

ORDINANCE NO. 103

AN ORDINANCE DEFINING AND REGULATING ADULT ENTERTAINMENT ESTABLISHMENTS, ESTABLISHING PROVISIONS FOR LICENSING AND ENFORCEMENT, IMPOSING PENALTIES FOR NONCOMPLIANCE AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDEN RIDGE:

ARTICLE I

INTRODUCTION

SECTION 1.01 Preamble

The City Council of the City of Garden Ridge deems it necessary to publish this ordinance to address types of adult entertainment activity within the city of Garden Ridge.

Prior to the adoption of this ordinance, the City Council reviewed detailed studies prepared by other jurisdictions regarding the detrimental social and economic effects on persons and properties immediately surrounding established sexually oriented businesses. The studies reviewed included those prepared by the cities of Dallas, Texas; Austin, Texas; Cleburne, Texas; Garden Grove, California; Houston, Texas and Seattle, Washington.

In addition, the City Council received a presentation from the San Antonio Police Department at its February 2, 2000 Regular meeting regarding the operation and impact to the community of sexually oriented businesses. At its March 1, 2000 Regular meeting, City Council received a presentation from Dr. Fernando Guerra from the San Antonio Metropolitan Health District regarding the secondary impacts of sexually oriented businesses on the community.

Based upon its review of such studies and presentations, the City Council believes the following statements to be true:

- a. Sex-oriented businesses increase crime in general and sex-related crimes in particular;
- b. Crime rates are higher in residential areas surrounding sex-oriented businesses than in commercial or industrial areas surrounding sex-oriented businesses;

- c. Crime rates are higher in areas where sex-oriented businesses are closely situated to one another than in areas where sex-oriented businesses are separated from one another;
- d. The presence of sex-oriented businesses in close proximity to residential areas has been shown to reduce property values in those areas;
- e. The image of the City of Garden Ridge as a pleasant and attractive place to live will be adversely affected by the presence of sex-oriented businesses in close proximity to residential uses, religious institutions, parks and schools;
- f. Sex-oriented businesses should be regulated to prevent deterioration and/or degradation of the vitality of the community, but such regulations should give persons desiring to patronize such businesses an opportunity to do so; and
- g. Sex-oriented businesses should be regulated through zoning or other mechanisms that will separate such businesses from those land uses with which they are incompatible.

SECTION 1.02 Purpose and Intent

The purpose of this ordinance is to regulate Adult Entertainment establishments to promote the health, safety and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the concentration of Adult Entertainment establishments within the City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance 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.

ARTICLE II

DEFINITIONS

SECTION 2.01 Definitions

- A. For purposes of this ordinance, the word "he" shall be defined to include the word "she" or "they".
- B. Unless otherwise expressly stated, the following terms shall, for the purposes of this ordinance, have the meanings indicated in this Section.
1. Adult Entertainment Establishment means:
 - a. A nightclub, bar, restaurant "bottle club", "men's club", "gentleman's club", "cabaret" or similar place of business, or portion thereof where live entertainment is provided for patrons, whether or not alcoholic beverages are served, which features as a significant portion of the entertainment an emphasis on the exhibition, depiction, or description of specified anatomical areas or specified sexual activities; or a place where entertainment is provided to patrons wherein, because of nudity or semi-nudity of person(s) employed by or associated with the operation of the business, admittance is limited to adults, or admittance is advertised or promoted as being restricted to adults.
 - b. The term "adult entertainment" shall not be construed to include:
 - (1) Any business operated by or employing licensed psychologists, licensed physical therapists, registered nurses, licensed athletic trainers;
 - (2) Any business operated by or employing licensed chiropractors engaged in practicing the healing arts;
 - (3) Any retail establishment whose principal business is the offering of wearing apparel for sale to customers and which does not exhibit merchandise on live models; or
 - (4) Any activity conducted or sponsored by any Texas independent school district, licensed or accredited private school or public or private college or university.
 2. Adult Arcade means any place to which the public is permitted or invited wherein coin operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so

displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas".

