

AN ORDINANCE 101022

**AMENDING ORDINANCE NUMBER 100190 AND SECTIONS OF CHAPTER 21, ARTICLE IX OF THE CITY CODE; STATING FINDINGS THAT RECOGNIZE THE ADVERSE SECONDARY EFFECTS UPON THE PUBLIC'S HEALTH, SAFETY, AND WELFARE RESULTING FROM THE ACTIVITIES OF HUMAN DISPLAY ESTABLISHMENTS, OF PUBLIC PLACES WHERE SEMI-NUDE TOPLESS DANCING AND FULLY NUDE DANCING OCCUR, AND OF PUBLIC PLACES WHERE A STATE OF NUDITY OR SEMI-NUDITY GENERALLY EXISTS; PROHIBITING NUDITY OR SEMI-NUDITY OR A STATE OF NUDITY OR SEMI-NUDITY IN A PUBLIC PLACE; ESTABLISHING EXCEPTIONS TO PROSECUTION; ESTABLISHING A LICENSING SCHEME FOR HUMAN DISPLAY ESTABLISHMENTS WHEREBY COMPLIANCE WITH THE SCHEME SERVES AS AN EXCEPTION TO PROSECUTION; SETTING PERMIT FEES OF \$50.00 TO \$375.00; PROVIDING PENALTIES AND ENFORCEMENT INCLUDING FINES UP TO \$2,000 PER VIOLATION; AUTHORIZING SUIT TO ENJOIN ILLEGAL ACTIVITY AND TO ENFORCE THIS ORDINANCE; PROVIDING A SEVERABILITY CLAUSE AND AN EFFECTIVE DATE.**

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**WHEREAS**, the City Council finds that it has a governmental interest in protecting the general welfare, health, safety, and order of the citizens of the City;

**WHEREAS**, the City Council finds that public places where a state of nudity, semi-nudity or specified sexual acts occur or exists most frequently are at Human Display Establishments, including but not limited to, topless bars and fully nude dance establishments and adult stores;

**WHEREAS**, the City Council finds that prostitution, violent crimes, and crimes against persons, promotion of prostitution, indecent exposure, lewd conduct, illegal drug possession, and illegal drug dealing occur with greater frequency at or near the aforementioned public places;

**WHEREAS**, the City Council finds that the managers and owners of the aforementioned public places either have repeatedly failed or have demonstrated an inability to ensure that prostitution, violent crimes, and crimes against persons, indecent exposure, lewd conduct, illegal drug possession, and illegal drug dealing do not occur at or near said public places;

**WHEREAS**, the City Council finds that managers or owners of the aforementioned public places have repeatedly failed to monitor or demonstrated an inability to monitor the patrons of said places and have allowed these patrons to engage in specified sexual activity while on said premises of said places;

**WHEREAS**, the City Council finds that for the safety of law enforcement and patrons, the interiors of the aforementioned public places should be easily accessible to law enforcement officers who are performing lawful investigations on said premises;

**WHEREAS**, the City Council finds that the interiors of these public places should be arranged and constructed in such a fashion so as to provide owners and managers and law enforcement a clear and unobstructed view of the actions of all patrons and employees so as to discourage impermissible, unlawful or illegal conduct;

**WHEREAS**, the City Council finds that there are adverse secondary effects resulting from public places where a state of nudity, semi-nudity, or specified sexual acts occur or exist;

**WHEREAS**, the City Council finds that Human Display Establishments offering a public place where a state of nudity, semi-nudity, or specified sexual acts occur or exist pose public health risks by engaging in unsanitary disposition of bodily secretions thereby posing a threat of spreading infection or disease;

**WHEREAS**, the City Council finds that the aforementioned public places serve as an attractive nuisance to minors;

**WHEREAS**, the City Council finds it has a governmental interest in protecting minors from exposure to the aforementioned public places;

**WHEREAS**, the City Council finds that various municipalities and counties situated outside its jurisdiction have experienced similar adverse secondary effects resulting from public places where a state of nudity, semi-nudity, or specified sexual acts occur or exist, including but not limited to:

the City of Jackson, Mississippi,  
the City of Erie, Pennsylvania,  
the City of Phoenix, Arizona,  
the City of Tucson, Arizona,  
the City of Garden Grove, California,  
the City of Los Angeles, California,  
the City of Whittier, California,  
Adams County, Colorado,  
Manatee County, Florida,  
the City of Indianapolis, Indiana,  
the City of Minneapolis, Minnesota,  
the City of Saint Paul, Minnesota,  
the City of Las Vegas, Nevada,  
the City of Ellicottville, New York,  
the City of Islip, New York,  
the City of New York, New York,  
New Hanover County, North Carolina,  
the City of Cleveland, Ohio,  
the City of Oklahoma City, Oklahoma,  
Hamilton County Tennessee,  
the City of Amarillo, Texas,  
the City of Austin, Texas,  
the City of Beaumont, Texas,  
the City of Cleburne, Texas,  
the City of Dallas, Texas,  
the City of El Paso, Texas,  
the City of Houston, Texas,  
the City of Newport News, Virginia,  
the City of Bellevue, Washington,  
the City of Des Moines, Washington  
the City of Seattle, Washington; and,  
the City of St. Croix, Wisconsin;

**WHEREAS**, the City Council finds that similar adverse secondary effects have impacted the City of Jackson, Mississippi as described at J&B Entm't, Inc. v. City of Jackson, Miss., 152 F.3d 362 (5th Cir. 1998); the City of Erie, Pennsylvania as described at City of Erie v. Pap's A.M., 529 U.S. 277 (2000); and other cities as described in City of Los Angeles v. Alameda Books, Inc., 535 U.S. 425 (2002); Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); City of Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986); and Young v. American Mini Theatres, Inc., 427 U.S. 50 (1976);

**WHEREAS**, the City Council finds that reducing the adverse secondary effects described herein is in the general welfare and best interest of the citizens and that the Ordinance which follows will substantially serve the City's interest in reducing these adverse secondary effects;

**WHEREAS**, the City Council finds that it is in the general welfare and best interest of the citizens that it prohibit the state of nudity and semi-nudity at a public place by adopting the concept contained in an ordinance of the City of Erie, Pennsylvania and approved by the United States Supreme Court in City of Erie v. Pap's A.M., 529 U.S. 277 (2000) and by adopting an exception to the ban on semi-nudity for the purpose of regulating environments conducive to those adverse secondary effects described in City of Erie v. Pap's A.M. and J&B Entm't, Inc. v. City of Jackson, Miss., 152 F.3d 362 (5th Cir. 1998) and as defined herein;

**WHEREAS**, the City Council finds that it previously adopted ordinances to limit and restrict nudity and similar activities, to establish zoning requirements for public places where a state of nudity and similar activity is allowed, and to provide penalties for violations of said ordinances;

**WHEREAS**, the City Council finds that the Legislature of Texas has declared in Section 243.001 of the Texas Local Government Code that the "unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity";

**WHEREAS**, the City Council finds that it does not intend to discriminate on the basis of gender, but to enact an ordinance which addresses the adverse secondary effects of Human Display Establishments, which make gender-based distinctions;

**WHEREAS**, the City Council finds that it does not intend the closure of businesses that are engaged in conveying erotic messages through dance;

**WHEREAS**, the City Council finds that it does not intend to prohibit any speech activities protected by the First Amendment of the United States Constitution, but it does intend to enact a content-neutral ordinance to address the adverse secondary effects resulting from nudity, semi-nudity, and specified sexual acts at a public place;

**WHEREAS**, the City Council finds that it is in the general welfare and best interest of the citizens that it make distinctions in regulation between those Human Display Establishments where a state of nudity, semi-nudity or specified sexual activities occur or exist and other establishments due to the greater health risks posed by the unsanitary disposition of bodily secretions associated with a state of nudity, semi-nudity or specified sexual activities;

