

CITY OF CANEY CITY, TEXAS

ORDINANCE # 122195

AN ORDINANCE OF THE CITY OF CANEY CITY, TEXAS, SUPERCEDING SECTION 71395 OF THE REVISED CODE OF ORDINANCES OF THE CITY OF CANEY CITY, TEXAS, RELATING TO THE REGULATION OF SEXUALLY-ORIENTED BUSINESSES LOCATED WITHIN THE CITY LIMITS OF THE CITY OF CANEY CITY PROVIDING A PURPOSE; PROVIDING DEFINITIONS; REQUIRING LICENSES; PROVIDING FOR FEES OF \$5,000; SETTING OUT VIOLATIONS; PROVIDING FOR INSPECTIONS; PROVIDING FOR APPEALS; SETTING OUT REGULATIONS; PROVIDING DEFENSES; PROVIDING PENALTIES; PROVIDING A SEVERABILITY CLAUSE, PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING AN EFFECTIVE DATE; PROVIDING EACH DAY A VIOLATION OCCURS SHALL CONSTITUTE A SEPARATE OFFENSE.

WHEREAS, the governing body of Caney City, Texas, is charged with the health, safety and welfare of the City's residents; and

WHEREAS, the Caney City Council wants to maintain and preserve the quality of life that the residents of Caney City enjoy; and

WHEREAS, the City Council of the City of Caney City, Texas, makes the following findings of fact:

1. It is clear to the Council that the majority of the testimony at the public hearings before the council reflect distaste for and the total elimination of the types of goods and services offered by adult-oriented businesses, even those which may be entitled to protection under the First Amendment. In accordance with constitutional principles and remedies of the views expressed at the public hearings the Council recognizes that some adult-oriented business have a right to exist that is protected by the laws and constitutions of the United States and the State of Texas.
2. That right can be protected at the same time that the City adopts regulations to minimize the adverse effects of adult-oriented businesses upon adjacent areas and activities.
3. The Council has received a study of the secondary effects of adult-oriented businesses from Gun Barrel City, Texas, which city has studies done in Austin, prepared by their City Manager and his staff. This study also reflects the results of studies conducted in Amarillo and Beaumont, Texas, Indianapolis, Indiana and Los Angeles, California, et al. In addition a review by Gun Barrel City, Texas, of the ordinances from DeSoto, Rockwall, Dallas, Denton, Longview and Lancaster, Texas has been accomplished.
4. Based upon the findings of these studies, the existing City Ordinances and the

testimony presented at public hearings before the Council, the Council finds that the unregulated location of adult-businesses can have a substantial adverse effect upon the value of neighboring properties, crime, traffic, and the peaceful and quiet enjoyment of residential dwellings and civic uses. The Council further finds that the regulations contained in this ordinance are necessary to ameliorate these undesirable secondary effects of adult-oriented businesses.

5. These regulations are the minimum necessary to achieve the governmental interests of protecting neighborhoods, civic uses and property values of neighboring properties, traffic control and the prevention of crime.

WHEREAS, The City Council of Caney City, Texas, in recognition of the above and the potential for future sexually-oriented businesses that require special regulation from the Public Safety Agencies of the City in order to protect and preserve the health, safety and welfare of all citizens, this ordinance has been entered to promulgate the following determinations and findings:

- A. Section 54.003 of the Local Government Code in Vernon's Texas Civil Statutes authorized Type A General Law cities to enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants; and,
- B. WHEREAS, Section 215.032 of the Local Government Code authorized Type A General Law municipalities to regulate the location and conduct of theaters, movie theaters and other places of public amusement; and,
- C. WHEREAS, Section 215.033 of the Local Government Code of Vernon's Texas Civil Statutes authorizes Type A General Law municipalities to license any lawful business or occupation that is subject to the police power of the municipality; and,
- D. The Texas Legislature has determined that the unregulated operation of certain sexually-oriented business may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods in the growth of criminal activity; and,
- E. Section 243.007 of the Local Government Code of Vernon's Texas Civil Statutes authorizes municipalities to adopt regulations and require licenses or permits for the operation of sexually-oriented businesses, which are defined in Section 243.002 of the Local Government Code to include adult movie theaters, nude studios, modeling studios, adult bookstores, or other similar commercial enterprises the major business of which is the offering of a service that is intended to provide sexual stimulation or sexual gratification of the customer; and,
- F. The City Council finds that sexually-oriented business can potentially be used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and.