3. Adult Bookstore or Adult Video Store means a commercial establishment which as its business purpose offers for sale or rental for any form of consideration any one or more of the following:
 - a. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations, which depict or describe "specified sexual activities" or "specified anatomical areas" or
 - b. Devices or paraphernalia which are designed for use in connection with "specified sexual activities". This does not include items used for birth control or for prevention of sexually transmitted diseases.
4. Adult Cabaret means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:
 - a. Persons who appear in a state of nudity; or
 - b. Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
 - c. Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
5. Adult Motel means a hotel, motel or similar commercial establishment which:
 - a. Offers public accommodations in any form of consideration, which provides patrons with closed circuit television transmission, film, motion pictures, video cassettes, slides or other photography reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas, and
 - b. Which advertises the availability of this sexually-oriented type of material by means of a sign visible from the public right of way, or by means of any off-premises advertising, including but not limited to, newspapers, magazines, pamphlets, leaflets, radio or television.
6. Adult Motion Picture Theatre means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which

are characterized by the depicting or description of "specified sexual activities" or "specified anatomical areas."

7. Church means a building, whether situated within the City or not, in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.
8. Customer means any person who.
 - a. Is allowed to enter an Adult Entertainment Establishment in return for the payment of an admission fee or any other form of consideration or gratuity; or
 - b. Enters an Adult Entertainment Establishment and purchases, views, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or
 - c. Is a member of and on the premises of an Adult Entertainment Establishment operating as a private club.
9. Employee means any person who renders any service whatsoever to the customers of an Adult Entertainment Establishment or who works in or about an Adult Entertainment Establishment and who receives compensation for such service or work from the operator or owner of the Adult Entertainment Establishment or from the customers therein.
10. Escort means a person who, for consideration, agrees or offers to act as a companion or date for another or who offers to privately model lingerie, to privately perform a striptease for another person, or to display any "specified anatomical areas".
11. Escort Agency means a person or business association who furnishes, offers to furnish or advertises to furnish escorts as its principal business purpose, for a fee, tip, or other consideration.
12. Permittee means a person in whose name a Specific Use Permit to operate an Adult Entertainment Establishment has been issued, as well as any and all individuals listed as applicants on the application for a Specific Use Permit.
13. Licensed Day Care Center 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.
14. Nude Model Business means any commercial establishment where a person who appears in a state of nudity or displays "specified anatomical areas" is provided or allowed to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration.
 15. Nudity or State of Nudity means:
 - a. The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or
 - b. A state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breasts.
 16. Operated or Caused 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 an Adult Entertainment Establishment whether or not that person is an owner, part owner, permittee or manager of the establishment:
 17. Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.
 18. Principal means over fifty-percent (50%) of customers, volume of sales, stock in trade, display areas or presentation time in any three (3) month increment period beginning from the date of issuance of a certificate of occupancy. Stock in trade shall be measured with all titles or available on the premises for sale or rental including those that are identical, considered a separate title or object.
 19. Regularly means featuring, promoting or advertising a happening or occurrence on a recurring basis.
 20. Residential District means a residentially zoned district as defined by the Zoning Ordinance of the City of Garden Ridge.
 21. Residential Use means a single family dwelling district (R) and Residence Agriculture District (RA) as defined in the Zoning Ordinance of the City of Garden Ridge.
 22. Sexual Encounter Center means a business or commercial enterprise that, as its principal business purpose, offers for any form of consideration "Specified Sexual Activities".

23. Specified Anatomical Areas means human genitals.
24. Specified Sexual Activities means and includes any of the following:
 - a. The fondling or other erotic touching of human genitals, pubic region, pubic hair, perineum, buttocks, anus, or female breasts;
 - b. Sex acts, normal or abnormal, actual or simulated, including intercourse, oral copulation, sodomy or bestiality;
 - c. Masturbation, actual or simulated; or
 - d. Urinary or excretory functions.
25. Tanning Salon means a commercial establishment where a person appearing in a state of nudity or displaying "specified anatomical areas" engages in activities related to sunbathing or tanning within the view of customers. This does not include the use of opaque tanning devices which are not visible to other customers or patrons of the establishment.