**WHEREAS**, the City Council finds that the authority to promulgate these regulations includes Article XI, Section 5 of the Texas Constitution; Subchapter E of Chapter 51 of the Texas Local Government Code; Chapter 54 of the Texas Local Government Code; Chapter 243 of the Texas Local Government Code; the City Charter; the United States Supreme Court decisions of City of Erie v. Pap's A.M., 529 U.S. 277 (2000) and Barnes v. Glen Theatre, Inc., 501 U.S. 560 (1991); and the following United States Circuit Court decisions: N.W. Enterprises, Inc. v. City of Houston, 372 F.3d 333 (5th Cir. 2004), cert. denied, 125 S.Ct. 416 (2004); N.W. Enterprises, Inc. v. City of Houston, 352 F.3d 162 (5th Cir. 2003), cert. denied, 125 S.Ct. 416 (2004); SOB, Inc. v. County of Benton, 317 F.3d 856 (8th Cir. 2003), cert. denied, 540 U.S. 820 (2003); Baby Dolls Topless Saloons, Inc. v. City of Dallas, Tex., 295 F.3d 471 (5th Cir. 2002), cert. denied, 537 U.S. 1088 (2002); J&B Entm't, Inc. v. City of Jackson, Miss., 152 F.3d 362 (5th Cir. 1998);

**WHEREAS**, the City Council finds that a copy of the studies performed in the municipalities and counties referred to herein, copies of the cases and statutes referred to herein, along with pertinent affidavits, presentations made to Council, statistical crime analysis for the City of San Antonio and other materials related to this ordinance are on file in the City Clerk's Office;

**WHEREAS**, the City Council finds the following regulations substantially advance the City's interest expressed herein above;

**WHEREAS**, the City Council intends and finds that the regulatory scheme, terms, and conditions herein are in accordance with the United States Constitution and the Texas Constitution; and,

**WHEREAS**, the City Council finds that personal information — such as home addresses, identification numbers, and other information of a similar type — obtained in the course of the permitting process hereinafter described, is not public information and may be safeguarded from public disclosure pursuant to Chapter 552 of the Texas Government Code, the Fifth Circuit decision in N.W. Enterprises, Inc. v. City of Houston, 352 F.3d 162, 194-5 (5th Cir. 2003), cert. denied, 125 S.Ct. 416 (2004) and the opinion of the Texas Attorney General at Tex. Att'y Gen. ORD-673 (2001) — and like opinions of the Texas Attorney General;

**NOW, THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

SECTION 1. Ordinance Number 100190 and the following sections of Chapter 21, Article IX of the City Code, entitled "Nudity and Semi-Nudity Prohibited at Public Places and Licensing of Human Display Establishments," shall be amended to read as indicated:

A. Section 21-200. Definitions.

The definitions contained at Section 35, Appendix A of the Unified Development Code shall control in all zoning matters. The definitions contained in this Article shall control in prohibiting the conduct proscribed by the provisions of this Article and shall control in the licensing scheme contained in this Article. When used in this Article, the following words, terms and phrases shall have the meaning ascribed to them, except where the context clearly indicates a different meaning.

*Act.* The term "act" shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Actor.* The term "actor" shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Adult store.* The term "adult store" shall have the same meaning as "Human Display Establishment".

*Adverse secondary effects.* The term "adverse secondary effects" shall mean any one of the following conditions caused by the existence of or geographic proximity to a Human Display Establishment:

- (1) The existence of violations of law, including but not limited to: prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity, sale or distribution or display of material harmful to a minor, sexual performance by a child, employment harmful to children, possession or promotion of child pornography, public lewdness, indecent exposure, indecency with a child, sexual assault, aggravated sexual assault, pandering, loitering, trespass, or any violation of Chapter 481 of the Texas Health and Safety Code, criminal attempt to conduct a violation of law, criminal conspiracy to conduct a violation of law, or solicitation to conduct a violation of law.
- (2) Diminution of surrounding property value.
- (3) Unsanitary health conditions resulting from improper disposition of bodily secretions thereby posing a threat of spreading infection or disease.

- (4) Those adverse secondary effects found to exist by the Texas Legislature at Section 243.001(a) of the Texas Local Government Code.
- (5) Those adverse secondary effects described by the United States Fifth Circuit Court in J&B Entm't, Inc. v. City of Jackson, Miss., 152 F.3d 362 (5th Cir. 1998) and by the United States Supreme Court in City of Erie v. Pap's A.M., 529 U.S. 277 (2000) and by the City of Jackson, Mississippi and the City of Erie, Pennsylvania as described in the legal opinions therein.

*Alcoholic beverage.* The term "alcoholic beverage" shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Application.* The term "application" shall mean any request for permit that is completed accurately and filed in compliance with the provisions of this Article.

*Application Amendment.* The term "application amendment" shall mean a document wherein is contained a change to the information provided on an application or renewal application.

*Applicant.* The term "applicant" shall mean an individual or Owner-Operator who files an application.

*Association.* The term "association" shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Background Investigation.* The term "Background Investigation" shall mean the review, analysis, and inquiry made by the Chief of Police in response to an application for a permit.

*Chief or Chief of Police.* The term "Chief" or "Chief of Police" shall mean the Director of the San Antonio Police Department or such person as may be authorized by him to carry out tasks such as those set forth herein.

*Commence an action.* The term "commence an action" shall mean to file a cause of action with a court of any jurisdiction, to pursue an appeal in any Appellate or Supreme Court and/or to obtain a settlement of a cause of action.

*Closed corporation.* The term "closed corporation" shall mean a corporation whose stock is not offered or sold on an exchange.

*Community supervision.* The term “community supervision” shall mean the same as that term is defined at Article 42.12, Section 2 of the Texas Code of Criminal Procedure or as may hereafter be amended therein.

*Configuration or configured.* The term “configuration” or “configured” shall mean the interior layout or interior construction design of a Human Display Establishment.

*Contested case.* The term “contested case” or “contested case hearing”, as used in this Article, shall mean the following:

A contested case is a proceeding in which the legal rights, duties, or privileges of a party are to be determined by the hearing officer after an opportunity for an adjudicative hearing.

*Conviction.* The term “conviction”, as used in this Article, shall mean the written declaration of a court, signed by the trial judge, that the defendant has been adjudged guilty of the offense in question, regardless of the punishment assessed. The term “convicted of” shall mean the person has a conviction on his record for the offense or activity stated.

*Corporation.* The term “corporation” shall mean a business entity created pursuant to statute and capable of issuing common or preferred stock. It shall include a closed corporation. In addition, the term shall also mean the same as that term is defined at Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Culpable mental state.* Unless specifically stated otherwise, the culpable mental state for a violation of this Article is recklessness, as that term is defined by Section 6.03 of the Texas Penal Code.

*Customer.* The term “customer” shall mean any individual who:

- (1) Enters a Human Display Establishment or any portion thereof by the payment of an admission fee, membership fee or any other form of consideration or gratuity;
- (2) Enters a Human Display Establishment or any portion thereof and purchases, rents, or otherwise partakes of any merchandise, goods, food, drink, entertainment or other services offered therein; or,
- (3) Enters a Human Display Establishment or any portion thereof based upon a private membership to a club or as a guest of an owner, operator, manager, floor-manager, employee, dancer, entertainer, or model.



*Dancer.* The term “dancer” shall have the same meaning as the term “entertainer”.

*Denial of Revocation/Suspension.* The term “Denial of Revocation/Suspension” shall mean a document wherein is contained the refusal of the hearing officer to revoke a permit and the reasons for the refusal.

*De novo.* The term “*de novo* review” shall mean the same as that term is defined by Texas courts or in Texas jurisprudence regarding the standard of proof used in review of decisions in administrative proceedings.

*Diagram.* The term “diagram” shall mean as follows:

A drawing sufficient to depict each area of a Human Display Establishment, whether open or closed, accessible or inaccessible to customers or patrons, including but not limited to, each entrance, exit, room, bar, kitchen, office, stairway, or lavatory. The drawing must indicate the square footage of the entire establishment, along with square footage of each enclosed area within the establishment. Each area should also be labeled by usage.

*Dressing room.* The term “dressing room” shall mean an enclosed area where entertainers are allowed to change clothes and where customers or patrons shall be prohibited from viewing or entering.

