

ORDINANCE NO. 561

AN ORDINANCE AMENDING Article 10 OF THE CODE OF ORDINANCES OF THE City OF WEST COLUMBIA, TEXAS, ENTITLED "LICENSES AND BUSINESS REGULATIONS, BY ADDING ARTICLE X ENTITLED "SEXUALLY ORIENTED BUSINESSES"; PROVIDING FOR THE REGULATION OF SEXUALLY ORIENTED BUSINESSES WITHIN THE CITY AND ITS EXTRATERRITORIAL JURISDICTION; PROVIDING FOR THE REPEAL OF ALL CODE PROVISIONS, ORDINANCES, RESOLUTIONS AND/OR INFORMAL POLICIES OF THE CITY OF WEST COLUMBIA, TEXAS TO THE EXTENT THEY ARE INCONSISTENT OR IN CONFLICT WITH THIS ORDINANCE; CONTAINING A SEVERABILITY CLAUSE; PROVIDING THAT THE VIOLATION OF THIS ORDINANCE SHALL CONSTITUTE AN OFFENSE PUNISHABLE BY A FINE OF NOT TO EXCEED \$500.00 or \$2,000.00 FOR EACH OFFENSE, AS MORE FULLY SET OUT IN THE ORDINANCE, AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED UPON EACH DAY DURING OR ON WHICH A VIOLATION OCCURS; PROVIDING FOR INJUNCTIVE RELIEF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, there is the potential for the location of Sexually Oriented Businesses in the City of West Columbia and such require special supervision from public safety agencies of the City 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 of the City of West Columbia finds that Sexually Oriented Businesses are frequently used for unlawful, sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of Sexually Oriented Businesses to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to insure that operators of Sexually Oriented Businesses comply with reasonable regulations and to insure that operators do not knowingly allow their Establishments to be used as places of illegal sexual activity or solicitation; and

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

WHEREAS, the City Council of the City of West Columbia desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry, protect the citizens from increased crime, preserve the quality of life, preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, it is not the intent of this Ordinance 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, the City Council of the City of West Columbia recognizes that applicable state law prohibits the promotion of obscene materials, and the City Council expects and encourages state law enforcement officials to enforce state obscenity laws against any such illegal activities both in the City of West Columbia and Brazoria County;

NOW, THEREFORE, BE IT ORDAINED BY THE City COUNCIL OF THE City OF WEST COLUMBIA, TEXAS:

Section One

The Code of Ordinances of the City West Columbia, Texas, shall be and is hereby amended by the addition to Article 10 "Licenses and Business Regulations" of Article X entitled "Sexually Oriented Businesses" which shall read as follows:

ARTICLE X. SEXUALLY ORIENTED BUSINESSES

DIVISION I- IN GENERAL

Sec. 10-340. Purpose and Intent

It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations which prevent the concentration of sexually oriented businesses within the City, The provisions of this article have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor the effect of this article 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 legally intended market.

Sec. 10-341. Definitions

In this Article these terms shall have the following meanings:

(a) *Adult Arcade* 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 maintained to show images to five or fewer Persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "Specified Sexual Activities" or "Specified Anatomical Areas".

(b) *Adult Bookstore or Adult Video Store* means a commercial Establishment which as one of its principal business purposes offer for sale or rental any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, DVDs, compact discs (CDs), or video reproductions, slides, or other visual representations which depict or describe "Specified Sexual Activities" or "Specified Anatomical Areas"; or

(2) Instruments, devices, or paraphernalia which are designed for use in connection with "Specified Sexual Activities".

(c) *Adult Cabaret* means a nightclub, bar, restaurant, or similar commercial Establishment which regularly features:

(1) Persons who appear in a state of semi-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, DVDs, compact discs (CDs), slides, or other photographic reproductions which are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas".

(d) *Adult Motel* means a hotel, motel , or similar commercial Establishment which:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, DVDs,

compact discs (CDs), slides or other photographic reproductions which are characterized by the depiction of "Specified Sexual Activities" or "Specified Anatomical Areas"; and has a sign visible from the public right of way that advertises the availability of the adult nature of such photographic reproductions; or

(2) Offers a sleeping room for rent for a period of time that is less than ten hours; or

(3) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten hours.

(e) *Adult Motion Picture Theater* means a commercial Establishment where, for any form of consideration, films, motion pictures, video cassettes, DVDs, compact discs (CDs), slides, or similar photographic reproductions are regularly shown that are characterized by the depiction or description of "Specified Sexual Activities" or "Specified Anatomical Areas".

