

AN ORDINANCE **97497**

**REPEALING ORDINANCE NUMBERS 57134, 57296, 67481, 68791, AND 89769; REPEALING CHAPTER 16, ARTICLE V OF THE CITY CODE THAT PERTAINS TO THE LICENSING AND REGULATION OF HUMAN DISPLAY ESTABLISHMENTS; CODIFYING THIS ORDINANCE AT CHAPTER 21, ARTICLE VIII OF THE CITY CODE; PROHIBITING NUDITY OR SEMI-NUDITY OR A STATE OF NUDITY OR SEMI-NUDITY IN A PUBLIC PLACE; ESTABLISHING EXCEPTIONS TO PROSECUTION; ESTABLISHING A LICENSING SCHEME FOR HUMAN DISPLAY ESTABLISHMENTS WHEREBY COMPLIANCE WITH THE SCHEME SERVES AS AN EXCEPTION TO PROSECUTION; PROVIDING PENALTIES AND ENFORCEMENT; AUTHORIZING SUIT TO ENJOIN ILLEGAL ACTIVITY AND TO ENFORCE THIS ORDINANCE; PROVIDING A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.**

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**WHEREAS**, the City Council finds that it has a governmental interest in protecting the general welfare, health, safety, and order of the citizens of the City; and

**WHEREAS**, the City Council finds that public places where a state of nudity, semi-nudity or specified sexual acts occur or exists most frequently are at Human Display Establishments, including but not limited to, topless bars and fully nude dance establishments and adult stores; and

**WHEREAS**, the City Council finds that prostitution, promotion of prostitution, indecent exposure, lewd conduct, illegal drug possession, and illegal drug dealing occur with greater frequency at or near the aforementioned public places; and

**WHEREAS**, the City Council finds that the managers and owners of the aforementioned public places either fail or are unable to ensure that prostitution, indecent exposure, lewd

conduct, illegal drug possession, and illegal drug dealing do not occur at or near said public places; and

**WHEREAS**, the City Council finds that managers or owners of the aforementioned public places fail to monitor or are unable to monitor the patrons of said places and allow these patrons to engage in specified sexual activity while on the premises of said places; and

**WHEREAS**, the City Council finds that for the safety of law enforcement and patrons, the interiors of aforementioned public places should be easily accessible to law enforcement officers who are performing lawful investigations on said premises; and

**WHEREAS**, the City Council finds that the interiors of these public places should be arranged and constructed in such a fashion so as to provide owners and managers a clear and unobstructed view of the actions of all patrons and employees so as to discourage impermissible or illegal conduct; and

**WHEREAS**, the City Council finds that there are adverse secondary effects resulting from public places where a state of nudity, semi-nudity, or specified sexual acts occur or exist; and

**WHEREAS**, the City Council finds that Human Display Establishments offering a public place where a state of nudity, semi-nudity, or specified sexual acts occur or exist pose public health risks by engaging in unsanitary disposition of bodily secretions thereby posing a threat of spreading infection or disease; and

**WHEREAS**, the City Council finds that the aforementioned public places serve as an attractive nuisance to minors; and

**WHEREAS**, the City Council finds it has a governmental interest in protecting minors from exposure to the aforementioned public places; and

**WHEREAS**, the City Council finds that various municipalities and counties situated outside its jurisdiction have experienced similar adverse secondary effects resulting from public places where a state of nudity, semi-nudity, or specified sexual acts occur or exist, including but not limited to the City of Jackson, Mississippi, the City of Erie, Pennsylvania, the City of Phoenix, Arizona, the City of Tucson, Arizona, the City of Garden Grove, California, the City of Los Angeles, California, the City of Whittier, California, Adams County, Colorado, Manatee County, Florida, the City of Indianapolis, Indiana, the City of Minneapolis, Minnesota, the City of Saint Paul, Minnesota, the City of Las Vegas, Nevada, the City of Ellicottville, New York, the City of Islip, New York, the City of New York, New York, New Hanover County, North Carolina, the City of Cleveland, Ohio, the City of Oklahoma City, Oklahoma, Hamilton County Tennessee, the City of Amarillo, Texas, the City of Austin, Texas, the City of Beaumont, Texas, the City of Cleburne, Texas, the City of Dallas, Texas, the City of El Paso, Texas, the City of Houston, Texas, the City of Newport News, Virginia, the City of Bellevue, Washington,

the City of Des Moines, Washington The City of Seattle, Washington and the City of Seattle, Washington; and

**WHEREAS**, the City Council finds that the adverse secondary effects impacting the City of Jackson, Mississippi are described at J&B Entertainment, Inc. v. City of Jackson, Mississippi, 152 F.3d 362 (5<sup>th</sup> Cir. 1998), and the adverse secondary effects impacting the City of Erie, Pennsylvania are described at City of Erie v. Pap's A.M., 120 S.Ct. 1382 (2000); and

**WHEREAS**, the City Council finds that it is in the general welfare and best interest of the citizens that it prohibit the state of nudity and semi-nudity at a public place by adopting the concept contained in an ordinance of the City of Erie, Pennsylvania and approved by the United States Supreme Court in City of Erie v. Pap's A.M., 120 S.Ct. 1382 (2000) and by adopting an exception to the ban on semi-nudity for the purpose of regulating environments conducive to those adverse secondary effects described in City of Erie v. Pap's A.M. and J&B Entertainment, Inc. v. City of Jackson, Mississippi, and as defined herein; and

**WHEREAS**, the City Council finds that it previously adopted ordinances to limit and restrict nudity and similar activities, to establish zoning requirements for public places where a state of nudity and similar activity is allowed, and to provide penalties for violations of said ordinances; and

**WHEREAS**, the City Council finds that the Legislature of Texas has declared in Section 243.001 of the Texas Local Government Code that the “unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity”; and

**WHEREAS**, the City Council finds that it does not intend to discriminate on the basis of gender, but to enact an ordinance which addresses the adverse secondary effects of Human Display Establishments which make gender-based distinctions; and

**WHEREAS**, the City Council finds that it does not intend the closure of businesses that are engaged in conveying erotic messages through dance; and

**WHEREAS**, the City Council finds that it does not intend to prohibit any speech activities protected by the First Amendment of the United States Constitution, but it does intend to enact a content-neutral ordinance to address the adverse secondary effects resulting from nudity, semi-nudity, and specified sexual acts at a public place; and

**WHEREAS**, the City Council finds that it is in the general welfare and best interest of the citizens that it make distinctions in regulation between those Human Display Establishments where a state of nudity, semi-nudity or specified sexual activities occur or

exist due to the greater health risks posed by the unsanitary disposition of bodily secretions associated with a state of nudity, semi-nudity or specified sexual activities; and

**WHEREAS**, the City Council finds that the authority to promulgate these regulations includes Article XI, Section 5 of the Texas Constitution; Subchapter E of Chapter 51 of the Texas Local Government Code; Chapter 54 of the Texas Local Government Code; Chapter 243 of the Texas Local Government Code; the City Charter; the United States Supreme Court decision of City of Erie v. Pap's A.M., 120 S.Ct. 1382 (2000); the United States Supreme Court decision of Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); the United States Fifth Circuit decision of J&B Entertainment, Inc. v. City of Jackson, Mississippi, 152 F.3d 362 (5<sup>th</sup> Cir. 1998); the United States Eighth Circuit decision of SOB, Inc. v. County of Benton, 317 F.3d 856 (8<sup>th</sup> Cir. 2003); and the United States Fifth Circuit decision of Baby Dolls Topless Saloons, Inc. v. City of Dallas, Texas, 295 F.3d 471 (5<sup>th</sup> Cir. 2002), cert. denied, 123 S. Ct. 699, \_\_\_ U.S. \_\_\_ (2002); and

**WHEREAS**, the City Council finds that a copy of the studies performed in the municipalities and counties referred to herein, copies of the cases and statutes referred to herein, along with pertinent affidavits, presentations made to Council, statistical crime analysis for the City of San Antonio and other materials related to this ordinance are on file in the City Clerk's Office; and

**WHEREAS**, the City Council intends to implement the alternative procedure for administrative hearing described in Chapter 54, Subchapter C. Quasi-Judicial Enforcement of Health and Safety Ordinances, of the Texas Local Government Code;

**NOW, THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

SECTION 1. Ordinance Numbers 57134, 57296, 67481, 68791, and 89769 are hereby repealed.

SECTION 2. Chapter 16, Article V of the City Code, is hereby repealed.

SECTION 3. Section 21-22 of the City Code is hereby repealed.

SECTION 4. This ordinance is to be codified at Chapter 21, Article VIII of the City Code and entitled "Nudity and Semi-Nudity Prohibited at Public Places and Licensing of Human Display Establishments".