*Employee.* The term “employee” shall mean:

- (1) Any person who renders any service whatsoever to any customer of a Human Display Establishment, works in or about a Human Display Establishment, or conducts any business in and for a Human Display Establishment; and, either receives or expects to receive compensation from the operator, owner, manager, floor-manager, or customers of the Human Display Establishment.
- (2) Excepted from this definition of “employee” are the following: Providers of legitimate accounting services, legal services, deliveries of goods for immediate use by the Human Display Establishment, and maintenance services for the Human Display Establishment.

- (3) By way of example, rather than limitation, the term “employee” includes the operator and other management personnel, clerks, dancers, models and other entertainers, food and beverage preparation personnel, door persons, bouncers, security personnel, and cashiers. This definition is intended to include the conventional employer-employee relationships, independent contractor relationships, agency relationships, and any other scheme or system whereby the “employee” has an expectation of receiving compensation, tips, or other benefits from the Human Display Establishment, operator, owner, manager, floor-manager, or customers in exchange for services provided.

*Entertain or entertaining.* The term “entertain” or “entertaining” shall mean the act of knowingly or intentionally posing, knowingly or intentionally dancing, or knowingly or intentionally appearing for the purpose of being observed or viewed for any reason while in a state of nudity, semi-nudity or while engaging in specified sexual activities. The term shall also include the above acts if the person posing, dancing, or appearing would be semi-nude but for a device used as a cover over the nipples and/or areola of the female breast.

*Entertainment.* The term “entertainment” shall mean the noun of the term “entertain”.

*Entertainer.* The term “entertainer” shall mean any individual, male or female, who poses, dances, or knowingly or intentionally appears for the purpose of being observed or viewed for any reason by any individual while in a state of nudity, semi-nudity, or while engaging in specified sexual activities. The term shall also include an individual who would be semi-nude but for a device used as a cover over the nipples and/or areola of the female breast.

*Entertainer’s Permit.* The term “Entertainer’s Permit” shall mean a license issued to an individual as lawful authority to act as an Entertainer in a Human Display Establishment.

*File or filed or filing.* The term “file” or “filed” or “filing” shall mean personal delivery to the Chief of Police at the San Antonio Police Headquarters or personal delivery to the Clerk of a Court.

*Floor-Manager.* The term “floor-manager” shall mean any individual holding a position in a Human Display Establishment with the responsibility for direct supervision of the operation of the Human Display Establishment and for monitoring and observing the areas of the Human Display Establishment to which customers or patrons are admitted at times during which the Human Display Establishment is open for business; or, at times during which customers or patrons are on the premises of the Human Display Establishment.

*Floor-Manager's Permit.* The term "Floor-Manager's Permit" shall mean a license issued to an individual as lawful authority to act as a floor-manager for a Human Display Establishment.

*Form.* The term "form" shall mean one or more pages wherein exist a uniform method of eliciting from an applicant the information required for an application in accordance with the provisions of this Article. The referenced pages shall include a verification or jurat where the applicant can affirm under oath and on the basis of personal knowledge that the information provided is accurate and complete; however, the referenced pages shall specifically exclude the affidavit required of an Owner-Operator.

*Hearing Officer.* The term "Hearing Officer" shall mean the judge of the City of San Antonio Municipal Court assigned to preside over environmental and code enforcement matters. If that judge is unable to fulfill this task for any reason, or if no judge is so assigned, then the Presiding Municipal Court Judge shall designate a judge to act as the Hearing Officer. The "Hearing Officer" shall exercise those powers authorized under the Texas Local Government Code, the Charter of the City of San Antonio, and the Municipal Code of the City of San Antonio, as appropriate in the furtherance of his or her duties.

*Human Display Establishment.* The term "Human Display Establishment" shall mean those premises, including those subject to regulation under Chapters 54 or 243 of the Texas Local Government Code, as amended, wherein there is conducted the business of furnishing, providing or procuring dancers, entertainers, or models who appear live at said premises in a state of nudity or semi-nudity, or while performing specified sexual activities. This term shall also include premises wherein dancers, entertainers, or models appear live, if said dancers, entertainers, or models would appear semi-nude but for a device used as a cover over the nipples and/or areola of the female breast.

- (1) The following are examples of adult stores: gentleman's club, topless club, sex parlor, nude studio, lingerie modeling studio, love parlor.
- (2) Excepting the prohibition against nudity and semi-nudity, premises used solely for the following purposes are exempt from regulation under this Article: bookstores, movie theaters, or video stores.

*Human Display Permit.* The term "Human Display Permit" shall mean the original license issued to an Owner-Operator of a Human Display Establishment as lawful authority to operate a Human Display Establishment.

*Identify.* The term "identify" shall mean the act of stating or declaring an identity.

*Identity.* The term “identity” shall mean: the true and correct name, address, telephone number, and facsimile number of the pertinent association, corporation, individual, operator, person, or owner.

*Individual.* The term “individual” shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Interior door.* The term “interior door” shall mean any opening between interior rooms through which foot traffic may occur and which serves as an entrance or an exit between the rooms, excluding electrically cooled rooms used as food storage devices, liquor cabinets, and food pantries.

*Invest.* The term “invest” shall mean to provide money, bartering, or in-kind services toward a Human Display Establishment in anticipation or expectation of generating a profit or incurring a tax benefit at some time in the future.

*Investment.* The term “investment” shall mean the noun of the term “invest”.

*Lavatory.* The term “lavatory” shall mean a room where exists a sink for washing hands and a toilet.

*Manager.* Unless otherwise specified herein, the term “manager” shall mean any individual who supervises or directs any employee, floor-manager, contractor, or sub-contractor of a Human Display Establishment.

*Manager’s Affidavit.* The term “Manager’s Affidavit” shall mean:

A sworn statement based upon personal knowledge by a manager of a Human Display Establishment wherein is stated:

- (1) That the attached copy of the photographic identification of an applicant for a Temporary Entertainer’s Permit is a true and correct copy of the photographic identification of said applicant;
- (2) The identity of the Human Display Establishment at which the applicant shall perform under the Temporary Entertainer’s Permit;
- (3) The dates upon which the applicant is scheduled to perform; and,
- (4) The information in the attached application is true and correct and the applicant is qualified to receive the requested permit.

*Manager's Permit.* The term "Manager's Permit" shall mean a license issued to an individual as lawful authority to act as a Manager of a Human Display Establishment.

*Model.* The term "model" shall have the same meaning as the term "entertainer".

*Notice or Notice of Rejection.* The term "notice" or "Notice of Rejection" shall mean a document wherein the Chief of Police informs an individual that an application or renewal application is denied and also specifies therein the reasons for the rejection.

*Notice of Intention to Revoke/Suspend Permit.* The term "Notice of Intention to Revoke/Suspend Permit" shall mean a document wherein the Chief of Police notifies a permit holder of his intention to revoke the permit.

*Notice of Revocation or Notice of Revocation/Suspension.* The term "Notice of Revocation" or "Notice of Revocation/Suspension" shall mean a document wherein is contained the decision of the hearing officer to revoke/suspend a permit based upon the allegations contained in a Notice of Intention to Revoke/Suspend Permit.

*Nude or nudity or state of nudity.* The term "nude" or "nudity" or "state of nudity" shall mean a state of dress which fails to fully and opaquely cover the anus, crevice of the buttocks, genitals, pubic region, or perineum anal region, regardless of whether the nipple and areola of the human breast are exposed.

*Operator.* The term "operator" shall mean the following:

- (1) An individual who owns a Human Display Establishment, if the establishment is a sole proprietorship or if the establishment is an assumed name of an individual;
- (2) Each individual partner of a general partnership, if the partnership owns any interest in a Human Display Establishment;
- (3) Each individual who is a general partner or a limited partner of a limited partnership, if the partnership owns any interest in a Human Display Establishment;
- (4) Each individual who is an officer or director of a corporation, if the corporation owns any interest in a Human Display Establishment;
- (5) Each association, individual, or person who is a stockholder of a closed corporation, if the closed corporation owns any interest in a Human Display Establishment;

- (6) Each manager, as defined in the Texas Limited Liability Company Act, of a limited liability company, if the company owns any interest in a Human Display Establishment; and,
- (7) Each association, if the association owns any interest in a Human Display Establishment.

