

CITY OF ROCKWALL

Planning and Zoning Agenda

AGENDA DATE: July 14, 1988

AGENDA NO. III.F.

AGENDA ITEM: P&Z 88-35-Z Hold Public Hearing and Consider Amending the Comprehensive Zoning Ordinance as it Pertains to Sexually Oriented Businesses

ITEM GENERATED BY: Council

ACTION NEEDED: Hold Public Hearing and consider action on the item

BACKGROUND INFORMATION:

The City Council recently passed an ordinance regulating sexually oriented businesses and requiring a license for such establishments. The purpose for adopting the ordinance now was to have regulations on the books before a use of this type attempts to open in town. Our attorney has also recommended that we also establish some zoning restrictions on these type of uses. Currently the zoning ordinance does not recognize any difference between, for example, a standard book store and one that sells sexually explicit materials. It is our attorney's opinion that we will have to make provision for these type of uses in the classification where there standard counterpart would be allowed. Book stores are allowed in General Retail. We will probably have to allow sexually oriented bookstores in GR and regulate them under a CUP. We are still discussing the specific provisions of an amendment with our attorney. The Commission may want to take any public comment Thursday night and table any recommendation until we the specific amendment is finalized.

ATTACHMENTS:

None

AGENDA ITEM: Zoning Ordinance - Sexually Oriented Bus.

ITEM NO: III.F.

Sexually Oriented Businesses

MINUTES OF THE PLANNING AND ZONING COMMISSION

July 14, 1988

Chairman Tom Quinn called the meeting to order with the following members present; Bob McCall, Leigh Plagens, and Hank Crumbley. The Commission first considered approval of the minutes of June 9, 1988. Plagens made a motion to approve the minutes as submitted. Crumbley seconded the motion. The motion was voted on and passed unanimously.

Quinn opened a public hearing and the Commission considered approval of a replat of a portion of the Ridgell Addition. Assistant City Manager Julie Couch explained that the current owner of Lots 1 and 2 of the Ridgell Addition has a residence that is in the middle of these two lots. He wished to combine the two lots into one lot and eliminate the lot that went through the center of his house. At this time Mike Reid joined the meeting. Couch explained that an additional five feet of right of way had been requested along the Sherman Street side and that the plat reflected the dedication. She further stated that the applicant was requesting a waiver of the requirement that 1/2 of the estimated cost of the improvements to Boydston and Sherman Streets be escrowed as this would be a one lot owner occupied subdivision. Harold Evans addressed the Commission on behalf of the applicant. McCall made a motion to approve the replat including the recommendation that the waiver request be approved. Plagens seconded the motion. The motion was voted on and passed unanimously.

The Commission then held a public hearing and considered approval of a replat of a portion of Phase 18, Section II, Chandlers Landing. At this time Bill Sinclair joined the meeting. Couch explained that the applicant proposed to make the unsold lots in the area larger and was therefore wanting to combine smaller lots. She explained that the average lot would increase in size from 4,000 feet to 7,500 square feet. She pointed out that the Commission would be receiving an application at their next meeting to redesignate the lots along the lake as Single Family as opposed to the present zero lot line. Harold Evans, engineer representing the applicant, explained the proposed changes in the lots. Bob McCloy, a property owner, questioned a greenbelt area near his lot. Evans explained that the greenbelt would not be affected by the changes. Rob Whittle stated for the record that FraCorp wouldn't contractually agree to allow expansion in Phase 17. As there was no one else wishing to address the commission on this issue, the public hearing was closed. Plagens made a motion to approve the replat. Crumbley seconded the motion. The motion was voted on and passed unanimously.

The Commission then held a public hearing and considered approval of a request from Rockwall Harbor Corporation for a Conditional Use Permit for a building over 5000 square feet with less than 100% non-combustible materials for proposed restaurant to be located on Lot 4, the Harbor Phase I. Couch explained that the applicants wanted to use wood frame construction and also wanted some exposed beams in the interior of the building. She pointed out that in similar applications, a condition was added that the structure be sprinklered and that non-combustible materials be used in the kitchen area. Rob Whittle, Rockwall Harbor Corporation, stated that the underground plumbing had already been completed for a sprinkler system, that they proposed an open beam look on the interior, a wood structure, stucco and tile roof, and a concrete block wall common with the future adjacent building. As

there was no one else wishing to address the Commission on this issue, the public hearing was closed. McCall made a motion to approve the Conditional Use Permit with the condition that the structure be sprinklered and that non-combustible materials be used in the kitchen area. Reid seconded the motion. The motion was voted on and passed unanimously.

The Commission then held a public hearing and considered approval of a request from Elaine Tibbetts for a Conditional Use Permit for a guest house as an accessory to a residence at 703 Kernodle. Couch explained that the applicant proposed to build a guest house for a relative and that staff's only concern was to provide that this portion of the lot was never sold separately or rented separately from the main residence. This was a violation of the Zoning Ordinance in residential zoning. Mrs. Tibbetts addressed the commission and outlined her building and improvement plans. She stated agreement to filing a deed restriction that would address staff's concerns. Sinclair made a motion to recommend approval of the request for a CUP providing that 1) a deed restriction be filed stating that the guest house may not be sold separately or rented separately from the main house and 2) that an annual review be conducted by staff to verify the terms of the ordinance granting the variance are being met. Crumbley seconded the motion. The motion was voted on and passed unanimously.

The Commission then held a public hearing and considered approval of a request from Gary Bodin for a conditional Use Permit for a truck wash at 2020 Kristy Lane. Couch explained that the applicant met drainage requirements but that the site plan desired some parking adjustments. She told the Commission that access from the adjacent lot was proposed to provide adequate turn space for semi-trucks and that an access easement should be provided. Gary Bodin outlined his proposed plans for improvement of the site but stated that he had already been utilizing the property as a truck wash for the last three years. The Commission discussed the existing miniwarehouses and how this affected the applicant's overall parking requirements, the location of the proposed parking, the lack of striping, possibly prohibiting waiting customers from parking on the street and blocking access to other business on Kristy, and tying the permit to the applicant and not the land. Jim Whitworth, representing the applicant, stated that a verbal access agreement had been made with the adjacent property owner but that a written easement could be obtained. After much discussion, Crumbley made a motion to recommend approval of the permit subject to the following conditions; 1) that parking would be moved closer to the exit drive and striped 2) that the Commission would review the CUP for compliance in one year 3) that an access easement with the adjacent property owner would be filed of record and 4) that the permit would be valid only as long as the applicant was the business operator. McCall seconded the motion. The motion was voted on and passed 5 to 1 with the Chair voting against the motion.

