

CITY OF NOLANVILLE

ORDINANCE NO. 3003-07-20-2009

SEXUALLY ORIENTED BUSINESSES

AN ORDINANCE OF THE CITY OF NOLANVILLE, TEXAS, RESTRICTING THE SITING OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR THE FOLLOWING: POPULAR NAME, LEGISLATIVE FINDINGS; SCOPE; DEFINITIONS; LICENSING REQUIREMENTS; LICENSING FEES; LOCATION AND SIGNAGE; ENFORCEMENT, INCLUDING CRIMINAL FINES NOT TO EXCEED \$2,000.00 PER VIOLATION; DEFENSES TO PROSECUTION; REPEALER; SEVERABILITY; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING

WHEREAS, there is the potential for the location of sexually oriented businesses in any community; and

WHEREAS, such businesses require special supervision for the public safety and welfare of the patrons of such businesses as well as the citizens of the City of Nolanville; and

WHEREAS, the Texas Legislature has determined that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity; and

WHEREAS, the City Council acknowledges the existence of convincing documented evidence that sexually oriented businesses have a deleterious effect on both surrounding businesses and residential areas, causing increased crime and reduced property values;¹ and

¹ See Studies of the cities of Austin (May 19, 1986); Amarillo (September 12, 1977); Beaumont (September 14, 1982); and Houston, Texas (1982-83); and to the cities of Indianapolis, Indiana (February, 1984); Los Angeles, California (June, 1977); Oklahoma City, Oklahoma (March 3, 1986); Phoenix, Arizona (May 25, 1979); and Seattle, Washington (March 24, 1989), are herein incorporated for all purposes as if printed verbatim.

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

WHEREAS, the City Council of the City of Nolanville desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; preserve the property values and character of surrounding neighborhoods; and deter the spread of urban blight; and

WHEREAS, licensing is a legitimate and reasonable means of creating 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 activities or solicitation; and

WHEREAS, pursuant to Chapter 211 of the Texas Local Government Code restricting the location of sexually oriented businesses within the City is a reasonable and legitimate exercise of the City's zoning authority; and

WHEREAS, pursuant to Chapter 243 of the Texas Local Government Code the City Council has authority to regulate sexually oriented businesses to promote the public, health, safety and welfare; and

WHEREAS, it is not the intent of the City Council to suppress any speech activities protected by the First Amendment of the United States Constitution, but to enact a content-neutral Ordinance that addresses the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the City Council to condone or legitimize the promotion of obscene materials; and

WHEREAS, the City Council seeks to regulate Sexually Oriented Businesses as part of the Board's comprehensive efforts to protect and preserve the scenic and historic nature of the City in a manner that fosters a family atmosphere conducive to City residents and tourists; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of Nolanville:

1. FINDINGS OF FACT

The foregoing recitals are incorporated into this Ordinance by reference as findings of fact as if expressly set forth herein.

2. AMENDMENT

Ordinance no. 3003 is amended in its entirety to read in accordance with *Exhibit A*, which is attached hereto and incorporated into this Ordinance for all intents and purposes.

3. REPEALER

All ordinances, or parts thereof, that are in conflict or inconsistent with any provision of this Ordinance are hereby repealed to the extent of such conflict, and the provisions of this Ordinance shall be and remain controlling as to the matters regulated, herein.

4. SEVERABILITY

Should any of the clauses, sentences, paragraphs, sections or parts of this Ordinance be deemed invalid, unconstitutional, or unenforceable by a court of law or administrative agency with jurisdiction over the matter, such action shall not be construed to affect any other valid portion of this Ordinance.

5. EFFECTIVE DATE

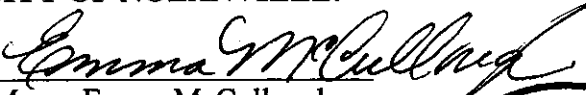
This Ordinance shall be effective immediately upon passage and publication.

6. PROPER NOTICE & MEETING

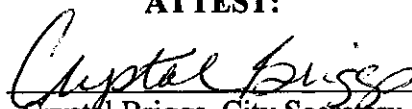
It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public, and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Texas Government Code, Chapter 551. Notice was also provided as required by Chapter 52 of the Texas Local Government Code.

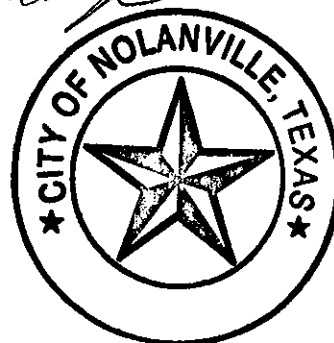
PASSED & APPROVED this, the 20th day of July, 2009, by a vote of 3 (ayes) to 0 (nays) to 1 (abstentions) of the City Council of Nolanville, Texas.

CITY OF NOLANVILLE:

by: 
Mayor Emma McCullough

ATTEST:


Crystal Briggs, City Secretary



APPROVED AS TO FORM:
Alan J. Bojorquez, City Attorney

GENERAL PROVISIONS

§ 3003.0 PURPOSE AND INTENT.

It is the purpose of this ordinance to regulate sexually oriented businesses in order to protect and promote the health, safety, and welfare by preventing the decline of residential and business neighborhoods and further by preventing the growth of criminal activity found to be associated with the unrestricted operation of certain sexually oriented businesses. The provisions of this ordinance have neither the purpose nor effect of imposing an unlawful limitation or restriction on the content of any protected speech, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny lawful access by the distributors and Exhibitors of sexually oriented entertainment to their intended market. This ordinance is to supersede all other sexually oriented business ordinances currently in effect.