*Owner.* The term “owner” shall mean each association, individual, person, partner, closed corporation, corporation, business entity, or manager (as defined by the Texas Limited Liability Company Act) who owns an interest in a Human Display Establishment.

*Owner-Operator.* The term “owner-operator” shall mean:

- (1) That owner or each member of a group of owners whose aggregate ownership interest in a Human Display Establishment equals or exceeds thirty-five percent (35.0%); and,
- (2) Who have been designated by a Human Display Establishment pursuant to the provisions of this Article as being a member of the class authorized to apply for and, if otherwise qualified, receive a Human Display Permit.

*Patron.* The term “patron” shall have the same meaning as the term “customer”.

*Permit.* The term “permit” shall mean either a Human Display Permit, a Manager’s Permit, a Floor-Manager’s Permit, an Entertainer’s Permit, a Temporary Manager’s Permit, a Temporary Floor-Manager’s Permit, a Temporary Entertainer’s Permit, or any other permit defined in this Article, depending upon the context used.

*Permit holder.* The term “permit holder” shall mean the individual who applied for and received a Manager’s Permit, Floor-Manager’s Permit, Entertainer’s Permit, Temporary Manager’s Permit, Temporary Floor-Manager’s Permit, Temporary Entertainer’s Permit, or, in the case of a Human Display Permit, the Owner-Operator of the Human Display Establishment. It shall also include any individual who applied for and received any permit defined in this Article, depending upon the context used.

*Person.* The term “person” shall mean the same as that term is defined in Section 1.07 of the Texas Penal Code or as may hereafter be amended therein.

*Public place.* The term “public place” shall mean all locations owned by or open to the general public inclusive of the sheds, enclosures, buildings, improvements, and fixtures upon the location. This term includes but is not limited to any Human Display Establishment, restaurant, tavern, bar, club or other establishment. This term also includes those locations that are restricted to specific members, restricted to adults, or restricted to patrons invited to the location, whether or not an admission charge is levied.

*Renewal application.* The term "renewal application" shall mean an application to re-establish a valid and existing permit for another term.

*Renewal permit.* The term “renewal permit” shall mean a valid and existing permit that is re-established for another term.

*Respondent.* The term “respondent” shall mean:

- (1) That individual or Owner-Operator who holds:
  - (a) a Human Display Permit;
  - (b) a Manager’s Permit;
  - (c) a Floor-Manager’s Permit; or
  - (d) an Entertainer’s Permit; and,
- (2) Defends his own permit in a revocation/suspension proceeding or appeal thereof.

*Revocation proceeding or revocation/suspension proceeding.* The term “revocation/suspension proceeding” shall mean the process by which any permit required herein is or may be revoked or suspended.

*Semi-nude or semi-nudity or state of semi-nudity.* The term “semi-nude” or “semi-nudity” or “state of semi-nudity” shall mean the exposure of the post puberty female breast so long as the following anatomical areas of an individual are fully and opaquely covered: the anus, genitals, pubic region and the perineum anal region of the human body. The term “semi-nude” shall also mean the exposure of the post puberty female breast if any device is worn as a cover over only the nipples and/or areola of the post puberty female breast so long as the following anatomical areas of an individual are fully and opaquely covered: the anus, genitals, pubic region and the perineum anal region of the human body.

*Specified sexual activities.* The term “specified sexual activities” shall mean sexual stimulation or arousal of an individual’s genitals; masturbation of one’s self or of another individual; sexual intercourse between individuals; sodomy; fellatio; cunnilingus; bestiality; fondling or other erotic touching of the anus, genitals or the pubic region; fondling or other erotic touching of the post puberty female breast of another; or excretory functions performed in conjunction with any of the preceding acts.

*Specified criminal act.* The term “specified criminal act” shall mean any of the following offenses:

- (1) as described in Chapter 21 of the Texas Penal Code or as may hereafter be amended therein:
  - (a) public lewdness;
  - (b) indecent exposure; or,
  - (c) indecency with a child.
- (2) as described in Chapter 22 of the Texas Penal Code or as may hereafter be amended therein:
  - (a) sexual assault; or,
  - (b) aggravated sexual assault.
- (3) as described in Chapter 43 of the Texas Penal Code or as may hereafter be amended therein:
  - (a) prostitution;
  - (b) promotion of prostitution;
  - (c) aggravated promotion of prostitution;
  - (d) compelling prostitution;
  - (e) sale, distribution or display of harmful material to a minor;
  - (f) sexual performance by a child;
  - (g) employment harmful to a child; or,
  - (h) possession or promotion of child pornography.
- (4) as described in Chapter 481 of the Texas Health and Safety Code or as may hereafter be amended therein.



- (5) as described at Chapter 15 of the Texas Penal Code or as may hereafter be amended therein:
- (a) criminal attempt to conduct any of the aforementioned offenses;
  - (b) criminal conspiracy to conduct any of the aforementioned offenses;
  - (c) criminal solicitation to conduct any of the aforementioned offenses; or,
  - (d) criminal solicitation of a minor to conduct any of the aforementioned offenses that are also identified in Section 15.031 of the Texas Penal Code.

*Stage name.* The term “stage name” shall mean an alias used by an entertainer during the course and scope of entertaining.

*Substantial evidence.* The term “substantial evidence” shall mean the same as that term is defined by Texas courts or in Texas jurisprudence regarding the standard of proof used in review of decisions in administrative proceedings.

*Temporary Entertainer.* The term “temporary entertainer” shall mean an individual who holds a Temporary Entertainer’s Permit.

*Temporary Entertainer’s Permit.* The term “Temporary Entertainer’s Permit” shall mean an Entertainer’s Permit that is valid for a reduced period of time, as set forth in this Article.

*Temporary Floor-Manager.* The term “Temporary Floor-Manager” shall mean an individual who holds a Temporary Floor-Manager’s Permit.

*Temporary Floor-Manager’s Permit.* The term “Temporary Floor-Manager’s Permit” shall mean a Floor-manager’s Permit that is valid for a reduced period of time, as set forth in this Article.

*Temporary Manager.* The term “Temporary Manager” shall mean an individual who holds a “Temporary Manager’s Permit.

*Temporary Manager’s Permit.* The term “Temporary Manager’s Permit” shall mean a Manager’s Permit that is valid for a reduced period of time, as set forth in this Article.

B. Section 21-201. Configuration of Buildings.

An individual or entity violates this Article if he operates a Human Display Establishment which fails to meet the configuration requirements in this Section. The layout or interior construction design of any such establishment must include each of the following:

- (1) Excepting a door that may serve as an entrance or exit to the building of the Human Display Establishment and excepting the interior of lavatories, for each area to which a customer or patron on the premises is allowed access, the following requirements are applicable:
  - (a) Each interior door must be made of clear glass that is no thicker than one-half (0.50) inch or of wood that is no thicker than one and a half (1.5) inches.
  - (b) All wooden doors must contain a clear glass window that is no thicker than one-half (0.50) inch and at least twelve (12.0) inches wide by twelve (12.0) inches high. Said window must be unobstructed at all times and situated on the door at a height no less than four and one half (4.5) feet and no greater than six (6.0) feet from the ground.
  - (c) Excepting the doorknob, no interior door may be made of metal, reinforced by metal, or be thicker than allowed herein.
  - (d) No interior door may have more than one throw from the doorknob or in any other manner latch from more than one place into a striker plate whenever the door is closed.
  - (e) Excepting one lock that forms part of the doorknob and is neither a deadbolt nor chain, no interior door may have a deadbolt, chain, and any type of lock.
  - (f) Each interior doorframe to a wooden door may not be reinforced with any type of metal, excepting a cubic area that is part of the striker plate in the dimensions of not more than: six (6.0) inches long by two (2.0) inches wide by six (6.0) inches high.
- (2) Excepting conduits for plumbing, heating, air conditioning, ventilation, electrical service, cable or satellite television, or food or drink service, no opening is allowed:

- (a) in any wall;
  - (b) partition;
  - (c) screen;
  - (d) lavatory stall;
  - (e) dressing room; or,
  - (f) any other barrier between viewing areas or toilettes.
- (3) The conduits for plumbing, heating, air conditioning, ventilation, electrical service, and cable or satellite television must be so screened or otherwise configured to prevent their use as openings that would allow any portion of an individual to penetrate the wall or barrier between the viewing areas or toilettes.
- (4) During hours of operation, the light fixtures shall be kept on at a sufficient intensity to illuminate by not less than one foot-candles as measured at four (4.0) feet above the level of the floor and at every area where customers or patrons are allowed.
- (5) Excepting the lavatories, no area to which patrons or customers have access, shall be less than 300 square feet.

