

CHAPTER 4

BUSINESS REGULATIONS

ARTICLE 4.01 GENERAL PROVISIONS

(Reserved)

ARTICLE 4.02 ALCOHOLIC BEVERAGES^{1*}

Division 1. Generally

Secs. 4.02.001–4.02.030 **Reserved**

Division 2. Hours and Places of Sale

Part I. In General

Sec. 4.02.031 **Definitions**

The terms “beer,” “manufacturer,” “general distributor,” “local distributor,” “retail dealer,” “person” and all other terms used in this division shall be construed as defined in V.T.C.A., Alcoholic Beverage Code, which definitions and constructions are hereby specifically made a part of this division.

Sec. 4.02.032 **Penalty for violation**

Any person, firm or corporation violating any provision of this division shall upon conviction be fined in accordance with state law as set forth in V.T.C.A., Alcoholic Beverage Code, and each violation of this division shall constitute a separate offense.

(Ordinance 2111 adopted 4/18/95)

Sec. 4.02.033 **Location of sale**

Hereafter it shall be unlawful to sell or offer for sale any alcoholic beverage for on-premises consumption by any dealer where the place of business of any such dealer is within 300 feet of any church, public school, or public hospital, within the corporate limits of the city, and no license or permit shall ever be issued to any dealer or person engaged in handling alcoholic beverages, as described in V.T.C.A., Alcoholic Beverage Code, where the place of business of any such dealer is within 300 feet of any church, public school, or public hospital, said

measurements to be along the property line of the street fronts and from door to front door and in a direct line across intersections where they occur. The measurement of the distance between the place of business where alcoholic beverages are sold and the public schools shall be from the nearest property line of the public school to the nearest doorway by which the public may enter the place of business, along street lines and in direct line across intersections. For any permit or license covering a premises where minors are prohibited from entering the premises under Alcoholic Beverage Code section 109.53, the measurement of the distance between the premises and a public school shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections. (Ordinance 2111 adopted 4/18/95; Ordinance adopting Code)

State law reference—Sales near church, school or hospital, V.T.C.A., Alcoholic Beverage Code, sec. 109.33.

Sec. 4.02.034 Hours of sale

(a) The hours of sale within the corporate limits of the city of beer or other alcoholic beverages shall be as prescribed in V.T.C.A., Alcoholic Beverage Code sections 105.01, 105.03, 105.04 and 105.05; further, on weekdays alcoholic beverages, including beer, can be sold within the corporate limits of the city on weekdays only between the hours of 7:00 a.m. and 12:00 midnight, Saturday from 7:00 a.m. to 1:00 a.m., and on Sunday from 12:00 noon to 12:00 a.m. On Sundays alcoholic beverages may be sold between the hours of 10:00 a.m. and 12:00 noon provided that food service must accompany the sale during those hours. (Ordinance 2111 adopted 4/18/95)

(b) In addition to the hours of sale and consumption within the corporate limits of the city for beer, wine or other alcoholic beverages authorized by subsection (a) of this section, the city further adopts the provisions of chapter 105 of the Texas Alcoholic Beverage Code allowing extended hours sales of beer, wine and other alcoholic beverages in accordance with said chapter, allowing sales of said beverages between the hours of midnight and 2:00 a.m. on any day for holders of a mixed beverage late hours permit and/or a retail dealer's on-premises late hours license as required by said chapter. (Ordinance 2373, sec. 1, adopted 1/6/06)

Secs. 4.02.035–4.02.060 Reserved

Part II. License

Sec. 4.02.061 County license required before issuance of city license

No person shall be issued a license under the terms of this division until he shall have first obtained a license from the tax collector of the county, in the classification and valid for the period applied for, which he shall display to the city secretary before such city license shall be issued.

Sec. 4.02.062 Required

After this division shall become effective (ordinance adopted April 18, 1995), it shall be unlawful for any person to manufacture or brew for the purposes of sale or to sell or distribute

any beer without first having applied for and secured a license as herein provided from the city secretary in his official capacity as collector of taxes of said city for the use and benefit of the general fund of said city. The annual license fees to be levied by the city shall always be half the fee charged by the state.

Sec. 4.02.063 Separate license for each place of business

No retail dealer shall carry on the same business at more than one place under the same license, but a separate license must be obtained for each place of business. No license may be assigned to another person.

Sec. 4.02.064 Application

Each application for a license shall be in writing and shall give the name of the person to whom a license is to be issued, the lot and block number, and house number of the premises on which such beer is to be sold, and shall state that a license has been issued by the county tax collector to such applicant for the sale of beer in the county and shall give the date and number of such license and shall state the classification for which the license was obtained from such county tax collector.

Sec. 4.02.065 Fees

(a) There is hereby levied an annual license fee to be paid to the city of one-half of the state license fees on every person, copartnership, corporation, association or group of persons, manufacturing or brewing for the purposes of sale, or selling or distributing vinous or malt liquors or beer containing one-half of one percent or more of alcohol by volume and more than three and two-tenths percent of alcohol of weight, within the city limits, in accordance with the classifications and scale set out in V.T.C.A., Alcoholic Beverage Code.

(Ordinance 2111 adopted 4/18/95)

(b) The city hereby imposes an annual license fee to be paid to the city of one-half of the state license fee on an applicant under section 4.02.034(b) to sell beer, wine and other alcoholic beverages during the extended hours adopted within the city limits in accordance with the Texas Alcoholic Beverage Code. (Ordinance 2373, sec. 2, adopted 1/6/06)

State law references—Local fee authorized on alcoholic beverage permits, V.T.C.A., Alcoholic Beverage Code, sec. 11.38; local fee authorized on alcoholic beverage licenses, V.T.C.A., Alcoholic Beverage Code, sec. 61.36.

Sec. 4.02.066 Payment of fees before issuance or renewal

All license fees shall be paid in advance before the license is issued or renewed. Such license shall cover the same period of time as the date on the state license.

Sec. 4.02.067 Issuance

Upon complying with the provisions of this division and the payment of the license fee herein

provided for the classification of license applied for, the city secretary shall issue the proper license which shall be by him signed, be under the seal of the city, and shall as far as practicable contain the terms provided by law for licenses issued by the county tax collector.

Sec. 4.02.068 Term; expiration; renewal

All licenses issued under the terms of this division shall terminate at midnight on December 31 of each year, and no license shall be issued for a longer term than one year. On or before the first day of January, each and every person, firm, or corporation owning a license issued under the terms of this division may submit a written application filed with the city tax collector not more than 30 days prior to the 1st of January to renew such license held by him. Such application shall be in writing and signed by the applicant and shall contain the information required in regard to the original application for the license.

Sec. 4.02.069 Display

All persons obtaining a license under this division shall at all times keep such license on display in some conspicuous place in the house where such business is conducted.

(Ordinance 2111 adopted 4/18/95)

ARTICLE 4.03 PEDDLERS, SOLICITORS AND ITINERANT BUSINESSES^{ii*}

Division 1. Generally

Sec. 4.03.001 Peddlers and solicitors

(a) It shall be unlawful for any solicitors of orders for merchandise, peddlers, itinerant merchants, or transient vendors of merchandise to go in and upon the premises of a private residence in the city, unless requested or invited to do so by the owner or occupant of said private residence, for the purpose of soliciting orders for the sale of goods, wares and merchandise, or for the purpose of disposing of or peddling same.

(b) Every solicitor of orders for the sale of merchandise, peddler, or transient vendor of merchandise shall obtain a permit from the city secretary before soliciting any orders, offering for sale or selling any goods or merchandise in the city, and it shall be the duty of the city secretary to make an investigation of all persons offering to do so to determine their authority for making such sales and taking such orders, and before issuing a permit shall determine that they actually represent the parties they so claim to represent and that they are an actual bona fide representative of a reliable concern. Unless he or she so finds, he or she shall refuse to issue a permit for the taking of orders and the selling of merchandise in the city. A permit fee as provided for in the fee schedule in appendix A to this code shall be paid to the city at the time of issuance of a six-month permit.

(c) Any person who shall violate any of the provisions of this section shall be deemed guilty of

a misdemeanor and fined in accordance with the general penalty in section 1.01.009 of this code.

(d) The provisions of this section requiring the payment of a license fee shall not apply to persons engaged in interstate commerce; provided, however, that it shall be unlawful for persons engaged in interstate commerce to go from house to house, or place to place, in the city, without having first registered with and obtained a written permit from said city, giving the following information:

- (1) Name, home address and local address, if any, of the registrant.
- (2) Name, and address of the person, firm or corporation, if any, that he or she represents, or for whom or through whom orders are to be solicited or cleared.
- (3) Nature of the articles or things which are to be sold or for which orders are to be solicited.
- (4) Whether the registrant, upon any sale or order, shall demand or receive or accept payment or deposit of money in advance of final delivery.
- (5) Period of time in which the registrant wishes to solicit or sell in said city.

(Ordinance 523-B adopted 7/7/71)

Secs. 4.03.002–4.03.030 Reserved

Division 2. Itinerant Businesses

Sec. 4.03.031 Definition

For the purpose of this division, an itinerant business is any person, firm, or business entity who sells or takes orders out of a vehicle, vehicles, trailer, tables, chairs or temporary stand on a premises where there is no related business building or on premises where such business is not related to the business buildings.

Sec. 4.03.032 Unlawful acts

It shall be unlawful for any itinerant business to sell or offer to sell any item or items within the city that is not part of a flea market or that is not housed within a properly constructed and permitted building or associated to a properly constructed and permitted building within a properly commercially zoned area within the city or that has not obtained a permit prior to engaging in the business.

Sec. 4.03.033 Temporary permit

An itinerant business may be permitted to operate within the city for no longer than thirty (30) days outside of an established flea market if same is associated with a fair, outdoor market,

outdoor festival, or other such activity associated with or operated by a charitable, religious or civic activity from the city.

Sec. 4.03.034 Permit application

Any itinerant business applicant for such a permit shall file an application in writing with the city secretary not less than ten (10) days before the engagement in any business as an itinerant business. The application must contain the following information:

- (1) Full name of the person applying for the permit, his or her address, telephone number if any, and, if the itinerant business is selling on behalf of an organization, the name and address of the parent organization;
- (2) The address of the itinerant business during the previous five (5) years with the name of at least one (1) reference from each such community;
- (3) A copy of a limited sales tax permit issued by the state or proof that the goods sold are not subject to such sales tax; and
- (4) A statement of the type of goods or wares to be sold.

Sec. 4.03.035 Cancellation of permit

Each itinerant business permit issued under this division shall be subject to cancellation for any violation of any provision of this division or any other code or ordinance violation in the city.

Sec. 4.03.036 Permit duration; fee

Each itinerant business permit shall expire at the end of thirty (30) days from which date it was issued. A fee as provided for in the fee schedule in appendix A to this code shall be paid to the city for the issuance of each permit under this division.

(Ordinance adopting Code)

ARTICLE 4.04 GARAGE SALES

Sec. 4.04.001 Definitions

Garage sale. Includes all sales entitled “garage sale,” “lawn sale,” “attic sale,” “rummage sale,” “flea market sale,” “yard sale,” or any similar sale of tangible personal property which is advertised by any means whereby the public at large is or can be made aware of said sale.

Goods. Includes any goods, warehouse merchandise or other property capable of being the object of a sale regulated hereunder.

Person. Includes individuals, partnerships, voluntary associations, and corporations.

(Ordinance 2037, sec. 1, adopted 7/21/92)

Sec. 4.04.002 Penalty for violation

Any person, association or corporation conducting any such sale without being properly licensed therefor or who shall violate any of the other terms and regulations of this article shall, upon conviction, be fined in accordance with the general penalty in section 1.01.009 of this code.

