

ORDINANCE NO. 97-56

AN ORDINANCE AMENDING CHAPTER 26, ARTICLE III OF THE CODE OF ORDINANCES, CITY OF LEAGUE CITY, TEXAS; ENACTING REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES; CONTAINING A SAVINGS CLAUSE; AND PROVIDING FOR THE PUBLICATION AND EFFECTIVE DATE THEREOF.

WHEREAS, sexually oriented businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such business as well as the citizens of the communities where they locate; and

WHEREAS, the City Council of the City of League City finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution, and sexual liaisons of a casual nature; and

WHEREAS, the spread of sexually transmitted diseases is a legitimate health concern of the City that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, permitting and/or licensing is a legitimate means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, 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 reduction of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the City Council of the City of League City wants to prevent these adverse effects and thereby protect the health, safety and welfare of the citizens of League City; protect the citizens of League City from increased crime, preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of sexually oriented businesses as well as the health problems associated with such businesses.

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

Section 1. That Chapter 26, Article III of the Code of Ordinances is hereby amended to read as follows:

### ARTICLE III. SEXUALLY ORIENTED BUSINESSES

#### **Sec. 26-61. DEFINITIONS.**

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context of their usage clearly indicates another meaning. Words not defined in this section shall have the meanings stated in the League City's Ninth New Collegiate Dictionary, as revised, or meanings stated in the Texas Penal Code, or any rules or regulations of any administrative agency, board or branch of the state, or any rules, regulations or codes of the city.

*Achromatic* means colorless, lacking in saturation or hue. Without limitation, gray shall be included, but white and black shall be excluded from the definition of achromatic.

*Adult bookstore* means an establishment whose primary business is the offering to customers of books, magazines, films or videotapes (whether for viewing off-premises or on-premises by use of motion picture machines or other image-producing devices), periodicals or other printed or pictorial materials which are intended to provide sexual stimulation or sexual gratification to such customers, and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

*Adult cabaret* means an establishment whose primary business is the offering to customers of live entertainment which is intended to provide sexual stimulation or sexual gratification to such customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

*Adult encounter parlor* means an establishment whose primary business is the provision of premises where customers either congregate, associate or consort with employees who engage in specified sexual activities with or in the presence of such customers, or who display specified anatomical areas in the presence of such customers, with the intent of providing sexual stimulation or sexual gratification to such customers.

*Adult lounge* means an adult cabaret, as defined above, which is a permitted or licensed premises pursuant to the Texas Alcoholic Beverage Code, where alcoholic beverages may be served or sold.

*Adult modeling studio* means an establishment whose primary business is the provision, to customers, of figure models who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in specified sexual activities or display specified anatomical areas while being observed, painted, painted upon, sketched, drawn, sculptured, photographed or otherwise depicted by such customers.

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

- (1) Offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section; and

- (2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours or allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

**Adult movie theater** means an establishment containing a room with tiers or rows of seats facing a screen, or projection area, whose major business is the exhibition to customers of motion pictures which are intended to provide sexual stimulation or sexual gratification to such customers and which are distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

**Applicant** means the applicant for a permit under this article, who shall be the intended operator of the enterprise.

**Child Care Facility** means a facility used as a day nursery, children's boarding home, child placement agency or other place for the care or custody of children under fifteen years of age, licensed by the State of Texas pursuant to Chapter 42 of the Texas Human Resource Code.

**Church** means a building in which persons regularly assemble for religious worship or which is intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

**Commercial multiunit center** means a building or structure (including a shopping mall or strip shopping center) containing three (3) or more separate premises, each of which is offered by lease or otherwise for separate occupancy or control and each of which occupies an enclosed area having its own door or entranceway opening onto public property, a public way or a common area.

**Conduct any business in an enterprise** means the doing of any one (1) or more of the following by any person, who shall be deemed to be conducting business in an enterprise:

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

**Customer** means any person, other than the employees or permitted Class II performers at a Class I enterprise, who:

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

*Director* means the city manager or such employees, officers or agents of the city as he may designate to perform the duties of the director under this article, including individuals with other governmental agencies named pursuant to a cooperative interlocal agreement.

*Display surface* means the entire surface of a sign, on one (1) side, devoted to exhibiting advertising. The display surface shall not include the sign frame and incidental supports thereto.

*Employee* means any person who renders any service whatsoever to the customers of an enterprise or who works in or about an enterprise and who receives compensation for such service or work from the operator or owner of the enterprise or from the customers therein, except for individuals who have a valid Class II SOBP.

*Enterprise* means an adult cabaret, adult encounter parlor, adult lounge, adult modeling studio, adult bookstore, adult movie theater or any establishment whose primary business is the offering to customers of a product or service which is intended to provide sexual stimulation or sexual gratification to such customers, and which is distinguished by or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical areas.

- (1) Enterprises are classified as follows:
  - (a) Class I enterprises conduct business regularly at a specific location.
  - (b) Class II enterprises are individuals who offer, for compensation, a service intended to provide sexual stimulation or sexual gratification to patrons at any location in the City, unless that individual is an employee of a Class I enterprise working at the location permitted under a Class I SOBP.
- (2) The term "enterprise" shall not be construed to include:
  - (a) Any business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists or licensed barbers performing functions authorized under the licenses held;
  - (b) Any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts; or
  - (c) Any retail establishment whose major business is the offering of wearing apparel for sale to customers.

