

ORDINANCE NO 092-013

AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS AMENDING THE CODE OF ORDINANCES BY ADDING A CHAPTER ENTITLED "SEXUALLY ORIENTED BUSINESSES;" PROVIDING DEFINITIONS; PROVIDING FOR THE LICENSING AND REGULATION OF ADULT ARCADES; ADULT BOOKSTORES; ADULT VIDEO STORES; ADULT CABARETS; ADULT MOTELS; ADULT MOTION PICTURE THEATERS; ESCORT AGENCIES; NUDE MODELING STUDIOS AND SEXUAL ENCOUNTER CENTERS; REGULATING THE DISPLAY OF SEXUALLY EXPLICIT MATERIALS TO MINORS; PROVIDING PENALTIES FOR CERTAIN VIOLATIONS AS CLASS A MISDEMEANORS AND CERTAIN VIOLATIONS AS CLASS C MISDEMEANORS AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES, PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING A CARE PERIOD; PROVIDING FOR REPEAL; PROVIDING A SEVERABILITY CAUSE; AND PROVIDING A PREVIOUSLY ESTABLISHED EFFECTIVE DATE.

WHEREAS, the City Council makes the following findings with regard to Sexually Oriented Businesses:

(1) Section 215.075, Texas Local Government Code, authorizes home rule cities to license any lawful business, occupation, or calling that is susceptible to the control of the police power;

(2) Section 54.004, Texas Local Government Code, authorizes home rule cities to enforce all ordinances necessary to protect the health, life, and property of their inhabitants;

(3) Sexually oriented businesses may require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the City;

(4) 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;

(5) There is convincing documented evidence that Sexually Oriented Businesses, because of their very nature, have deleterious effect on both the existing business around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values;

(6) Police agencies in numerous other jurisdictions have made a substantial number of arrests for sexually related crimes in Sexually Oriented Business establishments;

(7) It is recognized the Sexually Oriented Business often 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 areas;

(8) The City Council desires to minimize and control these adverse effects and thereby preserve the property values and character of surrounding neighborhoods, deter the spread of urban blight, protect the citizens from increased crime, preserve the quality of life, and protect the health, safety, and welfare of the citizenry; and

WHEREAS, the City Council makes the following findings with regard to the licensing of Sexually Oriented Business establishments:

(1) The City Council believes it is in the interest of the public safety and welfare to prohibit persons convicted of certain crimes from engaging in the occupation of operating a Sexually Oriented Business.

(2) The City Council, in accordance with Article 6252-13c of Vernon's Texas Civil Statutes, has considered the following criteria:

(a) The nature and seriousness of the crimes;

(b) The relationship of the crimes to the purposes for requiring a license to engage in the occupation;

(c) The extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(d) The relationship of the crimes to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the licensed occupation; and has determined that the crimes listed in 13.1-12 (a) (9) are serious crimes which are directly related to the duties and responsibilities of the occupation of operating a

Sexually Oriented Business. The City Council has further determined that the very nature of the occupation of operating a Sexually Oriented Business brings a person into constant contact with persons interested in sexually oriented materials and activities thereby giving the person repeated opportunities to commit offenses against public order and decency or crimes against the public health, safety, or morals should he be so inclined. Thus, it is the opinion of the City Council that the listed crimes render a person unable, incompetent, and unfit to perform the duties and responsibilities accompanying the operation of a Sexually Oriented Business in a manner that would promote the public safety and trust.

(3) The City Council has determined that no person who has been convicted of a crime listed in Sec. 13.1-12 (a) (9) as set forth in this ordinance, is presently fit to operate a Sexually Oriented Business until the respective time periods designated in that section have expired.

(4) It is the intent of the City Council to disqualify a person from being issued a Sexually Oriented Business Permit by the Town of Addison if he has been convicted within the designated time period of any of the crimes listed in Sec. 123.1-12 (a) (9);

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

SECTION 1. That the Code of Ordinances, Town of Addison, Texas, is hereby amended by adding a chapter to be numbered 13.1 which chapter reads as follows:

Chapter 13.1

Sexually Oriented Businesses

Article I. In General

Sec 13.1-1. Purpose and Intent.

