

Chapter 10

LICENSES, AND MISCELLANEOUS BUSINESS REGULATIONS*

Article I. In General

Secs. 10-1—10-25. Reserved.

Article II. Itinerant Merchants, Photographers and Shows

- Sec. 10-26. Definitions.
- Sec. 10-27. Itinerant merchants' or photographers' license—Required.
- Sec. 10-28. Same—Application; required information.
- Sec. 10-29. Same—Issuance when advance payment is not to be received.
- Sec. 10-30. Same—Issuance when advance payment is to be received; bond prerequisite.
- Sec. 10-31. Circus, carnival, menagerie or tent show license.
- Sec. 10-32. License fees.
- Sec. 10-33. Exemption for sales to dealers.
- Sec. 10-34. Registration and permit for persons engaged in interstate commerce.
- Sec. 10-35. Registration of peddlers.
- Sec. 10-36. Time limitation for peddlers stopping on streets.
- Secs. 10-37—10-50. Reserved.

Article III. Sexually Oriented Businesses

- Sec. 10-51. Purpose and intent.
- Sec. 10-52. Definitions.
- Sec. 10-53. Classification of sexually oriented businesses.
- Sec. 10-54. License requirements.
- Sec. 10-55. Issuance of license.
- Sec. 10-56. License fee.
- Sec. 10-57. Inspection.
- Sec. 10-58. Expiration of License.
- Sec. 10-59. Suspension.
- Sec. 10-60. Revocation.
- Sec. 10-61. Appeal.
- Sec. 10-62. Transfer of license.
- Sec. 10-63. Location of sexually oriented business.
- Sec. 10-64. Exemption from location restrictions.

***Cross references**—Alcoholic beverage permits, § 3-2; building permits, § 4-5; oil and gas well drilling permits, § 14-26 et seq.; trailer park permits, § 18-26 et seq.; taxicab permits, § 19-26.

SHEPHERD CODE

- Sec. 10-65. Additional regulations for escort agencies.
- Sec. 10-66. Additional regulations for nude model studios.
- Sec. 10-67. Additional regulations for adult theaters and motion picture theaters.
- Sec. 10-68. Additional regulations for adult motels.
- Sec. 10-69. Regulations pertaining to exhibition of sexually explicit films or videos.
- Sec. 10-70. Display of sexually explicit material to minors.
- Sec. 10-71. Enforcement.
- Sec. 10-72. Injunctive relief.
- Secs. 10-73—10-80. Reserved.

Article IV. Garbage Services

- Sec. 10-81. Authorization.
- Sec. 10-82. Regulation.
- Sec. 10-83. Requiring compliance.
- Sec. 10-84. Violation and penalty.

ARTICLE I. IN GENERAL

Secs. 10-1—10-25. Reserved.

**ARTICLE II. ITINERANT MERCHANTS,
PHOTOGRAPHERS AND SHOWS**

Sec. 10-26. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Interstate commerce means soliciting, selling or taking orders for or offering to take orders for any goods, wares, merchandise, photographs, newspapers or magazines or subscriptions to newspapers or magazines which, at the time the order is taken, are in another state or will be produced in another state and shipped or introduced into this city in the fulfillment of such orders.

Itinerant photographer means a person who solicits the taking, finishing, coloring, enlarging, and sale of photographs for profit and who has no studio or other place of business in the city equipped for the taking and finishing of such photographs.

Cross reference—Definitions and rules of construction generally, § 1-3.

Sec. 10-27. Itinerant merchants' or photographers' license—Required.

(a) *Merchants*. It shall be unlawful for any itinerant merchant who may move from place to place and sell or offer for sale any bankrupt, fire- or water-damaged stock of merchandise, goods, wares or any other commodity or for any person to go from house to house or from place to place in the city soliciting, selling, or taking orders for goods, wares, merchandise, or subscriptions to magazines without first applying for and obtaining a license to do so from the city secretary.

(b) *Photographers*. It shall be unlawful for any itinerant photographer, his agent or employee, without first applying for and obtaining a license to do so from the city secretary, to expose plates or films; to make negatives; to take pictures or photo-

graphs for future delivery; to solicit the taking, finishing, coloring, enlarging and sale of photographs for profit or deliver any article for future delivery.

Sec. 10-28. Same—Application; required information.

