

AN ORDINANCE OF THE CITY OF INGLESIDE ON THE BAY, TEXAS, REGULATING SEXUALLY ORIENTED BUSINESS; DECLARING THE PURPOSE AND INTENT OF THIS ORDINANCE; ADDING CERTAIN DEFINITIONS AND CLASSIFICATIONS; REQUIRING INSPECTIONS; PROVIDING FOR EXPIRATION, SUSPENSION, REVOCATION, AND TRANSFER OF LICENSES; PROVIDING FOR EXEMPTION FROM LOCATION RESTRICTIONS; PROVIDING ADDITIONAL REGULATIONS FOR ESCORT AGENCIES, NUDE MODEL STUDIOS, ADULT THEATERS, ADULT MOTION PICTURE THEATERS AND ADULT MOTELS; REGULATING THE EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS; PROHIBITING THE DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS; PROVIDING FOR ENFORCEMENT, PENALTIES AND INJUNCTION; PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF INGLESIDE ON THE BAY, STATE OF TEXAS:

Section 1: SEXUALLY ORIENTED BUSINESSES

A. PURPOSE AND INTENT

1. It is the purpose of this ordinance to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the city. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative

materials, including sexually oriented materials. Similarly, it is not the intent 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 effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

2. It is the intent of the City Council that the location regulations of this ordinance are promulgated pursuant to Chapter 243, Local Government Code, Vernon's Texas Codes as amended, Revised Civil Statutes of Texas, as they apply to nude model studios and sexual encounter centers only. It is the intent of the City Council that any other provision of this ordinance are promulgated pursuant to the Local Government Code and the Texas and United States Constitution.

B. DEFINITIONS

In this subsection:

- (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 (5) 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 offers for sale or rental for any form of consideration any one of more of the following:

(I) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas";

(II) 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:

(I) persons who appear in a state of nudity; or

(II) live performance which are characterized by the exposure of "specified anatomical areas" or by

"specified sexual activities"; or

(III) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(d) ADULT MOTEL means a hotel, motel or similar commercial establishment which:

(I) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or

(II) offers a sleeping room for rent for a period of time that is less than ten (10) hours; or (III) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

(e) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproduction are regularly shown which are characterized by the depiction or

description of "specified sexual activities" or "specified anatomical areas."

- (f) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."
- (g) CHIEF OF POLICE means the marshal, chief of police or other designee of the Mayor of the city of Ingleside on the Bay or his designated agent.
- (h) ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (i) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.
- (j) ESTABLISHMENT means and includes any of the following:
 - (I) the opening or commencement of any sexually oriented business as a new business;
 - (II) the conversion of an existing business,

whether or not a sexually oriented business, to any sexually oriented business;

(III) the addition of any sexually oriented business to any other existing sexually oriented business; or

(IV) the relocation of any sexually oriented business.

(k) LICENSEE means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license.

(l) 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.

(m) NUDITY or a STATE OF NUDITY means:

(I) the appearance of a human bare buttock, anus, male genitals, female genitals, or male or female breast; or

(II) a state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, areola of the female breast or male breast.

(n) PERSON means an individual, proprietorship, partnership, corporation, association, or other

legal entity.

- (o) RESIDENTIAL DISTRICT means a single family, duplex, multiple family or mobile home zoning district as defined in the applicable deed restrictions and/or City Zoning Ordinance and is composed of single family, duplex or multi-family dwelling units.
- (p) RESIDENTIAL USE means a single family, duplex, multiple family or "mobile home park" use as defined in the applicable deed restrictions and/or City Zoning Ordinance.
- (q) SEMI-NUDE means a state of dress in which clothing covers no more than the genitals, pubic region, and areolas of the female breast, as well as portions of the body covered by supporting straps or devices.
- (r) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:
 - (I) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - (II) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.
- (s) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult

theater, escort agency, nude model studio, or sexual encounter center.

(t) SPECIFIED ANATOMICAL AREAS means human genitals in a state of sexual arousal.