(Ordinance 2037, sec. 6, adopted 7/21/92)

Sec. 4.04.003 Persons and sales excepted

The provisions of this article shall not apply to or affect the following persons or sales:

- (1) Persons selling goods pursuant to an order or process of a court of competent jurisdiction.
- (2) Persons acting in accordance with their powers and duties as public officials.
- (3) Any person selling or advertising for sale an item of personal property which is specifically named or described in the advertisement and which separate items do not exceed five (5) in number.

(Ordinance 2037, sec. 5, adopted 7/21/92)

Sec. 4.04.004 License application and fees

It shall be unlawful for any person to conduct a garage sale in the city without first filing with the city secretary the information hereinafter specified and obtaining from such city secretary a license to do so, to be known as a garage sale license. A fee for such license shall be paid as provided for in the fee schedule in appendix A to this code. (Ordinance 2037, sec. 2, adopted 7/21/92)

Sec. 4.04.005 Information to be filed

The information to be filed with the city secretary, pursuant to this article, shall be as follows:

- (1) Name of the person, firm, group, corporation, association, or organization conducting said sale.
- (2) Name of the owner of the property on which said sale is to be conducted, and consent of the owner if the applicant is other than the owner.
- (3) Location at which the sale is to be conducted.

- (4) Number of days of the sale.
- (5) Date, nature of any past sale.
- (6) Relationship or connection the applicant may have had with any other person, firm, group, organization, association, or corporation conducting said sale and the date or dates of such sale.
- (7) Whether or not the applicant has been issued any other vendor's license by any local, state or federal agency.
- (8) Sworn statement or affirmation by the person signing that the information therein given is full and true and known to him to be so.

(Ordinance 2037, sec. 4, adopted 7/21/92)

Sec. 4.04.006 Issuance of license

- (a) Such license shall be issued to any one (1) address only two (2) times within a twelve-month period, and no such license shall be issued for more than four (4) consecutive calendar days.
- (b) Each license issued under this article must be prominently displayed on the premises upon which the garage sale is conducted throughout the entire period of the licensed sale.

(Ordinance 2037, sec. 3, adopted 7/21/92)

ARTICLE 4.05 SIGNS AND OUTDOOR ADVERTISING^{iii*}

Sec. 4.05.001 Definitions

Back-to-back sign. A structure with two parallel sign faces oriented in opposite directions, or two structures, each with one sign face and located not more than ten (10) feet from an obstruction preventing both structures from being seen at the same time from any point along the traveled way.

Expressway. That portion of U.S. Highways 77/83 located within the city.

Off-premises outdoor advertising. Any outdoor sign, display, figure, painting, drawing, message, billboard, or any other thing which is designed, intended, or used to advertise or inform, any part of which advertising or information content is visible from any place on the main-traveled way of the expressway or any thoroughfare in the city; but does not include on-premises signs advertising or identifying activities conducted on or products sold on the property upon which they are located.

Sign. All portions of an outdoor advertising structures, including structural elements, bases, sign, faces, trim and borders.

Sign face. That portion of a sign, including the display area, border and trim, but excluding the base, supports, and other structural members, facing traffic moving in one direction and built on one structure.

Thoroughfare. Any street, road, expressway, freeway, or highway located within the city.

V-type sign. A structure or structures with two or three sign faces, forming the shape of the letter “V” or a triangle when viewed from above, with an angle between any two (2) faces of not more than ninety (90) degrees.

(Ordinance 2273, sec. 1, adopted 11/20/02)

Sec. 4.05.002 Variances issued by board of adjustment

To provide reasonable flexibility in these regulations, the zoning board of adjustments may approve an application for a sign which does not conform with the provisions of this article, if the location, size and other characteristics of the sign would not be inconsistent with the character of the area in which it is to be located. (Ordinance 2273, sec. 12, adopted 11/20/02)

Sec. 4.05.003 Penalty

Any person violating any of the provisions of this article shall, upon a conviction, be fined any sum not exceeding the amount allowed for a class C misdemeanor; and each and every day that the provisions of this article are violated shall constitute a separate and distinct offense. In addition to said penalty provided for, the city shall have the right to bring suit in such court or courts having jurisdiction hereof and obtain such remedies as may be available at law. (Ordinance 2273, sec. 14, adopted 11/20/02)

Sec. 4.05.004 Exemptions

The following are exempt from this article:

- (1) A sign erected, maintained, and which is allowed under the highway beautification provisions contained in article IV, Texas Litter Abatement Act (article 4477-9a, Vernon’s Texas Civil Statutes) [Highway Beautification on Interstate and Primary Systems and Certain Roads, V.T.C.A., Transportation Code chapter 391];
- (2) A sign in existence prior to the effective date of this article (ordinance adopted November 20, 2002);
- (3) A directional or other official sign authorized by law, including a sign pertaining to natural wonders or scenic or historic attractions;

- (4) A sign or marker giving information about the location of underground electrical transmission lines, telegraph or telephone properties and facilities, pipelines, public sewers or waterlines;
- (5) A sign erected by an agency of the state or a political subdivision of the state; and
- (6) A sign erected solely for and relating to a public election, but only if:
 - (A) The sign is erected no sooner than the 60th day before the election day and is removed no later than the 10th day after the election;
 - (B) The sign is constructed of lightweight material;
 - (C) The surface area of the sign is not larger than thirty-two (32) square feet;
 - (D) The candidate has first submitted to the city secretary's office the name, address, and phone number of his or her campaign manager, and has signed his or her name on the registration sheet verifying that the political sign regulations of the city have been explained and that he or she fully understands the requirements; and
 - (E) The sign is not posted in violation of section 4.05.014 of this article.

(Ordinance 2273, sec. 11, adopted 11/20/02)

Sec. 4.05.005 Extraterritorial jurisdiction

This article shall not apply and be enforceable within extraterritorial jurisdiction of the city.
(Ordinance 2273, sec. 13, adopted 11/20/02)

Sec. 4.05.006 Location

Signs shall be permissible if located on private property and in conformance with the provisions of this article shall be permitted in the zones as set forth in the zoning ordinance. (Ordinance 2273, sec. 2, adopted 11/20/02)

Sec. 4.05.007 Size

The maximum area of a sign face shall be six hundred seventy-two (672) square feet, excluding cutouts, uprights, trim and apron. An off-premises sign shall not have a cutout area larger than twenty percent (20%) of the sign's surface copy area. For signs of a double-faced, back-to-back, or V-type nature, each face is considered a separate sign in computing the face area. (Ordinance 2273, sec. 3, adopted 11/20/02)

Sec. 4.05.008 Spacing

Property fronting thoroughfares and all properties zoned commercial shall be subject to the following:

- (1) For the purpose of this regulation, each side of the thoroughfare shall be considered separately.
- (2) V-type or back-to-back signs shall be considered one (1) sign.
- (3) An off-premises sign having a face area of 301 square feet or more shall not be erected within 2,000 feet of another off-premises sign.
- (4) An off-premises sign having a face area of at least 100 but less than 301 square feet shall not be erected within 1,000 feet of another off-premises sign.
- (5) An off-premises sign having a face area of less than 100 square feet shall not be erected within 150 feet of another off-premises sign.
- (6) Signs located at the same intersection are not in violation of this section because of their proximity to one another if they are located so that their messages are directed toward traffic flowing in different directions.
- (7) No sign shall be located in such a manner as to obstruct or otherwise physically interfere with the effectiveness of an official traffic sign, signal or device, or obstruct or physically interfere with a driver's view of approaching or intersecting traffic.
- (8) No advertising signs permitted on home occupation.

(Ordinance 2273, sec. 4, adopted 11/20/02)

Sec. 4.05.009 Height

There shall be a maximum height restriction of forty-two and one-half (42-1/2) feet, measured from the ground at the base of the sign supports or from the grade of the thoroughfare immediately adjacent to the highest point of the sign, whichever is of greater height. The minimum height restriction shall be as follows:

<u>Face Area of Sign</u>	<u>Height of Sign</u>
Less than 30 square feet	No minimum
30 square feet–73 square feet	10 feet
73 square feet–100 square feet	15 feet
100 square feet–300 square feet	25 feet

301 square feet–672 square feet

30 feet

(Ordinance 2273, sec. 5, adopted 11/20/02)

Sec. 4.05.010 Lighting

Signs may be illuminated, subject to the following restrictions:

- (1) No revolving or rotating beam or beacon of light that simulates any emergency light device shall be permitted as part of any sign. Flashing devices shall not be permitted upon a sign. Illuminated signs which indicate customary public information, such as time, date, temperature or other similar information, shall be permitted.
- (2) External lighting, such as floodlight, thin line, or gooseneck reflectors, are permitted, provided the light source is directed toward the face of the sign and is effectively shielded so as to prevent beams or rays of light from being directed into any portion of the traveled way.
- (3) The illumination of any sign within two hundred (200) feet of a residential zone lot line shall be diffused or indirect in design to prevent direct rays of light from shining into adjoining residential districts.

(Ordinance 2273, sec. 6, adopted 11/20/02)

Sec. 4.05.011 Prohibited off-premises signs

It shall be unlawful for any person or corporation to knowingly or intentionally place or maintain an off-premises sign:

- (1) That is obsolete or does not meet construction standards, such as out-of-date political billboards, signs advertising defunct businesses and signs which were erected without a building permit.
- (2) Which is not clean and in good repair.
- (3) Which is illegal under state law or regulations.
- (4) That is not securely fixed on a substantial structure.
- (5) That attempts or appears to regulate, warn, or direct the movement of traffic or which interferes with, imitates, or resembles any official traffic sign, signal or device.
- (6) That is erected or maintained upon trees or utility poles, or that is painted or drawn upon rocks or other natural features.

- (7) That is damaged or destroyed to an extent of more than 60% of fair market value as determined by the building inspector.
- (8) That prevents free ingress or egress from any door, window, or fire escape or that is attached to a standpipe or fire escape.

(Ordinance 2273, sec. 7, adopted 11/20/02)

Sec. 4.05.012 Construction standards and permits

- (a) All signs shall be constructed in accordance with the building code of the city. All nonexempted permanent off-premises signs, however, shall have a metal frame, metal legs, and be set a minimum of three (3) feet in the ground.
- (b) A person shall not erect a sign without first having obtained a permit from the building inspector of the city. To obtain a permit, an applicant must submit a site plan of the proposed sign which shall include the construction specifications, dimensions and location of the sign as well as the distances between the proposed sign and the closest sign(s) on the same side of the roadway. A permit if issued under this subsection is valid for six (6) months.

(Ordinance 2273, sec. 8, adopted 11/20/02)

Sec. 4.05.013 Nonconforming signs

Any sign legally erected prior to the effective date of this article (ordinance adopted November 20, 2002), not complying with the provisions of this article, may continue in existence, except as provided in section 4.07.011. (Ordinance 2273, sec. 9, adopted 11/20/02)

Sec. 4.05.014 Signs in public places

- (a) No person shall paint, mark or write on, or post or otherwise affix, any handbill or sign to or upon any sidewalk, crosswalk, street median, curb, curbstone, street lamppost, hydrant, tree, shrub, tree stake or guard, railroad trestle, electric light or power or telephone or telecommunications wire pole, or wire appurtenance thereof or upon any lighting system, public bridge, street sign or traffic sign or signal constituting public property.
- (b) Any handbill or sign found painted or otherwise affixed upon any public property contrary to the provisions of this section may be removed by the police department or the department of public works. The person responsible for any such illegal painting shall be liable for the cost incurred in the removal thereof. The department of public works is authorized to effect the collection of such cost.
- (c) Nothing in this section shall apply to the installation of a plaque or plate or individual letters or figures in a sidewalk commemorating an historical, cultural, or artistic event, location or personality for which the zoning board of adjustment has granted approval.

