

DRAFT ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 20 “SEXUALLY ORIENTED BUSINESSES” OF THE CODE OF ORDINANCES OF THE CITY OF WACO, TEXAS, RELATING TO LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY OF WACO, MCLENNAN COUNTY, TEXAS; TO PRESERVE AND PROTECT THE PUBLIC HEALTH, SAFETY, AND WELFARE; PROVIDING FOR SEVERABILITY; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING A SAVINGS CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR A PENALTY; PROVIDING FOR AN EFFECTIVE DATE; AND FINDING AND DETERMINING THAT THE MEETING AT WHICH THIS ORDINANCE IS PASSED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW.

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

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

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, the 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 crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, certain sexually oriented products and services offered to the public are recognized as not inherently expressive and not protected by the First Amendment, *see, e.g., FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 224 (1990) (escort services and sexual encounter services); *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1195 (10th Cir. 2003) (“On its face, the Ordinance applies to all ‘sexually oriented businesses,’ which include establishments such as ‘adult motels’ and ‘adult novelty stores,’ which are not engaged in expressive activity.”); *Sewell v. Georgia*, 233 S.E.2d 187 (Ga. 1977), *dismissed for want of a substantial federal question*, 435 U.S. 982 (1978) (sexual devices); and

WHEREAS, there is documented evidence of sexually oriented businesses, including adult bookstores and adult video stores, manipulating their inventory and/or business practices to avoid regulation while retaining their essentially “adult” nature, *see, e.g., Taylor v. State*, No. 01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002) (noting that “the nonadult video

selections appeared old and several of its display cases were covered with cobwebs”); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001) (finding retail adult store’s “argument that it is not an adult entertainment establishment” to be “frivolous at best”); *People ex rel. Deters v. The Lion’s Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005) (noting that “the accuracy and credibility” of the evidence on inventory in adult retail store was suspect, and that testimony was “less than candid” and “suggested an intention to obscure the actual amount of sexually explicit material sold”); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999) (documenting manipulation of inventory to avoid adult classification); and

WHEREAS, the manner in which an establishment holds itself out to the public is a reasonable consideration in determining whether the establishment is a sexually oriented business, *see, e.g., FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 261 (1991) (Scalia, J., concurring in part and dissenting in part) (“[I]t is most implausible that any enterprise which has as its constant intentional objective the sale of such [sexual] material does not advertise or promote it as such.”); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360, 365 (6th Cir. 2009) (“A prominent display advertising an establishment as an ‘adult store,’ moreover, is a more objective indicator that the store is of the kind the Act aims to regulate, than the mere share of its stock or trade comprised of adult materials.”); *see also Johnson v. California State Bd. of Accountancy*, 72 F.3d 1427 (9th Cir. 1995) (rejecting First Amendment challenge to statute which used the phrase “holding out” to identify conduct indicative of the practice of public accountancy, but did not ban any speech); *Spencer v. World Vision, Inc.*, 633 F.3d 723 (9th Cir. 2010) (O’Scannlain, J., concurring) (concluding that whether an entity “holds itself out” as religious is a neutral factor and that factor helps to ensure that the entity is a *bona fide* religious entity); and

WHEREAS, the City intends to regulate such businesses as sexually oriented businesses through a narrowly tailored ordinance designed to serve the substantial government interest in preventing the negative secondary effects of sexually oriented businesses; and

WHEREAS, the City’s regulations shall be narrowly construed to accomplish this end; and

WHEREAS, the City recognizes its constitutional duty to interpret and construe its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the City and the City Council accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Texas Constitutions, Texas Code, and the Texas Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the U.S. Constitution or the Texas Constitution, but to enact legislation to further the content-neutral governmental interests of the City, to wit, the controlling of secondary effects of sexually oriented businesses.

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

1. That Chapter 20, Sexually Oriented Businesses, and sections 20-1 through 20-42, of the Code of Ordinances, City of Waco, Texas, are hereby amended to read as follows:

Chapter 20 SEXUALLY ORIENTED BUSINESSES

- Sec. 20-1. Purpose; findings and rationale.
- Sec. 20-2. Definitions.
- Sec. 20-3. License required.
- Sec. 20-4. Issuance of license.
- Sec. 20-5. Fees.
- Sec. 20-6. Inspection.
- Sec. 20-7. Expiration and renewal of license.
- Sec. 20-8. Suspension.
- Sec. 20-9. Revocation.
- Sec. 20-10. Hearing; license denial, suspension, revocation; appeal.
- Sec. 20-11. Transfer of license.
- Sec. 20-12. Hours of operation.
- Sec. 20-13. Regulations pertaining to exhibition of sexually explicit films on premises.
- Sec. 20-14. Loitering, exterior lighting and monitoring, and interior lighting requirements.
- Sec. 20-15. Penalties and enforcement.
- Sec. 20-16. Applicability of chapter to existing businesses.
- Sec. 20-17. Prohibited conduct.
- Sec. 20-18. Maintenance of employee records.**
- Sec. 20-19. Scienter required to prove violation or business licensee liability.
- Sec. 20-20. Severability.
- Sec. 20-21. Conflicting code provisions repealed.
- Sec. 20-22. Effective date.
- Secs. 20-23—20-42. Reserved.

