

Ordinance 2004-08

ORDINANCE OF THE CITY OF RIESEL, TEXAS REGULATING SEXUALLY ORIENTED BUSINESSES; PROVIDING A METHOD OF ENFORCEMENT; PROVIDING A PENALTY; AND DECLARING AN EMERGENCY

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF RIESEL, TEXAS:

SECTION 1: PURPOSE AND INTENT.

- 1.1 It is the purpose of this Ordinance to regulate sexually oriented businesses to promote and protect the public health, safety, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to prevent concentration of sexually oriented businesses within the City. It is not the purpose, intent or effect of this Ordinance to limit, restrict or regulate the content of any communicative material, including sexually oriented materials. Similarly, it is not the intent nor effect of this Order 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.
- 1.2 This Ordinance is authorized pursuant to the general laws of the State of Texas and Chapter 243 of the Local Government Code.
- 1.3 A study conducted by McLennan County, Texas, the jurisdiction wherein the City of Riesel is located, determined that sexually oriented businesses have documented adverse secondary effects on crime rates, neighborhoods, property values and the public health, welfare and safety, and that the failure to regulate the location and manner of the operations of such businesses would be detrimental to the health, safety and welfare of the citizens of McLennan County, Texas. Said study was based in part on studies from various other jurisdictions which made similar findings. Based on such findings, and the studies of other jurisdictions reviewed, the City Council finds that sexually oriented businesses present adverse secondary effects on crime rates, neighborhoods, property values, and the public health, safety and welfare and that the regulation of the time, place and manner of the operation of sexually oriented businesses is proper and necessary for the protection of the health, safety and welfare of the citizens of the City of Riesel.
- 1.4 A review of applicable information indicates that the location restrictions hereunder allow for sufficient areas where such sexually oriented businesses could locate within the City of Riesel, and do not result in the total prohibition of the location of a sexually oriented business within the City.

SECTION 2. DEFINITIONS.

- 2.1 SEXUALLY ORIENTED BUSINESS means:
- (A) A sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, or adult motel; or
 - (B) Any commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or other items to provide sexual stimulation or gratification to the customer.
 - (C) The term does not include any of the commercial enterprises or businesses specifically exempted by §243.004 of the Local Government Code, or amendments thereto.
- 2.2 SEX PARLOR means a commercial enterprise which has as its primary business or has as one of its principal businesses the operation of an "Adult Theater".
- 2.3 NUDE STUDIO means a commercial enterprise which has as its primary business or has as one of its principal businesses the exhibition, appearance, display, performance, presentation, or showing of a person in a "state of nudity" or who displays "specified anatomical area" for the purpose of:
- (A) observation by a customer; or
 - (B) sketching, drawing, painting, sculpting, photographing, or other representation by a customer; or
 - (C) providing sexual stimulation or gratification to the customer.
- 2.4 MODELING STUDIO means a commercial enterprise which has as its primary business or has as one of its principal businesses the sale, loan, lease or rental of attire, garments, wearing apparel, clothing, devices, accessories, ornaments, jewelry, decorations, or other such items, the sale, loan, lease or rental of which is encouraged or accomplished through the exhibition, appearance, display, performance, presentation, or showing of said items on or by a person:
- (A) in a "state of nudity"; or
 - (B) while exposing "specified anatomical areas"; or

- (C) while providing physical contact between the person and/or the customer's "specified anatomical areas" whether or not covered by clothing; or
- (D) while performing "specified sexual activities" with the customer or for the customer's observation.

2.5 LOVE PARLOR means a commercial enterprise which has as its primary business or has as one of its principal businesses the operation of an "Adult Cabaret" or an "Escort Agency".

2.6 ADULT BOOKSTORE means a commercial enterprise which has as its primary business or has as one of its principal businesses the exhibiting, offering, sale, loan, or rental of:

- (A) books, magazines, periodicals and/or other printed matter, and/or photographs, drawings, videos, tapes, laser or compact discs, and/or other items or devices which depict or describe "specified sexual activities" or "specified anatomical areas", or which depict or describe acts, circumstances, events, happenings, performances or conditions intended to provide sexual stimulation or gratification to the customer, whether on or off of the premises of the enterprise; and/or
- (B) instruments, devices, or paraphernalia which are intended or designed for use in connection with "specified sexual activities" or intended or designed to provide sexual stimulation or gratification to the customer, whether on or off of the premises of the enterprise, including, but not limited to, simulated penises (dildos); vibrators, simulated vaginas, blow-up dolls with penetrable orifices, and items intended for insertion into the female vagina or the male or female anus, or intended to be used for simulated oral sex.