Quinn then opened a public hearing regarding an amendment to the Comprehensive Zoning Ordinance as it pertains to sexually oriented business. As there was no one wishing to address the Commission on this issue the hearing was closed. Couch explained that the City Attorney was in the process of reviewing the proposed amendment and that staff would be prepared to present it to the Commission at the worksession. The Commission discussed the existing definition of a sexually oriented business and the recommendation that the City Attorney was reviewing. Sinclair made a motion to table action

on the item until the July 25th Worksession. Reid seconded the motion. The motion was voted on and passed unanimously.

Couch then outlined a site plan and preliminary plat application for a Roadrunner convenience store to be located on SH-205 at SH-276. Couch explained that due to the odd configuration of the lot the applicant feels the site will not work if they must meet the 20 foot rear setback, and have applied for a variance to the Board of Adjustments to be considered August 4, 1988. She explained that the applicant agreed to meet with the adjacent property owner to determine if joint access for both properties could be located further east of the intersection. In addition, the applicants had agreed to provide some additional trees although the new landscape ordinance was not in effect.

Greg Arnold with Truman Arnold and Associates addressed the Commission and agreed to meet the conditions suggested. Sinclair made a motion to recommend approval of the preliminary plat and to table consideration of the site plan pending revisions to the landscaping and the joint access drive. Reid seconded the motion. The motion was voted on and passed unanimously.

As there was no further business to come before the Commission for consideration, the meeting adjourned.

APPROVED:

Thomas E. Quinn
Chairman

ATTEST:

Chelle Couch

CITY OF ROCKWALL

Planning and Zoning Agenda

AGENDA DATE: July 25, 1988

AGENDA NO. II.B.

AGENDA ITEM: Discuss and Consider Recommendation on an Amendment to the Comprehensive Zoning Ordinance to Adopt Regulations Regarding Sexually Oriented Businesses

ITEM GENERATED BY: Council

ACTION NEEDED: Discuss and consider recommendation with any changes in the motion

BACKGROUND INFORMATION:

At the last meeting the Commission held a public hearing regarding the establishment of zoning regulations regarding sexually oriented businesses. As we indicated at the last meeting, it is our attorney's opinion that we will not be able to restrict these type of uses to one particular classification if the standard counterpart is allowed in another zoning classification. Based on this our recommendation is that we amend all of the commercial zoning classifications where these uses are allowed, to require that any use meeting the definitions and provisions of Section 27 of the Rockwall Code of Ordinances, as it is currently adopted or as it may be amended in the future, must be granted a CUP in order to operate. The following wording would be added to the CUP section of the NS, GR, C, CBD, HC, LI, and HI classifications:

Conditional Uses -

Any of the above permitted uses that meet the provisions and definitions of Section 27 of the Rockwall Code of Ordinances, as it is currently adopted or as it may hereafter be amended, subject to the conditions established in Article IV.

Section 4. Conditions of Conditional Use -

Uses meeting the provisions and definitions of Section 27 of the Rockwall Code of Ordinances, as it is currently adopted or as it may hereafter be amended shall meet the following minimum conditions:

- a. Any CUP granted shall be issued only to the current owner and /or operator of the proposed establishment. Any change of ownership or operation will require that the permit be reapplied for following the procedure set forth in this section.
- b. All signage for the proposed use must be approved as a part of the CUP request.
- c. The hours of operation shall be submitted and approved as a part of the CUP request.
- d. If the use ceases operation the CUP shall be void.
- e. The CUP shall at all times meet the conditions of approval and the terms of all other applicable ordinances.

We would further recommend that a section be added to our private club ordinance stating that any proposed private club meeting the terms and definitions of Section 27 of the Code of Ordinances must apply for such use as a part of the CUP request for a private club and that it must meet the requirements of Section 4 of the Comprehensive Ordinance and all other applicable ordinances. Our attorney will be here Monday night to discuss this.

ATTACHMENTS:

1. Copy of ordinance 88-25

AGENDA ITEM: Sexually Oriented Business Amendment

ITEM NO.: II.B.

Sexually Oriented Businesses

MINUTES OF THE PLANNING AND ZONING COMMISSION

July 25, 1988

Chairman Tom Quinn called the meeting to order with the following members present; Leigh Plagens, Mike Reid, Bill Sinclair, and Hank Crumbley.

Assistant City Manager outlined a request from Holley Development for a Revision to the Preliminary Plan for PD-21, St. Mary's Place, to amend the height requirements for certain lots within the Planned Development. She explained that in 1983 when the PD was approved, certain lots were approved for single story structures in an effort to satisfy concerns of adjacent property owners. A building permit had been issued in error for two story structures. Upon discovery of the error, a stop order was issued and the builder submitted a request to revise the plan to allow two story structures.

Quinn opened the public hearing and Danny Holley, Holley Development, addressed the commission and explained that he had been in contact with several property owners and had made some revisions in the building plans to satisfy their concerns. He had removed rear windows on the second floor by shifting the second floor to the front of the building and changed the elevation to appear as just a roof line in the rear similar to the existing one story structures although about one and one half feet taller. He also agreed to reconstruct a screening fence which abutted Mrs. Doris McKee's property and remove dead trees.