SECTION 5. The following are codified at the City Code according to the subdivisions annotated with the substantive provisions.

A. Section 21-200. Definitions.

When used in this Article, the following words, terms and phrases shall have the meaning ascribed to them, except where the context clearly indicates a different meaning.

*Act.* The term “act” shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Actor.* The term “actor” shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Adult store.* The term “adult store” shall mean those premises, including those subject to regulation under Chapters 54 or 243 of the Texas Local Government Code, as amended, wherein there is conducted the business of furnishing, providing or procuring dancers, entertainers, or models who appear live at said premises in a state of nudity or semi-nudity, or while performing specified sexual activities. This term shall also include adult stores at which dancers, entertainers, or models appear live, if said dancers, entertainers, or models would appear semi-nude but for a device used as a cover over the nipples and/or areola of the female breast.

- (1) Premises to which the following terms apply shall be considered “adult stores”: gentleman’s club, topless club, sex parlor, nude studio, lingerie modeling studio, love parlor.
- (2) The following are exempt from regulation under this Article:
  - (a) bookstores, movie theaters, or video stores.

*Adverse secondary effects.* The term “adverse secondary effects” shall mean any one of the following conditions caused by the existence or geographic proximity to a Human Display Establishment:

- (1) The existence of violations of law, including but not limited to: prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity, sale or distribution or display of material harmful to a minor, sexual performance by a child, employment harmful to children, possession or promotion of child pornography, public lewdness, indecent exposure, indecency with a child, sexual assault, aggravated sexual assault, pandering, loitering, trespass, or any violation of Chapter 481 of the Texas Health and Safety Code, criminal attempt to conduct a violation of law, criminal conspiracy to conduct a violation of law, or solicitation to conduct a violation of law.
- (2) Diminution of surrounding property value.

- (3) Unsanitary health conditions resulting from improper disposition of bodily secretions thereby posing a threat of spreading infection or disease.
- (4) Those adverse secondary effects found to exist by the Texas Legislature at Section 243.001 of the Texas Local Government Code.
- (5) Those adverse secondary affects described by the United States Fifth Circuit Court in J&B Entertainment, Inc. v. City of Jackson, Mississippi, 152 F.3d 362 (5<sup>th</sup> Cir. 1998) and by the United States Supreme Court in City of Erie v. Pap's A.M., 120 S.Ct. 1382 (2000) and by the City of Jackson, Mississippi and the City of Erie, Pennsylvania as described in said legal opinions.

*Agent.* The term "agent" shall mean the same as the term "duly authorized agent".

*Alcoholic beverage.* The term "alcoholic beverage" shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Amendment.* The term "amendment" shall mean a document wherein is contained a change to the information provided on an application or renewal application in order to correct a prior statement that was incomplete or inaccurate when made; or, in order to correct a prior statement that is incomplete or inaccurate because of changed circumstances since the filing of the application or renewal application.

*Application.* The term "application" shall mean any request for permit that is completed accurately and filed in compliance with the provisions of this Article.

*Applicant.* The term "applicant" shall mean an individual or duly authorized agent who files an application.

*Association.* The term "association" shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Background investigation.* The term "Background investigation" shall mean the review, analysis, and inquiry made by the Chief of Police in response to an application for a permit.

*Chief or Chief of Police.* The term "Chief" or "Chief of Police" shall mean the Director of the San Antonio Police Department or any duly authorized agent thereof.

*Commence an action.* The term "Commence an action" shall mean to file a cause of action with a court of any jurisdiction, to pursue an appeal in any Appellate or Supreme Court and/or to obtain a settlement of a cause of action.

*Closed corporation.* The term “closed corporation” shall mean a corporation whose stock is not offered or sold on an exchange.

*Community supervision.* The term “community supervision” shall mean the same as that term is defined at Article 42.12, Section 2 of the Texas Code of Criminal Procedure or as may hereafter be amended therein.

*Configuration or configured.* The term “configuration” or “configured” shall mean the interior layout or interior construction design of a Human Display Establishment and said layout must include each of the following:

- (1) At least one (1) On-Site Manager’s Station per floor shall be located within the interior of the Human Display Establishment from which an on-site manager has an unobstructed view of the entire floor to which a customer or patron on the premises of the Human Display Establishment is allowed access, but excepting a view inside a lavatory, and if applicable, a stairway or elevator between floors.
- (2) If more than one (1) On-Site Manager’s Station is located within the interior of the Human Display Establishment per floor, then the interior layout shall be in such a manner so that there exists from at least one (1) of the On-Site Manager’s Stations an unobstructed view of the entire floor to which a customer or patron is allowed access, but excepting a view inside a lavatory, and if applicable, a stairway or elevator between floors.
- (3) The view required from an On-Site Manager’s Station is direct line of sight without the aid of mirrors, video equipment or other similar devices.
- (4) The light fixtures shall be of sufficient intensity to illuminate by not less than three (3.0) foot-candles as measured at four (4) feet above the level of the floor and at every area where customers or patrons are allowed.
- (5) Excepting a door that may serve as an entrance or exit to the building of the Human Display Establishment for each area to which a customer or patron on the premises is allowed access, excepting the interior of lavatories:
  - (a) each interior door must be made of clear glass that is no thicker than one-half (0.50) inch or of wood that is no thicker than one and a half (1.5) inches;
  - (b) excepting the doorknob, no interior door may be made of metal, reinforced by metal, or be thicker than allowed herein;

- (c) no interior door may have more than one throw from the doorknob or in any other manner latch from more than one (1) place into a striker plate whenever said door is closed; and,
  - (d) excepting one lock that forms part of the doorknob and is neither a deadbolt nor chain, no interior door may have a dead bolt, chain, and any type of lock.
- (6) For each area to which a customer or patron is allowed access, excepting a doorframe that may serve as an entrance or exit to the Human Display Establishment, each interior doorframe to a wooden door may not be reinforced with any type of metal, excepting a cubic area that is part of the striker plate in the dimensions of not more than: six (6.0) inches long by two (2.0) inches wide by six (6.0) inches high.
- (7) Excepting conduits for plumbing, heating, air conditioning, ventilation, electrical service or food service, no opening is allowed:
- (a) in any wall;
  - (b) partition;
  - (c) screen;
  - (d) lavatory stall;
  - (e) dressing room; or,
  - (f) any other barrier between viewing areas or toilettes.
- (8) The conduits for plumbing, heating, air conditioning, ventilation, and electrical service must be so screened or otherwise configured to prevent their use as openings that would allow any portion of an individual to penetrate the wall or barrier between the viewing areas or toilettes.

*Contested case.* The term “contested case” or “contested case hearing”, as used in this Article, is intended to comply with Section 54.044 of the Texas Local Government Code, and shall mean the following:

- (1) A contested case is a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the hearing officer after an opportunity for an adjudicative hearing.
- (2) Each party with standing to contest is entitled to an opportunity:
  - (a) for a hearing after reasonable notice of not less than 10 calendar days from the date of receipt of a Notice of Intention to Revoke Permit; and
  - (b) to respond and to present evidence and argument on each violation alleged in the Notice of Intention to Revoke Permit.

- (3) Notice of a hearing in a contested case must include that information required in a Notice of Intention to Revoke Permit, and a statement of the time, place, and nature of the hearing and shall be sent to the individual holding the permit via personal delivery or sent to said individual's address via United States Postal Service, Certified Mail, Return Receipt Requested.
- (3) Each party to a contested case is entitled to:
- (a) the assistance of counsel, at the party's expense, before the hearing officer; or
  - (b) expressly waive the right to assistance of counsel in writing or on the record before the hearing officer.
- (5) In each contested case before the hearing officer, the City Attorney, or his designated representative shall represent the Chief of Police.
- (6) While a contested case is pending, and prior to the final decision of the hearing officer regarding revocation or suspension, a permit remains valid unless:
- (a) it expires without timely application for renewal;
  - (b) it is voluntarily withdrawn or surrendered by the permit holder; or
  - (c) the permit holder commits an act or omission contrary to the provisions of this Article which otherwise invalidates said permit.
- (7) A contested case may not be continued, except upon express written agreement of all parties to the contested case, wherein said agreement constitutes a waiver by the permit holder of any appeal, cause of action, or other available remedy at law or in equity while said continuance remains in effect.
- (8) The record in a contested case shall include the following:
- (a) Notice of Intention to Revoke Permit;
  - (b) Response to Notice of Intention to Revoke Permit;
  - (c) Oral and documentary evidence received or considered at the hearing;
  - (d) a statement of matters officially noticed;
  - (e) questions and offers of proof, objections, and rulings on them;
  - (f) each decision, opinion, or report prepared by the hearing officer at the hearing;

- (g) all documents or data submitted to or considered by the hearing officer used in making his or her decision; and
  - (h) said record shall be filed with the Municipal Court for the City of San Antonio.
  