Any person desiring to engage in the business of itinerant merchant or that of peddling within the corporate limits of the city or in the business of taking pictures or photographs for future delivery by itinerant photographers shall make written application for a license to do so to the city secretary, which application shall show the name and address of the applicant; the name and address of the person the applicant represents; the kind of goods, wares and merchandise to be offered for sale; the address of the studio maintained by the itinerant photographer where the pictures or photographs will be actually developed, colored, enlarged or finished; whether or not such applicant upon any order so obtained will demand, accept or receive payment or deposit of money in advance of final delivery; the period of time the applicant wishes to so solicit, sell or take orders in the city; and such other information as the city shall require.

Sec. 10-29. Same—Issuance when advance payment is not to be received.

When the application for a license required by section 10-27 shows that the applicant will not demand, receive or accept payment or the deposit of money in advance of final delivery of such goods, wares, merchandise, magazines or articles to be sold, it shall be the duty of the city secretary to issue such applicant a license upon proof of the payment of the license fee fixed in this article, provided the city secretary is satisfied with the credentials of the applicant. No charge will be made by the city secretary for the issuance of the license, and all licenses issued, except licenses to itinerant merchants and itinerant photographers, shall be good for 30 days from the date of issuance.

Sec. 10-30. Same—Issuance when advance payment is to be received; bond prerequisite.

If the application for a license required by section 10-27 shows that the applicant will receive, demand or accept payment or the

deposit of money in advance of final delivery of goods, wares, merchandise, magazine subscriptions, photographs or other articles sold, such application shall be accompanied by a bond in the penal sum of \$1,000.00, executed by such applicant as principal and a surety company licensed to do business as such in the state or by two financially responsible owners of property situated in the state, subject to execution of the value in double the amount of such bond, as sureties, conditioned upon making final delivery of such goods, wares, merchandise, magazine subscriptions, plates, films, photographs or other articles of merchandise in accordance with the terms of such orders. The bond shall be for the use and benefit of all persons who may pay in advance or make any advance deposit on the purchase price of such orders and shall so stipulate in its terms. Different forms of licenses will be used by the city secretary so that such licenses shall expressly state whether or not the bearer of the license is authorized to accept payment or deposit in advance of delivery.

Sec. 10-31. Circus, carnival, menagerie or tent show license.

It shall be unlawful for any person to engage in the business of showing, exhibiting or operating a circus, carnival, menagerie or tent show, in which a charge for admission is demanded or received, in the city without first applying for and obtaining a license to do so from the city secretary, who shall not issue such license until the applicant exhibits to him a receipt from the city showing that the license fee, as fixed in this article, has been paid.

Sec. 10-32. License fees.

(a) For the purpose of this article, there shall be levied and assessed the following license fees, which shall be paid to the city secretary before any license shall be issued by him:

- (1) For itinerant merchants offering for sale a bankrupt stock of goods, or who shall advertise a fire sale or water and fire damaged stock for sale, or goods, wares, merchandise or any other commodity for a limited time of one month or less, the license fee shall be \$50.00. For each succeeding

additional month or fraction thereof, for each of the next five months and for each additional month after the first six months, the license fee shall be \$10.00 per month.

- (2) The license fee for itinerant photographers shall be \$100.00 per year or fraction thereof, to be levied, assessed against and collected from each person so engaged. In addition to the owner's license fee, each solicitor and salesperson shall obtain from the city secretary and carry on his person at all times a license showing whether or not he is authorized to collect money in advance, and a license fee of \$10.00 is levied and shall be paid by each solicitor or salesperson for such license, which shall be good for one year from the date of issuance.
- (3) For traveling medicine vendors, the license fee shall be \$25.00.
- (4) For medical specialists (not in special cases), the license fee shall be \$25.00.
- (5) For itinerant magazine salespersons, for each solicitor, the license fee shall be \$10.00.
- (6) For peddling using a motor vehicle, for each vehicle, the license fee shall be \$25.00.
- (7) For peddling on foot, each solicitor or salesperson of magazines or articles of merchandise shall at all times carry on his person his license receipt, and shall pay a license fee of \$10.00.
- (8) For each circus, carnival or menagerie showing, operating or exhibiting a show, exhibition, slide show, rides, or other demonstration where a charge for admission is demanded or received, the license fee shall be \$50.00.
- (9) For each tent show, excluding those which are part of a larger carnival or circus, the license fee shall be \$25.00.

(b) A person offering for sale agricultural products, meats, poultry, or other articles of food grown or produced by such person shall not be required to pay the license fee, but a license shall be issued by the city secretary upon satisfactory proof that he has produced or grown the products to be peddled, and such license

shall so state. All licenses, for which the fees are levied in subsection (a) of this section, other than subsections (a)(1) and (2) of this section, shall be issued for a period of 12 months from the date of issuance, but the fees shall be paid in one installment, whether the license is used for one day or for the entire year.

