

**AFFIDAVIT IN SUPPORT OF CERTIFICATE OF OCCUPANCY
APPLICATION FOR SEXUALLY ORIENTED BUSINESS**

Address of Proposed Business (the Property):
Legal Description:

By my signature below, I acknowledge that I am aware of the locational requirements related to sexually oriented businesses as defined in Sections 35-388, 35-424, and 35-A101 of the Unified Development Code (UDC), a chapter of the City Code of San Antonio. I further affirm that I have been provided a copy of the referenced code sections and understand that violations may result in suspension and/or revocation of this certificate of occupancy.

I hereby submit the following documents in support of the Application for a Certificate of Occupancy for the Property for a sexually oriented business:

- (a) A certified survey map prepared by a state licensed surveyor or state licensed engineer that shows the required minimum distances from properties with protected uses or protected zoning. Said survey map shows the location of the sexually oriented business on the Property meets the locational requirements of the UDC.
- (b) A sworn affidavit stating the name and mailing address of all owners of the planned, or existing, sexually oriented business on the Property;
- (c) If a corporate owner, the current name and street address of the corporate president and the registered agent for service on file with the Texas Secretary of State.

Applicant

Date

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Before me, the undersign authority, on this day personally appeared _____, the affiant who, after being duly sworn on oath, deposed and states the facts herein set forth are true and correct.

Sworn to and subscribed before me on this the _____ day of _____, 200__.

NOTARY PUBLIC, STATE OF TEXAS

Note: It shall be a violation of this ordinance for an owner of a sexually oriented business to fail or refuse to submit the prerequisite certified survey map or to fail or refuse to register the names and addresses of the owner(s). Without both the certified survey map and owner identification, no valid certificate of occupancy and/or building permit can be issued. Upon discovery of the absence of or the incorrectness of either document, the certificate of occupancy and/or building permit shall be declared invalid by the director of development services. (Ord. No. 98697 § 4)

**Applicable Unified Development Code Sections Relating to
Applications for Certificate of Occupancy for Sexually Oriented Businesses**

Sec. 35-388. Sexually Oriented Business Regulations.

These regulations are authorized by V.T.C.A. Local Government Code Ch. 243.

(a) Applicability. These regulations shall apply to all sexually oriented businesses operating on or after the effective date of this chapter. Further, any sexually oriented business annexed by the city after the effective date of this chapter shall be subject to all the requirements of this section. Existing sexually oriented businesses shall refer to this section and to nonconforming use regulations (article VII, division 1 of this chapter) to determine their appropriate classification.

(b) Property Uses Requiring Separation. Notwithstanding any provision of this chapter to the contrary, it shall be a violation to use or occupy land or a building for the purpose of operating or maintaining a sexually oriented business within one thousand (1,000) feet from property (referenced within this section as protected property, "protected use" or "protected zone") that is described as follows:

(1) Another sexually oriented business;

(2) Any property located within an "RP" or a residential zoning district, whether temporary or permanent, or devoted to a residential use, including any land zoned for one (1) of the aforementioned residential uses which is also described as a planned unit development or traditional neighborhood development, but excluding airports;

(3) Any property devoted to church, synagogue, mosque, or other religious worship facility used primarily for religious worship;

(4) Any public or private elementary, secondary or high school; or

(5) Any public park.

(c) Method of Measurement and Survey Requirements.

(1) Sole Tenant. Measurements shall be in a straight line, without regard to intervening structures or objects, from the nearest property line of the lot on which the sexually oriented business is located, to the nearest property line of the protected properties described in the above subsection (a), which requires separation. This method of measurement shall apply to a sexually oriented business which is the sole tenant, within one (1) building, located on one (1) platted lot.

(2) Multiple Tenants. Measurements shall be in a straight line, without regard to intervening structures or objects, from the nearest point of the occupied space of the sexually oriented business to the nearest property line of the protected property described in the above subsection (a) which requires separation. This method of measurement shall apply to a sexually oriented business which is a tenant within a multiple tenant building.