Sec. 20-1. Purpose; findings and rationale.

- (a) *Purpose.* It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this chapter to condone or legitimize the distribution of obscene material.

- (b) *Findings and Rationale.* Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the City Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *N.Y. State Liquor Authority v. Bellanca*, 452 U.S. 714 (1981); *Sewell v. Georgia*, 435 U.S. 982 (1978); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *City of Dallas v. Stanglin*, 490 U.S. 19 (1989); and

H&A Land Corp. v. City of Kennedale, 480 F.3d 336 (5th Cir. 2007); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006); *N.W. Enters. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *BGHA, LLC v. City of Universal City*, 210 F. Supp. 2d 821 (W.D. Tex. 2002), *aff'd* 340 F.3d 295 (5th Cir. 2003); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Woodall v. City of El Paso*, 49 F.3d 1120 (5th Cir. 1995); *J&B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362 (5th Cir. 1998); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988); *TK's Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994); *JSLG, Inc. v. City of Waco*, 504 Fed. Appx. 312 (5th Cir. 2012); *JSLG, Inc. v. City of Waco*, No. 6:11-cv-131, Doc. 37 (W.D. Tex. Sept. 26, 2011); *Foster v. City of El Paso*, 396 S.W.3d 244 (Tex. Ct. App.–El Paso 2013); *E.B.S. Enterprises, Inc. v. City of El Paso*, 347 S.W.3d 404 (Tex. Ct. App.–El Paso 2011); *Schleuter v. City of Fort Worth*, 947 S.W.2d 920 (Tex. Ct. App.–Fort Worth 1997); *Robinson v. City of Longview*, 936 S.W.2d 413 (Tex. Ct. App.–Tyler 1996); *Woodall v. State*, 336 S.W.3d 634 (Tex. Crim. App. 2011); *Coutta v. State*, 385 S.W.3d 641 (Tex. Ct. App.–El Paso 2012); *Nabilco Inc. v. State*, 2013 WL 119680 (Tex. Ct. App.–Houston Jan. 10, 2013); *Imaginary Images, Inc. v. Evans*, 612 F.3d 736 (4th Cir. 2010); *Ocello v. Koster*, 354 S.W.3d 187 (Mo. 2011); *84 Video/Newsstand, Inc. v. Sartini*, 2011 WL 3904097 (6th Cir. Sept. 7, 2011); *Plaza Group Properties, LLC v. Spencer County Plan Commission*, 877 N.E.2d 877 (Ind. Ct. App. 2007); *Flanigan's Enters., Inc. v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010); *East Brooks Books, Inc. v. Shelby County*, 588 F.3d 360 (6th Cir. 2009); *Entm't Prods., Inc. v. Shelby County*, 588 F.3d 372 (6th Cir. 2009); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003); *Peek-a-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011); *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007); *Heideman v. South Salt Lake City*, 348 F.3d 1182 (10th Cir. 2003); *Jacksonville Property Rights Ass'n, Inc. v. City of Jacksonville*, 635 F.3d 1266 (11th Cir. 2011); *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007); *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003); *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009); *Bigg Wolf Discount Video Movie Sales, Inc. v. Montgomery County*, 256 F. Supp. 2d 385 (D. Md. 2003); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Spokane Arcade, Inc. v. City of Spokane*, 75 F.3d 663 (9th Cir. 1996); *DCR, Inc. v. Pierce County*, 964 P.2d 380 (Wash. Ct. App. 1998); *City of New York v. Hommes*, 724 N.E.2d 368 (N.Y. 1999); *Taylor v. State*, No.