(d) A massage establishment which is properly registered under Chapter 752, Acts of the 69th Legislature, Regular Session, 1985 (Article 4512K, Vernon's Texas Civil Statutes), as amended.

(e) A tanning facility that is properly licensed pursuant to Ch. 145 of the Texas Health and Safety Code, the Tanning Facility Act, as amended by the Acts of 1995, 74th Legislature, ch. 684.

**Entertainment** means any act or performance, such as a play, skit, reading, revue, pantomime, scene, song, dance, musical rendition or striptease, whether performed by employees, agents, contractors or customers. The term "entertainment" shall also mean bartenders, waiters, waitresses or other employees exposing specified anatomical areas or engaging in specified sexual activities in the presence of customers.

**Exterior portion** means any part of the physical structure of an enterprise, including a wall, veneer, door, fence, roof, roof covering or window, which is visible from any public way or public property.

**Nude, Nudity or State of Nudity** means any state of dress which fails to opaquely cover a human buttock, anus, male genitalia, female genitalia or areola of a female breast.

**Operator** means the manager or other natural person principally in charge of an enterprise.

**Owner** means the proprietor if a sole proprietorship, all partners (general and limited) if a partnership, or all officers, directors and persons holding ten (10) percent or more of the outstanding shares if a corporation. The term "owner" shall not include any such person who has given to the operator a statement under oath that he does not desire to be listed on the permit application and that he waives any right to any notice that is required or permitted to be given under this article.

**Permit** means a current, valid sexually oriented business permit issued by the director pursuant to the terms of this article to an operator for an enterprise, and is sometimes referred to as a SOBP.

**Residential** means pertaining to the use of land for premises such as homes, town homes, patio homes, mobile homes, duplexes, condominiums and apartment complexes, which contain habitable rooms for nontransient occupancy and which are designed primarily for living, sleeping, cooking and eating therein. A premises which is designed primarily for living, sleeping, cooking and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes. Hotels, motels, boardinghouses, nursing homes, nursing schools and hospitals shall not be considered to be residential. The term "residential" shall also include any unimproved tract designated for tax appraisal purposes as residential by the Galveston County Appraisal District if situated in the City or by the appraisal district of the county in which the tract is situated if not situated in the City. The term additionally shall include any tract, that, based upon the records of the City planning department has been subdivided or platted for residential use, but that is not yet designated for tax appraisal purposes as residential.

**Public park** A publicly owned or leased tract of land, whether situated in the city or not, designated, dedicated, controlled, maintained and operated for use by the general public for active or passive recreational or leisure purposes by the city or any political subdivision of the state and containing

improvements, pathways, access or facilities intended for public recreational use. The term "public park" shall not include parkways, public roads, rights-of-way, esplanades, traffic circles, easements or traffic triangles unless such tracts or areas contain and provide improvements or access to a recreational or leisure use by the public. A current list of public parks shall be maintained for public inspection in the office of the City Secretary.

**School** means a building where persons regularly assemble for the purpose of instruction or education together with the playgrounds, stadia and other structures or grounds used in conjunction therewith. The term is limited to:

- (1) Public and private schools used for primary or secondary education, in which any regular kindergarten or grades one (1) through twelve (12) classes are taught; and
- (2) Special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or any of grades one (1) through twelve (12).

**Sign** means any display, design, pictorial or other representation which is so constructed, placed, attached, painted, erected, fastened or manufactured in any manner whatsoever so that the same is visible from the outside of an enterprise and that is used to seek the attraction of the public to any goods, services or merchandise available at such enterprise. The term "sign" shall also include such representations painted on or otherwise affixed to any exterior portion of an enterprise as well as such representations painted on or otherwise affixed to any part of the tract upon which such an enterprise is situated. This definition shall include and encompass all definitions contained in the sign regulations of the city.

**SOBP** means a Sexually Oriented Business Permit issued and regulated pursuant to this ordinance, and is sometimes referred to as a permit.

**Specified anatomical areas** means:

- (1) Less than completely and opaquely covered:
  - a. Human genitals, pubic region or pubic hair;
  - b. Buttock;
  - c. Female breast or breasts below a point immediately above the top of the areola;
  - d. Any combination of the foregoing; or
- (2) Human male genitals in a discernibly erect state, even if completely and opaquely covered.

**Specified sexual activities** means:

- (1) Human genitals in a discernible state of sexual stimulation or arousal;

- (2) Acts of human masturbation, sexual intercourse or sodomy;
- (3) Fondling or other erotic touching of human genitals, pubic region or pubic hair, buttock or female breast or breasts; or
- (4) Any combination of the foregoing.

*Tract* means a contiguous parcel of land under common ownership, whether situated within the city or not.

#### **Sec. 26-62. EXTERIOR PORTIONS OF ENTERPRISES.**

(a) It shall be unlawful for an owner or operator of an enterprise to allow any merchandise or activities of the enterprise, irrespective of whether such merchandise or activities are intended to provide sexual stimulation or sexual gratification or whether they are distinguished by or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas, to be visible from any point outside such enterprise.

(b) It shall be unlawful for the owner or operator of an enterprise to allow the exterior portions of the enterprise to have flashing lights, or any words, lettering, photographs, silhouettes, drawings or pictorial representations of any manner except to the extent permitted by the provisions of this section.

(c) It shall be unlawful for the owner or operator of an enterprise to allow exterior portions of the enterprise to be painted any color other than a single achromatic color. This provision shall not apply to any enterprise if the following conditions are met:

- (1) The enterprise is a part of a commercial multiunit center, and
- (2) The exterior portions of each individual unit in the commercial multiunit center, including the exterior portions of the enterprise, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multiunit center.