(f) *Adult Theater* means a theater, concert hall, auditorium, or similar commercial Establishment which regularly features Persons who appear in a State of Nudity or live performances which are characterized by the exposure of "Specified Sexual Activities" or "Specified Anatomical Areas".

(g) *Chief of Police* means the Chief of Police of the City of West Columbia or his designated agent.

(h) *Church* means a building used for public religious worship.

(i) *City* means the City of West Columbia, Texas.

(j) *City Secretary* means the City Secretary of the City of West Columbia or his or her designated agent.

(k) *Day Nursery* means an Establishment where children, separated from their parents or guardian, are housed for care or training during the day or a portion thereof on a regular schedule more often than once a week.

(l) *Escort* means a Person who, for consideration, agrees or offers to act as a companion, guide, or date for another Person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another Person.

(m) *Escort Agency* means a Person or business entity who furnishes, offers to furnish, or advertises to furnish Escorts as one of its primary business purposes for fee, tip, or other consideration.

(n) *Establishment* means and includes 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 sexually oriented business, to a sexually oriented business;
- (3) The additions of any sexually oriented business to any other existing sexually oriented business; or
- (4) The relocation of any sexually oriented business.

(o) *Hospital, Sanitarium, Nursing or Convalescent Home* means a building or portion thereof, used or designed for the housing or treatment of sick, aged, mentally injured convalescent or infirm Persons.

(p) *Licensee* means a Person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for such a license.

(q) *Nude Model Studio* means any place 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.

(r) *Nudity or a State of Nudity* means:

- (1) The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast below the top of the areola; or
- (2) A state of dress that fails to opaquely cover a human buttock, anus, male genitals, female genitals, or any part of the female breast below the top of the areola.

(s) *Operates or Causes to be Operated* means 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 Licensee of the business.

(t) *Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(u) *Residential District* means any platted City block in which a minimum of 80% of the lots having any improvements designed for human occupancy, have situated on those lots a single-family dwelling, duplex, townhouse, multiple family dwelling and/or manufactured home used for residential purposes.

(v) *Residential Use* means any use of a single-family dwelling, duplex, townhouse, multiple family dwelling, or manufactured home as a dwelling place or residence.

(w) *Semi-Nude* means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks, and any part of the female breast below the top of the areolae, as well as portions of the body covered by supporting straps or devices.

(x) *Sexual Encounter center* means 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 or Persons Semi-Nude or in a State of Nudity.

(y) *Sexually Oriented Business* means a business or commercial enterprise, the primary purpose 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. This definition includes, but is not limited to, Adult Arcades, adult bookstores, adult video stores, adult cabarets, Adult Motels, Adult Motion Picture Theaters, Adult Theaters, Escort agencies, Nude Model Studios, or Sexual Encounter centers.

(z) *Specified Anatomical Areas* means human genitals in a state of sexual arousal.

(aa) *Specified Sexual Activities* means and includes any of the following:

(1) The fondling or other touching of human genitals, pubic region, buttocks, anus, or female breasts;

(2) Sex acts, normal or perverted, actual or simulated, including, but not limited to, intercourse, oral copulation, or sodomy;

(3) Masturbation, actual or simulated; or

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

(bb) *Substantial Enlargement of a Sexually Oriented Business* means an increase in floor area occupied by the business of more than 25 percent as the floor area existed on the date the business received its initial permit.

(cc) Transfer of Ownership or Control of a Sexually Oriented Business
means and includes any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The Establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the Person possessing the ownership or control.

Sec.10-342. Classification.

Sexually Oriented Businesses are classified as follows:

- (1) Adult Arcades;
- (2) Adult bookstores or adult video stores;
- (3) Adult cabarets;
- (4) Adult Motels;
- (5) Adult Motion Picture Theaters;
- (6) Adult Theaters;
- (7) Escort agencies;
- (8) Nude Model Studios; and
- (9) Sexual Encounter centers.

[Sections 10-343 through 10-359.Reserved]

DIVISION II. LICENSE

Sec. 10-360. License required.

(a) A Person commits an offense if he operates a Sexually Oriented Business without a valid license, issued by the City for that particular classification.

(b) An application for a license must be made on a form provided by the City Secretary. The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with section 10-504 of this article shall submit a diagram meeting the requirements of section 10-504.

(c) The applicant must be qualified according to the provisions of this article.

