

## Chapter 24

### SEXUALLY ORIENTED BUSINESSES

#### ARTICLE I. IN GENERAL

##### Sec. 24-1. Purpose and scope.

- (A) The purpose of this chapter is to regulate sexually oriented businesses to promote the public health, safety and welfare of the citizens of South Padre Island, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses in the City.
- (B) 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, nor is it the intent of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment of the U.S. Constitution, or deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.
- (C) The City Council finds that the findings and conclusions recited in the preamble to the ordinance adopting this chapter are in all things true and correct.

##### Sec. 24-2. Definitions

When used in this chapter, the following words and terms shall have the following meanings ascribed to them unless the context of their usage clearly indicates another meaning or a more specific definition is introduced in a specific section:

“Adult arcade/adult video arcade/adult movie arcade”. Any place or establishment containing one (1) or more arcade devices, or any other establishment which regularly offers still or motion pictures, video displays, or games, to which the public is invited, wherein coin operated, slug operated or electronically, electrically, or mechanically operated still or motion picture machines, projectors or other image producing devices controlled by the permittee are maintained to show images to five (5) or fewer persons per machine at any one time and where the images to displayed are distinguished or characterized by an emphasis on matter intended to provide sexual stimulation or sexual gratification to the customer or which images depict, describe or relate to “specified sexual activities” or “specified anatomical areas”.

“Adult bookstore/adult video store”. A commercial establishment which regularly offers for sale or rents for off-premises use, books, magazines, films or videotapes, periodicals or other printed or pictorial materials which are distinguished by or characterized by an emphasis on matter intended to provide sexual stimulation or sexual gratification to the customer or which depict, describe or relate to “specified sexual activities” or “specified anatomical areas” and where a substantial or significant portion of its stock in trade consists of such offerings.

“Adult cabaret”. A commercial establishment which regularly offers live entertainment which is distinguished by or characterized by an emphasis on matter, physical displays or



entertainment intended to provide sexual stimulation or sexual gratification to the customer or which depicts, or relates to “specified sexual activities” or “specified anatomical areas”.

“Adult encounter parlor/business”. A commercial establishment which regularly provides off-premise services, on-premise services, or premises where customers either congregate, associate or consort with employees and such conduct is intended to provide sexual stimulation or sexual gratification to the customer or where employees engage in “specified sexual activities” or display “specified anatomical areas” in the presence of such customers.

“Adult lounge”. A commercial establishment which regularly offers live entertainment which is distinguished by or characterized by an emphasis on matter, physical displays or entertainment intended to provide sexual stimulation or sexual gratification to the customer or which matter, physical displays or entertainment depicts, describes or relates to “specified sexual activities” or “specified anatomical areas: and 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/nude studio/love parlor”. A commercial establishment which regularly provides models who engage in “specified sexual activities” or display “specified anatomical areas” or appear “nude or in a state of nudity” while being observed or painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted.

“Adult motel”. A hotel, motel or similar commercial establishment which regularly:

- (2) Offers accommodations to the public for any form of consideration and 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 which has a sign visible from the public right-of-way which advertises the availability of such material;
- (3) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
- (4) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

“Adult movie theater”. A commercial establishment containing a room with seats facing a screen or projection area which regularly exhibits motion pictures which are distinguished by or characterized by an emphasis on matter intended to provide sexual stimulation or sexual gratification to the customer or which motion pictures depict, describe or relate to “specified sexual activities” or “specified anatomical areas”.

“Adult novelty shop”. A commercial establishment which regularly sells products which are distinguished or characterized by an emphasis on matter intended to provide sexual stimulation or sexual gratification to the customer or which products depict, describe or relate to “specified sexual activities” or “specified anatomical areas”.

“Applicant”. The applicant for a permit shall be all of the owners of the business applying for a permit.



"Arcade device". Any coin-operated, slug-operated or electronic, electrical or mechanical device controlled by the permittee, that dispenses or effectuates the dispensing of displays, still or motion pictures, or video displays featuring matter intended to provide sexual stimulation or sexual gratification to the customer for which matter depicts, describes or relates to specified sexual activities" or "specified anatomical areas" and that shows images to five (5) or fewer persons in exchange for the payment of any consideration.

"Chief of Police". The Chief of Police of the City of South Padre Island or his designated agent.

"Church". A building in which persons regular assemble for religious worship and which is intended primarily to purposes connected with such worship or for propagating a particular form of religious belief.

"Conducts business". A person "conducts business" if that person:

- (1) Operates a cash register, cash drawer or other depository on business premises where cash funds or records of credit card or other credit transactions generated in any manner by the operation of the establishment or the activities conducted therein are kept.
- (2) Displays or takes orders from any person for any merchandise, goods, entertainment or other services offered on the business premises;
- (3) Delivers or provides to any person any merchandise, goods, entertainment or other services offered on the business premises;
- (4) Acts as a door attendant to regulate entry of persons into the business premises; or
- (5) Supervises or manages other persons in the performance of any of the foregoing activities on the business premises.