2.7 ADULT MOVIE THEATER means a commercial enterprise which has as its primary business or has as one of its principal businesses:

- (A) the displaying, projecting, exhibition, presentation or showing of films, motion pictures, video tapes, slides, laser/compact discs or other similar photographic reproductions to be viewed or shown on the enterprise premises;
- (B) where the images viewed or displayed are distinguished or characterized by the depicting or describing of "specified sexual activities", "specified anatomical areas", or are intended to provide sexual stimulation or gratification to the customer; and

(C) such showing:

- (1) is done on a regular or periodic basis; or
- (2) is advertised to the public, by sign or otherwise, directly or by inference, to contain material distinguished or characterized by the depicting or describing of "specified sexual activities", "specified anatomical areas", or which will provide sexual stimulation or gratification to the customer.

2.8 ADULT VIDEO ARCADE means a commercial enterprise which has as its primary business or has as one of its principal businesses:

- (A) the providing of coin, slug, or token operated electronic, electric or mechanical still or motion video tape, video cassette machines or compact/laser disc machines, projectors, or other image-producing devices to be viewed by or displayed to five (5) or fewer persons per machine at any one time while on the enterprise premises; and
- (B) the images viewed or displayed are distinguished or characterized by the depicting or describing of "specified sexual activities", "specified anatomical areas", or are intended to provide sexual stimulation or gratification to the customer.

2.9 ADULT MOVIE ARCADE means a commercial enterprise which has as its primary business or has an one of its principal businesses:

- (A) the providing of coin, slug, or token operated electronic, electric or mechanical still, film or motion picture machines or compact/laser disc machines, projectors, or other image-producing devices to be viewed by or displayed to persons on the enterprise premises; and
- (B) the images viewed or displayed are distinguished or characterized by the depicting or describing of "specified sexual activities", "specified anatomical areas", or are intended to provide sexual stimulation or gratification to the customer.

2.10 ADULT VIDEO STORE means a commercial enterprise which has as its primary business or has as one of its principal businesses the exhibiting, offering, sale, loan, or rental of any items or devices, films, motion pictures, video tapes or cassettes, video reproductions, slides, compact/laser discs, or other visual or audio representations, including books, periodicals, photographs, printed materials, audio tapes, and items or devices (including but not limited to simulated penises (dildos); vibrators; simulated vaginas, blow-up dolls with penetrable orifices and items intended for insertion into the female vagina or the male or female anus, or intended

to be used for simulated oral sex), which depict or describe "specified sexual activities" or "specified anatomical areas", and/or which depict or describe acts, circumstances, events, happenings, performances or conditions intended to provide sexual stimulation or gratification to the customer, or which are intended or designed for use in connection with "Specified Sexual Activities" or for use in the stimulation of "Specified Anatomical Areas", whether on or off of the premises of the enterprise.

2.11 ADULT MOTEL means a commercial enterprise, including a hotel, motel or similar establishment, which has as its primary business or has as one of its principal businesses the offering, loan, rental, lease, or granting of a license to occupy a room, rooms or other accommodations:

(A) (1) wherein a patron or customer may view or hear closed-circuit television transmissions, films, motion pictures, video cassettes or tapes, slides or other visual or audio representations which are characterized or include depictions or descriptions of "specified sexual activities", "specified anatomical areas", or which depict or describe acts, circumstances, events, happenings, performances or conditions intended to provide sexual stimulation or gratification to the customer; and

(2) the enterprise has a sign or other advertisement visible from the public right-of-way which indicates, directly or by inference, the availability of such accommodations for such adult type visual or audio representations; or

(B) adapted for the overnight accommodation of persons, and such accommodation can be:

(1) rented, leased or licensed for a period of time that is less than ten (10) hours; or

(2) sub-rented, sub-let, or sub-licensed by the renter, lessee or licensee for a period of time that is less than ten (10) hours.

2.12 ADULT THEATER means a commercial enterprise, including a theater, amphitheater, hall, concert hall, assembly hall, meeting hall, lecture hall, arena, auditorium, building (or portion thereof), or other facility, which has as its primary business or has as one of its principal businesses the appearance, presence or performance of persons, whether in person or by mechanical or electronic means, film, motion picture, video cassette, video tape, slides, laser discs, compact discs, or other photographic reproductions, and whether or not the persons are employees of the enterprise:

(A) in a "state of nudity"; or

- (B) in actions which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities", or are designed or intended to provide sexual stimulation or gratification to the customer.