(d) Nothing in this section shall be construed to require the painting of an otherwise unpainted exterior portion of an enterprise.

#### **Sec. 26-63. SIGNAGE.**

(a) Notwithstanding the sign regulations or any other city ordinance, code or regulation to the contrary, it shall be unlawful for the owner or operator of any enterprise or any other person to erect, construct or maintain any sign for the enterprise that:

- (1) Contains any flashing lights;
- (2) Exceeds seventy-two (72) square feet in area;
- (3) Exceeds twenty-five (25) feet in height or twenty (20) feet in length.

(b) Enterprise signs shall contain no photographs, silhouettes, drawings or pictorial representations of any manner, and may contain only:

- (1) The name of the enterprise; and/or
- (2) One (1) or more of the following phrases:
  - a. "Adult bookstore";
  - b. "Adult movie theater";
  - c. "Adult encounter parlor";
  - d. "Adult cabaret";
  - e. "Adult lounge";
  - f. "Adult novelties";
  - g. "Adult entertainment";
  - h. "Adult modeling studio."
- (3) Signs for adult movie theaters may contain the additional phrase, "Movie Titles Posted on Premises."

(c) Each letter forming a word on a sign shall be of solid color, and each such letter shall be the same print type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.

**Sec. 26-64. PERSONS YOUNGER THAN EIGHTEEN (18) PROHIBITED FROM ENTRY; ATTENDANT REQUIRED.**

(a) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of an enterprise at any time that the enterprise is open for business.

(b) It shall be the duty of the operator of each enterprise to ensure that an attendant is stationed at each public entrance to the enterprise at all times during such enterprise's regular business hours. It shall be the duty of the attendant to not allow any person under the age of eighteen (18) years to enter the enterprise. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:

- (1) A valid operator's, commercial operator's or chauffeur's driver's license; or
- (2) A valid personal identification certificate issued by the state department of public safety reflecting that such person is eighteen (18) years of age or older.

**Sec. 26-65. NOTICES.**

(a) Any notice required or permitted to be given by the director or any other city office, division, department or other agency under this article to any applicant, operator or owner of an enterprise may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit, or transfer application which has been received by the director, or any notice of address change which has been received by the director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. If any notice given by mail is returned by the postal service, the director shall cause it to be posted at the principal entrance to the establishment.

(b) Any notice required or permitted to be given to the director by any person under this article shall not be deemed given until and unless it is received in the office of the director at the time and in the manner provided for the filing of applications in subsection 26-69(a) of this chapter.

(c) It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the director in writing of any change of residence or mailing address.

**Sec. 26-66. VIOLATIONS.**

(a) The following shall be violations of this ordinance punishable as authorized in Tex. Loc. Gov't Code §243.010(b)(1). Each day a violation continues constitutes, and is punishable as, a separate offense:

(1) For any employee, owner, or enterprise operator of a Class I enterprise to allow any person below the age of eighteen (18) years to remain upon the premises or within the confines of the enterprise during the hours of operation;

(2) For any person to be at an enterprise in a state of nudity, however private rooms at adult motels and employees designated dressing rooms that are not visible or accessible to patrons are excepted from this prohibition;

(3) For any employee, owner or enterprise operator to request or suggest that any patron or employee become nude at the premises of the enterprise;

(4) For any person to engage in, or any employee, owner or enterprise operator to allow another person to engage in, sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any other public sexual acts prohibited by law, or acts which stimulate the aforesaid at or in a permitted premises;

(5) For any enterprise to exhibit advertisements, displays or other promotional materials at the premises that are characterized by specified sexual activities or specified anatomical areas and are visible from a public road, sidewalk or other public place;

(6) For any person to conduct business as an enterprise in the City of League City without a valid SOBP issued in accordance with this ordinance;

(7) For any person to counterfeit, forge, change, deface, duplicate or alter an SOBP;

(8) For any person to knowingly make any false, fraudulent or untruthful material representation, written or oral, or in any other way knowingly conceal any material fact required in the SOBP application;

(9) For the owner or enterprise operator to fail to comply with the conditions attached to the SOBP pursuant to 26-79; each and every day the enterprise fails to comply with a SOBP condition is a violation of this article;

(10) For any employee of an enterprise to provide materially false identification information to an enterprise under 26-76;

(11) For any person to attempt to transfer, assign or devise an SOBP;

(12) For any person performing at an enterprise to do so less than six (6) feet from the nearest patron and on a stage less than eighteen (18) inches above floor level;

(13) For the owner or enterprise operator of a Class I enterprise to allow any location within the enterprise to be used for the purpose of live exhibitions unless it is marked with clear indications of the six (6) foot zone; the absence of this demarcation will create a presumption that there have been violations of this article during performances in the unmarked area; or

(14) For any person to offer or accept a gratuity at an enterprise unless it is done pursuant to this section: specifically, gratuities being offered to any person performing on a stage must be placed in a receptacle provided for receipt of gratuities and a tip or gratuity offered to any employee in or about the non-stage area of the enterprise shall be placed into the hand of the employee or into a receptacle provided by the employee and not upon the person or into the clothing of the employee.

(b) The following categories of sexually oriented enterprises are prohibited in League City, Texas: modeling studios; escort agencies; escorts; encounter centers; any enterprise whose employees appear in a state of total nudity; and any Class II enterprise that provides services in a state of total nudity. It shall be a violation to engage in these business activities in League City, Texas.