"Customer/patron". Any person who:

- (1) Is on the premises of a regulated establishment in return for the payment of an admission fee or any other form of consideration or gratuity.
- (2) Is on the premises of a regulated establishment and purchases, rents or otherwise utilizes any merchandise, goods, entertainment or other services offered therein; or
- (3) Is on the premises of a regulated establishment operating as a private club and is a member of such club.

"Dwelling". A building or portion thereof designed or used for residential occupancy and for which a certificate of occupancy for such use has been issued, including one (1) family, two (2) family or multiple-family dwellings, but not including boarding and lodging houses, hotels or tourist courts.

"Employee". Any person who conducts business in or renders any service whatsoever to any person in a regulated establishment or who works in or about such a regulated establishment

and who receives compensation for such service or work from the operator or owner of the regulated establishment or from the customers therein. The term employee includes an independent contractor. A person is an employee if that person is an employee of the owner of a regulated establishment and is at any time on the premises of such regulated establishment whether working or not.

“Entertainment”. Any act or performance such as a play, skit, reading, revue, pantomime, scene, song, dance, musical rendition or striptease, whether performed by an owner, employee or customer, intended to provide sexual stimulation or sexual gratification to a customer. The term entertainment” shall also mean an owner, employee or customer engaging in “specified sexual activities” or exposing “specified anatomical areas” in the presence of a customer.

“Escort”. A person who for consideration agrees or offers to act as a companion, guide or date for a person or persons, and who agrees or offers to privately model lingerie or to privately expose “specified anatomical areas” or appear “nude or in a state of nudity: for that person or persons or requests that person or persons to expose “specified anatomical areas” or appear “nude or in a state of nudity”.

“Escort agency”. A commercial establishment, which furnishes, offers to furnish or advertises to furnish an escort to a person or persons for a fee, tip or other consideration.

“Individual”. A natural person.

“Manager”. An owner, manager, employee or other individual appointed by the owner to manage, direct and control the premises and operations of the sexually oriented business. A manager is an individual principally in charge of a regulated establishment at any time and who is responsible for the conduct of the business.

“Model”. Any person who poses to be observed, viewed, sketched, painted, painted upon, sculpted, drawn, photographed or otherwise depicted while engaging in “specified sexual activities” or displaying “specified anatomical areas” or while appearing “nude or in a state of nudity”.

“Nudity or state of nudity”. A state of dress that less than completely and opaquely covers:

- (1) A live human in full nudity;
- (2) Human genitals;
- (3) A human pubic region or pubic hair;
- (4) The crevice of the human buttocks;
- (5) Portions of the post puberty female breast or breasts below a point beginning immediately above the top of the areola and continuing downward to the lowest portion of the breast; or



(6) Any combination of the above.

“Owner”. The proprietor, if a sole proprietorship; all general partners and all limited partners with twenty (20) per cent or more of the investment in the partnership, if a partnership; or all officers, directors and any persons holding twenty (20) per cent or more of the outstanding shares, if a corporation.

“Permit”. A current, valid permit issued by the chief of police pursuant to the terms of this chapter to the owner of a sexually oriented business.

“Premises”. A tract of land (lot) occupied by a dwelling or regulated establishment, provided however, if a building has been physically divided into separate units such that each unit has its own individual means of ingress or egress to the exterior of the building and which units are offered by lease or otherwise for separate use and control, then “premises” shall refer to each such separate unit.

“Regulated establishment”. Any sexually oriented business regulated under the provisions of this chapter.

“Residential district”. A farm-rural, residential estate, one (1) family dwelling, Townhouse dwelling, multiple dwelling, travel trailer park, mobile home park, mobile home subdivision, apartment house or apartment-tourist district as defined in the zoning ordinance of the City of South Padre Island.

“Sexually oriented business”. An adult cabaret, adult lounge, nude studio, adult modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, adult novelty shop, adult arcade, adult encounter parlor, escort agency or other commercial enterprise the primary business of which is the regular offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer or which regularly sells, rents or exhibits pictures, whether motion or still, or sells, rents or exhibits devices or any other items distinguished or characterized by an emphasis on matter depicting, describing or relating to “specified sexual activities” or “specified anatomical areas”.

“Specified anatomical areas”. A less than completely and opaquely covered human genitals, pubic region, anus or portions of the post puberty female breast or breasts below a point beginning immediately above the top of the areola and continuing downward to the lowest portion of the breast, or human genitals in a state of sexual stimulation or arousal, or covered male genitals in a discernibly turgid state.