2.13 ADULT CABARET means a commercial enterprise, including, but not limited to, a nightclub, bar, restaurant, stage and/or table dancing/performance business or similar facility, which has as its primary business or a major aspect of its primary business or has as a principal business or a major aspect of one of its principal businesses the appearance, presence or performance of persons, whether in person or by mechanical or electronic means, film, motion picture, video cassette, video tape, slides, laser/compact discs or other photographic reproductions, and whether or not the persons are employees of the enterprise:

- (A) in a "state of nudity"; or
- (B) in actions which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities", and/or are designed or intended to provide sexual stimulation or gratification to the customer.

2.14 ESCORT AGENCY means a commercial enterprise which has as its primary business or has as one of its principal businesses the furnishing of or the offer to furnish, or a commercial enterprise which advertises to furnish, a person who will:

- (A) act as a private and temporary companion, guide or date for another person; or
- (B) privately model, display, exhibit or show lingerie, attire, garments, wearing apparel, clothing, devices, accessories, or other such items for another person, or perform/dance for another person; AND
- (C) appear in a "state of nudity" before the other person; or
- (D) expose "specified anatomical areas" to the other person; or
- (E) perform "specified sexual activities"; or
- (F) provide sexual stimulation or gratification to another.

2.15 CHURCH means a building in which persons regularly assemble for religious worship intended primarily for purposes connected with such worship or for propagating a particular form of religious belief.

- 2.16 COMMERCIAL ENTERPRISE or ENTERPRISE means a person or persons, corporation, partnership, association or other entity, engaged in business, commerce, trade, industry, job, livelihood or occupation, involving the payment of consideration, whether or not for profit.
- 2.17 ESTABLISH or ESTABLISHES means and includes any of the following: the opening or commencement of any sexually oriented business as a new business after December 13, 1993; the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; the addition of any sexually oriented business to any other existing sexually oriented business; the relocation of any sexually oriented business; the continuation of the operation of a sexually oriented business, including the continued operation of any sexually oriented business that existed before December 13, 1993; or the expansion of a sexually oriented business.
- 2.18 LICENSEE (except in Section 2.11, wherein it shall have its common meaning) 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.
- 2.19 NUDITY or a STATE OF NUDITY means the appearance or display of the human buttock, anus, genitals, or female breast; or a state of dress or undress that fails to opaquely cover the human buttock, anus, genitals or areola of the female breast.
- 2.20 NURSING HOME means a facility for the care of the aged or invalid, whether it be non-profit or for profit.
- 2.21 OPERATES OR CAUSES TO BE OPERATED A SEXUALLY ORIENTED BUSINESS. Any person who does any one (1) or more of the following shall be deemed to be operating or causing to be operated a sexually oriented business:
- (1) operates a cash register, cash drawer or other depository on the sexually oriented business premises where cash funds or records of credit card or other credit transactions generated in any manner by the operation of the commercial enterprise constituting a sexually oriented business or the activities conducted therein are kept;
 - (2) displays or takes orders from any customer for any merchandise, goods, entertainment or other services offered on the sexually oriented business premises;
 - (3) delivers or provides to any customer any merchandise, goods, entertainment or other services offered on the sexually oriented business premises;

- (4) acts as a door attendant to regulate entry of customers or other persons into the sexually oriented business premises;
- (5) supervises or manages other persons in the performance of any of the foregoing activities on the sexually oriented business premises; or
- (6) owns in whole or in part, manages, controls, or is a licensee of, a sexually oriented business.

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.

- 2.22 PERSON means an individual, proprietorship, partnership, corporation, association or other legal entity.
- 2.23 RESIDENTIAL means pertaining to the use of land, for premises such as single family homes, townhomes, patio homes, mobile homes, duplexes, habitable rooms for non-transient occupancy and which are designed primarily for living, sleeping, cooking, and eating therein. A premises which is designed primarily for living, sleeping, cooking and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes. This does not include permanently abandoned structures.
- 2.23A RESIDENTIAL NEIGHBORHOOD means an area zoned residential, or a subdivision having two or more residences.
- 2.24 SCHOOL means a building, where persons regularly assemble for the purpose of instruction or education together with the playgrounds, stadia and other structures or grounds used in conjunction therewith, whether or not located within or without an incorporated area. The term is limited to:
 - (A) Public and private schools used for primary or secondary education, in which any regular pre-kindergarten, kindergarten or any of grades one (1) through twelve (12) classes are taught; and
 - (B) Special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in pre-kindergarten, kindergarten or any of grades one (1) through twelve (12); and
 - (C) Child-care or nursery school facilities licensed by the State of Texas.