§ 3003.1 DEFINITIONS.

The following words and terms shall have the meanings set forth herein.

ADULT BOOKSTORE or **ADULT VIDEO STORE.** A commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

(1) Books, magazines, periodicals, or other printed matter, or discs, cassettes, photographs, films, motion pictures, video cassettes or video representations, slides or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas."

(2) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities." Not included in this definition are pharmaceutical supplies.

ADULT CABARET. A commercial establishment which regularly features:

(1) Persons who appear in a state of nudity or partial nudity; 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."

ADULT LINGERIE STORE/MODELING STUDIO. A commercial establishment where live models exhibit lingerie intended for an adult audience.

ADULT LOUNGE. An adult cabaret which is permitted or licensed pursuant to the Alcoholic Beverage Code where alcoholic beverages may be served, sold or consumed.

ADULT MOTEL. A hotel, motel, or similar commercial establishment which offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides, discs or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas," and/or has a sign visible from the public right-of-way which advertises the availability of this adult type of entertainment.

ADULT MOVIE THEATER OR ADULT VIDEO THEATER. A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, discs or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical activities" are regularly shown to groups of six or more people.

ADULT THEATER. A theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity, or live performances which are characterized by the exposure of "specified anatomical areas" or "specified sexual activities."

ADULT VIDEO ARCADE. Any commercial establishment to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion pictures, projectors, or other image-producing devices, to include computer and electronic games, 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."

CHURCH, OR REGULAR PLACE OF WORSHIP. Any structure used principally as a place wherein persons regularly assemble for religious worship including, but not limited to, sanctuaries, chapels, cathedrals, churches, synagogues, and on-site buildings adjacent thereto, such as parsonages, convents, fellowship halls, Sunday Schools and rectories.

BUILDING OFFICAL. The individual lawfully acting as the Building Official of the city pursuant to the City Charter, or his or her designated representative.

CONTROLLED SUBSTANCE. Any substance defined as a controlled substance by the Texas Controlled Substance Act, as then amended.

DAY CARE. A facility which provides care and/or supervision for adults or children on a day to day basis.

DRESSING ROOM. An enclosed area designed to allow a single person to try on items of apparel for the purpose of determining suitability.

ENTERTAINER. Any employee of a sexually-oriented business enterprise who performs or engages in entertainment.

ENTERTAINMENT. Any act or performance, such as a play, skit, reading, revue, fashion show, modeling performance, pantomime, role playing, encounter session, scene, song, dance, musical rendition or striptease that involves the display or exposure of specified sexual activities or specified anatomical areas. The term **ENTERTAINMENT** shall include any employee or entertainer exposing any specified sexual activities whatever in the presence of one or more customers.

ESCORT. A person who accompanies an individual for social purposes for any consideration.

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

ESTABLISHMENT. Any of the following:

- (1) The opening or commencement of any sexually oriented business as a new business;
- (2) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
- (3) The addition of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

GAMBLING. Shall have the meaning set forth at Tex. Penal Code § 47.02, as then amended.

INTENDED OPERATOR. The person principally in charge of the day to day operation of the establishment.

KNOWINGLY. Shall have the meaning set forth at Tex. Penal Code § 6.03, as then amended.

LICENSEE. A person in whose name a license to operate a sexually oriented business has been issued pursuant to the terms of this chapter.

MODELING/NUDE MODELING STUDIO. A commercial establishment where a person who appears in a state of nudity or displays “specified anatomical areas” is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

MONITOR. A television or other video screen, used as part of an electronic surveillance system, which displays images transmitted by electronic video cameras to such television or video screen.

NUDITY/PARTIAL NUDITY. Appearing in a state of dress which displays one or more “specified anatomical areas.”

OPERATE OR CAUSES TO BE OPERATED. To cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner or license holder of the establishment. A person who, while on the premises of sexually oriented business, does any one or more of the following shall be deemed to be operating or conducting such a business:

(1) Operates a cash register, cash drawer, or other depository where checks, cash funds or records of credit card or other credit transactions generated in connection with the activities of the business are kept; or

(2) Displays or takes orders from any customer for any merchandise, goods, entertainment or other service offered in connection with the activities of the business or

(3) Delivers or provides to any customer any merchandise, goods, entertainment or other services offered in connection with the activities of the business; or

(4) Acts as a door attendant to regulate entry of customers or other persons into the business premises; or

(5) Supervises or manages other persons in the performance of any of the foregoing activities.

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

PUBLIC. References to the public and members of the public shall mean and include all persons other than the owners, operators, agents and employees of a given sexually oriented business.

RENT. The act of permitting space to be occupied for any form of consideration.

RESIDENTIAL DISTRICT. One-Family Dwelling District (R-1); Two-Family Dwelling District (R-2); Multi-Family Dwelling District (R-3); One-Family Dwelling District - Mobile Home (R1-M); Mobile Home Park District (R-MH); or Townhouse - Single Family Dwelling District (RT-1).

RESIDENTIAL USE. One-Family Dwelling District (R-1); Two-Family Dwelling District (R-2); Multi-Family Dwelling District (R-3); One-Family Dwelling District - Mobile Home (R1-M); Mobile Home Park District (R-MH); or Townhouse - Single Family Dwelling District (RT-1) as defined in the City of Nolanville's Zoning Ordinance, Ordinance 6051-A, as amended.

RESTROOMS. Shall be synonymous with toilet facilities as defined in Tex. Health & Safety Code Chapter 341. No sexually oriented business activities shall be permitted in any such facilities.

SEXUAL ENCOUNTER CENTER. A business or commercial enterprise that, as one of its primary 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 partial nudity.

