

AN ORDINANCE OF THE CITY OF FRISCO, TEXAS AMENDING CHAPTER 66 (SEXUALLY ORIENTED BUSINESSES) OF THE FRISCO CODE OF ORDINANCES; REVISING AND ESTABLISHING SEXUALLY ORIENTED BUSINESS REGULATIONS; PROHIBITING MINORS FROM BEING ALLOWED TO ENTER, PERFORM, OR WORK IN A SEXUALLY ORIENTED BUSINESS, WITH VIOLATIONS SUBJECTING THE SEXUALLY ORIENTED BUSINESS TO LICENSE REVOCATION; REQUIRING A SEXUALLY ORIENTED BUSINESS TO NAME ONE OR MORE DESIGNATED OPERATORS WHO MUST BE PRESENT AT THE SEXUALLY ORIENTED BUSINESS DURING ALL HOURS OF OPERATION; CLARIFYING DUTIES, RESPONSIBILITIES, AND VIOLATIONS RELATING TO OPERATORS OF A SEXUALLY ORIENTED BUSINESS; REQUIRING DESIGNATED OPERATORS AND ADULT CABARET ENTERTAINERS TO MEET THE SAME CRIMINAL HISTORY QUALIFICATIONS AS LICENSEES; ENHANCING IDENTIFICATION RECORD REQUIREMENTS FOR EMPLOYEES OF A SEXUALLY ORIENTED BUSINESS, INCLUDING THE PROVISION OF CRIMINAL HISTORY REPORTS FOR DESIGNATED OPERATORS AND ADULT CABARET ENTERTAINERS; PROHIBITING VIP ROOMS THAT ARE NOT CLEARLY AND COMPLETELY VISIBLE AND PROVIDING FOR MORE OPEN AND VISIBLE SURROUNDS FOR ADULT CABARET ENTERTAINMENT; DELETING THE TERMS SEXUAL ENCOUNTER CENTER; CLARIFYING NOTICE REQUIREMENTS, APPEAL PROCEDURES, AND EFFECTIVE DATES RELATING TO THE SUSPENSION, REVOCATION, OR NONRENEWAL OF A SEXUALLY ORIENTED BUSINESS LICENSE; DEFINING TERMS; MAKING CERTAIN SEMANTIC, GRAMMATICAL, STRUCTURAL, AND CONFORMING CHANGES; PROVIDING TRANSITIONAL PROVISIONS; PROVIDING FOR A VIOLATION OF THIS ORDINANCE TO BE PUNISHABLE AS A CLASS A MISDEMEANOR AS PROVIDED IN SECTION 243.010(b) OF THE TEXAS LOCAL GOVERNMENT CODE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the City of Frisco, Texas ("City") in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of the City; and

WHEREAS, the City is expressly authorized to regulate sexually oriented business by virtue of being a home rule municipality and pursuant to Chapter 243 of the Texas Local Government Code; and

WHEREAS, the City Council of the City of Frisco, Texas ("City Council") finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime, such as the possession or use of controlled substances, the proliferation of drug-related activity, prostitution, disorderly conduct, assaults, and the like, and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Texas City Attorneys Association (TCAA) commissioned a study in 2008 to determine the secondary effects of retail-only sexually oriented businesses that sell or rent goods that can be consumed off-site (i.e. adult video stores, adult book stores, adult novelty store);

WHEREAS, the 2008 TCAA commissioned study concluded that retail-only sexually oriented businesses have the negative secondary effect of reducing the market value of single family homes and community shopping centers within ½ mile of the sexually oriented business;

WHEREAS, the 2008 TCAA commissioned study concluded that retail-only sexually oriented businesses have the negative secondary effect of increasing crime –since they pose large, statistically significant ambient public safety hazards in terms of prostitution, drugs, assault, robbery, and vandalism;

WHEREAS, in a 1984 Indianapolis study that polled 20% of the national membership of the American Institute of Real Estate Appraisers, 80% of the respondents predicted that an adult bookstore would negatively impact residential property values and 72% of the respondents believed that commercial property value would also be negatively effected;

WHEREAS, in a 1986 Oklahoma City study that polled one hundred Oklahoma City real estate appraisers, 74% predicted that the presence of an adult book store would have a negative impact on real estate value in the surrounding area;

WHEREAS, the City Council desires to minimize and to control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from

increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the City Council has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this City; and

WHEREAS, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

WHEREAS, the City is a "wired city", meaning the City believes that the availability of advanced telecommunication services are critical to the development of the community, thus the City has adopted practices and policies to further the availability of such services; and a survey conducted in the Spring of 2002 found that approximately seventy-five percent (75%) of households in the City have internet connectivity and that over ninety-five percent (95%) of households are offered service by a broadband carrier, thus making alternative means of communication available; and

WHEREAS, it is not the intent of the City Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City.

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

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Regulations Established. Regulations governing sexually oriented businesses are hereby established as set forth in Exhibit A, which is incorporated as if fully set forth herein.