(d) If a Person who wishes to operate a Sexually Oriented Business is an individual, he 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, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under section 10.344 and each applicant shall be considered a Licensee if a license is granted.

(e) The fact that a Person possesses a valid dance hall license does not exempt the Person from the requirement of obtaining a Sexually Oriented Business license. A Person who operates a Sexually Oriented Business and possesses a dance hall license shall comply with the requirements and provisions of this section as well as those requirements and provisions of section 10-353 of this article which are applicable.

Sec. 10-361. Issuance of license.

(a) The Chief of Police shall approve the issuance of a license by the City Secretary to an applicant within 30 days after receipt of an application unless the Chief of Police finds one or more of the following to be true:

- (1) An applicant is under 18 years of age;
- (2) An applicant or an applicant's spouse or an employee of the applicant is overdue in payment of taxes, fees, fines, or penalties assessed or imposed by the City in relation to a Sexually Oriented Business;
- (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- (4) An applicant or an applicant's spouse or an employee of the applicant has been convicted of a violation of a provision of this article, other than the offense of operating a Sexually Oriented Business without a license, within two years immediately preceding this application;
- (5) Any fee required by this article has not been paid;
- (6) An applicant has been employed in a Sexually Oriented Business in a managerial capacity within the preceding 12 months and has demonstrated an inability to operate or manage a Sexually Oriented Business in a peaceful and lawful manner, thus necessitating action by law enforcement officers;

(7) An applicant or the proposed Establishment is in violation of or is not in compliance with sections 10-363, 10-368, 10-380, 10-500, 10-501, 10-502, 10-503, 10-504, or 10-520 of this article; or

(8) An applicant or an applicant's spouse or an employee of the applicant has been convicted of a crime, indicted for a crime, where the indictment has not yet resulted in acquittal or dismissal of the charge;

a. Involving:

1. Any of the following offenses as described in the Texas Penal Code:

i. Prostitution;

ii. Promotion of prostitution;

iii. Aggravated promotion of prostitution;

iv. Compelling prostitution;

v. Obscenity;

vi. Sale, distribution, or display of sexually explicit material to a minor;

vii. Sexual performance by a child;

viii. Possession of child pornography;

2. Any of the following offenses as described in the Texas Penal Code;

i. Public lewdness;

ii. Indecent exposure;

iii. Indecency with a child;

3. Sexual assault or aggravated sexual assault as described in Texas Penal Code;

4. Incest, solicitation of a child, or harboring a runaway child as described in the Texas Penal Code; or

5. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

b. For which:

1. Fewer than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

2. Fewer than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

3. Fewer than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if convictions on two or more misdemeanor offenses or combination of misdemeanor offenses occurred within any 24-month period.

(b) The fact that a conviction is being appealed has no effect on the disqualification of the applicant or applicant's spouse under subsection (a) of this section.

(c) An applicant who has been convicted or whose spouse or employee has been convicted of an offense listed in subsection (a)(8)a. of this section may qualify for a Sexually Oriented Business license only when the time period required by subsection (a)(8)b. of this section has elapsed.

(d) The City Secretary, upon receiving approval by the Chief of Police of the issuance of a Sexually Oriented Business license, shall send to the applicant, by certified mail, return receipt requested, written notice of that action and state where the applicant must pay the license fee and obtain the license. Neither the written notice by the City Secretary nor the Chief of Police's approval of the issuance of a license shall authorize the applicant to operate a Sexually Oriented Business until the applicant has paid all fees required by this article and obtained actual possession of the license.

(e) The license, if granted, shall state on its face the name of the Person or Persons to whom it is granted, the expiration date, and the street address of the Sexually Oriented Business. The license must be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business so that it may be easily read at any time.

Sec. 10-362. Fees.

(a) The annual fee for a permit or license to operate a Sexually Oriented Business is \$1,500.00, to be paid upon application and on the last business day prior to expiration of any previous permit, license, or renewal. If the application is denied, this fee shall be refunded.

(b) In addition to the fees required by subsection (a) of this section, an applicant for a license or permit to operate a Sexually Oriented Business shall, at the time of making application, pay a nonrefundable fee of \$1,000.00 for the City to conduct a survey to ensure that the proposed Sexually Oriented Business is in compliance with the locational restrictions set forth in section 10-380 of this article.

(c) If an applicant is required by this Code to also obtain a dance hall license for the business at the same location, payment of the fee for the Sexually Oriented Business license exempts the applicant from payment of the fees for the dance hall license.

