

SECTION 9: SEXUALLY ORIENTED BUSINESS (SOB)

9.A Purpose and Intent.

It is the purpose of this section to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the city. Sexually oriented businesses are allowed in I “Industrial District” zoning classifications with a “Special Use Permit” granted by the Board of Adjustment. The provisions of this section have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this section to restrict or deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

9.B Definitions.

For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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

ADULT BOOKSTORE or ADULT VIDEO STORE. A commercial establishment which as its business purpose offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which depict or describe specified sexual activities or specified anatomical areas; or

(2) Instruments, devices, or paraphernalia which are designed for use in connection with specified sexual activities.

ADULT CABARET. A nightclub, bar, restaurant, or similar commercial:

(1) Establishment which at any time features;

(2) Persons who appear in a state of nudity;

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(3) Live performers which are characterized by the exposure or specified anatomical areas or by specified sexual activities; or

(4) 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.

ADULT ENCOUNTER PARLOR. An establishment whose business is at any time the provision of premises where customers either congregate, associate, or consort with employees who engage in specified sexual activities with or in the presence of such customers, or who display specified anatomical areas in the presence of such customers, with the intent of providing sexual stimulation or sexual gratification to such customers.

ADULT LOUNGE. An adult cabaret, as defined above, which is a permitted or licensed premise, pursuant to the Texas Alcoholic Beverage Code, where alcoholic beverages may be served or sold.

ADULT MODELING STUDIO. An establishment whose business is at any time the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed, or otherwise depicted by such customers.

ADULT MOTEL. A hotel, motel, or similar commercial establishment which:

(1) 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/or has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or

(2) Allows a tenant or occupant of a sleeping room to sub rent the room for a period of time that is less than ten hours.

ADULT MOTION PICTURE THEATER. 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.

ADULT THEATER. A theater, concert hall, auditorium, or similar commercial establishment which at any time features persons who appear in a state of nudity or live performers which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

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APPLICANT. The applicant for a permit shall be the operator of the sexually oriented business.

ARCADE DEVICE. Any coin or slug-operated or electronically or mechanically controlled machine or device that dispenses or effectuates the dispensing of entertainment that is intended for the viewing of five or fewer persons to exchange for any payment of any consideration.

CHIEF OF POLICE. The chief of police of the City of Stephenville or his or her designated agent.

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

CONDUCT ANY BUSINESS IN A SEXUALLY ORIENTED BUSINESS. Any person who does any one or more of the following shall be deemed to be conducting a business in a sexually oriented business:

(1) Operates a cash register, cash drawer or other depository on the sexually oriented business premises where cash funds or records of credit cards or other credit transactions generated in any manner by the operation of the sexually oriented business or the activities conducted therein are kept:

(2) Displays or takes orders from any customer for any merchandise, goods, entertainment, or other services offered on the sexually oriented business premises;

(3) Delivers or provides to any customer any merchandise, goods, entertainment or other services offered on the sexually oriented business premises;

(4) Acts as a door attendant to regulate entry of customers or other persons into the sexually oriented business premises; or

(5) Supervises or manages other persons in the performance of any of the foregoing activities on the sexually oriented business premises.

CUSTOMER. Any person who:

(1) Is allowed to enter a regulated sexually oriented business in return for the payment of an admission fee or any other form of consideration or gratuity; or

(2) Enters a regulated sexually oriented business and purchases, rents or otherwise partakes of any merchandise, goods, entertainment or other services offered therein; or

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(3) Is a member of and is on the premises of a regulated sexually oriented business operating as a private club.

EMPLOYEE. Any person who renders any service whatsoever to the customers of a regulated sexually oriented business or who works in or about a regulated sexually oriented business and who receives compensation for such service or work from the operator or owner of the regulated sexually oriented business or from the customers therein.

ENTERTAINMENT. Any act or performance, such as a play, skit, reading, revue, pantomime, scene, song, dance, musical rendition, or striptease, whether performed by employees, agents, contractors, or customers. The term **ENTERTAINMENT** shall also mean bartenders, waiters, waitresses, or other employees exposing specified anatomical areas or engaging in specified sexual activities in the presence of customers.

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

NUDITY OR A STATE OF NUDITY. That appearance of a human bare buttock, anus, male genitals, female genitals, or female breast.

OPERATOR. That manager or other natural person principally in charge of a regulated sexually oriented business.