SECTION 3: Penalty Provision. Any person, firm, corporation or business entity violating this Ordinance or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined a sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense. The penal provisions imposed under this Ordinance shall not preclude Frisco from filing suit to enjoin the violation. Frisco retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 4: Savings/Repealing Clause. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the repeal prevent a prosecution from being commenced for any violation if occurring prior to the repeal of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

SECTION 5: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Frisco hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 6: Effective Date. This Ordinance shall become effective from and after its adoption and publication as required by the City Charter and by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF FRISCO, TEXAS on this 16th day of December, 2008.



Mahe Maso  
MAHER MASO, Mayor

ATTESTED TO AND  
CORRECTLY RECORDED BY:

APPROVED AS TO FORM:

Ron Patterson  
RON PATTERSON

Interim City Secretary

Claire E. Swann

ABERNATHY ROEDER, BOYD & JOPLIN, P.C.  
RICHARD M. ABERNATHY  
CLAIRE E. SWANN  
City Attorneys

DATE OF PUBLICATION: December 19<sup>th</sup>, 2008, Frisco Enterprise

EXHIBIT A

(36 Pages)

## SEXUALLY ORIENTED BUSINESS REGULATIONS

### CITY OF FRISCO

#### SECTION I. PURPOSE AND FINDINGS.

(A) Purpose. It is the purpose of this Ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City; to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City; and to minimize the deleterious secondary effects of sexually oriented businesses both inside such businesses and outside in the surrounding communities. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials or performances, including sexually oriented materials or performances. Similarly, it is neither the intent nor effect of this Ordinance to restrict or deny access by adults to sexually oriented materials or performances protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene material.

(B) Findings. Based on evidence concerning the adverse secondary effects of adult uses 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*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, TDA "Kandyland", 529 U.S. 277 (2000), and *City of Los Angeles v. Alameda Books, Inc.* 121 S. Ct. 1223 (2001) and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the Texas City Attorneys Association's 2008 commissioned study and the report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council finds:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are generally uncontrolled by the operators of the establishments. Further, mechanisms are needed to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of some sexually oriented businesses defined in this Ordinance engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including, but not limited to, masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions, undesirable incidental effects and increases the possibility of the spread of communicable diseases.

(5) Persons often frequent certain sexually oriented businesses for the purpose of engaging in sexual activity within the premises of such sexually oriented businesses.

(6) Engaging in physical contact at a sexually oriented business is not a form of expression protected by the First Amendment.

(7) At least 50 communicable diseases may be spread by activities that occur in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A and Non B amebiasis, salmonella infections and shigella infections.

(8) From 1999 to 2002 there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States – 25,174 in 1999, 25,522 in 2000, 25,643 in 2001, and 26,464 in 2002, compared to 1982 when only 600 cases were reported.

(9) 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 of 1990.

(10) 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.

(11) The surgeon general of the United States in his report of October 22, 1986, 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.

(12) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(13) 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.

(14) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

(15) Numerous studies and reports have determined that areas around sexually oriented businesses experience increased criminal activity, including increased property crimes, violent crimes and sex crimes.

(16) Numerous studies and reports have determined that retail-only sexually oriented business (business that sell or rent goods that can be viewed or consumed off-site such as adult video stores, adult book stores, and adult novelty stores) create a negative secondary effect of reducing surrounding property values as well as increasing crime in the surrounding area;

(17) The findings noted in paragraphs numbered 1 through 16 above raise substantial governmental concerns.

(18) Sexually oriented businesses have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.

(19) 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 operated 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.

(20) Removal of doors on adult booths and requiring sufficient lighting and visibility by a manager or third party on premises with adult booths advances a substantial governmental interest in curbing the illegal and/or unsanitary sexual activity occurring therein.

(21) 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.

(22) 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 with the prevention of the spread of sexually transmitted diseases.



(23) It is desirable in the prevention of the spread of communicable diseases 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 activity.

(24) The fact that an applicant for an adult use 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.

(25) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases and sexually related crimes.

(26) There is an increasing commercial exploitation of human sexuality by owners and operators of sexually oriented businesses where alcoholic beverages are served or offered for sale for consumption on the premises, or where alcoholic beverages are permitted to be consumed.

(27) That such exploitation takes place in the form of employing or permitting persons to perform or exhibit their nude or semi-nude bodies to other person as an inducement to such other persons to purchase alcoholic beverages or to consume alcoholic beverages while on the premises.

(28) Such exploitation is further often accompanied by serious and dangerous criminal activity, such as prostitution, disorderly conduct, assaults, and the like.

(29) That the direct result of such exploitation in the context of the location where it is permitted (i.e. where alcohol is serve or consumed in a sexually oriented business) threatens the preservation of property values of adjoining and adjacent properties and neighborhoods.

(30) The general welfare, health, morals and safety of the citizens of the City will be promoted by the enactment of this Ordinance.

## SECTION II. DEFINITIONS.

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

(2) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, 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 AUDIO OR VIDEO CENTER means any place at which any of the following activities occurs:

(a) inbound or outbound telephone or other audio communications in which a topic or purpose of the communication between an occupant of the premises and a third party is the discussion or description of specified sexual activities, specified anatomical areas or is otherwise pornographic in nature for consideration;

(b) video or audio broadcasting, whether live, delayed, by film, by tape recording or otherwise, of specified sexual activities, specified anatomical areas or pornographic material for consideration; or

(c) filming, taping or otherwise creating video or audio recordings, including but not limited to, films, movies, video tapes, DVD's, audio tapes or compact discs, that are broadcast, sold, manufactured or distributed for consideration.