- (9) Ex parte communications in connection with any issue of fact or law between any party and the hearing officer are strictly prohibited, except on notice and opportunity for each party to participate.
  
- (10) The Texas Rules of Evidence and Procedure shall apply to a contested case except that evidence inadmissible under those rules may be admitted if the evidence is:
  - (a) necessary to ascertain facts not reasonably susceptible of proof under those rules;
  - (b) not precluded by State or Federal law; and
  - (c) of a type on which a reasonably prudent person commonly relies in the conduct of the person's affairs.
  
- (11) In a contested case, evidence that is irrelevant, immaterial, or unduly repetitious shall be excluded.
  
- (12) All testimony shall be sworn under oath in all contested cases.
  
- (13) In a contested case, the party requesting a transcript of the hearing shall bear the cost for production of said transcript.
  
- (14) All final decisions or orders in a contested case must be in writing and:
  - (a) must include findings of fact and conclusions of law, separately stated;
  - (b) contain a concise and explicit statement of the underlying facts supporting the findings; and
  - (c) if a party submits proposed findings of fact, the decision or order shall include a ruling on each proposed finding.
  
- (15) A decision or order by the hearing officer on a contested case shall either deny revocation or suspension, or suspend or revoke a permit, as appropriate under the terms of this Article, and:
  - (a) be rendered not later than five (5) calendar days after the date on which the hearing is finally closed;
  - (b) be provided to all parties via personal delivery or via United States Postal Service, Certified Mail, Return Receipt Requested; and
  - (c) be considered timely if:

- (i) for personal delivery, a party receives notice not later than five (5) calendar days from the date on which the hearing is finally closed; or
- (ii) for postal delivery, the decision or order is postmarked not later than five (5) calendar days from the date on which the hearing is finally closed.

(16) A party whose permit is suspended or revoked under the provisions of this Article may petition to any lawfully established court having jurisdiction on the subject matter, as provided in the terms of this Article or other applicable law.

*Conviction.* The term “conviction”, as used in this Article, shall mean the written declaration of a court, signed by the trial judge, that the defendant has been adjudged guilty of the offense in question, regardless of the punishment assessed.

*Corporation.* The term “corporation” shall mean a business entity created pursuant to statute and capable of issuing common or preferred stock. It shall include a closed corporation. In addition, the term shall also mean the same as that term is defined at Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Culpable mental state.* Unless specifically stated otherwise, the culpable mental state for a violation of this Article is recklessness, as that term is defined by Section 6.03 of the Texas Penal Code.

*Customer.* The term “customer” shall mean any individual who:

- (1) Enters a Human Display Establishment or any portion thereof by the payment of an admission fee, membership fee or any other form of consideration or gratuity;
- (2) Enters a Human Display Establishment or any portion thereof and purchases, rents, or otherwise partakes of any merchandise, goods, food, drink, entertainment or other services offered therein; or,
- (3) Enters a Human Display Establishment or any portion thereof based upon a private membership to a club or as a guest of an owner, operator, manager, on-site manager, employee, dancer, entertainer, or model.

*Dancer.* The term “dancer” shall have the same meaning as the term “entertainer”.

*Denial of Revocation/Suspension.* The term “Denial of Revocation/Suspension” shall mean a document wherein is contained the refusal of the hearing officer to revoke a permit and the reasons for said refusal.

*Diagram.* The term “diagram” shall mean as follows:

- (1) A licensed engineer’s or licensed architect’s blueprint of the interior of a Human Display Establishment, oriented to true north and to some designated street or object;
- (2) Said blueprint drawn to a designated scale and sufficient to depict each open area, closed area, entrance, exit, wall, stairs, room, bar, kitchen, lavatory, fixture and On-Site Manager’s Station to an accuracy of plus or minus six (6) inches;
- (3) Said blueprint contains a certification by the individual who drew the blueprint that it is a true and correct representation of the Human Display Establishment as of a particular calendar date; and,
- (4) Said blueprint contains the date executed by the individual who drew the blueprint.

*Dressing room.* The term “dressing room” shall mean an enclosed area where entertainers are allowed to change clothes and where customers or patrons shall be prohibited from viewing or entering.

*Duly authorized agent.* The term “duly authorized agent” shall mean an individual who has actual authority to file an application with the Chief of Police for a Human Display Permit on behalf of any association, corporation, individual, owner, operator, or person. To be a duly authorized agent, the individual must file an accurate and complete sworn affidavit at the time of filing an application for a Human Display Permit in which said individual declares:

- (1) Said individual’s identity;
- (2) The identity of the association, corporation, individual, owner, operator, or person on whose behalf said individual seeks a Human Display Permit;
- (3) The identity of the Human Display Establishment;
- (4) The identity of each association, corporation, individual, owner, operator or person with an ownership interest in the Human Display Establishment;
- (5) The basis for the actual authority as being one of the following:
  - (a) said individual is the sole owner or operator;

- (b) said individual is the president, chief executive officer, or equivalent of a corporation that is an owner or operator and said individual also owns a majority of the issued voting stock for said corporation;
  - (c) said individual is the president, chief executive officer, or equivalent of a corporation that is an owner or operator and said individual attaches a corporate resolution from said corporation's Board of Directors or from a majority of said corporation's voting stockholders wherein is authorized the application for said permit;
  - (d) said individual is a general partner of a partnership that is an owner or operator; or,
  - (e) said individual is a manager (as defined by the Texas Limited Liability company Act) of a Texas Limited Liability Company that is an owner or operator;
- (6) State that all information is on the basis of personal knowledge; and,
- (7) State that all information is true and correct and acknowledge that a false statement is subject to criminal penalty, including but not limited to charges of perjury.

*Employee.* The term "employee" shall mean any person who renders any service whatsoever to any customer of a Human Display Establishment, works in or about a Human Display Establishment, or conducts any business in and for a Human Display Establishment; and, either receives or expects to receive compensation from the operator, owner, manager, on-site manager, or customers of the Human Display Establishment. By way of example, rather than limitation, the term includes the operator and other management personnel, clerks, dancers, models and other entertainers, food and beverage preparation and service personnel, door persons, bouncers, security personnel, and cashiers. This definition is intended to include the conventional employer-employee relationships, independent contractor relationships, agency relationships, and any other scheme or system whereby the "employee" has an expectation of receiving compensation, tips, or other benefits from the Human Display Establishment, operator, owner, manager, on-site manager, or customers in exchange for services provided.

*Entertain or entertaining.* The term "entertain" or "entertaining" shall mean the act of knowingly or intentionally posing, dancing, or appearing for the purpose of being observed or viewed for any reason while in a state of nudity, semi-nudity or while engaging in specified sexual activities. The term shall also include the above acts if the person posing, dancing, or appearing would be semi-nude but for a device used as a cover over the nipples and/or areola of the female breast.

*Entertainment.* The term “entertainment” shall mean the noun of the term “entertain”.

*Entertainer.* The term “entertainer” shall mean any individual, male or female, who poses, dances, or knowingly or intentionally appears for the purpose of being observed or viewed for any reason by any individual while in a state of nudity, semi-nudity, or while engaging in specified sexual activities. The term shall also include an individual who would be semi-nude but for a device used as a cover over the nipples and/or areola of the female breast.

*File or filed or filing.* The term “file” or “filed” or “filing” shall mean personal delivery to the Chief of Police at the San Antonio Police Headquarters or personal delivery to the Clerk of a Court.

*Form.* The term "form" shall mean one or more pages wherein exist a uniform method of eliciting from an applicant the information required for an application in accordance with the provisions of this Article. The referenced pages shall include a verification or jurat where the applicant can affirm under oath and on the basis of personal knowledge that the information provided is accurate and complete; however, the referenced pages shall specifically exclude the affidavit required of a duly authorized agent.

*Hearing Officer.* The term “Hearing Officer” shall mean the judge of the City of San Antonio Municipal Court assigned to preside over environmental and code enforcement matters. The term “Hearing Officer” as used herein is intended to comply with Section 54.044 of the Texas Local Government Code, and said “hearing officer” shall exercise those powers authorized under the Texas Local Government Code, the Charter of the City of San Antonio, and the Municipal Code of the City of San Antonio, as appropriate in the furtherance of his or her duties.

*Human Display Establishment.* The term “Human Display Establishment” shall have the same meaning as “adult store”.

*Human Display Permit.* The term “Human Display Permit” shall mean a license issued to a duly authorized agent of an owner or operator of a Human Display Establishment as lawful authority to so operate a Human Display Establishment. Only those premises designated as a “Human Display Establishment” shall authorize live entertainment, as defined by the terms of this Article.