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

distributors and exhibitors of sexually oriented entertainment to their intended market.

(b) It is the intent of the City Council that the locational regulations of Section 13.1-26 of this chapter are promulgated pursuant to Chapter 243, Local Government Code. It is the intent of the City Council that all other provisions of this chapter are promulgated pursuant to the Addison City Charter and Sections 51.072, 54.004, and 215.075 of the Local Government Code.

Sec. 13.1-2 Definitions.

In this chapter:

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

(2) "ADULT BOOKSTORE" or "ADULT VIDEO STORE" means a commercial establishment which as one of its Principal Business Purposes openly advertises, displays or offers for sale or rental for any form of consideration any one or more of the following:

(a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe Specified Sexual Activities or Specified Anatomical Areas; or

(b) instruments, devices, or paraphernalia which are designed for use in connection with Specified Sexual Activities.

(3) "ADULT CABARET" means a dance hall, nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(a) persons who appear in either : a State of Nudity, or a state of Semi-Nudity, or a state of Simulated Nudity; or

(b) live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities; or

(c) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas; or

(d) dance, drama, opera, musical, lingerie modeling, or other similar live performances presented to the public and which are advertised either on or off the premises as:

- (i) topless; or
- (ii) adult entertainment; or
- (iii) X-rated; or
- (iv) nude; or
- (v) Semi-Nude; or
- (vi) by other terms calculated to attract patrons with Nudity, or Semi-Nudity.

(4) "ADULT MOTEL" means a hotel, motel or similar commercial establishment which:

(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 10 hours, or

(c) allows a tenant occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.

(5) "ADULT MOTION PICTURE THEATER" means a commercial establishment where, as one of its Principal Business Purposes, regularly shows for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions which are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.

(6) "ADULT THEATRE" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features Persons who appear in a State of Nudity, Simulated Nudity, and/or Semi-Nudity, or live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

(7) "CHIEF OF POLICE" means the chief of police of the Town of Addison or his designated agent.

(8) "CHURCH" means a regular place of religious worship.

(9) "CITY or "TOWN" means the Town of Addison, Texas.

(10) "ESCORT" means a Person who, for consideration, agrees or offers to act as a companion, guide, or date for another Person, or who agrees to offer to privately model lingerie or to privately perform a striptease for another Person.

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

(12) "ESTABLISHMENT" means and includes any of the following:

(a) the opening or commencement of any Sexually Oriented Business as a new business,

(b) the conversion of an existing business whether or not a Sexually Oriented Business to any Sexually Oriented Business,

(c) the addition of any Sexually Oriented Business to any other existing Sexually Oriented Business, or

(d) the relocation of any Sexually Oriented Business.

(13) "NUDE MODEL STUDIO" means any place where a Person, who appears in a State of Nudity, Simulated Nudity, and/or Semi-Nudity, or displays Specified Anatomical Areas, is provided, to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other Persons who pay money or any form of consideration.

(14) "NUDITY" or a "STATE OF NUDITY" means:

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

(b) a state of dress which fails to opaquely cover human genitals, buttock, pubic region, anus, or areola of the female breast.

(15) "OPERATES OR CAUSES TO BE OPERATED" means to cease 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, k part owner,

employee, independent contractor, agent or licensee of the business.

(16) "PERMITTEE" means a Person in whose name a permit to operate a Sexually Oriented Business has been issued, as well as any individual listed as an applicant on the application for a permit, and each Person who must sign the application.

(17) "PERSON" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(18) "PRINCIPAL BUSINESS PURPOSE" means any business activity which accounts for 15 percent (15%) or more or any one of the following:

- (a) gross revenues of the business, or
- (b) floor area of the business, or
- (c) inventory.

(19) "RESIDENTIAL DISTRICT" means a single family, duplex, townhouse, multiple family or mobile home zoning district, located within the Town of Addison or located within the boundaries of any municipality which adjoins the boundaries of the Town of Addison.