- (F) More persons contact the enterprise, by phone or otherwise, for the sexually oriented aspect of the enterprise than for the non-sexually oriented aspect of the enterprise; or
- (G) There are a greater number of sexually oriented items for sale, observation or use in the enterprise inventory than non-sexually oriented items for sale, observation or use; or
- (H) The reasonable cash market value of sexually oriented items in inventory and for sexually oriented services offered by the enterprise is more than the reasonable cash market value of the non-sexually oriented items and services; or
- (I) The sum of prices for the sale of the items in inventory for sexually oriented items and for sexually oriented services is more than the sum of the sale or service prices of the items in inventory for non-sexually oriented inventory and services; or
- (J) The profits of the enterprise from sexually oriented aspect of the enterprise are more than the profits from non-sexually oriented aspect of the enterprise; or
- (K) The enterprise represents itself primarily as a sexually oriented enterprise; or
- (L) The enterprise displays signs or engages in advertising to the public indicating directly or indirectly that the enterprise is principally a sexually oriented enterprise; or
- (M) The enterprise displays signs or engages in advertising to the public emphasizing directly or indirectly the sexually oriented aspect of the enterprise over the non-sexually oriented aspect of the enterprise.

The above listing is illustrative, and is not exclusive. Nothing shall preclude other means of direct or circumstantial proof that the sexually oriented aspect of the enterprise preponderates over the non-sexually oriented aspect of the enterprise.

2.26

ONE OF ITS PRINCIPAL BUSINESSES means that a commercial enterprise devotes a separate section, division, or display area on the enterprise premises or segment of its business to the items, materials, or activities addressed by the provision in which said term is used, or that such items, materials or activities constitute 25% or more of the commercial enterprise.

- 2.27 PUBLIC PARK means a park, playground, museum, library, stadia, sports field or arena, or public gathering or recreation area which is owned, operated or controlled by a government entity or non-profit entity and is open to the general public (with or without payment of a fee or charge).
- 2.28 SPECIFIED ANATOMICAL AREAS means human anus, or the human genitals, or any part thereof, whether or not in a state of sexual stimulation or arousal, and includes the covered male genitals in a discernable turgid state.
- 2.29 SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:
- (A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
 - (B) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, sodomy, or use of items or devices for insertion into or stimulation of Specified Anatomical Areas;
 - (C) masturbation, actual or simulated, with or without the use of items or devices for insertion into or stimulation of Specified Anatomical Areas; or
 - (D) excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above.
- 2.30 SUBSTANTIAL ENLARGEMENT of sexually oriented business means the increase in floor area occupied by the business by more than 25 percent, as the floor area existed on the date of enactment of this Ordinance.
- 2.31 TRANSFER OF OWNERSHIP OR CONTROL of sexually oriented business means and includes any of the following:
- (A) the sale, lease, or sublease of the business;
 - (B) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
 - (C) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by request or other operation of law upon death of the person possessing the ownership or control.

All terms and words used in this Ordinance, regardless of the number and gender in which they are used, shall be construed to include any other number, singular or plural, and any other gender, masculine, feminine, or

neuter, as the context or sense of any paragraph of this Ordinance may require.

SECTION 3: LICENSE REQUIRED.

- 3.1 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.
- 3.2 An application for a license must be made on a form provided by the Chief of Police or other duly authorized representative of the City of Riesel. 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 inches. Applicants who must comply with Section 16 hereof shall submit a diagram meeting the requirements of Section 16. The Applicant must provide the address of the location of the premises to be used as a sexually oriented business, and both a common and legal description of the premises.
- 3.3 The applicant must be qualified according to the provisions of this Ordinance and the premises must be inspected and found to be in compliance or non-compliance with applicable state and local laws and this Ordinance by an authorized representative of the City of Riesel within twenty-one (21) days of receipt of an application. The failure of the City to conduct the inspection within twenty-one (21) days shall not operate to delay consideration of the application for licensure, which shall be ruled upon within thirty (30) days of receipt.
- 3.4 If a person who wishes to establish and/or operate a sexually oriented business is an individual, he must sign the application for a license as applicant. If a person who wishes to establish and/or 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 license as applicant, unless the applicant is a corporation, in which case the duly authorized officer of the Corporation empowered to sign the application on behalf of the Corporation may execute the application on behalf of the corporate applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a license is granted. This does not require every employee of a sexually oriented business to obtain a license. Only the owner, owners, proprietor, or corporation must obtain a license. The employees of a sexually oriented business operate under the sexually oriented business' license.
- 3.5 The fact that a person possesses a valid theater license, dance hall license, or public house of amusement license does not exempt him from the requirement of obtaining a Sexually Oriented Business License.