01-01-00505-CR, 2002 WL 1722154 (Tex. App. July 25, 2002); *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Z.J. Gifts D-4, L.L.C. v. City of Littleton*, Civil Action No. 99-N-1696, Memorandum Decision and Order (D. Colo. March 31, 2001); *People ex rel. Deters v. The Lion's Den, Inc.*, Case No. 04-CH-26, Modified Permanent Injunction Order (Ill. Fourth Judicial Circuit, Effingham County, July 13, 2005); *Reliable Consultants, Inc. v. City of Kennedale*, No. 4:05-CV-166-A, Findings of Fact and Conclusions of Law (N.D. Tex. May 26, 2005);

and based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, "A comparative analysis of infractions in Texas alcohol establishments and adult entertainment clubs," Criminal Justice Studies, 2012; Report to the Texas Legislature, Sexually Oriented Businesses and Human Trafficking, March 2013; "Correlates of Current Transactional Sex among a Sample of Female Exotic Dancers in Baltimore, MD," Journal of Urban Health (2011); "Does the Presence of Sexually Oriented Businesses Relate to Increased Levels of Crime?" Crime & Delinquency (2012) (Louisville, KY); El Paso, Texas – 2008; Metropolis, Illinois – 2011-12; Manatee County, Florida – 2007; Hillsborough County, Florida – 2006; Clarksville, Indiana – 2009; Memphis, Tennessee – 2006; New Albany, Indiana – 2009; Louisville, Kentucky – 2004; Fulton County, GA – 2001; Chattanooga, Tennessee – 1999-2003; Jackson County, Missouri – 2008; Ft. Worth, Texas – 2004; Kennedale, Texas – 2005; Greensboro, North Carolina – 2003; Dallas, Texas – 1997; Houston, Texas – 1997, 1983; Phoenix, Arizona – 1995-98, 1979; Tucson, Arizona – 1990; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Grove, California – 1991; Los Angeles, California – 1977; Whittier, California – 1978; Oklahoma City, Oklahoma – 1986; New York, New York Times Square – 1994; the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota); Dallas, Texas – 2007; "Rural Hotspots: The Case of Adult Businesses," 19 Criminal Justice Policy Review 153 (2008); "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota; "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000; Sex Store Statistics and Articles; and Law Enforcement and Private Investigator Affidavits (Adult Cabarets in Forest Park, GA and Sandy Springs, GA),

the City Council finds:

- (1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (2) Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the City's rationale for this chapter,

exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the City's interest in regulating sexually oriented businesses extends to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the City. The City finds that the cases and documentation relied on in this chapter are reasonably believed to be relevant to said secondary effects.

The City hereby adopts and incorporates herein its stated findings and legislative record related to the adverse secondary effects of sexually oriented businesses, including the judicial opinions and reports related to such secondary effects.

Sec. 20-2. Definitions.

For purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

“Adult Bookstore or Adult Video Store” means a commercial establishment which, as one of its principal business activities, offers for sale or rental for any form of consideration any one or more of the following: books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, digital video discs, slides, or other visual representations which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas.” A “principal business activity” exists where the commercial establishment meets any one or more of the following criteria:

- (a) At least 35% of the establishment's displayed merchandise consists of said items, or
- (b) At least 35% of the retail value (defined as the price charged to customers) of the establishment's displayed merchandise consists of said items, or
- (c) At least 35% of the establishment's revenues derive from the sale or rental, for any form of consideration, of said items, or
- (d) The establishment maintains at least 35% of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in “floor space” maintained for the display, sale, or rental of said items); or
- (e) The establishment maintains at least five hundred square feet (500 sq. ft.) of its floor space for the display, sale, and/or rental of said items (aisles and walkways used to access said items, as well as cashier stations where said items are rented or sold, shall be included in “floor space” maintained for the display, sale, or rental of said items); or
- (f) The establishment regularly offers for sale or rental at least two thousand (2,000) of said items; or

- (g) The establishment maintains an “adult arcade,” which means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting “specified sexual activities” or “specified anatomical areas.”

“*Adult Cabaret*” means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment that regularly features live conduct characterized by nudity or semi-nudity. ~~No establishment shall avoid classification as an adult cabaret by offering or featuring nudity.~~

“*Adult Motion Picture Theater*” means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the display of “specified sexual activities” or “specified anatomical areas” are regularly shown to more than five persons for any form of consideration.

“*Characterized by*” means describing the essential character or quality of an item. As applied in this chapter, no business shall be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC-17 or R by the Motion Picture Association of America.

“*City*” means Waco, Texas.

“*Employ, Employee, and Employment*” describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, regardless of whether the person is denominated an employee, independent contractor, consultant, agent, lessee, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

“*Establish or Establishment*” means and includes any of the following:

- (a) The opening or commencement of any sexually oriented business as a new business;
- (b) The conversion of an existing business that is not a sexually oriented business to any sexually oriented business; or
- (c) The addition of any sexually oriented business to any other existing sexually oriented business.

“*Feature*” means to give special prominence to.

“*Floor Space*” means the floor area inside an establishment that is visible or accessible to patrons for any reason, excluding restrooms.