SEXUALLY ORIENTED BUSINESS.

(1) An adult bookstore, adult video arcade, adult bookstore or video store, adult cabaret, adult lingerie store/modeling studio, adult lounge, adult motel, adult movie theater, adult video theater, adult theater, escort agency, modeling studio, nude modeling studio, sexual encounter center, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting or exhibiting of devices or any other items, intended to provide sexual stimulation or sexual gratification to the customer.

(2) The following are exempted from regulation under this chapter:

(a) A business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed barber or any other state licensed/regulated professional engaged in performing functions authorized under the license held; or

(b) A business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.

SIGN. Any writing, name, number, figure, character, outline, emblem, graphic, window etching, stained or painted glass, mark, logo, mural, symbol, spectacle, display, delineation, announcement, advertising, billboard, signboard, flag, banner, pennant, bunting, device, appliance, structure erected for the purposes of supporting a sign, or any other thing of similar nature designed to attract attention outdoors, in or on any face or wall, window, awning, store front of any building, or on any pole or other form of support or structure and shall include all parts, portions, units, and materials composing the same, together with the frame, background, and support of anchorage thereof.

SPECIFIED ANATOMICAL AREAS. Specified anatomical areas are:

(1) Less than completely and opaquely covered: (a) human genitals, (b) human buttock or anus, or (c) female breasts below a point immediately above the top of the areola;

(2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(3) Any combination of the above.

Nothing in this definition should be construed to authorize or permit any person or entity to commit an offense listed in § 3003.14, the commission of such offenses being expressly prohibited, nor shall this definition be construed to establish or define standards for acceptable conduct. Without limiting the generality of the foregoing, obscenity as defined by the Texas Penal Code is specifically prohibited.

SPECIFIED SEXUAL ACTIVITIES. Specified sexual activities are those activities which display:

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

(2) Acts of human masturbation, sexual intercourse or sodomy;

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

(4) Intrusion, however slight, of any object, any part of an animal's body, or any part of a person's body into the genital or anal openings of any person's body, or into the body of an animal;

(5) Cunnilingus, fellatio, anilingus, bestiality, or exhibition of excretory function;

(6) Flagellation, mutilation or torture for the purposes of sexual arousal or gratification; or

(7) Any combination of the above.

Nothing in this definition should be construed to authorize or permit any person or entity to commit an offense listed in § 3003.14, the commission of such offenses being expressly prohibited, nor shall this definition be construed to establish or define standards for acceptable conduct. Without limiting the generality of the foregoing, obscenity as defined by the Texas Penal Code is specifically prohibited.

SUB-RENT. The act by one who has rented a room of permitting the room to be occupied for any form of consideration.

SUBSTANTIAL ENLARGEMENT. The increase in floor area occupied by the business by more than 25%, in addition to the floor area that existed on June 21, 1994 or the date first licensed if the business was not operating on June 21, 1994.

TRANSFER OF OWNERSHIP OR CONTROL. 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 the transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

VIEWING ROOM. An area designed to permit one or more persons the opportunity to view or observe a dancer, model, or other entertainer in a "private" or semi-private environment.

LICENSING PROVISIONS

§ 3003.2 GENERALLY.

(A) License required.

(1) A person commits an offense if he/she operates, owns, or causes to be operated, within the territorial limits of Nolanville, a sexually oriented business without a valid license authorizing such operation.

(2) The fact that a person possesses a valid theater license, dance hall license, amusement device license, business license, certificate of occupancy, or other license or permit does not exempt him from the requirement of obtaining a sexually oriented business license. Any person who owns or operates a sexually oriented business shall comply with the requirements and provisions of this chapter and all other applicable ordinances of the city and laws of the state of Texas.

(B) An application for a license to operate a sexually oriented business at any address, building, structure or portion thereof containing an existing sexually oriented business will not be accepted.

(C) A license issued pursuant to this subchapter shall not be construed to authorize or permit any person or entity to commit an offense listed in § 3003.14, the commission of such offenses being expressly prohibited, nor shall such license be construed to establish or define standards for acceptable conduct. Without limiting the generality of the foregoing, obscenity as defined by the Texas Penal Code is specifically prohibited.

(D) Notice required.

(1) An applicant for a license under this chapter to operate a sexually oriented business in a location not previously licensed shall post an outdoor sign at the proposed business location. Such sign shall be prominently posted at the front of the premises and oriented so as to be readily visible to traffic on Veteran's Memorial Boulevard and on all area roads properly zoned for Sexually Oriented Business. The sign shall read as follows in plain black lettering at least two inches square on a white background:

"NOTICE: The person or entity named below intends to open a sexually oriented business on this premises. Comments may be submitted to the City of Nolanville Building Official at (254) 698-6335."

The foregoing notice shall be followed by the name and address of the applicant. The sign shall be maintained in the manner required by this section for a period of not less than 60 days immediately preceding the filing of an application to operate a sexually oriented business under this chapter.

(2) The sign must be between 1,000 and 5,000 square inches in size, must be written in English, and shall contain no wording or graphics except as specified in this section. In all other respects the sign shall comply with all applicable provisions of Chapter 151 of this Code.

(3) The applicant shall provide written notice to the City Manager/City Secretary when the sign required by this division has been erected, and no application to operate a sexually oriented business upon such premises shall be filed before the 60th day after such notice is given.

§ 3003.3 APPLICATION.