- 3.6 A sexually oriented business that existed before the effective date of this Ordinance and which is seeking licensure or renewal under this Ordinance shall be allowed to continue its operations at its current location until a decision is made on the application by the Chief of Police, or authorized representative of the City. While the application is pending, no enforcement actions under this Ordinance shall take place against a sexually oriented business which existed prior to passage of this Ordinance.

SECTION 4: ISSUANCE OF LICENSE.

- 4.1 The Chief of Police or other duly authorized representative of the City of Riesel shall approve or deny the issuance of a license by the city secretary to an applicant within thirty (30) days after receipt of an application. The Chief of Police shall approve the issuance of the license unless he finds one or more of the following to be true:
1. an applicant or person managing or to manage the sexually oriented business operations is under eighteen (18) years of age;
 2. an applicant or person managing or to manage the sexually oriented business operations 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;
 3. an applicant or person managing or to manage the sexually oriented business operations 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 years immediately preceding the application;
 4. the premises to be used as the sexually oriented business are found in violation of applicable state or local law regarding public health or welfare, or the provisions of this Ordinance by the Chief of Police or other authorized representative of the City. In accordance with subsection 3.3, reports of compliance or non-compliance with applicable state or local law or this Ordinance, and the inspection related thereto must be completed within twenty-one (21) days of the receipt of the application. Failure to complete the inspection and report within the twenty-one (21) days will not prevent the Chief of Police or the City's authorized representative from considering violations of applicable state or local law or of this Ordinance with regard to the premises as a basis for denial of the license, but, rather, the twenty-one (21) day directive is meant to prevent possible delay of the license determination beyond the thirty (30) day period. In no case shall the Chief of Police or the City's authorized representative delay his determination on the license application beyond the thirty (30) day period set forth in this subsection 4.1 due to any delay in or failure to timely conduct any inspection or report on the part of the Chief of Police or the City's authorized representative or other applicable authority;

5. the premises to be used for the enterprise has been found in violation of applicable law by the Health Department and the applicant has failed to cure such deficiencies within the time established by the Health Department or by applicable law. Nothing herein shall be deemed to require Health Department inspection and approval of a premises prior to issuance of a license. However, if the Health Department has undertaken such an inspection and found violations that are not cured, this is a ground for denying the application. Under no circumstance shall the consideration of the application be delayed beyond the thirty (30) day period set forth herein based on an ongoing or planned Health Department inspection. The Chief of Police or other authorized representative of the City shall approve or deny the application on or before thirty (30) days of its receipt as set forth herein.
6. the applicant or the proposed enterprise is in, or would be in, violation of the location restrictions of Section 12 of this Ordinance if the sexually oriented business is established and/or operated as proposed in the application;
7. (a) an applicant or person managing or to manage the operation of the sexually oriented business, or a person operating or to operate or cause the operation of the sexually oriented business has been convicted of a crime involving:
 - (i) any of the following offenses as described in Chapter 43 of the Texas Penal Code (or its successor statutes):
 - prostitution;
 - promotion of prostitution;
 - aggravated promotion of prostitution;
 - compelling prostitution;
 - obscenity;
 - sale, distribution, or display of harmful material to minor;
 - sexual performance by a child;
 - possession of child pornography;
 - (ii) any of the following offenses as described in Chapter 43 of the Texas Penal Code (or its successor statutes):
 - public lewdness;
 - indecent exposure;
 - indecent with a child;
 - (iii) sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code (or its successor statutes);

- (iv) incest, solicitation of a child, or harboring a runaway child as described in Chapter 25 of the Texas Penal Code (or its successor statutes);
 - (v) for which less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense; less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within a 24 month period.
- (b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.
 - (c) An applicant who has been convicted or whose manager or operator has been convicted of an offense listed in Subsection 4.1(7)(a) may qualify for a sexually oriented business license only when the time period required by Subsection 4.1(7)(a)(v) has elapsed.
- 4.2 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 of the sexually oriented business so that it may be easily read at any time.
- 4.3 Should the Chief of Police or designated representative of the City fail to approve or deny the issuance of a license on or before thirty (30) days of receipt of the application, this shall result in automatic approval of the license.

SECTION 5: FEES.