(20) "RESIDENTIAL USE" means a single family, duplex, multiple family, or mobile home park, mobile home subdivision, and campground use.

(21) "SCHOOL" means any public or private nursery, preschool, day care center, learning center, elementary or secondary School.

(22) "SEMI-NUDE" or "STATE OF SEMI-NUDITY" means a state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

(23) "SEXUAL ENCOUNTER CENTER" means a business or commercial enterprise that, as one of its Primary Business Purposes, offers for any form of consideration:

- (a) physical contact in the form of wrestling or tumbling between Persons of the opposite sex; or
- (b) activities between male and female Persons and/or Persons of the same sex when one or more of the Persons is in a State of Nudity or Semi-Nudity.

(24) "SEXUALLY ORIENTED BUSINESS" means an Adult Arcade, Adult Bookstore or Adult Video Store, Adult Cabaret, Adult Motel, Adult Motion Picture Theater, Adult Theater, Escort Agency, Nude Model Studio or Sexual Encounter Center.

(25) "SIMULATED NUDITY" of "STATE OF SIMULATED NUDITY" means a state of dress in which any device or covering, exposed to view, is worn which simulates any portion of the genitals, buttocks, or pubic region or areolae of the female breast.

(26) "SPECIFIED ANATOMICAL AREAS" means human genitalia.

(27) "SPECIFIED SEXUAL ACTIVITIES" means and includes any of the following:

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

(b) sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;

(c) masturbation, actual or simulated; or

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

(28) "SUBSTANTIAL ENLARGEMENT" of Sexually Oriented Business means the increase in floor area occupied by the business by more than 24 percent, as the floor area exists on the date of passage of this ordinance.

(29) "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 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 which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the Person possessing the ownership or control.

Sec 13.1-3 Classification.

Sexually Oriented Businesses are classified as follows:

- (a) Adult Arcades;
- (b) Adult Bookstores or Adult Video Stores;
- (c) Adult Cabarets;
- (d) Adult Motels;
- (e) Adult Motion Picture Theaters;
- (f) Adult Theaters;
- (g) Escort Agencies;
- (h) Nude Model Studios; and
- (i) Sexual Encounter Centers.

Sec. 13.1-4 - 13.1-10. Reserved.

Article II. License.

Sec. 13.1-11. Permit Required.

(a) A Person commits an offense if he Operates a Sexually Oriented Business without a valid permit, issued by the City for the Particular type of business.

(b) An application for a permit must be made on a form provided by the Chief of Police. The application form shall be sworn to and shall: (i) include the name and address of the applicant; (ii) state whether or not the applicant meets each of the requirements set forth in Sec. 13.1-12 of this ordinance; (iii) the name and address of each person required to sign the application pursuant to Sec. 13.1-11 (d) of this ordinance, and the name, address and type of entity of each entity required to sign the application pursuant to Sec. 13.1-11(d) of this ordinance, and, as to each entity which is required to sign the application pursuant to Sec. 13.1-11(d) of this ordinance, and, as to each entity which is required to sign the application, the name and address of each person or entity which owns an interest in each such entity; (iv) include the names and addresses of each employee, agent and independent contractor of the Sexually Oriented Business; (v) such other matters, consistent with this ordinance, as may be specified in the application form, including, without limitation, driver's license numbers, social security numbers, dates of birth and identifying photographs of each Person required to be identified in the application. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space

occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.

(c) The applicant must be qualified according to the provisions of this chapter.

(d) If a Person who wishes to Operate a Sexually Oriented Business is an individual, he must sign the application for a permit as applicant. If a person who wished to operate a Sexually Oriented Business is other than an individual, each individual who directly or indirectly through one or more intermediaries owns or controls a 20 percent or greater interest in the business must sign the application for a permit as application. Each applicant must be qualified under Sec. 13.1-12 and each applicant shall be considered a Permittee if a permit is granted.

Sec. 13.1-12. Issuance of Permit.

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

(1) An applicant is under 21 years of age.