OWNER OR OWNERS. The proprietor if a sole proprietorship, all partners (general and limited) if a partnership, or all officers, directors, and persons holding ten or more of the outstanding shares if a corporation. The term **OWNER** shall not include any such person who has given to the operator a statement under oath that he does not desire to be listed on the permit application and that he waives any right to any notice that is required or permitted to be given under this ordinance.

PERMIT. A current, valid permit issued by the City Inspector pursuant to the terms of this ordinance to an operator for a sexually oriented business.

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

REGULATED ESTABLISHMENT. Any sexually oriented business, as defined herein.

RESIDENTIAL. Pertains to the use of land, whether situated within the city or not, for premises such as homes, town homes, patio homes, mobile homes, duplexes, condominiums and apartment complexes, which contain habitable rooms for no transient occupancy and which are designed primarily

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for living, sleeping, cooking, and eating therein. A premise which is designed primarily for living, sleeping, cooking, and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes.

SEXUALLY ORIENTED BUSINESS. An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, or nude model studio.

SPECIFIED ANATOMICAL AREAS.

(1) Less than completely and opaquely covered:

- (a) Human genitals, pubic region or pubic hair;
- (b) Buttock;
- (c) Female breast or breasts below a point immediately above the top of the areola;
- (d) Any combinations of the foregoing.

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

SPECIFIED SEXUAL ACTIVITIES. Any of the following:

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

(2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated; or

(4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above

TRACT. A contiguous parcel or land under common ownership, whether situated within the city or not.

9.C Location of Sexually Oriented Business.

(1) A person commits an offense if he or she operates or causes to be operated a sexually oriented business within 1,000 feet of:

- (a) A church;

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- (b) A public or private elementary or secondary school;
- (c) Residentially zoned property;
- (d) A public park;
- (e) A lot devoted to residential use;
- (f) Another sexually oriented business;
- (g) Licensed day care center.

(2) A person commits an offense if he or she 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.

(3) A person commits an offense if he or she operates or causes to be operated, a sexually oriented business without a permit for said business issued by the designated agent of the City of Stephenville.

(4) For the purpose of division (1) above, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, licensed day care center, or to the nearest boundary of an affected public park, residential district, or residential lot.

(5) For purposes of division (1)(f) above, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(6) Any sexually oriented lawfully operating prior to the effective date of this ordinance, which is in violation of division (1) or (2), above shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period of not to exceed six months, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use 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 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) in nonconforming.

(7) A sexually oriented business lawfully operating as conforming use after the effective date of this ordinance is not rendered a nonconforming use by the location, subsequent to the operation of the sexually oriented business, of a church, public or private elementary or secondary school, public park, residential district, or residential lot within 1,000 feet of the sexually oriented business.

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9.D Additional Regulations for Adult Motels.

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

(2) For purpose of division (1) above, the terms *RENT* or *SUB RENT* mean the act of permitting a room to be occupied for any form of consideration.

9.E. Permit - Required

(1) It shall be unlawful for any person to own, operate or conduct any sexually oriented business located within the city unless there is a permit for the sexually oriented business.

(2) It shall be unlawful for any person to own, operate, or conduct any sexually oriented business located within the city unless the permit is posted at or near the principal public entrance to the sexually oriented business in such a manner that it will be conspicuous to patrons who enter the premises.

(3) In any prosecution under division (1) above, it shall be presumed that there was no permit at the time of the alleged offense, unless a permit was then posted as provided in division (2).

9.F Application for Permit.

(1) Application for a permit, whether original or renewal, must be made to the designated agent of the City of Stephenville by the intended operator of the sexually oriented business. Applications must be submitted by hand delivery to the City Hall during regular business hours (8:00 a.m. to 5:00 p.m., Monday through Friday, city holidays excepted). Application forms shall be supplied by the City of Stephenville. The intended operator shall be required to give the following information.

(a) The name, street address (and mailing address if different) and Texas driver's license number of the intended operator, and any and all aliases. Notification required within 48 hours of change of operator. Information required as stated above. The name and street address (and mailing address if different) of the owner(s). Corporations shall be required to have written authorization from the president or chief executive officer.

(b) The name under which the sexually oriented business is to be operated and a general description of the services to be provided;

(c) The telephone number of the sexually oriented business;

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(d) The address, and legal description of the parcel of land on which the sexually oriented business is to be located;

(e) The date on which the owner(s) acquired the sexually oriented business for which the permit is sought, and the date on which the sexually oriented business began operations at the location for which the permit is sought; and

(f) A list of all employees or contractors involved in providing the services to be provided by the sexually oriented business.