ARTICLE III

LOCATION OF ADULT ENTERTAINMENT ESTABLISHMENTS

SECTION 3.01 Location

- A. An Adult Entertainment Establishment shall be located within a specific zoning district as set forth in the Garden Ridge Zoning Code.
- B. A person commits an offense if he establishes, operates or causes to be operated or expanded an Adult Entertainment Establishment within 1,500 feet of:

Any property devoted to

1. Any church, synagogue, mosque or other religious worship facility used primarily for religious worship.
2. Any public or private elementary, secondary or high school;
3. Any property zoned for or devoted to Single Family Dwelling District (R) or Residence-Agriculture (RA);
4. A licensed day care center;
5. A public park; and or
6. Residential use as defined in this section.
7. Another Sexually Oriented Business

- C. Measurements shall be in a straight line, without regard to intervening structures or objects, from the nearest property line of the lot on which the Adult Entertainment Establishment Business is located, to the nearest property line of the protected properties described in the above Subsection B, which require separation. This method of measurement shall apply to an Adult Entertainment Establishment which is the sole tenant, within one building, or tenant within a multiple-tenant building, located on one platted lot.
- D. In calculating the distances described in Subsections B immediately above, easements (such as right-of-way, drainage and utility easements) that are zoned as, or abut, a protected property classification, shall not be considered as a part of the protected property.
- E. A certified survey prepared by a licensed surveyor or licensed engineer showing distance measurements in accordance with Subsections B through D shall be submitted to the City Building Inspector for all Adult Entertainment Establishments as part of the Specific Use Permit application. Any Specific Use Permit issued for a building or facility used to conduct an Adult Entertainment Establishment without submission of the required survey shall be null and void.

ARTTICLE IV

SPECIFIC USE PERMIT FOR ADULT ENTERTAINMENT ESTABLISHMENT

SECTION 4.01 Specific Use Permit Required

- A. A person commits an offense if he operates or causes to be operated an Adult Entertainment Establishment without a valid Specific Use Permit, issued by the City for the particular type of business.
- B. All applications for a Specific Use Permit under this article shall be accompanied by a non refundable application fee of Five Hundred Dollars (\$500.00). An application shall not be considered to have been filed until the fee is paid and all information required by the application form has been submitted.

SECTION 4.02 Specific Use Permit Issuance

- A. The Chief of Police shall approve the City issuance of a Specific Use Permit 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 Adult Entertainment Establishment is or would be in violation of Article III of this ordinance and/or the physical layout of the premises does not comply with the requirements of Article V of this ordinance;
 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 City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to an Adult Entertainment Establishment;
 6. An applicant or an applicant's spouse has been convicted of a violation of a provision of this Ordinance, other than the offense of operating an Adult Entertainment Establishment without a Specific Use Permit, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect;
 7. The permit fee required by this Article has not been paid;
 8. The applicant has not demonstrated that the owner of the Adult Entertainment Establishment owns or holds a lease for the property or the applicable portion thereof upon which the Adult Entertainment Establishment will be situated or has a legally enforceable right to acquire the same;
 9. An applicant of the proposed establishment is in violation of or is not in compliance with Section 4.03 or 4.08 of this Article;
 10. An applicant or an applicant's spouse has been convicted of a crime:

a. Involving:

(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) Criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses.

b. For which:

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

(2) Less than five (5) years have elapsed since the date of conviction, or the date of release from the terms of probation, parole or deferred adjudication, or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

- (3) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty four (24) month period.
- B. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.
- C. An applicant who has been convicted or whose spouse has been convicted of an offense listed in Section 4.02 (A) (10) (a) may qualify for an Adult Entertainment Establishment Specific Use Permit only when the time period required by Section 4.02 (A) (10)(b) has elapsed.
- D. A non conforming Adult Entertainment Establishment operating prior to the date this Ordinance becomes effective shall apply for the Specific Use Permit required under Section 4.02 within 90 days of the effective date of this Ordinance. The Chief of Police shall approve the issuance of the Specific Use Permit with regard to noncompliance with Section 4.02 (A) (1), (5), (6), and/or (9). Failure to comply with Section 4.02 (A) (7), (8), and / or (1.0) may be cause to deny issuance of the Specific Use Permit if in the opinion of the Chief of Police such failure creates a harmful or dangerous condition.
1. If a Specific Use Permit is issued then such Specific Use Permit may be renewed as provided in Section 4.04 without complying with areas of non compliance existing at the time of its original issuance for the remainder of the permittee's lease term if permittee is a tenant or for a sufficient period of time to enable the permittee to recoup its investment in the nonconforming use business if permittee is the owner of the property in which the business is conducted.
 2. if the Specific Use Permit is denied by the Chief of Police based on his opinion that noncompliance with Section 4.02 (A) (7), (8) and / or (10) creates a harmful or dangerous condition then the prospective permittee shall have the right of appeal to the Municipal Court of the City of Garden Ridge, Texas, as provided in Section 4.07 (B) and (C) except that the burden of proof of the existence of the harmful or dangerous condition shall be borne by the Chief of Police.
 3. Any Specific Use Permit issued pursuant to 4.02 (D) (1) or (2) (after appeal) shall be terminated on the happening of any of the following events:
 - a. Any cessation of operation of the permitted business for a period in excess of 10 days for any reason;

