

**AGENDA MEMO**  
**BUSINESS OF THE CITY COUNCIL**  
**CITY OF FULSHEAR, TEXAS**

<b>AGENDA OF:</b>	March 19, 2019	<b>AGENDA ITEM:</b>	BUS- A
<b>DATE SUBMITTED:</b>	March 4, 2019	<b>DEPARTMENT:</b>	Finance
<b>PREPARED BY:</b>	Wes Vela, Chief Financial Officer	<b>PRESENTER:</b>	Wes Vela, Chief Financial Officer
<b>SUBJECT:</b>	Presentation and Acceptance of Audited FY2018 Annual Financial Report		
<b>ATTACHMENTS:</b>	Comprehensive Annual Financial Report will be delivered prior to the Council Meeting.		
<b>EXPENDITURE REQUIRED:</b>	N/A		
<b>AMOUNT BUDGETED:</b>	N/A		
<b>ACCOUNT NO. :</b>			
<b>ADDITIONAL APPROPRIATION REQUIRED:</b>	N/A		
<b>ACCOUNT NO. :</b>			

**EXECUTIVE SUMMARY**

The Annual Financial Report for the year ended September 30, 2018 has been audited by the audit firm Whitley Penn, LLP. Principal in charge, Mr. Christopher Breaux will present a brief overview of the audit.

**RECOMMENDATION**

Staff recommends acceptance of the Annual Financial Report.

**AGENDA MEMO**  
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**CITY OF FULSHEAR, TEXAS**

<b>AGENDA OF:</b>	March 19, 2019	<b>AGENDA ITEM:</b>	BUS- B
<b>DATE SUBMITTED:</b>	February 28, 2019	<b>DEPARTMENT:</b>	Planning and Development
<b>PREPARED BY:</b>	Sharon Valiante, Public Works Director, Zach Goodlander, Director of Development Services, Brant Gary, Assistant City Manager	<b>PRESENTER:</b>	Brant Gary, Assistant City Manager
<b>SUBJECT:</b>	<b>Public hearing regarding a proposed amendment to the City of Fulshear Code of Ordinances, Chapter 10, Article V. – Sexually Oriented Businesses, to include amendments to zoning regulations regarding Sexually Oriented Businesses within the Industrial District</b>		
<b>ATTACHMENTS:</b>	<b>Proposed Ordinance No. 2019-1292, Amending City Code Chapter 10 “Businesses”, Article V. “Sexually Oriented Businesses”</b>		

**EXECUTIVE SUMMARY**

This proposed amendment to the City of Fulshear Code of Ordinances, Chapter 10, Article V. – Sexually Oriented Businesses, seeks to update existing ordinances concerning sexually oriented businesses and particularly to regulate the emergence of so called “robot brothels”. This proposed amendment also seeks to clarify definitions within the ordinance. City staff has performed all of the requisite notices to property owners in the Industrial zoned district.

**RECOMMENDATION**

Staff recommends the City Council approve Ordinance No. 2019-1292 regarding the proposed amendments to the City of Fulshear Code of Ordinances, Chapter 10, Article V. – Sexually Oriented Businesses

**ORDINANCE NO. 2019-1292**

**AN ORDINANCE OF THE CITY OF FULSHEAR, TEXAS, AMENDING CITY CODE CHAPTER 10 “BUSINESSES”, ARTICLE V. “SEXUALLY ORIENTED BUSINESSES” TO CLARIFY DEFINITIONS AND PROVIDING RULES AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES; PROVIDING A PENALTY; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City Council of the City of Fulshear, Texas, (“City”) is authorized by Chapter 211 of the Texas Local Government Code to promulgate rules and regulations governing land use, structures, businesses and related activities; and

**WHEREAS**, the City Council further finds that the rules and regulations governing land use, structures, businesses, and related activities promotes the health, safety, morals and general welfare of the City; and

**WHEREAS**, the City Council has determined that the zoning amendment provided for herein promotes the health, safety, morals and protects and preserves the general welfare of the community; and

**WHEREAS**, it is the purpose of City Council in adopting these regulations to regulate sexually oriented businesses in order to promote the health, safety, moral and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The regulations have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor the effect of these regulations to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene material.