(4) ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

(a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, 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 which are designed for use in connection with "specified sexual activities" or designed to depict "specified anatomical areas."

(5) ADULT CABARET means a commercial establishment that regularly features the offering to customers of adult cabaret entertainment.

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

(7) ADULT CABARET ENTERTAINMENT means live entertainment that:

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

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

(8) 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 which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or

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

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

(9) 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 which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(10) APPLICANT means:

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

(b) each individual who signs an application for a sexually oriented business license as required by Section IV;

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

(d) each individual who has a twenty percent (20%) or greater ownership interest in a sexually oriented business for which a license application is made under Section IV, 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 IV, regardless of whether the individual's name or signature appears on the application.

(11) 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.

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

(13) EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise, and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

(14) 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 or "specified sexual activities" for another person.

(15) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its business purposes for a fee, tip, or other consideration.

(16) ESTABLISHMENT, when used as a verb, 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.

(17) LICENSE refers to both a sexually oriented business license and a sexually oriented business employee license, unless otherwise specified.

(18) 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 Ordinance, regardless of whether the individual's name or signature appears on the license application;

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

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

(f) in the case of an employee license, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

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

(20) NUDE MODEL STUDIO means any place where a person who appears nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude model studio shall not include a proprietary school licensed by the State of Texas or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

(a) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and

(b) where in order to participate in a class a student must enroll at least three days in advance of the class; and

(c) where no more than one nude or semi-nude model is on the premises at any one time.

(21) NUDITY; STATE OF NUDITY; SEMI-NUDE; OR SEMI-NUDE CONDITION means:

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

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

(22) 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.

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

(24) PERSON means an individual, a group of two (2) or more individuals, proprietorship, partnership, corporation, limited liability company, association, or other legal entity.

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

A commercial establishment may have other business purposes that are not a sexually oriented business or related to a sexually oriented business. Such other business purposes will not serve to exempt such commercial establishments from being categorized as a sexually oriented business so long as one of its business purposes is a sexually oriented business.

(26) 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) the human male genitals in a discernibly aroused state, even if completely and opaquely covered.

(27) SPECIFIED CRIMINAL ACTIVITY means any of the following offenses as described in the Texas Penal Code:

(a) prostitution, including promotion of, aggravated promotion of, and compelling prostitution;

(b) obscenity;

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

(d) sexual performance by a child;

(e) possession or distribution of child pornography;

(f) public lewdness;

(g) indecent exposure;

(h) indecency with a child;

(i) sexual assault or aggravated sexual assault;

(j) incest, solicitation of a child, or harboring a runaway child;

(k) engaging in organized criminal activity;

(l) gambling;

(m) offenses involving necrophilia or bestiality;

(n) distribution of a controlled substance;

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

(p) any similar offenses to those described above under the criminal or penal statutes of the States, country, county or city; for which:

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

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

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

The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(28) SPECIFIED SEXUAL ACTIVITIES means 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 but not limited to, intercourse, oral copulation, masturbation, or sodomy; or

(c) excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.

(29) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than ten percent (10%), as the floor areas exist on: (i) the date this Ordinance takes effect; or (ii) for any premises not used as a sexually oriented business when this Ordinance takes effect, the date an application for a license to use the premises as a sexually oriented business is received by the City designating the floor area of the structure or proposed structure in which the sexually oriented business will be conducted, regardless of any subsequent changes in applicants, licensees, owners, or operators of the premises or the sexually oriented business.

(30) 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 or ownership interests which 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.



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

### SECTION III. CLASSIFICATION.

Sexually oriented businesses are classified as follows:

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

### SECTION IV. LICENSE AND DESIGNATED OPERATOR REQUIRED.

(A) It is unlawful and shall be a misdemeanor:

(1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the City pursuant to this Ordinance for the premises at which the sexually oriented business is operating.

(2) For any person who operates a sexually oriented business to have an employee or employ a person, regardless of the nature of the employment relationship, who works for the sexually oriented business who is not licensed as a sexually oriented business employee by the City pursuant to this Ordinance.

(3) For any person to obtain employment, regardless of the nature of the employment relationship, with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this Ordinance.

(4) For any person to fail to have a designated operator, having a sexually oriented business employee license, and who is responsible for ensuring

compliance with this Ordinance, on-duty and working at any time the sexually oriented business is open for business.

(B) Time for submission of application for sexually oriented business license and regulations related to the requirement of posting notice of intent to locate a sexually oriented business include the following:

(1) Whenever a sign is posted at an intended location of a sexually oriented business in compliance with this Ordinance, and the intended location of the sexually oriented business is not in violation of the locational restrictions of this Ordinance at the time the sign is posted, the sexually oriented business will not be rendered nonconforming by any location or designation, subsequent to the posting of the sign, of a use listed in Section XV(B)(1)—(8) within one thousand (1,000) feet of the posted location of the sexually oriented business.