Sec. 10-363. Inspection.

(a) An applicant or Licensee shall permit representatives of the police department, the fire department, the department of public works, sanitation or health inspectors, code enforcement officers, and the building official to inspect the premises of a Sexually Oriented Business, for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(b) A Person or business entity which operates a Sexually Oriented Business or his or her agent or employee commits an offense if he or she refuses to permit a lawful inspection of the premises by a representative of the police department at any time it is occupied or open for business.

(c) The provisions of this section do not apply to areas of an Adult Motel which are currently being rented by a customer for use as a temporary or permanent habitation.

Sec. 10-364. Expiration of license.

Each license expires one year from the date of issuance, except that a license issued pursuant to a vocational restriction expires on the date the exemption expires. A license may be renewed only by making an application as provided in section 10-360. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will occur regardless of the pendency of the application.

Sec. 10-365. Suspension.

The Chief of Police shall suspend a license for a period not to exceed 30 days if he or she determines that a Licensee or an employee of a Licensee has:

(1) Violated or is not in compliance with sections 10-363, 10-368, 10-380, 10-500, 10-501, 10-502, 10-503, 10-504, or 10-520 of this article;

(2) Engaged in excessive use of alcoholic beverages while on the premises of the Sexually Oriented Business;

(3) Refused to allow an inspection of the premises of the Sexually Oriented Business as authorized by this article;

(4) Knowingly permitted gambling by any Person on the premises of the Sexually Oriented Business; and

(5) Demonstrated inability to operate or manage a Sexually Oriented Business in a peaceful and lawful manner thus necessitating action by law enforcement officers.

Sec. 10-366. Revocation.

(a) The Chief of Police shall revoke a license if a cause of suspension in section 10-365 of this article occurs and the license has been suspended within the preceding 12 months.

(b) The Chief of Police shall revoke a license if the Chief of Police determines that:

(1) A Licensee, agent, or employee gave false or misleading information in the material submitted during the application process;

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

(3) A Licensee, agent, or employee has knowingly allowed prostitution on the premises;

(4) A Licensee, agent, or employee knowingly operated the Sexually Oriented Business during a period of time when the Licensee's license was suspended;

(5) A Licensee has been convicted of an offense listed in section 10-344(a)(8)a. of this article for which the time period required in section 10-344(a)(8)b. has not elapsed;

(6) On two or more occasions within a twelve-month period, a Person or Persons committed an offense in or on the premises constituting a crime listed in section 10-344(a)(8)a. of this article said offenses resulting in convictions, and said Person or Persons were employed at the time said offenses were committed;

(7) A Licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the licensed premises. The term "sexual conduct" shall have the same meaning as it is defined in the Texas Penal Code; or

(8) A Licensee is delinquent in payment to the City for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the Sexually Oriented Business.

(c) The fact that a conviction is being appealed shall not impede the revocation of the license.

(d) Subsection (b)(7) of this section does not apply to Adult Motels as a ground for revoking a license unless the Licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) Whenever the Chief of Police revokes a license, the revocation shall continue for one year, and the Licensee shall not be issued a Sexually Oriented Business license for one year from the date revocation became effective. If, subsequent to revocation, the Chief of Police finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under subsection (b)(5) of this section, an applicant shall not be granted another license until the appropriate number of years required under section 10-344(a)(8)b. has elapsed.

Sec. 10-367. Appeal.

If the Chief of Police denies the issuance or renewal of a license, or suspends or revokes a license, the City Secretary shall send to the applicant or Licensee, by certified mail, return receipt requested, written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the applicant or Licensee whose application for a license or license renewal has been denied or whose license has been suspended or revoked has the right to appeal to the state district court. An appeal to the state district court must be filed within 30 days after the receipt of notice of the decision from the City Secretary. The applicant or Licensee shall bear the burden of proof in court.

Sec. 10-368 Transfer of license.

A Licensee shall neither transfer his license to another, nor shall a Licensee operate a Sexually Oriented Business under the authority of a license at any place other than the address designated in the application.

[Sections 10-369 through 10-379.Reserved]

DIVISION III. LOCATION RESTRICTIONS

Sec. 10-380. Location of Sexually Oriented Businesses.

(a) A Person commits an offense if he operates or causes to be operated a Sexually Oriented Business within the City.

(b) Any Sexually Oriented Business lawfully operating on August 1, 2008, that is in violation of subsection (a) 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, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use.