Bill Watkins addressed the Commission representing Mrs. Doris McKee. He stated that Mrs. McKee was opposed to changing the plan regardless of the origination of the error that resulted in issuance of the permit. Richard Jordan stated that the lots were not large enough to allow two story homes. He stated that two stories meant three bedrooms and children who had no place to play except in the street and in the other neighbors' yards. Alta Sellers told the Commission that she was the first to buy a house in St. Mary's and since only four lots could be built as two story, she believed most of the homes would be small homes that couldn't accommodate children. She further stated that she had constant problems with the children who did live in the neighborhood. Joe Smarrt told the Commission that originally the developer had requested 24 and then 18 units. He stated that the adjacent property owners were opposed to the zone change but were satisfied when a compromise was reached that would allow fourteen units: ten single story and four double story. He stated that an amendment to the plan would be a violation of a compromise reached by a previous Commission and Council with the property owners. Jessie McDaniel stated opposition to amending the plan to accommodate larger homes and children that the neighborhood already didn't provide play areas for. Nan Smarrt told the Commission that Ms. Maggie Underwood, who was not able to attend, had asked her to express her opposition to changing the plan. The Commission also had a letter from Ms. Underwood. As there were no further persons wishing to address the Commission on this issue, the public hearing was closed.

The Commission discussed the testimony of the developer and the property owners in the area. Sinclair questioned the need for double story residences in the area. Couch stated that the size of the lots would only accommodate a one bedroom residence if single story. Plagens stated opposition to changing the plan when five years previously, the property

opposition to changing the plan when five years previously, the property owners were satisfied that their concerns had been protected. Sinclair stated that he had been opposed to spot zoning when the PD was approved. Quinn stated that an amendment to the plan would pose no benefit to the Citizens of Rockwall and would betray the confidence of the adjacent property owners. Plagens made a motion to recommend to the City Council denial of the developer's request for an amendment. Sinclair seconded the motion. The motion was voted and passed unanimously.

The Commission then discussed a recommendation on an amendment to the Comprehensive Zoning Ordinance regarding Sexually Oriented Business. Couch explained that it was the attorney's opinion that the City could not restrict these types of uses in one zoning classification if the standard counterpart was allowed in another zoning classification. For example; a sexually oriented bookstore could not be prohibited in general retail if a standard bookstore was allowed. Therefore, the staff recommendation was that all zoning classifications be amended to require that any use meeting the definitions of provisions of Section 27 of the Rockwall Code of Ordinances must be granted a CUP in order to operate. The Conditions of the Conditional Use Permit could be as follows:

- a. Any CUP granted would be issued only to the current owner and/or operator of the proposed establishment. Any change of ownership or operation would require that the permit be reapplied for following the procedure set forth in this section.
- b. All signage for the proposed use must be approved as a part of the CUP request.
- c. The hours of operation must be submitted and approved as part of the CUP request.
- d. If the use ceases operation the CUP shall be void.
- e. The CUP must at all times meet the conditions of approval and the terms of all other applicable ordinances.


Couch added a further recommendation that the private club ordinance be amended to state that any proposed private club meeting the terms and definitions of Section 27 must apply for such use as a part of the CUP request for a private club and that it must meet the requirements of Section 4 of the Comprehensive Zoning Ordinance and all other applicable ordinances.

The Commission questioned the City Attorney regarding the restrictiveness of the ordinance, the City's inability to group all sexually oriented businesses in one zoning district, and the license process provided for in the already approved regulatory ordinance. Sinclair made a motion to recommend approval of the proposed amendments as submitted. Plagens seconded the motion. The motion was voted on and passed unanimously.

The Commission then adjourned into a worksession to review planning and zoning cases submitted for consideration by the Commission on August 11th. As there was no further business to come before the Commission for consideration, the meeting adjourned at 8:45 P.M.

ATTEST:

By



APPROVED:


Chairman

CITY OF ROCKWALL

City Council Agenda

AGENDA DATE: September 19, 1988 AGENDA NO. V.E.

AGENDA ITEM: Hold Public Hearing and Consider Amending the Comprehensive Zoning Ordinance to Adopt Regulations Regarding Sexually Oriented Businesses

ITEM GENERATED BY: Council

ACTION NEEDED: Hold Public Hearing and consider approval of an amendment to the Zoning ordinance with any changes included in the motion

BACKGROUND INFORMATION:

At the direction of the Council the Commission has recently held public hearings regarding the establishment of zoning regulations regarding sexually oriented businesses. Several months ago the City Council passed an ordinance regulating sexually oriented businesses. The purpose for adopting the ordinance now was to have regulations on the books before a use of this type attempts to open in town. Our attorney has also recommended that we also establish zoning restrictions on these types of uses. Currently the zoning ordinance does not recognize any difference between, for example, a standard book store and one that sells sexually explicit materials. After reviewing the uses to be regulated, it is our attorney's opinion that we will not be able to restrict these type of uses to one particular classification if the standard counterpart is allowed in another zoning classification. Based on this our recommendation to the Commission was that we amend all of the commercial zoning classifications where these uses are allowed, to require that any use meeting the definitions and provisions of Section 27 of the Rockwall Code of Ordinances, as it is currently adopted or as it may be amended in the future, must be granted a CUP in order to operate. The following wording would be added to the CUP section of the NS, GR, C, CBD, HC, LI, and HI classifications:

Conditional Uses -

Any of the above permitted uses that meet the provisions and definitions of Section 27 of the Rockwall Code of Ordinances, as it is currently adopted or as it may hereafter be amended, subject to the conditions established in Article IV.

Section 4. Conditions of Conditional Use -

Uses meeting the provisions and definitions of Section 27 of the Rockwall Code of Ordinances, as it is currently adopted or as it may hereafter be amended shall meet the following minimum conditions:

- a. Any CUP granted shall be issued only to the current owner and /or operator of the proposed establishment. Any change of ownership or operation will require that the permit be reapplied for following the procedure set forth in this section.
- b. All signage for the proposed use must be approved as a part of the CUP request.
- c. The hours of operation shall be submitted and approved as a part of the CUP request.

(SEE NEXT PAGE FOR ADDITIONAL NOTES)

ATTACHMENTS:

1. Copy of ordinance 88-25

AGENDA ITEM: Sexually Oriented Business Amendment

ITEM NO: V.E.

