knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code;
  - 8. If 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. If the licensee is required to register as a sex offender under the provisions of Chapter 62 of the Texas Code of Criminal Procedure.
  - 10. If a license is transferred in violation of Section 18-90(A).
- B. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- C. Section 18-86(A)(7) does not apply to Sexually Oriented 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.

**SEC. 18-87 Denial, Suspension and Revocation Procedures**

A. A denial, suspension, or revocation is an administrative procedure. In any hearing relating to such actions under this Section, the burden of proof shall be on the City (except for affirmative defenses), and shall be by a preponderance of the evidence.

B. If the Chief of Police is authorized to deny the issuance of a license, or suspend or revoke a license, the Chief of Police shall give written Notice to the applicant or licensee of his intent to implement denial, suspension, or revocation procedures.

1. The notice shall state the reason for such denial, suspension, or revocation.
2. The provisions of the code which have been violated.
3. The person or office with which any request for contested case hearing must be filed and the address at which any such request must be filed.

C. The notice shall provide that the denial of issuance, suspension or revocation shall take effect at the expiration of the tenth calendar day after notification, unless the licensee or permit holder provides a written request for hearing to the Chief of Police before the expiration of the tenth calendar day.

D. If a written request for hearing from the applicant, permit holder, or licensee is received by the Chief of Police before the expiration of the tenth calendar day, the suspension, denial of issuance, or revocation will be stayed pending a hearing and a decision by the Hearing Officer.

E. In making a determination as to the denial of a license, the Chief of Police shall consider whether the applicant has established the applicant's entitlement to a license under the requirements imposed by Section 18-82 of this Chapter and/or whether the City has established a disqualifying factor under the requirements imposed by Section 18-82 of this Chapter.

F. In making a determination of the suspension of a license under Section 18-85 of this Chapter, the Chief of Police shall consider: (1) whether the required number of citations under Section 18-85(A)(1), (2), or (3) were issued to the licensee, operator, or employee of the licensee within a twelve (12) month period of time; (2) whether notice of such citations was sent to the proper Sexually Oriented Business in compliance with Section 18-131 of this Chapter; (3) whether the licensee, operator, or employee of the licensee was convicted or placed on deferred disposition or probation for the citations.

G. In making a determination of the revocation of a license under Section 18-86(A)(1) of this Chapter, the Chief of Police shall consider: (1) whether the required number of citations under Section 18-85(A)(1), (2), or (3) were issued to the licensee, operator, or employee of the licensee within a twelve (12) month period of time; (2) whether notice of such citations was sent to the proper Sexually Oriented Business in compliance with Section 18-131 of this Chapter; (3) whether the licensee, operator, or

employee of the licensee was convicted or placed on deferred disposition or probation for the citations; and (4) whether the license at issue has been ordered suspended for a thirty (30) day period of time pursuant to Section 18-88(B)(4) of this Chapter within the preceding twelve (12) month period of time.

H. In making a determination of the revocation of a license under Sections 18-86(A)(2)-(10) of this Chapter, the Chief of Police shall consider whether the evidence shows that the specified convictions, events, or actions occurred as set forth in those sections of this Chapter.

**SEC. 18-88 Period of Suspension or Revocation**

A. The revocation of a license as provided for in Section 18-86 of this Chapter shall be for a period of twelve (12) months.

B. The suspension of a license as provided for in Section 18-85 of this Chapter shall be as follows:

1. The first suspension of a license shall be for a period of three (3) calendar days. When the Chief of Police is authorized to suspend a license for three (3) days, he shall notify the licensee in the notice of decision of the licensee's opportunity to pay a reinstatement fee in the amount of \$500.00 in lieu of the suspension. Payment of this administrative fee shall be considered, for the purposes of this Subsection, the first suspension and an administrative admission of the violations. However, this shall not be used as an admission of guilt in a criminal prosecution under this Chapter. If the licensee does not pay the reinstatement fee before the expiration of the thirtieth (30<sup>th</sup>) calendar day after notification, the licensee loses the opportunity to pay it.

2. The second suspension of a license shall be for a period of seven (7) calendar days.

3. The third suspension of a license shall be for a period of fifteen (15) calendar days.

4. The fourth suspension of a license shall be for a period of thirty (30) calendar days. Except where grounds for revocation of a license exist under Section 18-86(A)(1), each subsequent suspension of a license shall be for a period of thirty (30) calendar days.

**SEC. 18-89 Administrative Hearing and Appeals**

A. The applicant or licensee shall have ten (10) calendar days from the date notice is received, to request a hearing on the denial, suspension or revocation. The request shall be in writing and delivered via personal delivery, or via U.S. Postal Service, Certified Mail, Return Receipt Requested. If filed by mail, the request shall be considered timely filed if the green return receipt card shows the item was properly addressed and received by the addressee on or before the tenth calendar day from the date the permit holder,

licensee, or applicant received Notice of Intention to Revoke/ Suspend. Upon receipt of the request for hearing, a hearing before the Hearing Officer shall be scheduled to take place within thirty (30) calendar days unless both parties agree to a certain date beyond the thirty days. The Hearing Officer shall consider only the testimony and evidence admitted for consideration at the hearing. The Hearing Officer shall have five (5) business days from the date of the hearing to notify the applicant or licensee of the decision.

1. Standing:

a. Only the Chief of Police and the licensee, permit holder, or applicant shall have standing in an administrative revocation, suspension, or denial proceeding.

2. Representation by Counsel

a. Each party is entitled to:

(1) The assistance of counsel, at the party's expense, before the Hearing officer; or

(2) Expressly waive the right to assistance of counsel in writing or on the record before the Hearing Officer

3. Status of Permit During Hearing

a. While a case is pending, and prior to the final decision of the Hearing Officer regarding revocation or suspension, a permit remains valid unless:

(1) It expires without timely application for renewal;

(2) It is voluntarily withdrawn or surrendered by the permit holder;  
or

(3) The permit holder commits an act or omission contrary to the provisions of this Article which otherwise invalidates the permit.

(4) This shall not apply during any judicial appeal following the decision of the hearing officer.

4. Applicable Rules:

a. Except as otherwise indicated herein, the Texas Rules of Evidence and the Texas Rules of Civil Procedure shall apply to a hearing.