“*Hearing Examiner*” means an attorney, not an employee of the City, who is licensed to practice law in Texas, has experience in Texas municipal law, and is retained to serve as an independent tribunal to conduct hearings under this chapter.

“*Influential Interest*” means any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

“*Licensee*” means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. ~~In the case of an “employee,” it shall mean the person in whose name the sexually oriented business employee license has been issued.~~

“*Nude or Nudity*” means the showing of the human male or female genitals, pubic area, vulva, or anus with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

“*Operator*” means any person ~~on the premises of a sexually oriented business~~ who manages, supervises, or controls the sexually oriented business or a portion thereof. A person may be found to be an operator regardless of whether such person is an owner, part owner, or licensee of the business.

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

“*Premises*” means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.

“*Regional Shopping Mall (Enclosed)*” means a group of retail and other commercial establishments that is planned, developed, and managed as a single property, with on-site parking provided around the perimeter of the shopping center, and that is generally at least forty acres in size and flanked by two or more large “anchor” stores, such as department stores. The common walkway or “mall” is enclosed, climate-controlled and lighted, usually with an inward orientation of the stores facing the walkway.

“*Regularly*” means the consistent and repeated doing of an act on an ongoing basis.

“*Semi-Nude or Semi-Nudity*” means the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the

showing of the male or female buttocks. This definition shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard, or similar wearing apparel provided the areola is not exposed in whole or in part.

“*Semi-Nude Model Studio or Nude Model Studio*” means a place where persons regularly appear in a state of nudity or semi-nudity, as applicable, for money or any form of consideration in order to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons. This definition does not apply to any place where persons appearing in a state of nudity or semi-nudity did so in a class operated:

- (a) By a college, junior college, or university supported entirely or partly by taxation;
- (b) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (c) In a structure:
 - (1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude 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.

“*Sexual Device*” means any three (3) dimensional object designed for stimulation of the male or female human genitals, anus, buttocks, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices commonly known as dildos, vibrators, penis pumps, cock rings, anal beads, butt plugs, nipple clamps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy.

“*Sex Paraphernalia Store*” means a commercial establishment that regularly features sexual devices. This definition shall not be construed to include any:

- (a) pharmacy, drug store, medical clinic, or any establishment or entity primarily dedicated to providing medical or healthcare products or services; or
- (b) any establishment located within an enclosed regional shopping mall.

“*Sexually Oriented Business*” means an “adult bookstore or adult video store,” an “adult cabaret,” an “adult motion picture theater,” a “semi-nude model studio or nude model studio,” or a “sex paraphernalia store.”

“*Specified Anatomical Areas*” means and includes:

- (a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and
- (b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“*Specified Criminal Activity*” means any of the following specified crimes for which less than five years has elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date:

- (a) Prostitution; promotion of prostitution; aggravated promotion of prostitution; compelling prostitution; obscenity; sale, distribution or display of harmful material to minor; sexual performance by a child; employment harmful to children; possession or promotion of child pornography; or electronic transmission of certain visual material depicting minor, as described in V.T.C.A., Penal Code ch. 43;
- (b) Public lewdness; indecent exposure; or indecency with a child; as described in V.T.C.A., Penal Code ch. 21;
- (c) Sexual assault or aggravated sexual assault, as described in V.T.C.A., Penal Code ch. 22;
- (d) Prohibited sexual conduct; enticing a child; or harboring runaway child, as described in V.T.C.A., Penal Code ch. 25;
- (e) Trafficking of persons, as described in V.T.C.A., Penal Code ch. 20A;
- (f) Any attempt, solicitation, or conspiracy to commit one of the foregoing offenses; or
- (g) Any offense in another jurisdiction that, had the predicate act(s) been committed in Texas, would have constituted any of the foregoing offenses.

“*Specified Sexual Activity*” means any of the following:

- (a) intercourse, oral copulation, masturbation or sodomy; or
- (b) excretory functions as a part of or in connection with any of the activities described in (a) above.

“*Transfer of Ownership or Control*” of a sexually oriented business means any of the following:

- (a) The sale, lease, or sublease of the business;
- (b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

- (c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

“*Viewing Room*” means the room, booth, or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, or other video reproduction.

Sec. 20-3. License required.

- (a) *Sexually Oriented Business License.* It shall be unlawful for any person to operate a sexually oriented business in the City without a valid sexually oriented business license.