AGENDA NOTES CONTINUED

- d. If the use ceases operation the CUP shall be void.
- e. The CUP shall at all times meet the conditions of approval and the terms of all other applicable ordinances.

We would further recommend that a section be added to our private club ordinance stating that any proposed private club meeting the terms and definitions of Section 27 of the Code of Ordinances must apply for such use as a part of the CUP request for a private club and that it must meet the requirements of Section 4 of the Comprehensive Ordinance and all other applicable ordinances. Our attorney will be here Monday night to discuss this.

The Planning and Zoning Commission has recommended approval of the amendments as proposed. If the Council approves these changes we will draft an ordinance for your consideration at the next meeting.

MINUTES OF THE ROCKWALL CITY COUNCIL

September 19, 1988

Mayor Frank Miller called the meeting to order at 7:00 P.M. with the following Councilmembers present: Don Smith, Alma Williams, Frank Miller, Norm Seligman, Pat Luby and John Bullock.

Council first considered approval of the Consent Agenda which consisted of:

- A) the minutes of September 6, 1988
- B) an ordinance abandoning a drainage easement on Rockwall Parkway on second reading
- C) an ordinance abandoning a TU Electric easement in Stonebridge Meadows on second reading
- D) an ordinance authorizing a change in zoning from "A" Agricultural to "C" Commercial on a tract of land located on SH-205 south of Rockwall Parkway on second reading
- E) an ordinance regulating usage of the jogging trail at Harry Meyers Park on second reading
- F) a resolution urging the State to amend the definition of an emergency vehicle regarding emergency signal lights
- G) a resolution urging TML to support strict qualifying requirements for Agricultural exemption to Ad Valorem taxes.

Assistant City Manager Julie Couch read the ordinance captions. Miller pulled Items F and G. Williams made a motion to approve the Consent Agenda except Items F and G. Seligman seconded the motion. The motion was voted on and passed unanimously. Miller made a motion to approve Item F with a minor change in the wording of one sentence. Luby seconded the motion. The motion was voted on and passed unanimously. Miller then suggested minor wording revisions in Item G and made a motion to approve the resolution with these changes. Smith seconded the motion. The motion was voted on and passed unanimously.

Council then held a public hearing and considered approval of a request from P.D. Crawford for a change in zoning from "GR" General Retail to "SF-7" Single Family on a tract of land located at Kaufman Street and San Augustine, and considered approval of a final plat for the Crawford Addition. Couch outlined the applicant's request and explained that prior to obtaining a building permit to replace a residence that had burned and lost its non-conforming status the property had to be rezoned and platted. Bob Brown, representing the applicant, stated that Mr. Crawford proposed to move an old parsonage onto the lot to be used as his residence. Smith made a motion to approve the request, an ordinance authorizing the zone change on first

reading, the final plat, and a waiver of street escrow requirements. Luby seconded the motion. The motion was voted on and passed unanimously.

The Council then held a public hearing and considered approval of an ordinance granting a request from First Assembly of God Church for renewal of a Conditional Use Permit for a portable building exceeding the maximum size permitted in an "SF-7" Single Family classification. Couch explained that the CUP had been granted previously by the Council but had expired. She stated that the application was the same as the original application and read the ordinance caption. As there was no one present to address the Council on this issue the public hearing was closed. Seligman made a motion to approve the ordinance. Smith seconded the motion. The Mayor offered an amendment to require a two year time limit. Seligman seconded the amendment. The amendment was voted on and passed unanimously. The motion as amended was voted on and passed unanimously.

The Council then held a public hearing and considered approval of a request from Realvest, Inc., for an amendment to the preliminary plan for PD-8, Chandlers Landing to change the land use designation on Lots 9 through 23 in Phase 18, Section 2, from Zero Lot Line to Single Family, and approval of area requirements. Couch explained that the lots had previously been replatted, outlined the proposed area requirements, and read the caption of an ordinance amending the preliminary plan for PD-8. Harold Evans, representing the applicant, addressed the Council's questions regarding the lot sizes and possible tightness of lots. Seligman made a motion to approve the ordinance. Smith seconded the motion. The motion was voted on and passed unanimously.

Miller then opened a public hearing and Council considered amending the Comprehensive Zoning Ordinance to adopt regulations regarding sexually oriented businesses. Couch outlined the regulatory ordinance previously adopted by Council, the recommendation of the Planning and Zoning Commission and the recommendation of the City Attorney to amend the Zoning Ordinance and the Private Club Ordinance to provide regulations for sexually oriented businesses. As there was no one present to address this issue, the public hearing was closed. Williams made a motion to instruct Staff to draft ordinances amending the Comprehensive Zoning Ordinance and Private Club Ordinance regarding sexually oriented businesses. Luby seconded the motion. The motion was voted on and passed unanimously.

Council then held a public hearing and considered approval of an ordinance adopting the 1988-89 Operating Budget. As there was no one present wishing to address the Council on this issue, the public hearing was closed. Couch read the ordinance caption and City Manager Bill Eisen explained some changes that had been made at Council's direction since the Budget Worksession. Seligman made a motion to approve the ordinance. Smith seconded the motion. The motion was voted on and passed unanimously.

Council then held a public hearing and considered approval of a resolution making application to the Texas Capital Development Fund on behalf of Celebration Cake Company. Eisen explained that funding for business development and business expansion was available through the Texas Department of Commerce and Jim Head, of Celebration Cake Company, had requested the City to sponsor a loan application. He explained that although the City would technically be the recipient of the loan, a limited role would be

Council then considered approval of an ordinance amending the 1987-88 Budget. Couch read the ordinance caption. Williams made a motion to approve the ordinance. Smith seconded the motion. The motion was voted on and passed unanimously.

Council then considered approval of an ordinance setting the 1988-89 tax rate. Couch read the ordinance caption. Smith made a motion to approve the ordinance. Seligman seconded the motion. The motion was voted on and passed unanimously.