“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, actual or simulated, including intercourse, oral copulation or sodomy;
- (3) Masturbation, actual or simulated;

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

“Transfer of ownership or control of a sexually oriented business”. Means and includes any of the following:

- (1) The sale, lease or sublease of the business;
- (2) The cumulative transfer of securities which constitute a twenty (20) per cent or more interest in the business, whether by sale, exchange or other similar means;
- (3) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of the business, except where the only effect is to change the form of ownership and not any part of the effective or beneficial ownership or control; or
- (4) The transfer by bequest or other operation of law upon the death of the person possessing ownership or control.

### **Section 24-3. Enforcement.**

- (A) The provisions of this chapter are remedial and shall, unless otherwise addressed in a specific section, be construed to apply to all sexually oriented businesses now existing and to those that may be established in the future.
- (B) The locational regulations and permitting requirements in Section 24-4 and Sections 24-18 through 24-24 adopted hereunder are adopted under the authority of Chapter 243 of the Texas Local Government code. A violation of any of the locational and permitting provisions in Section 24-4 and Sections 24-18 through 24-24 of this chapter adopted under the authority of Chapter 243 of the Texas Local Government code shall constitute a Class A misdemeanor and may be punished in accordance with Chapter 12 of the Texas Penal Code.
- (C) A violation of any of the provisions of sections 24-5 through 24-17 shall constitute a Class C misdemeanor and may be enforced in accordance with Chapter 54 of the Texas Local Government Code and Sec. 21-1 of the Code of Ordinances of the City of South Padre Island.
- (D) Sections 24-4 through 24-7 of this chapter may be amended only after compliance with the procedure required to amend a zoning ordinance contained in Chapter 211, Texas Local Government Code.
- (E) Each calendar day that any violation shall occur or continue to occur shall constitute and be punishable as a separate offense.
- (F) The revocation or suspension of a permit shall not prohibit the imposition of a criminal penalty. The imposition of criminal penalty shall not prohibit the revocation or suspension of a permit.
- (G) The City may bring a civil action for the enforcement of this chapter.



(H) No provision of this chapter shall be construed as relieving any party from any other provision of state or federal law or from any provision of an ordinance, rule or regulation of the City of South Padre Island.

(I) Culpability shall be determined in accordance with the Texas Penal Code, §6.02.

## **ARTICLE II. GENERAL OPERATING REGULATIONS**

### **Sec. 24-4. Location of sexually oriented businesses.**

(A) The operation of sexually oriented businesses is prohibited on premises that are located within two hundred (200) feet of a existing single family, two family residence, the Single Family dwelling district ("A" District), Low Density Residential District ("E" District) Church, school or public park. Measurements shall be made in a straight line without regard to intervening structures or object, from the nearest point on the premises of the sexually oriented business to the nearest point on the boundary line of such residential premises or residential districts.

(B) The operation of sexually oriented businesses is prohibited on premises that are located within five hundred (500) feet of another sexually oriented business, which has been issued a permit under this chapter. Measurements shall be made in a straight line without regard to intervening structures or objects from the nearest point on the premises of the sexually oriented business to the nearest point on the premises of any other sexually oriented business.

(C) The operation of sexually oriented businesses is permitted on premises that are located in the "C" (Commercial) Zone, as that term is defined in the Zoning Ordinance and Map of the City of South Padre Island, and no other Zoning District.

(D) The operation of sexually oriented businesses is prohibited on premises that are located within one hundred fifty (150) feet of the right-of-way of Padre Boulevard.

### **Sec. 24-5. Exemption from location restrictions.**

(A) If the location of a sexually oriented business establishment is in violation of Subsection 24-4 (A) or 24-4 (B) of this chapter, then the applicant may file with the office of City Manager a written request for an exemption from the locational restrictions of Subsection 24-4 (A) or 24-4 (B).

(B) The City Manager or designee shall set a date for the hearing within sixty (60) days from the date the written request is received when the Zoning Board of Adjustment shall consider the request.

(C) The Zoning Board of Adjustment shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

(D) The Zoning Board of Adjustment may, in its discretion, grant an exemption from the locational restrictions of Subsection 24-4 (A) or 24-4 (B) by a concurring vote of seventy-five percent of the members of the board if it makes the following findings:

- (1) That the location of the proposed sexually oriented business will not have a detrimental effect on nearby residential or commercial 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 of South Padre Island 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;
  - (5) That the distance requirements for the location of the sexually oriented business contained in Subsection 24-4 (B) of this chapter may not be reduced by more than two hundred fifty (250) feet; and
  - (6) That all other applicable provisions of this chapter will be observed.
- (E) The Zoning Board of Adjustment shall approve or deny the exemption in accordance with the procedures for Zoning boards of Adjustment contained in the Texas Local Government code, Chapter 211. Notice shall be provided in accordance with the provisions of Texas Local Government Code §§211.006 and 211.007.
- (F) If the Zoning Board of Adjustment denies the exemption, the applicant may not re-apply for an exemption from the locational regulations of the chapter for the same premises until at least twelve (12) months have elapsed since the date of the Board's action.
- (G) The grant of an exemption does not exempt the applicant from any other provisions of this chapter other than the locational restrictions of Subsection 24-4 (A) or 24-4 (B).