- b. Any change in ownership of the permitted business;
 - c. Any violation of any of the terms of this Ordinance;
 - d. Any change in location or remodeling of the location at which the business operates;
 - e. The existence of any conditions set out in Section 4.02 of this ordinance for the denial of a Specific Use Permit other than those conditions waived at the time of issuance of the initial Specific Use Permit.
- E. The Specific Use Permit, 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 Adult Entertainment Establishment.
- F. The Specific Use Permit shall be posted in a conspicuous place at or near the entrance to the Adult Entertainment Establishment so that it may be easily read at any time.

SECTION 4.03 Inspection and Maintenance of Records

- A. An applicant or permittee shall permit representatives of the Police Department, Health Department, Fire Department and Building Inspectors to inspect the premises of an Adult Entertainment Establishment for the purpose of insuring compliance with the law, at any time it is occupied or open for business.
- B. A person who operates an Adult Entertainment Establishment or his agent or employee commits an offense if he operates the establishment without maintaining a current list of all employees employed by the business, along with a complete updated application. A valid driver's license, state identification card, or passport, all with a photo, shall be required for all employment applications.
- C. A person who operates an Adult Entertainment Establishment or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the Police Department at any time it is occupied or open for business.
- D. The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

SECTION 4.04 Expiration of Specific Use Permit

- A. Each Specific Use Permit shall expire one (1) year from the date of issuance.
- B. A Specific Use Permit may be renewed by submission to the Chief of Police or his designee of an application on the form prescribed by such official and payment of a nonrefundable renewal processing fee of Two Hundred Dollars (\$200.00).
- C. Application for renewal shall be made at least thirty (30) days before the expiration date.

SECTION 4.05 Suspension

- A. The Chief of Police shall suspend a Specific Use Permit for a period not to exceed thirty (30) days if he determines that a permittee or an employee of a permittee has:
 - 1. Violated or is not in compliance with Sections 3.01, 4.03 or 4.08 of this Ordinance;
 - 2. Engaged in public intoxication while on the Adult Entertainment Establishment premises;
 - 3. Refused to allow an inspection of the Adult Entertainment Establishment premises as authorized by this Article; or
 - 4. Knowingly permitted gambling by any person on the Adult Entertainment Establishment premises.

SECTION 4.06 Revocation

- A. The Chief of Police shall revoke a Specific Use Permit if a cause for suspension under Section 4.05 exists for which the permittee has served a prior suspension or paid a reinstatement fee within the preceding twelve months.
- B. The Chief of Police shall revoke a Specific Use Permit if he determines that:
 - 1. A permittee gave false or misleading information in the material submitted to the Chief of Police during the application process;
 - 2. A permittee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;

3. A permittee or an employee has knowingly allowed prostitution on the premises;
 4. A permittee or an employee knowingly operated the adult entertainment establishment during a period of time when the permittee's Specific Use Permit was suspended;
 5. A permittee has been convicted of an offense listed in Section 4.02 (A)(10) for which the time period required has not elapsed;
 6. On two (2) or more occasions within a twelve (12) month period, an employee of the establishment committed in or on the permitted premises an offense listed in Section 4.02 (A) (10) for which a conviction has been obtained.
 7. A permittee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation or sexual contact to occur in or on the permitted premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.02, Texas Penal Code; or
 8. A permittee is delinquent in payment of hotel occupancy taxes, ad valorem taxes or sales taxes related to the Adult Entertainment Establishment.
- C. The fact that a conviction is being appealed shall have no effect on the revocation of the Specific Use Permit.
- D. Section 4.06 (B) (7) does not apply to adult motels as a grounds for revoking the Specific Use Permit unless the permittee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, contact to occur in a public place or within public view.
- E. When the Chief of Police revokes a Specific Use Permit, the revocation shall continue for one (1) year and the permittee shall not be issued an Adult Entertainment Establishment Specific Use Permit for one (1) year from the date revocation became effective. If, subsequent to revocation, the Chief of Police finds that the basis for the revocation has been corrected or abated, the applicant may be granted a Specific Use Permit if a least ninety (90) days have elapsed since the date the revocation became effective. If the Specific Use Permit was revoked under Section 4.06 (B) (5), an applicant may not be granted another Specific Use Permit until the appropriate number of years required under Section 4.02 (A) (10) has elapsed.