- G. The City Council finds that caressing and fondling between patrons and nude or seminude employees of sexually-oriented businesses and the practice of patrons providing gratuities to such employees constitute overtures and opportunities for illegal activities and transactions such as prostitution and the sale of controlled substances; and,
- H. The City Council finds that the concern over sexually-transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of sexually-oriented businesses in order to protect the health and well-being of the citizens; and,
- I. The City Council finds that licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually-oriented businesses comply with regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitations; and,
- J. The City Council finds there is convincing documented evidence that sexually-oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and,
- K. The city Council recognizes that sexually-oriented businesses, due to their nature, have serious objectionable operational characteristics, demanding appropriate regulation in order to prevent such characteristics from contributing to urban and rural blight and downgrading the quality of life in the adjacent area; and,
- L. The City Council desires to minimize and control these adverse effects and thereby preserve the property values and character of surrounding neighborhoods, deter the spread of urban blight, protect the citizens from increased crime, preserve the quality of life, and protect the health, safety, and welfare of the citizens; and,
- M. Providing notice of the pendency of an application for a license to operate a sexually-oriented business will enable adjacent property owners to prepare their properties and tenants accordingly and will enable members of the general public to provide relevant information in their possession pertinent to the completeness of the information contained in the application; and,
- N. The City Council believes it is in the best interest of the public safety and welfare to prohibit persons convicted of certain crimes from engaging in; the occupation of operating a sexually-oriented business; and,
- O.) The City Council, in accordance with Article 6252-13c of Vernon's Texas Civil Statutes, has considered the following criteria:
- A. The nature and seriousness of the crimes;

- B. The relationship of the crimes to the purposes for requiring a license to engage in the occupation;
- C. The extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
- D. The relationship of the crimes to the ability, capacity, or fitness required to perform the duties and discharge the responsibility of the licensed occupation;

and has determined that the crimes listed in the various sections of Ordinance # 122 195 set forth in this ordinance are serious crimes which are directly related to the duties and responsibilities of the occupation of operating a sexually-oriented business; and;

- P. The City Council has further determined that the very nature of the occupation of operating a sexually-oriented business brings a person into constant contact with persons interested in sexually-oriented materials and activities thereby giving the person repeated opportunities to commit offenses against public order and decency or crimes against the public health, safety, or morals should said person be so inclined; and,
- Q. The City Council finds that the list of crimes set out in Ordinance # 122 195 set forth in this ordinance render a person unable, incompetent, and unfit to perform the duties and responsibilities accompanying the operation of a sexually-oriented business in a manner that would promote the public safety and trust; and,
- R. The City Council has determined that no person who has been convicted of a crime listed in Section 122 195.5(a)(10), as set forth in this ordinance. is presently fit to operate a sexually-oriented business until the respective time periods designated in that section have expired; and,
- S. It is the intent of the City Council to disqualify a person from being issued a sexually-oriented business license by the City of Caney City if that person is currently under indictment or misdemeanor information for, or has been convicted within; the designated time period of, any of the crimes listed in Section 122 195(a)(10) as set forth in this ordinance; and,
- T. It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral regulation which addresses the secondary effects of sexually-oriented businesses; and,
- U. It is not the intent of the City Council to condone or legitimize the promotion of obscene materials, and the City Council recognizes that the prohibition of obscene material (those not protected by the First Amendment) is enforceable through separate criminal sanctions under the Penal Code; and,
- V. It is pursuant to the authority granted by the Constitution and Chapter 243, Sections 243.00 1

et seq of the Texas Local Government Code that this Ordinance is enacted:

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

1. That the findings set out in the preamble to this ordinance are hereby in all things approved.
2. That there is hereby created a new Ordinance # 122 195 of the Code of Ordinances of the City of Caney, Texas, entitle "Regulation of sexually-oriented Businesses", such new Ordinance # 122 195 to provide as follows:

ORDINANCE # 122 195. Regulation of sexually-oriented businesses.