(2) An applicant or an applicant's spouse is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a Sexually Oriented Business.

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

(4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this chapter within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(5) An applicant is residing with a Person who has been denied a permit by the City to Operate a Sexually Oriented Business within the preceding 12 months, or residing with a Person whose permit to Operate a Sexually Oriented Business has been revoked within the preceding 12 months.

(6) The permit fee required by this chapter has not been paid.

(7) An applicant has been employed in a Sexually Oriented Business within the preceding 12 months and has demonstrated an inability to Operate or manage a Sexually Oriented Business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(8) An applicant or the proposed establishment is in violation of or is not in compliance with Sec. 13.1-14, or 13.1-19, or 13.1-26, or 13.1-36, or 13.1-37, or 13.1-38, or 13.1-39, or 13.1-40.

(9) The proposed location for the Sexually Oriented Business is not provided by or is not in accordance with the City's Zoning Ordinance for such use.

(10) An applicant or an applicant's spouse has been convicted of a crime:

(A) involving:

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

(aa) prostitution;

(bb) promotion of prostitution;

(cc) aggravated promotion of prostitution;

(dd) compelling prostitution;

(ee) obscenity;

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

(gg) sexual performance by a child;

(hh) possession of child pornography;

ii. any of the following offenses as described in Chapter 21 of the Texas Penal Code;

(aa) public lewdness;

(bb) indecent exposure;

(cc) indecency with a child;

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

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

v. criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses described in this Section 13.1-12(a) (0) (A).

(B) for which:

i. less than five 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 on a misdemeanor offense;

ii. less than ten 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 ten 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 two or more felony or misdemeanor offenses, occurring within any 36 month period.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant of applicant's spouse.

(c) An applicant who has been convicted or whose spouse has been convicted of an offense listed in Sec. 13.1-12(a) (9) may qualify for a Sexually Oriented Business permit only when the time period required by Sec. 13.1-12(a) (9) (B) has elapsed.

(d) The permit, if granted, shall state on its face the name of the Person or Persons to whom it is granted, the expiration date, and the address of the Sexually Oriented Business. The permit shall be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business so that it may be easily read at any time.

Sec. 13.1-13. Fees.

The annual fee for a Sexually Oriented Business Permit

is \$500.00.

Sec. 13.1-14. Inspection.

(a) An applicant or Permittee shall permit representatives of the police department, health department, fire department, and building inspection division 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.

(b) A Person who operates a Sexually Oriented Business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the police department at any time it is occupied or open for business.

(c) The provisions of this section do not apply to areas of an Adult Motel which are, at the time of such inspection, being rented by a customer for use for a period longer than 10 hours, and then actually occupied by such customer, unless one (1) hour notice is provided to such customer.

Sec. 13.1-15. Expiration of Permit.

(a) Each permit shall expire one year from the date of issuance and may be renewed only by making application as provided in Sec. 13.1-11. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the permit will not be affected.

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

Sec. 13.1-16 Suspension.

The Chief of Police shall suspend a permit for a period not to exceed 30 days if he determines that a Permittee or an employee of a Permittee has engaged in any one (1) of the following activities and/or occurrences:

(a) violated or is not in compliance with any one (1) of the following Sections: 13.1-14, 13.1-19, 13.1-26, 13.1-36, 13.1-37, 13.1-38, 13.1-39, of this Chapter,

(b) been "legally intoxicated" as such term is defined by the laws of the State of Texas pertaining to driving while intoxicated, while on the Sexually Oriented Business premises,

(c) refused to allow an inspection of the Sexually Oriented Business premises as authorized by this chapter,

(d) permitted gambling by any Person on the Sexually Oriented Business premises.

Sec. 13.1-17. Revocation.

(a) The Chief of Police shall revoke a permit if a cause of suspension in Sec. 13.1-16 occurs after the permit has previously been suspended and within 12 months following the date of such previous suspension.