*Identify.* The term “identify” shall mean the act of stating or declaring an identity.

*Identity.* The term “identity” shall mean: the true and correct name, address, telephone number, and facsimile number of the pertinent association, corporation, individual, operator, person, or owner.

*Individual.* The term “individual” shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Interior door.* The term “interior door” shall mean any opening between interior rooms through which foot traffic may occur and which serves as an entrance or an exit between said rooms, excluding electrically cooled rooms used as food storage devices, liquor cabinets, and food pantries.

*Invest.* The term “invest” shall mean to provide money, bartering, or in-kind services toward a Human Display Establishment in anticipation or expectation of generating a profit or incurring a tax benefit at some time in the future.

*Investment.* The term “investment” shall mean the noun of the term “invest”.

*Lavatory.* The term “lavatory” shall mean a room where exists a sink for washing hands and a toilet.

*Manager.* Unless otherwise specified herein, the term “manager” shall mean any individual who supervises or directs any employee, on-site manager, contractor, sub-contractor, or agent of a Human Display Establishment.

*Manager’s Permit.* The term “Manager’s Permit” shall mean a license issued to an individual as lawful authority to supervise or direct any employee, on-site manager, contractor, sub-contractor, or agent of a Human Display Establishment.

*Model.* The term “model” shall have the same meaning as the term “entertainer”.

*Notice or Notice of Rejection.* The term “notice” or “Notice of Rejection” shall mean a document wherein the Chief of Police informs an individual that an application or renewal application is denied and also specifies therein the reasons for the rejection.

*Notice of Intention to Revoke/Suspend Permit.* The term “Notice of Intention to Revoke/Suspend Permit” shall mean a document wherein the Chief of Police details the following: the factual basis for an intention to revoke/suspend a permit; the provisions of this Article alleged to be violated; and the calendar date by which a request for contested case hearing is due.

*Notice of Revocation/Suspension.* The term “Notice of Revocation/Suspension” shall mean a document wherein is contained the decision of the hearing officer to revoke/suspend a permit based upon the allegations contained in a Notice of Intention to Revoke/Suspend Permit.

*Nude or nudity or state of nudity.* The term “nude” or “nudity” or “state of nudity” shall mean a state of dress which fails to fully and opaquely cover the anus,

crevice of the buttocks, genitals, pubic region, or perineum anal region, regardless of whether the nipple and areola of the human breast are exposed.

*On-site manager.* The term “on-site manager” shall mean any individual charged by an owner or operator of a Human Display Establishment with the responsibility for direct supervision of the operation of the Human Display Establishment and with monitoring and observing all areas of the Human Display Establishment to which customers or patrons are admitted at all times during which the Human Display Establishment is open for business; or, at all times during which customers or patrons are on the premises of the Human Display Establishment.

*On-Site Manager’s Permit.* The term “On-Site Manager’s Permit” shall mean a license issued to an individual as lawful authority to be charged by an owner or operator of a Human Display Establishment with the responsibility for direct supervision of the operation of the Human Display Establishment and with monitoring and observing all areas of the Human Display Establishment to which customers or patrons are admitted at all times during which the Human Display Establishment is open for business; or, at all times during which customers or patrons are on the premises of the Human Display Establishment.

*On-Site Manager’s Station.* The term “On-Site Manager’s Station” shall mean a specified location within the interior of any Human Display Establishment from which an on-site manager can view all areas to which customers and patrons may be admitted, but excepting a lavatory and if applicable, a stairway or elevator between floors, as specifically detailed at the definition for the term “configuration” and the term “On-Site Manager’s Permit”.

*Operator.* The term “operator” shall mean the following:

- (1) An individual who owns a Human Display Establishment, if said establishment is a sole proprietorship or if said establishment is an assumed name of an individual;
- (2) Each individual of a general partnership, if said partnership owns any interest in a Human Display Establishment;
- (3) Each individual who is a general partner and a limited partner of a limited partnership, if said partnership owns any interest in a Human Display Establishment;
- (4) Each individual who is an officer or director of a corporation, if said corporation owns any interest in a Human Display Establishment;

- (5) Each association, individual, or person who is a stockholder of a closed corporation, if said closed corporation owns any interest in a Human Display Establishment;
- (6) Each manager, as defined in the Texas Limited Liability Company Act, of a limited liability company, if said company owns any interest in a Human Display Establishment; and,
- (7) Each association, if said association owns any interest in a Human Display Establishment.

*Owner.* The term “owner” shall mean each association, individual, person, partner, closed corporation, corporation, business entity, or manager (as defined by the Texas Limited Liability Company Act) who owns an interest in a Human Display Establishment.

*Patron.* The term “patron” shall have the same meaning as the term “customer”.

*Permit.* The term “permit” shall mean either a “Human Display Permit”, a “Manager’s Permit”, or an “On-Site Manager’s Permit”, depending upon the context used.

*Person.* The term “person” shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Public place.* The term “public place” shall mean all locations owned by or open to the general public inclusive of the sheds, enclosures, buildings, improvements, and fixtures upon said location. This term includes but is not limited to any Human Display Establishment, restaurant, tavern, bar, club or other establishment. This term also includes those locations that are restricted to specific members, restricted to adults, or restricted to patrons invited to the location, whether or not an admission charge is levied.

*Respondent.* The term “respondent” shall mean:

- (1) That individual or duly authorized agent who holds:
  - (a) a Human Display Permit;
  - (b) a Manager’s Permit; or,
  - (c) an On-Site Manager’s Permit; and,
- (2) Defends his own permit in a revocation proceeding or appeal thereof.

*Renewal application.* The term "renewal application" shall mean an application to re-establish a valid and existing permit for another term.

*Renewal permit.* The term "renewal permit" shall mean a valid and existing permit that is re-established for another term.

*Revocation/Suspension proceeding.* The term "revocation/suspension proceeding" shall mean the following:

- (1) The Chief of Police issues a Notice of Intention to Revoke/Suspend Permit.
- (2) The Notice of Intention to Revoke/Suspend Permit shall be sent to the individual holding a permit via personal delivery or sent to said individual's address via United States Postal Service, Certified Mail, Return Receipt Requested, and filed with the City of San Antonio Municipal Court to which the hearing officer is assigned. A file stamped copy of the Notice of Intention to Revoke/Suspend shall be made part of the record of any Revocation/Suspension hearing.
- (3) The individual holding a permit shall have ten (10) calendar days from the date of receipt of a Notice of Intention to Revoke Permit in which to file request for a contested case hearing with the hearing officer, wherein said request is sent via United States Postal Service, Certified Mail, Return Receipt Requested, or filed via personal delivery. If the permit holder chooses personal delivery, he or she must obtain a file stamped copy of their request for a hearing.
- (4) If no request for contested case hearing is timely filed, the hearing officer shall issue a Notice of Revocation/Suspension, as appropriate.
- (5) If a request for contested case hearing is timely filed, the hearing officer shall conduct a contested case hearing in accordance with the provisions of this Article.
- (6) This term is intended to comply with Section 54.044 of the Texas Local Government Code.

*Semi-nude or semi-nudity or state of semi-nudity.* The term "semi-nude" or "semi-nudity" or "state of semi-nudity" shall mean the exposure of the post puberty female breast so long as the following anatomical areas of an individual are fully and opaquely covered: the anus, genitals, pubic region and the perineum anal region of the human body. The term "semi-nude" shall also mean the exposure of the post puberty female breast if any device is worn as a cover over only the nipples and/or areola of the post puberty female breast so long as the following anatomical areas of an individual are

fully and opaquely covered: the anus, genitals, pubic region and the perineum anal region of the human body.

*Specified sexual activities.* The term “specified sexual activities” shall mean an actual or simulated sexual stimulation or arousal of an individual’s genitals; an actual or simulated masturbation of an individual; an actual or simulated sexual intercourse between individuals; an actual or simulated sodomy; an actual or simulated fellatio; an actual or simulated cunnilingus; an actual or simulated bestiality; fondling or other erotic touching of the anus, genitals, pubic region, or the post puberty female breast; or excretory functions performed in conjunction with any of the preceding acts.

*Specified criminal act.* The term “specified criminal act” shall mean any of the following offenses:

- (1) as described in Chapter 21 of the Texas Penal Code or as may hereafter be amended therein:
  - (a) public lewdness;
  - (b) indecent exposure; or,
  - (c) indecency with a child.
  
- (2) as described in Chapter 22 of the Texas Penal Code or as may hereafter be amended therein:
  - (a) sexual assault; or,
  - (b) aggravated sexual assault.
  