**WHEREAS**, each and every applicable requirement set forth in Chapter 211, Subchapter A, Texas Local Government Code, and the Code of Ordinances, City of Fulshear, Texas, concerning public notices, hearings, and other procedural matters has been fully complied with;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FULSHEAR, TEXAS:**

**Section 1.** That the facts found in the preamble of this Ordinance are true and correct and incorporated herein for all purposes

**Section 2.** Chapter 10 Article V. of the Code of Ordinances of the City of Fulshear, Texas is amended to provide as follows:

“CHAPTER 10 - BUSINESSES

...

ARTICLE V. - SEXUALLY ORIENTED BUSINESSES

Sec. 10-142. - Purpose.

It is the purpose of this article to regulate sexually oriented businesses in order to promote the health, safety, and welfare of the citizens of the city, and to establish reasonable and uniform rules and regulations to prevent the concentration of sexually oriented businesses within the city. The provisions of this article have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

Sec. 10-143. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adult arcade shall mean any premises that is subject to regulation under Chapter 243 of the Local Government Code, as amended, to which members of the public or members of any club, group or association are admitted and permitted to use one or more arcade devices on the premises.

Arcade device shall mean any coin or slug-operated or electronically or mechanically controlled machine or device that dispenses or effectuates the dispensing of entertainment, that is intended for the viewing of five or fewer persons in exchange for any payment of any consideration. Arcade device shall also mean an anthropomorphic device or object that is utilized for entertainment with one or more persons.

*Adult bookstore or adult video store* means a commercial establishment that as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

- (1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, CDs, DVDs, Blue-rays, or any other medium, or other visual representations that depict or describe specified sexual activities or specified anatomical areas; or
- (2) Instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

*Adult cabaret* means a nightclub, bar, restaurant, or similar commercial establishment that features:

- (1) Persons who appear in a state of nudity or semi-nudity, including topless dancers, nude dancers or strippers, male or female;
- (2) Live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities; or
- (3) Films, motion pictures, video cassettes, slides, CD's, DVD's, Blue-rays, or any other medium, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities; or specified anatomical areas.

*Adult mini-theatre* shall mean any premises that is subject to regulation under Chapter 243 of the Local Government Code as amended, to which members of the public or members of any club, group or association are admitted and permitted to use one or more mini-theatre devices.

*Adult motel* means a hotel, motel or similar commercial establishment that:

- (1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, CD's, DVD's, Blue-rays, or any other medium, or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas;
- (2) Offers a sleeping room for rent for a period of time that is less than ten hours;  
or
- (3) Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten hours.

*Adult motion picture theater* means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, CD's, DVD's, Blue-rays, or any other medium, or similar photographic reproductions are shown that are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

*Adult theater* means a theater, concert hall, auditorium or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

*Child care facility* means a facility licensed, certified, or registered by the state or agency of the state to provide assessment, care, training, education, custody,

treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services. The term "child care facility" includes a general residential operation, foster group home, foster home, day care center, group day care home, family home, agency foster group home, and agency foster home as those terms are defined by Texas Human Resources Code.

*City manager* means the city manager or administrator or his designee. If the city does not have employed a city manager, then the mayor shall be deemed the city manager for the purposes of effectuating the rules and regulations of this article.

*Entertainment shall mean:*

(1) Any live exhibition, display or performance; or

(2) Any still picture(s) or movie picture(s), whether mechanically, electrically or electronically displayed; or

(3) Any combination of the foregoing, in which the specified anatomical areas or specified sexual activities are depicted; or

(4) Use of an arcade device for any specified sexual activities.

*Escort* means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

*Escort agency* means a person who, or business association that furnishes, offers to furnish, or advertises to furnish escorts as one of its business purposes, for a fee, tip, or other consideration.