(c) A Class I enterprise has the duty to maintain and make available a time record reflecting the times and dates each Class II enterprise worked at that location. The director will provide a standard format for these records which shall require a sign-in/out sheet and notation of the SOBP Badge number. These records shall be available for inspection by the director during the hours of operation of the enterprise. These records shall be retained for at least a period of two (2) years from creation. Upon written request, the enterprise has a duty to provide a copy of the records to the director within seven (7) days of the request. It shall be a violation of this article to falsify these records.

(d) Each Class I enterprise shall have the duty to post a sign containing the following education AIDS message at eye level adjacent to each entrance, in each public restroom and in any dressing room in any Class I enterprise:

STOP AIDS. AVOID HIGH RISK BEHAVIOR. AVOID CONTACT WITH SEXUAL FLUIDS OR DIRTY NEEDLES. AIDS CAN BE TRANSMITTED BY SEX WITHOUT CONDOMS OR BY SHARING NEEDLES.

The signs shall be obtained from the director.

(e) Violation of any provision of this article that is not otherwise punishable pursuant to Tex. Loc. Gov't Code §243.010(b) shall be punishable as provided in the general penalty provision of this Code.

#### **Sec. 26-67. AUTHORITY TO FILE SUIT.**

The city attorney is hereby authorized to file suit to enjoin the violation of this article.

#### **Sec. 26-68. PERMIT REQUIRED.**

(a) It shall be unlawful for any person to own, operate or conduct any business in an enterprise (either Class I or Class II) located within the city without a valid sexually oriented business permit (SOBP) for the enterprise issued in accordance with this article.

(b) It shall be unlawful for any person to own, operate or conduct a Class I enterprise located within the city unless the Class I permit is posted at or near the principal public entrance to the enterprise in such a manner that it will be conspicuous to patrons who enter the premises.

(c) In any prosecution under subsection (a) above, it shall be presumed that there was no permit at the time of the alleged offense, unless a permit was then posted as provided in subsection (b).

(d) A separate application and SOBP shall be required for each enterprise.

(e) Each location of a Class I enterprise is a separate enterprise for the purposes of this article.

(f) An individual who is a Class II enterprise shall be issued a single SOBP and badge number.

(g) The SOBP for a Class II enterprise shall be available at any premises where the individual is conducting business. In addition, the individual shall wear a clearly visible badge issued by the director showing the SOBP number any time he/she is conducting business as an enterprise as defined in this article.

(h) An enterprise without a SOBP is a public nuisance enjoined under this article.

#### **Sec. 26-69. APPLICATION.**

(a) Applications for a Class I or Class II Sexually Oriented Business Permit required by this article, whether original or renewal, must be made to the director by the intended operator of the enterprise on forms prescribed and supplied by the director. Applications shall be verified under oath and submitted by hand delivery to the office of the director during regular working hours (8:00 a.m. to 4:30 p.m.) Monday through Thursday, 8:00 a.m. to 12:00 noon on Fridays, city holidays excepted. The intended operator/applicant shall be required to give and verify the following information on the application form:

- (1) All applications shall provide the following information. The information in subsections (a) and (b) will be made available to the public when a Class I application is received:

(a) The full legal name and any other named used by the applicant.

(b) A general description of the enterprise, which shall include the address of the enterprise and the services and products which will be offered.

1. A Class I SOBP shall be valid only for the address provided in the application.

2. A Class II application must contain the residential address of the applicant.

(c) The applicant's complete business license or permit history including any permit or license which has been issued to the applicant by any agency, board, City, County, or State, and any professional or vocational license or permit. This shall include those which have expired or are currently in effect and shall include any license or permit that has been denied, or was issued to the applicant and subsequently revoked or suspended. If there have been licenses or permits which were denied, revoked or suspended, the permit history shall include the reason for that action.

(d) If the applicant intends to operate the enterprise under an assumed name, a copy of the assumed name certificate filed in compliance with Chapter 36 of the Texas Business and Commerce Code. If the enterprise is licensed under the Texas Alcoholic Beverage Code the application shall be filed and the enterprise shall conduct business under the name shown on the liquor license. If the applicant is an individual, the applicant's valid driver's license number or Texas Department of Transportation identification card number shall be included.

(e) A non-refundable fee, established by City Council shall be paid in the form of a money order, cashier or bank check.

(f) A statement under oath that:

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

2. The applicant has read and understands the requirements of this article.

(g) The applicant shall authorize the director to seek information to confirm any statements set forth in the application.

(2) If the applicant is an individual, the applicant shall also provide:

(a) Each of the applicant's residential addresses for the three (3) years immediately preceding the date of the application, indicating the dates of each residence and including the present address and telephone number of the applicant.

(b) The applicant's business, occupation, and employment history for the three (3) years immediately preceding the date of application, indicating the applicable dates and addresses.

- (c) Documentation that the applicant is at least eighteen (18) years of age.
- (d) The applicant's height, eye color and natural hair color; the director shall take two photographs of the applicant at the time of the application, one photograph shall be affixed to the SOBPs and one photograph shall be retained by the director, new photographs may be required by the director upon application for renewal of the SOBPs.
- (e) The applicant's criminal history which shall consist of a statement of: any and all criminal convictions and the date and place thereof; any charge to which the applicant entered a plea of nolo contendere or for which applicant received deferred adjudication; but it shall not include Class C misdemeanor traffic violations.
- (f) The director may require the applicant to furnish fingerprints for the purpose of establishing identification.
- (g) Other identification and information as reasonably necessary in order to confirm the validity of information provided in the application.
- (h) A mailing address where the applicant can be reliably contacted.