~~(b) *Employee License.* It shall be unlawful for any person to be an “employee,” as defined in this chapter, of a sexually oriented business in the City without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license. It shall be unlawful for a sexually oriented business to allow an unlicensed “employee,” as defined in this chapter, to work on the premises of the sexually oriented business.~~

~~(e)~~(b) *Application.* An applicant for a sexually oriented business license ~~or a sexually oriented business employee license~~ shall file in person at the office of the building official a completed application made on a form provided by the building official. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection ~~(d)~~ (c) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection ~~(e)~~ (b), accompanied by the appropriate licensing fee:

- (1) The applicant’s full legal name and any other names used by the applicant in the preceding five (5) years.
- (2) Current business address or another mailing address for the applicant.
- (3) Written proof of age, in the form of a driver’s license, a picture identification document containing the applicant’s date of birth issued by a governmental agency, or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
- (4) ~~If the application is for a sexually oriented business license, t~~The business name, location, legal description, mailing address and phone number of the sexually oriented business.

- (5) ~~If the application is for a sexually oriented business license, t~~The name and business address of the statutory agent or other agent authorized to receive service of process.
- (6) A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this chapter, and if so, each specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
- (7) A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
- (i) been declared by a court of law to be a nuisance; or
 - (ii) been subject to a court order of closure.
- (8) An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and a sketch or diagram showing the configuration of the premises, including a statement of total floor area occupied by the business and a statement of floor area visible or accessible to patrons for any reason, excluding restrooms. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with the stage, booth, and/or room configuration requirements of this chapter shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable regulations. The building official may waive the requirements of this subsection (8) for a renewal application if the applicant adopts a legal description and a sketch or diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

The information provided pursuant to this subsection ~~(e)~~ (b) shall be supplemented in writing by certified mail, return receipt requested, to the building official within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

~~(d)(c) Signature. A person who seeks a sexually oriented business employee license under this section shall sign the application for a license.~~ If a person who seeks a sexually oriented business license under this section is an individual, he shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this chapter and each applicant shall be considered a licensee if a license is granted.

~~(e)~~(d) The information provided by an applicant in connection with an application for, or issuance of, a license under this chapter shall be maintained by the office of the building official on a confidential basis, and such information may be disclosed only as may be required, and only to the extent required, by governing law or court order. Any information protected by the right to privacy as recognized by state or federal statutory or case law shall be redacted prior to any required disclosure.

Sec. 20-4. Issuance of license.

- (a) *Sexually Oriented Business License.* Upon the filing of a completed application for a sexually oriented business license, the building official shall, within four business hours, issue a Temporary License to the applicant if the completed application is from a preexisting sexually oriented business that is lawfully operating in the City and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within thirty (30) days of the filing of a completed sexually oriented business license application, the building official shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The building official shall issue a license unless:
- (1) An applicant is less than eighteen (18) years of age.
 - (2) An applicant has failed to provide information required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.
 - (3) The license application fee required by this chapter has not been paid.
 - (4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this chapter;
 - (5) The sexually oriented business, as defined herein, is not in compliance with the locational requirements of Chapter 28 or any part of the ~~Waco Code~~ Code of Ordinances of the City of Waco. Notwithstanding the foregoing, this ground shall not be cited to deny a license to a business operating at a location that does not comply with said requirements, if that business:
 - (i) prior to January 1, 2014, was lawfully operating a business that did not qualify as a “sexually oriented business” as that term was then defined in the ~~Waco Code~~ Code of Ordinances of the City of Waco, but that did operate as a “sexually oriented business” as that term is currently defined in Section 20-2;
 - (ii) timely files, in 2014, a completed application for a license under this chapter;
 - (iii) lawfully operates a sexually oriented business at the same location continuously thereafter; and

(iv) there is no change, after the date this subsection is adopted, in the individual or individuals who own a thirty percent (30%) or more financial interest in the business.

(6) Any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

(i) been declared by a court of law to be a nuisance; or

(ii) been subject to an court order of closure.

(7) An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.

~~(b) *Employee License.* Upon the filing of a completed application for a sexually oriented business employee license, the building official shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. At that time, the building official or his or her designee may take a digital photograph of the head and shoulders of the applicant for inclusion on any annual sexually oriented business employee license issued to the applicant. The Temporary License shall expire upon the final decision of the City to deny or grant an annual license. Within thirty (30) days of the filing of a completed sexually oriented business employee license application, the building official shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The building official shall issue a license unless:~~

~~(1) The applicant is less than eighteen (18) years of age.~~

~~(2) The applicant has failed to provide information as required by this chapter for issuance of a license or has falsely answered a question or request for information on the application form.~~

~~(3) The license application fee required by this chapter has not been paid.~~

~~(4) Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):~~

~~(i) been declared by a court of law to be a nuisance; or~~

~~(ii) been subject to a order of closure.~~

~~(5) The applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this chapter.~~

~~(e)(b) Contents of License. The sexually oriented business license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee, and the expiration date. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.~~

Sec. 20-5. Fees.