- (3) as described in Chapter 43 of the Texas Penal Code or as may hereafter be amended therein:
  - (a) prostitution;
  - (b) promotion of prostitution;
  - (c) aggravated promotion of prostitution;
  - (d) compelling prostitution;
  - (e) obscenity;
  - (f) sale, distribution or display of material harmful to a minor;
  - (g) sexual performance by a child;
  - (h) employment harmful to a child; or,
  - (i) possession or promotion of child pornography.
  
- (4) as described in Chapter 481 of the Texas Health and Safety Code or as may hereafter be amended therein.

(5) as described at Chapter 15 of the Texas Penal Code or as may hereafter be amended therein:

- (a) criminal attempt to conduct any of the aforementioned offenses;
- (b) criminal conspiracy to conduct any of the aforementioned offenses;
- (c) criminal solicitation to conduct any of the aforementioned offenses; or,
- (d) criminal solicitation of a minor to conduct any of the aforementioned offenses that are also identified in Section 15.031 of the Texas Penal Code.

*Stage name.* The term “stage name” shall mean an alias used by an entertainer during the course and scope of entertaining.

*Substantial evidence.* The term “substantial evidence” shall mean the same as that term is defined by Texan courts or in Texan jurisprudence regarding the standard of proof used in administrative proceedings.

B. Section 21-201. Zoning Matters.

The definitions contained at Section 35, Appendix A of the Unified Development Code shall control in all zoning matters but the definitions contained in this Article shall control in prohibiting the conduct proscribed by the provisions of this Article and shall control in the licensing scheme contained in this Article.

C. Section 21-202. Remedial Effect.

The provisions of this Article are remedial and they shall, notwithstanding any other provision of the City's code, be construed to apply to each association, corporation, individual, operator, owner, person, or Human Display Establishment, now existing and as hereafter shall exist.

D. Section 21-203. Supplemental Effect.

The provisions of this Article are supplemental and shall be cumulative with all other laws and ordinances applicable in any manner to an association, corporation, individual, operator, owner, person, or Human Display Establishment, now existing and as hereafter shall exist.

E. Section 21-300. Nudity and Semi-Nudity Prohibited in a Public Place.

- (1) It shall be unlawful for an individual to recklessly or negligently appear in a state of nudity in a public place.

- (2) It shall be unlawful for an individual to recklessly or negligently appear in a state of semi-nudity in a public place.
- (3) It shall be unlawful for an individual, person, corporation, or association that manages, or operates a public place to recklessly or negligently allow an individual to appear at said public place in a state of nudity.
- (4) It shall be unlawful for an individual, person, corporation, or association that manages, or operates a public place to recklessly or negligently allow an individual to appear at said public place in a state of semi-nudity.
- (5) It shall be unlawful for an individual, person, corporation, or association that owns, but does not manage or operate, a public place to intentionally or knowingly allow an individual to appear at said public place in a state of nudity.
- (6) It shall be unlawful for an individual, person, corporation, or association that owns, but does not manage or operate, a public place to intentionally or knowingly allow an individual to appear at said public place in a state of semi-nudity.

F. Section 21-301. Permits Required.

- (1) It shall be unlawful for an individual, person, corporation, operator, owner, or association to operate a Human Display Establishment within the City of San Antonio, unless the Chief of Police has issued a Human Display Permit to the Human Display Establishment's duly authorized agent.
- (2) It shall be unlawful for an individual to act as a manager of a Human Display Establishment, unless the Chief of Police has issued a Manager's Permit to said individual.
- (3) It shall be unlawful for an individual to act as an on-site manager of a Human Display Establishment, unless the Chief of Police has issued an On-Site Manager's Permit to said individual.
- (4) It shall be unlawful to offer live entertainment at a Human Display Establishment within the City of San Antonio, unless the Chief of Police has issued a Human Display Permit to the Human Display Establishment's duly authorized agent.

G. Section 21-302. Exceptions.

- (1) It is an exception to the application of Section 21-300 of this Article that at the time of the state of nudity the actor was:
  - (a) a person engaged in expressing a matter of serious literary, artistic, scientific, political or social value;
  - (b) an individual, person, or association who owns, manages, operates or appears nude in a public place that is a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed massage therapist, or licensed barber engaged in performing functions authorized under the lawful license held;
  - (c) an individual, person, or association who owns, manages, operates or appears nude in a public place that is a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing lawfully the healing arts; or
  - (d) an individual, person, or association who owns, manages, operates or appears nude in a public place that is a business licensed as a tattoo studio or a body piercing studio and was engaged in practices authorized under said license.
  
- (2) It is an exception to the application of Section 21-300 of the Article that at the time of the state of semi-nudity the actor was:
  - (a) a person engaged in expressing a matter of serious literary, artistic, scientific, political or social value;
  - (b) an individual exposing a breast for the purpose of breastfeeding an infant or child;
  - (c) an individual, person, or association who owns, manages, operates or appears semi-nude in a public place that is a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed massage therapist, or licensed barber engaged in performing functions authorized under the lawful license held;
  - (d) an individual, person, or association who owns, manages, operates or appears semi-nude in a public place that is a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing lawfully the healing arts;
  - (e) an individual, person, or association who owns, manages, operates or appears semi-nude in a public place that is a business licensed as a tattoo studio or a body piercing studio and was engaged in practices authorized under said license; or
  - (f) a dancer, entertainer, or model who is entertaining at a lawfully permitted Human Display Establishment.

(3) It is an exception to the application of Sections 21-300(4) and 21-300(6) of this Article that at the time of the state of semi-nudity:

(a) the individual, person, or association who owns, manages or operates the public place lawfully possessed a Human Display Permit, and, the individual who appeared in a state of semi-nudity was a dancer, entertainer, or model who was entertaining in said Human Display Establishment .

H. Section 21-303. Penalties and Enforcement.

(1) The violation of any provision of this article, 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, shall be punishable as a Class C Misdemeanor with a fine not to exceed two thousand dollars (\$2,000), as provided by Section 54.001 of the Local Government Code.

(2) Upon proof of two (2) prior convictions of Sections 21-300, 21-701(4), 21-701(5), 2-701(6), 21-701(7), 21-701(8), or 21-701(12) of this Article, a third offense shall be punishable as a Class A Misdemeanor, as provided by Section 243.010(b) of the Local Government Code.

(3) Each day of any violation shall constitute and be punishable as a separate offense.

(4) The refusal to issue a permit based on ineligibility shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the refusal to issue a permit based on ineligibility.

(5) The revocation or suspension of a 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.

I. Section 21-304. Permit is a Privilege.

(1) A permit issued under the provisions of this Article is not a property interest but shall be a purely personal privilege that is subject to revocation if the respondent is found to have violated a provision of this Article.

(2) Pursuant to Section 243.008 of the Texas Local Government Code, and by authority of this Article, by accepting a permit, the holder of the permit consents that the Chief of Police or a peace officer may detain said individual on the premises of a Human Display Establishment for the purpose of verifying identity and permit.

(3) Any owner or operator that enjoys the benefit of a Human Display Permit or has accepted a permit through a duly authorized agent consents, pursuant to Section 243.008 of the Texas Local Government Code, and by authority of this Article, that the Chief of Police or peace officer may enter the premises of said Human Display Establishment at any time an owner, operator, manager, on-site manager, employee, customer or patron is on the premises to conduct an investigation or inspect the premises for the purpose of performing any duty imposed by this Article or state law.

(4) All peace officers shall have the duty to enforce the provisions of this Article and cooperate with the Chief of Police.

J. Section 21-305. Use of a Permit.

It shall be unlawful for an individual to use the permit of another. It shall be unlawful for an individual holding a permit to transfer that permit for use by another individual.

K. Section 21-306. Amendment.

(1) An applicant or permit holder shall file an amendment with the Chief of Police any time a prior statement contained on an application is known to the applicant to be incomplete or inaccurate because of changed circumstances.

(2) An applicant or permit holder shall file an amendment with the Chief of Police any time a prior statement contained on an application is known to the applicant to be incomplete or inaccurate because the statement was incomplete or inaccurate at the time of filing.

(3) The time in which to file an amendment is:

(a) thirty (30) calendar days from the date of changed circumstances; or,

(b) thirty (30) calendar days from the date that applicant knows that a prior statement was incomplete or inaccurate.

(4) It shall be unlawful for an applicant or permit holder to fail to comply with this section.

L. Section 21-307. Nonrefundable Fees.

All fees required in this Article are nonrefundable. Payment of the fees shall be by cashier's check or money order and made payable to the City of San Antonio.