SEC. 122 195.1. PURPOSE.

(a) The purpose of this Ordinance is to regulate sexually-oriented businesses to promote the health, safety, and general welfare of the citizens of the City of Caney City, and to establish a system of reasonable and uniform regulation of sexually-oriented businesses with the City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. Similarly, it is not the intent nor effect of this Ordinance 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) This Ordinance is promulgated pursuant to Chapter 243. Sections 243.001 et seq of the Local Government Code.

SEC. 122 195.2 DEFINITIONS.

In this Ordinance the following definitions shall apply:

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

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

- (a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other

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visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or

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

3. Adult cabaret means a night club, bar, restaurant, or similar commercial establishment which regularly features:

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

(b) Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(c) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

4. Adult motel means a hotel, motel or similar commercial establishment which:

(a) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, film, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

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

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

5. 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 and are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

6. Adult tanning salon means a commercial establishment which provides facilities for tanning the human skin, such as tanning beds, suntan lights, or other similar facilities, and regularly features for the entertainment of its clientele:

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

(b) Live performances or style shows of lingerie performed by persons who

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appear in a state of nudity or which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

7. Adult theater means a theater, concert hall, auditorium, or similar commercial establishment which 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."
8. Applicant means a person who must apply for a license by the Ordinance.
9. Chief of Police means the Chief of Police of the City of Caney City, Texas, or his designated agent.
10. Escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie, or to privately perform a striptease for another person.
11. Escort agency means a business association which furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.
12. Establishment means and includes any of the following:
 - (a) The opening or commencement of any sexually-oriented business as a new business;
 - (b) The conversion of an existing business, whether or not a sexually-oriented business, to any sexually-oriented business;
 - (c) The addition of any sexually-oriented business to any other existing sexually-oriented business;
 - (d) The relocation of any sexually-oriented business; or
 - (e) A location and place of business.
13. 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 on a person licensed under the Act.
14. Nude modeling 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.
15. Nudity or a state of nudity means:
 - (a) The appearance of a human bare buttock, anus, male genitals, female genitalia, pubic region or female breasts; or

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

(c) This definition shall not include a mother in the act of nursing her child.

16. 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.

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

18. Residential District means

19. Residential Use means

20. Seminude means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as, portions of the body covered by supporting straps or devices.

21. Sexual encounter center means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposit sex or other 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.

22. Sexually-oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult tanning salon, adult theater, escort agency, nude modeling studio, sexual encounter center, or other commercial enterprise, the primary business of which is the offering of a service or the selling renting or exhibiting, or devices, or any other items intended to provide sexual stimulation or sexual gratification to the customer.

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

24. Specified sexual activities means and includes any of the following:

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

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

(c) Masturbation, actual or simulated; or

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

25. Transfer of ownership or control of a sexually-oriented business includes any of the following:

- (a) The sale, lease, or sublease of the business:
- (b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of the law upon the death of the person possessing the ownership control.

SEC. 122 195.3 CLASSIFICATION

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 tanning salons;
7. Adult theaters;
8. Escort agencies;
9. Nude modeling studios; and
10. Sexual encounter centers.