Council then considered approval of an ordinance prescribing the method for setting rates at the Municipal Airport. Eisen explained that this would allow Airport rates to be set and amended by resolution as water and sewer rates were done. Couch read the ordinance caption. Smith made a motion to approve the ordinance. Luby seconded the motion. The motion was voted on and passed unanimously.

Council then considered approval of a resolution amending water and sewer rates. After a brief Council discussion, Seligman made a motion to approve the resolution. Smith seconded the motion. The motion was voted on and passed unanimously.

Council then considered approval of an ordinance updating service credit in TMRS and increasing the employee contribution rate. Eisen explained the contents of the ordinance. Couch read the ordinance caption. Smith made a motion to approve the ordinance. Williams seconded the motion. The motion was voted on and passed unanimously.

Council next considered approval of a resolution fixing a charge for returned checks. Eisen explained the current charge was \$5.00 and the resolution would establish a \$15.00 charge. Bullock questioned the cost of processing an insufficient check. Director of Finance Mike Phemister explained the procedures and stated that \$15.00 was an acceptable amount. Luby made a motion to approve the resolution. Smith seconded the motion. The motion was voted on and passed with all in favor except Bullock who was opposed.

Council discussed a resolution establishing a policy regarding review of newly annexed areas for the purpose of establishing permanent zoning. After discussion regarding the recommendation of the Planning and Zoning Commission, Seligman made a motion to approve the resolution. Williams seconded the motion. The motion was voted on and passed unanimously.

Council then considered approval of a resolution authorizing establishment of a 9-1-1 Emergency Telephone System and authorizing the levy of a charge to finance the service. Eisen outlined the steps taken to date towards establishing the service and additional procedures to be completed. Smith made a motion to approve the resolution. Luby seconded the motion. The motion was voted on and passed unanimously.

Council then considered award of bid for materials for a 12" water main extension to the Children's Shelter on Airport Road and a 6" water main replacement on the Alumax property. Director of Community Services Ed

Heath recommended award of the bid to Trans Tex Supply and explained that the two lower bidders had not complied with specifications. The bids were as follows:

Daystar Sales	\$14,121.70
Atlas Utility	\$14,657.04
*Trans Tex Supply	\$15,183.99
Bowles and Eden	\$15,863.42
Texas Meter Service	\$15,959.36

Seligman made a motion to award the bid as recommended. Williams seconded the motion. The motion was voted on and passed unanimously.

Council then considered authorizing the City Manager to execute an agreement with Independent Bank for financing a \$77,261.86 note. Mayor Miller turned the chair over to Councilmember Bullock and abstained from participation in the discussion due to a conflict of interest. Eisen explained that a balloon payment was due September 20th on a two year note in the original amount of \$110,000 used for the purchase of land. He stated that it would be a two year note with a three year amortization period at an interest rate of approximately 10% as determined by our depository agreement. Smith made a motion to authorize execution of the agreement. Seligman seconded the motion. The motion was voted on and passed unanimously.

Council then considered approval of a resolution accepting a donation of .2897 acres of land for use as a City park by Dr. Sherman Sparks and authorizing the City Manager to file a warranty deed effective January 20, 1989. Director of Parks and Recreation Rick Crowley outlined the provisions of the deed and location of the land. Williams made a motion to approve the resolution. Seligman seconded the motion. The motion was voted on and passed unanimously.

Council then considered award of bids for paving, drainage, and utility improvements in the Heritage Heights Subdivision. Eisen explained that FMHA approval still had not been received. Smith made a motion to table the award until October 17th or the next convenient meeting upon receipt of approval. Williams seconded the motion. The motion was voted on and passed unanimously.

As there was no further business to come before Council for consideration, the meeting adjourned.

APPROVED:

ATTEST:

Mayor

By: _____

CITY OF ROCKWALL, TEXAS

ORDINANCE NO. 88-25

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROCKWALL, TEXAS, AMENDING THE CITY CODE OF ORDINANCES BY ADDING A CHAPTER REGULATING SEXUALLY ORIENTED BUSINESSES; PROVIDING DEFINITIONS; PROVIDING FOR THE LICENSING AND REGULATION OF ADULT ARCADES, ADULT BOOKSTORES, ADULT VIDEO STORES; ADULT CABARETS; ADULT MOTELS; ADULT MOTION PICTURE THEATERS; ESCORT AGENCIES; NUDE MODELING STUDIOS AND SEXUAL ENCOUNTER CENTERS; REGULATING THE DISPLAY OF SEXUALLY EXPLICIT MATERIALS TO MINORS; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000.00) FOR THE VIOLATION OF SECTION 27-12 OF THE CITY CODE AS ADOPTED BY THIS ORDINANCE OTHER THAN VIOLATIONS INVOLVING NUDE MODEL STUDIOS OR SEXUAL ENCOUNTER CENTERS, WHICH VIOLATIONS SHALL BE PUNISHABLE AS A CLASS B MISDEMEANOR, AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH AN OFFENSE OCCURS OR CONTINUES; PROVIDING A PENALTY OF FINE OF FIVE HUNDRED DOLLARS (\$500.00) FOR A VIOLATION OF ANY SECTION OF CHAPTER 27 OF THE CITY CODE AS ADOPTED BY THIS ORDINANCE OTHER THAN SECTION 27-12 OF CHAPTER 27 AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED EACH DAY DURING OR ON WHICH A VIOLATION OCCURS OR CONTINUES; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING FOR AN AMORTIZATION PERIOD; PROVIDING A GRACE PERIOD; REPEALING INCONSISTENT LEGISLATION; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the United States Supreme Court decided City of Renton v. Playtime Theaters, Inc., U.S. _____, 106 S.Ct. 925 (1986), which outlined the ability to regulate sexually oriented businesses; and

WHEREAS, the City Council makes the following findings with regard to sexually oriented establishments:

(1) Section 215.075, Texas Local Government Code, authorizes home rule cities to license any lawful business, occupation, or calling that is susceptible to the control of the police power.

(2) Section 54.004, Texas Local Government Code, authorizes home rule cities to enforce all ordinances necessary to protect the health, life, and property of their inhabitants.