(3) If the applicant is a corporation, partnership, joint venture, or other similar business entity the applicant shall also include:

- (a) A Texas corporation shall provide a copy of the Articles of Incorporation with amendments; names and residential addresses of all current officers and directors; and the name and address of each stockholder holding more than 5% of the stock of the corporation.
- (b) A foreign corporation shall provide a copy of the certificate of authority to transact business in Texas, with all amendments; names and residential addresses of current officers and directors; and names and addresses of each stockholder holding more than 5% of the stock of the corporation.
- (c) A general or limited partnership shall provide the name and residential address of each of the partners, including limited partners, if the applicant is a limited partnership formed under the laws of Texas, a copy of the certificate of limited partnership filed with the Office of the Secretary of State, and amendments included, if one or more of the partners is a corporation the information required of corporate applicants shall be included in the application in addition to these requirements.
- (d) If the applicant is a joint venture or other similar entity, the names and residential addresses of the participants and their valid drivers license numbers or Texas Department of Transportation identification card numbers are required if the participants are individuals, if any participant is a corporation or partnership, the applicable information required in items (a), (b) or (c) above shall be provided.
- (e) As to each person required to be identified in this section, the application shall also contain: a statement as to any ownership interest that person has in any other enterprise in League City, Texas; a description as to any management, supervisory, or

oversight responsibility that person will have in the enterprise; a valid driver's license number or Texas Department of Transportation identification card number; and a certification as to each officer, director, partner, or participant that he/she has not been convicted of any of the crimes listed in 26-71(d).

(4) Applicants for a Class I SOBP shall also provide:

(a) The name and residential address of each enterprise operator.

(b) The name and address of the owner of the real property at which the business is to be located and a copy of any lease or rental agreement.

(c) A reliable estimate of the number of employees, including a description of the capacities in which they will be employed; a general description of the management structure for the enterprise; 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. Enterprises subject to 26-78 of this article are required to conform to that section.

(d) The applicant shall post signs at the property where the proposed enterprise will be located. The signs shall be at least 24 inches x 48 inches in size and legibly state that a Sexually Oriented Business Permit Application has been filed with the City of League City. It shall also state the date the application was filed and the phone number for the director. The sign shall inform the public that persons can contact that office for more information about the application. Each letter on the sign must be at least 1.5 inches x 2 inches in size. It shall be the duty of the applicant to erect each sign so that it is in a location clearly visible from the public sidewalk, road or highway. A sign shall be placed on each side of the property visible from a public sidewalk, road or highway. If a side of the property is longer than three hundred feet, one sign shall be erected in each three hundred foot increment of the property. The signs shall be erected within seven (7) days after the filing of the application for the SOBP and remain until the application has been approved or denied by the director. If the director determines that the signs have not been erected pursuant to the requirements of this subsection, a written notice shall be issued to the applicant identifying the deficiencies and no action shall be taken on the application until the signs have been erected as required.

(e) Every applicant for a Class I SOBP shall give written notice of the application to all owners and lessees of real property within one thousand (1000) feet of property on which the SOBP is requested. These owners and lessees are interested parties in any public hearing process connected with the SOBP, including revocation hearings. The owners of these properties shall be notified as required in this subsection even if the property is not located in the City of League City, Texas. Owners of property within one thousand (1000) feet of the proposed location that are not within the incorporated area of League City, Texas shall have the same rights under this subsection as the residents of the incorporated area of League City, Texas.

1. Notice shall be sent within ten (10) days after the application is filed with the director and shall contain a legible copy of the "Notice to Interested

Parties" included in the application form provided by the director and shall contain the information described in subsection (b) items (1) & (2).

2. Notice shall be given by posting the notice in the U.S. Mail, properly addressed and postage prepaid.

3. Each property owner and lessee so notified shall have fourteen (14) days to file a request for a public hearing as provided in 26-79. The "Notice to Interested Parties" shall contain the procedures for requesting the hearing.

**Sec. 26-70. DUTIES OF THE APPLICANTS AND ENTERPRISES.**

(a) The applicant/enterprise shall be under a continuing affirmative duty while the application is pending and during the effective dates of the SOBP to notify the director of any of the following events. Notice is to be provided in writing and delivered no later than seven (7) days after the occurrence of:

(1) Address and/or name change of the applicant;

(2) Revocation or suspension of any permits or licenses listed in the applicant's permit history; and

(3) A Class I enterprise shall notify the director when the enterprise learns that a Class II enterprise has been formally charged with a crime listed under 26-71(c)(10)(d) and the crime is alleged to have occurred on the premises of the Class I enterprise.

(b) The enterprise shall comply with the conditions attached to the SOBP pursuant to 26-79. Each and every day the enterprise fails to comply with a SOBP condition is a violation of this ordinance.

(c) An enterprise shall notify the director immediately if a SOBP or badge is lost or stolen. If notice of loss has not been provided to the director and an SOBP or badge is found in the possession of any person other than the enterprise, it shall be presumed that the enterprise had knowledge of the illegal use of the SOBP or badge, and participated in the attempt to transfer the permit.

**Sec. 26-71. ISSUANCE OR DENIAL.**

(a) Within thirty (30) days of receipt of any permit application, either original or renewal, the director shall grant or deny the requested permit and give written notice to the applicant as to the decision.

(b) A Class II SOBP shall be issued within seven (7) business days unless the application is denied.