5. The following additional rules shall apply to any hearing pursuant to this Article:

- a. The City Attorney, or his designated representative shall represent the Chief of Police.
- b. Except upon express written agreement of all parties to the hearing, or upon showing of good cause for a period not to exceed twenty days, a hearing will not be continued.
- c. *Ex parte* communications in connection with any issue of fact or law between any party and the Hearing Officer are strictly prohibited, except on notice and opportunity for each party to participate.
- d. A party may request a court reporter to transcribe the hearing. The party requesting a transcript of the hearing shall bear the cost for production of the transcript.
- e. If there be any conflict between the Texas Rules of Evidence and the Texas Rules of Civil Procedure and the rules set forth in this Article, this Article shall prevail.

6. Record—The hearing record shall include the following:

- a. a File Stamped Copy of Notice of Intention to Revoke/ Suspend Permit;
- b. the request for a hearing and any written response to the Notice of Intention to Revoke/ Suspend Permit or License;
- c. a statement of matters officially noticed;
- d. questions and offers of proof, objections, and ruling on them;
- e. each decision, opinion, or report prepared by the Hearing Officer at the hearing;
- f. all documents, data, and other evidence submitted to or considered by the Hearing Officer used in making his or her decision; and,
- g. the record shall be filed with the Municipal Court for the City of Euless.

7. Decision of the Hearing Officer

- a. If a request for a hearing has been timely filed, the Hearing Officer shall conduct a de novo hearing and shall make one of the following findings:

(1) If the hearing is one for which the permit or license is subject to suspension, the Hearing Officer's determination that the alleged offense occurred and the severity of the offense, either order a suspension pursuant to the time periods in Section 18-88; or deny the suspension.

(2) If the Hearing Officer finds that any of the condition set forth in this Article exists that would make the permit or license subject to revocation, the Hearing Officer shall, on the basis of the severity of the offense, either: revoke the permit or license, or order a suspension pursuant to Section 18-88.

b. If the Hearing Officer does not make the requisite findings, then the permit or revocation or suspension is deemed as being denied.

#### 8. Notice of Revocation/ Suspension

a. A final decision or order by the Hearing Officer shall be issued in writing, and shall:

(1) include findings of fact and conclusions of law, separately stated;

(2) contain a concise and explicit statement of the underlying facts supporting the findings;

(3) if a party submits proposed finding of fact, the decision or order shall include a ruling on each proposed finding;

(4) be rendered not later than five business days after the date on which the hearing is finally closed;

(5) be provided to all parties via personal delivery or via United States Postal Service, Certified Mail, Return Receipt Requested; and,

(6) be considered timely if:

(a) for personal delivery, a party receives notice not later than three business days from the date on which the decision is rendered; or,

(b) for postal delivery, the decision or order is postmarked not later than three business days from the date on which the decision is rendered.

b. The decision by the Hearing Officer is effective thirty (30) calendar days after the applicant or licensee is notified of the decision, unless a reinstatement fee under Section 18-88(B)(1) of this Chapter is paid (if available), or an appeal is made to District Court.

c. Following a final decision, any revocation or suspension of the permit in question shall take effect upon the date of delivery of the notice of the Hearing Officer's decision or such other date as may be set by the Hearing Officer and stated in the notice.

d. Any act authorized by permit shall be unauthorized and in violation of this Article upon and after the effective date of any suspension of the permit until the suspension expires.

e. Any act authorized by a permit shall be unauthorized and in violation of this Article upon and after the effective date of any revocation of the permit unless and until a new permit, if any, is applied for and granted pursuant to the terms of this Article. If a permit has been revoked because of crimes or activities occurring on the premises of a Sexually Oriented Business, the owner/ operator of the Sexually Oriented Business is disqualified from receiving or holding any permit under this Article for a period of one calendar year from the effective date of the revocation.

f. If a permit is suspended or revoked because of crimes or activities occurring on the premises of a Sexually Oriented Business, each and every individual, person, or association which is an owner/ operator of a Sexually Oriented Business at the time of any suspension or revocation of the sexually oriented business for that establishment shall be considered to have had a permit suspended or revoked as if they held the permit or license in their own name for purposes of determining whether they are qualified to participate in another permit application under this Article. If a permit is suspended or revoked because of crimes or activities of one or more of the permit holders which did not occur on the licenses premise, then only the individual(s) shall be considered to have had a permit suspended or revoked for purposes of determining whether they are eligible to participate in another permit application under this Article.

B. Upon receipt of written notice of the denial, suspension or revocation of a license, the applicant whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal by filing suit in the appropriate district court within thirty (30) calendar days after the receipt of notice of the decision of the Hearing Officer, as applicable. The filing of such suit shall have the effect of staying denial, suspension or revocation for the Sexually Oriented Business licensed under this Chapter at such location, pending a judicial determination of the appeal. The City shall grant a provisional license upon the filing of a court action to appeal the denial of a Sexually Oriented Business license if the applicant is not currently licensed for such

business at the subject location; provided, however, a provisional license shall not be issued under the following circumstances: (a) the location of the proposed Sexually Oriented Business is or would be in violation of Division 8 of this Chapter; (b) the duration of the provisional license would coincide with any period of license suspension or revocation set forth in Section 18-88; or (c) there has been a judicial determination upholding the denial of a license for such Sexually Oriented Business at such location within the previous twelve (12) calendar months. Written notice of the denial of a provisional license and the basis for the denial will be provided by the Chief of Police within ten (10) calendar days of service of the court action upon the City.

If the Hearing Officer renders a decision adverse to the Chief of Police, then the Chief of Police shall have thirty days from which the Notice of Revocation/ Suspension is issued in which to file suit in the appropriate district court.

Failure to file suit shall waive and shall bar any appeal or cause of action if suit is not filed within thirty days.

C. Any provisional license and certificate of occupancy issued under this section will expire upon the court's entry of judgment on such appeal. The applicant shall bear the burden of proof in court. The substantial evidence standard of review shall apply to such appeal.

#### **SEC 18-90 Transfer of License**

A. A person commits an offense if the person transfers a license or permit to another person or operates a Sexually Oriented Business under the authority of a license at any place other than the address designated on the license. A transfer of a license is deemed to have occurred if there is a transfer of more than fifty percent (50%) of the ownership or control of a Sexually Oriented Business.