Sec. 10-381 Variance from location restrictions.

(a) If the Chief of Police denies the issuance of a license to an applicant because the location of the Sexually Oriented Business Establishment is in violation of section 10-380 of this article, then the applicant may, not later than 15 calendar days after receiving notice of the denial from the City Secretary, file with the Planning and Zoning Commission, a written request for a variance from the location restrictions of section 10-380.

(b) If the written request is filed within the 15-day limit, the Planning and Zoning Commission shall consider the request in accordance with the procedures in place for the review of variance requests by the Planning and Zoning Commission with respect to other matters under their jurisdiction and control.

(c) The Planning and Zoning Commission may, in its discretion, grant a variance from the location restrictions of section 10-380 if it makes the following findings:

- (1) That the location of the proposed Sexually Oriented Business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
- (2) That the granting of the variance will not violate the spirit or intent of this article;
- (3) That the location of the proposed Sexually Oriented Business

will not diminish property values or quality of life in the adjacent areas or encourage the development of urban blight;

(4) That the location of an additional Sexually Oriented Business in the area will neither be contrary to any program of neighborhood conservation nor interfere with any efforts of urban renewal or restoration; and

(5) That all other applicable provisions of this article will be observed.

(d) If the Planning and Zoning Commission grants the variance, the variance is valid for one year from the date of the Planning and Zoning Commission's action. Upon the expiration of a variance, the Sexually Oriented Business is in violation of the location restrictions of section 10-380 until the applicant applies for and receives another variance.

(e) If the Planning and Zoning Commission denies the variance, the applicant may not re-apply for a variance until at least 12 months have elapsed since the date of the Planning and Zoning Commission's action.

(f) The grant of a variance does not exempt the applicant from any other provisions of this article other than the location restrictions of section 10-380.

[Sections 10-382 through 10-499.Reserved]

DIVISION IV. REGULATIONS

Sec. 10-500. Additional regulations for Escort agencies.

(a) An Escort Agency shall not employ any Person under the age of 18 years.

(b) A Person commits an offense if he or she acts as an Escort or agrees to act as an Escort for any Person under the age of 18 years.

Sec. 10-501. Additional regulations for Nude Model Studios.

(a) A Nude Model Studio shall not employ any Person under the age of 18 years.

(b) A Person under the age of 18 years commits an offense if he appears in a State of Nudity in or on the premises of a Nude Model Studio. It is a defense to prosecution under this subsection if the Person under 18 years was in a restroom not open to public view or Persons of the opposite sex.

(c) A Person commits an offense if he appears in a State of Nudity or knowingly allows another to appear in a State of Nudity on the premises of a Nude Model Studio which can be viewed from a public right-of-way.

(d) A Nude Model Studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

Sec.10-502. Additional regulations for Adult Theaters and Adult Motion Picture Theaters.

(a) A Person commits an offense if he knowingly allows a Person under the age of 18 years to appear in a State of Nudity in or on the premises of an Adult Theater or Adult Motion Picture Theater.

(b) A Person under the age of 18 years commits an offense if he knowingly appears in a State of Nudity in or on the premises of an Adult Theater or Adult Motion Picture Theater.

(c) It is a defense to prosecution under subsections (a) and (b) of this section if the Person under 18 years was in a restroom not open to public view or Persons of the opposite sex.

Sec. 10-503. Additional regulations for Adult Motels.

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial Establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the Establishment is an Adult Motel as that term is defined in this article.

(b) A Person commits an offense if, as the Person in control of a sleeping room in a hotel, motel, or similar commercial Establishment that does not have a sexually oriented license, he rents or sub-rents a sleeping room to a Person and, within ten hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

Sec. 10-504. Regulations pertaining to exhibition of sexually explicit films or videos.

(a) A Person who operates or causes to be operated a Sexually Oriented Business, other than an Adult Motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction that depicts Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:

(1) Upon application for a Sexually Oriented Business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

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

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

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises include two or more manager's stations, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from one or more of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (a)(5) remains

unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (a)(1).

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one foot-candle as measured at the floor level.

(8) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described in subsection (a)(7) is maintained at all times that any patron is present in the premises.

(b) A Person having a duty under subsections (a)(1) through (8) of this section commits an offense if he knowingly fails to fulfill that duty.

[Sections 10-505 through 10-519.Reserved]

DIVISION V. OFFENSES AND ENFORCEMENT

Sec. 10-520. Display of sexually explicit material to minors.