(b) The Chief of Police shall revoke a permit if he determines that any one (1) of the following situations, activities, or events has occurred:

1. a Permittee gave false or misleading information in the material submitted to the Chief of Police during the application process,

2. a Permittee or an employee has allowed possession, use or sale of controlled substances on the premises,

3. a Permittee or an employee has allowed prostitution on the premises,

4. a Permittee or an employee Operated the Sexually Oriented Business during a period of time when the Permittee's permit was suspended,

5. a Permittee has been convicted of an offense listed in Sec. 13.1-12(a) (9)(A) for which the time period required in Sec. 13.1-12(a)(9)(B) has not elapsed.

6. on two or more occasions within a five (5) year period, a Person or Persons committed an offense occurring in or on the permitted premises of a crime listed in Sec. 13.1-12(a)(9)(A) for which a conviction has been obtained, and the Person or Persons were employees of the Sexually Oriented Business at the time the offenses were committed,

7. a Permittee or an employee has allowed any act of sexual intercourse, sodomy, oral copulation,

masturbation, or Sexual Contact to occur in or on the permitted premises. The term "Sexual Contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code, or

8. a Permittee is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the Sexually Oriented Business.

(c) The fact that a convictions being appealed shall have no effect on the revocation of the permit.

(d) Sec. 13.1-17(b)(7) does not apply to Adult Motels as a ground for revoking the permit unless the Permittee or employee allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) When the Chief of Police revokes a permit, the revocation shall continue for one year and the Permittee shall not be issued a Sexually Oriented Business permit for one year from the date revocation became effective. If, subsequent to revocation, the Chief of Police finds that the basis for the revocation has been corrected or abated, applicant may be granted a permit if at least 90 days have elapsed since the date the revocation became effective. If the permit was revoked under sec. 13.1-17(b)(5) an applicant may not be granted another permit until the appropriate number of year required under Sec. 13.1-12(1)(9)(B) has elapsed.

Sec. 13.1-18 Appeal.

If the Chief of Police denies the issuance of a permit or suspends or revokes a permit, the Chief of Police shall send to one (1) applicant, or Permittee, by certified mail, return receipt requested, written notice of the action and the right to an appeal. The aggrieved party or parties may, not later than then (10) days after such notice is mailed, appeal the decision of the Chief of Police to the City Council. The filing of an appeal stays the action of the Chief of Police in suspending or revoking a permit until the City Council makes a final decision. The appeal shall be filed with the City Secretary. The City Council shall set a time and place for a hearing on such appeal and notice of such hearing shall be mailed, postage prepaid, to one (1) applicant or permittee, at his last known address, at least five (5) days prior to the date of the hearing.

Sec. 13.1-19 Transfer of Permit.

A Permittee shall not transfer his permit to another, nor shall a Permittee Operate a Sexually Oriented Business under the

authority of a permit at any place other than the address designated in the application.

Sec. 13.1-20 - 13.1-25. Reserved.

Article III. Locations.

Sec. 13.1-26. Location of Sexually Oriented Businesses.

(a) A Person commits an offense if he Operates or Causes to be Operated a Sexually Oriented Business within 1,000 feet of:

1. a Church, or
2. a School, or
3. a boundary of a Residential District, or
4. a public park adjacent to a Residential District, or
5. the property line of a lot devoted to a Residential Use.

These locational provisions apply whether or not the church, school, boundary of a Residential District, Public Park adjacent to a Residential District, or property line of a lot devoted to a Residential Use is located within or outside the Town of Addison.

(b) A Person commits an offense if he causes or permits the Operation, Establishment, Substantial Enlargement or Transfer of Ownership or Control of a Sexually Oriented Business within 1,000 feet of another Sexually Oriented Business.

(c) A Person commits an offense if he Causes or permits the Operation, Establishment or maintenance of more than one Sexually Oriented Business in the same building, structure, or portion thereof, or he increases the floor area of any Sexually Oriented Business in any building structure, or portion thereof to contain another Sexually Oriented Business.

(d) For the purposes of Sec. 13.1-26(a), 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 School, or to the nearest boundary of an affected public park, Residential District, or residential lot.