(Ordinance 2273, sec. 10, adopted 11/20/02)

Sec. 4.05.015 Special sign categories

(a) Political signs. Political signs are a special type of temporary signs that will be permitted to be placed for a period not to exceed 60 days prior to the election and 10 days after the election. In the event of a runoff election, those candidates participating in such election would be allowed an extended permit time up to 10 days after the runoff election. A permit must be obtained for each sign erected that is 32 square feet or larger. All political signs should be spaced to avoid dangerous visual clutter caused by a proliferation of signs. In addition to applicable fees otherwise payable for a sign permit, the applicant shall post a deposit as provided in the fee schedule in appendix A to this code that shall be held to ensure the removal of the signs. Such deposit is refundable upon the surrender of the signs for disposal or proof of such action. Any sign not surrendered or disposed of within 15 days of the election or actually removed by the city because it is located on public property shall be a partial forfeiture of the removal deposit. The amount of deposit forfeiture shall be \$10.00 per sign collected in violation of this subsection. If total forfeiture exceeds the total deposit, the applicant shall be billed for the difference. All candidates must register with the city secretary and make such deposit to the finance department. (Ordinance 2273, sec. 10, adopted 11/20/02; Ordinance adopting Code)

(b) Painted signs. Signs painted on the side of buildings will not require a building permit, but will be counted toward overall square footage of signs allowable (off premises painted signs will require a permit).

(c) Temporary signs. Temporary signs shall be prohibited except for short periods of time not to exceed fourteen (14) consecutive days, and not more than four times per calendar year. (Nonprofit, civic, religious or charitable organizations will be exempt from this provision.)

(1) Real estate signs. Real estate signs are a special category of temporary sign and will be exempt from permitting if less than 32 square feet. These temporary signs may be in place until such time the real property is no longer offered for sale or lease.

(2) Construction signs. Construction signs are a special category of temporary signs used to promote the contractor, bank or other business/service involved or responsible for construction taking place on the premises and are allowable until such time as construction is complete and the building is occupied by tenant or user. Such businesses/services include, but are not limited to, landscaping, financing, and subcontractors of all types.

(3) Political signs. Political signs are a special category of temporary signs whose regulations are specified under subsection (a) above.

(d) Secured portable signs. These signs (usually lighted arrow signs or black signs with neon letters) will not be treated as temporary signs and will be allowable as permanent signs only if they are secured into the ground with 3' rebar stakes. Any signs intended to be permanent, but not securely fixed upon passage of this article (ordinance adopted November 20, 2002), will have

thirty days to be secured in this manner. If electrical connections are allowed on these signs, the customer must have the proper electrical receptacles in place to allow safe lighting of the sign and avoid loose or accessible connections, extension cords, etc. If proper electrical receptacles are not available upon sign delivery, the electrical connectors within the sign must be disabled by the sign company to ensure safe use by the customer.

(Ordinance 2273, sec. 11, adopted 11/20/02)

ARTICLE 4.06 COIN-OPERATED MACHINES^{iv*}

Division 1. Generally

Secs. 4.06.001–4.06.030 **Reserved**

Division 2. License and Occupation Tax

Sec. 4.06.031 **Definitions**

Coin-operated machine. Any kind of machine or device operated by or with a coin or other United States currency, metal slug, token, electronic card, or check, including a music or skill or pleasure coin-operated machine.

Music coin-operated machine. Any kind of coin-operated machine, including a phonograph, piano, or graphophone, that:

- (1) Dispenses music or is used to dispense music;
- (2) Is operated by inserting a coin, metal slug, token, or check; and
- (3) Is not an amusement machine designed exclusively for a child.

Operator. A person who exhibits or displays, or permits to be exhibited or displayed, a coin-operated machine in this city in a place of business that is not owned by the person.

Service coin-operated machine. Any kind of machine or device, including a pay toilet or telephone, that dispenses only a service. The term does not include a machine or device that dispenses merchandise, music, skill, or pleasure.

Skill or leisure coin-operated machine. Any kind of coin-operated machine that dispenses, or is used or is capable of being used to dispense or afford, amusement, skill, or pleasure or is operated for any purpose, other than for dispensing only merchandise, music or service. The term:

- (1) Includes a marble machine, marble table machine, marble shooting machine, miniature racetrack machine, miniature football machine, miniature golf machine,

miniature bowling machine, billiard or pool game, or machine or device that dispenses merchandise or commodities or plays music in connection with or in addition to dispensing skill or pleasure; and

- (2) Does not include an amusement machine designed exclusively for a child.

(Ordinance 2308, sec. 1, adopted 3/16/04)

Sec. 4.06.032 Exempt machines

This division does not apply to;

- (1) A stamp vending machine;
- (2) A service coin-operated machine; or
- (3) If subject to an occupation or gross receipts tax:
 - (A) Gas meter;
 - (B) Food vending machine;
 - (C) Confection vending machine;
 - (D) Beverage vending machine;
 - (E) Merchandise vending machine; or
 - (F) Cigarette vending machine.

(Ordinance 2308, sec. 2, adopted 3/16/04)

Sec. 4.06.033 Exempt corporations and associations

(a) A corporation or association owning, leasing, or renting a music or skill or pleasure coin-operated machine is exempt from section 4.06.041 if:

- (1) The corporation or association is organized and operated exclusively for religious, charitable, educational, or benevolent purposes;
- (2) The corporation's or association's net earnings do not inure to the benefit of a private shareholder or individual; and
- (3) The corporation or association owns, leases, or rents the coin-operated machine:
 - (A) For the corporation's or association's exclusive use; and

(B) To further a purpose of the corporation or association.

(b) A tax may not be assessed against a corporation or an association exempt under this section if assessment of the tax is prohibited by other law.

(Ordinance 2308, sec. 3, adopted 3/16/04)

Sec. 4.06.034 Private ownership exempt

An individual who owns a music or skill or pleasure coin-operated machine for personal use and amusement in the individual's private residence is not required to obtain a license or pay a tax under this division. (Ordinance 2308, sec. 4, adopted 3/16/04)

Sec. 4.06.035 Exempt owners or exhibitors

A person who owns or exhibits a coin-operated machine is exempt from the licensing and recordkeeping requirements of this division if the person:

- (1) Operates or exhibits the coin-operated machine only on premises occupied by the person and in connection with the person's business;
- (2) Does not own a coin-operated machine subject to the tax imposed under this division and located on the business premises of another person; and
- (3) Does not have a direct or indirect financial interest in the music or skill or pleasure coin-operated machine industry, except for ownership of the coin-operated machine operated or exhibited on premises occupied by the person.

(Ordinance 2308, sec. 5, adopted 3/16/04)

Sec. 4.06.036 Disciplinary authority

The city or city commission may:

- (1) Conduct an investigation, hold a hearing, or take other necessary action to:
 - (A) Ensure compliance with this division; or
 - (B) Identify a violation of this division;
- (2) Conduct an investigation of a violation of this division committed by a person who owns, operates, exhibits, or displays a coin-operated machine in this city.

(Ordinance 2308, sec. 6, adopted 3/16/04)

Sec. 4.06.037 License application requirements

A person shall apply for a license from the city. The license application must contain a complete statement about the ownership of the business that is the subject of the application, including the nature of the business entity. (Ordinance 2308, sec. 7, adopted 3/16/04)

Sec. 4.06.038 Terms of license issuance

A license issued under this division:

- (1) Is effective for only one business entity;
- (2) Does not vest any property or right in the license holder, except for the right to conduct the licensed business;
- (3) May not be transferred or assigned.

(Ordinance 2308, sec. 8, adopted 3/16/04)

Sec. 4.06.039 Expiration of license

A license issued under this division expires on the earlier of:

- (1) December 31 of the year the license is issued; or
- (2) The death or dissolution of the license holder.

(Ordinance 2308, sec. 9, adopted 3/16/04)

Sec. 4.06.040 Required owner records

An owner shall maintain a complete and itemized record of each coin-operated machine the owner purchases, receives, possesses, handles, exhibits, or displays in this city in accordance with accepted auditing and accounting practices. (Ordinance 2308, sec. 10, adopted 3/16/04)

Sec. 4.06.041 Imposition of tax

An occupation tax is imposed on each coin-operated machine that an owner exhibits or displays, or permits to be exhibited or displayed in this city. The tax rate is per year is as provided in the fee schedule in appendix A to this code or the maximum amount authorized by section 2153.451 of the Texas Occupation Code and its successor statutes if that amount is greater. (Ordinance 2308, sec. 11, adopted 3/16/04; Ordinance adopting Code)

Sec. 4.06.042 Exemption from tax

The tax imposed under this division does not apply to an owner of a coin-operated machine or a

machine that is exempt from the tax under another provision of this division if the owner is otherwise exempt from the state occupation tax for coin-operated machines under state law. (Ordinance 2308, sec. 12, adopted 3/16/04)

Sec. 4.06.043 Sealing authorized; release fee

The city may:

- (1) Seal a coin-operated machine if the tax imposed is not paid; and
- (2) Charge a fee of not more than the amount as provided in the fee schedule in appendix A to this code for the release of a sealed coin-operated machine.

(Ordinance 2308, sec. 13, adopted 3/16/04; Ordinance adopting Code)

Secs. 4.06.044–4.06.070 Reserved

Division 3. Eight-Liners

Sec. 4.06.071 Definitions

Coin-operated machine. [In addition to the definition in section 4.06.031,] also means any electronic, electromechanical, or mechanical contrivance, commonly called eight-liner, that is designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5.00, whichever is less.

Location. Area within the confines of a building that is under the sole control of a licensee.

(Ordinance 2362, sec. 2, adopted 7/5/05)

Sec. 4.06.072 Penalty

It shall be a violation of this division for any person, partnership, corporation, or other legal business entity to offer eight-liner machines for use by the public at any location within the corporate limits of the city without a license, and shall be subject to a fine of \$50.00 per eight-liner machine, for each day of violation. An expired license shall not be subject to this penalty provision. (Ordinance 2362, sec. 9, adopted 7/5/05)

Sec. 4.06.073 License required

All persons, firms, corporations, or other legal entities owning, possessing, maintaining, or operating any eight-liner machine for use by the general public, including private clubs or associations, shall apply for a license and registration from the city. The license application must

contain a complete statement about the identity of the owner of the eight-liner machines; the location of the eight-liner machines; the number of eight-liner machines at the location; the nature of any business being operated at the location; the date when each eight-liner machine was placed at the location; the owner of the location where the eight-liner machines [are placed]; and any other pertinent information that may be required by the city in the licensing and registration of eight-liner machines. The initial license must be obtained within 45 days of the effective date of this division (ordinance adopted July 5, 2005). No applicant shall be eligible for a license after expiration of the 45-day period. (Ordinance 2362, sec. 3, adopted 7/5/05)

Sec. 4.06.074 Terms of license issuance

A license issued for eight-liners under this division:

- (1) Is required for each location and is personal to the applicant and may not be sold, bargained, conveyed, transferred or assigned;
- (2) May only be issued to an individual, partnership, corporation, or other legal business entity, to be referred to herein as “licensee”;
- (3) Does not vest any property or right in the licensee, except for the right to conduct the licensed business;
- (4) Must be renewed periodically; and
- (5) Shall require an initial and a renewal fee of \$100.00 to be paid to the city for registration, inspection, and licensing.

(Ordinance 2362, sec. 4, adopted 7/5/05)

Sec. 4.06.075 Expiration of license

A license for eight-liners shall expire:

- (1) On the last day of December of the year the license is issued; or
- (2) On the death of the applicant or the transfer of ownership or possession of the eight-liner machines; or
- (3) On the change of ownership of the location or business concern at the location where the eight-liner machines are located.