M. Section 21-308. Authority to File Suit.

The City Attorney is authorized, at his discretion, in addition to or in lieu of any other remedies set forth in this Article, or under any other applicable state statute, to commence an action to enjoin the violation of this Article or to enjoin any person, corporation, or association from establishing, operating, or maintaining a public place or Human Display Establishment contrary to the provisions herein, or in any other statute or doctrine.

N. Section 21-400. Types of Permits, Calculation of Deadlines, Time and Delivery.

- (1) By 2:00 o'clock P.M. on the thirtieth (30<sup>th</sup>) business day after receipt of an application, the Chief of Police shall issue the following types of permits to an applicant so long as the applicant qualifies under the provisions of this Article:
  - (a) a Human Display Permit;
  - (b) a Manager's Permit; or,
  - (c) an On-Site Manager's Permit.
- (2) By 2:00 o'clock P.M. on the thirtieth (30<sup>th</sup>) business day after receipt of an application, the Chief of Police shall issue a Notice of Rejection to an applicant who fails to qualify under the provisions of this Article.
- (3) Unless the applicant requests in writing and at the time of filing an application that the permit or Notice of Rejection be kept at the San Antonio Police Headquarters for personal retrieval, the Chief of Police shall send same to the applicant's address, as listed in the application, via United States Postal Service, Certified Mail, Return Receipt Requested. Said mail shall be deposited with United States Postal Service not later than 2:15 o'clock P.M. on the thirtieth (30<sup>th</sup>) business day after receipt of an application.
- (4) If personal retrieval was properly requested for a permit or Notice of Rejection, the Chief of Police shall retain the permit or Notice of Rejection only between the hours of 2:00 o'clock P.M. and 4:00 o'clock P.M. on the thirtieth (30<sup>th</sup>) business day after receipt of an application. If the applicant fails to retrieve either the permit or Notice of Rejection by the said 4:00 o'clock P.M., the Chief of Police shall then send the permit or the Notice of Rejection to the applicant's address, as listed in the application. The means of sending the permit or Notice of Rejection shall be via the United States Postal Service, Certified Mail, Return Receipt Requested. Said mail shall be deposited with the United States Postal Service not later

than 4:30 o'clock P.M. on the same day that personal retrieval was scheduled.

- (5) When determining a date upon which a deadline exists in this Article, calculate the specified number of days as follows:
  - (a) The day the act or event was performed or scheduled to occur after which the designated period of time begins to run is not to be included. The designated period of time begins on the next day.
  - (b) The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.
- (6) In this Article, delivery of a Notice of Revocation shall be by personal delivery at the applicant's address, as listed in the application, or by sending it to the applicant's address, as listed in the application, via the United State Postal Service, Certified Mail, Return Receipt Requested.
- (7) In this Article, delivery by the United States Postal Service shall be presumed to be on the third (3<sup>rd</sup>) calendar day after depositing the mail with the United States Postal Service, unless the applicant has proof to the contrary.
- (8) In this Article, the last known address of an applicant, contained in an application or an amendment, is presumed as the correct address. Whenever delivery to an address is authorized or mandated under the provisions of this Article, delivery to the presumed correct address is sufficient to comply under this Article.
- (9) Personal delivery or delivery by mail as prescribed in this Article, shall be prima facie evidence that the Chief of Police has fulfilled his duty to deliver a permit, Notice of Rejection, Notice of Intention to Revoke Permit, Notice of Revocation, or Denial of Revocation.
- (10) The Chief of Police shall issue the requested permit if the Chief of Police fails to deliver Notice of Rejection and does not have prima facie proof of said delivery or deposit, and if the applicant files a written request for issuance of said permit not later than 2:00 o'clock P.M. on the tenth (10<sup>th</sup>) calendar day following the deadline to issue a permit or notice. If the applicant fails to timely file a request for said permit upon the failure of the Chief of Police to issue said notice, then said applicant shall waive any appeal or cause of action that he may have herein.

(11) The deadlines imposed by this Article may be extended by the mutual agreement of the Chief of Police and the pertinent individual, except as follows:

- (a) The Chief of Police shall not agree to shorten any deadline;
- (b) The Chief of Police shall not agree to extend any deadline wherein there is an express provision in this Article that a failure to comply with said deadline shall result in an applicant's waiver of appeal or cause of action; or,
- (c) As otherwise prohibited within this Article.

O. Section 21-401. Qualifications and Specifications: Manager's Permit.

(1) Unless an individual is disqualified under one or more of the provisions of this Article, an individual who performs the following acts shall be qualified for a Manager's Permit:

- (a) pay a one hundred dollar (\$100.00) nonrefundable processing fee to the City of San Antonio;
- (b) answer under oath accurately and completely the requests for information contained on the form for said permit;
- (c) provide proof of identity by presenting to the Chief of Police a valid and lawful photographic identification card that was issued to said individual by a governmental authority of the United States of America or any State, possession, commonwealth, or territory thereof; and
- (d) appear at the place designated by the Chief of Police and submit to being photographed and fingerprinted by the Chief of Police.

(2) If on the basis of substantial evidence, the Chief of Police concludes that one of the following conditions exists then an individual shall be disqualified from receiving said Manager's Permit if:

- (a) said individual is convicted of a felony in any jurisdiction;
- (b) said individual is convicted of a specified criminal act in any jurisdiction;
- (c) said individual has submitted false information on a form for said permit or said individual has responded falsely to inquiries in a Background Investigation; or
- (d) at the time of application, said individual is disqualified from receiving or holding a permit pursuant to Section 21-406 of this Article.

- (3) An individual who applies for a Manager's Permit shall provide the following information:
- (a) the information contained in a valid and lawful photographic identification card that was issued to said individual by a governmental authority of the United States of America or any State, possession, commonwealth, or territory thereof;
  - (b) the name and address of the Human Display Establishment for which the individual requests said permit;
  - (c) a list of each misdemeanor or felony for which the individual has been convicted, excluding traffic offenses;
  - (d) a list of each misdemeanor or felony for which the individual is under community supervision at the time of application, excluding traffic offenses;
  - (e) the name and address of each court and jurisdiction for those offenses which resulted in convictions in response to Section 21-401(3)(c) herein;
  - (f) the name and address of each court and jurisdiction for those offenses that the individual is under community supervision at the time of application in response to Section 21-401(3)(d); and
  - (g) a signed waiver and authorization allowing the Chief of Police to request criminal history reports from pertinent federal, state, and local law enforcement for the individual submitting an application.
- (4) A Manager's Permit shall consist of one (1) photographic identification card that contains the following information: a photograph of the manager; the name and address of the Human Display Establishment at which the Manager's Permit is valid; the full name of the manager; the date of issuance; the effective date; and, the date of expiration.

P. Section 21-402. Qualification and Specifications: An On-Site Manager's Permit.

- (1) Unless an individual is disqualified under one or more of the provisions of this Article, an individual who performs the following acts shall be qualified for an On-Site Manager's Permit: perform those acts detailed at Section 21-401(1)(a)-(d) herein.
- (2) The following conditions shall disqualify an individual from obtaining an On-Site Manager's Permit: those conditions specified at Section 21-401(2)(a)-(d) herein.
- (3) An individual who applies for an On-Site Manager's Permit shall provide the following information: that information specified at Section 21-401(3)(a)-(g) herein.

- (4) An On-Site Manager's Permit shall consist of one (1) photographic identification card that contains the following information: a photograph of the on-site manager; the name and address of the Human Display Establishment at which the On-Site Manager's Permit is valid; the full name of the on-site manager; the date of issuance; the effective date; and, the date of expiration.

Q. Section 21-403. Qualification and Specifications: A Human Display Permit.

- (1) It shall be unlawful to apply for a Human Display Permit, unless the individual who applies is a duly authorized agent and complies with the requirements for a duly authorized agent.
- (2) Unless a duly authorized agent is disqualified under one or more provisions of this Article, an agent who performs the following acts shall be qualified to receive on behalf of an owner or operator a Human Display Permit:
  - (a) the duly authorized agent pays a seven hundred and fifty dollar (\$750.00) nonrefundable processing fee to the City of San Antonio;
  - (b) the duly authorized agent submits a diagram;
  - (c) allows an inspection of the premises as directed in Section 21-406 herein; and,
  - (d) the duly authorized agent performs those acts detailed at Section 21-401 if the duly authorized agent is also applying for a Manager's Permit or On-Site Manager's Permit.
- (3) If on the basis of substantial evidence, the Chief of Police concludes that one of the following conditions exists then a duly authorized agent shall be disqualified from receiving a Human Display Permit:
  - (a) if any owner or operator identified by the duly authorized agent in said agent's affidavit is convicted of a felony in any jurisdiction;
  - (b) if any owner or operator identified by the duly authorized agent in said agent's affidavit is convicted of a specified criminal act in any jurisdiction;
  - (c) if the duly authorized agent, owner, or operator has refused to allow an inspection of the premises of the Human Display Establishment by at least three (3) calendar days prior to a deadline to issue a permit or Notice of Rejection;
  - (d) if the duly authorized agent, owner, or operator has failed to submit to the Department of Development Services a

diagram by at least ten (10) calendar days prior to the deadline to issue a permit or Notice of Rejection;

- (e) if the duly authorized agent or any individual, owner, or operator identified in said agent's affidavit has submitted false information on an application form for said permit or has falsely responded to inquiries in a Background Investigation;
- (f) if the duly authorized agent or any individual, owner or operator identified in said agent's affidavit has previously had two (2) Human Display Permits revoked pursuant to Section 21-406.