(2) The operator of a proposed sexually oriented business shall notify the City Secretary's Office ("City Secretary"), by either certified mail or hand delivery, whenever a sign is posted at the intended location of the business in compliance with this Ordinance. The notification must be in the form of a sworn statement indicating the location of the sign and the date it was posted and must be received by the City Secretary within five (5) days after the date of the sign's posting.

(3) Paragraph (1) of this subsection does not apply if:

(a) A complete sexually oriented business license application for the proposed sexually oriented business is not filed with the City within fifteen (15) days after the expiration of the 60-day posting requirement of this Ordinance; or

(b) The notification requirements of Paragraph (2) of this subsection are not met.

(4) An applicant for a sexually oriented business license shall, not later than the sixtieth (60<sup>th</sup>) day before the date the application is filed, prominently post an outdoor sign at the location for which the license is sought stating the following:

(a) "Potential Site for Sexually Oriented Business";

(b) Name of the applicant;

(c) Applicant's business mailing address; and

(d) "Contact City of Frisco Planning and Development Services."

(5) The sign shall also meet the following specifications:

(a) The notice sign shall be sixteen (16) square feet;

(b) The width of the notice sign shall be four (4) feet;

(c) The notice sign shall be constructed in accordance with the City's design standards for zoning signs as set forth in City Sign Regulation Ordinance No. 04-01-03, as it exists or may be amended;

(d) The notice sign(s) shall be placed in a location visible from all streets adjacent to the property (more than one (1) sign is required if the property is adjacent to more than one (1) street);

(e) The notice sign(s) shall be located no greater than twenty (20) feet from the property line adjacent to the street, unless otherwise directed in writing by the City for safety or visibility reasons; and

(f) The lettering on the notice sign(s) shall be of sufficient size to be legible by passers-by on the street that the sign is facing.

The posting of a sign is not required prior to submitting an application for renewal of a valid sexually oriented business license when the sexually oriented business is presently operating at the location.

(C) An application for a sexually oriented business license or a sexually oriented business employee license must be made on a form provided by the City and shall be sworn to as true and correct by the applicant.

(D) All applicants must be qualified according to the provisions of this Ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the City to determine whether the applicant meets the qualifications established in this Ordinance.

(E) Only a person who is an officer of or who has an ownership interest in a sexually oriented business may apply for a sexually oriented business license. An individual wishing to operate a sexually oriented business must sign the application as the applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual having the power to control or direct its operations, each individual who is an officer and/or each individual having a twenty percent (20%) or greater ownership interest in the sexually oriented business must sign the application for a license as an applicant. Such persons include, but are not limited to, general partners, officers, directors, and controlling shareholder(s) or owners. Each applicant must be qualified under this Ordinance and each applicant shall be considered a licensee if a license is granted.

(F) The completed application for a sexually oriented business license shall be on a form to be provided by the City, contain the following information and be accompanied by the following documents:

(1) If the applicant is:

(a) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is eighteen (18) years of age;

(b) a partnership, the partnership shall state its complete name, the date of its formation, evidence that the partnership is in good standing under the laws of the State of Texas and if not a Texas partnership, its state of formation and the names and capacity of all partners and officers, whether the partnership is general, limited or otherwise, a copy of the partnership agreement or certificate of partnership, if any, and the official name and address to be used for process of service on the partnership; and/or

(c) a corporation, limited liability company or other legal entity, the entity shall state its complete name, the date of its incorporation or formation, evidence that the entity is in good standing under the laws of the State of Texas and if not a Texas entity, its state of incorporation or formation, the names and capacity of all officers, directors and controlling stockholders or owners, and the name of the registered agent and the address of the registered office for service of process.

(2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state:

(a) the sexually oriented business's fictitious name; and

(b) submit the required registration and assumed name documents.

(3) Whether the applicant, or a person residing with the applicant, has been convicted of a "specified criminal activity" as defined in this Ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each conviction, and the date of release from confinement, if applicable.

(4) Whether the applicant, or a person residing with the applicant, has had a previous license under this Ordinance or other similar sexually oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder or owner of a corporation or other legal entity that is licensed under this Ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(5) Whether the applicant or a person residing with the applicant holds any other licenses under this Ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.

(6) The classification of the sexually oriented business for which the applicant is seeking the license. A sexually oriented business may only have one classification to be eligible for a license.

(7) The location of the proposed sexually oriented business, including a legal description of the property, street address, telephone number(s), if any, and the dates a notice sign was posted as required by this Ordinance.

(8) The applicant's mailing address and residential address.

(9) For each applicant(s): a copy of (i) a valid state driver's license with photo, or a valid state identification card with photo for any applicant who does not drive, plus (ii) an additional form of identification with a photo. The originals of the required forms of identification shall be presented to the City Secretary or his/her designee, for inspection prior to the issuance of a license.

(10) The applicant's driver's license number and state of issuance.

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

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

(13) A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business, prepared and sealed by an architect or engineer, drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(14) A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within one thousand (1,000) feet of the property to be certified; the property lines of any

established religious institution/synagogue, school, or public park or recreation area within one thousand (1,000) feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence or owned by such type of user at the time an application is submitted.

(15) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict "specified sexual activities" or "specified anatomical areas," then the applicant shall comply with the additional application requirements set forth in Section XVII.