- 5.1 The annual fee for a Sexually Oriented Business License is Five Hundred Dollars (\$500.00). If the applicant is required to also obtain a dance hall license or public house of amusement license for the business at a single location, payment of the fee for the sexually oriented business license exempts the applicant from payment of the fees for the dance hall or public house of amusement licenses. This fee shall be paid by certified check made payable to the City, and should be submitted with the original application for license, and each annual renewal application for license.

SECTION 6: INSPECTIONS.

- 6.1 An applicant or licensee shall permit the Chief of Police or representatives of the City of Riesel to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law and this Ordinance, at any time it is occupied or open for business. 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 at any time it is occupied or open for business. 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 permanent or temporary habitation.

SECTION 7: EXPIRATION OF LICENSE.

- 7.1 Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 3. Applications for renewal must be filed at least thirty days prior to the expiration date of the current license. The application will be acted on by the Chief of Police or other duly authorized representative of the City in accordance with the same procedures and time-lines as for original applications. Licenses issued automatically for failure to timely rule upon them in accordance with Subsection 4.3 above also terminate one (1) year from their deemed issuance, and the renewal procedures herein must be followed. When the Chief of Police or other duly authorized representative of the City of Riesel denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial, subject to appeal rights and City Council action provided herein, unless changes in conditions, circumstances or location, along with a submission of a new application, warrants the issuance of a license. If subsequent to denial, the Chief of Police or other duly authorized representative of the City of Riesel finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if the applicant has submitted a new application in accordance with the procedures of this Ordinance.

SECTION 8: SUSPENSION.

- 8.1 The Chief of Police or other duly authorized representative of the City of Riesel shall suspend a license for a period not to exceed thirty (30) days if he determines that a licensee or an employee of a licensee has:
- a. violated or is not in compliance with the provisions of this Ordinance in the operation of the sexually oriented business;
 - b. refused to allow an inspection of the premises of the sexually oriented business as authorized by this Ordinance;
 - c. knowingly allowed a person under seventeen (17) years of age to enter a sexually oriented business.

Allowing a person to enter a portion of a business not devoted primarily to the sale, rental or exhibition of sexually oriented materials or entertainment shall not be grounds for suspension. However, allowing entry by one under seventeen (17) years of age into a portion of a sexually oriented business which is primarily devoted to the sale, rental or exhibition of sexually oriented materials or entertainment shall be a ground for suspension.

SECTION 9: REVOCATION.

- 9.1 The Chief of Police or other duly authorized representative of the City of Riesel shall revoke a license if a cause of suspension in Section 8 occurs, and the license has been suspended within the preceding twelve months.
- 9.2 The Chief of Police or other duly authorized representative of the City of Riesel shall revoke a license if he determines that:
1. A licensee gave false or misleading information in the material submitted to the Chief of Police or other duly authorized representative of the City of Riesel during the application process;
 2. A licensee or an employee has knowingly allowed possession of, use, or sale of controlled substances on the premises;
 3. A licensee or an employee has knowingly allowed prostitution on the premises;
 4. A licensee or an 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 Subsection 4.1(7)(a) above for which the time period required in Subsection 4.1(7)(a)(v) has not elapsed;
 6. On two or more occasions within a twelve month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Subsection 4.1(7)(a) above for which a conviction has been obtained, and the persons or persons were employees or contractors of the sexually oriented business at the time the offenses were committed; or
 7. 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. This subsection does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act to occur in a public place or within public view.

The fact that a conviction is being appealed shall have no effect on the revocation of the license.

- 9.3 When the Chief of Police or other authorized representative of the City of Riesel 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 the license was revoked under subsection 9.2(5), an applicant may not be granted another license until the appropriate number of years required under Subsection 4.1(7)(a)(v) has elapsed.

SECTION 10: APPEAL.

- 10.1 If the Chief of Police or other authorized representative of the City of Riesel denies the issuance of a license, or suspends or revokes a license, he shall send the applicant or licensee by certified mail, return receipt requested, or other reliable courier, notice of the action and the reasons therefor and of the right to an appeal. The aggrieved person may appeal the decision to the City Council if a request for such appeal is made in writing to the Mayor within ten (10) calendar days of the receipt of the notice of the action. The City Council shall act on the appeal within thirty (30) calendar days of the receipt of the appeal. The filing of an appeal stays the action of the Chief of Police or other duly authorized representative of the City of Riesel in suspending or revoking a license until the City Council makes a final decision. The filing of an appeal of a denial of a license stays any enforcement action against the applicant/appellant if the sexually oriented business involved in the appeal existed and was in operation at the same location prior to the effective date of this Ordinance pending the City Council's action on such appeal. The applicant shall have the right to a hearing before the City Council as part of the appeals process.

