

**ORDINANCE NO. 2010 - 01**

**AN ORDINANCE AMENDING THE 1985 CITY OF CANTON ZONING ORDINANCE BY DISPERSING SEXUALLY-ORIENTED BUSINESSES AND LIMITING THEM TO A SPECIFIED ZONING DISTRICT; PRESCRIBING DEFINITIONS OF SEXUALLY-ORIENTED BUSINESSES; PROVIDING FOR LICENSING AND REGULATION OF SEXUALLY-ORIENTED BUSINESSES AND EMPLOYEES; AND PROVIDING FOR ADDITIONAL MISCELLANEOUS REGULATIONS FOR SEXUALLY-ORIENTED BUSINESSES; PROVIDING FOR PENALTIES FOR FAILURE TO COMPLY WITH SUCH ORDINANCE; PROVIDING A SEVERABILITY CLAUSE; REPEALING ALL ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, sexually-oriented businesses require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses, as well as the citizens of the City of Canton; and

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

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

**WHEREAS**, licensing is a legitimate and reasonable 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 downgrading 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 close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

**WHEREAS**, the Canton City Council desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry; protect the citizens 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**, the Canton City Council has determined that locational criteria alone do not adequately protect the health, safety and general welfare of the people of the City of Canton; 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 which addresses the secondary effects of sexually-oriented businesses; and

**WHEREAS**, it is not the intent of the Canton City Council to condone or legitimize the distribution of obscene material, and the Council recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the City of Canton;

**NOW, THEREFORE**, pursuant to the authority granted by the Constitution and the legislature of the State of Texas, BE IT ENACTED BY THE CITY COUNCIL OF CANTON, VAN ZANDT COUNTY, TEXAS:

**SECTION 1. AMENDMENT.**

That Article 19 of the 1985 City of Canton Zoning Ordinance be amended to read as follows:

**ARTICLE 19**

**SEXUALLY-ORIENTED BUSINESSES**

**SECTION 19-1. PURPOSE AND FINDINGS.**

- A. Purpose. It is the purpose of this ordinance to regulate sexually-oriented businesses in order to promote the health, safety, morals and general welfare of the citizens of Canton, 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 ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. Similarly, it is not the intent or effect of this ordinance to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.
- B. Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the City Council, and on findings incorporated in the cases of *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), *City of Erie v. Pap's A.M.*, TDA "Kandyland", 529 U.S. 277 (2000), and *City of Los Angeles v. Alameda Books, Inc.*, 121 S. Ct. 1223 (2001) and on studies in other communities, including but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the Report of the Attorney General's Working Group on the Regulation of Sexually-oriented Businesses, (June 6, 1989, State of Minnesota), and the Survey of Texas Appraisers, Secondary Effects of Sexually-Oriented Businesses on Market Values; Crime-Related Secondary Effects, Secondary Effects of "Off-Site" Sexually-Oriented Businesses by the Texas City Attorneys Association (June 2008), the City Council finds:
1. Sexually-oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.
  2. Certain employees of sexually-oriented businesses defined in this ordinance as adult theatres 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 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 space encourages such activities, which creates unhealthy conditions.
  5. Persons frequent certain adult theatres, adult arcades, and other sexually-oriented businesses for the purpose of engaging in sex within the premises of such sexually-oriented businesses.
  6. At least 50 communicable diseases may be spread by activities occurring in sexually-oriented businesses, including but not limited to, syphilis, gonorrhoea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

7. Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States – 600 in 1982, 2200 in 1983, 4600 in 1984, 8555 in 1985 and 253,448 through December 31, 1992.
8. As of December 31, 2006, there have been 70,577 reported cases of AIDS in the State of Texas.
9. Since 1999 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Van Zandt County, Texas.
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 1981 and 40,920 in 2007.
11. The number of cases of gonorrhea in the United States reported annually remains at a high level, with over 355,000 cases being reported in 2007.
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.
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 numbered 1 through 15 raise substantial governmental concerns.
17. Sexually-oriented businesses have operational characteristics which 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 of Canton. 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 theatres.
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.

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 ordinance is designed to prevent or who are likely to be witnesses to such activity.
23. The fact that an applicant for an adult use license 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 ordinance.
24. The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually-transmitted diseases.
25. The general welfare, health, morals and safety of the citizens of the City of Canton will be promoted by the enactment of this ordinance.

#### **SECTION 19-2. DEFINITIONS.**

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

B. ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its principal purposes, offers for sale or rental for any form of consideration any one or more of the following:

1. Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or
2. Instruments, devices or paraphernalia which are designed for use in connection with "specified sexual activities."