C. Section 21-202. Remedial Effect.

The provisions of this Article are remedial and they shall, notwithstanding any other provision of the City's code, be construed to apply to each association, corporation, individual, operator, owner, owner-operator, person, or Human Display Establishment, now existing and as hereafter shall exist.

D. Section 21-203. Supplemental Effect.

The provisions of this Article are supplemental and shall be cumulative with all other laws and ordinances applicable in any manner to an association, corporation, individual, operator, owner, owner-operator, person, or Human Display Establishment, now existing and as hereafter shall exist.

E. Section 21-204. Construction of Terms.

Whenever the context requires herein, the following construction shall apply: the use of the masculine shall mean the feminine and vice versa; the use of the singular shall mean the plural and vice versa; and, the reference to any class of individual or person shall include each individual or person within the class, unless specifically excepted by the text of the reference. For example, when referencing an "owner-operator", each individual or person within the class of "owner-operator" is being referenced, unless the text of the section specifically excepts all but one within the class.

F. Section 21-300. Nudity and Semi-Nudity Prohibited in a public place.

- (1) It shall be unlawful for an individual to intentionally or knowingly appear in a state of nudity in a public place.
- (2) It shall be unlawful for an individual to intentionally or knowingly appear in a state of semi-nudity in a public place.
- (3) It shall be unlawful for an individual, person, corporation, or association that manages, or operates a Human Display Establishment to intentionally or knowingly allow an individual to appear on the premises of said establishment in a state of nudity.
- (4) It shall be unlawful for an individual, person, corporation, or association that manages, or operates a Human Display Establishment to intentionally or knowingly allow an individual to appear on the premises of said establishment in a state of semi-nudity.
- (5) It shall be unlawful for an owner-operator of a Human Display Establishment to intentionally or knowingly allow an individual to appear on the premises of said establishment in a state of nudity.
- (6) It shall be unlawful for an owner-operator of a Human Display Establishment to intentionally or knowingly allow an individual to appear on the premises of said establishment in a state of semi-nudity.

G. Section 21-301. Permits Required.

- (1) It shall be unlawful for an individual, person, corporation, operator, owner, owner-operator, or association to operate a Human Display Establishment within the City of San Antonio, unless the Chief of Police has issued a Human Display Permit to the Human Display Establishment's owner-operator.

- (2) It shall be unlawful for an individual to act as a manager of a Human Display Establishment, unless the Chief of Police has issued a Manager's Permit to said individual.
- (3) It shall be unlawful for an individual to act as a Floor-Manager of a Human Display Establishment, unless the Chief of Police has issued a Floor-Manager's Permit to said individual.
- (4) It shall be unlawful to offer live entertainment at a Human Display Establishment within the City of San Antonio, unless the Chief of Police has issued a Human Display Permit to the Human Display Establishment through said establishment's owner-operator.
- (5) The Human Display Permit will be issued to the owner-operator, but will be issued in the name of the Human Display Establishment and will be specific for that location only.
- (6) It shall be unlawful for an individual to act as an Entertainer in a Human Display Establishment, unless the Chief of Police has issued an Entertainer's Permit to said individual.

H. Section 21-302. Exceptions and Affirmative Defenses

- (1) It is an exception to the application of Section 21-300 of this Article that at the time of the state of nudity the actor was a person engaged in expressing a matter of serious literary, artistic, scientific, political or social value.
- (2) It is an affirmative defense to the application of Section 21-300 of this Article that at the time of the state of nudity the actor was:
  - (a) an individual, person, or, in the case of 21-300(3) through 21-300(6), an association, who owns, manages, operates or appears nude in a public place that is a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed massage therapist, or licensed barber engaged in performing functions authorized under the lawful license held;
  - (b) an individual, person, or, in the case of 21-300(3) through 21-300(6), an association, who owns, manages, operates or appears nude in a public place that is a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing lawfully the healing arts; or

- (c) an individual, person, or, in the case of 21-300(3) through 21-300(6), an association, who owns, manages, operates or appears nude in a public place that is a business licensed as a tattoo studio or a body piercing studio and was engaged in practices authorized under the license.
- (3) It is an exception to the application of Section 21-300 of the Article that at the time of the state of semi-nudity the actor was:
- (a) a person engaged in expressing a matter of serious literary, artistic, scientific, political or social value;
  - (b) an individual exposing a breast for the purpose of breastfeeding an infant or child;
  - (c) a dancer, entertainer, or model who holds an entertainer's permit and is entertaining at a lawfully permitted Human Display Establishment.
- (4) It is an affirmative defense to the application of Section 21-300 of the Article that at the time of the state of semi-nudity the actor was:
- (a) an individual, person, or, in the case of 21-300(3) through 21-300(6), an association, who owns, manages, operates or appears semi-nude in a public place that is a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, licensed massage therapist, or licensed barber engaged in performing functions authorized under the lawful license held;
  - (b) an individual, person, or, in the case of 21-300(3) through 21-300(6), an association, who owns, manages, operates or appears semi-nude in a public place that is a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing lawfully the healing arts; or,
  - (c) an individual, person, or, in the case of 21-300(3) through 21-300(6), an association, who owns, manages, operates or appears semi-nude in a public place that is a business licensed as a tattoo studio or a body piercing studio and was engaged in practices authorized under the license.

- (5) It is an exception to the application of Sections 21-300(4) and 21-300(6) of this Article that at the time of the state of semi-nudity:

the individual, owner-operator, person, or association who owns, manages or operates the public place lawfully possessed a Human Display Permit, and, the individual who appeared in a state of semi-nudity was a dancer, entertainer, or model who held an entertainer's permit and was entertaining in said Human Display Establishment.

I. Section 21-303. Penalties and Enforcement.

- (1) The violation of any provision of this article, including the doing of anything which is herein prohibited or declared to be unlawful or the failure to do anything or perform any duty which is required herein, shall be punishable as a Class C Misdemeanor with a fine not to exceed \$2,000.00, as provided by Section 54.001 of the Local Government Code.
- (2) Each day of any violation shall constitute and be punishable as a separate offense.
- (3) The refusal to issue a permit based on ineligibility shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the refusal to issue a permit based on ineligibility.
- (4) The revocation or suspension of a permit shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a permit.

J. Section 21-304. Process for Requesting a Permit.

- (1) The Chief of Police shall create a form for each type of permit consistent with the provisions of this Article.
- (2) An applicant may obtain a form during any business day at the San Antonio Police Headquarters. The Chief of Police shall accept applications for filing Monday through Friday, excluding holidays, between the hours of 9:00 a.m. and 3:00 p.m. at the San Antonio Police Headquarters. Applications shall not be accepted at any other time or on any other day.
- (3) At the time that the Chief of Police receives an application, the applicant shall submit and the Chief of Police shall take the photograph of the applicant at the San Antonio Police Headquarters.

- (4) All photographs shall be used to perform a Background Investigation and for the purpose of photographic identification of permit holders, and shall be kept on record with the Chief of Police while the applicant possesses a valid permit, and for a period of not less than five years after the expiration, revocation, or denial of the permit.
- (5) All photographs of applicants shall be destroyed at the expiration of five years after the expiration, revocation, or denial of the permit, but all applicants submitting new applications shall be required to comply with photograph and fingerprint requirements in this Section.
- (6) All applicants shall submit to a criminal background check for the purpose of verifying the information requested in Sections 21-401, 21-402, 21-403 and 21-404.