(3) Easements Excluded. In calculating the distances described in subsections (b)(1) and (b)(2) above easements (such as right-of-way, drainage and utility easements) that are zoned as, or abut, a protected property classification, shall not be considered as part of the protected property.

(4) Surveyor. A certified survey prepared by a licensed surveyor or licensed engineer showing distance measurements in accordance with (1) and (2) of this subsection shall be submitted to the director of development services for all sexually oriented businesses as part of the application for the certificate of occupancy. Any certificate of occupancy issued for a building or facility used to conduct a sexually oriented business without submission of the required survey shall be null and void.

(d) Downtown District Prohibition. In addition to the location restrictions of subsection (a), it shall be a violation to operate, own, manage, or maintain a sexually oriented business within the "D" downtown district.

(e) Nonconforming Rights. See section 35-708 of this chapter.

(1) Annexation. Any sexually oriented business annexed by the city after the effective date of this chapter shall be subject to all the requirements of this section.

(f) Certificate of Occupancy. See subsection 35-424(c) for procedures for issuance of a certificate of occupancy for a sexually oriented business.

(g) Violations Subject to Criminal and Civil Penalties. See section 35-497 of this chapter.

(Ord. No. 98697 § 4 and 6) (Ord. No. 101816, § 2, 12-15-05)

Sec. 35-A101. Generally

Sexually oriented business. Includes any of the land uses defined as follows:

(1) Adult arcade means any place to which the public is permitted or invited, wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines,

projectors, or other image-producing devices are designed and maintained to show images to five (5) or fewer persons per machine or device at any one time, and where the images so displayed are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas.

(2) Adult bookstore means an adult bookstore, adult novelty store, or adult video store where more than twenty (20) percent of its inventory (that is offered for sale, rental or viewing for any form of consideration to on-premises customers) or floor space consists of one (1) or more of the following:

(a) Books, magazines, or sound recordings, or printed, visual or audio material of any kind which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities; or

(b) Non-contraceptive instruments, devices, toys, or paraphernalia designed for use in connection with specified sexual activities, books, magazines, pamphlets, pictures, drawings, photographs, motion picture films, or sound recordings, or printed, visual or audio material of any kind, which, because of the depiction or description of specified sexual activities in the materials offered for sale, is restricted to adults. Novelty items designed as sight gags, advertised as such and not designed or advertised for sexual activity, are not instruments or devices as defined and regulated herein.

(3) Adult entertainment establishment means a nightclub, bar, restaurant "bottle club", "men's club", "gentlemen's club", "cabaret" or similar place of business, or portion thereof where live entertainment is provided for patrons, whether or not alcoholic beverages are served which features as a significant portion of the entertainment an emphasis on the exhibition, depiction, or description of specified anatomical areas or specified sexual activities; or a place where entertainment is provided to patrons wherein, because of the nudity or semi-nudity of person(s) employed by or associated with the operation of the business, admittance is limited to adults, or admittance is advertised or promoted as being restricted to adults.

(4) Adult motel means a motel, hotel or similar commercial establishment which: (a) offers public accommodations, in any form of consideration, which provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, slides, or other photography reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas, and (b) which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets, leaflets, radio, or television.

(5) Adult motion picture theater means a business place where one (1) or more films, videos, slides, motion pictures, or similar photographic reproductions are shown that have as a dominant theme, or are distinguished by, an emphasis on the depiction or description of specified sexual activities for observation by patrons or guests, and where admittance to such showings are restricted to adults.

(6) Adult theater means a theater, concert hall, auditorium, or similar commercial establishment which, for any form of consideration, regularly features employees, volunteer patrons, or independent contractors, who appear nude or semi-nude and/or engage in specified sexual activity, or live performances which are characterized by exposure of specified anatomical areas or engagement in specified sexual activities.

(7) Massage parlor means any place where, for any form of consideration or gratuity, massage, alcohol rub, administration of fomentation, electric or magnetic treatments, or any other treatment or manipulation of the human body which occurs as a part of, or in connection with, such treatment, manipulation, or service related thereto, exposes specified anatomical areas. The definition of a massage parlors shall not include the practice of massage in any licensed hospital, nor by a licensed massage therapist, hospital, licensed physicians, surgeons, chiropractor, osteopath, nurse, technician working under the supervision of a licensed physician, surgeon, chiropractor, or osteopath, nor by trainers of any amateur, semiprofessional or professional athlete or athletic team or school athletic program.