(16) A statement whether the applicant or a person with whom applicant is residing remains delinquent in payment to the City of taxes, fees, fines or penalties, after notice of amount due has been sent.

(G) The completed application for a sexually oriented business employee license shall be on a form to be provided by the City, contain the following information and shall be accompanied by the following documents:

(1) The applicant's name or any other name (including "stage" names) or aliases used by the individual;

(2) Age, date, and place of birth;

(3) Height, weight, hair and eye color;

(4) Present residence address and telephone number;

(5) Present business address and telephone number;

(6) A copy of (i) a valid state driver's license with photo, or a valid state identification card with photo for any applicant who does not drive, plus (ii) an additional form of identification with a photo. The originals of the required forms of identification shall be presented to the City Secretary, or his/her designee, for inspection prior to the issuance of a license; and

(7) Proof that the individual is at least eighteen (18) years of age.

(8) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the City. Any fees for the photographs and fingerprints shall be paid by the applicant.

(9) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other

county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(10) A statement whether the applicant has been convicted of a "specified criminal activity" as defined in this Ordinance and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each conviction, and the date of release from confinement, if applicable.

(11) A statement whether the applicant or a person with whom applicant is residing remains delinquent in payment to the City of taxes, fees, fines or penalties, after notice of amount due has been sent.

(H) All employees of a sexually oriented business must obtain a sexually oriented business employee license as required by this Ordinance. Any person who fails to timely submit an application for a license, as required by this subsection or any person operating sexually oriented business who allows an employee to continue working who is not in compliance with this subsection or who fails to receive a license shall be considered to be in violation of Section IV(A)(1), (2) and/or (3).

## SECTION V. ISSUANCE OF LICENSE.

(A) Upon the filing of said complete application for a sexually oriented business employee license, the City shall issue a temporary license, valid for thirty (30) days, to said applicant. The application shall then be referred to the appropriate City departments for an investigation to be made on such information as is contained on the application. The investigation shall be completed within twenty-five (25) days from the date the completed application was filed. Upon completion of the investigation, the City shall issue a license, not later than thirty (30) days from the date the completed application was filed, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;

(2) The applicant is a minor;

(3) The applicant, applicant's spouse, or designated operator has been convicted of a "specified criminal activity" as defined in this Ordinance;

(4) The sexually oriented business employee license is to be used for employment in a business prohibited or unlicensed by local or state law, statute, rule or regulation, or prohibited by a particular provision of this Ordinance;

(5) The applicant has had a sexually oriented business employee license revoked by the City within two (2) years of the date of the current application;

(6) The license fee required by this Ordinance has not been paid; or

(7) The applicant or a person with whom applicant is residing remains delinquent in payment to the City of taxes, fees, fines or penalties, after notice of amount due has been sent.

(B) If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section XIII.

(C) Sexually oriented business licenses and sexually oriented business employee licenses granted pursuant to this Section shall be subject to annual renewal upon the written application of the applicant and a finding by the City that the applicant has not been convicted of any specified criminal activity as defined in this Ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section VI.

(D) Upon the filing of said complete application for a sexually oriented business license, the application shall be referred to the appropriate City departments for an investigation to be made on such information as is contained on the application. The investigation shall be completed within twenty-five (25) days from the date the completed application was filed. Upon completion of the investigation, the City shall issue a license not later than thirty (30) days from the date the completed application was filed, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) An applicant is a minor;

(2) An applicant or a person with whom applicant is residing remains delinquent in payment to the City of taxes, fees, fines or penalties, including but not limited to those related to the sexually oriented business or the property on which the sexually oriented business is located, after notice of amount due has been sent;

(3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;



(4) An applicant or a person with whom the applicant is residing has been denied a license by the City to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;

(5) An applicant or a person with whom the applicant is residing has been convicted of a "specified criminal activity" as defined in this Ordinance;

(6) The premises to be used for the sexually oriented business have not been approved by the Police Department, Fire Department, Planning and Development Services, Health and Food Safety Department; or other City department or applicable governmental agency as being in compliance with applicable laws and ordinances;

(7) The license fee required by this Ordinance has not been paid; or

(8) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this Ordinance, the Comprehensive Zoning Ordinance (CZO), as defined herein, or any other applicable City ordinance, as each is existing or may be amended.

(E) The sexually oriented business license, if granted, shall state on its face, the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to Section III. All sexually oriented business licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time the establishment is occupied or open for business. A sexually oriented business license is only valid on the premises for which it was issued. The sexually oriented business employee license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date and the address of the applicant. The holder of a sexually oriented business employee license shall have the license available for inspection at the premises where they are working pursuant to the authority granted under the license. The holder of a sexually oriented business license shall be responsible for verifying that each employee holds a valid sexually oriented business employee license and for maintaining copies of such employee licenses on the premises. Licenses are not transferable.

(F) A sexually oriented business license shall issue for only one classification as found in Section III.

## SECTION VI. FEES.

(A) Every application for a sexually oriented business license shall be accompanied by a \$700.00 non-refundable application and investigation fee. An application shall not be considered complete until the fee is paid.