An applicant or licensee whose application for a license has been denied or whose license has been suspended or revoked has the right to appeal to the state district court. A state district court has jurisdiction over actions arising from the denial, suspension or revocation of a license issued under this Order pursuant to Section 243.007 of the Texas Local Government Code.

SECTION 11: TRANSFER OF LICENSE.

- 11.1 A licensee shall not transfer his license to another, and any such transfer shall be of no effect. Nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

SECTION 12 : LOCATION OF SEXUALLY ORIENTED BUSINESSES.

- 12.1 a. A person commits an offense if he establishes, operates or causes to be operated or substantially enlarges a sexually oriented business within 1500 feet of:
- (1) a church;
 - (2) a school;
 - (3) a public park; or

- (4) a nursing home.
- b. For the purposes of Subsection 12.1(a), 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, school, or nursing home, or to the nearest boundary of an affected public park.
- c. Any sexually oriented business lawfully operating prior to the effective date of this Ordinance that is in violation of Subsection 12.1(a) shall be deemed a nonconforming use. The nonconforming use shall be allowed to continue for a period not to exceed one (1) year, from the effective date of this Ordinance, 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 or extended, except that the use may be changed to a conforming use. An extension of amortization may be granted if the City Council finds good cause exists therefor based on information regarding investment and recoupment provided by the person requesting the extension. The request must be made in writing to the Mayor and will be considered by the City Council within thirty (30) days of its receipt. Enforcement of this Ordinance against an existing business covered by this subsection shall be stayed pending City Council action on the request.
- d. 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, school, public park, or nursing home within the prohibited distance 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.

SECTION 13: EXEMPTION FROM LOCATION RESTRICTIONS.

- 13.1 a. If an applicant is denied a license because the location of the sexually oriented business is in violation of Section 12 of this Ordinance, then the applicant may, in addition to or in lieu of his right of appeal of the denial provided at Section 10 of this Ordinance, 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 Section 12. The request for exemption shall initially be reviewed by the Chief of Police or duly authorized representative of the City within ten (10) days of the City Secretary's receipt of the same and the City Secretary shall assure that the Chief of Police or duly authorized representative of the City gets a copy of the request within two (2) days of its receipt. The Chief of Police or duly authorized representative of the City shall make a decision on the request not later than fifteen (15) days after its receipt, and notify the requestor of his/her decision in writing posted to the mail or sent by courier no later than five (5) days thereafter. The Chief of Police or duly authorized representative of the City shall base their decision on the factors set forth in part (d) of this Subsection set out below. The

applicant must submit information supporting his request, including affidavits where necessary, for the review of the Chief of Police or the authorized representative of the City, along with the written request for exemption. Denial of the exemption may be appealed to the City Council by filing a written request therefor within ten (10) days of notice of denial of the exemption.

- b. If the written appeal is filed by the Applicant within the ten (10) day period, the City Council shall consider the appeal. The city secretary shall set a date for the hearing within sixty (60) days of the date the written appeal is received.
- c. The City Council shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.
- d. The City Council may, in its discretion, grant an exemption from the locational restrictions of Section 12 if it makes the following findings:
 - 1. That the location of the 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 exemption will not violate the spirit and intent of this Ordinance;
 - 3. That the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;
 - 4. That the location of a sexually oriented business in the area will not cause an increase in criminal activity in the area of its location; and
 - 5. That all other applicable provisions of this Ordinance will be observed.
- e. The City Council shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. The decision of the City Council is final subject to any judicial remedies available to the Applicant. The Applicant has the burden of proof to show the foregoing facts by clear and convincing evidence.
- f. If the City Council grants the exemption, the exemption is valid for one year from the date of the Council's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 12 until and unless the applicant applies for and receives another exemption.
- g. If the City Council denies the exemption, the applicant may not re-apply for an exemption until at least twelve (12) months have elapsed since the date of the

Council's action, unless substantial changes have occurred which would create the possibility of a different decision on the request.

- h. The grant of an exemption does not exempt the applicant from any other provisions of this Ordinance other than the locational restrictions of Section 12.
- i. Failure of the City Council to act on the application within the time prescribed shall be construed as a denial of the exemption. Enforcement action based on location under this Ordinance against a sexually oriented business that existed prior to the effective date of this Ordinance shall be stayed from the filing of the request for exemption to the date of a denial of the exemption on appeal by the City Council. This stay does not apply to enforcement action based on violations of state or other laws, or based on other provisions of this Ordinance.