(u) SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

(I) the fondling or other erotic touching of human genitals, pubic regions, buttocks, anus, or female breasts;

(II) sex acts, normal or perverted, actual or simulated including intercourse, oral copulation, or sodomy;

(III) masturbation, actual or simulated; or

(IV) excretory functions as part of or in connection with any of the activities set forth in (I) through (III) above.

(v) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor area occupied by the business by more than twenty-five (25%), as the floor area exists on the effective date of this ordinance.

(w) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(I) the sale, lease, or sublease of the business;

(II) the transfer of securities which constitute

a controlling interest in the business, whether by sale, exchange, or similar means; or

(III) 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.

C. CLASSIFICATION

Sexually oriented businesses are classified as follows:

- (a) adult arcades;
- (b) adult bookstores or adult video stores;
- (c) adult cabarets;
- (d) adult motels;
- (e) adult motion picture theaters;
- (f) adult theaters;
- (g) escort agencies;
- (h) nude model studios; and
- (i) sexual encounter centers.

D. LICENSE REQUIRED

1. A person commits an offense if he operates a sexually oriented business without a valid license, issued by the city for the particular type of business.
2. An application for a license must be made on a form provided by the marshal, chief of police or their designee. 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 drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6") inches. Applicants who must comply with Subsection S of this ordinance shall submit a diagram meeting the requirements of Subsection S.

3. The applicant must be qualified according to the provisions of this ordinance and the premises must be inspected and found to be in compliance with the law by the appropriate official.
4. 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, each individual who has a twenty (20%) percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Subsection E and each applicant shall be considered a licensee if a license is granted.
5. The fact that a person possesses a valid theater license does not exempt him/her from the requirements of obtaining a sexually oriented business license. A person who operates a sexually oriented business and possesses

a theater license shall comply with the requirements and provisions of this ordinance as well as all other requirements of law.

E. ISSUANCE OF LICENSE

1. The marshal, chief of police or other appropriate official shall approve or deny the issuance of a license to an applicant within thirty (30) days after the receipt of an application. An application not granted within thirty (30) days is deemed approved. An application shall be granted unless the appropriate official finds one or more of the following to be true:

- (a) An applicant is under eighteen (18) years of age.
- (b) An applicant or an applicant's spouse is overdue in payment to the city of taxes, fees, fines, or penalties assessed against them or imposed upon them in relation to a sexually oriented business.
- (c) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for the information on the application form.
- (d) An applicant or an applicant's spouse has been convicted of a violation of a provision of this ordinance, other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall

have no effect.

- (e) An applicant is residing with a person who has been denied a license by the city to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
- (f) The premises to be used for the sexually oriented business have not been approved by the appropriate health department, fire department, and the building official as being in compliance with applicable laws and ordinances.
- (g) The license fee required by this ordinance has not been paid.
- (h) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding twelve (12) months and has demonstrated that he/she is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.
- (i) An applicant or the proposed establishment is in violation of or is not in compliance with Subsections G, L, M, O, P, Q, R, S, or T.
- (j) An applicant or an applicant's spouse has been convicted of a crime:

(I) involving:

(aa) any of the following offenses as described in chapter 21 of 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 harmful materials to a minor;

(vii) sexual performance by a child;

(viii) employment harmful to minors;

(ix) possession of child pornography;

(bb) any of the following offenses as described in the Texas Penal Code:

(i) public lewdness;

(ii) indecent exposure;

(iii) indecency with a child;

(cc) sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code.

(dd) incest, solicitation of a child, or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or

(ee) criminal attempt, conspiracy, or solicitation to commit any of the forgoing offenses;

(II) for which:

(aa) less than two (2) 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;

(bb) less than five (5) 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 felony offense; or

(cc) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of offenses occurring within any twenty-four month period.

2. The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or

applicant's spouse.

3. An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection E, Item 1 (j) (I) may qualify for a sexually oriented business license only when the time period required by Subsection E, Item 1 (j) (II) has elapsed.
4. 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 address of the sexually oriented business. The license shall 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.