(3) Sexually oriented businesses may require special supervision from the public safety agencies of the city in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the city.

(4) Licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

(5) There is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values.

(6) The City Council further finds that the police in numerous other jurisdictions have made a substantial number of arrests for sexually related crimes in sexually oriented business establishments.

(7) It is recognized that sexually oriented businesses often have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent areas.

(8) The City Council desires to minimize and control these adverse effects and thereby preserve the property values and character of surrounding neighborhoods, deter the spread of urban blight, protect the citizens from increased crime, preserve the quality of life, and protect the health, safety, and welfare of the citizenry; and

WHEREAS, the City Council makes the following findings with regard to the licensing of sexually oriented business establishments:

(1) The City Council believes it is in the interest of the public safety and welfare to prohibit persons convicted of certain crimes from engaging in the occupation of operating a sexually oriented business.

(2) The City Council, in accordance with Article 6252-13c of Vernon's Texas Civil Statutes, has considered the following criteria:

(a) the nature and seriousness of the crimes;

(b) the relationship of the crimes to the purposes for requiring a license to engage in the occupation;

(c) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(d) the relationship of the crimes to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation; and has determined that the crimes listed in Section 27-4(a)(10) are serious crimes which are directly related to the duties and responsibilities of the occupation of operating a sexually oriented business. The City Council has further determined that the very nature of the occupation of operating a sexually oriented business brings a person into constant contact with persons interested in sexually oriented materials and activities thereby giving the person repeated opportunities to commit offenses against public order and decency or crimes against the public health, safety, or morals should he be so inclined. Thus, it is the opinion of the City Council that the listed crimes render a person unable, incompetent, and unfit to perform the duties and responsibilities accompanying the operation of a sexually oriented business in a manner that would promote the public safety and trust.

(3) The City Council has determined that no person who has been convicted of a crime listed in Section 5(a)(10), as set forth in this ordinance, is presently fit to operate a sexually oriented business until the respective time periods designated in that section have expired.

(4) It is the intent of the City Council to disqualify a person from being issued a sexually oriented business license by the city of Rockwall if he has been convicted within the designated time period of any of the crimes listed in Section 27-4(a)(10), as set forth in this ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROCKWALL:

SECTION 1. (a) It is the purpose of this ordinance to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the city, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the city. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance 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.

(b) It is the intent of the City Council that the locational regulations of Section 27-12 of the City Code as adopted by this ordinance are promulgated pursuant to Sections 243.001-243.009, Texas Local Government Code, as they apply to nude model studios and sexual encounter centers only. It is the intent of the City Council that all other provisions of this ordinance are enacted pursuant to the City Charter and Sections 51.072, 54.004, and 215.075 of the Texas Local Government Code.

SECTION 2. The Code of Ordinances of the City of Rockwall, Texas is amended by adding thereto a new Chapter 27, to read in its entirety as follows:

"SEXUALLY ORIENTED BUSINESSES

Section 27-1. Definitions.

In this Chapter:

(1) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(2) ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment which as a principal business purpose openly advertises

or displays or offers for sale or rental for any form of consideration any one or more of the following:

(A) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or

(B) instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

As used herein, "principal business purpose" shall include any business activity which accounts for 15 percent or more of the following: (i) gross revenues of the business; (ii) floor area of the business; or (iii) inventory.

(3) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(A) persons who appear in a state of nudity; or

(B) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(C) films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(4) ADULT MOTEL means a hotel, motel or similar commercial establishment which:

(A) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities"

or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this type of photographic reproductions; or

(B) offers a sleeping room for rent for a period of time that is less than 10 hours; or

(C) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

(5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which 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."

(7) CHIEF OF POLICE means the Chief of Police of the City of Rockwall or his designated agent.

(8) 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.

(9) ESCORT AGENCY means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

(10) ESTABLISHMENT means and includes any of the following:

(A) the opening or commencement of any sexually oriented business as a new business;

(B) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;

(C) the addition of any sexually oriented business to any other existing sexually oriented business; or

(D) the relocation of any sexually oriented business.

(11) 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.

(12) NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

(13) NUDITY or a STATE OF NUDITY means

(A) the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast or

(B) a state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

(14) PERSON means an individual, proprietorship, trust, partnership, corporation, association, or other legal entity.

(15) RESIDENTIAL DISTRICT means a one family, two family, townhouse, or multiple family district as defined by the zoning ordinances of the City of Rockwall.

(16) RESIDENTIAL USE means a one family, two family, townhouse or multiple family use as defined by the zoning ordinance of the City of Rockwall.

(17) SCHOOL means any public or private nursery, preschool, day care center, learning center, elementary or secondary school.

(18) SEMI-NUDE means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

(19) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(A) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(B) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

(20) 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.

(21) SPECIFIED ANATOMICAL AREAS means human genitals in a state of sexual arousal.

(22) SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

(A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or

(B) sex acts; or

(C) masturbation, actual or simulated; or

(D) excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above.

(23) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor area occupied by the business by more than 25 percent, as the floor area exists on the effective date of this ordinance.

(24) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(A) the sale, lease, or sublease of the business;

(B) the transfer of securities or other ownership interest which constitute a direct, indirect, legal, equitable or beneficial controlling interest in the business, whether by sale, exchange, or similar means; or

(C) the establishment of a trust, gift, or other similar legal device which transfers the direct, indirect, legal, equitable or beneficial 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 to a person meeting all of the requirements of Section 27-4 hereof, who shall have notified the Chief of Police of the transfer and furnished all of the information required to be submitted in an application for a license, within 60 days of the transfer.

Section 27-2. Classification.

Sexually oriented business is defined and classified as any commercial establishment operating in the City, in whole or in part, as any one or more of the following:

- (1) adult arcade;
- (2) adult bookstore or adult video store;
- (3) adult cabaret;
- (4) adult motel;
- (5) adult motion picture theater;

- (6) adult theaters;
- (7) escort agency;
- (8) nude model studio; and
- (9) sexual encounter center.

Section 27-3. 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.