Sec. 10-33. Exemption for sales to dealers.

This article shall not apply to sales made to dealers by commercial travelers or sales agents in the usual course of business, nor to vendors of milk or dairy products.

Sec. 10-34. Registration and permit for persons engaged in interstate commerce.

(a) This article shall not apply to persons engaged in interstate commerce. However, it shall be unlawful for a person engaged in interstate commerce to go from house to house or place to place in the city without having first registered and obtained a permit from the city secretary, giving the following information:

- (1) Name, home address and local address, if any, of the registrant.
- (2) Name and address of the person, if any, that he represents or for whom or through whom orders are to be solicited or cleared.
- (3) Nature of the articles or things which are to be sold or for which orders are to be solicited.
- (4) Whether the registrant, upon any sale or order, shall demand or receive or accept payment or deposit of money in advance of final delivery.
- (5) The period of time the registrant wishes to solicit or sell in the city.

(b) The applicant must possess a state sales tax number.

(c) The registrant, at the time of the registration, as provided in this section, shall submit for inspection of the city secretary written proof of his identity, which may be in the form of an

automobile license, identification letter or card issued to the registrant by the person for whom or through whom orders are to be solicited or cleared.

Sec. 10-35. Registration of peddlers.

Every person desiring to obtain a permit to go from house to house or place to place in the city soliciting business within the terms of this article shall fill out and sign such forms as shall be prepared by the city secretary, and, among other questions, such applicant shall give a full history, if any, of his police record. The applicant shall further submit to and permit the taking of his fingerprints if the fingerprints shall be requested by the city secretary. The city secretary shall be fully authorized and empowered to revoke and cancel any license or permit previously issued by his office upon being satisfied that such license holder has given false statements in his application, or upon being satisfied that such license holder has a police record of law violation, if the crime directly relates to the duties and responsibilities of the licensed occupation.

Sec. 10-36. Time limitation for peddlers stopping on streets.

It shall be unlawful for any peddler to take a stand, or stop or stand his vehicle on any public street outside normal parking areas within the corporate limits of the city for a longer time than one hour.

Secs. 10-37—10-50. Reserved.

ARTICLE III. SEXUALLY ORIENTED BUSINESSES*

Sec. 10-51. Purpose and intent.

(a) It is the purpose of this article 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

***Editor's note**—Ord. No. 187, adopted November 8, 1999, called for the addition of new art. II. In order to maintain Code numbering uniformity and allow for preexisting art. II, the provisions of Ord. No. 187 were renumbered as art. III, §§ 10-51—10-72 at the editor's discretion.

uniform regulations to prevent the concentration of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article 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 of the city that the location regulations of section 10-53 of this article are promulgated pursuant to chapter 243 of the Texas Local Government Code.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-52. Definitions.

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."

Adult bookstore or adult video store means a commercial establishment that as one of its principal business purposes offers for sale or rental for any form of consideration, any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, other visual representations which depict or describe "specified sexual activities" or "specified sexual areas;" or
- (2) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

Adult cabaret means a nightclub, bar, restaurant or similar commercial establishment that regularly features:

- (1) Persons who appear in a state of nudity or seminudity;
- (2) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or
- (3) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

Adult motel means a hotel, motel or similar commercial establishment that:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right-of-way which advertises the availability of this type of photographic reproductions; or
- (2) Offers a sleeping room for rent for a period of time that is less than ten hours; or
- (3) Allows a tenant or occupant of a sleeping room to sublet the room for a period of time that is less than ten hours.

Adult motion picture theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

Adult theater means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

Child care facility means a building used as a day nursery, children's boarding home, child placement agency, religious or charitable encampment for children or any other place for the care or custody of children under 16 years of age.

Church means a building in which persons regularly assemble for worship, intended primarily for purposes connected with faith, or for propagating a particular form of belief.

Escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

Escort agency means a person who, or business association that, furnishes, offers or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

Establishment means and includes any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of any existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

Licensee means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

Mayor means the mayor of the city or his designated agent.

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

Nudity or a state of nudity means:

- (1) The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or
- (2) A state of dress that fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

Operates or causes to be operated means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

Seminude 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.

Sexual encounter center means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) 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 seminude.

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 modeling studio, or sexual encounter center.

Specified anatomical areas means human genitals in a state of sexual arousal.

Specified sexual activities means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3), above.