(c) The director shall issue a permit to the applicant unless one (1) or more of the following conditions exist:

(1) The actual or proposed location of the enterprise is outside of the area(s) designated for a class I enterprise under Section 26-81;

(2) The applicant failed to supply all of the information requested on the application.

(3) The applicant gave materially false, fraudulent or untruthful information on the application.

- (4) The applicant's enterprise is not in compliance with sections 26-62 or 26-63.
- (5) The application or the enterprise does not meet any other requirement of this article.
- (6) The applicant has not fully complied with all state, federal and local laws or regulations affecting the conduct of its business.
- (7) The operator has had a permit revoked for the same enterprise within the one-hundred-eighty-day period next preceding the date that the application was filed.
- (8) The applicant, or if the application is a corporation, partnership, or other business entity, any officer, director, partner or participant required to be identified in the application, was convicted of any of the crimes listed below and:
  - 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 combination of misdemeanor offenses occurring within a 24-month period.
  - d. The crimes considered in applying this section are:
    - 1. Prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity, sale, distribution, or display of harmful material to a minor, sexual performance by a child, or possession of child pornography as described in Chapter 43 of the Texas Penal Code;
    - 2. Public lewdness, indecent exposure, or indecency with a child as described in Chapter 21 of the Texas Penal Code;
    - 3. Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
    - 4. Incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code;
    - 5. Gambling, gambling promotion, keeping a gambling place, communicating gambling information, possession of gambling devices or equipment, or possession of gambling paraphernalia as described in Chapter 47 of the Texas Penal Code;
    - 6. Forgery, credit card abuse or commercial bribery as described in Chapter 32 of the Texas Penal Code;

7. A criminal offense as described in Chapter 481, Subchapter D of the Health and Safety Code;

8. A criminal offense as described in Chapter 34 of the Texas Penal Code;

9. Criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses; or any other offense in another state that, if committed in this state, would have been punishable as one or more of the aforementioned offenses; or

10. A violation as described in 26-66.

(d) If the director determines that an applicant is not eligible for a permit, the applicant shall be given notice in writing of the reasons for the denial within thirty (30) days of the receipt of its application by the director. An applicant may appeal the decision of the director regarding such denial by filing a written request for a hearing with the director within ten (10) days after he is given notice of such denial. The director's decision on the application shall be final unless an appeal is timely filed. An appeal shall not stay the director's decision on the issuance of a permit. The applicant's written request for a hearing shall set out the grounds on which the denial is challenged. The hearing shall be conducted by City Council. At the hearing, the City Council shall receive oral and written testimony regarding the application. Hearings shall be conducted under rules issued by the director, which shall be consistent with the nature of the proceedings and shall ensure that each party may present evidence, cross-examine witnesses and be represented by legal counsel.

(e) The City Council shall conduct the hearing within fifteen (15) days after receipt of the applicant's written request for a hearing unless the applicant requests an extension in writing. The City Council shall render a written decision and issue notice thereof to the applicant within fifteen (15) days after the conclusion of the hearing. The written decision of the City Council shall be final.

**Sec. 26-72. TRANSFER.**

(a) A permit is personal to the owner and operator designated in the application; provided, however, it may be transferred pursuant to this section. A transfer application must be filed by the tenth day next following any change of the owner or operator designated on the application. If a transfer application is not timely filed, the permit shall be invalid for any purpose relating to the operation of the enterprise, and any transfer shall require and be treated in all respects as an original permit application.

(b) The director shall prescribe a form on which permit transfer applications shall be made. The form shall include a statement under oath that the original application remains correct as previously submitted in all respects except those that are amended by the transfer application. The transfer application shall contain a statement under oath that the individual signing the transfer application has personal knowledge of the information contained therein and that the information is true and correct and shall not be complete unless accompanied by a nonrefundable transfer fee in the minimum amounts as shall be determined by the city council from time to time and on file in the office of the director. Transfer applications shall be filed in the same place and at the same time as original applications and the fee shall be payable in the same manner as for original applications.

(c) Transfers shall be reviewed, issued and subject to appeal in the same manner as original applications pursuant to this article, they shall be issued for the remaining term of the transferred permit.

**Sec. 26-73. TERM; RENEWAL.**

(a) A Class I SOBP shall be valid for one (1) year from the date it is issued, a Class II SOBP shall be valid until the individual's next birth date, unless the SOBP is revoked or suspended pursuant to this article; the enterprise is sold or transferred, or the SOBP is canceled by written request of the applicant. The renewal fee for the initial Class II SOBP will be reduced to reflect proration of the application fee based on the portion of the year for which the initial SOBP was valid.

**Sec. 26-74. REVOCATION OR SUSPENSION.**

(a) The director shall have the authority to revoke a permit for any one (1) or more of the following reasons:

- (1) The owner or operator of the permitted enterprise knowingly allowed a person under eighteen (18) years of age to enter an enterprise.
- (2) The permitted enterprise does not conform to the provisions of sections 26-62 or 26-63 of this article.
- (3) Three (3) or more cumulative violations of any of the offenses contained in chapter 21, chapter 43, section 22.011, or section 22.021 of the state's V.T.C.A., Penal Code or of the offenses contained in this article have occurred on the premises of the permitted enterprise. These violations must have occurred in a consecutive period of twelve (12) months, and the owner or operator must have knowingly allowed such violations to occur or did not make a reasonable effort to prevent the occurrence of such violations.
- (4) The operator of the permitted enterprise gave materially false, fraudulent or untruthful information on the original, renewal or transfer application form.
- (5) The enterprise has been closed for business for a period of thirty (30) consecutive days, unless such closure is due to circumstances beyond the control of the owner and the owner is proceeding with due diligence, given all attendant circumstances, to reopen the establishment.
- (6) There was a change of owner or operator for which a transfer application was not timely filed pursuant to this article.
- (7) The permit should not have been issued pursuant to the criteria of this section.
- (8) Refusal, after notification, to comply with valid orders of the building official, fire marshal, health official, electrical inspector or zoning official pursuant to rules and regulations set forth in this Code.