SEC. 122 195.4 LICENSE REQUIRED AND DUTIES OF APPLICANT

- (a) The following are required to be licensed:
 - (1) All owners, clerks, and employees of a sexually-oriented business are required to be licensed to operate or work in said business. The term "employees" includes persons who work in a sexually-oriented business for gratuities or other compensation, and do not earn wages or a salary.
 - (2) All corporations or directors of corporations of any sexually-oriented business and their employees.
 - (3) All partners in any sexually-oriented business and their employees.

(4) All executive officers, corporations, partners, and lien holders and their employees which are associated with any sexually-oriented business requiring a license under this Ordinance.

(b) No person shall work for any sexually-oriented business without having at all times while at work, a valid current Texas driver's license or a State-issued identification card which depicts a picture of the person and indicates the person's date of birth.

(c) All potential employees and/or clerks of sexually-oriented business must comply with Sections 122 195.4 (a), (b), (c), and (h); 122 195.6, 122 195.7, 122 195.8, 122 195.9, 122 195.10 and 122 195.13 of this Ordinance; and not be in violation of Section 122 195.5 (a)(1),(3), (4), (6), (8) or (10) of this Ordinance before being issued an identification card to work at the business. Application forms will be provided by the chief of police and the determination of compliance must be made by the chief of police within thirty (30) days from time of application.

(d) An application for a sexually-oriented business license must be made on a form provided by the chief of police. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who must comply with Section 122 195.22 of this Article shall submit a diagram meeting the requirements of Section 122 195.22. All locational requirements must be approved by the chief of police within thirty (30) days from the time the application is filed.

(e) The applicant for a sexually-oriented business must be qualified according to the provisions of this Ordinance.

(f) If a person who wishes to operate a sexually-oriented business is an individual, such person must sign the application for a license as applicant. If a person who wishes to operate a sexually-oriented business is other than an individual, each individual who has an interest in the business must sign the application for a license as applicant and shall be considered a licensee if a license is granted.

(g) The fact that a person possesses any other valid license required by law does not exempt that person from the requirement of obtaining a sexually-oriented business license. A person who operates a sexually-oriented business and possesses another business license shall comply with the requirements and provisions of this Ordinance, as well as the requirements and provisions of the laws concerning the other license.

(h) Each applicant shall attach two copies of a recent photo to the application form.

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

- (1) Payment of the application fee in full;
- (2) If the establishment is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

- (3) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
- (4) If the establishment is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto;
- (5) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership the qualification documents, together with all Amendments thereto.

(j) Each applicant for a business license shall, upon the filing of the application and payment of the filing fee, place signs (at least 24 inches x 36 inches in size) which provide notification and information specifically stating "SEXUALLY-ORIENTED BUSINESS LICENSE APPLICATION PENDING" and the date on which the application was filed. All lettering on the signs must be at least 1 and 1/2 inches x 2 inches in size for each letter on the sign. The signs must be of sufficient quantities to be placed upon the property so as to identify it as being subject to a proposed sexually-oriented license. It shall be the duty of each applicant as to each particular application to erect said signs along all the property's public road or highway frontage so as to be clearly visible from the public road or highway. If a property does not have a public road or highway frontage, the signs shall be placed upon the property in a manner to maximize the view of said sign when approached from the customary means of approaching the property. One sign shall be erected for each three hundred foot increment of each public road or highway frontage on said property existing, or any part thereof. Said signs shall be erected no less than fourteen (14) days after the filing of the application for the sexually-oriented business license and remain erected until the application has been approved by the chief of police.

(k) Every applicant for a sexually-oriented business license shall give notice of the application by publication at the applicant's expense in two consecutive issues of a newspaper of general circulation published in the City of Caney City. The notice shall be printed in 10-point boldface type and shall include the following: (1) the fact that a sexually-oriented business license has been applied for; (2) the exact location of the place of business for which the permit is sought; (3) the names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and (4) if the applicant is a corporation, the names and titles of all officers. Such notice shall be printed not less than fourteen (14) days after the application is filed with the chief of police.

(l) An applicant for a renewal permit on an existing business at the time of the passage of this Ordinance is not required to publish notice or meet the posting requirements of (j) and (k) above.