Substantial enlargement of a sexually oriented business means the increase in floor area occupied by business by more than 20 percent, as the floor area exists on the date of passage of this article.

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 transfer of securities that constitute a controlling interest in the business, whether by sale, exchange or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device that transfers the ownership 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.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-53. Classification of sexually oriented businesses.

Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult motion picture theaters;

- (6) Adult theaters;
 - (7) Escort agencies;
 - (8) Nude model studios; and
 - (9) Sexual encounter centers.
- (Ord. No. 187, § 2, 11-8-1999)

Sec. 10-54. License requirements.

(a) A person commits an offense if he operates a sexually oriented business without a valid license, issued by the city for the particular type of business.

(b) An application for a license must be made on a form provided by the city secretary. The application form shall be sworn to and shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of the 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 article and the premises must be found to be in compliance with the law by the city's building official.

(d) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as the applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under section 10-55 and each applicant shall be considered a licensee if a license is granted.
(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-55. Issuance of license.

(a) The mayor shall approve the issuance of a license by the city secretary to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true:

- (1) An applicant is under 18 years of age;

- (2) An applicant or an applicant's spouse is overdue in his payment to the city of taxes, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business;
- (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
- (4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this article, other than the offense of operating a sexually oriented business without a license, 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 license by the city to operate a sexually oriented business within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.
- (6) The premises to be used for the sexually oriented business have not been approved by the city's building official as being in compliance with applicable laws and ordinances.
- (7) The license fee required by this article has not been paid.
- (8) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated that he is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.
- (9) An applicant for the proposed establishment is in violation of or is not in compliance with any section of this article.

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

a. Involving:

1. Any of the following offenses as described in chapter 43 of the Texas Penal Code:
 - i. Prostitution;
 - ii. Promotion of prostitution;
 - iii. Aggravated promotion of prostitution;
 - iv. Compelling prostitution;
 - v. Obscenity;
 - vi. Sale, distribution, or display of harmful material to a minor;
 - vii. Sexual performance by a child; or
 - viii. Possession of child pornography;
2. Any of the following offenses as described in chapter 21 of the Texas Penal Code:
 - i. Public lewdness;
 - ii. Indecent exposure; or
 - iii. Indecency with a child;
3. Sexual assault or aggravated sexual assault as described in chapter 22 of the Texas Penal Code;
4. Incest, solicitation of a child, or harboring a runaway child as described in chapter 25 of the Texas Penal Code; or
5. Criminal attempt conspiracy, or solicitation to commit any of the foregoing offenses;

b. For which:

1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
2. Less than five years have elapsed since the date of conviction or the date of release from

confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

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

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

(c) The license, 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 license 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.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-56. License fee.

The annual fee for a sexually oriented business license shall be \$500.00.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-57. Inspection.

(a) An applicant or licensee shall permit representatives of the police department, fire department, and the city's building official 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 shall not apply to areas of an adult motel that are currently being rented by a customer as a permanent or temporary habitation.
(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-58. Expiration of license.

(a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in section 10-55. 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 license shall not be affected.

(b) When the mayor denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the mayor finds that the basis for denial of renewal of the license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.
(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-59. Suspension.

The mayor shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee has:

- (1) Violated or is not in compliance with any section of this article;
- (2) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (3) Refused to allow an inspection of the sexually oriented business premises as authorized by this article;
- (4) Knowingly permitted gambling by any person on the sexually oriented business premises; or
- (5) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-60. Revocation.

(a) The mayor shall revoke a license if a cause of suspension in section 10-59 occurs and the license has been suspended within the preceding 12 months.

(b) The mayor shall revoke a license if he determines that:

- (1) A licensee gave false or misleading information in the material submitted to either the city secretary or the mayor during the application process;
- (2) A licensee, an agent or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
- (3) A licensee, an agent or an employee has knowingly allowed prostitution on the premises;
- (4) A licensee, an agent or an employee knowingly operated a sexually oriented business during a period of time when the licensee's license was suspended;
- (5) A licensee has been convicted of an offense listed in section 10-55(a)(10)1. for which the time period required in section 10-55(a)(10)2. has not lapsed;
- (6) On two or more occasions within a 12 month period, a person or persons committed an offense, occurring in or on the licensed premises, of a crime listed in section 10-55(a)(10)1., 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 licensee, an agent or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in section 21.01, Texas Penal Code; or
- (8) A licensee is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes, sales taxes or other taxes related to the sexually oriented business.