B. A person commits an offense if the person counterfeits, forges, changes, defaces or alters a license.

#### **SEC 18-91 Exemption From Location Restrictions**

A. If the Chief of Police denies the issuance of a license to an applicant because the location of the Sexually Oriented Business is in violation of Division 8, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the City Secretary a written request for an exemption from the locational restrictions.

B. If the written request is filed with the City Secretary within the ten (10) day limit, the Zoning Board of Adjustment shall consider the request. The City Secretary shall set a date for the hearing within sixty (60) days from the date the written request is filed, unless both parties agree to a certain date beyond the sixty (60) days. If a timely request is so filed, the existing license is deemed not to have expired until the decision of the

Board on such request. The Zoning Board of Adjustment shall enter a written ruling on the request within five (5) days of the hearing.

E. The Zoning Board of Adjustment may grant an exemption from the location restrictions of Division 8, if it makes the following findings:

1. That the location of the Sexually Oriented Business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;

2. That the location of the Sexually Oriented Business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;

3. That the location of the Sexually Oriented Business in the area will neither be contrary to any program of neighborhood conservation, nor will it interfere with any efforts of urban renewal or restoration; and

4. That all other applicable provisions of this Chapter will be observed.

F. In making the findings specified in Section 18-91(E), the Board may take into account among other things:

1. Crime statistics of the location and its 1,000 foot radius maintained by the appropriate law enforcement agency for the previous twelve (12) month period;

2. Assessed values for the location and properties within the surrounding 1,000 foot radius, taking into account any decline or increase in property values or rates of decrease or increase in property values in relation to otherwise comparable properties;

3. Sales, leases, and vacancy rates of all property types within the surrounding 1,000 foot radius in relation to otherwise comparable properties; and

4. Any evidence regarding the award or denial of any public or private grants for neighborhood conservation, urban renewal or restoration for any property located within a 1,000 foot radius.

G. The Board shall grant or deny the appeal by a majority vote. Failure to reach a majority vote approving the appeal shall result in denial. Disputes of fact shall be decided on the basis of a preponderance of the evidence. A decision by the Zoning Board of Adjustment shall be considered a final action.

H. If the Board grants an exemption to the location restrictions, the exemption is valid for one (1) year from the date of the Board's action. Except as provided in Section 18-91(B), the Sexually Oriented Business is in violation of the location restrictions of Division 8 until the applicant applies for and receives another exemption.

I. The grant of an exemption does not exempt the applicant from any provisions of this Chapter other than the location restrictions.

## **18-92 Exceptions**

- A. It is an exception to the application of Section 18-107 of this Article that at the time of the state of nudity or semi-nudity the actor was:
1. an individual, person, or, in the case of 18-107 C. -18-107 F., an association, who owns manages, operates, or appears nude in a public place that is a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed massage therapist, or licensed barber engaged in performing function authorized under the lawful license held;
  2. an individual, person, or, in the case of 18-107 C. -18-107 F., an association, who owns, manages, operates, or appears in nude in a public place that is a business operated by or employing a licensed physician or chiropractor engaged in practicing the healing arts; or
  3. an individual, person, or, in the case of 18-107 C. -18-107 F., an association, who owns, manages, operates, or appears in nude in a public place that is a business licensed as a tattoo studio or a body piercing studio and was engaged in practices authorized under the license.

Secs. 18-93 – 18-99. Reserved.

## **Division 3**

### **SEXUALLY ORIENTED BUSINESS EMPLOYEES, CONDUCT AND OPERATIONS**

#### **Sec. 18-100. Definitions**

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

**CONDUCT ANY BUSINESS IN AN ENTERPRISE** means any person who does any one or more of the following shall be deemed to be conducting business in an enterprise:

- (1) Operates a cash register, cash drawer or other depository on the premises of the enterprise where cash funds or records of credit card or other credit transactions generated in any manner by the operation of the enterprise or the activities of the premises of the enterprise;

- (2) Displays or takes orders from any customer for any merchandise, goods, entertainment or other services offered on the premises of the enterprise;
- (3) Delivers or provides to any customer any merchandise, goods, entertainment or other services offered on the premises of the enterprise;
- (4) Acts as a door attendant to regulate entry of customers or other persons into the premises of the enterprise; or
- (5) Supervises or manages other persons in the performance of any of the foregoing activities on the premises of the enterprise.

CUSTOMER means any person who:

- (1) Is allowed to enter an enterprise or any portion of an enterprise in return for the payment of an admission fee, membership fee or any other form of consideration or gratuity;
- (2) Enters an enterprise or any portion of an enterprise and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or
- (3) Is a member of and on the premises of an enterprise operating as a private or membership club or an enterprise that reserves any portion of the premises of the enterprise as a private or membership club.

DIRECTOR means the Chief of Police and such employee(s) of the police department as he may designate to perform the duties of the director under this article.

EMPLOYEE means any person who renders any service whatsoever to the customers of an enterprise, works in or about an enterprise or who conducts any business in an enterprise and who receives or has the expectation of receiving any compensation from the operator, or customers of the enterprise. By way of example, rather than limitation, the term includes the operator and other management personnel, clerks, dancers, models and other entertainers, food and beverage preparation and service personnel, door persons, bouncers, and cashiers. It is expressly intended that this definition cover not only conventional employer-employee relationships but also independent contractor relationships, agency relationships, and any other scheme or system whereby the 'employee' has an expectation of receiving compensation, tips, or other benefits from the enterprise or its customers in exchange for services performed.

ENTERPRISE means an adult bookstore, adult cabaret, adult encounter parlor, adult lounge, adult modeling studio, adult movie theater or any establishment whose primary business is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to its customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical

areas. The term "enterprise" shall include any premises for which a permit is required under either or both of Articles II and III of this chapter. However, the term 'enterprise' shall not be construed to include:

- (1) Any business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers performing functions authorized under the licenses held;
- (2) Any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts; or
- (3) Any retail establishment whose major business is the offering of wearing apparel for sale to customers.

ENTERTAINER means any employee of an enterprise who performs or engages in entertainment.

ENTERTAINMENT means any act or performance, such as a play, skit, reading, revue, fashion show, modeling performance, pantomime, role playing, encounter session, scene, song, dance, musical rendition or striptease that involves the display or exposure of specified sexual activities or specified anatomical areas. The term "entertainment" shall include any employee or entertainer exposing any specified anatomical areas or engaging in any specified sexual activities whatever in the presence of customers.