(e) For purposes of Sec. 13.1-26(b), 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.

(f) Any Sexually Oriented Business lawfully operating on the effective date of this ordinance that is in violation of Subsections (a), (b) or (c) of the section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed eighteen months (18 months), unless sooner terminated for any reason or voluntarily discontinued for a period of 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 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 is nonconforming.

(g) 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 permit, of a church, School, public park, Residential District, or residential lot within 1,000 feet of the Sexually Oriented Business. This provision applies only to the renewal of a valid permit, and does not apply when an application for a permit is submitted after a permit has expired or has been revoked.

(h) Subsections (b), (f), and (g) shall apply to any Sexually Oriented Business located within the City, whether or not the measurement of the 1,000 feet is made wholly within the boundaries of the City or includes within such 1,000 feet, area within the boundaries of any municipality adjoining the boundaries of the City.

(i) A Sexually Oriented Business shall be located or Operated only where such use is provided by and is in accordance with the City's Zoning Ordinance.

Sec. 13.1-27 Exemption From Location Restrictions.

(a) If the Chief of Police denies the issuance of a permit to an applicant because the location of the Sexually Oriented Business is in violation of Sec. 13.1-26 of this Chapter, then the applicant may, not later than 10 calendar days after the mailing of the notice of the denial, file with the City a written request for any exemption from the locational restrictions of Section 13.1-26.

(b) If the written request is filed with the City

Secretary within the 10 day limit, the City Council shall consider the request. The City Secretary shall set a date for the hearing within 60 days from the date the written request is received.

(c) The City Council shall hear and consider evidence offered by any interested Person. The formal rules of evidence do not apply.

(d) The City Council may in its discretion, grant an exemption from the locational restrictions of Section 13.1-26 if it makes the following findings:

(1) that the location of the proposed Sexually Oriented Business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare,

(2) that the granting of the exemption will not violate the spirit and intent of this chapter of the City Code of Ordinances,

(3) that the location of the proposed Sexually Oriented Business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight,

(4) that the location of an additional Sexually Oriented Business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration, and

(5) that all other applicable provisions of this chapter will be observed.

(e) The City Council shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the City Council is final.

(f) If the City Council grants the exemption, the exemption is valid for one year from the date of the Council's action. Upon the expiration of an exemption, the Sexually Oriented Business is in violation of the locational restrictions of Sec. 13.1-26 until the applicant applies for and receives another exemption.

(g) If the City Council denies the exemption, the applicant may not re-apply for an exemption until at least 12 months have elapsed since the date of the Council's action.

(h) The grant of an exemption does not exempt the applicant from any other provisions of this chapter other than the locational restrictions of Sec. 13.1-26.

Sec. 13.1-28 - 13.1-35 Reserved.

Article IV. Additional Regulations.

Sec. 13.1-36. Additional Regulations for Escort Agencies.

(a) An Escort Agency shall not employ any Person under the age of 21 years.

(b) A person commits an offense if he acts as an Escort or agrees to act as an Escort for any Person under the age of 21 years.

Sec. 13.1-37. Additional Regulations for Nude Model Studios.

(a) A Nude Model Studio shall not employ any Person under the age of 21 years.

(b) A Person under the age of 21 years commits an offense if he appears in a State of Nudity in or on the premises of a Nude Model Studio. It is a defense to prosecution under this subsection if the person under 21 years was in a restroom not open to public view or persons of the opposite sex.

(c) A Person commits an offense if he appears in a State of Nudity or 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.

Sec.13.1-38 Additional Regulations for Adult Theaters and Adult Motion Picture Theaters.

(a) A Person commits an offense if he allows a Person under the age of 21 years to appear in a State of Nudity in or on the premises of an Adult Theater of Adult Motion Picture Theater.

(b) A Person under the age of 21 years commits an offense if he appears in a State of Nudity in or on the premises of an Adult Theater or Adult Motion Picture Theater.

(c) It is a defense to prosecution under Subsections (a) and (b) of this section if the Person under 21 years was in a restroom not open to public view or persons of the opposite sex.