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

*Mini-theatre device* shall mean any coin or slug-operated or electrically or electronically or mechanically controlled machine or device that dispenses or effectuates the dispensing of "entertainment," that is intended for the viewing of more than five persons but less than 100 persons in exchange for any payment of any consideration. The term "mini-theatre device" shall not include any conventional motion picture screen or projection area designed to be viewed in a room containing tiers or rows of seats with a viewer seating capacity of 100 or more persons.

*Nude model studio* means any place where a person who appears in a state of nudity or semi-nudity or displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration.

*Nudity or a state of nudity* means:

- (1) The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or
- (2) A state of dress that fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

*Operates or causes to be operated* means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operating a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

*Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.

*Places of worship* means a building in which persons regularly assemble for worship, intended primarily for purposes connected with faith, or for propagating a particular form of belief.

*Residential area* means a single-family, duplex, townhouse, multiple-family or mobile home or area so designated by such uses.

*Residential use* means property used or intended for use as a dwelling.

*School* means any public or private learning center, elementary school, secondary school, junior college, community college, college, university or other center for post-secondary education.

*Semi-nude* means a state of dress in which clothing covers no more than the genitals, pubic region, and areolas of the female breasts, as well as portions of the body covered by supporting straps or devices.

*Sexual encounter center* means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
- (2) Activities between male and female persons or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

*Sexually oriented business* means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

*Specified anatomical areas* means human genitals.

*Specified sexual activities* means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated;

- (4) Excretory functions as part of or in connection with any of the activities set forth in subsections (1) through (3) of this definition; or
- (5) Any of the foregoing with an arcade device.

*Substantial enlargement of a sexually oriented business* means the increase in floor area occupied by the business by more than 20 percent, as the floor area existed on the date of the enactment of this article.

*Transfer of ownership or control of a sexually oriented business* means and includes any of the following:

- (1) The sale, lease, or sublease of the business;
- (2) The transfer of securities that constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
- (3) The establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

Sec. 10-144. - Classifications of sexually oriented businesses.

Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores or adult video stores;
- (3) Adult cabarets;
- (4) Adult Mini-theatres;
- (5) Adult motels;
- (6) Adult motion picture theaters;
- (7) Adult theaters;
- (8) Escort agencies;
- (9) Nude model studios;
- (10) Sexual encounter centers; and
- (11) Any combination thereof.

Sec. 10-145. - Notice by sign.

- (a) An applicant for a license or permit issued under section for a location not currently 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 stating that a sexually oriented business is intended to be located on the premises and providing the name and business address of the applicant.



- (b) The sign must be at least 24 inches by 36 inches in size and must be written in lettering at least two inches in size. The municipality or county in which the sexually oriented business is to be located may require the sign to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

Sec. 10-146. - License required.

- (a) A person commits an offense if he operates a sexually oriented business without a valid license issued by the city for the particular type of business. A suspended, revoked, or expired license is not a valid license.
- (b) An application for a license must be made on a form provided by the City manager.
- (c) The applicant must be qualified according to the provisions of this article and the premises must be inspected and found to be in compliance with the law.
- (d) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. If no individual has a 20 percent or greater interest in the business, then all business interest holders must sign the application for a license as applicant.
- (e) 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 and the extraterritorial limits that lie within a 1,000-foot radius of the location for the proposed sexually oriented business. The notice shall include a copy of the application for license.

Sec. 10-147. - Issuance of a license.

- (a) The city manager shall approve the issuance of a license within 30 days after receipt of a complete application unless the city manager finds one or more of the following to be true:
  - (1) An applicant is under 18 years of age.
  - (2) An applicant is overdue in payment to the city of taxes, fees, fines or penalties assessed against or imposed upon the applicant.
  - (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or failed to respond to a request for information by the city.
  - (4) An applicant has been convicted of a violation of a provision of this article within two years immediately preceding the application.
  - (5) Any fee required by this article has not been paid.