(Ordinance 2362, sec. 5, adopted 7/5/05)

Sec. 4.06.076 Imposition of tax

An occupation tax of \$100.00 is imposed on each eight-liner machine that is licensed under this

division, which tax is due and payable to the city on the last day of December of each year, regardless of the date when the license or renewal license is issued. A late fee of \$25.00 shall be imposed on any tax that is paid not more than 30 days after the due date, and a late fee of \$50.00 shall be imposed on any tax that is paid after the 30th day of the due date. For this purpose, the date of payment is when the payment is actually received by the city. (Ordinance 2362, sec. 6, adopted 7/5/05)

Sec. 4.06.077 Sealing authorized; release fee

The city may:

- (1) Seal an eight-liner machine if the tax imposed is not paid within 60 days after the due date; and
- (2) Charge a fee of not more than \$25.00 for the release of a sealed coin-operated machine.

(Ordinance 2362, sec. 7, adopted 7/5/05)

Sec. 4.06.078 Limitations on license

(a) A license under this division may be obtained only for eight-liner machines that are being maintained or operated for use by the public on the effective date of this division (ordinance adopted July 5, 2005), limited to eight (8) per location. An owner shall be required to swear or attest to this fact upon application. A false statement shall result in the forfeiture of the license as to eight-liner machines covered by the license. (Ordinance 2362, sec. 8, adopted 7/5/05; Ordinance adopting Code)

(b) New licenses for additional eight-liner machine establishments [on the] effective date of this division will not be permitted, unless the new establishment would replace a closed establishment. (Ordinance 2362, sec. 8, adopted 7/5/05)

Secs. 4.06.079–4.06.100 Reserved

Division 4. Permit for Amusement Coin-Operated Machines

Sec. 4.06.101 Required; application

Any person who desires to exhibit, locate or display a skill or pleasure coin-operated machine, electric game machine, or billiard and pool game machine within the corporate limits of the city must apply with the building inspections division for a permit for each machine to be exhibited, located or displayed. The application for the permit shall be on a form provided by the building inspection division and shall require the applicant to furnish the following:

- (1) Name, address, and telephone number and nature of business entity where the machine is proposed.

- (2) Make, type and serial number of each machine proposed to be placed.
- (3) Name, address, and telephone number of the owner of each machine listed on the application.
- (4) If the premises to be permitted is also a premises licensed by the state on each machine located, exhibited or displayed.

(Ordinance 2357, sec. 2, adopted 6/21/05)

Sec. 4.06.102 Fees

(a) The permit fee for amusement coin-operated machines and fees for the operation of the amusement coin-operated machines within the corporate limits of the city are as provided in the fee schedule in appendix A to this code. (Ordinance 2357, sec. 1, adopted 6/21/05; Ordinance adopting Code)

(b) Coin-operated machines which dispense or vend merchandise, music or service exclusively and coin-operated machines designed exclusively for children are expressly excluded from regulations of this division. (Ordinance 2357, sec. 1, adopted 6/21/05)

Sec. 4.06.103 Violations

Any person who locates, exhibits, or displays an amusement coin-operated machine without a valid permit from the city building inspections division is in violation of the terms and conditions hereof and shall upon conviction be fined in any sum not to exceed \$200.00, and every day that such machine is operated, exhibited or displayed in this city shall constitute a separate offense. (Ordinance 2357, sec. 3, adopted 6/21/05)

ARTICLE 4.07 TAXICABS^{v*}

Division 1. Generally

Sec. 4.07.001 Definitions

The following words, when used in this article, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates otherwise:

Certificate. A permit in the form of a certificate of public necessity and convenience authorizing the operation of taxicabs over the streets of the city.

Cruising. Any movement of unoccupied taxicabs over the streets of the city except in the following instances:

- (1) Unoccupied taxicabs proceeding to answer a request for taxicab service by prospective passengers.
- (2) Unoccupied taxicabs returning by the most direct route to the location where such taxicab is customarily kept or to the taxi stand of the operator of the taxicab nearest to the place of discharge of its last passenger.
- (3) Unoccupied taxicabs moving over public streets by the most direct route to a garage or other place for automotive repairs or for the purpose of being repaired or stored.

Driver. The person actually driving the taxicab.

Motor vehicle. Every motor-propelled vehicle used for the transportation of persons over the public streets of the city.

Operate a taxicab. The driving of a vehicle so marked as to indicate that it is a taxicab on any street of the city, and shall also be construed to mean the driving of any vehicle containing a passenger over any street of the city for any monetary fare unless such vehicle is being operated pursuant to a franchise or permit issued by the city, or a franchise or permit issued by the railroad commission of the state or any permission duly granted by the city commission, or is a chartered bus serving more than twelve passengers or is an ambulance.

Operator. In connection with taxicabs, the person to whom a certificate has been issued and under which certificate the particular taxicab is being operated.

Person. Includes both singular and plural and shall mean and embrace any person, firm or corporation, their agents, servants and employees.

Pronouns. Pronouns in the masculine gender shall include the corresponding word in the feminine or neuter gender.

Street. Includes any street, alley, avenue, lane, public place or highway within the corporate limits of the city.

(Ordinance 891, sec. I, adopted 6/26/74)

Taxicab. Includes every vehicle used for the transportation of no more than eight (8) passengers for hire over the streets of the city, with the following exceptions:

- (1) A vehicle being operated pursuant to a franchise or permit issued by the city, or pursuant to a franchise or permit legally issued by the railroad commission of the state, or pursuant to permission duly granted by proper authority of the city for a vehicle to operate over a regular route, upon a set schedule or pursuant to any permission duly granted by the city commission, or a vehicle being operated as a chartered bus under a contract to carry twelve (12) or more passengers.

- (2) Vehicles being used as ambulances.
- (3) Vehicles rented or leased for self operation by the persons actually driving the same, unless such a vehicle is transporting for compensation persons other than the one who actually rented or leased the same.

(Ordinance 891, sec. I, adopted 6/26/74; Ordinance adopting Code)

Waiting time. Includes all time when a taxicab is not in motion, occupied by a passenger and the time consumed while standing at the direction of the passenger or person who has engaged the taxicab. (Ordinance 891, sec. I, adopted 6/26/74)

Sec. 4.07.002 Exceptions

(a) A vehicle which is lawfully transporting a passenger or passengers from a point outside of the city to a destination within the city, or after discharging such a passenger within the city is returning empty by the most direct route to its regular place of business outside the city, is excepted from the provisions of this article. Provided, however, that no such vehicle without such certificate shall solicit or accept a passenger from any point within the city for transportation to any destination whatsoever.

(b) A vehicle which is lawfully transporting a passenger or passengers from and to points within the city upon an established and restricted route or routes, such as buses (the same being authorized and regulated by separate ordinance of the city) [is excepted from the provisions of this article].

(Ordinance 891, sec. III, adopted 6/26/74)

Sec. 4.07.003 Twenty-four-hour service required

All taxicab operators holding a certificate hereunder must provide twenty-four-hour service. Failure to so provide and have available twenty-four-hour service will be grounds for immediate suspension of said certificate until such service is provided, and, if not corrected within one (1) week of the receipt of notice by the certificate holder, said certificate will be canceled.

(Ordinance 891, sec. XVI(B), adopted 6/26/74)

Sec. 4.07.004 Cruising

Cruising, as defined in this article, is hereby prohibited. However, upon the completion of a call or upon returning by the most direct route to the nearest stand of the company employing a taxicab driver or to the regular stand of such driver, such taxicab may, if hailed by a prospective passenger, stop and pick up such passenger. (Ordinance 891, sec. XXV, adopted 6/26/74)

Sec. 4.07.005 Soliciting patronage

It shall be unlawful for any taxicab driver to solicit by work, signal, sign or otherwise patronage

for such taxicab upon any public street of the city or in or near any public place within the city. (Ordinance 891, sec. XXVI, adopted 6/26/74)

Sec. 4.07.006 Maintenance of fixed place of business

Every holder of a certificate issued under the terms of this article shall maintain at least one (1) fixed place of business or location within the corporate limits of the city on private property at a place to be approved by the chief of police. The chief of police shall approve the proposed location unless in his or her opinion the installation of a taxi business at such location would create a traffic hazard, or unless the general welfare of the citizens of the city would be best served by not having a taxi business located at such place; provided, however, that no taxi business location or taxi stand shall be located in any place in the city if other ordinances of the city prohibit the location of such a stand or business at such place. (Ordinance 891, sec. XXVII, adopted 6/26/74)

Sec. 4.07.007 Taxistands or call boxes

In addition to its principal fixed place of business, the operator of a taxicab business may have taxistands or call boxes at other locations in the city, provided that such other locations be first approved by the chief of police and that such a use of a proposed location is not in violation of any ordinance of the city. (Ordinance 891, sec. XXVIII, adopted 6/26/74)

Sec. 4.07.008 Parking on private premises when not in use; exceptions

Except when carrying passengers, answering calls, going to or from officially designated taxicab stands or going to a garage or other place where automotive repairs are made, for the purpose of being repaired, all taxicabs shall be kept off the streets of the city and upon premises owned by or leased to and under the supervision and control of the holder of the certificate by virtue of which such taxicab is being operated within the city; provided, however, that a taxicab may occupy officially designated taxicab stands at locations approved by the chief of police. No taxicab shall be kept upon the streets or other public places of the city longer than is reasonably necessary for the performance of the public service which such taxicab is designed to render. Each taxicab must stand and remain, except in the immediate act of discharging or taking on passengers, upon or within a private depot and grounds, upon private premises owned or leased to the holder of the certificate by virtue of which such taxicab is being operated and under the control of such holder. It shall be unlawful for any taxicab to stand waiting employment upon any public street or public property within the corporate limits of the city. Nothing herein contained shall be construed to prohibit the parking of taxicabs immediately adjacent to the curb in any part of any public street if such part of the street in which such taxicab is parked has been officially designated by the chief of police as a street in which taxicabs may park and await employment. (Ordinance 891, sec. XXIX, adopted 6/26/74)

Sec. 4.07.009 Inspection

Before being allowed to operate upon the streets of the city, each and every taxicab shall be inspected and approved by the chief of police or his or her representatives. No taxicab shall be

driven or operated upon the streets of the city unless the same is in safe condition and free from mechanical defects with particular reference to, but not limited to, lights, brakes, tires and steering apparatus. (Ordinance 891, sec. XXX, adopted 6/26/74)

Sec. 4.07.010 Markings

Each and every taxicab operated upon the streets in the city shall have painted or placed on both sides, in letters and numbers of a sufficient size to be legible to one with normal 20-20 vision at a distance of one hundred fifty feet (150'), the following markings: first, the trade name of the organization under whose certificate such taxicab is being operated and, second, the number assigned to such taxicab by or under the direction of the city secretary. Such letters and numbers shall be painted on each taxicab or on a sign attached thereto with permanent, nonwashable paint of a color sharply contrasting to the color of the taxicab so that the same will be readily apparent. Such letters and numbers shall not, at any time, be covered with any substance, material or other object that would prevent the same being seen or in any way obscure their visibility. Each person operating taxicabs in the city shall cause same to be painted or placed in such a manner as to properly distinguish them from private vehicles, and such color combinations as are used shall be filed with the city secretary and no two (2) taxicab operators shall be permitted to use the same or similar color combinations. (Ordinance 891, sec. XXXI, adopted 6/26/74)

Sec. 4.07.011 Transportation of persons for unlawful or immoral purpose

It shall be unlawful for any operator or driver of a taxicab to drive, transport or cause to be transported, or permit or allow another to drive, transport or cause to be transported, any person over any street in the city for the purpose of lewdness, assignation, or prostitution or for any other unlawful or immoral purpose. (Ordinance 891, sec. XXXIX, adopted 6/26/74)

Secs. 4.07.012–4.07.040 Reserved

Division 2. Certificate of Public Convenience and Necessity and Permit

Sec. 4.07.041 Required

No person shall drive, operate or cause to be operated nor shall any person employ, permit or allow another to drive, operate or cause to be operated any taxicab over any street in the city for the purpose of transporting passengers for compensation, nor shall any person accept compensation for the transportation of passengers without first having obtained from the city under the provisions of this article a permit in the form of a certificate of public necessity and convenience authorizing such operation and acts. (Ordinance 891, sec. II, adopted 6/26/74)

Sec. 4.07.042 Application; information to be sworn

Any person desiring a certificate to operate taxicabs in the city shall file with the city secretary a written application for such certificate. Such application shall be filled out and filed in triplicate on forms obtained from the city secretary, shall be verified by the oath of the applicant and shall give, among other details, the following information:

- (1) The name, age and address of the applicant, if a natural person; if the applicant is a partnership, the name, age and residence of all partners, general and limited; if the applicant is a corporation, its name, date and place of incorporation, the address of its principal place of business, the names and residences of all its officers and directors, the names and residences of all its stockholders owning ten percent (10%) or more of the total issued capital stock each, and showing the percentage of the total issued capital stock owned by each of them, the total amount and nature of its authorized capital stock, the amount thereof fully paid up, as well as a duly certified copy of its charter and bylaws, and, further, if the applicant is a foreign corporation, a duly certified copy of its permit to do business in the state.
- (2) The length of time the applicant has been a resident at his or her current address.