F. FEES

The annual fee for a sexually oriented business license is FIVE HUNDRED (\$500.00) DOLLARS.

G. INSPECTION

1. An applicant or licensee shall permit representatives of the marshal, police department, health department, fire department, building inspection department or other designated official to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.
2. A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a

representative of the police, fire, health and building inspection departments at any time it is occupied or open for business.

3. The provisions of this Subsection do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

H. EXPIRATION OF LICENSE

1. Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Subsection D. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.
2. When the marshal, chief of police or other designated official denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to denial, the appropriate official finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted license if at least ninety (90) days have elapsed since the date denial became final.

I. SUSPENSION

The appropriate official shall suspend a license for a period not to exceed thirty (30) days if he determines that a licensee or an employee has:

- (a) violated or is not in compliance with Subsections G, L, M, O, P, Q, R, S, or T of this ordinance;
- (b) engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (c) refused to allow an inspection of the sexually oriented business premises as authorized by this ordinance;
- (d) knowingly permitted gambling by any person on the sexually oriented business premises; or
- (e) demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

J. REVOCATION

1. The appropriate official shall revoke a license if a cause of suspension in Subsection I occurs and the license has been suspended within the preceding twelve (12) months.
2. The appropriate official shall revoke a license if he determines that:
 - (a) a licensee gave false or misleading information in the material submitted during the application process;
 - (b) a licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - (c) A licensee or an employee has knowingly allowed prostitution on the premises;

- (d) a licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
 - (e) a licensee has been convicted of an offense listed in Subsection E, Item 1 (j) (I) for which the time period required in Subsection E, Item 1 (j) (II) has not elapsed;
 - (f) on two (2) or more occasions within a twelve (12) month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Subsection E, Item 1 (j) (I) for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;
 - (g) 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. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code; or
 - (h) a licensee is delinquent in payment to the city for ad valorem taxes, assessments, or sales taxes related to the sexually oriented business.
3. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
 4. Subsection J, Item 2 (g) does not apply to adult motels

as a ground for revoking the 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.

5. When the appropriate official revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective. If, subsequent to revocation, the appropriate official finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Subsection J, Item 2 (e) an applicant may not be granted another license until the appropriate number of years required under Subsection E, Item 1 (j) (II) has elapsed.

K. APPEAL

If the appropriate official denies the issuance of a license, or suspends or revokes a license, the applicant, or licensee, by certified mail, return receipt requested, shall be sent written notice of the action and the right to an appeal. The aggrieved party may appeal the decision of the appropriate official to the City Council. The filing of an appeal stays the action in suspending or revoking a license until the City Council makes a

final decision.

L. TRANSFER OF LICENSE

A licensee shall not transfer the 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.

M. LOCATION OF SEXUALLY ORIENTED BUSINESSES

1. A person commits an offense if the person operates or causes to be operated a sexually oriented business within one thousand (1,000') feet of:
 - (a) a church;
 - (b) a public or private elementary or secondary school;
 - (c) a residential district;
 - (d) a public park adjacent to a residential district;
 - (e) a lot devoted to a residential use.
2. A person commits an offense if the person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand (1,000') feet of another sexually oriented business.
3. A person commits an offense if the person causes or permits the operation, establishment, or maintenance of more than one (1) sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing

another sexually oriented business.

4. For the purposes of Subsection M, Item 1, 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 public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot.
5. For purposes of Subsection M, Item 2, of this ordinance, the distance between any two (2) 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.
6. Any sexually oriented business lawfully operating on the effective date of this ordinance, that is in violation of Subsection M, Items 1, 2, or 3 of this ordinance shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed three (3) years unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or

more sexually oriented businesses are within one thousand (1,000') feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

7. 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, public or private elementary or secondary school, public park, residential district, or residential lot within one thousand (1,000') feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.
8. The measurements referred to in Items 1, 2, 4, 5, and 7 above shall be certified by a Registered Public Surveyor licensed by the State of Texas, whose fee shall be paid by the applicant or licensee.