**Sec. 24-6. Existing businesses.**

- (A) A sexually oriented business lawfully operating on July 20, 2001 that is in violation of Subsections (A), (B), (C) or (D) of Section 24-4 shall be deemed a legal nonconforming use. Except as provided in this section, such nonconforming use shall be interpreted and applied in accordance with Sec. 20-12, Nonconforming Uses of the Zoning Ordinance of the City of South Padre Island. A nonconforming use allowed under this Subsection, including signs, shall not be increased, enlarged, extended or altered except the use may be changed to a conforming use.
- (B) A legal nonconforming use must register and obtain a permit as provided by Article IV of this chapter on or before January 1, 2002 or it shall be in violation of this Chapter. No application received by the City after January 1, 2002 shall be considered.
- (C) A sexually oriented business operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of a sexually oriented business permit,



of a single family residence, two family residence, Single Family dwelling district ("A" District), Low Density Residential District ("E" District), Church, school or public park within two hundred (200) feet. 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.

**Sec. 24-7. On-premise advertising and signs.**

- (A) On-premise advertisements, displays or other promotional materials for a sexually oriented business, which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" shall not be shown or exhibited so as to be visible to the public from public places located outside the business premises.
- (B) A person commits an offense if that person allows on-premise advertisements, displays or other promotional materials for a sexually oriented business, which are distinguished or characterized by an emphasis on matter depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" to be shown or exhibited so as to be visible to the public from public places located outside the business premises.
- (C) Notwithstanding the City's Zoning Ordinance, Building Code or any other City ordinance, code or regulation to the contrary, it shall be unlawful for the owner or operator of any sexually oriented business to maintain or have maintained by another person more than one (1) primary sign and more than one (1) secondary sign on the premises of a sexually oriented business.
- (D) Primary signs shall not exceed one (1) structure or device. Such primary sign shall
  - (1) Be a flat plan and rectangular in shape;
  - (2) Not exceed seventy-five (75) square feet in area composed of extending lines including the outer extremities of all letters, symbols, figures, character and delineations or the framework or background whichever lines include the larger area. Double faced signs shall count as one (1) face provided that the faces are back-to-back, parallel and not more than thirty-six (36) inches apart;
  - (3) Not exceed ten (10) feet in height or ten (10) feet in width; and
  - (4) Not contain any moving parts, flashing lights, reflectors, photographs, silhouettes, drawings or pictorial representations of any manner.
- (E) Secondary signs shall have only one (1) display surface. The surface display shall:
  - (1) Be a flat plan and rectangular in shape;
  - (2) Not exceed twenty (20) square feet in area;
  - (3) Not exceed five (5) feet in height or eight (8) feet in width;

- (4) Be affixed flat against any wall or door of the business; and
  - (5) Not contain any moving parts, flashing lights, reflectors, photographs, silhouettes, drawings or pictorial representations of any manner.
- (F) In this section, “premises” or “on-premise” means all of a tract of commercial property in which a sexually oriented business is located in addition to the area encompassed in the definition of “premises” contained in Section 24-2 of this chapter.

**Sec. 24-8. Inspections.**

- (A) An owner, manager or an employee of a sexually oriented business shall allow representatives of the Police Department to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law at any time the sexually oriented business is open for business.
- (B) An owner, manager or employee of a sexually oriented business commits an offense if that person refuses to permit an inspection of the premises at any time it is open for business.

**Sec. 24-9. Notice.**

- (A) Any notice required or permitted to be given by any City personnel or department under this chapter to any applicant or owner of a sexually oriented business may be given either by personal delivery or by U.S. Postal Service certified mail, postage prepaid, return receipt requested, to the most current business address as specified in the application for the permit, or any amendment thereof, which has been received by the Chief of Police. Notification or delivery by mail shall be complete upon deposit of the paper, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. Receipt of notice by mail shall be deemed to occur on the date physically received or the third day following notification, whichever is earlier.
- (B) In the event that any notice given by mail is returned by the U.S. Postal Service, the Chief of Police shall cause it to be posted in plain view at the principal entrance to the business.
- (C) A person commits an offense if that person removes any notice or order posted upon any sexually oriented business pursuant to this chapter. It is a defense to prosecution under this chapter that the actor had the prior express consent of the Chief of Police to remove any notice or order.

**Sec. 24-10. Age restrictions.**

- (A) A person under the age of eighteen (18) years is prohibited from entering into or being on the premises of a sexually oriented business.
- (B) A person commits an offense if that person is under the age of eighteen (18) years and knowingly enters into or is on the premises of a sexually oriented business.