(B) In addition to the application and investigation fee required above, every application for renewal of a valid sexually oriented business license shall pay to the City an annual non-refundable renewal fee of \$350.00. An application for renewal shall not be considered complete until the fee is paid.

(C) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual \$75.00 non-refundable application, investigation, and license fee. An application shall not be considered complete until the fee is paid.

(D) All license applications and fees shall be submitted to the City Secretary, or its designee.

## SECTION VII. INSPECTION.

(A) As a condition of licensing, an applicant, licensee, operator, employee, or any person in control of the premises shall permit representatives of the Police Department, Health and Food Safety Department, Fire Department, Planning and Development Services, or other City departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business and at other reasonable times upon request.

(B) A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises.

## SECTION VIII. IDENTIFICATION RECORDS.

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

(B) The registration card or file must contain the following information for each employee:

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

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

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

(8) Date of commencement of employment or contractual relationship with the sexually oriented business.

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

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

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

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

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

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

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

## SECTION IX. EXPIRATION OF LICENSE.

(A) Each sexually oriented business license and each sexually oriented business employee license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section IV. Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the license will still expire on its expiration date.

(B) When the City denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to denial, the City finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the denial became final.

## SECTION X. SUSPENSION.

The City shall suspend a license for a period not to exceed thirty (30) days if it determines that a licensee, an operator, or an employee has:

- (1) violated or is not in compliance with any section of this Ordinance;
- (2) refused to allow an inspection of the sexually oriented business premises as authorized by this Ordinance; or
- (3) knowingly permitted gambling by any person on the sexually oriented business premises.

A sexually oriented business may not operate while the sexually oriented business license issued for that business is suspended and the holder of a sexually oriented business employee license may not work on the premises of a sexually oriented business while that employee's license is suspended, except as allowed by Section XIII.

## SECTION XI. REVOCATION.

(A) The City shall revoke a license if a cause of suspension in Section X occurs and the license has been suspended within the preceding twelve (12) months.

(B) The City shall revoke a license if it determines that one or more of the following is true:

- (1) a licensee gave false or misleading information in the material submitted during the application process;

(2) a licensee or an operator has knowingly allowed possession, use, or sale of controlled substances on the premises or failed to report such activities to the police;

(3) a licensee or an operator has knowingly allowed prostitution on the premises or failed to report such activities to the police;

(4) a licensee or an operator knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) a licensee or a designated operator has been convicted of an offense listed in Section II(27)(a) through (p) for which the time period required in Section II(27)(p)(i) through (iii) has not elapsed;

(6) a licensee or an operator has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises;

(7) a licensee remains delinquent in payment to the City of taxes, fees, fines or penalties, including but not limited to those related to the sexually oriented business or the property on which the sexually oriented business is located, after notice of amount due has been sent;

(8) a designated operator, having a sexually oriented business employee license, responsible for ensuring compliance with this Ordinance is not on-duty and working at any time the premises is open for business; or

(9) a licensee or operator has violated Section XXIV of this Ordinance.

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

(D) Subsection (B)(6) does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(E) When the City revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a license for one (1) year from the date the revocation became effective. If, subsequent to revocation, the City finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective.

(F) After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek judicial

review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

## SECTION XII. NOTICE OF DENIAL OF ISSUANCE OR RENEWAL OF LICENSE OR SUSPENSION OR REVOCATION OF LICENSE; SURRENDER OF LICENSE.

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

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

(C) After suspension or revocation of a license or denial of renewal of a license that was valid on the date the application for renewal was submitted, the applicant or licensee shall discontinue operating the sexually oriented business and surrender the license to the City by 11:59 p.m. of the 10<sup>th</sup> day after the date:

(1) notice required by Subsection (A) is delivered to the applicant or licensee, if no appeal is filed under Section XIII of this Ordinance; or

(2) a final decision is issued by the City Manager upholding the action by the City, if an appeal is filed under Section XIII of this Ordinance.

(D) For purposes of this Ordinance, written notice is deemed to be delivered:

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

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

## SECTION XIII. APPEAL PROCEDURE

(A) Any applicant for a license who is denied a license or the holder of any license that is suspended or revoked shall have the right to appeal such decision to the City Manager or his/her designee. The appeal may be made by filing with the City Manager or his/her designee within ten (10) days after notice of the denial, suspension or revocation has been received, a written statement setting forth fully the grounds for the appeal and the name, mailing address, facsimile number and telephone number to

be used by the City to provide notice of the hearing as required by Paragraph (B) of this Section XII.

(B) The City Manager or his/her designee shall provide for a hearing on such appeal and shall notify, in writing, the appellant and City official who denied, suspended or revoked the license of the date and time of such hearing at least seven (7) days prior to the hearing, unless appellant agrees in writing to a shorter notice. Disputes of fact shall be decided on the basis of a preponderance of the evidence. For purposes of this section, notice by facsimile or hand delivery shall be considered delivered on the date of fax or delivery if faxed or delivered prior to 5:00 p.m., and if after 5:00 p.m. it shall be considered delivered on the next day; and notice by mail shall be deemed delivered on the second day following deposit in the United States mail.

(C) The decision of the City Manager or his/her designee shall be made no later than thirty (30) days after receipt of notice of the appeal. The decision of the City Manager or his/her designee is final.