A commercial establishment may have other principal businesses purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

C. ADULT CABARET means a nightclub, bar, restaurant or similar commercial establishment which regularly features:

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

- D. ADULT MOTEL means 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, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or
  2. Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
  3. Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- E. ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- F. ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."
- G. EMPLOYEE means a person who performs any service on the premises of a sexually-oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
- H. ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- I. ESCORT AGENCY means 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.
- J. ESTABLISHMENT means and includes any of the following:
1. the operating 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 additions of any sexually-oriented business to any other existing sexually-oriented business; or
  4. the relocation of any sexually-oriented business.
- K. LICENSEE means a person in whose name a license to operate a sexually-oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually-oriented business.
- L. NUDE MODEL STUDIO means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" 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. Nude Model Studio shall not include a proprietary school licensed by the State of Texas or a college, junior college or university supported entirely or in part by public taxation; 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 in a structure:

1. that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-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 or semi-nude model is on the premises at any one time.
- M. NUDITY or a STATE OF NUDITY means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage 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.
- N. PERSON means an individual, proprietorship, partnership, corporation, association or other legal entity.
- O. SEMI-NUDE or in a SEMI-NUDE CONDITION means 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 female 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.
- P. SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
1. Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
  2. Activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.
- Q. SEXUALLY-ORIENTED BUSINESS means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
- R. SPECIFIED ANATOMICAL AREAS means:
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.
- S. SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:
1. 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; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or other 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 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.
- T. SPECIFIED SEXUAL ACTIVITIES means any of the following:
- 1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;
  - 2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
  - 3. Excretory functions as part of or in connection with any of the activities set forth in (a) through (b) above.
- U. SUBSTANTIAL ENLARGEMENT of a sexually-oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this ordinance takes effect.
- V. TRANSFER OF OWNERSHIP OR CONTROL of a sexually-oriented business means and includes any of the following:
- 1. the sale, lease or sublease of the business;
  - 2. the transfer of securities 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.

**SECTION 19-3. CLASSIFICATION.**

Sexually-oriented businesses are classified as follows:

- 1. Adult arcades;
- 2. Adult bookstores, adult novelty stores, or adult video stores;
- 3. Adult cabarets;
- 4. Adult motels;
- 5. Adult motion picture theaters;
- 6. Adult theaters;
- 7. Escort agencies;
- 8. Nude model studios; and
- 9. Sexual encounter centers.

## SECTION 19-4. LICENSE REQUIRED.

- A. It is unlawful:
1. for any person to operate a sexually-oriented business without a valid sexually-oriented business license issued by the City of Canton pursuant to this ordinance;
  2. for any person to obtain employment with a sexually-oriented business without having secured a sexually-oriented business employee license pursuant to this ordinance;
  3. 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 ordinance.
- B. An application for a license must be made on a form provided by the City of Canton.
- C. All applicants must be qualified according to the provisions of this ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable the City to determine whether the applicant meets the qualifications established in this ordinance.
- D. A person who wishes to operate a sexually-oriented business must sign the application for a license as an applicant. If a person other than an individual wishes to operate a sexually-oriented business, all persons legally responsible for the operations of the sexually-oriented business or who have power to control or direct its operations must sign the application for a license as applicant. Such persons include, but are not limited to, general partners, corporate officers, corporate directors, and controlling shareholder(s). Each application must be qualified under the following section and each applicant shall be considered a licensee if a license is granted.
- E. The completed application for a sexually-oriented business license shall contain the following information and shall be accompanied by the following documents:
1. If the applicant is:
    - a. An individual - the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age;
    - b. A partnership - the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any.
    - c. A corporation - the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and controlling stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
  2. If the applicant intends to operate the sexually-oriented business under a name other than that of the applicant, he or she must state (a) the sexually-oriented business' fictitious name; and (b) submit the required registration documents.
  3. Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
  4. Whether the applicant, or a person residing with the applicant, has had a previous license under this ordinance or other similar sexually-oriented business ordinances from another city or county denied, suspended or revoked, including the name and location of a sexually-oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with

the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually-oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