SECTION 4.07 Appeal

- A. If the Chief of Police is authorized to deny the issuance of a Specific Use Permit, or suspend or revoke a Specific Use Permit, the Chief of Police shall give written notice to the applicant or permittee of such intention.
1. The notice shall provide that the denial of issuance, suspension, or revocation shall take effect at the expiration of the third working day after notification unless the permittee provides a written response to the Chief of Police before the expiration of the third (3rd) working day.
 2. If a written response from the applicant or permittee is received by the Chief of Police before the expiration of the third working day, the suspension, denial of issuance, or revocation will be stayed pending a decision by the Chief of Police. The Chief of police shall review the response before the rendering of a decision.
 3. The Chief of Police shall give written notice of this decision to the applicant or permittee within two working days.
 4. The decision by the Chief of Police is effective immediately and final pending any appeal.
 5. Notice shall be deemed delivered by hand delivery to owner or employee of the establishment or by a posting of the notice at the usual business entrance of the establishment. Notice may also be sent by certified mail, return receipt requested. Such notice if by mail shall be mailed to the address listed in the Specific Use Permit application for receipt of notice.
- B. Upon receipt of written notice of the denial, suspension or revocation or the decision by the Chief of Police, the permittee whose application for a Specific Use Permit has been denied or whose Specific Use Permit has been suspended or revoked shall have the right to appeal to the Municipal Court of the City of Garden Ridge, Texas.
- C. An appeal to the Municipal Court of Garden Ridge must be filed within thirty (30) days after the receipt of notice of the decision of the Chief of Police.
- D. The permittee shall bear the burden of proving in court that the decision of the Chief of Police was improper and unreasonable.

SECTION 4.08 Transfer of Specific Use Permit

- A. A person commits an offense if he transfers his specific use permit to another person or operates an Adult Entertainment Establishment under the authority of a Specific Use Permit at any place other than the address designated in the application.

- B. If a written request to transfer a Specific Use Permit is filed with the City Secretary within the ten (10) day limit, the City Council shall consider the request. The City Clerk shall set a date for the hearing within sixty (60) days from the date the written request is received. If a timely request is so filed, the existing Specific Use Permit is deemed not to have expired until the decision of the City Council on such request.
- C. The City Council may grant an exemption from the location restrictions of Section 3.01, if it makes the following findings:
1. That the location of the Adult Entertainment Establishment will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
 2. That the location of the Adult Entertainment Establishment 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 Adult Entertainment Establishment in the areas will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and
 4. That all other applicable provisions of this Ordinance will be observed.
- D. In making the findings specified in Section 4.08 (C), the City Council shall take into account among other things:
1. Crime statistics of the location and its 1,500 foot radius maintained by the appropriate law enforcement agency for the previous six (6) month period;
 2. County Appraisal District appraisals for the location and its 1,500-foot radius taking into account any decline or increase in property values;
 3. Vacancy rates of residential, commercial, or office space within the surrounding 1,500 foot radius; 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 1,500 foot radius.
 5. The City Council shall grant or deny the exemption by a majority vote. Failure to reach a majority vote approving the exemption shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of true evidence. The decision of the City Council is final.

6. If the Council grants the exemption, the exemption is valid for one (1) year from the date of the Council's action. Upon the expiration of an exemption, the Adult Entertainment Establishment is in violation of the location restrictions of Section 3.01 until the applicant applies for and receives another exemption.
7. If the Council denies the exemption, the applicant may not reapply for an exemption until at least twelve (12) months have elapsed since the date of the Council's action.
8. The grant of an exemption does not exempt the applicant from any provisions of this Ordinance other than the locational restrictions.

ARTICLE V

ADDITIONAL REGULATIONS

SECTION 5.01 Additional Regulations for Adult Cabaret

- A. A person commits an offense if he employs at an Adult Cabaret a person under the age of eighteen (18) years.
- B. An employee of an Adult Cabaret while appearing in a state of nudity commits an offense if the employee touches a customer or the clothing of a customer.
- C. A customer at an adult cabaret commits an offense if he touches an employee appearing in a state of nudity or if the customer touches the clothing of the employee.
- D. A permittee or employee commits an offense if he permits any customer access to an area of the premises not visible from the manager station or not visible by a walk-through of the premises without entering a closed area, excluding restrooms.