K. Section 21-305. Use of a Permit.

- (1) A permit issued under the provisions of this Article is not a property interest but shall be a purely personal privilege that is subject to revocation or suspension if the respondent is found to have violated a provision of this Article.
- (2) By authority of this Article, by accepting a permit, the holder of the permit consents that the Chief of Police or a peace officer may detain the individual on the premises of a Human Display Establishment for the purpose of verifying identity and permit.
- (3) Any owner, operator, or owner-operator that enjoys the benefit of a Human Display Permit or has accepted a permit through the owner-operator consents, by authority of this Article, that the Chief of Police or peace officer may enter the premises of the Human Display Establishment at any time an owner, operator, owner-operator, manager, floor-manager, employee, customer or patron is on the premises to conduct an investigation or inspect the premises for the purpose of performing any duty imposed by this Article.
- (4) All peace officers shall have the duty to enforce the provisions of this Article and cooperate with the Chief of Police in the enforcement hereof.
- (5) It shall be unlawful for an individual to use the permit of another. It shall be unlawful for an individual holding a permit to transfer that permit for use by another individual. Excepting an Entertainer's Permit and a Floor-Manager's Permit, permits are valid for one Human Display Establishment only and may not be transferred to any other establishment or location.



L. Section 21-306. Amendment.

- (1) An applicant or permit holder shall file an application amendment with the Chief of Police any time a prior statement contained on an application is known to the applicant to be materially incomplete or inaccurate because of changed circumstances.
- (2) An applicant or permit holder shall file an application amendment with the Chief of Police any time a prior statement contained on an application is known to the applicant to be materially incomplete or inaccurate because the statement was incomplete or inaccurate at the time of filing.
- (3) The time in which to file an application amendment is:
  - (a) thirty calendar days from the date of changed circumstances; or,
  - (b) thirty calendar days from the date that applicant knows that a prior statement was incomplete or inaccurate.
- (4) It shall be unlawful for an applicant or permit holder to fail to comply with this section.

M. Section 21-307. Non-refundable Fees.

All fees required in this Article are non-refundable. Payment of the fees shall be by cashier's check or money order and made payable to the City of San Antonio.

N. Section 21-308. Authority to File Suit.

The City Attorney is authorized, at his discretion, in addition to or in lieu of any other remedies set forth in this Article, or under any other applicable state statute, to commence an action to enjoin the violation of this Article or to enjoin any person, corporation, or association from establishing, operating, or maintaining a public place or Human Display Establishment contrary to the provisions herein, or in any other statute or doctrine.

O. Section 21-400. Types of Permits, Calculation of Deadlines, Time and Delivery.

- (1) The Chief of Police shall issue the following types of permits to an applicant who qualifies under the provisions of this Article by the following time periods:

- (a) for a Human Display Permit or Manager's Permit, by 2:00 p.m. on the thirtieth business day after receipt of an application;
  - (b) for a Floor-Manager's Permit or Entertainer's Permit, by 2:00 p.m. on the tenth business day after receipt of an application-;
  - (c) for a Temporary Entertainer's Permit, a Temporary Floor-Manager's Permit, and a Temporary Manager's Permits, issued by the times indicated hereinafter.
- (2) The Chief of Police shall issue a Notice of Rejection to an applicant who fails to qualify under the provisions of this Article by the following time periods:
- (a) for a Human Display Permit or Manager's Permit, by 2:00 p.m. on the thirtieth business day after receipt of an application;
  - (b) for a Floor-Manager's Permit or Entertainer's Permit, by 2:00 p.m. on the tenth business day after receipt of an application-;
  - (c) for a Temporary Entertainer's Permit, by 3:00 p.m. on the first business day after receipt of the application.
- (3) Unless the applicant requests in writing and at the time of filing an application that the permit or Notice of Rejection be kept at the San Antonio Police Headquarters for personal retrieval, the Chief of Police shall send the permit or Notice of Rejection to the applicant's address, as listed in the application, via United States Postal Service, Certified Mail, Return Receipt Requested, deposited with United States Postal Service and postmarked on or before 2:15 p.m. on the final day allowed in 21-400(2) above.
- (4) If personal retrieval was properly requested for a permit or Notice of Rejection, the Chief of Police shall have the permit or Notice of Rejection available for pick up from the time of its issuance until 4:00 p.m. on the on the final day allowed in 21-400(2) above. If the applicant fails to retrieve either the permit or Notice of Rejection by 4:00 p.m., the Chief of Police shall then send the permit or the Notice of Rejection to the applicant's address, as listed in the application. The means of sending the permit or Notice of Rejection shall be via the United States Postal Service, Certified Mail, Return Receipt Requested. The mail shall be deposited with the United States Postal Service not later than 4:30 p.m. on the final day allowed in 21-400(2) above.

- (5) When determining a date upon which a deadline exists in this Article, calculate the specified number of days as follows:
  - (a) The day the act or event was performed or scheduled to occur after which the designated period of time begins to run is not to be included. The designated period of time begins on the next day.
  - (b) The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.
- (6) Unless otherwise stated in this Article, where delivery of any notice to applicant is required, delivery shall be by personal delivery at the applicant's address, as listed in the application, or by sending it to the applicant's address, as listed in the application, via the United State Postal Service, Certified Mail, Return Receipt Requested.
- (7) Unless otherwise stated in this Article, delivery by the United States Postal Service shall be presumed to be on the third business day after depositing the mail with the United States Postal Service, unless the applicant has proof to the contrary.
- (8) In this Article, the last known address of an applicant, contained in an application or an amendment, is presumed as the correct address. Whenever delivery to an address is authorized or mandated under the provisions of this Article, delivery to the presumed correct address is sufficient to comply under this Article.
- (9) Personal delivery or delivery by mail as prescribed in this Article, shall be prima facie evidence that the Chief of Police has fulfilled his duty to deliver a permit, Notice of Rejection, Notice of Intention to Revoke/Suspend Permit, Notice of Revocation/Suspension, or Denial of Revocation/Suspension.
- (10) The Chief of Police shall issue the requested permit if the Chief of Police fails to deliver Notice of Rejection and does not have prima facie proof of the delivery or deposit, and if the applicant files a written request for issuance of the permit not later than 2:00 p.m. on the tenth business day following the deadline to issue a permit or notice. If the applicant fails to timely file a request for the permit upon the failure of the Chief of Police to issue the notice, then the applicant shall waive any appeal or cause of action that he may have herein.

(11) The deadlines imposed by this Article may be extended by the mutual agreement of the Chief of Police and the pertinent individual, except as follows:

- (a) The Chief of Police shall not agree to shorten any deadline;
- (b) The Chief of Police shall not agree to extend any deadline wherein there is an express provision in this Article that a failure to comply with the deadline shall result in an applicant's waiver of appeal or cause of action; or,
- (c) As otherwise prohibited within this Article.

P. Section 21-401. Qualifications and Specifications: Manager's Permit and Temporary Manager's Permit.

(1) Unless an individual is disqualified under one or more of the provisions of this Article, an individual who performs the following acts shall be qualified for a Manager's Permit:

- (a) pay a \$100.00 as a non-refundable processing fee to the City of San Antonio;
- (b) answer under oath accurately and completely the requests for information contained on the form for the permit;
- (c) provide proof of identity by presenting to the Chief of Police a valid and lawful photographic identification card that was issued to the individual by a governmental authority of the United States of America or any State, possession, commonwealth, or territory thereof;
- (d) provide proof that the applicant is at least eighteen years of age or older; and,
- (e) appear at the place designated by the Chief of Police and submit to being photographed and fingerprinted by the Chief of Police. Fingerprints taken pursuant to this section shall be used for purposes of the background check.