Sec. 13.1-29. Additional Regulations for Adult Motels.

(a) 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 10 hours creates a rebuttable presumption that the establishment is an Adult Motel.

(b) A Person commits an offense 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 sub-rents a sleeping room to a Person and, within 10 hours from the time the room is Rented to such Person, he rents or sub-rents the same sleeping room again to another different Person.

(c) For purposes of Subsection (b) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

Sec. 13.1-40 Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

(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 of less than 150 square feet of floor space, a film, video cassette, or other video reproduction which depicts Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:

(1) Upon application for 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 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 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 of all areas of the interior of the premises to an accuracy of plus or minus six inches. The chief of Police may waive the foregoing diagram for renewal applications if the 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) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Chief of Police.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such manner that there is an obstructed 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.

(6) It shall be the duty of the owners and operator, and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in Subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and 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 application filed pursuant to Subsection (1) of this section.

(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 one (1.0) foot candle as measured at the floor level.

(8) It shall be duty of the owners and operator and it shall also be the duty of an agents and employees present in the premises to ensure that the illumination described above, is maintained at all times that any patron is present in the premises.

(b) A Person having a duty under Subsections (1) through (8) of Subsection (a) above commits an offense if he knowingly fails to fulfill that duty.

Sec. 13.1-41. Enforcement

(a) Any Person violating Sec. 13.1-11(a) and 13.1-26 of this Chapter, shall be charged in the Class A Misdemeanor and, such violation is punishable upon conviction as a Class A misdemeanor.

(b) Any Person violating a provision of this Chapter, other than Sec. 13.1-11(a) and 13.1-26, shall be charged with a Class C Misdemeanor and, upon conviction, shall be punished by a fine; the amount of such fine may not exceed the maximum amount allowed by law for a Class C Misdemeanor.

(c) It is a defense to prosecution under Sec. 13.1-11(a), 13.1-26 and 13.2-27(d) 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; a college, junior college, or university supported entirely or partly by taxation;

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

(3) in a structure:

(i) which has no sign visible from the extension of the structure and no other advertising that indicates a Nude Person is available for viewing; and

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

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

(d) It is a defense to prosecution under Sec. 13.1-11(a) and 13.1-26 that each item of descriptive printed film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political or scientific value.

(e) A violation of this Chapter shall be deemed committed each day during or on which a violation occurs or continues.

Sec. 13.1-42 Injunction

A Person who Operates or Causes to be Operated a Sexually Oriented Business without a valid permit or in violation of Sec. 13.1-26 of this Chapter is subject to a suit for injunction as

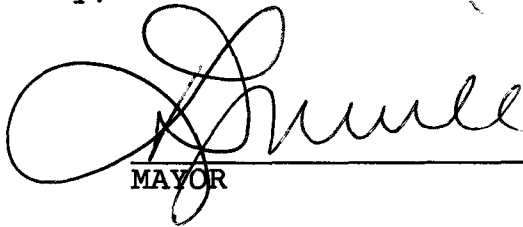
well as prosecution for criminal violations.

SECTION 2. That all Persons required by this ordinance to obtain a Sexually Oriented Business Permit because said business is in existence on the date of or prior to the effective date of Ordinance 092-005, are hereby granted a grace period, which shall be for a period of 90 days from the effective date of that ordinance.

SECTION 3. That all ordinances of the City in conflict with the provisions of this ordinance be, to the extent of such conflict, and the same are hereby repealed and all other ordinances of the City not in conflict with the provisions of this ordinance shall remain in full force and effect.

SECTION 4. That should any paragraph, sentence, subdivision, clause, phrase or section of this ordinance be adjudged or be held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole or any part of provision thereof other than the part so decided to be invalid, illegal, or unconstitutional.

DULY PASSED BY THE CITY COUNCIL OF THE TOWN OF ADDISON,
TEXAS this the 28th day of January, 1992.


MAYOR

ATTEST:


CITY SECRETARY

Published
4/23/92