(c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(d) Subsection (b)(7) does not apply to adult motels as grounds for revoking the license unless the licensee, agent or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) When the mayor revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the mayor finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under subsection (b)(5), an applicant may not be granted another license until the appropriate number of years required under section 10-55(a)(10)b. has elapsed since the termination of any sentence, parole or probation.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-61. Appeal.

If the mayor denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the applicant or licensee whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal to the state district court. An appeal to the state district court must be filed within 30 days after the receipt of notice of the decision of the mayor. The applicant or licensee shall bear the burden of proof in court.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-62. Transfer of license.

A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-63. Location of sexually oriented business.

(a) A person commits an offense if he operates or causes to be operated a sexually oriented business within 1,500 feet of:

- (1) A church;
- (2) A public or private elementary school or secondary school;
- (3) A public park;
- (4) A public library;
- (5) A nursing facility or retirement home;
- (6) A police station or fire station;
- (7) City hall;
- (8) The property line of a lot devoted to residential use;
- (9) A child care facility; or
- (10) Any building or structure in which alcoholic beverages are offered for sale.

(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 1,500 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 the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(d) For the purposes of subsection (a) of this section, measurement shall be 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, child care facility, public or private elementary school or secondary school, or building or structure in which alcoholic beverages are offered for sale, or to the nearest boundary of an affected public park, residential district, or residential lot.

(e) For the purposes of subsection (a) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to any 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 article that is in violation of subsections (a), (b), or (c) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed 12 months, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,500 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) 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 license, of a church, public or private elementary or secondary school, child care facility, public park, residential district, or residential lot, or any building or structure in which alcoholic beverages are offered for sale, within 1500 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-64. Exemption from location restrictions.

(a) If the mayor denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of any provision of this article, then the applicant may, not later than ten calendar days after receiving notice of the denial, file with the city secretary a written request for an exemption from the locational restrictions of this article.

(b) If the written request is filed with the city secretary within the ten-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) A hearing by the city council may proceed if a quorum of the city council is present. 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 restriction of this article 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 article;
- (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 article 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 city council's action. Upon expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of this article until the applicant applies for and receives another exemption.

(g) If the city council denies the exemption, the applicant may not reapply for an exemption until at least 12 months have elapsed since the date of the city council's action.

(h) The grant of an exemption does not exempt the applicant from any other provisions of this article other than the locational restrictions of section 10-63.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-65. Additional regulations for escort agencies.

(a) An escort agency shall not employ any person under the age of 18 years.

(b) A person commits an offense if he acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-66. Additional regulations for nude model studios.

(a) A nude model studio shall not employ any person under the age of 18 years.

(b) A person under the age of 18 years commits an offense if he appears in a state of nudity or seminudity in or on the premises of a nude model studio. It is a defense to prosecution under this section if the person under eighteen 18 years was in a restroom not open to public view or persons of the opposite sex.

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

(d) A nude 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.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-67. Additional regulations for adult theaters and motion picture theaters.

(a) A person commits an offense if he knowingly allows a person under the age of 18 years to appear in a state of nudity or seminudity in or on the premises of an adult theater or adult motion picture theater.

(b) A person under the age of 18 years commits an offense if he knowingly appears in a state of nudity or seminudity in or on the premises of an adult theater or adult motion picture theater.

(c) It is a defense to prosecution under subsections (a) and (b) of this section if the person under 18 years was in a restroom not open to the public view or persons of the opposite sex.
(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-68. 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 ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.

(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 subrents a sleeping room to a person and, within ten hours from the time the room is rented, he rents or subrents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.
(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-69. 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 or 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 stations, the location of all over-

head lighting fixtures, which lights are controlled by which switches and designating a portion of the premises in which patrons are not permitted. Only agents or employees shall have access to light switches. 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 sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The mayor may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration for 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 mayor.
- (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 the 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 have two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at

least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

- (6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present on the premises to ensure that the view area specified in subsection (a)(5) of this section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present on 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 the application filed pursuant to subsection (a)(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 footcandle as measured at the floor level.
- (8) It shall be the duty of the owners and operator and it also shall be the duty of any agents and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

(b) A person having a duty under subsection (a)(1)—(a)(7), above, commits an offense if he or she knowingly fails to fulfill that duty.

(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-70. Display of sexually explicit material to minors.

(a) A person commits an offense if, in a business establishment open to persons under the age of 17 years, he displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

- (1) Human sexual intercourse, masturbation, or sodomy;

- (2) Fondling or other erotic touching of human genitals, public region, buttocks, or that portion of the female breast;
- (3) Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or
- (4) Human male genitals in a discernibly turgid state, whether covered or uncovered.