MANAGER means any person who supervises, directs or manages any employee of an enterprise or any other person who conducts any business in an enterprise with respect to any activity conducted on the premises of the enterprise, including any "on-site manager."

ON-SITE MANAGER means any person charged by an owner or operator of an enterprise with the responsibility for direct supervision of the operation of the enterprise and with monitoring and observing all areas of the enterprise to which customers are admitted at all times during which the enterprise is open for business or customers are on the premises of the enterprise.

OPERATOR means the manager or other natural person principally in charge of an enterprise.

OWNER or OWNERS means the proprietor if a sole proprietorship, all general partners if a partnership, or the corporation if a corporation.

PERMIT means the current, valid permit issued by the director pursuant to the terms of this article.

SEPARATE AREA means any portion of the interior of an enterprise separated from any other portion of an enterprise by any wall, partition or other divider.

**SPECIFIED ANATOMICAL AREAS:**

- (1) Less than completely and opaquely covered:
  - a. Human genitals, pubic region or pubic hair;
  - b. Buttock;
  - c. Female breast or breasts or any portion thereof that is situated below a point immediately above the top of the areola; or
  - d. Any combination of the foregoing; or
- (2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES:**

- (1) Human genitals in a discernible state of sexual stimulation or arousal;
- (2) Acts of human masturbation, sexual intercourse or sodomy;
- (3) Fondling or other erotic touching of human genitals, pubic region or pubic hair, buttock or female breast or breasts; or
- (4) Any combination of the foregoing.

**TEMPORARY ENTERTAINER** means an individual who holds a Temporary Entertainer's Permit

**TEMPORARY ENTERTAINER'S PERMIT** means an Entertainer's Permit that is valid for a reduced period of time, as set forth in this Article.

**TEMPORARY FLOOR-MANAGER** means an individual who holds a Temporary Floor-Manager's Permit.

**TEMPORARY FLOOR-MANAGER'S PERMIT** means a Floor-Manager's Permit that is valid for a reduced period of time, as set forth in this Article.

**TEMPORARY MANAGER** means an individual who holds a Temporary Manager's Permit

**TEMPORARY MANAGER'S PERMIT** means an Entertainer's Permit that is valid for a reduced period of time, as set forth in this Article.

**Sec. 18-101. Cumulative**

The provisions of this Article are expressly made cumulative of other applicable laws including, without limitation to the entire chapter.

**Sec. 18-102. Permit required**

A. It shall be unlawful for any person who does not hold a permit or temporary permit to act as an entertainer or a manager of or in an enterprise.

B. It shall be the duty of the operator and owners of each enterprise to ensure that no person acts as an entertainer or manager of or in the enterprise unless that person holds a permit or temporary permit.

**Sec. 18-103. Issuance of permits**

A. Any person who desires to obtain an original or renewal permit shall make application to the director in person at the Police Department between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, city observed holidays excepted. The application shall be made under oath upon a form prescribed by the director and shall include:

1. The name, home street address and mailing address (if different) of the applicant;
2. Proof of the date of birth of the applicant and the identity of the applicant, including at least one photographic identity card issued by a governmental agency;
3. A list of any criminal charges pending, convictions, and time of service in jail or prison as related to any applicable offense that is specified in Section 18-82 of this Article; and

B. Each application shall be accompanied by a nonrefundable processing fee of \$60.00. Each applicant shall be required to obtain from the Texas Department of Public Safety a copy of their criminal history report and surrender it to the Police Department upon making application.

C. The Director shall issue the permit within three business days from the date of filing of the application unless he finds that the applicant has been convicted of or spent time in jail or prison for an offense specified in the applicable provisions of Section 18-82 of this Article within the time specified therein. If the application is not granted, then the applicant shall be mailed notice of the grounds and of their right to provide evidence and request a hearing as provided by Section 18-87 of this Article, within ten days from the date of filing of the application.

D. Each permit issued by the Director shall consist of two photographic identification cards, a personal card and an on-site card.

E. Any applicant whose application is denied and who requests a hearing on the denial shall be granted a hearing within thirty days following the receipt of the request by the Chief of Police. The hearing shall be conducted as provided in Section 18-89 of the Article. If the Hearing Officer rules against the applicant, then the applicant shall be given notice of the right to seek an injunction or judicial review of the decision as provided in Section 18-89 of this Article.

F. In the event that the director fails to issue or deny a permit application within the time specified in subsection (c) or to provide a hearing within the time specified in subsection (e), then the applicant shall, upon written request, be immediately issued a temporary permit which shall be valid until the third day after the applicant is given notice of the decision of the director or the hearing officer.

G. If any personal card or on-site card is lost or stolen, the holder thereof shall immediately notify police department and request a replacement, which shall be issued for a fee of \$35.00 within three days following verification of the identity of the holder.

H. No permit application shall be accepted nor shall a permit be issued to any person who does not provide proof that he is at least 18 years old. Any permit issued by virtue of any misrepresentation or error to any person under age 18 shall be void, and the holder of such permit shall be subject to criminal prosecution.

I. A temporary manager's permit or temporary entertainer's permit shall be issued within twenty-four hours of the application when:

1. The application has been completed and submitted to the Police Department.
2. The applicant supplies a copy of a valid and lawful photographic identification card that was issued to the individual by a governmental authority of the United States of America or any State, possession, commonwealth, or territory thereof;
3. A preliminary investigation indicates that the applicant is otherwise qualified under this Article for the issuance of a temporary permit; and
4. The applicant has not applied for or been granted a temporary permit in the year preceding the application.

**Sec. 18-104. Term, transfer, amendment**

A. A permit is valid for two years from the date of its issuance.

B. A temporary entertainer's permit or temporary manager's permit shall be valid for thirty calendar days.

C. A permit is personal to the named permit holder and is not valid for use by any other person.

D. Each permit holder shall notify the police department of his new address within ten days following any change of address.

E. Permits shall be portable from location to location, so long as each such location is a validly licensed Sexually Oriented Business.

**Sec. 18-105. Display**

A. Each manager or entertainer shall conspicuously display his personal card upon his person at all times while acting as an entertainer or manager of or in an enterprise.