(A) An application for a license must be made on a form provided by the Building Official. The application shall not be processed until it is complete and contains:

(1) The name of the applicant and a statement as to whether the applicant is an individual, partnership, corporation or other specified legal entity;

(2) The name under which the business is to be operated and a description of the sexually oriented business to be conducted;

(3) The name, address and telephone number of each owner and operator;

(4) The street address and legal description of the parcel of land on which the business is to be located, and the telephone number of the enterprise;

(5) A detailed description of the business activities to be conducted on the premises,

(6) A written declaration, sworn to under oath by the applicant or its duly authorized agent, that the information contained in the application is true and correct; and

(7) If a person who wishes to operate a sexually oriented business is an individual, he/she must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, the application must have been signed by all persons who have a right to participate in the management and control of the business, including without limitation officers and directors of corporations, members and managers of limited liability companies, partners in partnerships, etc.

(B) The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be oriented to Veterans Memorial Boulevard and drawn to a designated scale, or drawn with marked dimensions on the interior of the premises to an accuracy of plus or minus six inches. The applicant shall sign a notarized statement attached to the diagram stating that the proposed plan for the sexually oriented business complies with the requirements set forth in this chapter. The applicant may submit a remodeling plan to scale for modification of the current structure. If the plan is acceptable and the license is approved, the license shall not be effective until the modification is completed and a certificate of occupancy issued. The diagram must show all interior walls and partitions, the locations of one or more manager stations and the locations of lighting fixtures. The diagram must clearly specify any areas in the premises to which members of the public will not be permitted access, and must designate the location where the license will be posted.

(C) The premises must be inspected and found to be in compliance with the law by the County Health Department, Fire Department, and Building Official. The failure of any such department or official to complete the necessary investigations or inquiries

within 45 days of the date the properly completed application is filed with the city shall result in the administrative approval of the application by that department or official, unless such failure is caused by an applicant or an applicant's agent.

§ 3003.4 APPROVAL OR DISAPPROVAL.

(A) The Building Official shall approve or disapprove the issuance of a license to an applicant within 45 days following the date on which the complete application is filed with the city. Failure of the Building Official to disapprove an application by the end of the forty-fifth day following the day on which the properly completed application is filed shall result in the administrative approval of such application, and the license shall promptly thereafter be issued. Such license shall nevertheless be subject to suspension or revocation as provided herein. Each applicant must be qualified under this section, and each applicant shall be considered the licensee if a license is granted.

(B) Approval must be granted unless one or more of the following is true:

- (1) Any applicant is under 18 years of age.
- (2) An applicant is overdue in payment of any taxes, fees, utilities, fines, court directed payments, assessments or interest to the city, or penalties assessed against the applicant or imposed upon the applicant in relation to a sexually oriented business.
- (3) An applicant has failed to provide information requested on the application form or has supplied false or misleading information in the application process.
- (4) An applicant has been convicted of a violation of a provision of this chapter within three years immediately preceding the filing of the application. The fact that a conviction is being appealed shall have no effect.
- (5) The premises to be used for the sexually oriented business have been disapproved by the County Health Department, Fire Department, or the Building Official.
- (6) The license fee required by this chapter has not been paid.
- (7) An applicant or the proposed establishment is in violation of or is not in compliance with any applicable section of this chapter.
- (8) The proposed business is otherwise prohibited by law.
- (9) The outdoor sign has not been posted or maintained as required by §3003.2(D) for a continuous period of at least 60 days immediately preceding the filing of the application or, without regard such posting, the applicant did not give the City Manager/City Secretary written notice as required by § 3003.2(D)(3).

(C) When the Building Official denies renewal of a license for false or misleading information, the applicant shall not be issued a license for one year from the date of denial. If the applicant has been convicted of a violation of this chapter, the applicant shall not be issued a license for three years from the date of conviction. If any other basis of denial for renewal of license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the denial became final and the applicant is otherwise entitled to receive a license under this section.

(D) The license, if granted, shall state on its face the name of the person(s) to whom it is granted, the expiration date, the address of the sexually oriented business, and the type of sexually oriented business for which it is issued.

§ 3003.5 FEES.

(A) The license fee for a sexually oriented business shall be in the same amount as established and published annually in the City Fee Schedule and shall be in addition to the City Business Registration License

(B) The license fees shall be charged for each license application filed and shall be paid at the time the application and diagram are submitted for processing.

§ 3003.6 LICENSE TO BE POSTED.

It shall be unlawful for any person to own, operate, conduct, or cause to be operated or conducted a sexually oriented business within the territorial limits of the city, unless the license required by this chapter is posted at or near the principal public entrance to the business in such a manner that it will be conspicuous to patrons who enter the premises.

§ 3003.7 EXPIRATION AND RENEWAL OF LICENSE.

(A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in § 3003.3. Applications for renewal should be made at least 45 days before the expiration date, and when made less than 45 days before the expiration date the expiration of the license will not be affected.

(B) The Building Official may waive the requirement that the diagram be submitted with renewal applications if the applicant certifies that the configuration of the premises has not been altered since the diagram on file with the original application was prepared.

§ 3003.8 SUSPENSION.

(A) The Building Official shall suspend a license for a period not to exceed 60 days if he/she determines that subsequent to the issuance of the license:

- (1) An employee or licensee violated any provision of this chapter;

(2) An employee or licensee has been charged with a violation of any statute, ordinance, or other law pertaining to the possession, use, or consumption of alcoholic beverages or any other controlled substance while on the business premises during business hours;

(3) A licensee altered the activities or character of the business such that the business offers, provides, displays or exhibits goods, services or entertainment not offered, provided, displayed or exhibited at the time the license was issued, and not otherwise authorized by the license.

(4) An employee or licensee knowingly permitted gambling by any person on the sexually oriented business premises; employee has been convicted of any offense listed in § 3003.14; or

(5) Licensee demonstrated inability to operate or manage the sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

(B) It shall be unlawful for any person to operate, conduct, or cause to be operated or conducted a sexually oriented business within the territorial limits of the city, during any period of time when the license authorizing such operation has been suspended.