5. Whether the applicant or a person residing with the applicant holds any other licenses under this ordinance or other similar sexually-oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.
  6. The single classification of license for which the applicant is filing.
  7. The location of the proposed sexually-oriented business, including a legal description of the property, street address, and telephone number(s), if any.
  8. The applicant's mailing address and residential address.
  9. A recent photograph of the applicant(s).
  10. The applicant's driver's license number.
  11. 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 it 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.
  12. A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered professional land surveyor depicting the property lines and the structures containing any existing sexually-oriented businesses within 1,000 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, or public park or recreation area within 1,000 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
  13. If an applicant wishes to operate a sexually-oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section 19-4.
- F. Before any applicant may be issued a sexually-oriented business employee license, the applicant shall submit on a form to be provided by the City of Canton the following information:
1. The applicant's name or any other name (including "stage" names) or aliases used by the individual;
  2. Age, date, and place of birth;
  3. Height, weight, hair and eye color;
  4. Present residence address and telephone number;
  5. Present business address and telephone number;
  6. Date, issuing state and number of driver's permit or other identification card information; and
  7. Proof that the individual is at least eighteen (18) years of age.
- G. Attached to the application form for a sexually-oriented business employee license as provided above, shall be the following:

1. A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the police department. Any fees for the photographs and fingerprints shall be paid by the applicant.
2. A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state or country; has ever had a license, permit or authorization to do business denied, revoked or suspended, or had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application.
3. A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

#### **SECTION 19-5. ISSUANCE OF LICENSE.**

- A. Upon the filing of said application for a sexually-oriented business employee license, the city shall issue a temporary license to said applicant. The application shall then be referred to the appropriate city departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty (30) days from the date the completed application is filed. After the investigation, the City shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
1. The applicant has failed to provide information reasonably necessary for the issuance of the license or has falsely answered a question or request for information on the application form;
  2. The applicant is under the age of eighteen (18) years;
  3. The applicant has been convicted of a "specified criminal activity" as defined in this ordinance;
  4. The sexually-oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance; or
  5. The applicant has had a sexually-oriented business employee license revoked by the City within two (2) years of the date of the current application.

If the sexually-oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section 19-10.

- B. A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by the City that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section 19-6.
- C. Within thirty (30) days after receipt of a completed sexually-oriented business application, the City shall approve or deny the issuance of a license to an applicant. The City shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:
1. An applicant is under eighteen (18) years of age.
  2. An applicant or a person with whom applicant is residing is overdue in payment to the City of taxes, fees, fines or penalties assessed against or imposed upon him/her in relation to any business.

3. An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
  4. An applicant or a person with whom the applicant is residing has been denied a license by the City to operate a sexually-oriented business within the preceding twelve (12) months or whose license to operate a sexually-oriented business has been revoked within the preceding twelve (12) months.
  5. An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this ordinance.
  6. The premises to be used for the sexually-oriented business have not been approved by the health department, fire department and the building official as being in compliance with applicable laws and ordinances.
  7. The license fee required by this ordinance has not been paid.
  8. An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.
- D. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually-oriented business and the classification for which the license is issued pursuant to Section 19-3. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually-oriented business so that they may be easily read at any time.
- E. The health department, fire department and the building official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the City.
- F. A sexually-oriented business license shall issue for only one classification as found in Section 19-3.

**SECTION 19-6. FEES.**

- A. Every application for a sexually-oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$500.00 non-refundable application and investigation fee.
- B. In addition to the application and investigation fee required above, every sexually-oriented business that is granted a license (new or renewal) shall pay to the City an annual non-refundable license fee of \$500.00 within thirty (30) days of license issuance or renewal.
- C. Every application for a sexually-oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual \$500.00 non-refundable application, investigation and license fee.
- D. All license applications and fees shall be submitted to the Chief of Police of the City.

**SECTION 10-7. INSPECTION.**

- A. An applicant or licensee shall permit representatives of the Police Department, Health Department, Fire Department, Zoning Department or other City departments or agencies to inspect the premises of a sexually-oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.
- B. A person who operates a sexually-oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time it is open for business.

however, they must be consistent with site and landscape planning principles and will be part of the review process.

L. Signs for Sexually-Oriented Businesses

1. Signage shall be limited to wall signs only.
2. One wall sign is allowed per each building side visible from a public roadway. The maximum area allowed for wall signs is as follows:

Building Frontage	Surface
1-50 linear feet	40 square foot sign per side
51-100 linear feet	50 square foot sign per side
101-150 linear feet	55 square foot sign per side
Over 150 linear feet	60 square foot sign per side
3. Wall signs may not extend above the roof line of the establishment.
4. Content of the signs shall not include any offensive or obscene language.
5. Signs may not display any anatomical figures or body parts.
6. Signs may not be illuminated with neon, argon, Krypton, Xenon or any gas filled tubes except for standard mercury vapor type fluorescent lighting tubes.
7. Signs may not contain any colored or "glow in the dark" fluorescent lighting or paint.
8. Signs may not contain the letters "X" in any number or form unless it is the name of the business.
9. Signs may not describe sexual activities.
10. Signs may not contain photographic reproductions or any moving or motion picture.
11. No signage inside the establishment shall be allowed to be visible from the exterior of the business.
12. Signs may contain the name of the business, address and type of business (i.e., "Adult Cabaret" or "Adult Motel")
13. Signs must have "opaque" backgrounds and be illuminated internally or with shielded light sources to be energy efficient.
14. White background or yellow background signs which produce light pollution shall be discouraged.
15. Signage must be pre-approved by the City of Canton Building Inspector prior to issuance of a permit.

## **SECTION 19-11. TRANSFER OF LICENSE.**

A licensee shall not transfer his/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.

## **SECTION 19-12. LOCATION OF SEXUALLY-ORIENTED BUSINESSES.**

- A. A person commits a misdemeanor if that person operates or causes to be operated a sexually-oriented business in any zoning district other than GI-1 (General Industrial District), as defined and described in the City of Canton's zoning code.
- B. A person commits an offense if the person operates or causes to be operated a sexually-oriented business within 1,000 feet of:
1. a church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
  2. a public or private educational facility, including but not limited to, child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges and university; school includes the school grounds but does not include facilities used primarily for another purpose and only incidentally as a school;
  3. a boundary of a residential district as defined in the City of Canton's zoning code;
  4. a public park or recreational area which has been designated for park or recreational activities, including but not limited to, a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the city which is under the control, operation or management of the city park and recreation authorities.
  5. the property line of a lot devoted to a residential use as defined in the City of Canton's zoning code;
  6. an entertainment business which is oriented primarily towards children or family entertainment; or
  7. a licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State.
- C. A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually-oriented business within 1,000 feet of another sexually-oriented business.
- D. A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one sexually-oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually-oriented business in any building, structure, or portion thereof containing another sexually-oriented business.
- E. For the purposes of subsection B of this section, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually-oriented business is conducted, to the nearest property line of the premises of a use listed in subsection B. Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.
- F. For purposes of subsection C of this section, the distance between any two sexually-oriented businesses shall be measured in a straight line, without regard to the intervening structures or

objects or political boundaries, from the closest exterior wall of the structure in which each business is located.

- G. Any sexually-oriented business lawfully operating on the effective date of this ordinance that is in violation of subsection A through F of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed one (1) year, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually-oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually-oriented business which was first established and continually operating at a particular location is the conforming use and the later established business(es) is/are nonconforming.
- H. A sexually-oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually-oriented business license, of a use listed in subsection B of this section within 1,000 feet of the sexually-oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or been revoked.

#### **SECTION 19-13. ADDITIONAL REGULATIONS FOR ADULT MOTELS.**

- A. Evidence that a sleeping room in a hotel, motel or a similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.
- B. A person commits a misdemeanor 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 license, he rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented he rents or sub-rents the same sleeping room again.
- C. For purposes of subsection (B) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

#### **SECTION 19-14. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY-EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.**

- 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 one hundred fifty (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 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 thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The 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 rack or other materials and, at all times, 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 five (5) foot-candles 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 forty-eight (48") inches of the floor.
- B. A person having a duty under subsection (1) through (14) of subsection A above commits a misdemeanor if he knowingly fails to fulfill that duty.

**SECTION 19-15. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.**

- A. An escort agency shall not employ any person under the age of 18 years.
- B. A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

**SECTION 19-16. ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.**

- A. A nude model studio shall not employ any person under the age of 18 years.
- B. A person under the age of 18 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under

this subsection if the person under 18 years was in a restroom not open to public view or visible to any other person.

- C. A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.
- D. A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

#### **SECTION 19-17. ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY.**

- A. It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually-oriented business, appears in a state of nudity or depicts specified sexual activities.
- B. It shall be a misdemeanor for a person who knowingly or intentionally in a sexually-oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) 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 solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually-oriented business.
- D. It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer.

#### **SECTION 19-18. 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.

#### **SECTION 19-19. HOURS OF OPERATION.**

No sexually-oriented business, except for an adult motel, may remain open at any time between the hours of 11:00 p.m. and 10:00 a.m. on weekdays and Saturdays, and midnight Saturday to 12 noon on Sundays.

