



Resolution

RESOLUTION NO. 908

OFFICE OF THE
MAYOR
CITY OF SAN LUIS

A RESOLUTION OF THE CITY OF SAN LUIS, ARIZONA,
DECLARING THAT CERTAIN DOCUMENT ENTITLED
"ARTICLE 7-4 SEXUALLY ORIENTED BUSINESSES" A
PUBLIC RECORD; REPEALING ANY CONFLICTING
PROVISIONS; PROVIDING FOR SEVERABILITY; AND
DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
San Luis:

Section 1: That the certain document entitled "Article 7-4 Sexually Oriented Businesses", three (3) copies of which are on file with the City Clerk of the City of San Luis, is hereby made and declared a public record of the City of San Luis, Arizona, and made a part hereof as though fully set forth again in full.

Section 2: In the event of a conflict between the provisions of this resolution or the attached "Article 7-4 Sexually Oriented Businesses" and any other ordinance, resolution, regulation, or policy of the City of San Luis, the conflicting provisions are hereby repealed, superseded, and replaced, and the provisions of this resolution and "Article 7-4 Sexually Oriented Businesses" shall govern.

Section 3: If any section, subsection, sentence, clause, phrase, or portion of this resolution or the attached "Article 7-4 Sexually Oriented Businesses" is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this resolution or the attached "Article 7-4 Sexually Oriented Businesses."

Section 4: Whereas, it is necessary for the preservation of the peace, health, safety and welfare of the City of San Luis, Arizona, and for further reason that the best interest of the City require the amendments to go into immediate effect, an emergency is declared to exist, and this resolution shall become immediately operative and in force from and after the date of posting hereof.

PASSED AND ADOPTED by the Mayor and Council of the City of San Luis,
Arizona, this 8th day of December, 2010.



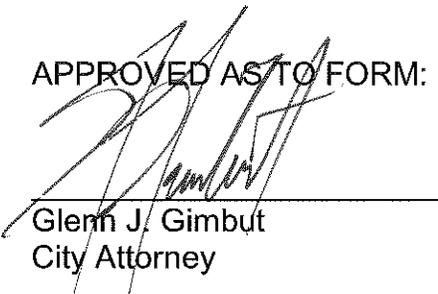
Juan Carlos Escamilla, Mayor

ATTEST:



Sonia Cuello, City Clerk

APPROVED AS TO FORM:



Glenn J. Gimbut
City Attorney

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§ 7-4-01 Purpose and Findings.

(A) *Purpose.* It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the city. The provisions of this chapter 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 chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

(B) *Findings.* Based on evidence of the adverse secondary effects of adult uses presented in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases and materials made available to the City Council, including *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728 (2002); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *California v. LaRue*, 409 U.S. 109 (1972); *BGHA, Inc. v. City of Universal City, TX*, No. 02-50220 (5th Cir. 2003); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 2002 U.S. App. LEXIS 12202 (5th Cir., June 20, 2002); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Woodall v. City of El Paso*, 49 F.3d 1120 (5th Cir. 1995); *J & B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362 (5th Cir. 1998); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988); *TK's Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994); *Lagrange Trading Co. v. Nicolosi*, 1991 U.S. Dist. LEXIS 3551 (E.D. La. 1991); *Vonderhaar v. City of St. Tammany*, 633 So. 2d 217 (La. Ct. App. 1993); *Liberto v. Rapides City City Council*, 667 So. 2d 552 (La. Ct. App. 1995); *City of Gretna v. Russland Enterprises, Inc.*, 564 So. 2d 367 (La. Ct. App. 1990); and other cases; and on testimony to Congress in 136 Cong. Rec. S 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S 5636; 134 Cong. Rec. E 3750; and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1984; Minneapolis, Minnesota-1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas - 1977; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio - 1977 ; and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York Times Square study - 1994; Phoenix, Arizona -1995-98; and also on findings of physical abuse from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000, and the Report of the Attorney

General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), the City Council finds:

- (1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the unlicensed operators of the establishments. Further, there is presently no mechanism in this City to make the owners and operators of these establishments responsible for the activities that occur on their premises.
- (2) Some employees of unregulated sexually oriented businesses defined in this ordinance as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
- (3) Sexual acts, including masturbation, and oral and anal sex, occur at unregulated sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.
- (4) Offering and providing such unregulated space encourages such activities, which creates unhealthy conditions.
- (5) Some persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses, or for the purpose of purchasing or selling illicit drugs.
- (6) Numerous communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis salmonella, campylobacter and shigella infections, chlamydial, myoplasmal and ureoplasmal infections, trichomoniasis and chancroid.
- (7) According to research from the Kaiser Family Foundation, an estimated 650,000 to 900,000 Americans are infected with HIV. The number of new HIV infections occurring each year is now about 41,000. Men and women of all races are most likely to be infected by sexual contact.
- (8) As of December 2004 there were 9,320 reported AIDS cases in Arizona with 114 reported cases in Yuma County. As of February 2008 there were 12,677 reported cases of HIV/AIDS in Arizona and 153 cases in Yuma County according to the Arizona Department of Health Services.
- (9) The Centers for Disease Control and Prevention estimates that as many as 1 in 3 people with HIV/AIDS do not know they are infected.
- (10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990. Between 2001 and 2002, the number of reported primary and secondary syphilis cases increased 12.4 percent. According to the 2009 Annual Report concerning Sexually Transmitted Diseases

in Arizona as made by the Arizona Department of Health Services, Arizona had a rate of 232 cases per 100,000 population for primary and secondary (P&S) syphilis.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, and the Centers for Disease Control and Prevention estimates that more than 700,000 persons in the U.S. get new gonorrheal infections each year. Only about half of these infections are reported. According to the 2009 Annual Report concerning Sexually Transmitted Diseases in Arizona as made by the Arizona Department of Health Services there were 3,251 gonorrhea cases in Arizona.

(12) The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

(13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See, e.g., Findings of U.S. Dept. of Health & Human Services.

(14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(15) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view adult oriented films.

(16) The findings noted in paragraphs number 1 through 15 raise substantial governmental concerns.

(17) Sexually oriented businesses have operational characteristics that should be reasonably regulated in order to protect those substantial governmental concerns.

(18) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(19) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theaters.

(20) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.

(21) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and will prevent the further secondary effects of dissemination of illegal obscenity, child pornography, and to minors, materials harmful to them.

(22) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this article is designed to prevent or who are likely to be witnesses to such activity.

(23) The fact that an applicant for an adult use has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this article.

(24) The barring of such individuals from employment in sexually oriented businesses for a specified period of years serves to prevent distribution of illegal material, to prevent conduct which leads to the transmission of sexually transmitted diseases, and to preclude the establishment of criminal enterprises within the City.

(25) The general welfare, health, morals and safety of the citizens of the City will be promoted by the enactment of this article.

§ 7-4-02 Definitions.

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

ADULT ARCADE. Any place to which the public is permitted or invited, wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are regularly 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 their emphasis upon matters exhibiting "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE, ADULT NOVELTY STORE or ADULT VIDEO STORE. A commercial establishment which has as a significant or substantial portion of its stock-in-trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space 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, computer simulations, holograms, motion pictures, video reproductions, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or display of "specified sexual activities" or "specified anatomical areas"; or

(2) Instruments, devices, or paraphernalia, which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of the user or others.

ADULT CABARET. A nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(1) Persons who appear semi-nude; or

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

(3) Films, motion pictures, computer simulations, holograms, video cassettes, slides, or other photographic reproductions, which are characterized by the exhibition or display of "specified sexual activities" or "specified anatomical areas."

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

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, computer simulations, holograms, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the exhibition or display 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; and either

(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 subrent the room for a period of time that is less than ten hours.

ADULT MOTION PICTURE THEATER. A commercial establishment where, for any form of consideration, films, holograms, computer simulations, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown or displayed which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

ADULT ORIENTED BUSINESS. This term is synonymous with **SEXUALLY ORIENTED BUSINESS** and means an adult arcade, adult bookstore, adult cabaret, adult motel, adult theater, adult motion picture theater, adult video store, escort agency, nude model studio, or sexual encounter center.

ADULT THEATER. A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear nude or semi-nude, or in live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

ADULT VIDEO STORE. See **ADULT BOOKSTORE.**

EMPLOYEE, EMPLOY, and EMPLOYMENT. Describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time, or contract basis, regardless of whether the person is denominated as an employee, independent contractor, agent, or by another status. **EMPLOYEE** does not include a person exclusively on the premises for repair or maintenance of the premises, or for the delivery of goods to the premises.

ENFORCEMENT OFFICER. The Chief of Police, City Zoning Administrator or such person as may be designated by the City Council.