(2) If on the basis of substantial evidence, the Chief of Police concludes that one of the following conditions exists then an individual shall be disqualified from receiving the Manager's Permit:

- (a) the individual is a sex offender as defined in Section 46.001 of the Texas Business and Commerce Code;
  - (b) the individual is convicted of a felony, not included in Section 21-401(2)(a), in any jurisdiction during the preceding ten years;
  - (c) the individual has been convicted of or been placed on deferred adjudication for a specified criminal act, not included in Section 21-401(2)(a), in any jurisdiction, during the preceding ten years;
  - (d) the individual has submitted false information on a form for the permit or the individual has responded falsely to inquiries in a Background Investigation;
  - (e) at the time of application, the individual is disqualified from receiving or holding a permit pursuant to Section 21-407 or 21-408 of this Article; or
  - (f) at the time of application, the individual has a suspended permit or has had a permit revoked within the past calendar year, pursuant to Section 21-407 of this Article.
- (3) An individual who applies for a Manager's Permit shall provide the following information:
- (a) The information contained in a valid and lawful photographic identification card that was issued to the individual by a governmental authority of the United States of America or any State, possession, commonwealth, or territory thereof;
  - (b) the name and address of the Human Display Establishment for which the individual requests the permit;
  - (c) whether the individual has been convicted of or placed on deferred adjudication for an offense for which the individual is subject to registration under Chapter 62, Texas Code of Criminal Procedure, along with a list of each of the aforementioned offenses;
  - (d) excluding traffic offenses, a list of each misdemeanor or felony, not included in Section 21-401(3)(c) above, for which the individual has been convicted or received deferred adjudication during the past ten years;

- (e) excluding traffic offenses, a list of each misdemeanor or felony, not included in Section 21-401(3)(c) above, for which the individual is under community supervision at the time of application;
  - (f) the name and address of each court and jurisdiction listed in response to Section 21-401(3)(c) herein;
  - (g) the name and address of each court and jurisdiction for those offenses that the individual is under community supervision at the time of application in response to Section 21-401(3)(e) ;
  - (h) a signed waiver and authorization allowing the Chief of Police to request criminal history reports from pertinent federal, state, and local law enforcement for the individual submitting an application.; and,
  - (i) a driver's license number of a State, possession, commonwealth or territory of the United States of America — if issued — and, a Social Security Number of the United States of America — if issued.
- (4) A Manager's Permit shall consist of one photographic identification card that contains the following information: a photograph of the manager; the name and address of the Human Display Establishment at which the Manager's Permit is valid; the permit identification number assigned by the City; the date of issuance; the effective date; and, the date of expiration.
- (5) A Temporary Manager's Permit shall be issued within twenty-four hours of the application when:
- (a) The applicant for a Manager's Permit has submitted a completed application to the San Antonio Police Department Identification Section, pursuant to the provisions herein;
  - (b) The Applicant supplies the San Antonio Police Department's Vice Unit with a copy of a valid and lawful photographic identification card that was issued to the individual by a governmental authority of the United States of America or any State, possession, commonwealth, or territory thereof;

- (c) A preliminary investigation indicates that the applicant is otherwise qualified under this Article for the issuance of a Temporary Manager's Permit; and
  - (d) The applicant has not applied for or been granted a Temporary Manager's Permit in the year preceding the application.
- (6) Each Temporary Manager's Permit is valid for thirty calendar days from the date of issuance or until the issuance of a Manager's Permit, whichever occurs first.
- Q. Section 21-402. Qualification and Specifications: Floor-Manager's and Temporary Floor-Manager's Permit.
- (1) Unless an individual is disqualified under one or more of the provisions of this Article, an individual who performs the following acts shall be qualified for a Floor-Manager's Permit:
    - (a) pay \$50.00 as a nonrefundable processing fee to the City of San Antonio; and
    - (b) perform those acts detailed at Section 21-401(1)(b)-(e) herein.
  - (2) The following conditions shall disqualify an individual from obtaining a Floor-Manager's Permit: those conditions specified at Section 21-401(2)(a)-(f) herein.
  - (3) An individual who applies for a Floor-Manager's Permit shall provide the following information: that information specified at Section 21-401(3)(a)-(i) herein.
  - (4) A Floor-Manager's Permit shall consist of one photographic identification card that contains the following information: a photograph of the floor-manager; the permit identification number assigned by the City; the date of issuance; the effective date; and, the date of expiration.
  - (5) A Temporary Floor-Manager's Permit shall be issued within two business days of application for same if:
    - (a) The applicant has submitted a completed application to the San Antonio Police Department Identification Section plus paid \$50.00 as a nonrefundable processing fee to the City of San Antonio;

- (b) The applicant supplies the San Antonio Police Department's Vice Unit with copy of a valid and lawful photographic identification card that was issued to the individual by a governmental authority of the United States of America or any State, possession, commonwealth, or territory thereof;
  - (c) A preliminary investigation indicates that the applicant is otherwise qualified under this Article for the issuance of a Temporary Floor-Manager's permit; and
  - (d) The applicant has not applied for or been granted a Temporary Floor-Manager's Permit in the year preceding the application.
- (6) Each Temporary Floor-Manager's Permit is valid for ten (10) business days from the date of issuance.

R. Section 21-403. Qualification and Specifications: A Human Display Permit.

- (1) It shall be unlawful to apply for a Human Display Permit, unless the application is from the owner-operator of the proposed Human Display Establishment and the owner-operator files an accurate and complete sworn affidavit at the time of filing the application in which the owner-operator declares:
- (a) The identities of the owner, operator, and the owner-operator of the Human Display Establishment;
  - (b) The identity of the Human Display Establishment;
  - (c) That the owner of the Human Display Establishment has designated an owner-operator to be culpable under the permitting provisions of this Article and further that the proof of said designation is in the format for the type of person that comprises the owner (*e.g.*, a corporate resolution for a corporation) and attached to the application.
  - (d) State that all information is on the basis of personal knowledge; and,
  - (e) State that all information is true and correct and acknowledge that a false statement is subject to criminal penalty, including but not limited to charges of perjury.



- (2) Unless an owner-operator is disqualified under one or more provisions of this Article, an owner-operator who performs the following acts shall be qualified to receive on behalf of an owner or operator a Human Display Permit:
- (a) pays \$375.00 as a nonrefundable processing fee to the City of San Antonio;
  - (b) submits a diagram;
  - (c) allows an inspection of the premises as directed in Section 21-406 herein;
  - (d) if an individual, provide proof that the applicant is at least eighteen years of age or older or if the applicant is a corporation, provide proof that the corporate representative is at least eighteen years of age; and,
  - (e) performs those acts detailed at Section 21-401 if the owner-operator is also applying for a Manager's Permit or Floor-Manager's Permit.
- (3) If on the basis of substantial evidence, the Chief of Police concludes that one of the following conditions exists then an owner-operator shall be disqualified from receiving a Human Display Permit for the Human Display Establishment for which the permit is sought:
- (a) if any owner or operator of the Human Display Establishment is a sex offender as defined by Section 46.001 of the Texas Business and Commerce Code;
  - (b) if any owner or operator of the Human Display Establishment is convicted of a felony, not included in Section 21-403(3)(a) above, in any jurisdiction in the past ten years;
  - (c) if any owner or operator of the Human Display Establishment has been convicted of or received deferred adjudication for a specified criminal act, not included in Section 21-403(3)(a) above, in any jurisdiction in the past ten years;
  - (d) if the owner-operator of the Human Display Establishment has refused to allow an inspection of the premises of the Human Display Establishment by at least three business days prior to a deadline to issue a permit or Notice of Rejection;

- (e) if the owner-operator of the Human Display Establishment has failed to submit to the Department of Development Services a diagram by at least ten business days prior to the deadline to issue a permit or Notice of Rejection;
- (f) if the owner-operator of the Human Display Establishment has submitted false or incomplete information on an application form for the Human Display Permit or has falsely responded to inquiries in a Background Investigation;
- (g) if the owner-operator of the Human Display Establishment has previously had two Human Display Permits revoked pursuant to Section 21-407;
- (h) if the owner-operator of the Human Display Establishment has a Human Display Permit that is currently suspended pursuant to Section 21-407;
- (i) if the Human Display Establishment fails to conform to the configuration requirements set forth in Section 21-201 above; or
- (j) if the owner-operator of the Human Display Establishment has had a Human Display Permit revoked within the preceding year or is otherwise disqualified from receiving or holding a permit pursuant to Section 21-407 or 21-408 of this Article.