(C) The Building Official may suspend a license if he determines that, subsequent to the issuance of the license, a licensee or operator of a sexually oriented business has been formally charged with the commission of an offense listed in § 3003.14. Such suspension shall end upon final disposition of the offense by the trial court, whether by acquittal, dismissal, deferred adjudication, or conviction.

§ 3003.9 REVOCATION.

(A) The Building Official shall revoke a license if he/she determines that:

(1) A cause of suspension under § 3003.8, occurs and the license has been suspended within the preceding 12 months.

(2) A licensee gave false or misleading information in the material submitted to the City Manager/City Secretary during the application process;

(3) A licensee or an employee has knowingly allowed the unlawful possession, use, or sale of alcoholic beverages or controlled substances on the premises;

(4) A licensee has been convicted of any of the Texas Penal Code Offenses listed in § 3003.14; an employee has been convicted of any offense listed in § 3003.14 and the licensee knowingly failed to prevent the conduct for which the employee was convicted;

(5) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the license was suspended;

(6) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises at any time the business is open to the public. The term "sexual contact" shall have the meaning set forth in Tex. Penal Code § 21.01;

(7) A licensee is delinquent in payment of any taxes, fees, utilities, fines, assessments or interest to the city, or penalties assessed against the applicant or imposed upon the applicant in relation to a sexually oriented business;

(8) A licensee has attempted to assign, transfer, or divide a license to operate a sexually oriented business issued under this chapter, or

(9) A licensee or employee refused to allow an inspection as permitted herein.

(B) When the City Manager/City Secretary revokes a license, the revocation shall continue for one year.

§ 3003.10 APPEAL ON DENIAL, SUSPENSION OR REVOCATION.

If the Building Official denies the issuance of a license, or suspends or revokes a license, he/she shall send to the applicant or licensee, at the address of the business as shown on the most recent application, by certified mail, return receipt requested, written notice of such action and the right to appeal. The aggrieved party may appeal the decision of the City Manager/City Secretary to the Zoning Board of Adjustment in accordance with procedures set forth in the zoning ordinance of the city as amended. The filing of an appeal stays the action of the City Manager/City Secretary in suspending or revoking a license until the Zoning Board of Adjustment makes a final decision.

§ 3003.11 NONTRANSFERABILITY.

A sexually oriented business license is not transferable, assignable or divisible. Any attempted or purported transfer, assignment or division shall be void.

WORK PERMITS

§ 3003.12 PERMITS REQUIRED.

(A) The City Council finds that persons who hold or are requesting a permit under this section are employed in sexually oriented businesses where there is high degree of opportunity for unlawful sexual conduct or the solicitation thereof, lewd conduct, obscenity offenses, and conduct harmful to minors. Therefore, the enumerated offenses are directly related to the duties and responsibilities authorized by the subject permit.

There is a serious need to protect members of the public and fellow employees of sexually oriented business enterprises from persons who have certain criminal histories.

(B) It shall be unlawful for any person who does not hold a work permit to act as an entertainer, employee, manager, or owner of or in a sexually oriented business.

(C) It shall be the duty of each licensee of each sexually oriented business to ensure that no person acts as an entertainer, employee, manager, or owner unless that person holds a permit.

§ 3003.13 ISSUANCE OF PERMITS.

(A) Any person who desires to obtain an original or renewal permit shall make application in person at the City Hall in Nolanville. The application shall be made under oath upon a form prescribed by the Building Official and shall include:

- (1) The name, home street address and mailing address (if different) of the applicant;
- (2) Proof of the date of birth of the applicant and the identify of the applicant, including at least one photographic identity card issued by a government agency;
- (3) A separate page which can be detached from the request listing any pending criminal charges, convictions, and time of service in jail or prison by the applicant for any offense that is specified in § 3003.14 of this chapter; and
- (4) Three passport-type photographs of the applicant of a size specified by the Police Department, which shall become part of the photographic identity cards if a permit is issued.

(B) Each application must be fully completed and shall be accompanied by a non-refundable processing fee of \$25. Each applicant shall be required to provide fingerprints to be used to verify the applicant's identity and criminal history information. Each applicant shall sign a waiver and authorization form authorizing the Police Department to request, on behalf of the applicant, criminal history reports from the Texas Department of Public Safety and any appropriate federal agency. No application will be accepted for filing unless and until the requirements of this section are met.

(C) The Building Official shall issue the permit within ten business days from the date of filing of the application, unless he finds that the application was incorrect or incomplete, or that the applicant is otherwise disqualified under this section. If the application is not granted, then the applicant shall be mailed notice of the grounds for denial and their right to provide evidence and appeal, as provided by § 3003.10 of this chapter, within ten business days from the date of filing of the application. Lists provided in compliance with division (A)(3) of this section shall be destroyed ten days following the date of notice of decision by the Chief of Police.

(D) Each permit issued by the Building Official shall consist of three photographic identification cards: a personal card, an on-site card and a Police Department file card.

(E) In the event that the Building Official fails to issue or deny a permit application within the time specified in division (C), then the applicant shall, upon written request, be immediately issued a temporary permit which shall be valid until the day after the applicant is given notice of the decision of the Chief of Police.

(F) If any personal card or on-site card is lost or stolen, the holder thereof shall immediately notify the Police Department and request a replacement from the Building Official, which shall be issued for a fee of \$10 accompanied by three photographs as described in § 3003.13(A) within three days following verification of the identity of the holder.