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

ESCORT AGENCY. A person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

ESTABLISH or ESTABLISHMENT. Any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business.
- (2) The conversion of an 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. 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; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

NUDE, NUDITY or A STATE OF NUDITY. The showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

NUDE MODEL STUDIO. Any place where a person who appears in a state of nudity or displays "specified anatomical areas" [a commercial establishment which regularly features a person (or persons) who appears semi-nude and] is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. A **NUDE MODEL STUDIO** does not mean a modeling class, or the facility for such class, operated:

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

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

OPERATE or CAUSE TO BE OPERATED. To cause to function or to put in a state of doing business. OPERATOR means any person on the premises of a sexually oriented business who is authorized to exercise operational control of the business, or who causes to function or who puts or keeps in operation, the business. A person may be found to be operating or causing to be operated a sexually oriented business regardless of whether that person is an owner, part owner, or licensee of the business.

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

REGULARLY FEATURES or REGULARLY SHOWN. A consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing business of the sexually oriented business.

SEMI-NUDE or IN A SEMI-NUDE CONDITION. The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel, provided the areola is not exposed in whole or in part.

SEXUAL ENCOUNTER CENTER. A business or commercial establishment, that as one of its principal business purposes, offers for any form of consideration: a place where two or more persons may congregate, associate, or consort for the purpose of "specified sexual activities." The definition of sexual encounter center or any sexually oriented businesses shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or similar professional person licensed by the state engages in medically approved and recognized sexual therapy.

SEXUALLY ORIENTED BUSINESS. This term is synonymous with **ADULT ORIENTED BUSINESS** and means an adult arcade, adult bookstore, adult novelty store, adult cabaret, adult motel, adult theater, adult motion picture theater, adult video store, escort agency, semi-nude model studio, or sexual encounter center.

SPECIFIED ANATOMICAL AREAS. Human genitals in a state of sexual arousal.

(1) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(2) Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

SPECIFIED CRIMINAL ACTIVITY.

(1) Any one of the following offenses: Prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(2) For which:

(a) 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;

(b) 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

(c) 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 a combination of misdemeanor offenses occurring within any 24 month period.

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

SPECIFIED SEXUAL ACTIVITIES. Any of the following:

(1) The fondling of another person's genitals, pubic region, anus, or female breasts;

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

(3) Excretory functions as part of, or in connection with, any of the activities set forth in subdivisions (1) through (2) above.

SUBSTANTIAL ENLARGEMENT. The increase in floor areas occupied by the business by more than 25%, as the floor areas exist on the date this chapter takes effect.

TRANSFER OF OWNERSHIP OR CONTROL OF A SEXUALLY ORIENTED BUSINESS. Any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which 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 which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

§ 7-4-03 Classification.

Sexually oriented businesses are classified as follows:

- (A) Adult arcades;
- (B) Adult bookstores, adult novelty stores, or adult video stores
- (C) Adult cabarets.
- (D) Adult motels.
- (E) Adult motion picture theaters.
- (F) Escort agencies.
- (G) Nude model studios.
- (H) Sexual encounter centers.

§ 7-4-04 License Required.

(A) It is unlawful:

- (1) For any person to operate a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the city pursuant to this chapter.
- (2) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the city pursuant to this chapter.

(3) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.

(B) An application for a license must be made on a form provided by the city. All applications must be qualified according to the provisions of this chapter.

(C) An applicant for a sexually oriented business license or a sexually oriented business employee license shall file with the Enforcement Officer a completed application made on a form prescribed and provided by the city. An application shall be considered complete if it includes the information required in this section. The applicant shall be qualified according to the provisions of this chapter. The application shall be notarized. The application shall include the information called for in subsections (1) through (6), and where applicable subsection (7) as follows:

(1) The full true name and any other names used in the preceding five years.

(2) The current business address.

(3) Either a set of fingerprint suitable for conducting necessary background checks pursuant to this chapter, or the applicant's social security number, to be used for the same purpose.

(4) If the application is for a sexually oriented business license, the name, business location, legal description, business mailing address and phone number of the proposed sexually oriented business.

(5) Written proof of age, in the form of either:

(a) A copy of a birth certificate and current photo,

(b) A current driver's license with picture, or

(c) Other picture identification document issued by a governmental agency.

(6) The issuing jurisdiction and the effective dates of any license or permit held by the applicant relating to a sexually oriented business, and whether any such license or permit has been denied, revoked, or suspended, and if so, the reason or reasons therefor.

(7) If the application is for a sexually oriented business license, the name and address of the statutory agent or other agent authorized to receive service of process.

The information provided pursuant to subsections (1) through (7) above shall be supplemented in writing by certified mail, return receipt requested, to the Enforcement Officer within ten working days of a change of circumstances which would render the information originally submitted false or incomplete.

(D) The application for a sexually oriented business license shall 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 shall 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.