(D) If the appellant being denied a license renewal holds an unrevoked, unsuspended license for the preceding year, he/she shall be permitted to continue to operate under the existing license until a final decision is made by the City Manager or his/her designee under this Section, unless the City determines from evidence or information presented to it that continued operation or work by the appellant would constitute a continuing and imminent threat to the public welfare; however, if said license expired under Section IX of this Ordinance prior to the denial of the renewal, the license shall be considered expired and the appellant may not use the expired license.

(E) An appellant appealing the suspension or revocation of a license may continue to use such license until a final decision is made by the City Manager or his/her designee, unless the City determines from evidence or information presented to it that continued operation or work by the appellant would constitute a continuing and imminent threat to the public welfare.

#### SECTION XIV. TRANSFER OF LICENSE.

A licensee commits a misdemeanor if the licensee transfers his/her license to another or operates a sexually oriented business under the authority of a license at any place other than the address designated in the application.

#### SECTION XV. LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(A) A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business in any zoning district other than as allowed by Frisco's Comprehensive Zoning Ordinance No. 00-01-11, as it exists or may be amended ("CZO").

(B) A person commits a misdemeanor if the person operates or causes to be operated, within the City limits, a sexually oriented business within one thousand (1,000) feet of any of the following located within the City limits or its extraterritorial jurisdiction:

(1) A church, synagogue, mosque, temple or structure that is used primarily for religious worship and related religious activities or real property owned by, or for the benefit of, a religious organization that intends to use the property for such purposes if such ownership has been registered with the City;

(2) A public or private educational facility, including but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, colleges and universities; school includes the school grounds and related athletic or other facilities regularly visited by students;

(3) A boundary of a residential district as defined in the CZO or an area designated as residential on the City's Future Land Use Plan;

(4) A public park or recreational area which has been designated for park or recreational activities, including but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the City which is under the control, operation, or management of a governmental entity;

(5) The property line of a lot devoted to a residential use as defined in the CZO;

(6) An entertainment business which is oriented primarily towards children or family entertainment;

(7) A licensed premises, licensed pursuant to the Texas Alcoholic Beverage Code; or

(8) A road designated as a major thoroughfare on the City's Thoroughfare Plan.

(C) A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand (1,000) feet of another sexually oriented business.

(D) A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any



sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(E) For the purpose of subsection (B) of this Section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure that is part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use or edge of a district listed in subsection (B), as determined by the City Building Official or his/her designee. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

(F) For purposes of subsection (C) of this Section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each business is located, as determined by the City Building Official or his/her designee.

(G) Any sexually oriented business lawfully operating prior to the effective date of this Ordinance that is in violation of one or more of subsections (A) through (F) of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one year, unless sooner terminated for any reason, including but not limited to, suspension or revocation of license, or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within one thousand (1,000) feet of one another and otherwise in a permissible location, the sexually oriented business which was first lawfully established and continually operating at a particular location is the conforming use and the later established business(es) is/are nonconforming.

(H) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a use listed in subsection (B) of this Section within one thousand (1,000) feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

## SECTION XVI. ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(A) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this Ordinance.

(B) A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

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

#### SECTION XVII. ADDITIONAL REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room, booth, stall or partitioned portion of a room having less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts "specified sexual activities" or "specified anatomical areas," (herein referred to as "viewing area") shall comply with the following requirements:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The City may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) No alteration in the configuration or location of a manager's station may be made without the prior written approval of the City.

(3) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(4) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. No viewing area shall have a door, half-door, curtain, portal partition or other divider unless at least one side is completely open to an adjacent public room and a manager's station so that the area inside is visible to persons in the adjacent public room and a manager's station.

(5) It shall be the duty of the licensee to ensure that the view area specified herein remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this Section.

(6) No viewing area may be occupied by more than one person at any time.

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.

(8) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(9) No licensee shall allow openings of any kind to exist between viewing areas.

(10) No person shall make or attempt to make an opening of any kind between viewing areas. A solid metal barrier in which an opening cannot be easily made shall be used in the wall construction between viewing areas within forty eight (48") inches of the floor.

(11) The licensee shall, during each business day, regularly inspect the walls between the viewing areas to determine if any openings or holes exist.

(12) The licensee shall cause all floor coverings in viewing areas to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(13) The licensee shall cause all wall surfaces and ceiling surfaces in viewing areas to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

(B) A person having a duty under Subsection (1) through (13) of Subsection (A) above commits a misdemeanor if he knowingly fails to fulfill that duty.

## SECTION XVIII. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

(A) A person commits an offense if the person acts as an escort or agrees to act as an escort for a minor.

## SECTION XIX. ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.

(A) Reserved.

(B) A minor commits an offense if the minor appears in a state of nudity in or on the premises of a nude model studio.

(C) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.

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

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

(F) A patron at a nude model studio commits an offense if the patron touches an employee who is exposing any specified anatomical areas or touches the clothing of the employee.

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

## SECTION XX. ADDITIONAL REGULATIONS CONCERNING ADULT MOTION PICTURE THEATERS.

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

(B) A minor commits an offense if the minor knowingly appears in a state of nudity in or on the premises of an adult motion picture theater.