- (C) An owner, manager or employee commits an offense if that person knowingly, recklessly or with criminal negligence allows a person who is under the age of eighteen (18) years to remain on the premises of a sexually oriented business.
- (D) It shall be the duty of the owner or manager of each regulated business to ensure that an employee is stationed at or has in view each public entrance to the regulated business at all times during regular business hours. It shall be the duty of the employee not to allow any person under the age of eighteen (18) years to enter the establishment.
- (E) It shall be presumed that an owner, manager or an employee knew a person was under the age of eighteen (18) years unless such employee asked for and was furnished a valid drivers license or a valid personal identification certificate issued by the Texas Department of Public Safety, the licensing authority of another state or the federal government reflecting that such person is eighteen (18) years of age or older. It shall be a defense to any charge under this section that the owner, manager, or employee was shown by such person a driver's license or other personal picture identification which, upon reasonable examination, appeared to be valid on its face reflecting that such person is more than seventeen (17) years old.

**Sec. 24-11. Public health and education.**

- (A) Each room or compartment of the sexually oriented business to which patrons are allowed access shall have a sign posted with a sexually transmitted disease (STD) educational message, which will consist of one (1) of the following statements in both the English and Spanish languages in letters not less than one and one-half (1 1/2) inches in height.

STOP SEXUALLY TRANSMITTED DISEASES  
AVOID CONTACT WITH SEXUAL FLUIDS

SEXUALLY TRANSMITTED DISEASES ARE TRANSMITTED  
BY SEX WITHOUT CONDOMS

- (B) An owner of a sexually oriented business commits an offense if the sexually oriented business does not have an STD educational message posted in plain view in each room or compartment of the sexually oriented business to which patrons are allowed access.
- (C) All sexually oriented businesses shall be kept in a clean and sanitary condition. This subsection shall be enforced in accordance with the provisions of the Texas Health and Safety Code and the public health provisions of the Code of Ordinances of the City of South Padre Island.

**Sec. 24-12. Management of sexually oriented businesses.**

- (A) The owner shall designate and appoint an individual(s) to manage, direct and control the premises and operations of the sexually oriented business.
- (B) The person(s) appointed to manage, direct and control the sexually oriented business shall remain in or upon the premises at all times the sexually oriented business is open.



- (C) During the time a person is on duty as manager, the person appointed to manage, direct and control the sexually oriented business shall at all times have the duty to ensure that each employee in the sexually oriented business has training on the requirements of this chapter and is instructed to commit no act which would constitute a violation of this chapter or which would provide grounds or part of the grounds for revocation of a permit under this chapter. A manager commits an offense if he fails to see that such training and instruction is provide.
- (D) The person appointed to manage, direct and control the sexually oriented business commits an offense if that person solicits, encourages, directs, aids or attempts to aid, an employee to violate the provisions of this chapter.

### **ARTICLE III. ADDITIONAL OPERATING REGULATIONS**

#### **Sec. 24-13.**

- (A) In each adult arcade/adult video arcade/adult movie arcade, at least one (1) manager's station shall be located within the premises and such location(s) shall provide an owner, manager or employee on duty with an unobstructed view of every area of the adult arcade to which any patron is permitted access for any purpose, other than toilet facilities, from said manager's station. If an adult arcade has two (2) or more manager's stations, the interior design of the adult arcade shall be configured to provide an unobstructed view of each area of the adult arcade to which any patron is permitted access for any purpose, other than toilet facilities, from at least one (1) of the manager's stations. The view required must be by direct line of sight from a manager's station and there must be sufficient light for a person at the manager's station(s) to view every area of the adult arcade to which any patron is permitted access for any purpose, other than toilet facilities. Each manager's station shall be manned at all times. It shall be the duty of the owners, managers and employees of the adult arcade to ensure that the view area as specified in this ordinance remains unobstructed by merchandise, display racks or other materials at all times that any patron is present in the adult arcade.
- (B) No owner, manager or employee of an adult arcade shall equip or allow to remain equipped any area to which patrons are permitted access with screens, doors, curtains or obstructions and coverings of any kind that prevent a direct and unobstructed view of the area. This subsection shall not apply to toilet facilities, nor shall it be deemed to prevent the use of exterior doors.
- (C) All interior walls of any areas into which patrons are allowed access shall be continuous from floor to ceiling, with no apertures, holes or other openings.
- (D) A viewing compartment, cubicle or booth shall not be occupied by more than one (1) person at any time.

#### **Sec. 24-14, Escort Agencies.**

- (A) The owner or manager of an escort agency shall not employ as an escort any person under the age of eighteen (18) years.