(b) An application for a license must be made on a form provided by the Chief of Police. The application form shall be sworn to and shall: (i) include the name and address of the applicant; (ii) state whether or not the applicant meets each of the requirements set forth in Section 27-4 of this Chapter; (iii) the name and address of each person required to sign the application pursuant to Section 27-3(d) of this Chapter, and the name, address and type of entity (if any) of each person or entity owned or controlled by such person which owns or controls an interest in the business to be licensed; and (iv) such other matters, consistent with this ordinance, as may be specified in the application form. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with Section 27-19 of this Chapter shall submit a diagram meeting the requirements of Section 19.

(c) The applicant must be qualified according to the provisions of this Chapter and the premises must be inspected and found to be in compliance with the law by the fire marshall, and building official.

(d) If a person who wishes to operate a sexually oriented business is an individual, he must sign an 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 directly, or indirectly through one or more intermediaries, owns or controls a 10 percent or greater interest in the business must sign and submit, as an applicant, a separate application containing all applicable information required by Section 27-3(b) of this Chapter. Each applicant must be qualified under Section 27-5 and each applicant shall be considered a licensee if a license is granted.

Section 27-4. Issuance of License.

(a) The Chief of Police shall approve the issuance of a license by the City Secretary to an applicant within 30 days after receipt of an application unless he finds one or more of the following to be true:

(1) An applicant is under 18 years of age.

(2) An applicant or an applicant's spouse is overdue in his payment to the city of taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business.

(3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

(4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this Chapter, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(5) An applicant is residing with a person who has been denied a license by the city to operate a sexually oriented business

within the preceding 12 months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding 12 months.

(6) The premises to be used for the sexually oriented business have not been approved by the fire marshall, and the building official as being in compliance with applicable laws and ordinances.

(7) The license fee required by this Chapter has not been paid.

(8) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding 12 months and has demonstrated that he or she is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(9) An applicant or the proposed establishment is in violation of or is not in compliance with Section 27-6, 27-11, 27-12, 27-14, 27-15, 27-16, 27-17, or 27-18 of this Chapter.

(10) An applicant or an applicant's spouse has been convicted of a crime:

(A) involving:

(i) any of the following offenses as described in Chapter 43 of the Texas Penal Code:

(aa) prostitution;

(bb) promotion of prostitution;

(cc) aggravated promotion of prostitution;

(dd) compelling prostitution;

(ee) obscenity;

(ff) sale, distribution,
or display of harmful
material to minor;

(gg) sexual performance
by a child;

(hh) possession of child
pornography;

(ii) any of the following
offenses as described in
Chapter 21 of the Texas Penal
Code:

(aa) public lewdness;

(bb) indecent exposure;

(cc) indecency with a
child;

(iii) sexual assault or
aggravated sexual assault as
described in Chapter 22 of the
Texas Penal Code;

(iv) incest, solicitation
of a child, or harboring a
runaway child as described in
Chapter 25 of the Texas Penal
Code;

(v) criminal attempt,
conspiracy, or solicitation to
commit any of the foregoing
offenses;

(B) for which:

(i) less than two years
have elapsed since the date of
conviction or the date of
release from confinement
imposed for the conviction,
whichever is the later date, if
the conviction is of a
misdemeanor offense;

(ii) 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

(iii) 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.

(b) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(c) An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection (a)(10) may qualify for a sexually oriented business license only when the time period required by Section 27-4(a)(10)(B) has elapsed.

Section 27-5. Fees.

(a) The annual fee for a sexually oriented business license is \$500.00.

Section 27-6. Inspection.

(a) An applicant or licensee shall permit representatives of the police department, health department, fire department, community services department, and building inspection division to inspect the premises of a sexually oriented business for the purpose of insuring 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 above described departments 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 which are currently being rented by a customer for use as a permanent or temporary habitation.

Section 27-7. Expiration of License.

(a) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 27-3. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected.

(b) When the Chief of Police denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, the Chief of Police finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.

Section 27-8. Suspension.

The Chief of Police shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee has:

(1) violated or is not in compliance with Section 27-6, 27-11, 27-12, 27-14, 27-15, 27-16, 27-17 or 27-18 of this Chapter;

(2) became legally intoxicated, as defined by laws of the State of Texas pertaining to driving while intoxicated,

while on the premises of the sexually oriented business;

(3) refused to allow an inspection of the sexually oriented business premises as authorized by this ordinance;

(4) knowingly permitted gambling by any person on the sexually oriented business premises.

Section 27-9. Revocation.

(a) The Chief of Police shall revoke a license if a cause of suspension in Section 27-8 occurs and the license has been suspended within the preceding 12 months.

(b) The Chief of Police shall revoke a license if he determines that:

(1) a licensee gave false or misleading information in the material submitted to the chief of police during the application process;

(2) a licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) a licensee or an employee has knowingly allowed prostitution on the premises;

(4) a licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) a licensee has been convicted of an offense listed in Section 27-4(a)(10)(A) for which the time period required in Section 27-4(a)(10)(B) has not elapsed;

(6) on two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 27-4(a)(10)(A), for which a conviction has been obtained and the person

or persons were employees of the sexually oriented business at the time the offenses were committed;

(7) a licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code; or

(8) a licensee is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes, or sales 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) Subsection (b)(7) does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) When the Chief of Police 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 Chief of Police finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 90 days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (b)(5), an applicant may not be granted another license until the appropriate number of years required under Section 27-4(a)(10)(B) has elapsed.

Section 27-10. Appeal.

If the Chief of Police denies the issuance of a license, or suspends or revokes a

license, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. The aggrieved party may appeal the decision of the Chief of Police to The City Council. The filing of an appeal stays the action of the Chief of Police in suspending or revoking a license until the City Council makes a final decision. The appeal shall be filed with the City Secretary.

Section 27-11. 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.

Section 27-12. Location of Sexually Oriented Businesses.

(a) A person commits an offense if he operates or causes to be operated a sexually oriented business within 1,000 feet of:

- (1) a church;
- (2) a school;
- (3) a boundary of a residential district as defined in this ordinance;
- (4) a public park adjacent to a residential district as defined in this ordinance;
- (5) the property line of a lot devoted to residential use as defined in this ordinance.