(b) In this section "display" means to locate an item in such a manner that, without obtaining assistance from an agent or employee of the business establishment:

- (1) It is available to the general public for handling and inspection; or
 - (2) The cover, outside packaging on the item or contents of the item is visible to members of the general public.
- (Ord. No. 187, § 2, 11-8-1999)

Sec. 10-71. Enforcement.

(a) Any person violating a provision of this article, upon conviction, is punishable by a fine not to exceed \$500.00 for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

(b) It is a defense to prosecution under section 10-54(a), 10-63 or 10-66(e) of this article that a person appearing in a state of nudity or seminudity did so in a modeling class operated:

- (1) By a proprietary school licensed by the state, a college, junior college, or university supported entirely by or partly by taxation;
- (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(3) In a structure:

- a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude or seminude person is available for viewing; or
- b. Where in order to participate in a class a student must enroll at least three days in advance of the class; and
- c. Where no more than one nude or seminude model is on the premises at any time.

(c) It is a defense to prosecution under sections 10-54(a) or 10-63 of this article 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. (Ord. No. 187, § 2, 11-8-1999)

Sec. 10-72. Injunctive relief.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of section 10-63 of this article is subject to a suit for injunction as well as prosecution for criminal violations. (Ord. No. 187, § 2, 11-8-1999)

Secs. 10-73—10-80. Reserved.

ARTICLE IV. GARBAGE SERVICES

Sec. 10-81. Authorization.

(a) No person, firm, or corporation shall use any city street, alley or public right-of-way in any manner for the purpose of engaging in the business of commercial and/or residential garbage service unless such person, firm or corporation shall have first obtained a franchise from the city for such purpose. Said franchise must be granted by ordinance duly passed by a majority of city council, and no grant of any franchise or lease, or right to use the same, either on, through, along, across, under or over the same, by any private corporation, association or individual shall be granted by the city council for a longer period of five years.

(b) Every such franchise or grant shall make adequate provision, by way of forfeiture of the grant or otherwise, to secure efficiency of public service at reasonable rates and to maintain the property devoted to the public service in good repair throughout the term of grant of said franchise.

(c) No franchise grant shall ever be exclusive.

(d) The city shall receive for the franchise a percent of the gross revenue, which shall be determined by the city council.
(Ord. No. 198, § 1, 12-11-2000)

Sec. 10-82. Regulation.

The city council shall have the power by franchise to determine, fix and regulate the changes, fares or rates of compensation to be charged by any person, firm or corporation enjoying a franchise in the City of Shepherd and shall be determining, fixing and regulating such charges, rates, or compensation, base the same upon the fair rate of return upon the fair value of property of such person, firm or corporation devoted to furnishing service in such city or the inhabitants thereof. The city council may prescribe the character, quality and extent of service to be rendered and shall have the power to regulate and require the extension of services of such franchise within such city by such person, firm or corporation and from time to time may alter or change such rules, regulations and compensation, upon due notice to, and if requested, hearing for such person, firm or corporation. In order to ascertain all facts necessary for a proper understanding of what is or should be reasonable rate or regulation, the city council shall have full power to inspect the books of such franchise holder and compel the attendance of witnesses for such purpose.

(Ord. No. 198, § 2, 12-11-2000)

Sec. 10-83. Requiring compliance.

The lawful conduct of a business necessitating a franchise under the terms of the ordinance, not already under a valid franchise, may continue to operate for a period of not more than 90 days from the effective date of this article.

(Ord. No. 198, § 3, 12-11-2000)

Sec. 10-84. Violation and penalty.

Any person, firm or corporation who shall violate any of the provisions of this article or who shall operate without a franchise as required shall be guilty of a misdemeanor and, upon conviction thereof, shall be liable to a fine of not more than \$1,000.00 and each day such violation shall be permitted to exist shall constitute a separate violation.

(Ord. No. 198, § 4, 12-11-2000)



(3) In a structure:

- a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude or seminude person is available for viewing; or
- b. Where in order to participate in a class a student must enroll at least three days in advance of the class; and
- c. Where no more than one nude or seminude model is on the premises at any time.

(c) It is a defense to prosecution under sections 10-54(a) or 10-63 of this article 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.
(Ord. No. 187, § 2, 11-8-1999)

Sec. 10-72. Injunctive relief.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of section 10-63 of this article is subject to a suit for injunction as well as prosecution for criminal violations.
(Ord. No. 187, § 2, 11-8-1999)