SECTION 5.02 Additional Regulations for Escort Agencies

- A. A person commits an offense if he employs at an escort agency any person under the age of 18 years.
- B. A person commits an offense if he acts as an escort or agrees to act as an escort for any person under the age of 18 years.

SECTION 5.03 Additional Regulations for Nude Model Businesses or Tanning Salons

- A. A person commits an offense if he employs at a nude model business any person under the age of 18 years.
- B. A person under the age of 18 years commits an offense if he appears in a state of nudity in or on the premises of a nude model business. It is a defense of prosecution under this Subsection if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.
- C. A person commits an offense if he appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model business premises which can be viewed from the public right-of-way or by persons outside the premises.
- D. A person commits an offense if he 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. Mats, tables or tanning machines are permissible in a tanning salon.
- E. A permittee or employee commits an offense if he permits any customer access to an area of the premises not visible from the manager's station or not visible by a walk through of the premises without entering a closed area, excluding restrooms.
- F. An employee or a customer of a nude model business or a tanning salon commits an offense if he touches another individual, either an employee or a customer who is then in a state of nudity or touches the clothing of another individual, either an employee or a customer who is then in a state of nudity.

SECTION 5.04 Additional Regulations for Adult Theaters and Adult Motion Picture Theaters

- A. A person commits an offense if he knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
- B. A person under the age of 18 years commits an offense if he knowingly appears in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
- C. It is a defense to prosecution under Subsections (A) and (B) of this Section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

SECTION 5.05 Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos

- A. A person who operates or causes to be operated an Adult Entertainment Establishment other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:
1. Upon application for an Adult Entertainment Establishment Specific Use Permit, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designate any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 82 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Chief of Police may waive the foregoing diagram for renewal applications if the application adopts a diagram that was previously submitted and certified that the configuration of the premises has not been altered since it was prepared.
 2. The application shall be sworn to be true and correct by the applicant.
 3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Chief of Police or his designee.
 4. The permittee commits an offense if he permits a manager's station to be unattended by an employee at any time a customer is present on 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. If the premises has two or more manager's stations designated, then the interior of the premises shall be considered in such a manner that there is a view of each area of the premises to which any customer is permitted access for any purpose from at least one of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station.

6. The permittee commits an offense if he permits access to a customer of any area of the premises that is not visible from the manager's station for any purposes 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) remains unobstructed by any doors, walls, merchandise, display racks or other material at all times that any customer is present in the premises and to ensure 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-candle as measured at the floor level.
9. The permittee commits an offense if he permits illumination of any area of the premises to which customers have access to be less than one (1.0) foot-candle as measured at the floor level.

ARTICLE VI

ENFORCEMENT

SECTION 6.01 Violation a Misdemeanor

Any person, firm, corporation, agent or employee thereof who violates any of the provisions of this Ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined in amount not to exceed Two Thousand Dollars and No Cents (\$2,000.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

SECTION 6.02 Defenses


- A. It is a defense to prosecution under Sections 3.01, 4.01, and 5.03 that a person appearing a state of nudity did so in a modeling class operated:
 1. By a proprietary school licensed by the State of Texas, a college, junior college, or university supported entirely or partly by taxation;
 2. a private college or university which maintains and operates educational programs in which credits are transferable to a college, or university supported entirely or partly by taxation; or
 3. In a structure:

- a. Which has no sign or other advertising visible from the exterior of the structure indicating a nude person is available for viewing; and
 - b. When, in order to participate in a class, a student must enroll in at least three (3) classes in advance of the class; and
 - c. Where no more than one nude model is on the premises at any one time.
- B. It is a defense to prosecution under Section 3.01 and 4.01 that said item of descriptive, printed, film or video material offered for sale or rental:
1. Taken as a whole, contains serious literary, artistic, political, or scientific value; and
 2. When taken as a whole does not appeal to the prurient interest in sex.


SECTION 6.03 Effective Date

This ordinance shall take effect immediately upon its passage, approval and publication according to law.

PASSED AND APPROVED THIS 3rd DAY OF May, 2000.


Jay E. Feibelman, Mayor

ATTEST:


Judy Tokar
City Secretary