(b) Prior to revocation of a permit, the director shall investigate the grounds alleged to determine whether probable cause for revocation may exist and, if so, shall notify the owner and operator in writing of reasons for the proposed revocation and grant such owner and operator the opportunity to appear before City Council at a time and place specified within such notice. Such hearing shall be held not less than fifteen (15) days after the notice is given. Hearings shall be conducted under rules issued by the director. Such rules shall be consistent with the nature of the proceedings and shall ensure that each party may present evidence, cross-examine witnesses and be represented by legal counsel. If after the hearing City Council finds that the permit should be revoked, it shall issue a written order revoking

such permit which shall be effective on the third day after notice thereof is given to the operator. If City Council determines, based upon the nature of the violation, that the ends of justice would be served by a suspension in lieu of a revocation, it may suspend the operation of the permit for a period of time to be stated in the order of suspension not to exceed two (2) months; however, a suspension may not be ordered if the grounds are based upon subsection (a)(6) or (7) above.

#### **Sec. 26-75. VALIDITY; FORGERY; CANCELLATION.**

- (a) A Class I permit is valid only at the location for which it is issued.
- (b) It shall be unlawful for any person to counterfeit, forge, change, deface or alter a permit.
- (c) A permit may be cancelled upon written request of the owner or operator and surrender of the permit itself to the director. Permits shall be surrendered at the same place and at the same time as permit applications as provided in subsection 26-69(a) of this article. The surrender of a permit shall be effective upon its filing in the office of the director.
- (d) If an SOBP or badge is lost or destroyed a replacement may be obtained by filing a lost SOBP/badge application and paying a lost SOBP/badge fee.
- (e) A replacement SOBP or badge shall be issued immediately upon confirmation of the identity of the applicant through the director's Records.
  - (1) A replacement badge number will be assigned to a Class II enterprise.
  - (2) A replacement permit will expire on the same date as the original permit.
- (f) It shall not be a defense to prosecution for conducting business without an SOBP or failure to display a badge that an SOBP or badge was lost or stolen. The enterprise may not conduct business as an enterprise, in League City, Texas, until he/she obtains a replacement SOBP or badge.
- (g) A SOBP or badge found in the possession of any person other than the enterprise may be immediately seized by the director. The authorized SOBP holder may reclaim the permit or badge from the director's office.

#### **Sec. 26-76. SOBP EMPLOYEE RECORDS.**

- (a) A Class I enterprise has the duty to keep the following information on file on site for each person employed at the enterprise:
  - (1) The full legal name, professional or performing names and any other names used by the employee;
  - (2) A photocopy of the employee's valid driver's license or Texas Department of Transportation identification card;
  - (3) The current address and telephone number of the employee;
  - (4) Employee's height, eye color and natural hair color;

- (5) A photograph of the employee taken within one (1) month immediately preceding the date of employment and updated every year;
  - (6) A description of the capacity in which the employee is employed; and
  - (7) If the employee is employed in a capacity that involves serving liquor to patrons, evidence of certification through completion of a Texas Alcoholic Beverage Commission approved seller training program, under V.T.C.A., Alcoholic Beverage Code Sect. 106.14.
- (b) The enterprise has the duty to maintain and make available these records for inspection, and copying, but the director. The director will provide a standard format for these records. The records shall include a time record reflecting the times and dates each employee worked. These records shall be available for inspection by the director during the hours of operation of the enterprise upon twenty-four (24) hour notice. These records shall be retained for at least a period of two (2) years from creation. Upon written request, the enterprise has a duty to provide a copy of the records to the director within seven (7) business days of the request.
- (c) Any employee who provides false information to an enterprise pursuant to this section violates this article.
- (d) The Class I enterprises has the duty to have the employee information available regarding any individual working at an enterprise unless that individual has a valid Class II SOBP available at the premises.

#### **Sec. 26-77. 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 (2) or more times in less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel that is an enterprise under this article if the motel also provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section.
- (b) For purposes of this section, the terms "rent" or "subrent" mean the act of allowing a room to be occupied for any form of consideration.
- (c) An "Adult Motel" permitted pursuant to this article may have a resident manager living on site. This shall not be considered a dwelling under the distancing requirements of the city zoning ordinance, but no individuals under the age of eighteen (18) may live on site.

#### **Sec. 26-78. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.**

A person who operates or causes to be operated an enterprise other than an adult motel which exhibits on the premises in a view room of less than one hundred fifty (150) square feet of floor space a film, video cassette, computer programs, or other visual reproduction depicting specified sexual activities or specified anatomical areas has the duty to comply with the following requirements:

(1) 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, excluding lavatories, to which any patron is allowed access for any purpose;

(2) If the premises has two (2) or more manager's stations designated, the interior of the premises shall be configured so that there is an unobstructed, direct line of sight, view from at least one (1) station to all portions of the premises where patrons are allowed access, excluding rest rooms; and

(3) The enterprise has the duty to maintain at least one (1) employee on duty and situated in each manager's station at all times that any patron is present inside the premises.