N. EXEMPTION FROM LOCATION RESTRICTIONS

1. If the appropriate official denies the issuance of a license to an application because the location of the sexually oriented business establishment is in violation of Section 4-M of this ordinance, then the applicant may

not later than ten (10) calendar days after receiving notice of the denial, file with the city secretary a written request for an exemption from the locational restrictions of Subsection M.

2. If the written request is filed with the city secretary within the ten (10) day limit, the City Council shall consider the request. The city secretary shall set a date for the hearing within sixty (60) days from the date of the written request is received to coincide with a regular or special meeting of the City Council.
3. The city council shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.
4. The City Council may, in its discretion, grant an exemption from the locational restrictions of Subsection M if it makes the following findings:
 - (a) 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;
 - (b) that the granting of the exemption will not violate the spirit and intent of the Code of Ordinances;
 - (c) that the location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or

restoration; and

(d) that all other applicable provisions of this ordinance will be observed.

5. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the City Council is final.
6. If granted, the exemption is valid for one (1) year from the date of the City Council's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Subsection M until the applicant applies for and receives another exemption.
7. If the City Council denies the exemption, the applicant may not reapply for an exemption until at least twelve months have elapsed since the date of the City Council's action.
8. The grant of an exemption does not exempt the applicant from any other provisions of this ordinance other than the locational restrictions of Subsection M.

0. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES

1. An escort agency shall not employ any person under the age of eighteen years.
2. A person commits an offense if he acts as an escort or agrees to act as an escort for any person under the age of eighteen years.

P. ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS

1. A nude model studio shall not employ any person under the age of eighteen years.
2. A person under the age of eighteen years commits an offense if the person 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 eighteen years was in a restroom not open to public view or persons of the opposite sex.
3. A person commits an offense if the person appears in a state of nudity or knowingly allows another to appear in state of nudity in an area of a nude model studio premises which can be viewed from the public right-of-way.
4. 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.

Q. ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS

1. A person commits an offense if the person knowingly allows a person under the age of eighteen years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.
2. A person under the age of eighteen years commits an offense if the person knowingly appears in a state of

nudity in or on the premises of an adult theater or an adult motion picture theater.

3. It is a defense to prosecution under Subsection Q, Items 1 and 2 if the person under eighteen years was in a restroom not open to public view or persons of the opposite sex.

R. ADDITIONAL REGULATIONS FOR ADULT MOTELS

1. Evidence that a sleeping room in a hotel, motel, or 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 herein.
2. 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 business license, the person rents or subrents a sleeping room to a person and, within ten hours from the time the room is rented, the person rents or subrents the same sleeping room again.
3. For purposes of Subsection R, Item 2, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

S. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS

1. A person who operates or causes to be operated a sexually

oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty square feet of floor space, a film video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (a) 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 thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The appropriate official may waive the foregoing

- diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (b) The application shall be sworn to be true and correct by the applicant.
 - (c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the appropriate official or his designee.
 - (d) 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.
 - (e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose

from at least one of the manager's stations. The view required in this section must be by direct line of sight from the manager's station.

- (f) 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 6, Item 1 (e) 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 which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection S, Item 1 (a).
- (g) 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 (1.0) footcandle as measured at the floor level.
- (h) 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 above is maintained at all times that any patron is present in the premises.

2. A person having a duty under Subsection S, Item 1 (a) through (h) above commits an offense if the person knowingly fails to fulfill that duty.

T. DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS

1. A person commits an offense if, in a business establishment open to persons under the age of seventeen years, the person 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:
 - (a) human sexual intercourse, masturbation, or sodomy;
 - (b) fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;
 - (c) less than completely and opaquely covered human genitals, buttocks, or that portion of the female breasts below the top of the areola; or
 - (d) human male genitals in a discernibly turgid state, whether covered or uncovered.
2. In this section "display" means to locate an item in such a manner that, without obtaining assistance from an employee of the business establishment:
 - (a) it is available to the general public for handling and inspection; or
 - (b) the cover or outside packaging on the item is visible to members of the general public.

