

## **SECTION 17-31. LOCATION REGULATIONS FOR SEXUALLY-ORIENTED BUSINESSES**

### **(a) PURPOSE AND INTENT:**

- (1) It is the purpose of this Ordinance to regulate the location of sexually-oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the City, and to preserve the quality, property values, integrity and character of the City's neighborhoods, and other businesses, and protect the citizens of the City of Lewisville from objectionable effects of sexually-oriented businesses.
- (2) The provisions of this Ordinance have neither the purpose nor the intent of imposing a limitation or restriction on the content of any communicative materials, including sexually-oriented materials. Similarly, it is not the intent nor the 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) Definitions:**

**Sexually-Oriented Business:** Any commercial establishment open to the public which:

- (1) Displays, distributes, issues, gives, provides, lends, delivers, transfers, transmits, circulates, disseminates, presents, exhibits, advertises, sells, rents, or leases a substantial or significant portion (20% or more); or
- (2) Utilizes a substantial or significant portion (20% or more) of its display areas, including, but not limited to, floor, shelf, rack, table, stand or case for; or
- (3) Exhibits for substantial or significant portion (20% or more) of the total presentation time, material regulated by the Texas Penal Code, Section 43.21 and/or 43.24; or
- (4) Any commercial establishment open to the public which involves employees or customers who engage in conduct which is distinguished or characterized by "specified sexual activities" or "specified anatomical areas", as defined herein.

**Sexually-Oriented Businesses:** Include, but are not limited to, any of the following businesses:

- (1) **Adult Bookstore:** An establishment having as a substantial or significant portion (20% or more) of its stock and trade, books, magazines and other periodicals which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "specified sexual activities", or "specified anatomical areas", or an establishment with a segment or section devoted to the sale or display of such material, or instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities".
- (2) **Adult Theater:** An enclosed building with a capacity of fifty (50) or more persons used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas" for observation by patrons therein.
- (3) **Adult Cabaret:** A nightclub, bar, restaurant, or a 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. Motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depicting or the description of "specified sexual activities" or "specified anatomical area".
- (4) **Sexual Encounter Center:** 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.
- (5) **Nude Modeling Studio:** 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 consideration.

**Specified Anatomical Area:** Defined as less than completely and opaquely covered:

- (1) Human genitals, pubic region; or
- (2) Buttock; or
- (3) Breast below the point immediately below the top of areola; or
- (4) Human genitals in a discernable turgid state, even if completely and opaquely covered.

**Specified Sexual Activities:** Activities defined as:

- (1) Human genitals in the state of sexual stimulation or arousal; or
- (2) Acts of human masturbation, sexual intercourse or sodomy; or
- (3) Fondling or other erotic touching of human genitals, pubic region, buttock, or breast.

**Nudity or a State of Nudity:** The appearance of a human bare buttock, human genitals, or human breast.

**Person:** An individual, proprietorship, partnership, corporation, association, or other legal entity.

**Semi-Nude:** A state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the breast, as well as portions of the body covered by supporting straps or devices.

**Establishment:** Establishment means and includes any of the following:

- (1) The opening or commencement of any sexually-oriented business as a new business;
- (2) The conversion of an existing business whether or not a sexually-oriented business;
- (3) The addition of any sexually-oriented business to any other existing sexually-oriented business; or
- (4) The relocation of any sexually-oriented business.

**Transfer of Ownership or Control** of an adult entertainment establishment means and includes any of the following:

- (1) The sale, lease or sublease of the business;
- (2) The transfer of securities which 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 which transfers the ownership or control of business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

**Church:**

- (1) A structure used primarily for the purpose of engaging in religious worship or promoting the spiritual development or well-being of individuals; and
- (2) A structure used by an organization operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment or compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of public gain; and
- (3) A structure used by an organization whose charter, bylaws or other regulations adopted by the organization to govern its affairs:
  - a. Pledges its assets for use in performing the organization's religious functions; and
  - b. Directs that on discontinuance of the organization by dissolution or otherwise, the assets are to be transferred to the State of Texas or to a charitable, educational, religious or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.
- (4) Use of a structure for occasional or secular purposes other than religious worship does not result in loss of the status as a church if the primary use of the structure is for religious worship and all income from the other use is devoted exclusively to the maintenance and development of the structure as a place of religious worship.
- (5) For the purpose of this section, "religious worship" shall mean individual or group ceremony or meditation, education or fellowship, the purpose of which is to manifest or develop reverence, homage, and commitment in behalf of a religious faith.

**Hospital:** An institution or place where sick or injured in-patients are given medical or surgical care, either at public (charity) or private expense.

**Public Park:** Any park, playground, greenbelt, nature trail, recreational facility, or wildlife conservation and management area, located within the City of Lewisville and owned, controlled, or operated by any school district, municipality, county, state or federal government, which is open for use by the general public.

**School:** A facility or place under public, private, or denominational sponsorship having a curriculum equivalent to a public elementary or secondary school, including elementary, middle, or junior high, and senior high schools, but excluding trade or commercial schools.

**Civic Facility:** Any place or facility owned, controlled, or operated by any school district, municipality, county, state, or federal government which is open for use by the general public. Civic facilities shall include amphitheaters, auditoriums, cemeteries, libraries, museums, post offices, public offices and administrative buildings, public plazas and open space, recreational centers and facilities, stadiums, arenas, convention or civic centers; but excluding storage and maintenance facilities, facilities for public utilities, including substations, treatment, generation, or pump facilities, police or fire stations, or landfills or disposal facilities.

(c) **Location:**

- (1) It shall be a violation of this Ordinance to locate or operate a sexually-oriented business, as defined herein, within the City of Lewisville:
- a. Within one thousand (1,000) feet of the district boundary line of any residential zoning district;
  - b. Within one thousand (1,000) feet of any other sexually-oriented business;
  - c. Within one thousand (1,000) feet of the property line of any church, hospital, public park, school or civic facility, day care center, day nursery or kindergarten legally operating under the zoning laws of the City of Lewisville;
  - d. Within one thousand (1,000) feet of the property line of a lot devoted to residential use.
- (2) For the purpose of this section, measurements 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 sexually-oriented business is located to the nearest property line of the premises of a church, hospital, school, civic facility, day care center, day nursery, kindergarten, lot devoted to residential use, or to the nearest boundary of a district restricted to residential use by the Zoning Ordinance of the City, or to the nearest boundary of a public park.

**(d) Compliance With Other Ordinances:** Sexually-oriented businesses shall be subject to, and comply with, the rules and provisions of the Building Code, Fire Code, and any other applicable code or ordinance of the City of Lewisville. Where conflict exists between the prescriptions established in this Ordinance and the requirements of the Building Code, Fire Code, or other applicable Code or Ordinance of the City of Lewisville, then the more restrictive requirement shall apply.

**(e) Exterior Signs:** Exterior signs located on the building or premises of a sexually-oriented business shall conform to the requirements of the Sign Ordinance of the City of Lewisville. Such exterior sign shall not advertise, either graphically or verbally, either by explicit or literal expression, connotation, or implied reference, any specified sexual activity or specified anatomical area, as defined herein.