B. Each manager or entertainer shall provide his on-site card to the manager or on-site manager in charge of the enterprise to hold while the manager or entertainer is on the premises.

C. In any prosecution under Section 18-105 of this Article, it shall be presumed that the actor did not have a permit unless the permit was in display as required under section (a) of this subsection.

**Sec. 18-106. Revocation**

In the event that the director has reasonable grounds to believe that any permit holder has been convicted of or spent time in jail or prison for an offense as specified in the applicable provision of Section 18-82 of this Article within the time specified therein, then the Director may revoke the permit following a notice of the grounds pursuant to Section 18-87. The permit holder has a right to an administrative hearing pursuant to Section 18-89. In the event that the hearing officer determines that the permit should be revoked, then he or she shall issue render a decision pursuant to Section 18-89 following the mailing of notice of the decree to the permit holder in order to allow the permit holder an opportunity before the permit must be surrendered to seek an injunction or judicial review of the decision as authorized in Section 18-89 of this Article.

**18-107 Nudity and Semi-Nudity Prohibited in a Public Place**

A. It shall be unlawful for an individual to intentionally or knowingly appear in a state of nudity within 50 feet of a public place or establishment that serves or permits the consumption of alcohol.

B. It shall be unlawful for an individual to intentionally or knowingly appear in a state of semi-nudity within 50 feet of a public place or establishment that serves or permits the consumption of alcohol.

C. It shall be unlawful for an individual, person, corporation, or association that manages, or operates a Sexually Oriented Business to intentionally or knowingly

allow an individual to appear on the premises of said establishment in a state of nudity.

- D. It shall be unlawful for an individual, person, corporation, or association that manages, or operates a Sexually Oriented Business to intentionally or knowingly allow an individual to appear on the premises of said establishment in a state of semi-nudity.
- E. It shall be unlawful for an owner-operator of a Sexually Oriented Business to intentionally or knowingly allow an individual to appear on the premises of said establishment in a state of nudity.
- F. It shall be unlawful for an owner-operator of a Sexually Oriented Business to intentionally or knowingly allow an individual to appear on the premises of said establishment in a state of semi-nudity.

**Sec. 18-108 Loitering and Monitoring**

- (a) It shall be the duty of the operator of a Sexually Oriented Business to:
  - (i) ensure that at least two conspicuous signs, visible from a public right of way, stating that no loitering is permitted on the premises are posted on the exterior of the structure;
  - (ii) designate one or more employees to monitor the parking lot of the premises by the use of video cameras and monitors, which shall operate and record continuously at all times that the premises are open for business. The monitors shall be installed within a manager's station, and the operator of a Sexually Oriented Business shall preserve the recordings of the parking lot of the premises for a period of not less than one week before the recordings may be erased. Recordings maintained under this Section are subject to the inspection requirements set forth in Section 18-83.
- (b) No Sexually Oriented Business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.
- (c) It shall be unlawful for a person having a duty under this section to intentionally or knowingly fail to fulfill that duty.

Sec. 109. Reserved.

**Division 4**

**ADDITIONAL REGULATIONS**

**Sec. 18-110 Additional Regulations for Sexually Oriented Cabaret**

- A. A person commits an offense if the person employs at a Sexually Oriented Cabaret any person under the age of eighteen (18) years.
- B. An employee of a Sexually Oriented Cabaret, while appearing in a state of nudity or semi-nudity, commits an offense if the employee intentionally or knowingly touches a customer or the clothing of a customer.
- C. A customer at a Sexually Oriented Cabaret commits an offense if the customer intentionally or knowingly touches an employee appearing in a state of nudity or semi-nudity or the clothing of an employee appearing in a state of nudity or semi-nudity.
- D. A licensee, operator or employee commits an offense if the licensee, operator or employee intentionally or knowingly allows, in a Sexually Oriented Business, a person to appear on a stage, unless (1) no customer is present on the stage; (2) the stage is at least eighteen (18) inches above the floor, and is: (a) at least six (6) feet from any customer (hereinafter called "unenclosed performance stage"); or (b) 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 performance stage to at least five (5) feet above the level of the performance stage, but such that there are no openings in the wall or partition that would permit physical contact between customers and such employee (hereinafter called "enclosed performance stage").
- E. A licensee or employee commits an offense if the licensee or employee intentionally or knowingly 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 private, exclusive, closed, curtained, or otherwise screened area, excluding restrooms. The view required in this subsection shall be by direct line of sight. The view shall be deemed insufficient if clear visibility of such line of sight must be attained by utilizing flashlights or spotlights in addition to overhead house lighting.
- F. A licensee, operator or employee commits an offense if the licensee, operator or employee intentionally or knowingly appears in a state of nudity or semi-nudity or intentionally or knowingly allows another to appear in a state of nudity or semi-nudity in an area of the Sexually Oriented Cabaret business premises which can be viewed from the public right-of-way.
- G. A licensee commits an offense if the licensee fails to display the signs on the interior of the Sexually Oriented Cabaret business premises as required in Section 18-123(A) and/or the floor markings required in Section 18-123(B).
- H. An employee of a Sexually Oriented Cabaret must attend training given by the licensee concerning the requirements of this Chapter as they pertain to Sexually Oriented Cabarets, including but not limited to Sections 18-83, 18-85, 18-86, 18-110, 18-120, 18-121, 18-122, 18-123, and 18-130, before the employee receives any compensation for the person's services. The licensee shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services;

and, at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee identifying the date on which the training was provided and the specific topics discussed.

I. A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the Sexually Oriented Cabaret. At least one person so appointed shall be on the premises at any time the Sexually Oriented Cabaret is open.

J. An operator or a person appointed under Subsection (H) above shall at all times have the duty to ensure that each employee in the Sexually Oriented Cabaret has received the training required by Subsection (G) above and each employee is instructed to commit no act which would constitute a violation of this Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter.

#### **Sec. 18-111 Additional Regulations for Escort Agencies**

A. A person commits an offense if the person employs at an Escort Agency any person under the age of eighteen (18) years.

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

C. An employee of an Escort Agency must attend training given by the licensee concerning the requirements of this Chapter as they pertain to Escort Agencies, including but not limited to Sections 18-83, 18-85, 18-86, 18-110, 18-120, 18-121, 18-122, 18-123, and 18-130, before the employee receives any compensation for the person's services. The licensee shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services; and, at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee identifying the date on which the training was provided and the specific topics discussed.