(Ordinance 891, sec. IV, adopted 6/26/74; Ordinance adopting Code)

- (3) The trade name, if any, under which the applicant proposed to operate.
- (4) The address of the place of business from which the applicant proposes to operate.
- (5) The make, type, model, capacity and condition of the taxicabs proposed to be operated; the design and color schemes of each taxicab; and the lettering and marks to be used thereon.
- (6) The number of taxicabs for which a permit is desired.
- (7) Full information pertaining to the extent, quality and character of the service that the applicant proposes to render.
- (8) Facts showing the demand, need and necessity for such service.
- (9) A full and complete statement of the experience, if any, the applicant has had in rendering such service in the city or elsewhere; if the applicant is a partnership, a like statement for the partnership and each partner, general and limited; if the applicant is a corporation, a like statement for the corporation and each of its officers and directors.
- (10) Any such additional and other information as may be required by the city commission in its discretion.

(Ordinance 891, sec. IV, adopted 6/26/74)

Sec. 4.07.043 Referral of application to commission

When an application for a certificate containing the required information in full, properly executed and verified, is filed in triplicate with the city secretary, it shall be his or her duty at the

next regular meeting of the city commission following the filing of such application to call the attention of the city commission thereto. (Ordinance 891, sec. V, adopted 6/26/74)

Sec. 4.07.044 Investigation by commission

After receiving any application for a certificate, the city commission shall make or cause to be made by its agents or employees, or by persons designated by it, such investigation as it may consider necessary. The city commission shall determine whether or not the public necessity and convenience require the operation of such taxicabs and whether or not the applicant is fit and proper, qualified and able to efficiently conduct such business and render such service to the public. (Ordinance 891, sec. VI, adopted 6/26/74)

Sec. 4.07.045 Facts to be considered before issuance

In determining whether or not such certificate should be issued, the city commission shall consider, among other things, the following items:

- (1) Probable permanency and quality of the service offered by the applicant, the experience he or she has had in rendering such service in the city, or similar service elsewhere and the past record and experience of the applicant in adjusting claims and paying judgments, if any, to claimants.
- (2) The financial ability of the applicant to respond in damages to claims or judgments arising by reason of injury to persons or damage to property resulting from the operation of a taxicab.
- (3) The character and condition of the taxicabs to be used.
- (4) The character of the applicant.
- (5) If the applicant is a partnership or corporation, the above enumerated items shall be applied to each of the partners, officers, directors and stockholders.

(Ordinance 891, sec. VII, adopted 6/26/74)

Sec. 4.07.046 Effect of findings, etc., of investigation

The evidence in any investigation, inquiry or hearing may be taken by the city commission as a whole, by the mayor, any one or more of the city commissioners or by an agent, employee or representative authorized, requested, or designated to conduct and carry on such investigation, inquiry or hearing by the city commission. Every finding and opinion made by such person or persons authorized or instructed to conduct such investigation, inquiry or hearing shall be the finding or opinion of the city commission itself when presented to the city commission in open meeting and adopted, approved or confirmed by the city commission. (Ordinance 891, sec. VIII, adopted 6/26/74)

Sec. 4.07.047 Grant or denial

If the city commission finds that the public necessity and convenience do not require the operation of any additional taxicabs, or that the interest of the general public and the city will best be served by the refusal of such application, then it shall forthwith refuse such application and no certificate shall be issued to such applicant. If the city commission finds that the public necessity and convenience require the operation of the number of taxicabs applied for, or of a lesser number, and that the applicant is fit and qualified morally and financially to conduct the business, and that the general welfare of the citizens of the city will best be served by the addition of more taxicabs, and that all other requirements of this article have been fully complied with by the applicant, the city commission shall notify the applicant and all holders of certificates issued under this article of its findings. In the event of such a finding, then the holders of certificates issued under the terms of this article shall be given a period of thirty (30) days within which to add a sufficient number of taxicabs to their operating fleet to take care of the need found to exist by the city commission. If, within such thirty-day period, such taxicabs are added and so located as to fill adequately the need found to exist, then the city commission shall forthwith refuse the application and no certificate shall issue to such applicant. However, if the then holders of certificates under the terms of this article shall fail to obtain additional taxicabs needed and to so locate them as to adequately fulfill the need found to exist within such thirty-day period, then the city commission shall grant such application forthwith, and the city secretary shall, when all other prerequisite requirements of this article have been satisfied, issue to the applicant a certificate authorizing him or her to operate the number of taxicabs specified by the city commission within the corporate limits of the city for the city's fiscal year or the unexpired portion thereof. (Ordinance 891, sec. IX, adopted 6/26/74)

Sec. 4.07.048 Liability insurance requirements

Each such certificate holder shall, before commencing taxicab business thereunder, obtain liability insurance covering each taxicab, driver thereof, and any and all other transporting employees, in the minimum amount as prescribed by current state law. A memorandum copy of such policy shall be deposited at the office of the city secretary, together with a receipt attached thereto, reflecting payment in advance of the total premium thereon for a period of not less than the ensuing year from the date of issuance. Failure to maintain such insurance in such form shall result in the automatic and immediate revocation of the certificate of operation. (Ordinance 891, sec. XL, adopted 6/26/74; Ordinance adopting Code)

Sec. 4.07.049 Display

Each certificate, including any supplemental certificate, issued hereunder shall be prominently displayed at all times at the principal place of business of the operator to whom such certificate is issued. (Ordinance 891, sec. X, adopted 6/26/74)

Sec. 4.07.050 Permit issued for each taxicab authorized by certificate

With the issuance of a certificate to operate taxicabs in the city, the city secretary shall also issue an individual permit for each taxicab authorized to be operated under such certificate. Such

permit shall show the trade name of the operator; the expiration date of the operator's certificate; and the make, model, capacity, license number, motor number and taxicab number, as designated by the city secretary, of the taxicab for which such permit is issued. If, at any time, the operator desires to replace a taxicab for which a permit has been issued under the provisions of this section, he or she shall surrender the permit for the taxicab being withdrawn from service to the city secretary for cancellation and shall obtain a permit for the replacement taxicab. Provided, however, that no permit shall be issued under the provisions of this section until such taxicab has been inspected and approved by the chief of police or his or her representative as is herein required. (Ordinance 891, sec. XI, adopted 6/26/74)

Sec. 4.07.051 Display of permit

Each taxicab permit issued under the preceding section hereof shall be prominently displayed at all times in full view of persons in the back seat of the taxicab for which such permit was issued. It shall be unlawful to display any such permit in any taxicab other than the one for which the permit was issued. (Ordinance 891, sec. XII, adopted 6/26/74)

Sec. 4.07.052 Transferability

No certificate or permit issued under the terms of this article shall be transferable or assignable without the written consent and approval of the city commission after written application has been made to the city commission therefor. If the city commission deems it necessary or advisable, after receipt of such an application for permission to transfer or assign such permit, then it may make or order to be made such investigation as it deems necessary to satisfy itself that the proposed transferee or assignee is a fit and proper person to conduct such business, that such transferee or assignee is financially able to conduct such business and to pay any claims for damages which might be asserted against him or her by virtue of the operation of such taxicabs, and that the operation of such business by the transferee or assignee will be beneficial to the general public of the city. (Ordinance 891, sec. XIII, adopted 6/26/74)

Sec. 4.07.053 Compliance; additional taxicabs

The holder of any certificate issued under the terms of this article shall be authorized to operate in the city only the number of taxicabs specified on such certificate. If the public necessity and convenience require the operation of additional taxicabs at any time, then after written application to the city commission, the city commission may authorize such order to add additional taxicabs to his or her fleet. Before passing upon such application, the city commission may, if it deems desirable, make or cause to be made, by its agents, employees, or designated representatives, such investigation as it deems necessary to ascertain whether or not the public necessity and convenience require the addition of more taxicabs. If the city commission finds that the public necessity and convenience require the addition of more taxicabs, then it shall authorize the applicant to add to his or her fleet a designated number of taxicabs. After such authorization the person so authorized may then operate the number of taxicabs specified in the certificate originally granted to it, plus the number of taxicabs it is authorized to add to its fleet as set out above. The city secretary shall issue to such applicant a supplemental certificate. (Ordinance 891, sec. XIV, adopted 6/26/74)

Sec. 4.07.054 Suspension

If, for any reason, the city commission deems that the general welfare of the citizens require such action or that the best interest of the city will be served thereby, it may, by formal action and without any prior notice to the holder thereof, suspend for any period up to but not exceeding thirty (30) days any certificate issued under the terms of this article. In the event of such a suspension such certificate shall be of no force and effect and the holder thereof shall not be authorized to operate taxicabs in the city. For good cause, the city commission may by formal action lessen or terminate any such period of suspension. (Ordinance 891, sec. XV, adopted 6/26/74)

Sec. 4.07.055 Revocation and cancellation

If the holder of any certificate shall show by his or her actions that he or she is not a fit and proper person to operate taxicabs in the city, or if the financial position of the holder shall reach such a condition that the city commission does not deem the holder able to pay in full reasonable claims for damages which might be legally established and confirmed, or if for good and sufficient reason the general welfare of the citizens of the city will best be served by such action, the city commission may, after a hearing, revoke and cancel any certificate issued by it under the terms of this article. In the event of such revocation and cancellation the certificate shall be null and void. (Ordinance 891, sec. XVI(A), adopted 6/26/74)

Sec. 4.07.056 Notice and hearing on revocation

The hearing as specified in the preceding section shall not be held until notice of the hearing has been given to the holder of the certificate in question by registered mail addressed to the holder at the address shown on the records of the city and a period of at least five (5) days has elapsed since the mailing of such notice. Such notice shall specify the time and place of the hearing, and shall list the reasons why the general welfare of the city requires the revocation and cancellation of such certificate. The holder of the certificate in question shall be allowed to be present at such hearing, which shall be public, and shall be allowed to be represented by counsel, if the holder deems the same advisable. He or she shall have full opportunity to disprove any and all charges and allegations set out against him or her or his or her operations in the notice. Such hearing may be conducted by the city commission or by an agent, employee or representative; then upon approval and adoption of the city commission of findings of fact made by the person conducting such hearing, such findings of fact so approved and adopted shall be and become the findings of the city commission. If the findings of fact made after such hearing show that the operator is not a fit and proper person to conduct such business, or is unable to pay in full reasonable claims for damages which might be asserted or for any reason the general welfare of the citizens of the city or the best interests of the city will be served best by such action, then the city commission shall revoke and cancel the certificate in question and there shall be no appeal of any nature from such action. (Ordinance 891, sec. XVII, adopted 6/26/74)