SECTION 122.195.5 ISSUANCE OF LICENSE.

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

- (1) An applicant under 18 years of age;
- (2) An applicant or an applicant's spouse is overdue in the payment to the City of: taxes,

fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually-oriented business. The City Secretary shall make this determination and report the director's findings to the chief of police within thirty (30) days from the time the application is filed.

(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 Ordinance, 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. The chief of police shall make this determination within thirty (30) days from the time the application is filed.

(5) The premises to be used for the sexually-oriented business have not been approved by the chief of police as being in compliance with this Ordinance. Reports of compliance or noncompliance with this Ordinance must be completed by the chief of police within thirty (30) days from the time the application is filed.

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

(7) An applicant has failed to comply with the requirements of Sec. 122 195.4(i), (j), or (k) unless exempt under Sec. 122 195.4(l).

(8) An applicant has been employed in a sexually-oriented business in a managerial capacity within the preceding twelve (12) months, and has demonstrated an inability to operate or manage a sexually-oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(9) An applicant or the proposed establishment is in violation of, or is not in compliance with, Sections 122 195.12, 122 195.13, 122 195.14, 122 195.15, 122 195.16, 122 195.17, 122 195.18, 122 195.19, 122 195.20, 122 195.21, 122 195.22, and 122 195.23.

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

(A) involving:

(i) Any of the following offenses as described in Chapter 43 of the Texas Penal Code:

(aa) Prostitution;

(bb) Promotion of prostitution;

(cc) Aggravated promotion of prostitution;

(dd) Compelling prostitution;

- (ee) Obscenity;
- (ff) Sale, distribution, or display of harmful material to a minor;
- (gg) Sexual performance by a child;
- (hh) Prosession of child pornography;
- (ii) Any of the following offenses as described in Chapter 21 of the Texas Penal Code:
 - (aa) Public lewdness;
 - (bb) Indecent exposure;
 - (cc) Indecency with a child;
- (iii) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
- (iv) Incest, solicitation of a child, or harboring a runaway child as described in Chapter 25 of the Texas Penal Code;
- (v) Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

(B) For which:

- (i) 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, if the conviction is of a misdemeanor offense;
 - (ii) less than five (5) years have elapsed since the date of conviction, or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
 - (iii) less than five (5) 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 with any twenty-four (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) An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection 122.195.5(a)(10)(A) may qualify for a sexually-oriented license only when the time

period required by Section 122 195.5(a)(10)(B) has elapsed.

(d) 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.

(e) It shall be the duty of the chief of police to report to the applicant the findings under Section 122 195.5 within thirty (30) days from the time the application is filed.

(f) No license shall be issued if the applicant is in violation of any health and safety statutes of the State of Texas or health and safety ordinances of the City of Caney City.

(g) Any sexually-oriented business which is in operation on the effective date of this Ordinance shall have sixty (60) days within which time to file an application with the chief of police. During the thirty (30) day period as described in Section 122 195.5 said applicant who was in business on the effective date of this Ordinance cannot otherwise be regulated by this Ordinance.

(h) If the Chief of police fails to act upon an application within the thirty (30) day period specified in this Ordinance, the applicant shall be entitled to the issuance of a temporary license upon written demand thereto to the chief of police by the applicant. Such a temporary license shall be valid only until the third day after the chief of police issues the requested license or denies issuance of same. Denial of a license shall be appealable as set out in Section 122 195.12 of this Ordinance

SEC. 122 195.6 FEES.

(a) The annual fee for a sexually-oriented business license is \$5,000(Five Thousand).

(b) Each employee of a sexually-oriented business shall pay a \$500 (Five Hundred) annual fee with each application.

SEC. 122 195.7 VIOLATIONS

(a) It shall be a violation of this Ordinance for any person to own or operate a sexually-oriented business at a location inside the corporate limits of the City of Caney City unless the sexually-oriented business possesses a valid license issued by the chief of police in accordance with the terms of this Ordinance.