**Sec. 26-79. PUBLIC HEARING ON HEALTH AND SAFETY.**

(a) When the director receives a written request for a public hearing concerning a Class I SOBP application, the director shall confirm that it is: from an interested party; that the request specifically identifies the SOBP application at issue; that the request is timely filed; and that the request specifically identifies health and safety concerns affected by the enterprise. The director shall then initiate the public hearing procedure, as follows:

(1) A hearing official, appointed by City Council, shall be contacted by the director and a date set for the public hearing.

(2) The director shall send the applicant a written Notice of Hearing at least ten (10) days in advance, stating the date, time and place of the hearing and shall make a copy of the Notice of Hearing available to the public.

(3) Publicizing the hearing shall be the responsibility of the interested party who requested the hearing. The director shall make available to the public a copy of any request for hearing and the Notice of Hearing.

(4) The director shall place a sign at the location identified in the application containing the time and place of the hearing.

(b) If a request for a public hearing is received by the director after the SOBP has been issued or renewed, the hearing shall be scheduled when the next renewal application is filed. The director shall confirm that the request identifies health and safety concerns affected by the enterprise that are not addressed in the current SOBP and that the request is filed by an interested party. The request shall then be attached to the SOBP records. When a renewal application is submitted, the director shall initiate the hearing as set out in subsection (a).

(c) If the request for public hearing is deficient, the director shall return it to the person who submitted the request with a notation stating the deficiency. A request that does not comply with the requirements stated in (a) or (b) above shall not extend the period of time in which a request for hearing may be filed.

(d) The hearing shall be conducted by the hearing official under the following guidelines. The hearing official shall liberally construe these guidelines to allow the public input to protect the health and safety of a neighborhood affected by the location of an enterprise and to allow the applicant to address these concerns:

(1) The hearing official may exclude evidence that is irrelevant, immaterial, or unduly repetitious. Relevance and materiality shall be evaluated by the relation of the evidence to health and safety concerns directly related to the SOBP at issue, and condition which may be attached to the SOBP to address those concerns. The hearing is not limited to the health and safety concerns specifically identified in the hearing request.

(2) Any person may record, videotape or transcribe the hearing provided there is no interference with the proceedings. The hearing official shall have the power to limit any interference with the proceeding.

(3) After the conclusion of the public hearing, the hearing official shall produce a written statement containing the official's findings of public health and safety concerns and recommendations for conditions to be attached to the SOBP. The recommendations shall be forwarded to the director, the applicant and the interested party who requested the hearing. When the hearing official determines that public health and safety concerns exist, the director shall attach conditions as part of the SOBP. If no official record of the hearing has been requested, the hearing official's statement shall be the official record of the public hearing. The hearing official may consult with the director for the purpose of developing appropriate conditions to address the health and safety concerns shown at the hearing.

(4) If evidence is produced at the hearing that would support denial of the SOBP, the hearing official shall provide that information to the director, who shall investigate whether the evidence warrants denial or revocation of the SOBP under this article.

#### **Sec. 26-80. JUDICIAL REVIEW.**

(a) Any owner, operator, or applicant of an enterprise who is aggrieved by a decision that denies, suspends, or revokes a permit, and who has complied fully and timely with all applicable provisions pertaining to appeals of decisions in this article may seek appropriate judicial relief by writ of mandamus or other available remedy in a court of competent jurisdiction.

(b) The person aggrieved by the decision of the city may seek judicial review of such decision immediately following the decision. The city attorney shall cooperate with the aggrieved party in seeking an expedited disposition of the matter.

#### **Sec. 26-81. LOCATION OF CLASS I ENTERPRISE**

All Class I enterprises must be located in the area or areas designated for such use by City Council. Attached Schedule A describes the area or areas designated by City Council, which schedule may be amended from time to time by City Council.

Section 2. If any provisions, section, exception, subsection, paragraph, sentence, clause or phrase of this ordinance or the application of same to any person or set of circumstances, shall for any reason be held unconstitutional, void or invalid, such invalidity shall not affect the validity of the remaining provisions of this ordinance or their application to other persons or sets of circumstances and to this end all provisions of this ordinance are declared to be severable.

Section 3. All ordinances or parts of ordinances inconsistent with the terms of this ordinance are hereby repealed; provided however, that such repeal shall be only to the extent of such inconsistency and in all other respects this ordinance shall be cumulative of other ordinances regulating and governing the subject matter covered by this ordinance.

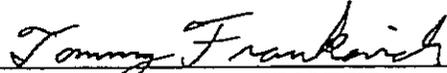
Section 4. Pursuant to the provisions of Article II, Section 21 of the City charter, and in light of the adoption of this Ordinance by an affirmative vote of a four-fifths (4/5) majority of the council members present, this Ordinance may be published by caption only.

Section 5. This Ordinance shall become effective after its approval and adoption upon second and final reading and the publication of the caption only pursuant to law.

APPROVED first reading the 14th day of October, 1997.

APPROVED second reading the \_\_\_ day of \_\_\_\_\_, 1997.

PASSED AND ADOPTED the 14th day of October, 1997.

  
\_\_\_\_\_  
A. T. (TOMMY) FRANKOVICH,  
Mayor

ATTEST:

  
\_\_\_\_\_  
BARBARA NUGENT,  
City Secretary

SUSPENDED RULE AND PASSED ON FIRST AND FINAL READING

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