- (B) A person commits an offense if that person acts as an escort or agrees to act as an escort for any person under the age of eighteen (18) years.
- (C) An owner or manager of an escort agency commits an offense if that person employs as an escort any person under the age of eighteen (18) years.
- (D) An owner, manager or employee of an escort agency commits an offense if that person, while he or she is employed as an escort for any compensation whatsoever, exposes that person's genitals, pubic region or pubic hair or the crevice of the buttocks.
- (E) An owner, manager or employee of an escort agency commits an offense if, while he or she is employed as an escort for any compensation whatsoever, the owner, manager or employee solicits a customer to expose the customer's genitals, pubic region or pubic hair or the crevice of the buttocks.
- (F) An owner, manager or employee of an escort agency commits an offense if, while he or she is employed as an escort for any compensation whatsoever, and appearing "nude or in a state of nudity" he or she touches a customer or the clothing of a customer.

#### **Sec. 24-15. Adult modeling studios.**

- (A) An owner, manager or employee of an adult modeling studio shall not place or permit a bed, sofa or mattress in any room on the premises of an adult modeling studio, except that a sofa may be placed in a reception room open to the public.
- (B) An owner, manager or employee of an adult modeling studio commits an offense if that person places or permits a bed, sofa or mattress in any room on the premises of an adult modeling studio, except in a reception room open to the public.
- (C) No person shall be permitted to use the premises of an adult modeling studio as living quarters or residence in any capacity, temporarily or permanently.
- (D) An owner, manager or employee of an adult modeling studio commits an offense if that person uses or allows another person to use the premises of an adult modeling studio as living quarters or residence in any capacity, temporarily or permanently.
- (E) No adult modeling studio shall be kept open for business between the hours of 10:00 p.m. and 8:00 a.m.
- (F) An owner, manager or employee of an adult modeling studio commits an offense if that person conducts business as an adult modeling studio or operates an adult-modeling studio between the hours of 10:00 p.m. and 8:00 a.m.

#### **Sec. 24-16. Adult motels.**

- (A) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours

creates a presumption that the establishment is an adult motel as that term is defined in this chapter.

- (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 permit, that person rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, that person 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.

**Sec. 24-17. Adult cabarets/adult lounges.**

- (A) An owner, manager or employee of an adult cabaret/adult lounge commits an offense if, while exposing that person's genitals, pubic region or pubic hair or anus, he or she is on the premises of an adult cabaret/adult lounge and in an area of the premises open to customers, excluding toilet facilities.
- (B) An owner, manager or employee commits an offense if the owner, manager or employee of an adult cabaret/adult lounge permits any customer access to an area of the premises not visible by a walk through of the premises without entering a closed area, excluding toilet facilities.
- (C) An owner or manager who operates an adult cabaret/adult lounge commits an offense if the owner or manager operates an establishment without maintaining a current list of all employees. The list must be kept on file at the establishment at all times whether the employee is on or off-duty and include the following information regarding each employee:
  - (1) Correct legal name;
  - (2) All alias or stage names currently used by the employee;
  - (3) Date of birth;
  - (4) Race;
  - (5) Color of hair and eyes;
  - (6) Current residence and phone number; and
  - (7) Texas driver's license number or identification number.
- (D) The owner, manager or employee of a regulated establishment commits an offense by failing to provide or by providing false or deceptive information on an employee list that was requested by a licensed peace officer for purposes related to the enforcement of this chapter. It is a defense to prosecution of the owner or manager for providing false or deceptive information under this subsection that the information in Section 24-17(C)(2), (4), (5) and (6) was provided in writing by the employee and is maintained by the permittee on the premises of the sexually oriented business while such person is an employee of the sexually oriented



business and the owner or manager had no reason to doubt the information presented. If is a defense to prosecution of an owner or manager for providing false or deceptive information under this Subsection that the information in Section 24-17 (C) (1), (3) and (7) was obtained from a current Texas driver's license, a copy of which is maintained by the permittee on the premises of the sexually oriented business while such person is an employee of the sexually oriented business and the owner or manager had no reason to doubt the information presented.

#### **ARTICLE IV. PERMITS**

##### **Sec. 24-18. Permits required.**

- (A) A commercial establishment that is sexually oriented business shall be permitted in accordance with this chapter. Each adult cabaret, adult lounge, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, adult novelty shop, adult arcade, adult encounter parlor, escort agency or other type of sexually oriented business shall require a separate permit.
- (B) A person commits an offense if that person conducts business as a sexually oriented business within the City of South Padre Island unless the person posts the permit at or near the principal public entrance to the business in such a manner that it will be conspicuous to patrons who enter the premises or behind the bar in a conspicuous manner.
- (C) A person commits an offense if that person conducts business as a sexually oriented business within the City of South Padre Island unless the person posts the permit at or near the principal public entrance to the business in such a manner that it will be conspicuous to patrons who enter the premises or behind the bar in a conspicuous manner.
- (D) Every permittee shall have and maintain exclusive occupancy and control of the entire permitted premises in every phase of the operation of the sexually oriented business on the permitted premises. A permittee commits an offense if the permittee attempts to avoid such responsibility by creating any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee.