#### **SECTION 19-20. EXEMPTIONS**

- A. It is a defense to prosecution under Section 19-17 that a person appearing in a state of nudity did so in a modeling class operated:
  - 1. By a proprietary school, licensed by the State of Texas; 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; or
  - 3. In a structure:
    - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
    - b. Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
    - c. Where no more than one nude model is on the premises at any one time.

**SECTION 19-21. INJUNCTION.**

A person who operates or causes to be operated a sexually-oriented business without a valid license or in violation of Section 19-12 of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations. Such violations shall be punishable by a fine of not to exceed five hundred (\$500.00) dollars. Each day a sexually-oriented business so operates is a separate offense or violation.

**SECTION 19-22. SIGNS AND OUTDOOR LIGHTING**

Sexually-oriented businesses shall meet the following for signage and lighting:

- A. Signage shall be limited to wall signs only.
- B. One wall sign is allowed per each building side visible from a public roadway. The maximum area allowed for wall signs is as follows:

<u>Building Frontage</u>	<u>Surface</u>
1-50 linear feet	40 square foot sign per side
51-100 linear feet	50 square foot sign per side
101-150 linear feet	55 square foot sign per side
Over 150 linear feet	60 square foot sign per side

- C. Wall signs may not extend above the roof line of the establishment.
- D. Content of the signs shall not include any offensive or obscene language.
- E. Signs may not display any anatomical figures or body parts.
- F. Signs may not be illuminated with neon, argon, Krypton, Xenon or any gas filled tubes except for standard mercury vapor type fluorescent lighting tubes.
- G. Signs may not contain any colored or "glow in the dark" fluorescent lighting or paint.
- H. Signs may not contain the letters "X" in any number or form unless it is the name of the business.
- I. Signs may not describe sexual activities.
- J. Signs may not contain photographic reproductions or any moving or motion picture.
- K. No signage inside the establishment shall be allowed to be visible from the exterior of the business.
- L. Signs may contain the name of the business, address and type of business (*i.e.*, "Adult Cabaret" or "Adult Motel")
- M. Signs must have "opaque" backgrounds and be illuminated internally or with shielded light sources to be energy efficient.
- N. White background or yellow background signs which produce light pollution shall be discouraged.
- O. Signage must be pre-approved by the City of Canton Building Inspector prior to issuance of a permit.
- P. Exterior Lighting Requirements for sexually-oriented businesses:
  - 1. Exteriors of all buildings must be illuminated up to thirty (30) foot candles per side.
  - 2. Lighting must conform to the Illuminating Engineering Society of North America requirements.
  - 3. Canopy lights are recommended and all lighting must illuminate downward to create safety

and security.

4. Parking areas must be lighted in conformance with the Illuminating Engineering Society of North America requirements, the International Dark-Sky Association recommendations and the following:
  - a. The illumination level in all parking areas must not be greater than six (6) foot candles in the horizontal plane and must not exceed 0.5 vertical foot candles.
  - b. All points across the interior of the parking lot must have an illumination level greater than three (3) foot candles.
  - c. Illumination should not exceed 0.50 horizontal foot candles beyond the property line.
  - d. Illumination should be uniform since high wattage lights can actually lead to dark pockets and a less secure area.
  - e. Parking lot lights shall be no higher than thirty-three (33) feet above the finished grade or surface. This shall include the total height of the luminaire, pole, and any base or supporting structure.
  - f. Lighting fixtures should be set to eliminate glare onto public rights-of-way should minimize or eliminate light directed upward.
  - g. The maximum wattage allowed for parking lot lights shall not exceed 400 watts without specific approval from the City of Canton Building Inspector.

**SECTION 2. VIOLATION AND PENALTY.**

Any violation of this Ordinance shall be a misdemeanor and each day that said violation occurs shall be a separate misdemeanor and the penalty for violating the provisions of this Ordinance shall be a fine not to exceed Two Hundred and no/100 (\$200.00) Dollars.

**SECTION 3. SEVERABILITY.**

If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

**SECTION 4. CONFLICTING ORDINANCES REPEALED.**

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

**SECTION 5. EFFECTIVE DATE.**

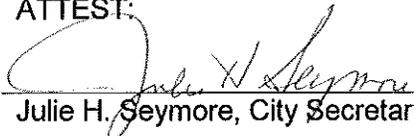
This ordinance shall become effective immediately upon its passage, approval and publication as provided by law.

**PASSED AND APPROVED** this 16<sup>th</sup> day of February, 2010.

**APPROVED:**

  
\_\_\_\_\_  
WILLIAM R. WILSON, Mayor  
City of Canton

ATTEST:

  
\_\_\_\_\_  
Julie H. Seymore, City Secretary