The initial license and annual renewal fees for sexually oriented business licenses ~~and sexually oriented business employee licenses~~ shall be as follows: three hundred fifty dollars (\$350) for the initial fee for a sexually oriented business license and one hundred fifty dollars (\$150) for annual renewal. ~~fifty dollars (\$50) for the initial sexually oriented business employee license and twenty five dollars (\$25) for annual renewal.~~

Sec. 20-6. Inspection.

Sexually oriented businesses and sexually oriented business employees shall permit the building official, fire marshal, police chief, and their agents or designees to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this chapter, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be construed by the City to authorize only reasonable inspections of the licensed premises pursuant to this chapter.

Sec. 20-7. Expiration and renewal of license.

- (a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this chapter.
- (b) Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license, and when made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

Sec. 20-8. Suspension.

- (a) The building official shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly or recklessly violated this chapter or has knowingly or recklessly allowed an employee or any other person to violate this chapter.
- ~~(b) The building official shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed thirty (30) days if the employee licensee has knowingly or recklessly violated this chapter.~~

Sec. 20-9. Revocation.

- (a) The building official shall issue a written notice of intent to revoke a sexually oriented business license ~~or a sexually oriented business employee license, as applicable,~~ if the licensee knowingly or recklessly violates this chapter or has knowingly or recklessly allowed an employee or any other person to violate this chapter and a suspension of the licensee's license has become effective within the previous twelve-month (12-mo.) period.
- (b) The building official shall issue a written notice of intent to revoke a sexually oriented business license ~~or a sexually oriented business employee license, as applicable,~~ if:
 - (1) The licensee has knowingly given false information in the application for the sexually oriented business license ~~or the sexually oriented business employee license;~~
 - (2) The licensee has knowingly or recklessly engaged in or allowed unlawful possession, use, or sale of controlled substances on the premises of the sexually oriented business;
 - (3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;
 - (4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked;
 - (5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity or specified criminal activity to occur in or on the premises of the sexually oriented business;
 - (6) The licensee has knowingly or recklessly allowed a person under the age of twenty-one (21) years to consume alcohol on the premises of the sexually oriented business;
 - (7) The licensee has knowingly or recklessly allowed a person under the age of eighteen (18) years to appear in a semi-nude condition or in a state of nudity on the premises of the sexually oriented business; or

- (8) The licensee has knowingly or recklessly allowed three (3) or more violations of this chapter within a twelve-month period.
- (c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- (d) When, after the notice and hearing procedure described in this chapter, the City revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license ~~or sexually oriented business employee license~~ for one (1) year from the date revocation becomes effective.

Sec. 20-10. Hearing; license denial, suspension, revocation; appeal.

- (a) When the building official issues a written notice of intent to deny, suspend, or revoke a license, the building official shall immediately send such notice, which shall include the specific grounds under this chapter for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the building official for the respondent. The notice shall also set forth the following: The respondent shall have ten (10) days after the delivery of the written notice to submit, at the office of the building official, a written request for a hearing before a Hearing Examiner. If the respondent does not request a hearing within said ten (10) days, the building official's written notice shall become a final denial, suspension, or revocation, as the case may be, on the thirtieth (30th) day after it is issued.
- (b) If the respondent does make a written request for a hearing within said ten (10) days, then the building official shall, within ten (10) days after the submission of the request, send a notice to the respondent indicating the date, time, and place of the hearing. The hearing shall be conducted by the Hearing Examiner not less than ten (10) days nor more than twenty (20) days after the date that the hearing notice is issued. The City shall provide for the hearing to be transcribed.
- (c) At the hearing, the respondent shall have the opportunity to present all relevant arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the building official's witnesses. The building official shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The Hearing Examiner shall issue a final written decision, including specific reasons for the decision pursuant to this chapter, to the respondent within five (5) days after the hearing.
- (d) If the decision is to deny, suspend, or revoke the license, the written decision shall advise the respondent of the right to appeal such decision to a court of competent jurisdiction, and

the decision shall not become effective until the thirtieth (30th) day after it is rendered. If the Hearing Examiner's decision finds that no grounds exist for denial, suspension, or revocation of the license, the Hearing Examiner shall, contemporaneously with the issuance of the decision, order the building official to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the building official shall contemporaneously therewith issue the license to the applicant.

- (e) If any court action challenging a licensing decision is initiated, the City shall consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings.

Sec. 20-11. Transfer of license.

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

Sec. 20-12. Hours of operation.

No sexually oriented business shall be or remain open for business between 2:00 a.m. and 6:00 a.m. on any day.

Sec. 20-13. Regulations pertaining to exhibition of sexually explicit films on premises.