R. Section 21-404. Ratification and Term of Permit.

(1) The City Council accepts, ratifies, and endorses the following acts of the Chief of Police:

- (a) all acts performed by the Chief of Police between the date of this Article's passage and the effective date of this Article so long as said acts are consistent with the duties, powers, and provisions of this Article;
- (b) all permits issued by the Chief of Police between the date of this Article's passage and the effective date of this Article so long as said permits contain the following: the actual date of issuance, an effective date of permit that coincides with the effective date of this Article; and, an expiration date of permit that is one (1) calendar year from the effective date of permit.

(2) Each permit issued shall be valid for a period of one (1) calendar year from the date of issuance at which time it shall expire, unless the permit is sooner revoked or surrendered.

(3) Each permit shall be subject to renewal as of its expiration date by filing a renewal application.

(4) Each renewal application must be filed at least forty-five (45) calendar days prior to the date of expiration.

(5) Except as expressly indicated herein, all of the deadlines, fees, and procedures applicable to any application and permit shall also be applicable to each renewal application and renewal permit.

(6) The Chief of Police shall not require another photograph for a renewal application unless he cannot verify the identity of the applicant who filed a renewal application; or, unless the applicant filing a renewal application is different from the individual who filed the original application.

S. Section 21-405. Inspections and Background Checks; Deadlines.

- (1) The Chief of Police shall conduct all necessary Background Investigations prior to the expiration of thirty (30) calendar days from the receipt of an application for a Human Display Permit, Manager's Permit, or On-Site Manager's Permit for the purpose of determining whether each applicant is in compliance with the provisions of this Article, and based upon those findings, the Chief of Police shall either issue or reject the permit in accordance with the deadlines found in Section 21-400.
- (2) The Chief of Police, the Director of the Department of Development Services, or their designated representatives, and any other pertinent City Department or said department's designated representatives, shall complete all inspections required under this Article prior to the expiration of thirty (30) calendar days from receipt of an application for a Human Display Permit, Manager's Permit, or On-Site Manager's Permit, and based upon those findings, the Chief of Police shall either issue or reject said permit in accordance with the deadlines found in Section 21-400.
- (3) If an application is rejected based on an inspection of the premises only, the Chief of Police shall provide to the duly authorized agent a Notice of Rejection within ten (10) calendar days following the deadline to issue a permit or notice.
- (4) An applicant may request a re-inspection only if the duly authorized agent:
  - (a) submits said request, by certified mail, return receipt requested, within ten (10) calendar days subsequent to the receipt of the decision of the Chief of Police; and
  - (b) pays to the City of San Antonio a nonrefundable processing fee of one hundred and fifty dollars (\$150.00) with the submission of said request.
- (5) The Chief of Police, the Director of the Department of Development Services, or their designated representatives, and any other pertinent City Department or said department's designated representatives, shall complete a re-inspection and either issue or reject a permit based upon a request for re-inspection not more than fifteen (15) calendar days from the date of receipt of the request for re-inspection. If upon re-inspection the Chief of Police concludes the noted problems have not been remedied, the Chief of Police shall issue a Notice of Rejection and notify applicant in accordance with Section 21-400.

- (6) An applicant for a Human Display Permit shall be entitled to only one (1) request for re-inspection per permit application.
- (7) Notwithstanding the provisions of this Section, an applicant whose application is rejected under the provisions of this Article may petition to any lawfully established court having jurisdiction on the subject matter without first applying for a re-inspection.

T. Section 21-406. Standing in Alternative Procedure for Administrative Hearings; Revocation or Suspension of Permits.

- (1) Regarding a Manager's Permit, or an On-Site Manager's Permit, only an applicant and the Chief of Police shall have standing in an administrative revocation/suspension proceeding or in any appeal thereof.
- (2) Regarding a Human Display Permit, an owner, operator, and the Chief of Police have standing in an administrative revocation/suspension proceeding or any appeal thereof.
- (3) If on the basis of information and belief and after the issuance of a Human Display Permit, Manager's Permit, or On-Site Manager's Permit, the Chief of Police concludes that a permit holder has been convicted of a felony or specified criminal act, the Chief of Police shall initiate a revocation proceeding.
- (4) If on the basis of information and belief and after the issuance of a Human Display Permit, the Chief of Police concludes that an employee not otherwise required to hold a Manager's Permit or On-Site Manager's Permit has been convicted of a felony or specified criminal act that occurred on the licensed premises, the Chief of Police shall initiate a revocation proceeding if:
  - (a) There exists a cumulative total of three (3) or more convictions of employees for a felony or specified criminal act wherein said acts occurred within a consecutive twelve (12) months period on the licensed premises in an area to which customers and patrons are allowed and within the direct line of sight of an on-site manager's station.
- (5) If on the basis of information and belief and after the issuance of a Human Display Permit, Manager's Permit, or On-Site Manager's Permit, the Chief of Police concludes that the permit holder has been convicted of violating Sections 21-300, 21-301, 21-701(4), 21-701(5), 21-701(6), 21-701(7), 21-701(10), 21-701(11), or 21-701(12) of this Article, the Chief of Police shall initiate a revocation/suspension proceeding if:

(a) For the revocation/suspension of a Human Display Permit, a cumulative total of three (3) or more convictions for violations of any of the following sections have occurred within a consecutive six (6) month period on the licensed premises:

- (i) Section 21-300;
- (ii) Section 21-301; or
- (iii) Section 21-701(4), (5), (6), (7), (10), (11), or (12).

(b) For the revocation/suspension of a Manager's Permit or On-Site Manager's Permit, a cumulative total of three (3) or more convictions in the name of the permit holder for violations of any of the following sections have occurred within a consecutive twelve (12) months period:

- (i) Section 21-300;
- (ii) Section 21-301;
- (iii) Section 21-701(4), (5), (6), (7), (10), (11), or (12).

(6) If on the basis of substantial evidence the hearing officer finds that a permit holder holds a permit in violation of Sections 21-406(3), 21-406(4), or within the previous twelve (12) calendar months had said permit suspended pursuant to Section 21-406(7), the hearing officer shall revoke said permit.

(7) If on the basis of substantial evidence the hearing officer finds that a permit holder holds a permit in violation of Section 21-406(5), the hearing officer shall suspend said permit for a period of sixty (60) calendar days.

(8) An individual who has had a permit in his/her name revoked may not reapply for any permit under this Article for a period of one (1) calendar year from the effective date of the revocation of said permit.

U. Section 21-407. Appeal and Judicial Review.

(1) If a respondent is entitled to receive a permit under the provisions of Sections 21-401, 21-402, or 21-403, and if after timely filing a request for the permit pursuant to the provisions of Section 21-400(10) the Chief of Police refuses or fails to issue the permit, then the respondent:

(a) shall have thirty (30) calendar days from the expiration of the deadline in Section 21-400(10) in which he may file suit for a

- writ of mandamus or other available remedy in a Judicial District Court of Bexar, County, Texas; and,
- (b) shall waive any appeal or cause of action if suit is not filed within the time specified herein.
- (2) If an application is denied or a permit revoked or suspended, then:
- (a) a respondent shall have forty-five (45) calendar days from the date of receipt of Notice of Rejection or Notice of Revocation in which to file suit for writ of mandamus or other available remedy in a Judicial District Court of Bexar County, Texas; and,
  - (b) said respondent shall waive any appeal or cause of action if suit is not filed within the time specified herein.
- (3) The Notice of Revocation/Suspension is final on the date of delivery.
- (4) Any act authorized by a permit shall be unauthorized and in violation of this Article once a Notice of Revocation/Suspension regarding said permit is final.