(b) It shall be a violation of this Ordinance for any person to be employed at or work at a sexually-oriented business at a location inside the corporate limits of the City of Caney City unless the person shall possess a valid license issued by the chief of police in accordance with the terms of this Ordinance. This includes individuals who work for gratuities or other compensation but may not earn wages or salary.

(c) It shall be a violation of this Ordinance for any person to employ, in a sexually-oriented business at a location inside the corporate limits of the City of Caney City a person under the age

of 18 years. This includes individuals who work for gratuities or other compensation but may not earn wages or a salary.

(d) It shall be a violation of this Ordinance for a person under the age of 18 years to appear in a state of nudity in or on the premises of a sexually-oriented business. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

(e) It shall be a violation of this Ordinance for a person to knowingly allow a person under the age of 18 years to appear in a state of nudity in or on the premises of a sexually-oriented business. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

(f) It shall be a violation of this Ordinance for a person to appear in a state of nudity in an area of a sexually-oriented business which can be viewed from the public right-of-way.

(g) It shall be a violation of this Ordinance for an employee of a sexually-oriented business who appears in a state of nudity or seminude to fondle or caress any patron or clientele of the sexually-oriented business, and it shall be unlawful for any patron or clientele of any sexually-oriented business to fondle or caress any employee of a sexually-oriented business who appears in a state of nudity or seminude.

SEC. 122 195.8 INSPECTION

(a) An Applicant or licensee shall permit representatives of the Caney City police department 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 Caney City police department, health department, fire department, planning and building officials at any time it is occupied or open for business.

(c) The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitat.

SEC. 122 195.9 EXPIRATION OF LICENSE

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 122 195.4. Application for renewal should be made at least thirty (30) days before the expiration date, the expiration of the license will not be affected.

SEC. 122 195.10 SUSPENSION

The chief of police shall suspend a license for a period not to exceed thirty (30) days if the chief of police determines that a licensee has:

- (a) violated or is not in compliance with any portion of this Ordinance;
- (b) engaged in excessive use of alcoholic beverages while on the sexually-oriented business premises;
- (c) refused to allow an inspection of the sexually-oriented business premises as authorized by the Ordinance.
- (d) knowingly permitted gambling by any person on the sexually-oriented business premises;
- (e) demonstrated inability to operate or manage a sexually-oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

SEC. 122 195.11 REVOCATION

- (a) The chief of police shall revoke a license if a clause of suspension in Section 122 195.10 occurs and the license has been suspended within the preceding twelve (12) months.
- (b) The chief of police shall revoke a license if the chief of police determines that:
 - (1) A licensee gave false or misleading information in the material submitted to the chief of police during the application process;
 - (2) A licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - (3) A licensee or an employee has knowingly allowed prostitution on the premises;
 - (4) A licensee or an employee knowingly operated the 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 122 195.5(a)(10)(A) for which the time period required in Section 122 195.5(a)(10)(b) has not elapsed.
 - (6) On two or more occasions within a twelve (12) month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 122 195.5(a)(10)(A) for which a conviction has been obtained, and the person or persons were employees of the sexually-oriented business at the time the offenses were committed;
 - (7) A licensee 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;
 - (8) A licensee is delinquent in payment to the City of Caney City for hotel occupancy taxes, or sales taxes related to the sexually-oriented business; or

(9) A licensee has violated a health and/or safety statute or ordinance as determined in Section 122 195.8.

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

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

(e) When the chief of police 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 chief of police finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (b)(5) hereunder, an applicant may not be granted another license until the appropriate number of years required under Section 122 195.5(2)(10)(B) has elapsed.