D. A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the Escort Agency. At least one person so appointed shall be on the premises at any time the Escort Agency is open.

E. An operator or a person appointed under Subsection (D) above shall at all times have the duty to ensure that each employee in the Escort Agency has received the training required by Subsection (C) above and each employee is instructed to commit no act which would constitute a violation of this Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter.

**Sec. 18-112 Additional Regulations for Nude Model Businesses**

- A. A person commits an offense if the person employs at a Nude Model Business any person under the age of eighteen (18) years.
- B. A person commits an offense if the person intentionally or knowingly appears in a state of nudity or semi-nudity in or on the premises of a Nude Model Business.
- C. A person commits an offense if the person intentionally or knowingly appears in a state of nudity or semi-nudity or intentionally or knowingly allows another to appear in a state of nudity or semi-nudity in an area of a Nude Model Business premises which can be viewed from the public right-of-way.
- D. A person commits an offense if the person intentionally or knowingly places or permits a bed, sofa or mattress in any room on the premises of a nude model business, except that a sofa may be placed in a reception room open to the public.
- E. A licensee or employee commits an offense if the person intentionally or knowingly permits any customer access to an area of the premises not visible from the manager's station by direct line of sight or not visible by a walk through of the premises without entering a private, exclusive, closed, curtained, or otherwise screened area, excluding restrooms. The view required in this subsection shall be by direct line of sight. The view shall be deemed insufficient if clear visibility of such line of sight must be attained by utilizing flashlights or spotlights in addition to overhead house lighting.
- F. An employee of a Nude Model Business, while appearing in a state of nudity, commits an offense if the employee intentionally or knowingly touches a customer or the clothing of a customer.
- G. A customer at a Nude Model Business commits an offense if the customer intentionally or knowingly touches an employee or the clothing of an employee while the employee is appearing in a state of nudity.
- H. A licensee commits an offense if the licensee fails to display the signs on the interior of the Nude Model Business premises as required in Section 18-123(A) and/or the floor markings required in Section 18-123(B).
- I. An employee of a Nude Model Business commits an offense if that employee allows, asks, directs, or suggests that a customer disrobe to a state of nudity.
- J. An employee of a Nude Model Business must attend training given by the licensee concerning the requirements of this Chapter as they pertain to Nude Model Businesses, including but not limited to Sections 18-83, 18-85, 18-86, 18-110, 18-120, 18-121, 18-122, 18-123, and 18-130, before the employee receives any compensation for the

person's services. The licensee shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services; and, at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee identifying the date on which the training was provided and the specific topics discussed.

K. A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the Nude Model Business. At least one person so appointed shall be on the premises at any time the Nude Model Business is open.

L. An operator or a person appointed under Subsection (K) above shall at all times have the duty to ensure that each employee in the Nude Model Business has received the training required by Subsection (J) above and each employee is instructed to commit no act which would constitute a violation of this Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter.

**Sec. 18-113 Additional Regulations for Sexually Oriented Theaters and Sexually Oriented Motion Picture Theaters**

A. A person commits an offense if the person employs at a Sexually Oriented Theater or Sexually Oriented Motion Picture Theater any person under the age of eighteen (18) years.

B. A person commits an offense if the person intentionally or knowingly appears in a state of nudity or semi-nudity in or on the premises of a Sexually Oriented Theater or Sexually Oriented Motion Picture Theater.

C. Sexually Oriented Theaters and Sexually Oriented Motion Picture Theaters shall also comply with the requirements of Section 18-114 of this Chapter.

D. An employee of a Sexually Oriented Theater or Sexually Oriented Motion Picture Theater must attend training given by the licensee concerning the requirements of this Chapter as they pertain to Sexually Oriented Theaters or Sexually Oriented Motion Picture Theaters, including but not limited to Sections 18-83, 18-85, 18-86, 18-110, 18-120, 18-121, 18-122, 18-123, and 18-130, before the employee receives any compensation for the person's services. The licensee shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services; and, at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee identifying the date on which the training was provided and the specific topics discussed.

E. A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the Sexually Oriented Theater or Sexually Oriented Motion Picture Theater. At least one person so appointed shall be on the premises at any time the Sexually Oriented Theater or Sexually Oriented Motion Picture Theater is open.

F. An operator or a person appointed under Subsection (E) above shall at all times have the duty to ensure that each employee in the Sexually Oriented Theater or Sexually Oriented Motion Picture Theater has received the training required by Subsection (D) above and each employee is instructed to commit no act which would constitute a violation of this Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter.

**Sec. 18-114 Regulations Pertaining to Exhibition of Sexually Explicit Films, Photographs, Pictures 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, photograph, picture, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

1. An application for a Sexually Oriented Business license shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) 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 license 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 shall be oriented to the north, or to some designated street or object, and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). 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 the previously submitted diagram 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.

4. The licensee commits an offense if the licensee permits a manager's station to be unattended by an employee at any time a customer is present on, in or about 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 customer is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment or any other equipment allowing for the viewing of film, videos, photographs or other video reproduction. 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 customer is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
6. The licensee commits an offense if the licensee permits a customer access to any area of the premises that is not visible from the manager's station for any purpose, excluding restrooms.
7. The licensee, operator and any agents and employees present on the premises shall ensure: that the view area specified in Subsection (5) of this section remains unobstructed by any doors, curtains, partitions, walls, blinds, locks or other control-type devices, merchandise, display racks or other materials at all times that any customer is present on, in or about the premises; and, that no customer is permitted access to any area of the premises which has been designated as an area in which customers will not be permitted in the application filed pursuant to Subsection (1) of this section.
8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot-candles as measured at the floor level.
9. The licensee commits an offense if the licensee permits illumination of any area of the premises to which customers have access to be less than one (1.0) foot-candles as measured at the floor level.
10. No viewing room or booth of less than 150 square feet of floor space shall be occupied by more than one (1) person at any time.
11. No licensee shall allow openings or holes of any kind to exist between adjacent or adjoining viewing rooms or booths.
12. No person shall make or attempt to make an opening or hole of any kind between adjacent or adjoining viewing rooms or booths.
13. The licensee shall, during each business day, regularly inspect the walls of all viewing rooms or booths to determine if any openings or holes exist.
14. In a viewing room or booth of less than 150 square feet of floor space, the walls shall be no more than forty-eight (48) inches tall. At least one wall of any such viewing room or booth shall be visible in a direct unobstructed line of sight from the manager's

station. Each wall or door of any such viewing room or booth shall be constructed of clear transparent glass, plastic or substantially equivalent materials that allow an unobstructed view of the entire interior of the viewing room or booth.