##### **Sec. 24-19. Permit application.**

- (A) Applications for a permit, whether original or renewal, must be made to the Chief of Police by the owner of the business. Applications must be submitted to the Police Department between the hours of 8:00 a.m. to 4:00 p.m. Monday through Friday (city holidays excepted). Application forms shall be supplied by the Chief of Police.
- (B) The applicant shall be the owner and shall provide the following information on the application form:
  - (1) The name and a street address (and mailing address, if different) and valid state driver's license number or identification card number of the applicant.
  - (2) The name under which the business is to be operated and a general description of the services and products to be provide.

- (3) The telephone number of the business.
- (4) The address, and a legal description of the parcel of land on which the business is to be located.
- (5) The date on which the owner acquired the business for which the permit is sought and the date on which the business began operations or intends to be in operations as a sexually oriented business at the location for which the permit is sought.
- (6) The name and street address (and mailing address, if different) and valid state driver's license number or identification card number of the applicant's spouse, if applicable.

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

- (1) A certified copy of the assumed name certificate filed in compliance with the Assumed Business or professional Name Act (Chapter 36, Texas Business and commerce Code) if the business is to be operated under an assumed name.
- (2) If the business is a Texas corporation, a copy of the articles of incorporation, with all amendments thereto, certified by the Secretary of State.
- (3) If the business is a foreign corporation, a copy of the certificate of authority to transact business, in this state, with all amendments thereto, certified by the Secretary of State.
- (4) If the business is a limited partnership formed under the laws of Texas, a copy of the certificate of limited partnership, with all amendments thereto, certified by the Secretary of State.
- (5) If the business is a foreign limited partnership, a copy of the certificate of limited partnership and the qualification documents, with all amendments thereto certified by the Secretary of State.
- (6) A copy of a valid Texas driver's license or identification card of the applicant.
- (7) Any of items (1) through (6) above, shall not be required for a renewal application if the applicant states that the documents previously furnished the Chief of Police with the original application or previous renewals thereof remain correct and current.
- (8) A diagram of the premises showing a plan thereof, specifying the manager's station location(s), if applicable, which designates the portions of the premises in which patrons will not be permitted. Each diagram should be oriented towards the north or to a designated street. The diagram shall be drawn to a designated scale.

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

- (1) The applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct.



- (2) The applicant has read the provisions of this chapter regarding sexually oriented businesses.
- (E) The application shall be signed by all the owners.
- (F) A separate application and permit shall be required for each business location and for each type of sexually oriented business.
- (G) The fee for an original or transfer application is five hundred dollars (\$500.00). The fee for a renewal application is three hundred twenty-five dollars (\$325.00). The fee for a reinspection of the premises is one hundred seventy-five dollars (\$175.00). Payment shall be by certified check, cashier's check or money order. The fee shall be paid in full at the time of application and is not refundable.

**Sec. 24-20. Term and renewal of permit.**

- (A) Each permit shall be valid for a period of one (1) 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 its expiration date by the filing of a renewal application with the Chief of Police. Renewal applications will be filed at least thirty (30) days, but not more than ninety (90) days, prior to the expiration of the permit that is to be renewed. If the permit has been revoked by the revocation is in abatement in accordance with Section 24-24 (C), then the application may be submitted within ten (10) days following the receipt of the written notice of the City Manager's final action on the appeal.
- (B) A permit is valid only at the premises for which it is issued.
- (C) A person commits an offense if that person counterfeits, forges, changes, defaces or alters a permit.
- (D) A permit may be canceled upon written request of the owner and/or the surrender of the actual permit to the Chief of Police.

**Sec. 24-21. Issuance or denial of permit.**

- (A) Within thirty (30) days of receipt of any application, either original, renewal or transfer, the Chief of Police shall grant or deny the requested permit and give written notice to the applicant as to the decision. In the event that the Chief of Police determines that an applicant is not eligible for a permit, the notice shall include the reasons for the denial of the permit.
- (B) The Chief of Police shall issue a permit to the applicant unless one (1) or more of the following conditions exist:
  - (1) The applicant's sexually oriented business is located in violation of the provisions of section 24-4 of this chapter.
  - (2) The applicant failed to supply all of the information required on the application by Section 24-19.

- (3) The applicant gave fraudulent or untruthful information on the application. This part does not apply to clerical errors.
- (4) The application or the business does not meet any other requirement of this chapter.
- (5) The applicant has been convicted of a felony for which less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, or a misdemeanor for which less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, of a crime in any state involving:
  - (a.) Public lewdness, indecent exposure or indecency with a child as described in Chapter 21 of the Texas Penal Code;
  - (b.) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal code;
  - (c.) Prohibited sexual conduct, enticing a child, harboring a runaway child or sale or purchase of a child as described in Chapter 25 of the Texas Penal Code;
  - (d.) Prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity, sale, distribution or display of harmful material to a minor, sexual performance by a child, employment harmful to children, or possession or promotion of child pornography as described in Chapter 43 of the Texas Penal Code.
  - (e.) Facilitation, attempt, conspiracy or solicitation to commit any of the foregoing offenses; or
  - (f.) Any similar offenses to those described above under the criminal or penal code of another state.
- (C) Property uses and distances for original applications shall be determined as of the time that the application is filed. If a renewal or transfer application is timely filed, the property uses and measurements for the renewal or transfer application shall be determined as of the time that the original application for the business was filed. If not timely filed, renewal applications shall be treated in the same manner in all respects as original applications.