U. ENFORCEMENT

1. Except as provided by Subsection U, Item 2, any person violating Subsection M of this ordinance, upon conviction, is punishable by a fine not to exceed ONE THOUSAND DOLLARS.
2. If the sexually oriented business involved is a nude model studio or sexual encounter center, then violation of Subsection D, Item 1 or Subsection M of this ordinance is punishable as a CLASS B MISDEMEANOR.
3. Except as provided by Subsection U, Item 2, any person violating a provision of this ordinance other than Subsection M, upon conviction, is punishable by a fine not to exceed TWO HUNDRED DOLLARS.
4. It is a defense to prosecution under Subsection D, Item 1, Subsection M, or Subsection P, Item 4 that a person appearing in a state of nudity did so in a modeling class operated:
 - (a) by a proprietary school licensed by the State of Texas; a college, junior college, or university supported entirely or partly by taxation;
 - (b) by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation;
or
 - (c) in a structure:

(I) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

(II) where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

(III) where no more than one (1) nude model is on the premises at any one time.

5. It is a defense to prosecution under Subsection D, Item 1 or Section M that each item of descriptive, printed, film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.

V. INJUNCTION

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Subsection M of this ordinance is subject to a suit for injunction as well as prosecution for criminal violations.

THIS ORDINANCE SHALL TAKE EFFECT FROM AND AFTER ITS PASSAGE AND PUBLICATION AS PROVIDED BY LAW, PASSED, ADOPTED AND FINALLY APPROVED THIS THE 2nd DAY OF June, 1992.

CITY OF INGLESIDE ON THE BAY, TEXAS

BY: Al Robbins
Al Robbins, Mayor

PUBLIC NOTICE

NOTICE is hereby given that a public hearing will be held by the City Council of the City of Ingleside on the Bay, State of Texas, on the 2nd day of June, 1992, at 6:00 o'clock p.m. or as soon thereafter as the matter is reached on the agenda, at 419 Woodhaven, in the City of Ingleside on the Bay, Texas, to consider: AN ORDINANCE of the City of Ingleside on the Bay, Texas, regulating sexually oriented business; declaring the purpose and intent of this ordinance; adding certain definitions and classifications; requiring inspections; providing for expiration, suspension, revocation, and transfer of licenses; providing for exemption from location restrictions; providing additional regulations for escort agencies, nude model studios, adult theaters, adult motion picture theaters and adult motels; regulating the exhibition of sexually explicit films or videos; prohibiting the display of sexually explicit material to minors; providing for enforcement, penalties and injunction; providing an effective date.

Al Robbins, Mayor
City of
Ingleside on the Bay

Published in The Ingleside Index May 21, 1992.

ATTEST:

Adelia Martinez
(Signature)
City Secretary



APPROVED AS TO FORM.

THE STATE OF TEXAS
COUNTY OF SAN PATRICIO:

Before me, the undersigned authority, personally appeared R. P. RICHARDS of The Ingleside Index, who after being

by me duly sworn, on his oath deposes and said:

1. That (he) (~~she~~) is PUBLISHER of The Ingleside Index a weekly newspaper published in San Patricio County, Texas.

2. That the CITY OF INGLESIDE ON THE BAY: ORDINANCE REGULATING SEXUALLY ORIENTED BUSINESS

hereto annexed, was published in the regular issues of said Ingleside Index once each week for One (1) successive weeks said publications having been made on the May 21, 1992

3. That a printed copy of said notice as the same appeared in said issues is attached hereto.

R. P. Richards



Sworn to and subscribed before me this Twenty first

day of May, 1992
Elizabeth Vana

Notary Public, San Patricio County, Texas
PUBLICATION FEE: \$ 39.78