(E) If the person who wishes to operate a sexually oriented business is an individual, he or she shall sign the application for a license as applicant. If the person who wishes to operate a sexually oriented business is other than an individual (such as a corporation), each officer, director, general partner, or other person who will participate directly in decisions relating to management of the business shall sign the application for a license as the applicant. Each applicant must be qualified under § 7-4-05 and each applicant shall be considered as a licensee if a license is granted.

(F) A person who possesses a valid business license is not exempt from the requirement of obtaining any required sexually oriented business license. A person who operates a sexually oriented business and possesses a business license shall comply with the requirements and provisions of this chapter, where applicable.

(G) The information provided by an applicant in connection with the application for a license under this chapter shall be maintained by the Enforcement Officer on a confidential basis, and may be disclosed only:

(1) To other governmental agencies in connection with a law enforcement or public safety function, or

(2) As may otherwise be required by law or a court order.

§ 7-4-05 Issuance of License.

(A) Upon the filing of a completed application for a sexually oriented business license or a sexually oriented business employee license, the Enforcement Officer shall issue a temporary license to the applicant, which temporary license shall expire upon the final decision of the Enforcement Officer to deny or grant the license. Within 20 days after the receipt of a completed application, the Enforcement Officer shall either issue a license, or issue a written notice of intent to deny a license, to the applicant. The Enforcement Officer shall approve the issuance of a license unless one or more of the following is found to be true:

(1) An applicant is less than 18 years of age.

(2) An applicant is delinquent in the payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant in relation to a sexually oriented business.

(3) An applicant has failed to provide information as required by § 7-4-04 for issuance of the license.

(4) An applicant has been convicted of a specified criminal activity. The fact that a conviction is being appealed shall have no effect under this subsection. For purposes of this subsection, CONVICTION:

(a) Means a conviction or a guilty plea; and

(b) Includes a conviction of any business entity for which the applicant had, at the time of the offense leading to the conviction for a specified criminal activity, a management responsibility or a controlling interest.

(5) The license application fee required by this chapter has not been paid.

(6) An applicant has falsely answered a question or request for information on the application form.

(7) The proposed sexually oriented business is located in a zoning district other than a district in which sexually oriented businesses are allowed to operate under the zoning and land use regulations of the City of San Luis, or is not in compliance with the location restrictions established for sexually oriented businesses in the appropriate zoning district(s).

(8) An applicant or the proposed establishment is in violation of or is not in compliance with §§ 7-4-25 through 7-4-29.

(B) An applicant who is ineligible for a license due to subsection (A)(4) above may qualify for a sexually oriented business license only when the time period required by the applicable subsection of *SPECIFIED CRIMINAL ACTIVITY*, as defined in § 7-4-02, has elapsed.

(C) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to that applicant, the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. A sexually oriented business employee license shall contain a photograph of the licensee. The sexually oriented business 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. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing, and shall produce such license for inspection upon request by a law enforcement officer or other authorized city official.

§ 7-4-06 Fees.

(A) The non-refundable initial license fee for a sexually oriented business license is \$2,000 and the annual renewal fee for a sexually oriented business license is \$750.

(B) The non-refundable initial license fee for a sexually oriented business employee license is \$500 and the annual renewal fee for a sexually oriented business employee license is \$200.

§ 7-4-07 Inspection.

(A) For the purpose of ensuring compliance with this chapter, an applicant, operator or licensee shall permit law enforcement officers and any other federal, state, county or city agency in the performance of any function connected with the enforcement of this chapter, normally and regularly conducted by such agencies, to inspect, at any time the business is occupied or open for business, those portions of the premises of a sexually oriented business which patrons or customers are permitted to occupy.

(B) 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 habitation.

§ 7-4-08 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 § 7-4-04. An application for renewal shall 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 will not be affected.

(B) When the city 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 city finds that the basis for denial of the renewal license has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date denial became final.

§ 7-4-09 Suspension.

The city shall issue a written intent to suspend a license for a period not to exceed 30 days if it determines that a licensee or an employee of a licensee has:

(A) Violated or is not in compliance with any section of this chapter.

(B) Refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

§ 7-4-10 Revocation.

(A) The Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if a cause of suspension in § 7-4-09 occurs and the license has been suspended within the preceding 12 months.

(B) The Enforcement Officer shall issue a written statement of intent to revoke a sexually oriented business license if the Officer determines that:

(1) A licensee gave false or misleading information in the material submitted during the application process;

(2) A licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) A licensee has knowingly allowed prostitution on the premises;

(4) A licensee has knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) A licensee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises. This subsection will not apply to an adult motel, unless the licensee knowingly allowed sexual activities to occur either:

(a) In exchange for money, or

(b) In a public place or within public view.