SEC. 122 195.12 APPEAL

If the chief of police denies the issuance of a license, or suspends or revokes a license, the chief of police shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action, a statement of facts with supporting documentation which formed the basis for the decision, and notice of the right to an appeal. The aggrieved party may appeal the decision of the chief of police to a state district court of appropriate jurisdiction. An appeal to the state district court must be filed within thirty (30) days after the receipt of notice of the decision of the chief of police. Filing an appeal in a district court stays the chief of police in suspending or revoking a license until the district court makes a final decision. All decisions of the chief of police not appealed become final and unappealable within thirty (30) days. The applicant or licensee shall bear the burden of proof in court.

SEC. 122 195.13 TRANSFER OF LICENSE

A licensee shall not transfer the 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.

SEC. 122 195.14 LOCATION OF SEXUALLY-ORIENTED BUSINESSES

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

(1) A church;

(2) A public or private elementary or secondary school;

- (3) A boundary of a residential or historic district as defined in this chapter;
- (4) A public park; or
- (5) The property line of a lot devoted to a residential use as defined in this chapter.

The above location restrictions apply whether or not the church, rectory, church-related structure, public school, private school, parochial school, elementary school, secondary school, school zone, residential district boundary, public park playground, recreational facility, library, day-care center, nursery school, kindergarten or property line devoted to residential use is located within or outside the City of Caney City.

(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.

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

(e) For purposes of Subsection (b) of this section, the distance between any two sexually-oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

SEC. 122 195.15 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES

A person who operates or causes to be operated a sexually-oriented business without a valid license or in violation of Section 122 195.14 of this chapter is subject to a suit for injunction as well as prosecution for criminal violations.

SEC. 122 195.16 ADDITIONAL REGULATIONS FOR ADULT CABARETS

(a) Any dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur on a platform which is raised at least two feet (2') from the level of the floor.

(b) No dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur closer than ten feet (10') to any patron or clientele.

(c) No patron or clientele shall directly pay or give any gratuity to any person, employee or otherwise, who shall dance or participate in any show, exhibition or performance while in a state

of nudity or seminude.

(d) No person, employee or otherwise, shall solicit or accept any gratuity from any patron or clientele in return for dancing or participating in any show, exhibition or performance while in a state of nudity or seminude.

(e) A minimum of two (2) signs at least eighteen inches (18") square bearing red letters a minimum of two inches (2") high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:

"GRATUITIES FOR PERFORMERS ARE PROHIBITED BY LAW. (CITE IN SMALLER LETTERS THE APPLICABLE ORDINANCE PROVISION)"

SEC. 122 195.17 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 (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this Ordinance.

(b) A person commits 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 or she rents or sub-rents a sleeping room to a person and within ten (10) hours from the time the room is rented, he or she rents or sub-rents the same sleeping room again.

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

SEC. 122 195.18 ADDITIONAL REGULATIONS FOR ADULT TANNING SALONS

(a) Any dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur on a platform which is raised at least two feet (2') from the level of the floor.

(b) No dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur closer than ten feet (10') to any patron or clientele.

(c) No patron or clientele shall directly pay or give any gratuity to any person, employee or otherwise, who shall dance or participate in any show, exhibition or performance while in a state of nudity or seminude.

(d) No person, employee or otherwise, shall solicit or accept any gratuity from any patron or clientele in return for dancing or participating in any show, exhibition or performance while in a state of nudity or seminude.

(e) A minimum of two (2) signs at least eighteen inches (18") square bearing red letters in a minimum of two inches (2") high on a white background shall be prominently displayed in locations

readily observed by patrons or clientele providing the following notice:

“GRATUITIES FOR PERFORMERS ARE PROHIBITED BY LAW. (CITE IN SMALLER LETTERS THE APPLICABLE ORDINANCE PROVISION)”

SEC. 122 195.19 ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS

- (a) The requirements and provisions of this Ordinance # 122 195 of this code remain applicable to adult theaters and adult motion picture theaters.
- (b) A person commits an offense if he knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
- (c) A person under the age of 18 years commits an offense if he knowingly appears in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
- (d) It is a defense to prosecution under Subsections (b) and (c) of this section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

SEC. 122 195.20 ADDITIONAL REGULATIONS FOR NUDE MODELLING STUDIOS

- (a) A nude modelling 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/she appears in a state of nudity in or on the premises of a nude modelling studio. It is a defense to prosecution under this Subsection if the person under 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/she appears in a state of nudity or knowingly allows another to appear in a state of nudity in the area of a nude modelling studio premises which can be viewed from the public right of way.
- (d) A nude modelling studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public .