(b) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business located within 500 feet of another sexually oriented business.

(c) 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 the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(d) For the purposes of Subsection (a), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or school, or to the nearest boundary of an affected public park, residential district, or residential lot.

(e) For purposes of Subsection (b) of this section, the distance between any two sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(f) Any sexually oriented business lawfully operating on the effective date of this Chapter 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 six (6) months, unless sooner terminated for any reason or voluntarily discontinued for a period of 30 days or more. Such nonconforming uses 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 500 feet 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(es) is nonconforming.

(g) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church, school, public park, residential district, or residential lot within 1000 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

Section 27-13. Exemption From Location Restrictions.

(a) If the Chief of Police denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 27-12 of this Chapter, then the applicant may, not later than 10 calendar days after receiving notice of the denial, file with the City Secretary a written request for an exemption from the locational restrictions of Section 27-12.

(b) If the written request is filed with the City Secretary within the 10-day-limit, The City Council, shall consider the request. The City Secretary shall set a date for the hearing within 60 days from the date the written request is received.

(c) A hearing by the Council may proceed if a quorum is present. The council shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

(d) The City Council may, in its discretion, grant an exemption from the locational restrictions of Section 13 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 safety or welfare;

(2) That the granting of the exemption will not violate the spirit and intent of this Chapter of the city code;

(3) That the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban blight;

(4) That the location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of urban renewal or restoration; and

(5) That all other applicable provisions of this ordinance will be observed.

(e) The 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 council is final.

(f) If the council grants the exemption, the exemption is valid for one year from the date of the council's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 27-12 until the applicant applies for and receives another exemption.

(g) If the council denies the exemption, the applicant may not re-apply for an exemption until at least 12 months have elapsed since the date of the council's action.

(h) The grant of an exemption does not exempt the applicant from any other provisions of this ordinance other than the locational restrictions of Section 27-12.

Section 27-14. Additional Regulations For Escort Agencies.

(a) An escort agency shall not employ any person under the age of 18 years.

(b) A person commits an offense if he acts as an escort or agrees to act as an escort for any person under the age of 18 Years.

Section 27-15. Additional Regulations for Nude Model Studios.

(a) A nude model studio shall not employ any person under the age of 18 years.

(b) A person under the age of 18 years commits an offense if he appears in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

(c) A person commits an offense if he appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

(d) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

Section 27-16. Additional Regulations For Adult Theaters and Adult Motion Picture Theaters.

(a) A person commits an offense if he knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.

(b) A person under the age of 18 years commits an offense if he knowingly appears in a state of nudity in or on the premises of an adult theater or adult motion picture theater.

(c) It is a defense to prosecution under Subsections (a) and (b) of this section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

Section 27-17. 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 10 hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

(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, he rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, he rents or subrents the same sleeping room again.

(c) For purposes of subsection (b) of this section, the terms "rent" or "subrent" mean the act of permitting a room to be occupied for any form of consideration.

Section 27-18. Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's

stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Chief of Police or his designee.

(4) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an

unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in Subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (1) of this section.

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) footcandle as measured at the floor level.

(8) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above, is maintained at all times that any patron is present in the premises.

(b) A person having a duty under Subsections (1) through (8) of Subsection (a) above commits an offense if he knowingly fails to fulfill that duty.

Section 27-19. Enforcement.

(a) Except as provided by Subsection (b), any person violating Section 27-12 hereof, upon conviction, is punishable if not to exceed \$2,000.00.

(b) If the sexually oriented business involved is a nude model studio or sexual encounter center, then violation of Section

27-3(a) or Section 27-12 of this Chapter is punishable as a Class B misdemeanor.

(c) Except as provided by Subsection (b), any person violating a provision of this Chapter other than Section 27-3(a), upon conviction, is punishable by a fine not to exceed \$500.00.

(d) It is a defense to prosecution under Section 27-3(a), 27-12, or 27-15(d) that a person appearing in a state of nudity did so in a modeling class operated:

(1) by a proprietary school licensed by the State of Texas; 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 transferrable 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 person is available for viewing; and

(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 model is on the premises at any one time.

(e) It is a defense to prosecution under Section 27-3(a) or Section 27-12 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.

(f) A violation of this Chapter shall be deemed committed each day during or on which a violation occurs or continues.

Section 27-20. Injunction.

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 27-12 of this Chapter is subject to a suit for injunction as well as prosecution for criminal violations."

SECTION 2. That all persons required by this ordinance to obtain a sexually oriented business license because said business is in existence on the date of or prior to the effective date of this ordinance, are hereby granted a grace period, which shall be for a period of 90 days from the effective date of the ordinance.

SECTION 3. If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereto any person or circumstances is held invalid or unconstitutional by a Court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this Ordinance; and the City Council hereby declares it would have passed such remaining portions of this Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

SECTION 4. Section 18-7, 18-B and 18-9 of the City Code of Ordinances, pertaining to the exhibition of certain sexually explicit films in specified areas, are ~~repealed~~ repealed and deleted.

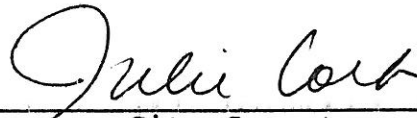
SECTION 5. The fact that the present ordinances and regulations of the City of Rockwall, Texas, are inadequate to properly safeguard the health, safety, morals, peace and general welfare of the inhabitants of the City of Rockwall, Texas, creates an emergency for the immediate preservation of the public business, property, health, safety and general welfare of the public which requires that this ordinance shall become effective from and after the date of its passage and it is accordingly so ordained.

PASSED AND APPROVED on the 5th day of July,
1988.



Mayor, City of Rockwall

ATTEST:



City Secretary,
City of Rockwall, Texas

[SEAL]

APPROVED AS TO FORM:

City Attorney,
City of Rockwall, Texas

1st reading 6/20/88

2nd reading 7/5/88