(6) A licensee is delinquent in payment to the city for ad valorem taxes, or sales 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) When, after the notice and hearing procedure described in § 7-4-11, the Enforcement Officer 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, provided that, if the conditions of § 7-4-11(B) are met, a provisional license will be granted pursuant to that section. If, subsequent to revocation, the Enforcement Officer finds that the basis for the revocation found in subsections (B)(1) and (B)(4) of this section has been corrected or abated, the applicant shall be granted a license if at least 90 days have elapsed since the date the revocation became effective.

§ 7-4-11 Hearing; License Denial, Suspension, Revocation; Appeal.

(A) (1) If the Enforcement Officer determines that facts exist for denial, suspension, or revocation of a license under this chapter, the Enforcement Officer shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend, or revoke the license, including the grounds therefor, by personal delivery, or by certified mail. The notification shall be directed to the most current business address on file with the Enforcement Officer. Within five working days of receipt of such notice, the respondent may provide to the City Manager, in writing, a response that shall include a statement of reasons why the license or permit should not be denied, suspended, or revoked. Within three days of the receipt of respondent's written response, the City Manager shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding.

(2) Within ten working days of the receipt of respondent's written response, the City Manager shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his or her behalf. If a response is not received by the City Manager in the time stated or, if after the hearing, the City Manager

finds that grounds as specified in this chapter exist for denial, suspension, or revocation, the decision shall become final five days after the City Manager sends, by certified mail, written notice that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

(3) If the City Manager finds that no grounds exist for denial, suspension, or revocation of a license, then within five days after the hearing, the City Manager shall withdraw the intent to deny, suspend, or revoke the license, and shall so notify the respondent in writing by certified mail of such action and shall contemporaneously issue the license.

(B) When a decision to deny, suspend, or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied, or whose license has been suspended or revoked, shall have the right to appeal such action to a court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement of the denial, suspension, or revocation, the city shall immediately issue the aggrieved party a provisional license. The provisional license shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee, as the case may be, and will expire upon the court's entry of a judgment on the aggrieved party's action to appeal, challenge, restrain, or otherwise enjoin the city's enforcement.

§ 7-4-12 Transfer of License.

A licensee shall not transfer his or her 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.

§ 7-4-13 Injunction.

A person who operates or causes to be operated a sexually operated business without a valid license or in violation of § 7-4-12 is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable as a class one misdemeanor pursuant to Article 1-8 of the City Code. Each day a sexually oriented business operates is a separate offense or violation.

Regulations for Specific Businesses

§ 7-4-25 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 the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

§ 7-4-26 Regulations Concerning Public Nudity.

(A) It shall be a misdemeanor for a person to knowingly and intentionally, in a sexually oriented business, appear in a state of nudity or engage in specified sexual activities.

(B) It shall be a misdemeanor for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition, unless the person is an employee who, while semi-nude, is at least six feet from any patron or customer and on a stage at least two feet from the floor.

(C) It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to receive directly any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity directly to any employee, while that employee is semi-nude in a sexually oriented business.

(D) It shall be a misdemeanor for an employee, while semi-nude, to knowingly and intentionally touch a customer or the clothing of a customer.

§ 7-4-27 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 chapter.

(B) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business 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.

§ 7-4-28 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, live entertainment, 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 patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the

permit, if granted, will be conspicuously posted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. The city may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

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

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

(4) It is the duty of the licensee of the premises to ensure that at least one licensed 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.

(6) It shall be the duty of the licensee to ensure that the view area specified in subsection (5) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks, or other materials and, 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 (1) of this section.

(7) No viewing room may be occupied by more than one person at any time.

(8) 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 5.0 footcandles as measured at the floor level.

(9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(11) No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

(12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board, or other porous material shall be used within 48 inches of the floor.

(B) A person having a duty under subsections (1) through (14) above commits a misdemeanor if he or she knowingly fails to fulfill that duty.

§ 7-4-29 Prohibition Against Children in a Sexually Oriented Business.

A person commits a misdemeanor if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

§ 7-4-30 Exceptions.

It is a defense to prosecution under § 7-4-26 that a person appearing in a state of nudity did so in a modeling class operated:

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

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

(C) In a structure:

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

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

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

§ 75-99 Penalty.

(A) It shall be unlawful for any person, firm, or corporation to violate, or cause the violation of, any provision of this chapter. Any person, firm, or corporation violating any of the provisions of the requirements of this chapter shall be guilty of a class 1 misdemeanor, punishable pursuant to Article 1-8 of the City Code.

(B) It is a defense to prosecution under § 7-4-04 of this chapter 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.