SECTION 14: ADDITIONAL REGULATIONS FOR NUDE AND MODELING STUDIOS.

- 14.1 a. A nude studio or modeling studio shall not employ any person under the age of eighteen (18) years.
- b. A person under the age of eighteen (18) years commits an offense if he appears in a state of nudity before a person or before persons of the opposite sex in or on the premises of a nude studio or modeling studio.
- 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 in an area of a nude studio or modeling studio premises which can be viewed from the public right-of-way.
- d. A nude studio or modeling 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.
- e. No sexual contact with or touching of "specified anatomical areas" of models by customers or others on the premises of the Nude Studio or Modeling Studio shall be allowed.
- f. Models shall not masturbate or touch "specified anatomical areas" of their body for the purpose of viewing by a customer or others on the premises.

**SECTION 15: ADDITIONAL REGULATIONS FOR ADULT THEATERS,
ADULT MOVIE THEATERS, ADULT CABARETS AND ESCORT AGENCIES.**

- 15.1 a. A person commits an offense if he knowingly allows a person under the age of eighteen (18) years to appear in a state of nudity to person(s) of the opposite sex in or on the premises of an adult theater, adult movie theater, adult cabaret, or escort agency.

- b. A person under the age of eighteen (18) years commits an offense if he knowingly appears in a state of nudity to person(s) of the opposite sex in or on the premises of an adult theater, adult movie theater, adult cabaret, or escort agency.
- c. An adult theater, adult movie theater, adult cabaret or escort agency 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 area open to the public.
- d. No sexual contact with or touching of "specified anatomical areas" of performers, models or dancers by customers or others, including the performer, model or dancer themselves if such contact or touching is made in the view of or for the observation of the customer, shall be allowed.

SECTION 16: REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

- 16.1 a. A person who operates or causes to be operated a sexually oriented business 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 which is characterized by the depiction and/or presentation of "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 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 minus six (6) inches. The City Council 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 other duly authorized representative of the City of Riesel.

4. It is the duty of the owners and operator of the premises to ensure that at least one (1) 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 the 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 reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) 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 part (a)(5) of this Subsection, 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 information filed pursuant to part (a)(1) of this Subsection.
 7. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access. An illumination as described above is to be maintained at all times that any patron is present in the premises.
- b. A person having a duty under Subsection 16.1(a)(1) through (7) commits an offense if he knowingly fails to fulfill that duty.

SECTION 17: PERSONS YOUNGER THAN SEVENTEEN (17) PROHIBITED FROM ENTRY; ATTENDANT REQUIRED.

- 17.1 It shall be unlawful to allow a person who is younger than seventeen (17) years of age to enter or be on the premises of a sexually oriented business at any time that the sexually oriented business is open for business.
- 17.2 It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented business's regular business hours. It shall be the duty of the attendant to not allow any person under the age of seventeen (17) years to enter the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of seventeen (17) unless such attendant asked for and was furnished:

1. a valid operator's, commercial operator's, or chauffeur's driver's license showing that the person is at least seventeen (17) years of age; or
2. a valid personal identification certificate issued by the Texas Department of Public Safety reflecting that such person is seventeen (17) years of age or older.

SECTION 18: ENFORCEMENT.

- 18.1 a. PENALTY. The violation of any provision of this Ordinance is a misdemeanor including the doing of anything which is herein prohibited or declared to be unlawful or the failure to do anything or perform any duty which is required herein and shall be punishable as provided by Section 243.010(b) of the Local Government Code, as amended. Such a violation, upon conviction, is punishable by a fine not to exceed \$1,000.00. Each day any violation shall continue shall constitute and be punishable as a separate offense.
- b. The revocation or suspension of any permit shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.

SECTION 19: INJUNCTION.


- 19.1 A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 12 of this Ordinance or otherwise in violation of this Ordinance, is subject to a suit for injunction as well as prosecution for criminal violations.

SECTION 20: PUBLIC NECESSITY AND SEVERANCE CLAUSE.

- 20.1 The fact that the City of Riesel needs an Ordinance regulating sexually oriented business for the protection of the health and general welfare of the citizen of the City of Riesel creates an urgency and imperative public necessity that this Ordinance be passed as an emergency measure, and it is so enacted.
- 20.2 Should any section, clause or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance or any other provision of this Ordinance, in whole or in part, other than the part so declared to be invalid.

PASSED AND APPROVED THIS 7th DAY OF Sept, 2004.

THE CITY OF RIESEL, TEXAS

By: 
Mayor

ATTEST:


City Secretary