(G) No permit application shall be accepted nor shall a permit be issued to any person who does not provide proof that he/she is at least 21 years old. Any permit issued by virtue of any misrepresentation or error to any person under age 21 shall be void.

§ 3003.14 PERMIT QUALIFICATION AND RETENTION.

(A) A conviction in the state for any of the below listed Texas Penal Code offenses or a violation of this chapter shall be considered grounds for denial, revocation or refusal to renew a permit requested under this section. Texas Penal Code Offenses include:

(1) Any of the following offenses as described in Tex. Penal Code Ch. 43:

- (a) Prostitution;
- (b) Promotion of prostitution;
- (c) Aggravated promotion of prostitution;
- (d) Compelling prostitution;
- (e) Obscenity;
- (f) Sale, distribution or display of harmful material to a minor;
- (g) Sexual performance by a child;
- (h) Employment harmful to children; or
- (i) Possession or promotion of child pornography;

(2) Any of the following offenses as described in Tex. Penal Code Ch. 21:

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- (a) Public lewdness;
 - (b) Indecent exposure; or
 - (c) Indecency with a child;
- (3) Sexual assault or aggravated sexual assault as described in Tex. Penal Code Ch. 22;
- (4) Harboring a runaway child as described in Tex. Penal Code Ch. 25;
- (5) Criminal attempt, conspiracy or solicitation to commit any of the above offenses; or
- (6) A violation of the Texas Controlled Substance Act of Dangerous Drug Act punishable as a felony;
- (7) Any offense under the laws of another state or the United States, without regard to its title, but which substantially corresponds to the elements of any Texas offense described or referred to above.

(B) Work permits may be revoked for any violation of this chapter.

(C) For purposes of this section the appeal of a conviction shall not prevent its consideration, unless and until it is reversed or set aside. Any disposition by a plea or Nolo Contendere or by deferred adjudication shall be considered in the same manner as a conviction. Notwithstanding division (A) of this section, if the conviction is at least three years old, the applicant may request consideration of a work permit application.

§ 3003.15 TERM, TRANSFER, AMENDMENT OF PERMIT.

- (A) A permit is valid for one year from the date of its issuance.
- (B) A permit is personal to the named permit holder and is not valid for use by any other person.
- (C) Each permit holder shall notify the Building Official of his new address within ten days following any change of his/her address.

§ 3003.16 DISPLAY OF PERMITS.

(A) Each owner, manager, entertainer, or employee shall maintain their personal work permit card in their possession at all times while on or in the premises of an adult oriented enterprise.

(B) Each owner, manager, entertainer, or employee shall provide his on-site card to the manager or on-site manager in charge of the enterprise to hold while the owner, manager, entertainer, or employee is on the premises.

(C) In any prosecution under this chapter, it shall be presumed that the owner, manager, entertainer, or employee did not have a permit unless the permit was in possession and the on-site card on display as required by this section.

OPERATING REGULATIONS

§ 3003.17 INTERIOR CONFIGURATION.

(A) *Unobstructed view.* Excepting only adult motels, the interior of the sexually oriented business 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 only restrooms. Restrooms may not contain video, photographic, monitoring or other surveillance equipment. The view required in this division must be by direct line of sight from the manager's station.

(B) *Electronic surveillance equipment.* Businesses which were lawfully operating and open to the public on June 21, 1994 may apply to the Building Official to allow the use of electronic surveillance equipment as an alternative to the direct line-of-sight requirements of this section.

(1) Businesses wishing to use an electronic surveillance system shall indicate on the sketch or diagram required by this section the locations of all cameras and the location of a single monitor station. The station must be located in a lobby or public waiting area, but the monitor(s) must be oriented so as to not be readily viewed by patrons.

(2) The Building Official may issue a written permit allowing the use of electronic surveillance equipment only upon a showing that:

- (a) The business is otherwise in conformity with this chapter;
- (b) The electronic surveillance equipment will promote the intent of this chapter;
- (c) The equipment meets the standards set forth below; and
- (d) Compliance with the direct line-of-sight requirements of this section would be impractical or unnecessarily burdensome or costly.

(3) When electronic surveillance equipment is approved and installed, a sign stating that "The entire premises of this business are monitored by electronic surveillance

equipment at all times" must be prominently posted at the main entrance so as to be clearly visible to all patrons prior to entering the establishment.

(4) Electronic surveillance equipment must be installed, operated and maintained to meet the following standards at all times during which the premises are open to the public.

(a) Field of view - Requires a view of at least 95% of the room under surveillance and must at all times include a simultaneous view of all employees and customers in the room.

(b) The surveillance system shall monitor all areas simultaneously where patrons are permitted (excluding only restrooms) via split screen or multiple screens.

(c) Equipment will be set up, operational and properly adjusted at all times. If at any time the surveillance system is inoperative or fails to meet all minimum specifications hereunder, the business shall immediately comply with the provisions in division (B) above in its entirety.

(d) Electronic video cameras shall have a minimum light sensitivity of 1 lux; however, the room illumination shall be increased as necessary to assure surveillance equipment displays the room's contents and occupants clearly and accurately.

(e) Both the monitor(s) and camera(s) shall deliver resolution of not less than 380 horizontal TV lines, and signal-to-noise ratio shall be not less than 45 dB.

(f) Electronic surveillance equipment shall provide a constant audio feed from the cameras to the monitor(s). The audio system must feature a frequency response of at least 250 Hz to 8 kHz \pm 5 dB, with no more than 3% total harmonic distortion. The amplitude of the audio feed shall be adjusted to not less than 5 dB above the ambient noise level of the room in which the monitor is located using an "A" weighted scale.