15. Live entertainment is prohibited in any viewing room or booth of less than 500 square feet of floor space, as well as any other room adjacent to or visible from any viewing room or booth.

16. The licensee or operator commits an offense if the licensee intentionally or knowingly allows a person to appear in a state of nudity or semi-nudity in, on or about the premises of a Sexually Oriented Business, other than a Sexually Oriented Motel, which exhibits on the premises in a viewing room of less than 500 square feet of floor space, a film, photograph, picture, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas.

17. A person commits an offense if the person intentionally or knowingly appears in a state of nudity or semi-nudity in or on the premises of a Sexually Oriented Business, other than a Sexually Oriented Motel, which exhibits on the premises in a viewing room of less than 500 square feet of floor space, a film, photograph, picture, video cassette or other video reproduction which depicts specified sexual activities or specified anatomical areas.

18. It is a defense to prosecution under Subsections (16) and (17) of this section if the person was in a restroom not open to public view or persons of the opposite sex.

B. A person having a duty under Subsection (1) through (18) of Subsection (A) herein commits a misdemeanor if he or she knowingly fails to fulfill that duty.

C. An employee of a Sexually Oriented Business that exhibits sexually explicit films, photographs, pictures or videos must attend training given by the licensee concerning the requirements of this Chapter as they pertain to such a business, including but not limited to Sections 18-83, 18-85, 18-86, 18-110, 18-120, 18-121, 18-122, 18-123, and 18-130, before the employee receives any compensation for the person's services. The licensee shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services; and, at least once a year thereafter. The licensee shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee identifying the date on which the training was provided and the specific topics discussed.

D. A licensee shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the Sexually Oriented Business as described in this Section. At least one person so appointed shall be on the premises at any time the Sexually Oriented Business as described in this Section is open.

E. An operator or a person appointed under Subsection (D) above shall at all times have the duty to ensure that each employee in the Sexually Oriented Business as described in this Section has received the training required by Subsection (C) above and each employee is instructed to commit no act which would constitute a violation of this Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter.

**Sec. 18-115 Additional Regulations Pertaining to Adult Bookstores, Adult Novelty Stores and Adult Video Stores**

A. A person who operates or causes to be operated an Adult Bookstore, Adult Novelty Store or Adult Video Store shall comply with the following requirements:

1. An application for a Certificate of Occupancy for an Adult Bookstore, Adult Novelty Store or Adult Video Store shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) 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 shall be oriented to the north, or to some designated street or object, and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The Building Official 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 the previously submitted diagram 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 Building Official.
4. An owner, operator, agent or employee commits an offense if the owner, agent, operator or employee permits a manager's station to be unattended by an employee at any time a customer is present on, in or about 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 customer is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment or any other equipment allowing for the viewing of film, videos, photographs or other video reproduction. 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 customer is permitted access for any purpose from at least one (1) of the manager's

stations. The view required in this subsection must be by direct line of sight from the manager's station.

6. An owner, operator, agent or employee commits an offense if the owner, operator, agent or employee intentionally or knowingly permits a customer access to any area of the premises that is not visible from the manager's station for any purpose, excluding restrooms.

7. The owners, operator and any agents and employees present on the premises shall ensure: that the view area specified in Subsection (5) of this section remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials at all times that any customer is present on, in or about the premises; and, that no customer is permitted access to any area of the premises which has been designated as an area in which customers will not be permitted in the application filed pursuant to Subsection (1) of this section.

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

9. An owner, operator, agent or employee commits an offense if the owner, operator, agent or employee intentionally or knowingly permits illumination of any area of the premises to which customers have access to be less than one (1.0) foot-candles as measured at the floor level.

10. No viewing room or reading room may be occupied by more than one (1) person at any time.

11. No owner, operator, agent or employee shall allow openings or holes of any kind to exist between adjacent or adjoining viewing rooms or booths or reading rooms or booths.

12. No person shall make or attempt to make an opening or hole of any kind between adjacent or adjoining viewing rooms or booths or reading rooms or booths.

13. The owner, operator, agent or employee shall, during each business day, regularly inspect the walls of all viewing rooms or booths and reading rooms or booths to determine if any openings or holes exist.

14. The walls of any viewing room or booth and any reading room or booth shall be no more than forty-eight (48) inches tall. At least one wall of any viewing room or booth shall be visible in a direct unobstructed line of sight from the manager's station. Each wall or door of any viewing room or booth shall be constructed of clear transparent glass, plastic or substantially equivalent materials that allow an unobstructed view of the entire interior of the viewing room or booth.

15. Live entertainment is prohibited in any viewing room or booth and any reading room or booth as well as any other room adjacent to or visible from any reading or viewing room or booth.

16. An owner, operator, agent or employee commits an offense if the owner, operator, agent or employee intentionally or knowingly allows a person to appear in a state of nudity or semi-nudity in, on or about the premises of an Adult Bookstore, Adult Novelty Store or Adult Video Store.

17. A person commits an offense if the person intentionally or knowingly appears in a state of nudity or semi-nudity in, on or about the premises of an Adult Bookstore, Adult Novelty Store or Adult Video Store.

18. It is a defense to prosecution under Subsections (16) and (17) of this section if the person was in a restroom not open to public view or persons of the opposite sex.

B. A person having a duty under Subsections (1) through (18) of Subsection (A) herein commits a misdemeanor if he or she knowingly fails to fulfill that duty.

C. An employee of an Adult Bookstore, Adult Novelty Store or Adult Video Store must attend training given by the licensee concerning the requirements of this Chapter as they pertain to such a business, including but not limited to Sections 18-83, 18-85, 18-86, 18-110, 18-120, 18-121, 18-122, 18-123, and 18-130, before the employee receives any compensation for the person's services. The owner, operator or agent shall provide this training to all employees at the beginning of employment before the employee receives any compensation for services; and, at least once a year thereafter. The owner, operator or agent shall maintain written records of the training provided to each employee pursuant to this subsection. These records shall include a signed and dated statement from each employee verifying the employee's attendance at and participation in training provided by the licensee identifying the date on which the training was provided and the specific topics discussed.