(a) A Person commits an offense if, in a business Establishment open to Persons under the age of 18 years, he displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

- (1) Human sexual intercourse, masturbation, or sodomy;
- (2) Fondling or other erotic touching of human genitals, pubic region, 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.

Sec. 10-521. Enforcement/penalty.

(a) Except as provided by subsection (b) of this section, any Person violating section 10-380 of this article, upon conviction, is punishable by a fine not to exceed \$2,000.00.

(b) If the Sexually Oriented Business involved is a Nude Model Studio or Sexual Encounter center, then violation of section 10-380 of this article is punishable as a class A misdemeanor.

(c) Except as provided by subsection (b) of this section, any Person violating a provision of this article other than section 10-380, upon conviction, is punishable by a fine not to exceed \$500.00.

(d) It is a defense to prosecution under section 10-360(a), 10-380, or 10-501(d) of this article that a Person appearing in a State of Nudity did so in a modeling class operated:

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

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

(3) In a structure:

a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude Person is available for viewing;

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

c. Where no more than one nude model is on the premises at any one time.

(e) It is a defense to prosecution under section 10-360(a) or section 10-380 of this article that each item of descriptive, printed, film, or video material offered for sale or rental contains serious literary, artistic, political, or scientific value.

Sec. 10-522. Exterior portions of Sexually Oriented Businesses.

(a) It shall be unlawful for an owner or operator of a Sexually Oriented Business to allow the merchandise or activities of the Establishment to be visible from a point outside the Establishment.

(b) It shall be unlawful for the owner or operator of a Sexually Oriented Business to allow the exterior portion of the Sexually Oriented Business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any kind except to the extent permitted by the provisions of Article VI entitled "Signs" of Chapter 4 of the Code of Ordinance of the City of West Columbia.

(c) Signage for Sexually Oriented Businesses shall comply with the provisions of Article VI entitled "Signs" of Chapter 4 of the Code of Ordinance of the City of West Columbia.

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

(1) The Establishment is a part of a commercial multi-unit center;
and

(2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the Sexually Oriented Business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(e) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a Sexually Oriented Business.

(f) To the extent that this section conflicts with of Article VI entitled "Signs" of Chapter 4 of this Code, Article VI of Chapter 4 of this Code shall govern.

Sec.10-523. Massages.

It shall be unlawful for any Sexually Oriented Business to offer or perform massages. This section does not apply to massages administered by physicians, massage therapists, physical therapists, chiropractors, nurses, athletic trainers, cosmetologists, or barbers duly licensed, registered, or regulated by the state, so long as their services are administered in accordance with state law and said massages are not performed on the premises of a Sexually Oriented Business.

Sec. 10-524 Injunction.

A Person who operates or causes to be operated a Sexually Oriented Business without a valid license or in violation of section 10-380 of this article is subject to a suit for injunction as well as prosecution for criminal violations.

Sec. 10-525. Separate Offenses

Each act or omission which is prohibited under this Article shall constitute a separate offense for each day or portion of a day during or on which such violation occurs.

Section 2

Any and all Code provisions, rules, ordinances, police regulations, resolutions, and/or informal policies of the City of West Columbia, whether written, or otherwise, which are in any manner in conflict with or inconsistent with this article, shall be and are hereby repealed to the extent of such conflict and/or inconsistency.

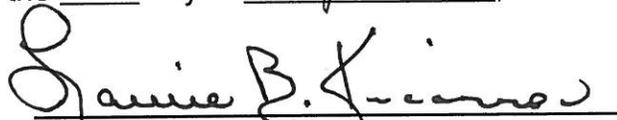
Section 3

It is hereby declared to be the intention of the City Council that the several provisions of this article are severable, and if any court of competent jurisdiction enters a final order which holds that any section, sub-section, sentence, clause, phrase, or other portion of this article is invalid, illegal, or otherwise unenforceable, then any such portion shall be deemed a separate, distinct and independent provision, and any such ruling shall not affect any other provisions of this article which are not specifically designated as being illegal, invalid, or unenforceable.

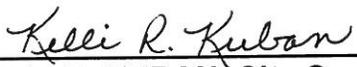
Section 4

This article shall be effective upon its passage and approval, and the publication of its caption as provided by law.

PASSED and APPROVED this the 8th day of September, 2008.


LAURIE KINCANNON, Mayor

ATTEST:


KELLI R. KUBAN, City Secretary