## SECTION XXI. ADDITIONAL REGULATIONS FOR ADULT CABARETS.

(A) A licensee or an operator of an adult cabaret commits an offense if he employs, contracts with, or otherwise allows a person to act as an adult cabaret

entertainer if the person has been convicted of an offense listed in Section II(27)(a) through (p) for which the time period required in Section II(27)(p)(i) through (iii) has not elapsed.

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

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

(D) An adult cabaret may not contain any VIP rooms, except that any VIP room contained in a lawfully operating adult cabaret on the effective date of this Ordinance may continue in existence for one year from the effective date of this Ordinance provided that no adult cabaret entertainment occurs in the VIP room.

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

## SECTION XXII. ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY.

(A) It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified "sexual activities."

(B) It shall be a misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears in a state of nudity unless the person is an employee who, while in a state of nudity, shall be at least ten (10) feet from any patron or customer and on a stage at least two (2) feet from the floor level used by patrons.

(C) It shall be a misdemeanor for an employee, while in a state of nudity in a sexually oriented business, to solicit any pay or gratuity from any patron or for any patron to pay or give any gratuity to any employee, while said employee is in a state of nudity in a sexually oriented business.

(D) It shall be a misdemeanor for an employee, while in a state of nudity, to touch a patron or the clothing of a patron.

(E) It shall be a misdemeanor for a patron to touch an employee in a state of nudity, or to touch the clothing of an employee in a state of nudity.

### SECTION XXIII. PROHIBITION AGAINST MINORS IN A SEXUALLY ORIENTED BUSINESS.

(A) A licensee or an operator commits an offense if he knowingly:

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

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

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

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

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

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

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

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

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

### SECTION XXIV. HOURS OF OPERATION.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of midnight (12:00 A.M.) and ten o'clock (10:00) A.M. on weekdays and Saturdays, and midnight (12:00 A.M.) and noon (12:00 P.M.) on Sundays.

### SECTION XXV. ALCOHOLIC BEVERAGE SALES AND CONSUMPTION PROHIBITED.

(A) It shall be an offense for any person to maintain, own, or operate a sexually oriented business if they also serve or offer for sale or consumption on or off the premises, alcoholic beverages.

(B) It shall be an offense for any person including employees and patrons, while on the premises of a sexually oriented business, to possess, serve, offer for sale or consume alcoholic beverages.

#### SECTION XXVI. SIGNS AND EXTERIOR PORTIONS.

(A) A person commits an offense if the person allows:

(1) the merchandise or activities of the sexually oriented business to be visible from any point outside the premises;

(2) any exterior portion of the premises of a sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, graphics or pictorial representations of any manner except for the words or letters allowed by Section XXVII (B) of this Ordinance.

(3) any sign to exist that does not comply with City Sign Regulations Ordinance No. 04-01-03, as it exists or may be amended; or

(4) any exterior portion of the premises of a sexually oriented business to be any color other than a single achromatic color, unless the following conditions are met:

(a) the premises is part of a commercial multi-unit development;  
and

(b) the exterior portions of each premises or unit in the commercial multi-unit development, including the exterior of the sexually oriented business, are the same color as one another or are colored in such a way as to be a component of the overall architectural style or pattern of the commercial multi-unit development.

(B) Notwithstanding any provision of City Sign Regulations Ordinance No. 04-01-03, as it exists or may be amended, a sexually oriented business is limited to one (1) primary sign and one (1) secondary sign and no sign visible from any point outside the premises shall contain photographs, silhouettes, drawings, or pictorial representations of any manner, and may contain only:

(1) the name of the establishment; and/or

(2) one of the following phrases:

(a) "adult arcade"

(b) "adult audio center" or "adult video center";

(c) "adult bookstore"

- (d) "adult novelty store"
- (e) "adult video stores"
- (f) "adult cabaret"
- (g) "adult motel"
- (h) "adult motion picture theater"
- (i) "escort agency"
- (j) "nude modeling studio"

A person commits an offense by installing or causing to be installed any sign in violation of this subsection or by allowing the continued display of an unlawful sign.

#### SECTION XXVII. INJUNCTION.

A person who operates or causes to be operated a sexually oriented business without a valid license or who violates this Ordinance is subject to a suit for injunction as well as prosecution for criminal violations.

#### SECTION XXVIII. ENFORCEMENT.

(A) Whenever a person does an act that is prohibited, fails to perform an act that is required, or commits an act that is made an offense by any provision of this Ordinance or any other Ordinance regulating sexually oriented businesses, the violation is punishable as provided by Section 243.010(b) of the Texas Local Government Code, as amended, or other applicable law. A person violating a provision of this Ordinance is guilty of a separate offense for each day or part of a day during which the violation is committed, continued, or permitted.

(B) Except where otherwise specified, a culpable mental state is not required for the commission of an offense under this Ordinance.

(C) It is a defense to prosecution under Section XIX that a person appearing in a state of nudity did so in a modeling class operated:

(1) by a proprietary school, licensed by the State of Texas; or a college, a junior college, or a university supported entirely or partly by governmental taxation;

(2) by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or



(3) in a structure:

(a) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

(b) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(c) where no more than one nude model is on the premises at any one time.