V. Section 21-500. Process for Requesting a Permit.

- (1) The Chief of Police shall create a form for each type of permit consistent with the provisions of this Article.
- (2) An applicant may obtain a form during any business day at the San Antonio Police Headquarters. The Chief of Police shall accept applications for filing only on a business Monday or business Tuesday between the hours of 9:00 o'clock A.M. and 4:00 o'clock P.M. at the San Antonio Police Headquarters. Applications shall not be accepted at any other time or on any other day.
- (3) At the time that the Chief of Police receives an application, the applicant shall submit and the Chief of Police shall take the photograph of the applicant at the San Antonio Police Headquarters.
- (4) All photographs shall be used to perform a Background Investigation and for the purpose of photographic identification of permit holders, and shall be kept on record with the Chief of Police while the applicant possesses a valid permit, and for a period of not less than five years after the expiration, revocation, or denial of said permit.

- (5) All photographs of applicants shall be destroyed at the expiration of five years after the expiration, revocation, or denial of said permit, but all applicants submitting new applications shall be required to comply with photograph and fingerprint requirements in this Section.
- (6) All applicants shall submit to a criminal background check for the purpose of verifying the information requested in Section 21-401, Section 21-402, and Section 21-403.
- W. Section 21-600. Human Display Establishment: Hours of Operation.
- (1) A Human Display Establishment shall not allow customers or patrons onto the premises during the following hours of any day: 2:15 o'clock A.M. through 7:00 o'clock A.M.
- (2) It shall be unlawful for a Human Display Establishment to allow customers or patrons onto the premises during the proscribed hours as provided in Section 21-600(1).
- X. Section 21-601. Human Display Establishment: Posting of Permit.
- (1) The Human Display Permit shall be framed and posted six (6) feet above the floor on an interior wall of the Human Display Establishment that allows for the permit to be no more than two (2) feet from the doorframe of the front entrance. It shall be unlawful to obstruct from plain view a posted Human Display Permit.
- (2) It shall be unlawful to fail or refuse to post the Human Display Permit as mandated in this Article. It shall be unlawful for an individual to destroy, move, relocate or remove a posted Notice of Revocation.
- (3) If a Notice of Revocation is delivered, the Chief of Police shall remove the Human Display Permit from the wall of the Human Display Establishment; post the Notice of Revocation on the exterior wall next to the front entrance of the Human Display Establishment; and, post the Notice of Revocation on the exterior side of each door that may serve as an entrance or exit to the Human Display establishment.
- Y. Section 21-602. Human Display Establishment: Records.
- (1) The owner, operator, manager, or on-site manager of any Human Display Establishment shall keep on the premises a register of all employees of the Human Display Establishment that includes all information detailed at Section 21-401(3) herein for each employee plus a copy of a photographic identification card issued by governmental

authority of the United States of America or any State, possession, commonwealth, or territory thereof to said employee and:

- (a) each employee's true name;
- (b) aliases;
- (c) gender;
- (d) height;
- (e) weight;
- (f) color of hair and eyes;
- (g) date of birth;
- (h) date of initial employment;
- (i) date of termination, if applicable; and
- (j) specific job or employment duties.

(2) The register shall be maintained for all current employees and ex-employees employed at any time during the preceding thirty-six (36) months.

(3) It shall be unlawful to fail to maintain said register; or, fail or refuse to present said register to a peace officer upon request.

Z. Section 21-700. Holder of a Manager's or On-Site Manager's Permit.

(1) Each individual who holds a Manager's or On-Site Manager's Permit shall display his or her valid permit to a peace officer upon request while upon the premises of the Human Display Establishment for which said permit is authorized.

(2) In prosecuting a violation of Section 21-300 herein, it shall be presumed that the actor did not have a valid permit unless a valid permit was displayed in accordance with Section 21-700(1) herein.

(3) It shall be unlawful for a manager or on-site manager to fail to display his or her valid permit upon request of a peace officer while upon the premises of the Human Display Establishment for which said permit is authorized.

AA. Section 21-701. Duties of Owners, Employees and Customers.

(1) Each manager, on-site manager, owner, and operator shall comply with the provisions of this Article.

(2) Each employee, customer, and patron shall comply with the provisions of this Article.

- (3) Each manager, on-site manager, owner, and operator shall ensure that each employee, customer, and patron complies with the provisions of this Article.
- (4) It shall be unlawful for a Manager, On-Site Manager, operator, or owner to allow the conduct described in Section 21-701(5), (6), or (7) of this Article. Whenever an employee, customer, or patron fails to comply Section 21-701(5), (6), or (7), it shall be presumed that a Manager or On-Site Manager, operator, or owner allowed the prohibited conduct if said Manager, On-Site Manager, operator or owner was present on the premises at the time of the violation, and said conduct occurred in an area to which customers or patrons are allowed access, excluding a lavatory.
- (5) It shall be unlawful for any dancer, entertainer, or model to intentionally or knowingly touch another person, or the clothing of another person while entertaining or while in a state of semi-nudity.
- (6) It shall be unlawful for a customer to intentionally or knowingly touch a dancer, entertainer, or model while said entertainer is entertaining or while in a state of semi-nudity.
- (7) It shall be unlawful for any dancer, entertainer, or model to entertain while in a state of nudity.
- (8) It shall be unlawful for any employee to be in a state of nudity, semi-nudity, or to perform specified sexual activities while in the presence of any customer or patron and while in an area within the Human Display Establishment not subject to the direct line of site requirement.
- (9) It shall be unlawful for any employee to entertain while in a lavatory, or in a stairway or elevator used as access between floors.
- (10) It shall be unlawful for a Manager, On-Site Manager, owner, or operator on the premises of any Human Display Establishment to allow an obstruction into the line of sight view required under Section 21-200 at the definition of the term "configuration". It shall be presumed that a Manager, On-Site Manager, operator or owner allowed said obstruction if said Manager, On-Site Manager, operator or owner was present on the premises at the time of the obstruction.
- (11) It shall be unlawful for any on-site manager's station to be without an on-site manager during any time that a customer or patron is allowed on the premises of any Human Display Establishment.

- (12) It shall be unlawful for a Manager, On-Site Manager, owner, or operator on the premises of any Human Display Establishment to allow any individual to be on the premises of a Human Display Establishment who is younger than eighteen (18) years of age. It shall be presumed that a Manager, On-Site Manager, owner or operator allowed said individual to be on the premises if said Manager, On-Site Manager, operator or owner was present on the premises at the time the underage individual was present.
- (13) It shall be unlawful for any individual to be on the premises of any Human Display Establishment who is younger than eighteen (18) years of age.
- (14) It shall be the duty of the duly authorized agent, owner or operator of any Human Display Establishment to conform the interior of said premises to the specifications provided in this Article.
- (15) It shall be the duty of the duly authorized agent, owner or operator of any Human Display Establishment to notify the Chief of Police and the Director of Development Services, or his duly authorized representative, that the location is ready for the inspections required under this Article prior to the expiration of any applicable deadline contained herein.
- (16) It shall be the duty of the duly authorized agent, owner or operator of a Human Display Establishment to post, and maintain free of obstruction, the following notices in all capital letters with red type on a white background in typeface no less than one (1) inch in length per letter, no more than two (2) feet from each door used as an entrance or exit into or from the Human Display Establishment, and at a height of no less that four (4) feet and no more than six (6) feet from the ground:
- (a) “No Touch Rule - It is violation of the San Antonio City Code for a dancer, entertainer, model, customer or patron to intentionally or knowingly touch while entertaining or while in a state of semi-nudity.”
  - (b) “No Minors - No individual under the age of eighteen (18) is allowed inside the premises.”
  - (c) “Patrons’ conduct is being observed by management. Illegal conduct will not be permitted.”
  - (d) Said notices shall include the appropriate City of San Antonio ordinance number.

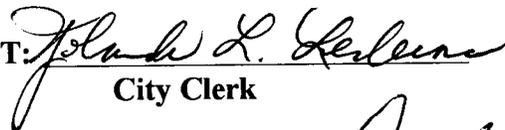
(17) It shall be unlawful to fail to post the notices required by Section 21-701(16).

SECTION 6. Severability. If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or sets of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereby, and all provisions of this Ordinance are declared to be severable for that purpose.

SECTION 7. This Ordinance shall become effective ten (10) days after the date of passage. Human Display Establishments that are in existence and operating at the time of the passage of this ordinance shall be allowed to continue their operations for a period of sixty (60) days after the effective date of this ordinance, provided that they file completed applications and pay the associated fees for a Human Display Permit and all necessary Manager's and On-site Manager's Permits with the Chief of Police within thirty (30) after the effective date of this ordinance. Said Human Display Establishments must also comply with Sections 21-300(1), 21-600, 21-602 and 21-701 of this ordinance during the sixty (60) day time period.

**PASSED AND APPROVED on this the 17<sup>th</sup> day of April, 2003.**

  
**MAYOR**  
**EDWARD D. GARZA**

**ATTEST:**   
**City Clerk**

**APPROVED AS TO FORM:**   
**City Attorney**