Sec. 4.07.057 Fee for use of streets

As compensation or rental or license fee for the privilege of operating upon and using the public streets and thoroughfares of the city, and conducting and carrying on the business of transporting passengers for compensation on and over the streets and thoroughfares in taxicabs, each holder of a certificate issued under the terms of this article shall pay to the city at the office of the city secretary a fee as provided for in the fee schedule in appendix A to this code for each twelve-month period for each taxicab operated by such certificate holder hereunder, the same to be paid at the time of the registration of each such taxi as provided for in section 4.07.050 herein, and the same to be paid in advance for each successive twelve-month period thereafter. Such compensation shall be in lieu of all other fees to be paid by taxicab operators imposed by any other ordinance now in force, but shall not be construed to be in lieu of any validly assessed ad valorem taxes. (Ordinance 891, sec. XVIII, adopted 6/26/74)

Sec. 4.07.058 Effect of failure to pay fees

Upon failure of any holder of a certificate to pay the license fees hereinabove provided for, the city commission shall automatically suspend the permit issued to the person thus in default, and such suspension shall continue and be in full force and effect until it shall be reported to the city commission at a regular meeting that such commission or default has been corrected. (Ordinance 891, sec. XIX, adopted 6/26/74)

Sec. 4.07.059 Operation without certificate

It shall be unlawful for any taxicab to be operated under or by virtue of any certificate issued under the terms of this article unless such taxicab is owned and controlled by the holder of such certificate. (Ordinance 891, sec. XX, adopted 6/26/74)

Secs. 4.07.060–4.07.090 Reserved

Division 3. Driver's Permit

Sec. 4.07.091 Required

It shall be unlawful for any person to drive a taxicab in the city without first having obtained a taxicab driver's permit from the chief of police, and without having a valid chauffeur's license issued by the department of public safety of the state. (Ordinance 891, sec. XXXII, adopted 6/26/74)

Sec. 4.07.092 Application

A written application for a taxicab driver's permit shall be filed and shall be upon a form obtained from the chief of police containing, among other matters, the following information:

- (1) A showing of the experience of the applicant in driving motor vehicles, including public vehicles.
- (2) Whether or not the applicant has ever been convicted of a traffic violation by any

federal, state, or municipal agency and, if so, the particulars of each violation of which the applicant may have been convicted.

- (3) The applicant's name, street address, age, sex, telephone number and place of residence for the three (3) years immediately preceding the date of such application.
- (4) The name of the taxicab operator for whom such driver proposes to work. Each such driver license shall be limited to the taxicab operator for whom he or she is driving at the time of the issuance of such license, and such driver shall not be eligible to receive a permit to drive for another taxicab operator until his or her current permit has expired.
- (5) Such other additional information as the chief of police in his or her discretion may prescribe on such forms.

(Ordinance 891, sec. XXXIII, adopted 6/26/74)

Sec. 4.07.093 Certificates and photographs to accompany application

The application required by section 4.07.092 shall be accompanied by at least two (2) photographs of the applicant taken within the last preceding three (3) months. Such application shall also be accompanied by a certification by at least three (3) reputable persons personally acquainted with the applicant, showing the applicant to be a person of good moral character. (Ordinance 891, sec. XXXIV, adopted 6/26/74)

Sec. 4.07.094 Additional investigation; payment of fee; issuance; term

(a) If the chief of police deems it advisable, he or she shall make such additional investigations of the applicant as he or she deems necessary to ascertain whether or not he or she is a fit and proper person to drive a taxicab in the city. If, after examining such applicant and obtaining such information as he or she deems advisable, the chief of police is satisfied that the applicant is a fit and proper person to drive a taxicab in the city, then the chief of police shall cause to be issued to such applicant a permit to drive taxicabs in the city for the city's current fiscal year or the unexpired portion thereof.

(b) Should said permit be refused by the chief of police, the applicant may appeal said refusal to the city commission by making a written request for a hearing to the city secretary who will place the applicant on the agenda for the next regular meeting of the commission. If the findings of fact made after such hearing show that the operator is not a fit and proper person to conduct such business or is unable to pay in full reasonable claims for damages which might be asserted or for any reason the general welfare of the citizens of the city or the best interests of the city will be served by such action, then the city commission shall deny the permit to drive a taxicab in the city, and there shall be no appeal of any nature from such action.

(Ordinance 891, sec. XXXV, adopted 6/26/74)

Sec. 4.07.095 Display

The taxicab driver's permit shall be prominently displayed at all times in full view of persons in the back seat of the taxicab being driven by the permittee. Such permit shall have attached to it a picture of the permittee, his name, age and such other information as may be deemed proper by the chief of police. (Ordinance 891, sec. XXXVII, adopted 6/26/74)

Sec. 4.07.096 Suspension, cancellation or revocation

(a) If at any time in the opinion of the chief of police the public interest, the public safety or the general welfare of the citizens of the city will best be served by suspension or revocation of a taxicab driver's permit, the chief of police shall suspend or shall cancel and revoke such driver's permit. No person whose driver's permit has been so suspended or revoked shall drive any taxicab in the city until and unless such permit shall be reinstated by the chief of police, or he or she shall obtain a new taxicab driver's permit.

(b) Should the taxicab driver wish to appeal such suspension or revocation, he or she can appeal the decision of the chief of police as provided in section 4.07.094 for appeal from denial of the initial application, and should the city commission suspend, revoke or cancel the permit in question, there shall be no appeal of any nature from such action.

(Ordinance 891, sec. XXXVIII, adopted 6/26/74)

Secs. 4.07.097–4.07.120 Reserved

Division 4. Rates and Fares

Sec. 4.07.121 Taximeters required

It shall be unlawful for any owner to operate and for any driver to drive any taxicab unless same is equipped with taximeter. Said taximeter shall properly and accurately compute and register on its face the charge for distance traveled by and the waiting time of said taxicab. All taximeters shall be placed in such a position in said taxicab so that the face thereof and the total fare numerals may be easily seen and read by a passenger sitting in any part of said taxicab. Between the hours of sunset and sunrise, the face of every taximeter shall be well illuminated. When a passenger engages a taxicab, the flag signal or other device affixed to such taxicab is employed. The operation by any owner of any taxicab with a taximeter which is defective or which does not accurately compute and register on its face the charge for distance traveled or waiting time shall constitute a violation of this article. All taximeters shall be subject to inspection and test from time to time. (Ordinance 891, sec. XXI, adopted 6/26/74)

Sec. 4.07.122 Schedule of transportation services; fares

The transportation services and rates to be charged for transportation by taxi in the city shall be as provided for in the fee schedule in appendix A to this code, with the rate designations to be the maximum to be charged therefor, the same to have been determined as fair and reasonable.

(Ordinance 891, sec. XXI, adopted 6/26/74)

Sec. 4.07.123 Posting of rates

Every taxicab operator shall post in each taxicab operated by him or her in a conspicuous place, in view of the passengers to be conveyed, a schedule of fares to be charged for such service. Such schedule shall be printed on a card in not less than twenty-four (24) point black-faced type, letter spaced, and giving the rates and distances for which such rates apply. (Ordinance 891, sec. XXIV, adopted 6/26/74)

Sec. 4.07.124 Ordinary luggage not to affect fare

The rates set out in section 4.07.122 shall be the sole charge made or collected, and there shall be no additional charge made for ordinary luggage, bags or parcels being carried by such passenger so long as the passenger needs no assistance with any of these items. It shall be unlawful for any driver of a taxicab to demand or receive a fee or charge for taxicab services in excess of or less than the rates specified in section 4.07.122. However, nothing herein contained shall be construed as requiring a taxicab to carry trunks, very large packages, parcels, articles or objects likely to injure or damage the taxicab. (Ordinance 891, sec. XXII, adopted 6/26/74)

Sec. 4.07.125 Right to payment of regular fare in advance

Every driver of a taxicab shall have the right to demand the payment of the regular fare before picking up a passenger and may refuse employment unless so paid; otherwise, no driver of a taxicab shall refuse or neglect to convey any orderly person upon request to any place in the city unless previously engaged or unable to do so. It shall be unlawful for any driver to request payment in advance of a fare in excess of the fare prescribed by this article. (Ordinance 891, sec. XXIII, adopted 6/26/74)

ARTICLE 4.08 OIL OR GAS WELLS^{vi*}

Division 1. Generally

Secs. 4.08.001–4.08.030 Reserved

Division 2. Drilling Permit

Sec. 4.08.031 Required

It shall be unlawful for any person to drill or commence operations to drill any well in search of oil or gas within the city limits or to work upon or assist in any way in the prosecution of such operations for drilling of any such well without having first obtained a permit in accordance with these provisions.

Sec. 4.08.032 Application and issuance

(a) The city commission shall be the permit issuing authority hereunder in accordance with these provisions.

(b) An application shall be made and filed with the city secretary for a permit hereunder in writing giving specifications as follows:

- (1) Proposed location or site of operations;
- (2) Type of operations (drilling, excavation, proposed depths, etc.);
- (3) Type of production sought;
- (4) A layout plat or map showing the proposed location of drilling along with equipment, holding tanks, lines, etc., proposed to be used in connection with such operations.

(c) In issuance or denial of permits hereunder, the city commission may consider, among other things, the following:

- (1) Proximity of proposed site to residences, hospitals, churches or business establishments.
- (2) If, in the judgment of the city commission, operations of the type proposed in the application would pose a general nuisance to the citizens of the city.
- (3) Traffic or fire hazards that may result from operations for which the permit application is made.
- (4) The likelihood of irreparable damage being done by operations for which the permit application is made to surrounding areas.

(Ordinance adopting Code)

ARTICLE 4.09 SEXUALLY ORIENTED BUSINESSES^{vii*}

Division 1. Generally

Sec. 4.09.001 Definitions

In this article:

Adult cabaret. Within the definition of a “sexually oriented business,” a place of business or enterprise, such as a nightclub, bar, pub, or restaurant, that permits or employs any person to act as an entertainer on its premises.

Entertainer. A person who for valuable consideration performs specified physical activities in a sexually oriented business while in a state of nudity or seminudity, within the view of one or more patrons or customers of the sexually oriented business, and consents to being viewed by such other person or persons.

Licensee. A person who is issued a license under this article.

Manager. Any person who does not have an ownership interest in a sexually oriented business but who manages, operates, or supervises the day-to-day business affairs of a sexually oriented business (including purchasing of inventory, scheduling events, or the hiring and firing of employees and/or entertainers).

Nudity or state of nudity. The exposure or uncovered appearance of a person's anus, genitals, breast nipples, or areola.

Seminude. The exposure or appearance of a person's bare buttock, bare upper thigh, bare midriff, bare back, or bare breast. This definition includes the plural where the context requires.

Sexually oriented business. A sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service, entertainment, or a product or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to any person.

Specified sexual activities. The performance of, or engaging in, any physical activity such as a dance, dance routine, acrobatic or gymnastic movement, performance or exhibition which includes any of the following:

- (1) The fondling or touching of the genitals, pubic region, hips, buttocks, anus, or breasts whether the same are covered or uncovered by any clothing or other material;
- (2) Performing sex acts, normal or perverted, actual or simulated, including sexual intercourse, bestiality, oral copulation, or sodomy, with or without a partner or with an inanimate object;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in this section.

(Ordinance 2384, sec. 1, adopted 8/7/06)

Sec. 4.09.002 Penalty for violation

(a) A person commits an offense if the person violates any provision of this article. An offense under this section is a class A misdemeanor and punishable as such upon conviction.