(8) Sexual encounter establishment means any business or commercial establishment that, as of its primary business purposes, offers for any form of consideration, a place where two (2) or more persons may congregate, associate, or consort for the purpose of specified sexual activities or the exposure of specified anatomical areas when one (1) or more of the persons is in a state of nudity or semi-nudity. The definition of sexual encounter establishment shall not include an establishment where a medical practitioner, psychologist, psychiatrist, or medical professional, licensed by the state engages in medically approved and recognized therapy or treatment.

(9) Nude modeling studio means any place where a person who, for money or any form of consideration, appears in a state of nudity or displays specified anatomical areas, to be observed, sketched, drawn, painted, sculptured, photographed, or otherwise depicted by other persons. This

definition shall not include nude modeling by an adult that occurs in conjunction with art classes of a university, college, or any art class supervised by an art instructor paid by an arts school.

(10) Nudity attraction establishment means any place of business where nudity or semi-nudity is regularly or routinely advertised as a characteristic of the business or which regularly attracts patrons with nudity or semi-nudity.

Additional definitions are as follows:

(11) Specified anatomical areas means the human genitals, crevice of the buttocks, pubic region, anus, and the areola of the post puberty female breast.

(12) Specified sexual activity means actual and simulated human genitals in a state of sexual stimulation or arousal, actual or simulated human masturbation, sexual intercourse, sodomy, fellatio, cunnilingus, fondling or other erotic touching of human genitals, pubic region, buttock or female breast, and excretory functions as part of or in connection with the above described activity.

(13) Nude or nudity or state of nudity means a state of dress which fails to cover the human anus, genitals, pubic region, and the areola of the post puberty female breast.

(14) Semi-nude or semi-nudity or state of semi-nudity means a state of dress which fails to fully opaquely cover the crevice of the human buttocks, genitals, pubic region, and the post puberty female breast areola.

(15) Negative secondary effects means any one (1) of the following conditions caused by geographic proximity to a sexually oriented business:

(a) Depreciation in surrounding property values; and/or

(b) Violations of law not limited to but including: indecent exposure, drug use, prostitution, pandering, exposing minors to harmful materials, possession and distribution of obscene materials, possession and distribution of controlled substances, public intoxication, disturbing the peace, and/or

(c) Adverse impact upon the City of San Antonio's central business district as a family oriented vacation destination.

Sec. 35-B118. Sexually Oriented Business.

If the subject building or portion of the building is intended for future use or is currently used as a "sexually oriented business", then the following shall be submitted attached to and made part of the application for certificate of occupancy and/or building permit:

(a) A certified survey map prepared by a state licensed surveyor or state licensed engineer which shows the required minimum distances from properties with protected uses or protected zoning; and

(b) A sworn affidavit stating the name and mailing address of all owner(s) of the planned, or existing, sexually oriented business; and

(c) If a corporate owner, the current name and street address of the corporate president and the registered agent for service on file with the Texas Secretary of State.

(d) It shall be a violation of this ordinance for an owner of a sexually oriented business to fail or refuse to submit the prerequisite certified survey map or to fail or refuse to register the names and addresses of the owner(s). Without both the certified survey map and owner identification, no valid certificate of occupancy and/or building permit can be issued. Upon discovery of the absence of or the incorrectness of either document, the certificate of occupancy and/or building permit shall be declared invalid by the director of development services.

(Ord. No. 98697 § 4)

Sec. 35-C107. Sexually Oriented Businesses.

A "sexually oriented business certificate of occupancy fee" of five hundred seventy-five dollars (\$575.00) shall be paid to the City of San Antonio with the submission of each application for a certificate of occupancy for a sexually oriented business to pay for the cost of review and verification of accuracy of the application, survey maps, ownership information, and conformance with other certificate requirements.