(2) The application shall be accompanied by the following:

(a) The application shall be accompanied by a diagram of the sexually oriented business showing a plan thereof and designating any portion of the sexually oriented business in which patrons will not be permitted. Such diagram shall also designate the place at which patron the permit will be 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 drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the sexually oriented business. The designated agent of the City of Stephenville shall waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the sexually oriented business has not been altered since it was prepared.

(b) Original application fee. (Fee to be set annually by the City Council. Payment of application fee to be made by certified check, cashiers check or money order, which fee shall not be refundable under any circumstances.)

(c) Renewal application fee. (Fee to be set annually by the City Council. Payment of application fee to be made by certified check, cashiers check or money order, which fee shall not be refundable under any circumstances.)

(d) The application shall contain a statement under oath that:

(1) That applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct; and

(2) The applicant has read the provisions of this article.

(e) A separate application and permit shall be required for each sexually oriented business.

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9.G. Issuance of Denial or Permit Application.

(1) Within 20 days of receipt of any application, either original or renewal, the designated agent of the City of Stephenville shall grant or deny the requested permit and have written notice to the applicant as to the decision.

(2) The designated agent of the City of Stephenville shall issue a permit to the applicant unless one or more of the following conditions exist:

(a) The applicant's sexually oriented business is located within 1,000 feet of any school, church, licensed day care center, residentially zoned property, public park, lots devoted to residential use, or another sexually oriented business. Measurements shall be made as outlined in divisions (4) and (5) of 9.C;

(b) The applicant failed to supply all of the information requested on the application;

(c) The applicant gave materially false, fraudulent or untruthful information on the application;

(d) The application or the sexually oriented business does not meet any other requirement of this ordinance;

(e) The applicant has not fully complied with all state, federal and local laws or regulations affecting the conduct of its business; or

(f) The operator has had a permit revoked for the same sexually oriented business within the 180-day period next proceeding the date that the application was filed.

9.H Term of Permit.

Each permit shall be valid for a period of one year and shall expire on the anniversary of its date of issuance, unless sooner revoked, or surrendered. Each permit shall be subject to renewal as of the expiration date by the filing of a renewal application with the designated agent of the City of Stephenville. Renewal applications must be filled at least 20 days prior to the expiration date of the permit that is to be renewed.

9.I Revocation or Suspension of Permit

The designated agent of the City of Stephenville shall have the authority to revoke a permit for any one or more of the following reasons:

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(1) The owner or operator of the permitted sexually oriented business knowingly allowed a person under 18 years of age to enter a sexually oriented business;

(2) The permitted sexually oriented business does not conform to the provisions of 9.K:

(3) Three or more cumulative violations of any of the offenses contained in Chapter 21, Chapter 43, §§ 22.011 or 22.021 of the Texas Penal Code or of the offenses contained in this article have occurred on the premises of the permitted sexually oriented business. These violations must have occurred in a consecutive period of 12 months, and the owner or operator must have knowingly allowed such violations to occur or did not make a reasonable effort to prevent the occurrence of such violations;

(4) The operator of the permitted sexually oriented business gave materially false, fraudulent or untruthful information on the original, or renewal application form;

(5) The sexually oriented business has been closed for business for a period of 30 consecutive days, unless such closure is due to circumstances beyond the control of the owner, and the owner is proceeding with due diligence, given all attendant circumstances, to reopen the establishment.

9.J Other Permit Provisions.

(1) Permit is valid only at the location for which it is issued;

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

(3) A permit may be cancelled upon written request of the owner(s) or operator and surrender of the permit itself to the designated agent of the City of Stephenville. Permits shall be surrendered at the same place and at the same time as permit applications as provided in herein. The surrender of a permit shall be effective upon its filing in the office of the designated agent of the City of Stephenville.

9.K Exterior Portions of Sexually Oriented Business.

(1) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the sexually oriented business to be visible from any point outside such sexually oriented business.

(2) It shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portions of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner.

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9.L Enforcement.

(1) Except as provided by division (4) below, any person violating division (4)(c), upon conviction shall be punished by a fine not to exceed \$1,000 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

(2) Except as provided by division (4) below, any person any provision of this ordinance other than Paragraph C shall be punished by a fine not to exceed \$200 for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.

(3) If the sexually oriented business involved is a nude model studio, then a violation of this ordinance shall be punishable as a Class B misdemeanor.

(4) It is a defense to prosecution under division (4)(c) that a person appearing in a state of nudity did so in a modeling class operated:

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

(b) 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;

(c) In a structure:

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

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

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

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