D. An owner, operator, or agent shall designate and appoint one or more individuals to manage, direct, and control the premises and operations of the Adult Bookstore, Adult Novelty Store or Adult Video Store. At least one person so appointed shall be on the premises at any time the Adult Bookstore, Adult Novelty Store or Adult Video Store is open.

E. An operator or a person appointed under Subsection (D) above shall at all times have the duty to ensure that each employee in the Adult Bookstore, Adult Novelty Store or Adult Video Store has received the training required by Subsection (C) above and each employee is instructed to commit no act which would constitute a violation of this Chapter or which would provide grounds, or part of the grounds, for suspension or revocation of a license issued under this Chapter.

Secs. 18-116 – 18-119. Reserved.

**Division 5**  
**MISCELLANEOUS**

**Sec. 18-120 Hours of Operation**

No Sexually Oriented Business, except for a Sexually Oriented Motel, may remain open at any time between the hours of two o'clock (2:00) A.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, and two o'clock (2:00) A.M. and noon (12:00) P.M. on Sundays.

**Sec. 18-121 Prohibition Against Children in a Sexually Oriented Business**

A licensee, owner, operator, agent or employee commits an offense if the licensee, owner, operator, agent or employee intentionally, knowingly, or recklessly allows a person under the age of eighteen (18) years on the premises of a Sexually Oriented Business.

**Sec. 18-122 Conspicuous Signage and Markings Required**

A. A licensee or operator commits an offense if the licensee or operator fails to display a sign on the interior of the Sexually Oriented Business premises notifying customers and employees of the prohibition prescribed by Subsections 18-122(A), (B), (C) and (D), above. The sign must be prominently and continuously displayed where customers enter the premises, and immediately adjacent to each stage required by Section 6.03(B), and must state in letters at least two inches high:

TOUCHING OR TIPPING AN EMPLOYEE WHO IS IN A STATE OF NUDITY OR SEMI-NUDITY IS A CRIME (MISDEMEANOR), PUNISHABLE BY FINE UP TO \$2,000. PATRONS SHALL REMAIN AT LEAST SIX FEET FROM ALL UNENCLOSED PERFORMANCE STAGES WHILE A PERSON IS PERFORMING ON SAID PERFORMANCE STAGE.

The Chief of Police may require, at the time of issuance or renewal of the license, the licensee to also display the sign in a language other than English if he determines that a substantial portion of the expected customers speak the other language as their familiar language. Upon notification, a licensee commits an offense if the sign does not contain this language in the required language, in addition to English.

B. A licensee or operator commits an offense if the licensee, operator or employee fails to prominently and continuously display a two inches wide glow-in-the-dark line on the floor of the Sexually Oriented Business marking a distance of six feet from each unenclosed stage on which an employee in a state of nudity may appear in accordance with Section 18-122(A).

Secs. 18-123 – 18-129. Reserved.

**Division 6**  
**ENFORCEMENT**

**Sec. 18-130 Violation a Misdemeanor**

- A. Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this ordinance shall be guilty of a Class C misdemeanor, and upon conviction thereof shall be fined an amount not to exceed Two Thousand Dollars and No Cents (\$2,000.00) for each offense, as provided by Section 54.001 of the Local Government Code, except that any person, firm, corporation, agent or employee thereof who violates a provision of this ordinance related to licenses, permits or inspections as set forth in Division Two of this ordinance shall be guilty of a Class A misdemeanor.
- B. Each day that a violation is permitted to exist shall constitute a separate offense.
- C. The refusal to issue a permit based on ineligibility shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the refusal to issue a permit based on ineligibility.
- D. The revocation or suspension of a permit shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.

**Sec. 18-131 Notice of Violation**

The City shall send to a Sexually Oriented Business written notice of each citation issued to an operator or employee of the business for an alleged violation of Sections 18-120, 18-121, 18-123, or any provision of Division 5 of this Chapter. The notice will be sent within three (3) business days of the issuance of the citation to the operator or employee. The notice will be sent by certified mail, return receipt requested, to the business address of the Sexually Oriented Business as it appears on its license application, to the attention of the licensee, as it appears on the license application. A failure of the City to provide such notice is not a violation of this Chapter. It is not a defense to a citation issued to an employee or operator for an alleged violation of Sections 120, 18-121, 18-123, or any provision of Division 5 of this Chapter, that notice of the issuance of that citation was not given to the Sexually Oriented Business in accordance with this Section.

Secs. 18-132 – 18-139. Reserved.

**Division 7**

**18-140 Sign Requirements**

- A. Notwithstanding any provision of the Euless Development Code or any other city ordinance, code, or regulation to the contrary, the owner or operator of any sexually

oriented business or any other person commits an offense if he erects, constructs, or maintains any sign for the establishment other than one primary sign and one secondary sign, as provided in this section.

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

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

C. A secondary sign may have only one display surface. The display surface must:

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

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

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

(G) "Nude model studio."

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

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

Secs. 18-141 – 18-149. Reserved.

**Division 8  
Location Requirements**

**18-150 Location Requirements**

Sexually oriented businesses must comply with the location requirements prescribed in section 84-183.

**SEVERABILITY CLAUSE.** That it is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such invalid or unconstitutional phrase, clause, sentence, paragraph or section.

**SAVING CLAUSE.** That applicable chapters of the Code of Ordinances, City of Euless, Texas, as amended, shall remain in full force and effect, save and except as amended by this ordinance.

**EFFECTIVE DATE.** This ordinance shall be in full force and effect from and after its passage and publication as provided by the Euless City Charter and the laws of the State of Texas.

**PRESENTED AND APPROVED ON FIRST AND FINAL READING** at a regular meeting of the Euless City Council on the \_\_\_\_ day of \_\_\_\_\_, 2009, by a vote of \_\_\_\_ ayes, \_\_\_\_ nays, and \_\_\_\_ abstentions.

**APPROVED:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Mary Lib Saleh, Mayor

\_\_\_\_\_  
Bob McFarland, City Attorney

**ATTEST:**

\_\_\_\_\_  
Susan Crim, TRMC, City Secretary