SEC. 122 195.21 ADDITIONAL REGULATIONS FOR SEXUAL ENCOUNTER CENTERS

- (a) Any dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur on a platform which is raised at least two feet (2') from the level of the floor.
- (b) No dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur closer than ten feet (10') to any patron or clientele.
- (c) No patron or clientele shall directly pay or give any gratuity to any person, employee or otherwise, who shall dance or participate in any show, exhibition or performance while in a state

of nudity or seminude.

(d) No person, employee or otherwise, shall solicit or accept any gratuity from any patron or clientele in return for dancing or participating in any show, exhibition or performance while in a state of nudity or seminude.

(e) A minimum of two (2) signs at least eighteen inches (18") square bearing red letters a minimum of two inches (2") high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:

"GRATUITIES FOR PERFORMERS ARE PROHIBITED BY LAW. (CITE IN SMALLER LETTERS THE APPLICABLE ORDINANCE PROVISION)"

SEC. 122 195.22 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY-EXPLICIT FILMS OR VIDEOS.

(a) A person who operates or causes to be operated a sexually-oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

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

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alternation in the configuration or location of a manager's station may be made without the prior approval of the chief of police or a designee of the chief of police.

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

(5) The interior of the premises shall be configured in such a manner that there is an

unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such 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. Viewing booths must be separated at least twelve (12) inches from the exterior walls of any other view booths by open space.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the area specified in Subsection (a)(5) hereunder remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises, and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (a)(1) of this section.

(7) For safety purposes, the premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level.

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

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

(c) All locational requirements of this section must be approved by the chief of police within thirty (30) days from the time the application is filed.

SEC. 122 195.23 DISPLAY OF SEXUALLY-EXPLICIT MATERIAL TO MINORS

(a) A person commits an offense if, in a sexually-oriented business establishment open to persons under the age of 18 years, he or she 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, any of the following:

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

(2) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;

(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 employee of the business establishment:

(1) It is available to the general public for handling and inspection; or

(2) The cover or outside packaging on the item is visible to members of the general public.

SEC. 122 195.24 DEFENSES

(a) It is a defense to prosecution under Sections 122 195.4(a), 122 195.20(d), 122 195.21(a) or (b) that a person appearing in a state of nudity did so in a modelling class operated:

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

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

(3) In a structure:

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

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

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

(b) It is a defense to prosecution under Section 122 195.7(a) 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.

SEC. 122 195.25 ENFORCEMENT

(a) Any person violating Section 122 195.14 of this Ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

(b) If the sexually-oriented business involved is a nude model studio or sexual encounter center, then violation of Section 122 195.14 of this chapter is punishable as a Class A Misdemeanor.

(c) Any person violating a provision of this Ordinance other than Section 122 195.14, upon conviction is punishable by a fine not to exceed \$500.

SEC. 122 195.26 INJUNCTION

Section 3. That if any clause, section, or other part of this ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby, but shall remain in full force and effect.

Section 4. That all ordinances or parts of ordinances that conflict herewith, be and the same are hereby repealed to the extent of such conflict only.

Section 5. That this ordinance shall be in full force and effect immediately upon and after its final passage and publication as required by law.

PASSED AND APPROVED at a regular meeting of the City Council of the City of Caney City, Texas, this the 21 day of Dec, 1995, by a vote of 5 ayes and _____ nays.

APPROVED:



JOE BARREN, MAYOR

ATTEST:


ANNE REMLEY, CITY SECRETARY