- (a) A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.
 - (1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing rooms, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, or other video reproductions. The diagram shall also designate the place at which the license 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 shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The building official 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) It shall be the duty of the operator, and of any employees present on the premises, 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.
- (3) The interior 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 (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
- (4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no specified sexual activity occurs in or on the licensed premises.
- (5) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:
 - (i) That the occupancy of viewing rooms less than 150 square feet is limited to one person.
 - (ii) That specified sexual activity on the premises is prohibited.
 - (iii) That the making of openings between viewing rooms is prohibited.
 - (iv) That violators will be required to leave the premises.
 - (v) That violations of these regulations are unlawful.
- (6) It shall be the duty of the operator to enforce the regulations articulated in (5)(i) though (iv) above.
- (7) The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator'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, excluding restrooms, from at least one of the operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

- (8) It shall be the duty of the operator to ensure that no porous materials are used for any wall, floor, or seat in any booth or viewing room.
- (b) It shall be unlawful for a person having a duty under subsections (a)(1) through (a)(8) to knowingly or recklessly fail to fulfill that duty.
- (c) No patron shall knowingly or recklessly enter or remain in a viewing room less than 150 square feet in area that is occupied by any other patron.
- (d) No patron shall knowingly or recklessly be or remain within one foot of any other patron while in a viewing room that is 150 square feet or larger in area.
- (e) No person shall knowingly or recklessly make any hole or opening between viewing rooms.

Sec. 20-14. Loitering, exterior lighting and monitoring, and interior lighting requirements.

- (a) It shall be the duty of the operator of a sexually oriented business to: (i) ensure that at least two conspicuous signs stating that no loitering is permitted on the premises are posted on the premises; (ii) designate one or more employees to monitor the activities of persons on the premises by visually inspecting the premises at least once every ninety (90) minutes or inspecting the premises by use of video cameras and monitors; and (iii) provide lighting to the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. Said lighting shall be of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business, the operator shall record the video footage, and the operator shall maintain the video footage for thirty (30) days after it is recorded. The monitors shall be installed within an operator's station.
- (b) It shall be the duty of the operator of a sexually oriented business to ensure that the interior premises shall be equipped with overhead lighting of sufficient intensity to illuminate every place to which customers are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level and the illumination must be maintained at all times that any customer is present in or on the premises.
- (c) No sexually oriented business shall erect a fence, wall, or similar barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way, except that a sexually oriented business may erect a fence, wall, or similar barrier within five (5) feet surrounding a dumpster or dumpsters that are placed in a permanent location and set on appropriately sized concrete pads as specified by the city solid waste services department to prevent the dumpster or dumpsters from being visible from a public right of way.
- (d) It shall be unlawful for a person having a duty under this section to knowingly or recklessly fail to fulfill that duty.

Sec. 20-15. Penalties and enforcement.

- (a) A person who violates any provision of this chapter shall be guilty of a Class A misdemeanor. Each day a violation is committed, or permitted to continue, shall constitute a separate offense.
- (b) The City's legal counsel is hereby authorized to institute civil proceedings necessary for the enforcement of this chapter to enjoin, prosecute, restrain, or correct violations hereof. Such proceedings shall be brought in the name of the City, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this chapter, or any of the laws in force in the City or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.
- (c) Any premises, building, dwelling, or other structure in which a sexually oriented business is operated or maintained in violation of this chapter shall constitute a nuisance and shall be subject to civil abatement proceedings in a court of competent jurisdiction.

Sec. 20-16. Applicability of chapter to existing businesses.

- (a) *Licensing Requirements.* All sexually oriented businesses lawfully operating in the City in compliance with all state and local laws prior to the effective date of this chapter, ~~and all sexually oriented business employees working in the City prior to the effective date of this chapter,~~ are hereby granted a *De Facto* Temporary License to continue operation ~~or employment~~ for a period of ninety (90) days following the effective date of this chapter. By the end of said ninety (90) days, all sexually oriented businesses ~~and sexually oriented business employees~~ must apply for a license under this chapter.
- (b) *Interior Configuration Requirements.* Any preexisting sexually oriented business that is required to, but does not, have interior configurations or stages that meet at least the minimum requirements of section 20-13 and subsection 20-17(b) shall have ninety (90) days from the effective date of this chapter to conform its premises to said requirements. ~~During said ninety (90) days, any employee who appears within view of any patron in a semi-nude condition shall nevertheless remain, while semi-nude, at least six (6) feet from all patrons.~~
- (c) *Other Requirements.* Except as provided for in subsections 20-16(a) and (b), sexually oriented businesses shall comply with this chapter on the date that it takes effect.

Sec. 20-17. Prohibited conduct.