(b) No mental state shall be required as an element of any offense committed for violation of this article, except where a provision of this article expressly requires otherwise.

(Ordinance 2384, sec. 10, adopted 8/7/06)

Sec. 4.09.003 Location of businesses

(a) No sexually oriented business shall be permitted within a one-thousand-foot radius measured from the property line of a sexually oriented business to the nearest property line of:

- (1) A church, chapel, synagogue, mosque, or a place of religious worship;
- (2) A public or private elementary or secondary school;
- (3) A boundary of a residential district as defined by the zoning ordinance;
- (4) A public park;
- (5) A lot devoted to residential use, including the lot upon which the sexually oriented business is located, if any part of said lot includes the residence of any individual;
- (6) A hospital;
- (7) A child care facility;
- (8) A public library; or
- (9) Another sexually oriented business.

(b) The distance in subsection (a) shall be measured in a straight line without regard to intervening structures or objects.

(c) A person commits an offense if he/she causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure or portion thereof, or the expansion of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(d) A sexually oriented business that becomes nonconforming under this section after a license has been issued shall be abated within seven (7) years, unless the use is earlier terminated by the licensee or the license is earlier revoked or nonrenewed by the city for failure to comply with any other provision of this article.

(Ordinance 2384, sec. 8, adopted 8/7/06)

Sec. 4.09.004 Requirements and prohibitions

All licensees under this article must additionally comply with the following requirements and prohibitions:

- (1) A sexually oriented business shall be prohibited from advertising to the general public on any sign or billboard within the corporate city limits using drawings, photographs, or images that depict nude or seminude persons and/or that depict one or more persons engaged in sexually suggestive positions.
- (2) A sexually oriented business shall be prohibited from advertising to the general public on any sign or billboard within the corporate city limits using risqué language and/or words that describe or symbolize, metaphorically or otherwise, genitalia, anus, or buttocks or female breasts, or that has sexual suggestions or connotations, or that is sexually provocative.
- (3) A sexually oriented business shall be prohibited from placing any screening device that would prevent any entrance from being visible from the nearest public street or right-of-way.
- (4) All entrances and exits to a sexually oriented business shall be sufficiently lighted to make it visible from the nearest public street. The building shall be equipped with exterior lighting sufficient to illuminate a ten-foot area along each exterior wall of the building. No part of the property where a sexually oriented business is located may be fenced in with any opaque material if the fence is more than three feet in height. All parking areas shall be amply lighted through use of commercial grade lighting fixtures that are positioned to project partially overlapping beam angles sufficient to illuminate the entire general parking area and its entrance and exit with white or neutral color light.
- (5) A sexually oriented business shall provide at least one licensed security person inside the building, at the entrance to the building, and at the parking area during the time it opens for business until the last customer has exited the premises.
- (6) A sexually oriented business shall prohibit all persons who are not employees of the sexually oriented business from loitering outside the building, in and around the parking areas, or in parked vehicles.
- (7) An entertainer shall be prohibited from performing specified physical activities within six (6) feet of any patron or customer of the sexually oriented business. This prohibition shall not apply for purposes of receiving or obtaining compensation from any patron.
- (8) An entertainer shall be prohibited from making any physical contact with any other person while performing specified physical activities, except for receiving or obtaining compensation from any patron.

- (9) An entertainer shall be prohibited from making contact at any time with any part of a patron's or customer's clothing or body while on the premises of the sexually oriented business, except for receiving or obtaining compensation from any patron.

(Ordinance 2384, sec. 9, adopted 8/7/06)

Secs. 4.09.005–4.09.030 Reserved

Division 2. License

Sec. 4.09.031 Required; application

(a) It is an offense for any person, firm, or entity to own or operate a sexually oriented business without a license or permit issued by the city under this division. It is an offense for any person to operate or manage a sexually oriented business without possessing a license issued by the city under this division if the person possesses no ownership interest in the sexually oriented business. It is an offense for any person to act as an entertainer on the premises of a sexually oriented business without possessing a license or permit issued by the city under this division. It is an offense for any person to act as a manager or entertainer on the premises of a sexually oriented business if the sexually oriented business does not possess a valid license or permit issued by the city under this division. This subsection does not apply to laborers, technicians, material men, or other independent contractors performing any maintenance, repairs, or improvements to the building, structure, grounds, or premises of the sexually oriented business.

(b) An application for a license to own or operate a sexually oriented business must be accompanied by a sketch or diagram showing the configuration of the premises including a statement of total floor space occupied by the business and specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. The sketch or diagram need not be professionally prepared but each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. A manager's station may not exceed 32 square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted.

(c) Every application for a license to own or operate a sexually oriented business must be signed by each person who has an ownership interest of twenty percent (20%) or more in the sexually oriented business. In the case of a partnership, all general partners must sign the application regardless of the percent of ownership. In the case of a corporation, all officers must sign the application regardless of the percent of ownership.

(d) Each application for an entertainer's or manager's license must be signed by the individual applicant. Each person signing an application shall be considered an applicant and must individually qualify for a license. Each applicant shall be considered a licensee if a license is granted.

(e) Each license issued hereunder shall contain frontal and profile photographs of the licensee; the name and home address of the licensee; the licensee's date of birth, weight, sex, height, eye color and hair color; a description and photograph of any distinguishing tattoos or birthmarks on the licensee; the expiration date of the license; and all other identifying information deemed necessary by the city. In the case of a license for an owner, operator, or manager, the license shall also contain the address of the location of the sexually oriented business. Each license issued to an owner for operation of a sexually oriented business and the license issued to a manager of a sexually oriented business shall be prominently displayed at a location in the premises of the sexually oriented business where it will be clearly visible to business patrons and any city inspectors. Each entertainer shall, upon the request of any authorized city representative, be required to produce inside the premises of the sexually oriented business a license issued under this division.

(f) Each applicant must submit two proofs of identification (e.g., birth certificate, baptismal certificate, social security card, driver's license, military identification card, police identification card), and at least one form of identification must contain a recent photograph of the applicant. The applicant must also submit one proof of residence (e.g., a current utility bill, rent receipt, lease, or mortgage payment receipt). The stated residence must be the address to the applicant's current primary residence.

(g) Possessing any other valid license does not exempt any person from the requirement of obtaining a sexually oriented business license. A person who operates a sexually oriented business and possesses any other valid license shall comply with all the requirements and provisions of any other city ordinance.

(h) A valid dancehall license is not exemption from the requirement of obtaining a sexually oriented business license. A person who operates a sexually oriented business and possesses a dancehall license shall comply with the requirements and provisions of this article as well as the requirements and provisions of all city ordinances that regulate events.

(Ordinance 2384, sec. 2, adopted 8/7/06)

Sec. 4.09.032 Issuance; renewal; denial

(a) Initial application procedure.

- (1) Any person who intends to apply for a license or permit to own or operate a sexually oriented business under this article, for a location not previously licensed or permitted, shall, not later than the 60th day before the date the application is filed, prominently post an outdoor sign at the location which states that a sexually oriented business is intended to be located on the premises. The sign must include a notice that states that an application to own or operate a sexually oriented business at the location will be made to the city, the date that the application will be filed, and the name and business address of the owner and operator. The notice must be in the Spanish language also. The sign must be constructed of a durable material, with dimensions of

not less than 48 inches in width and 48 inches in length. The notice on the sign must be written or printed in lettering that is at least 3 inches in size.

The background color of the sign must be in a light shade of any color, and the lettering must be in a dark color that is in sharp contrast to the background color of the sign. The sign must be posted at least four (4) feet above ground level in such a manner and position that it is clearly readable from any public right-of-way by a person of normal vision, and it is to remain continuously posted for the 60-day period.

- (2) An application for a license to own or operate a sexually oriented business shall not be accepted until after there has been compliance with the notice requirements of subsection (a)(1) of this section. The application for a license shall be filed with the planning and zoning department in a form provided by the city. An application will not be accepted for filing if it does not contain all of the information requested by the city. By filing the application for a license, all applicants consent to the city inquiring into and investigating the applicant's or applicants' personal background and criminal history with respect to the initial application and all subsequent applications for renewal.

The planning and zoning director shall make a written report and issue recommendations regarding the application, based on the investigation and written inspection reports made by the various city department heads, such as the chief of police, fire chief, fire marshal, and the chief building inspector. A copy of the planning and zoning director's report and recommendations shall be available for inspection and copying by the applicant not less than five (5) calendar days before the meeting in which the planning and zoning commission of the city shall review the license application.

- (3) Notice of the application for a license to own or operate a sexually oriented business under this article shall be mailed by the city to all known mailing addresses within the corporate limits of the city that lie within a one-thousand-foot radius of the location for the proposed sexually oriented business. This notice shall be mailed not later than fourteen (14) calendar days before the meeting at which the application for a license is reviewed by the planning and zoning commission. The notice shall include a copy of the application for a license and state the time, date, and place of the meeting when the planning and zoning commission will review the application.
- (4) The planning and zoning commission shall, not later than the forty-fifth (45th) day after the application is accepted by the city, review the license application, together with the report and recommendations from the planning and zoning director. The planning and zoning commission shall issue a recommendation to the board of city commissioners to approve or deny issuance of the license.
- (5) The board of city commissioners shall, not later than thirty (30) days after the planning and zoning commission makes its recommendation, review the application and consider the report and recommendations of the planning and zoning commission

and act to approve or deny the license application. The applicant will be notified in writing of the decision of the board of city commissioners not later than ten (10) days after the decision is made. If the application is denied, the notice will state the reasons for the denial.

- (6) Except as otherwise provided in this subsection, the procedures set forth in subsections (a)(2) and (5) of this section shall apply to all initial applications for issuance of an entertainer's license or a manager's license, except that the application shall be filed with the chief of police who will then prepare a written report and issue recommendations regarding the application to board of city commissioners. A copy of the chief of police's report and recommendations shall be available for inspection and copying by the applicant not less than five (5) calendar days before the meeting in which the board of city commissioners shall review the license application.

(b) Renewal procedure.

- (1) It shall be the duty of all licensees to annually apply with the planning and zoning department for renewal of their license. An application for renewal of the license shall be filed not more than one hundred twenty (120) days or less than ninety (90) days before the expiration date of the license. The respective license renewal fee set forth in this division shall be paid at the time that the license renewal application is filed.
- (2) The application for a license shall be filed with the planning and zoning department in a form provided by the city. A renewal application will not be accepted for filing if it does not contain all of the information requested by the city. The planning and zoning director shall prepare a report on the application based on the investigation and inspection reports made by the various city department heads, such as the chief of police, fire chief, fire marshal, and the chief building inspector. A copy of this report shall be available for inspection and copying by the applicant not less than five (5) calendar days before the meeting in which the planning and zoning commission shall review the license renewal application.
- (3) Notice of the application for renewal of a license to own or operate a sexually oriented business under this article shall be mailed by the city to all known mailing addresses within the corporate limits of the city that lie within a one-thousand-foot radius of the location for the proposed sexually oriented business. This notice shall be mailed not later than fourteen (14) calendar days before the meeting at which the license renewal is reviewed by the planning and zoning commission. The notice shall include a copy of the license renewal application and state the time, date, and place of the meeting when the planning and zoning commission will review the license renewal application.
- (4) The planning and zoning commission shall, not later than the forty-fifth (45th) day after the application is accepted by the city, review the license application, together with the report and recommendations from the planning and zoning director. The planning and zoning commission shall issue a recommendation to the board of city

commissioners to approve or deny issuance of the license.