(5) At all times during which a member of the public is present in the business the exits to the booths or viewing rooms shall be open and unobstructed and a manager or other responsible employee shall observe the room monitor(s) to ensure the safe and lawful conduct of the occupants.

(6) Nothing in this section shall be construed to permit conduct otherwise prohibited by §§ 3003.20 through 3003.24, or to otherwise affect regulations generally applicable to adult video arcades, adult video stores, adult movie theaters, or adult video theaters.

(7) An owner or operator commits an offense if a manager or other responsible employee fails to observe the system monitor(s) at all times during which a member of the public is present in the business premises. It is a defense to prosecution that at the

time of the alleged offense the business was operating in full compliance with division (A) of this section.

§ 3003.18 EXTERIOR OF ENTERPRISE.

(A) *Visibility from outside premises.* It shall be unlawful for a licensee of an enterprise to allow the merchandise or activities of the enterprise to be visible from any point outside the licensed premises.

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

(C) *Coloration.* It shall be unlawful for the owner or operator of an enterprise to allow exterior portions of the enterprise to be painted any color other than a single color. Grays, tans, and light earth tones are permissible; however, any bold, garish or gaudy coloration that attracts attention is excluded from this definition and prohibited. Nothing in this chapter shall be construed to require the painting of an otherwise unpainted exterior. This provision shall not apply if the enterprise is part of a multi-unit commercial center and the exterior portions of each unit are painted the same color so as to reflect an overall architectural style of that center.

§ 3003.19 SIGNAGE.

(A) *Primary and secondary signs.* Notwithstanding City of Nolanville Ordinance 6051-A, as amended or any other city ordinance, code or regulation to the contrary, it shall be unlawful for the owner or operator of any enterprise or any other person to erect, construct, or maintain any sign for the enterprise other than one primary sign and one secondary sign, as provided herein.

(1) Primary signs shall have no more than two display surfaces. Each such display surface shall:

- (a) Not contain any flashing lights;
- (b) Be a flat plane, rectangular in shape;
- (c) Not exceed 75 square feet in area; and
- (d) Not exceed ten feet in height or ten feet in length;

(2) Secondary signs shall have only one display surface. Such display surface shall:

- (a) Be a flat plane, rectangular in shape;

- (b) Not exceed 20 square feet in area;
- (c) Not exceed five feet in height and four feet in width;
- (d) Be affixed or attached to any exterior wall or door of the enterprise; and not contain any flashing lights.

(3) Primary and secondary signs shall not contain any wording, photographs, silhouettes, drawings or pictorial representations which describe or depict specified anatomical areas or specified sexual activities. In addition, primary and secondary signs shall not contain any wording, photographs, silhouettes, drawings or pictorial representations whose dominant theme taken as a whole:

- (a) Appeals to a prurient interest of a minor in sex, nudity or excretion;
- (b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
- (c) Lacks serious social value for minors.

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

(B) *Compliance with restrictions.* Any sign located on the premises of a commercial multi-unit center that displays the name, or any portion of the name of any sexually oriented business, any name under which any sexually oriented business was formerly operated on the premises, or any other terminology that is commonly used to identify, or is associated with the presence of a sexually oriented business, shall comply with all restrictions of this section. The intent of this section is to prevent the use of signage identifying the commercial multi-tenant center itself from being used as a subterfuge to evade the restrictions on adult oriented business signs set forth in this section.

§ 3003.20 OBSTRUCTION OF VIEW.

Except as permitted by § 3003.18 of this chapter, it shall be an offense for any owner, operator, agent or employee to knowingly permit the view area specified in § 3003.17 to be obstructed by any doors, walls, merchandise, display racks or other materials at any time that any patron is present on the premises, or to allow a patron access to any area of the premises which has been designated in the application filed pursuant to § 3003.3(B) as an area in which patrons will not be permitted.

§ 3003.21 LIGHTING.

It shall be an offense for any owner, operator, agent or employee to knowingly allow patrons access to any area that is not illuminated by overhead lighting fixtures to an intensity of at least one foot-candle as measured at floor level. Such light intensity shall be maintained at all times during which the premises are open to the public.

§ 3003.22 INSPECTION.

(A) By accepting a license to operate a sexually oriented business, the holder consents that a Peace Officer, Fire Marshall, Building Official or Health Inspector may enter the licensed premises at any time such premises are open for business to conduct an inspection or investigation for the purpose of evaluating compliance with this chapter.

(1) In conducting an inspection as provided herein, officers shall remain in those areas of the business premises to which members of the public have access, and shall not enter into areas into which owners, managers and employees of that business are permitted.

(2) In conducting inspections as provided herein, officers shall limit their investigations to detecting violations of the regulatory provisions of this chapter.

(3) This section does not in any way limit the authority of an officer to conduct any search authorized by a warrant, or pursuant to any exception to the warrant requirement.

(B) It shall be an offense for any person to interfere with a lawful inspection of the premises by a representative of any law enforcement agency, County Health Department, Fire Department, or the Building Inspection Division at any time it is occupied or open for business.

§ 3003.23 CONDUCT OF OWNERS, MANAGERS, EMPLOYEES AND ENTERTAINERS.

(A) It shall be unlawful for any owner, manager, employee, or entertainer to touch a customer or the clothing of a customer while engaging in entertainment or while exposing any specified anatomical areas or engaging in any specified sexual activities.

(B) It shall be unlawful for any owner, manager, employee, or entertainer to engage in entertainment or to expose any specified anatomical areas or engage in any specified sexual activities in the presence of a customer in any separate area within an enterprise to which entry or access is blocked or obscured by any door, curtain or other barrier separating entry to such area from any other area of the enterprise.