- (6) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated an inability to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.
- (7) An applicant or the proposed establishment is in violation of or is not in compliance with any provisions of this article.
- (8) An applicant has been convicted of a crime involving any of the following offenses as described in the state penal code:
  - a. Prostitution;
  - b. Promotion of prostitution;
  - c. Aggravated promotion of prostitution;
  - d. Compelling prostitution;
  - e. Obscenity;
  - f. Sale, distribution, display of harmful material to a minor;
  - g. Possession of child pornography
  - h. Public lewdness;
  - i. Indecent exposure;
  - j. Indecency with a child;
  - k. Sexual assault or aggravated sexual assault;
  - l. Incest, solicitation of a child, or harboring a runaway child; or
  - m. Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses; for which:
    1. Less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of misdemeanor offense;
    2. Less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
    3. Less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
- (9) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.
- (10) The license, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented

business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

Sec. 10-148. - Fees.

- (a) The annual fee for a sexually oriented business shall be as adopted by the city council and on file in the city secretary's office. The licensee shall pay this fee to the city annually.
- (b) An applicant for an initial sexually oriented business shall, at the time of making application, pay a nonrefundable fee, as adopted by the city council and on file in the city secretary's office, for the city to conduct an inspection to ensure that the proposed sexually oriented business is in compliance with the locational restrictions set forth in this article.

Sec. 10-149. - Inspection of premises.

- (a) The applicant or licensee shall permit representatives of the city to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.
- (b) A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the city at any time it is occupied or open for business.
- (c) The provisions of this section do not apply to areas of an adult motel that are currently being rented by a customer for use as a permanent or temporary habitation.

Sec. 10-150. - Expiration of license.

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in section 10-146. Application for renewal must be made at least 30 days before the expiration date.

Sec. 10-151. - Suspension of license.

The city manager shall suspend a license for a period not to exceed 30 days if he determines that a licensee or agent or employee of a licensee has:

- (1) Violated or is not in compliance with any part of this article;
- (2) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (3) Refused to allow an inspection of the sexually oriented business premises as authorized by this article;
- (4) Knowingly permitted gambling by any person on the sexually oriented business premises; or

- (5) Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

Sec. 10-152. - Revocation of license.

- (a) The city manager shall revoke a license if a cause of suspension in section 10-151 occurs and the license has been previously suspended within the preceding 12 months.
- (b) The city manager shall revoke a license if he determines that:
  - (1) A licensee gave false or misleading information in the material submitted to the city manager during the application process;
  - (2) A licensee, an agent or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
  - (3) A licensee, an agent or an employee has knowingly allowed prostitution on the premises;
  - (4) A licensee, an agent or an employee has knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
  - (5) A licensee has been convicted of an offense listed in this article for which the required time period has not elapsed;
  - (6) On two or more occasions in a 12-month period, a person or persons committed an offense, occurring in or on the licensed premises, or a crime listed in section 10-147, for which a conviction has been obtained, and the person or persons were the licensee or agents or employees of the sexually oriented business at the time the offenses were committed;
  - (7) A licensee or agent or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in V.T.C.A., Penal Code § 21.01; or
  - (8) A licensee is delinquent in payment to the city for any ad valorem taxes, sales or other taxes related to the sexually oriented business.
- (c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (d) When the city manager revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the city manager finds that the basis for the revocation has been corrected or abated, the application may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked, an applicant may not be granted another license until the appropriate number of years required under this section or section 10-147 has elapsed.

Sec. 10-153. - Appeal.

If the city manager denies the issuance of a license, or suspends or revokes a license, the city manager shall send to the applicant or licensee, by certified mail, return receipt requested written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the applicant or licensee shall have the right to appeal to the state district court. An appeal to the state district court must be filed within 30 days after the receipt of notice of the decision of the city manager. An appeal to the district court shall be limited to a hearing under the substantial evidence rule.

Sec. 10-154. - Transfer of license.

A licensee shall not transfer his license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

Sec. 10-155. - Location of sexually oriented businesses and hours of operation.