- (a) No patron, employee, or any other person shall knowingly or intentionally, in a sexually oriented business, ~~appear in a state of nudity or~~ engage in a specified sexual activity.
- (b) No person shall knowingly or intentionally, in a sexually oriented business, appear in a nude or semi-nude condition unless the person is an employee who, while nude or semi-

nude, remains ~~at least six (6) feet from all patrons and~~ on a stage at least twelve (12) inches from the floor in a room of at least six hundred (600) square feet.

- (c) No employee who appears nude or semi-nude in a sexually oriented business shall knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business. No customer shall knowingly or intentionally touch such an employee or the clothing of such an employee on the premises of a sexually oriented business.
- (d) No person shall knowingly or recklessly allow a person under the age of eighteen (18) years to be or remain on the premises of a sexually oriented business.
- (e) No operator of a sexually oriented business shall knowingly or recklessly allow a room in the sexually oriented business to be simultaneously occupied by any patron and any employee who is nude or semi-nude or who appears nude or semi-nude on the premises of the sexually oriented business, unless an operator of the sexually oriented business is present in the same room and able to view said employee(s) and patron(s) in the room. The view required by this subsection shall be by direct line of sight, and shall not be obstructed by any door, wall, partition, curtain, or similar object.
- (f) No operator or licensee of a sexually oriented business shall violate the regulations in this section or knowingly or recklessly allow an employee or any other person to violate the regulations in this section.
- (g) A sign in a form to be prescribed by the building official, and summarizing the provisions of subsections (a), (b), (c), and (d), shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry. No person shall cover, obstruct, or obscure said sign.

Sec. 20-18. Maintenance of employee records.

(a) An operator commits an offense if he fails to maintain on the premises of the sexually oriented business a file that contains, for each employee, as defined in this chapter, the information required by this section.

(b) The file must contain the following information for each employee:

- (1) Full legal name;
- (2) All aliases or stage names;
- (3) Date of birth;
- (4) Hair color, eye color, height, and weight;
- (5) Current business or mailing address;

- (6) Legible copy of a valid driver's license or other government-issued personal identification card containing the employee's photograph and date of birth;
 - (7) Date of commencement of employment with the sexually oriented business;
 - (8) Original color photograph with a full face view that accurately depicts the employee's appearance at the time the employee commenced employment with the sexually oriented business; and
 - (9) The printed results of a criminal history conviction search of the employee conducted through the Texas Department of Public Safety's Computerized Criminal History (CCH) System (<https://records.txdps.state.tx.us/dpswebsite/criminalhistory/> or other official Texas Department of Public Safety website) within the preceding 12 months.
- (c) An operator commits an offense if he fails, upon request by the building official, fire marshal, police chief, or their agents or designees, to make available for inspection all records and information required to be maintained by this section.
- (d) All records required to be maintained by this section must be retained at the sexually oriented business for at least 90 days following the date of any voluntary or involuntary termination of the employee's employment with the sexually oriented business.

Sec. 20-~~189~~. Scienter required to prove violation or business licensee liability.

This chapter does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a reckless mental state is necessary to establish a violation of a provision of this chapter. Notwithstanding anything to the contrary, for the purposes of this chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this chapter, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

Sec. 20-~~1920~~. Severability.

This chapter and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed

independently of such section or provision so known to be invalid. Should any procedural aspect of this chapter be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this chapter.

Sec. 20-~~2021~~. Conflicting code provisions repealed.

Any provision(s) in the Code of Ordinances, City of Waco, Texas specifically in conflict with any provision in this chapter is hereby deemed inoperative and repealed.

Sec. 20-~~2122~~. - Effective date.

This chapter shall become effective on upon its passage as provided by the City Charter of the City of Waco.

Secs. 20-~~2223~~—20-42. Reserved.

2. That nothing in this ordinance shall be constructed to affect any suit or proceeding pending in any court, or liability incurred, or any cause or causes of action acquired or existing, under any act or prior ordinance; nor shall any legal remedy of any character be lost, impaired, or affected by this ordinance.

3. That it is the intention of the City Council and is hereby ordained that the provisions of this ordinance shall become and be a part of the Code of Ordinances of the City of Waco, Texas, and that sections of this ordinance may be renumbered or relettered to accomplish such intention.

4. That it is hereby officially found and determined that the meeting at which this ordinance is passed is open to the public and that public notice of the time, place and purpose of said meeting was given as required by law.

PASSED AND APPROVED:

First Reading:

Second Reading:

Malcolm Duncan Jr., Mayor
City of Waco, Texas

ATTEST:

Patricia W. Ervin, City Secretary

APPROVED AS TO FORM & LEGALITY:

DRAFT