**Sec. 24-22. Permit transfers.**

- (A) A permit is personal to the owner designated in the application. A permit may be transferred pursuant to this section. A transfer application must be filed within thirty (30) days of any change of owner designated on the current permit. A transfer application shall allow the continuation of business under an existing permit while a new application is being processed. Any transfer application shall require and be treated in all respects as an original permit application. In the event that a transfer application is not timely filed, then the existing permit shall be invalid for any purpose relating to the operation of the business. Provided,



however, that nothing in this section shall affect the nonconforming use provisions of Section 24-6.

- (B) Transfer applications shall be filed on the same form and in the same place and at the same times as original applications and the fee shall be payable in the same manner as for original application.
- (C) Transfers shall be reviewed, issued and subject to appeal in the same manner as original application. The permit will be issued for one (1) year.

**Sec. 24-23. Revocation of permit.**

- (A) The Chief of Police shall have the authority to revoke a permit for any one (1) or more of the following reasons:
  - (1) The permittee has been convicted of any of the following offenses during the permit period:
    - (a) Public lewdness, indecent exposure or indecency with a child as described in Chapter 21 of the Texas Penal Code;
    - (b) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
    - (c) Prohibited sexual conduct, enticing a child, harboring a runaway child, or sale or purchase of a child as described in Chapter 25 of the Texas Penal Code;
    - (d) Prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity, sale, distribution or display of harmful material to a minor, sexual performance by a child, employment harmful to children or possession or promotion of child pornography as described in Chapter 43 of the Texas Penal Code;
    - (e) Facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses; or
    - (f) Any similar offenses to those described above under the criminal or penal code of another state.
  - (2) The permittee of the permitted business gave materially false or fraudulent information on the original, renewal or transfer application form.
  - (3) That the permit was not issued in accordance with the criteria contained in this chapter.
- (B) Prior to revocation of a permit, the Chief of Police shall conduct an investigation to determine whether the permit should be revoked. If the Chief of Police determines the permit should be revoked, the Chief of Police shall notify the owner in writing that the permit is revoked and the reasons for the revocation.

- (C) The revocation shall commence on the day after the time to file an appeal with the City Manager under Section 24-24 (B) has expired. In the case of such appeal, the revocation is abated in accordance with Section 24-24 (C) until the City Manager's written notice of final action on appeal required by Section 24-24 (B) is delivered to the permittee.
- (D) The fact that a permit has been renewed shall have no effect on the revocation of the permit.
- (E) When the Chief of Police revokes a permit, the revocation shall continue for one (1) year and the permittee shall not be issued a sexually oriented business permit for one (1) year from the date revocation became effective. If the permit was revoked under Subsection 24-23 (A)(3), an applicant may be granted a permit at such time as the applicant complies with the requirements of this chapter.

#### **Sec. 24-24. Appeal.**

- (A) If the Chief of Police denies the issuance or renewal of a permit or revokes a permit, the Chief of Police shall notify the applicant or permittee, by certified mail, return receipt requested, of the action and the right to an appeal.
- (B) Upon receipt of written notice of the denial or revocation of a permit, the applicant or permittee whose application for a permit or permit renewal has been denied or whose permit has been revoked has the right to appeal to the City Manager or a state district court. An appeal to the City Manager must be filed with the City Secretary within ten (10) days after the receipt of the notice of the decision of the Chief of Police. The City Manager shall appoint a neutral person as hearing official who will hear the appeal within ten (10) days of receipt of the appeal by the City Secretary. The hearing official shall determine whether a preponderance of the evidence supports the denial or revocation. The City Manager shall notify the applicant or permittee, by certified mail, return receipt requested, of the hearing official's action within fifteen (15) days of receipt of the appeal by the City Secretary. The notice shall advise the applicant or permittee of his or her right to appeal to a state district court. An appeal to the state district court must be filed within thirty (30) days after the receipt of the notice of the denial or revocation of a permit by the Chief of Police or within thirty (30) days after the receipt of the notice of the decision of the City Manager. The applicant or permittee shall bear the burden of proof in court.
- (C) The appeal of a revocation of a permit to the City Manager shall abate the revocation of the permit until such time as the City Manager notifies the owner of his or her final decision.
- (D) The appeal of a revocation of a permit to state district court shall not abate the revocation of the permit. [Chapter 24 was added to Code of Ordinances by Ord 01-09, August 20



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