- (a) A person commits an offense if the person operates or causes to be operated a sexually oriented business within a 1,000-foot radius of:
- (1) A place of worship;
  - (2) A school;
  - (3) A child care facility;
  - (4) A boundary of a residential area;
  - (5) A public park;
  - (6) The property line of a lot devoted to residential use;
  - (7) Any building or structure in which alcoholic beverages are offered for sale;
  - (8) A hospital;
  - (9) A public library;
  - (10) A recreational center;
  - (11) A public swimming pool; or
  - (12) Another sexually oriented business.
- (b) A person commits an offense if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or increases the floor area of any sexually oriented business.
- (c) For the purpose of subsection (a) of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of the premises listed in subsection (a)(1)—(12) of this section.

- (d) Any sexually oriented business lawfully operating on the effective date of the ordinance from which this article is derived that is in violation of subsections (a), (b) or (c) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed 12 months, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming use shall not be increased, enlarged, extended, or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within a 1,000-foot radius of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later established business is nonconforming.
- (e) A sexually oriented business shall be prohibited from placing advertisement on any sign or billboard within the corporate city limits or the city's extraterritorial jurisdiction, using risqué language or words that describe or symbolize, metaphorically or otherwise, female breasts, genitalia, or buttocks, or that has sexual suggestions or connotations, or that is sexually provocative or obscene.
- (f) A sexually oriented business shall be prohibited from placing any screening device that would prevent any entrance from being visible from a public street or from erecting any opaque fencing around the perimeter of the property where the sexually oriented business is located.
- (g) A sexually oriented business shall be required to maintain adequate lighting at its parking lot and at each entrance and exit door to the building housing the sexually oriented business.
- (h) A sexually oriented business may only be open for business Monday through Saturday between the hours of 10:00 a.m. and 10:00 p.m.

Sec. 10-156. - Exemptions from locational restrictions.

- (a) If the city manager denies the issuance of a license to an application because the location of the sexually oriented business establishment is in violation of any section of this article, then the applicant may, not later than ten calendar days after receiving notice of the denial, file with the mayor of the city a written request for an exemption from the locational restrictions of this article.
- (b) If the written request is filed with the mayor within the ten-day limit, the city council shall consider the request. The mayor shall set a date for a public hearing within 60 days from the date the written request is received.
- (c) A hearing by the city council may proceed if a quorum of the city council is present. The city council shall hear and consider evidence offered by any interested person.
- (d) The city council may, in its discretion, grant an exemption from the locational restrictions of this article if it makes the following findings:
  - (1) That the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public health, safety or welfare;

- (2) That the granting of the exemption will not violate the spirit and intent of this article;
  - (3) That the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban or rural blight;
  - (4) That the location of an additional sexuality oriented business in the area will not be contrary to any person of neighborhood conservation nor will it interfere with any efforts or urban renewal or restoration; and
  - (5) That all other applicable provisions of this article will be observed.
- (e) The city council shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the city council is final.
  - (f) If the city council grants the exemption, the exemption is valid for one year from the date of the city council's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of this article until the applicant applies for and receives another exemption.
  - (g) If the city council denies the exemption, the applicant may not reapply for an exemption until at least 12 months have elapsed since the date of the city council's action.
  - (h) The grant of an exemption does not exempt the applicant from any other provision of this article other than the locational restriction.

Sec. 10-157. - Additional regulations for adult motels.

- (a) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two or more times in a period of time that is less than ten hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this article.
- (b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, rents or sub-rents a sleeping room to a person and, within ten hours from the time the room is rented, rents or sub-rents the same sleeping room again.
- (c) For purposes of subsection (b) of this section, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

Sec. 10-158. - Other unlawful acts.

- (a) A business permitted under this article must have at least one viewing station with an unobstructed view of every area of the premises to which any customer is permitted access, other than toilet facilities.