- (5) The board of city commissioners shall, not later than thirty (30) days after the planning and zoning commission makes its recommendation, review the application and consider the report and recommendations of the planning and zoning commission and act to approve or deny the license application. The applicant will be notified in writing of the decision of the board of city commissioners not later than ten (10) days after the decision is made. If the application is denied, the notice will state the reasons for the denial.
 - (6) If any licensee fails to renew a license by the deadline provided in this division, it will be deemed abandoned by the licensee.
 - (7) Except as otherwise provided in this subsection, the procedures set forth in subsections (b)(2) and (5) of this section shall apply to all renewal applications for issuance of an entertainer's license or a manager's license, except that the application shall be filed with the chief of police who will then prepare a written report and issue recommendations regarding the application to board of city commissioners. A copy of the chief of police's report and recommendations shall be available for inspection and copying by the applicant not less than five (5) calendar days before the meeting in which the board of city commissioners shall review the license application.
- (c) Agreement to alter deadlines. Nothing herein shall prohibit any applicant or licensee and the city from agreeing, in writing, to decrease or increase any of the time periods prescribed by this section.
- (d) Qualifying criteria. A license shall not be initially issued or subsequently renewed if the board of city commissioners finds any of the following:
- (1) The applicant is not eighteen (18) years of age or older.
 - (2) The applicant recklessly, knowingly, or intentionally provided false material information on the application, or recklessly, knowingly, or intentionally omitted material information on the application.
 - (3) The applicant is required to possess a valid sales tax permit issued by the state and does not possess one.
 - (4) The applicant has not paid the filing or renewal fee.
 - (5) The sexually oriented business is not permissible in the proposed zoning district.
 - (6) The applicant is under indictment for a felony offense.
 - (7) The applicant is currently charged by information or indictment with a class A or class B misdemeanor offense of theft, assault, prostitution, gambling, or possession or

use of illegal drugs.

- (8) The applicant is currently on probation or parole for any felony offense.
- (9) The applicant is currently on probation or parole for any class A or class B misdemeanor.
- (10) The applicant has been convicted of a felony offense within the last 10 years, whether the conviction is final or not.
- (11) The applicant has been convicted of two or more class A misdemeanor offenses within the last ten (10) years, whether the conviction is final or not.
- (12) The applicant has been convicted of a class A misdemeanor offense involving prostitution within the last ten (10) years.
- (13) The applicant has been convicted of a class B misdemeanor offense involving prostitution within the last five (5) years, whether the conviction is final or not.
- (14) The applicant has been convicted of three or more class B misdemeanor offenses within the last ten (10) years, whether the conviction is final or not.
- (15) The applicant is residing with a person who has been convicted of one or more felonies within the last ten (10) years, whether the conviction is final or not.
- (16) The applicant has willfully misrepresented any information on the application.
- (17) The applicant has had a license issued under this division, as amended, revoked within the last five (5) years.
- (18) The applicant is convicted of an offense which would have disqualified the applicant from initially obtaining a license under this article if the conviction had occurred prior to the initial application for a license.
- (19) A licensee recklessly, knowingly, or intentionally employs or engages the services of an entertainer or manager who does not possess a license under this article.
- (20) A licensee or an employee is convicted of the offense of selling, serving, or furnishing an alcoholic beverage to a minor.
- (21) A licensee or an employee commits a violation of the Texas Alcoholic Beverage Code in selling, serving, or furnishing an alcoholic beverage to an intoxicated person at the sexually oriented business.
- (22) A licensee or an employee commits a violation of the Texas Alcoholic Beverage Code in selling, serving, or furnishing an alcoholic beverage during prohibited hours

at the sexually oriented business.

- (23) The building proposed as the premises for the sexually oriented business does not comply with the city's codes, including, but not limited to, the building code, electrical code, mechanical code, fire code, landscaping ordinance, zoning ordinance, subdivision ordinance, and any other provision of this article.
- (24) The applicant has not complied with any other requirement of this article.
- (25) The sexually oriented business becomes the scene of criminal activity such as, but not limited to, prostitution, illicit drug transaction, sexual or physical assault, murder, pornographic activity.
- (26) The city may, in its sole discretion, approve an initial license or a license renewal conditioned upon the applicant meeting qualifications within a time period set by the city. In the case of a renewal, the city may, in its sole discretion, suspend the license in lieu of denial pending the applicant meeting qualifications within a time period established by the city. The time period established under this subsection may not exceed forty-five (45) days.

(e) Appeal procedure for denial of license.

- (1) A person who is denied a license or a renewal thereof by the board of city commissioners shall, not later than ten (10) days after the date the written notice is mailed to the person, file a notice of appeal with the city manager's office. For a person who is present in person or by representative at the meeting where the decision is announced, the ten-day period commences to run on the date of the meeting.
- (2) The notice of appeal must specifically state one or more of the following grounds:
 - (A) The decision of the board of city commissioners is not supported by substantial evidence;
 - (B) The decision of the board of city commissioners is not authorized under this article;
 - (C) The decision of the board of city commissioners is clearly erroneous;
 - (D) The decision of the board of city commissioner is the result of fraudulent evidence, corruption, or the illegal partiality of one or more commissioners or city employees; or
 - (E) In the case of a denial solely on the basis of the applicant's criminal history, that there exist exceptional circumstances that overcome the disqualification.
- (3) The notice of appeal must set out with particularity the evidence that the appealing

party will rely on in support of any ground for appeal.

- (4) The board of city commissioners shall hear the appeal not later than thirty (30) days after it is filed with the city manager's office. The hearing shall be held in accordance with the hearing procedure rules established by the board of city commissioners.
- (5) An applicant who is denied a license or a renewal thereof solely on the basis of his or criminal record may qualify for a license only if the applicant can demonstrate to the board of city commissioners by clear and convincing evidence that there exist exceptional circumstances that overcome the disqualification and make the applicant presently fit to obtain a license under this article. In making this determination, the board of city commissioners shall consider the following factors:
 - (A) The extent and nature of the applicant's past criminal activity;
 - (B) The applicant's age at the time of the commission of a crime;
 - (C) The amount of time that has elapsed since the last criminal activity;
 - (D) The conduct and work activity prior to and following the criminal activity;
 - (E) Evidence of rehabilitation, including letters of recommendation from prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility of the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with such person.
- (6) The decision of the board of commissioners is not subject to rehearing, except that the board of commissioners may, sua sponte or upon request, grant a new hearing if it determines that there exists newly discovered material evidence which the licensee through the exercise of due diligence could not reasonably obtain or that the decision of the board of city commissioner is the result of fraudulent evidence, corruption, or the illegal partiality of one or more commissioners or city employee. The final decision of the board of commissioners may be appealed to a court of competent jurisdiction, but not later that twenty (20) days after the decision becomes final.

(Ordinance 2384, sec. 3, adopted 8/7/06)

Sec. 4.09.033 Fees

- (a) Each application for a license to own or operate a sexually oriented business must be accompanied by an initial application fee as follows:
 - (1) Three thousand dollars (\$3,000.00) if the applicant/licensee is residing in the county.
 - (2) Five thousand dollars (\$5,000.00) if the applicant/licensee is residing more than 250

miles from the city.

(b) Each application for a license to act as an entertainer or to act as a manager of a sexually oriented business must be accompanied by an initial application fee of five hundred dollars (\$500.00) if the applicant has continuously resided within 75 miles of the city for the last consecutive 10 years; otherwise the initial application fee shall be one thousand dollars (\$1,000.00).

(c) The annual renewal fee for a license to own or operate a sexually oriented business is seven hundred and fifty dollars (\$750.00).

(d) The annual renewal fee for an entertainer's license or a manager's license is two hundred dollars (\$200.00).

(Ordinance 2384, sec. 4, adopted 8/7/06)

Sec. 4.09.034 Expiration

All licenses issued under this division shall expire twelve months from the date that the license is approved for issuance by the board of city commissioners. (Ordinance 2384, sec. 5, adopted 8/7/06)

Sec. 4.09.035 Disqualification for revocation

Any person whose license issued under this division has been revoked shall be disqualified from applying for any license under this division for a twelve-month period commencing on the date of revocation. (Ordinance 2384, sec. 6, adopted 8/7/06)

Sec. 4.09.036 Suspension or revocation notice and hearing

(a) The planning and zoning director shall serve a licensee with a written notice of intent to suspend or revoke a license stating all the reasons for the proposed action. The notice shall state that the suspension or revocation shall become final unless the licensee requests a hearing as provided in this section.

(b) The notice of intent to suspend or revoke a license shall be served by certified U.S. mail, return receipt requested, addressed to the licensee to the address shown on the application as being the licensee's current primary residence or the licensee's postal address.

(c) If the licensee desires to contest the proposed action, the licensee shall request a hearing before the board of city commissioners. The request for a hearing shall be made in writing and delivered to the planning and zoning director not later than the 14th day after the postmark date on the notice sent to the licensee. The board of city commissioners shall hold a hearing not later than the 30th day after the date the planning and zoning director receives the request for hearing.

(d) The hearing will be conducted in accordance with rules adopted by the board of

commissioners. At the hearing, formal rules of evidence will not apply, but the board of commissioners will not consider hearsay evidence.

(e) At the hearing, the licensee has the right to:

- (1) Be represented by legal counsel or a representative of the licensee's choice;
- (2) Hear the evidence supporting the reason(s) for suspension or revocation;
- (3) Cross-examine witnesses; and
- (4) Present evidence.

(f) The parties may by agreement change the date and time of the hearing, and recess, continue, or postpone a hearing after its commencement.

(g) At the close of the hearing, the board of commissioners may deliberate and shall announce its decision.

(h) Notice of the decision of the board of commissioners shall be mailed to the licensee via certified U.S. mail, return receipt requested, addressed to the address shown on the application as being the licensee's current primary residence or postal address. This notice shall be mailed not later than ten (10) days after the decision is announced.

(i) The decision of the board of commissioners is not subject to rehearing, except that the board of commissioners may, sua sponte or upon request, grant a new hearing if it determines that there exists newly discovered material evidence which the licensee through the exercise of due diligence could not reasonably obtain or that the decision of the board of city commissioners is the result of fraudulent evidence, corruption, or the illegal partiality of one or more commissioners or city employee. The final decision of the board of commissioners may be appealed to a court of competent jurisdiction, but not later than twenty (20) days after the decision becomes final.

(Ordinance 2384, sec. 7, adopted 8/7/06)

^{i*} State law references—Regulation of alcoholic beverages generally, V.T.C.A., Alcoholic Beverage Code; local regulation of alcoholic beverages, V.T.C.A., Alcoholic Beverage Code, sec. 109.31 et seq.

^{ii*} State law reference—Authority of municipality to license, tax, suppress, prevent, or otherwise regulate peddlers, hawkers and pawnbrokers, V.T.C.A., Local Government Code, sec. 215.031.

^{iii*} State law reference—Authority of municipality to regulate signs, V.T.C.A., Local Government Code, ch. 216.

^{iv*} State law references—Coin-operated machines, V.T.C.A., Occupations Code, ch. 2153; taxation of coin-operated machines, V.T.C.A., Occupations Code, sec. 2153.451.

^{v*} State law reference—Authority of municipality to regulate taxicabs, V.T.C.A., Local Government Code, sec. 215.004.

^{vi*} State law references—Oil and gas, V.T.C.A., Natural Resources Code, chs. 52, 81 et seq.; lease of municipal oil, gas or mineral land, V.T.C.A., Local Government Code, sec. 253.005; municipal regulation of exploration and development of mineral interests, V.T.C.A., Natural Resources Code, sec. 92.007.

^{vii*} State law references—Authority of municipality to regulate sexually oriented businesses, V.T.C.A., Local

Government Code, ch. 243; employment harmful to children, V.T.C.A., Penal Code, sec. 43.251; sexual offenders as owners, operators, managers or employees of sexually oriented businesses, V.T.C.A., Business and Commerce Code, ch. 47.