(C) It shall be unlawful for any owner, manager, employee, or entertainer to engage in entertainment or to expose any specified anatomical areas or engage in any specified sexual activities in any area of an enterprise at a time when entry or access into the enterprise is blocked by a locked door or other barrier.

§ 3003.24 REGULATIONS CONCERNING PERSONS UNDER CERTAIN AGE.

(A) Sexually oriented businesses shall not employ any person under the age of 21 years.

(B) It shall be an offense for any person to knowingly allow a person under the age of 21 years to appear in a state of nudity or partial nudity in or on the premises of a sexually oriented business.

(C) It shall be an offense for a person under the age of 21 years to appear in a state of nudity or partial nudity in or on the premises of a sexually oriented business. It is a defense to prosecution under this division if the defendant was in a restroom not open to public view or person(s) of the opposite sex.

(D) It shall be an offense for a person under the age of 21 years to act as an escort. It shall be an offense for a person to act as an escort or agree to act as an escort for any person under the age of 18 years. The term escort is used as defined in this chapter.

(E) It shall be an offense for a person to appear in a state of nudity or partial nudity or to allow another to appear in a state of nudity or partial nudity in an area of a sexually oriented business which can be viewed from outside of the licensed premises.

(F) No alteration after licensing shall be made to the interior configuration of a sexually oriented business nor shall the business alter or relocate a manager's station without prior approval of the City Manager/City Secretary..

(G) Except as permitted by § 3003.18 of this chapter, at least one owner, operator or employee must be situated in each manager's station at all times that any patron is present inside the premises. A licensee commits an offense if patrons are inside the premises and the manager's station is not occupied by an owner, operator or employee or if entry or access into the enterprise is blocked by any locked door or other barrier. This subsection shall not apply to adult motels.

(H) A sexually oriented business (excluding adult motels) shall not place or permit a bed, sofa, or mattress in any room on the premises to which members of the public have access, except that a sofa may be placed in a reception room open to the public.

(I) It shall be the duty of each licensee, owner, operator and manager of a sexually oriented business to ensure that all persons acting as managers, employees or entertainers on the premises hold and display work permits as required by §§ 3003.12 through 3003.16 of this chapter.

(J) It shall be the duty of the on-site manager to ensure that no manager, employee or entertainer is allowed to conduct any business on the premises of an enterprise unless the on-site manager has in his possession an on-site work permit card prepared by the Building Official. On-site work permit cards shall be made immediately available for inspection upon request by any Peace Officer or Code Enforcement Official. Managers or entertainers working at more than one enterprise may retrieve their on-site work permit cards upon departing the premises in order to present them to any other enterprise where such persons are employed.

(K) It shall be an offense for any owner, operator, manager, employee or entertainer to operate or cause to be operated any sexually oriented business enterprise without a permit, as prescribed by §§ 3003.12 through 3003.16 of this chapter, or to allow the operation of any sexually oriented business enterprise by any person unless that person possesses a permit required by §§ 3003.12 through 3003.16 and the enterprise has in its possession an on-site card for that person.

§ 3003.25 DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS.

(A) It shall be an offense for a person, in a business establishment open to persons under the age of 18 years, to display any graphic or visual reproduction of material which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or per-version for commercial gain, any of the following:

- (1) Human sexual intercourse, masturbation, or sodomy;
- (2) Fondling or other erotic touching of human genitals, buttocks, or female breasts;
- (3) Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or
- (4) Human male genitals in a discernibly turgid state, whether covered or uncovered.

(B) In this section “display” means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:

- (1) It is available to the general public for handling and inspection; or
- (2) The cover or outside packaging on the item is visible to members of the general public.

§ 3003.26 LOCATION RESTRICTIONS.

(A) It is an offense for any person to operate or cause to be operated a sexually oriented business within 300 feet of:

- (1) A church; or place of religious worship;
- (2) Day care facility;
- (3) School;
- (4) Hospital;
- (5) Public building; or
- (6) Public park.

(B) It shall be an offense for a person to operate or cause to be operated a sexually oriented business outside of an area fronting Veterans Memorial Boulevard/Business Highway 190.

(C) It shall be an offense for any person to cause or permit the operation, establishment, substantial enlargement or transfer of ownership or control of a sexually oriented business within 300 feet of another sexually oriented business.

(D) It shall be an offense for any person to cause or permit the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof containing another sexually oriented business.

(E) For the purposes of division (A) above of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church; or place of religious worship, day care facility, school, hospital, public building or public park.

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

(G) Any sexually oriented business lawfully operating on June 21, 1994 that is in violation of divisions (A), (B), or (C) above of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed three years from June 21, 1994, unless sooner terminated for any reason, or if voluntarily discontinued for a period of 30 days or more.

(1) Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use.

(2) If two or more sexually oriented businesses are within 300 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 is nonconforming.

(3) 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 church or place of religious worship, day care facility, school, hospital, public building or public park within 300 feet of the sexually oriented business.

§ 3003.27 CIVIL REMEDIES.

In addition to any other remedies which may be available at law or in equity, the city may sue in the appropriate district court for an injunction to prohibit the violation of, or enforce compliance with, any regulation contained in this chapter.

§ 3003.28 PENALTY.

(A) If the sexually oriented business involved displays any type of nude or partial nude modeling activity, or if it is a sexual encounter center, then a violation of § 3003.2 or § 3003.19 of this chapter is punishable as a Class B misdemeanor.

(B) Except as otherwise provided herein, a violation of this chapter is punishable by a fine not to exceed \$2,000.

(C) Each day during which a violation of a provision of this chapter occurs or continues shall constitute a separate violation.