- (b) A business permitted under this article must have the viewing station occupied by an owner or employee when open for business.
- (c) A business permitted under this article must not have a room, area, or space that is not visible and apparent during a walk-through of the premises.
- (d) A business permitted under this article may not be used as living quarters or residence in any capacity, temporarily or permanently, except for an adult motel.
- (e) A business permitted under this article may not install any screens, doors, curtains or other obstructions or allow unauthorized installations to remain that would cause an obstructed view of any area customers are allowed. This does not apply to toilet facilities or to prevent the use of exterior doors.
- (f) A business permitted under this article may not have any interior walls that contain apertures, holes, or other openings in an area to which customers are allowed access.
- (g) There shall be light fixtures that provide illumination no less than one foot-candle as measured at four feet above floor level.
- (h) An adult modeling studio may not be furnished with a bed, mattress, or sofa except a reception room open to the public may be furnished with a sofa.
- (i) Viewing compartments, cubicles and any type of hidden or private booth or room are prohibited.
- (j) A manager or employee of a business permitted under this article may not invite, direct or instruct a customer to a separate area to which entry or access is blocked or obscured by a door, curtain or other barrier, regardless of whether entry to the area is by invitation, admission fee, club membership fee, or other form of gratuity or consideration. This does not apply to toilet facilities or to prevent the use of exterior doors.
- (k) A manager or employee may not provide entertainment, services, or display goods for sale in a separate area to which entry or access is blocked or obscured by a door, curtain, or other barrier, regardless of whether entry to the area is by invitation, admission fee, club membership fee, or other form of gratuity or consideration.
- (l) An owner, employee, or customer shall not appear nude or in a state of nudity.
- (m) An owner or employee shall not expose his genitals, pubic region, pubic hair or anus at any time.
- (n) An employee may not touch an employee, customer, or the clothing of another employee or customer while appearing semi-nude.
- (o) An employee entertaining or appearing semi-nude may not perform within six feet of a customer.
- (p) An owner or manager shall not allow semi-nude adult entertainment without having clearly marked a six-foot boundary from the employee and the customer at all times the entertainer is semi-nude.



- (q) A person providing the adult entertainment in the state of semi-nudity may not be tipped, except in a designated container.
- (r) An employee providing services, other than services comprising adult entertainment, in a permitted business may not be tipped, except by placement of tip in the employee's hand or other designated container.
- (s) An owner or employee may not perform or simulate sexual intercourse, sodomy, or masturbation.
- (t) It shall be unlawful for the owners or operator and it shall also be unlawful for any agent or employee present in an adult arcade or adult mini-theatre to knowingly allow or permit any act of sexual intercourse, sodomy, oral copulation, indecent exposure, lewd conduct or masturbation with or without an individual or an arcade device to occur in the adult arcade or adult mini-theatre or to knowingly allow or permit the adult arcade or adult mini-theatre to be used as a place in which solicitation for sexual intercourse, sodomy or oral copulation to occur.

Sec. 10-159. - Penalty.

- (a) Any person who violates or causes, allows, or permits another to violate any provision of this article shall be deemed guilty of a Class A misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than \$4,000.00. Each occurrence of any such violation of this article shall constitute a separate offense. Each day on which any such violation of this article occurs shall constitute a separate offense.
- (b) It is a defense to prosecution under section 10-146(a) and 10-155 that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:
  - (1) By a proprietary school licensed by the state; a college, junior college, or university supported entirely or partly by taxation;
  - (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
  - (3) In a structure:
    - a. Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing;
    - b. Where in order to participate in a class a student must enroll at least three days in advance of the class; and
    - c. Where no more than one nude or semi-nude model is on the premises at one time.
- (c) It is a defense to prosecution under section 10-146(a) and 10-155 that each item of descriptive, printed film, or video material offered for sale or rental, taken as a whole, contains serious literary artistic political or scientific value.”

**Section 3. *Repeal.*** Any ordinance or any part of an ordinance in conflict herewith shall be and is hereby repealed only to the extent of such conflict.

**Section 4. *Severability.*** In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstances shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Fulshear, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

**Section 5. *Effective date.*** This Ordinance shall be effective after being published as required by law.

PASSED, APPROVED and ADOPTED on the \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Aaron Groff, Mayor

ATTEST:

\_\_\_\_\_  
Kimberly Kopecky, City Secretary