S. Section 21-404. Qualifications and Specifications: Entertainer's Permit and Temporary Entertainer's Permit.

- (1) Unless an individual is disqualified under one or more of the provisions of this Article, an individual who performs the following acts shall be qualified for an Entertainer's Permit:
  - (a) pay \$50.00 as a nonrefundable processing fee to the City of San Antonio; and
  - (b) perform those acts detailed at Section 21-401(1)(b)-(e) herein.
- (2) The following conditions shall disqualify an individual from obtaining an Entertainer's Permit: those conditions specified at Section 21-401(2)(a)-(f) herein.
- (3) An individual who applies for an Entertainer's Permit shall provide the following information: that information specified at Section 21-401(3)(a) and Section 21-401(3)(c)-(i) herein.

- (4) An Entertainer's Permit shall consist of one identification card that contains the following information: a photograph of the entertainer; the permit identification number assigned by the City; the date of issuance; the effective date; and, the date of expiration.
- (5) A Temporary Entertainer's Permit shall consist of one identification card that contains the following information: the permit identification number assigned by the City; the date of issuance; the effective date; and, the date of expiration.
- (6) A Temporary Entertainer's Permit shall be issued within twenty-four hours of the application when:
  - (a) The applicant for a Temporary Entertainer's Permit has submitted a completed application to the San Antonio Police Department Identification Section, pursuant to the provisions herein, and prior to 3:00 p.m. of the last business day before a scheduled performance by applicant;
  - (b) The Applicant supplies the San Antonio Police Department's Vice Unit with a copy of a valid and lawful photographic identification card that was issued to the individual by a governmental authority of the United States of America or any State, possession, commonwealth, or territory thereof — or, copy of said identification so long as it identifies the residence of the applicant as being outside of Bexar County, Texas;
  - (c) If the aforementioned photographic identification and signature of the applicant for a Temporary Entertainer's Permit are not available at the time the application for a Temporary Entertainer's Permit is submitted to the San Antonio Police Department, a legible copy of said identification and signature shall be transmitted via facsimile transmission or personal delivery to the San Antonio Police Department by the Manager — along with a Manager's Affidavit, wherein the Manager vouches for said identification and signature — in a Manager's Affidavit — prior to the time of the first performance by the Temporary Entertainer.
  - (d) Preliminary investigation warrants the issuance of a Temporary Entertainer's Permit;
  - (e) The applicant pays \$50.00 as a nonrefundable processing fee to the City of San Antonio for each Temporary Entertainer's Permit;

- (f) The applicant designates the sole Human Display Establishment at which the Temporary Entertainer's Permit may be used;
  - (g) The applicant has not applied for or been granted more than three Temporary Entertainer's Permits during the calendar year for which the application is made and the Human Display Establishment at which the permit will be used has not hosted more than eleven entertainers who have a Temporary Entertainer's Permit during the calendar year in which an applicant seeks a Temporary Entertainer's Permit for use at said Human Display Establishment.
- (7) In lieu of the applicant, the Manager may submit the application, a copy of the identification, and all other requirements referenced in Section 21-404(6) herein, together with a Manager's Affidavit.
  - (8) A Temporary Entertainer Permit shall be valid for a period of not longer than seven calendar days from the date of issuance and shall be valid at only one designated Human Display Establishment.

T. Section 21-405. Ratification and Term of Permits.

- (1) The City Council approves, accepts, ratifies, and endorses the following acts of the Chief of Police:
  - (a) all acts performed by the Chief of Police between the date of this Article's passage and the effective date of this Article so long as the acts are consistent with the duties, powers, and provisions of this Article;
  - (b) all permits issued by the Chief of Police between the date of this Article's passage and the effective date of this Article so long as the permits contain the following: the actual date of issuance, an effective date of permit that coincides with the effective date of this Article; and, an expiration date of permit that is one calendar year from the effective date of permit.
- (2) Each Human Display Permit, Manager's Permit, Floor-Manager's Permit, and Entertainer's Permit issued shall be valid for a period of one calendar year from the date of issuance, unless otherwise stated in this Article, at which time it shall expire, unless the permit is sooner revoked or surrendered.

- (3) Each Human Display Permit, Manager's Permit, Floor-Manager's Permit, and Entertainer's Permit shall be subject to renewal as of its expiration date by filing a renewal application.
- (4) Each renewal application must be filed at least forty-five calendar days prior to the date of expiration.
- (5) Except as expressly indicated herein, all of the deadlines, fees, and procedures applicable to any application and permit shall also be applicable to each renewal application and renewal permit.
- (6) The Chief of Police shall not require another photograph for a renewal application unless he cannot verify the identity of the applicant who filed a renewal application; or, unless the applicant filing a renewal application is different from the individual who filed the original application.

U. Section 21-406. Inspections and Background Checks; Deadlines.

- (1) The Chief of Police shall conduct all necessary Background Investigations prior to the expiration of thirty calendar days from the receipt of an application for a Human Display Permit or a Manager's Permit, for the purpose of determining whether each applicant is in compliance with the provisions of this Article, and based upon those findings, the Chief of Police shall either issue or reject the permit in accordance with the deadlines found in Section 21-400(1)(a).
- (2) The Chief of Police shall conduct all necessary Background Investigations prior to the expiration of ten calendar days from receipt of an application for a Floor-Manager's Permit or an Entertainer's Permit, for the purpose of determining whether each applicant is in compliance with the provisions of this Article, and based upon those findings, the Chief of Police shall either issue or reject the permit in accordance with the deadlines found in Section 21-400(1)(b).
- (3) The Chief of Police, the Director of the Department of Development Services, or their designated representatives, and any other pertinent City Department or the department's designated representatives, shall complete all inspections required for an application prior to the expiration of thirty calendar days from receipt of the application for a Human Display Permit or a Manager's Permit, for the purpose of determining whether each applicant is in compliance with the provisions of this Article, and based upon those findings, the Chief of Police shall either issue or reject the permit in accordance with the deadlines found in Section 21-400.

- (4) If an application is rejected based on an inspection of the premises only, the Chief of Police shall provide to the owner-operator a Notice of Rejection within ten business days following the deadline to issue a permit or notice.
  - (5) An applicant may request a re-inspection only if the owner-operator:
    - (a) submits the request, by certified mail, return receipt requested, within ten business days subsequent to the receipt of the decision of the Chief of Police; and
    - (b) pays to the City of San Antonio a nonrefundable inspection fee of \$150.00 with the submission of the request.
  - (6) The Chief of Police, the Director of the Department of Development Services, or their designated representatives, and any other pertinent City Department or the department's designated representatives, shall complete a re-inspection and either issue or reject a permit based upon a request for re-inspection not more than fifteen business days from the date of receipt of the request for re-inspection. If upon re-inspection the Chief of Police concludes the noted problems have not been remedied, the Chief of Police shall issue a Notice of Rejection and notify applicant in accordance with Section 21-400.
  - (7) Notwithstanding the provisions of this Section, an applicant whose application is rejected under the provisions of this Article may petition to any lawfully established court having jurisdiction on the subject matter without first applying for a re-inspection.
- V. Section 21-407. Procedure for Administrative Hearings; Revocation or Suspension of Permits.
- (1) Standing:
    - (a) Regarding a Manager's Permit, a Floor-Manager's Permit, an Entertainer's Permit, a Temporary Manager's Permit, a Temporary Floor-Manager's Permit, or a Temporary Entertainer's Permit, only the permit holder/applicant and the Chief of Police shall have standing in an administrative revocation/suspension proceeding or in any appeal of a denial, revocation or suspension.

(b) Regarding a Human Display Permit, the owner-operator of the Human Display Establishment and the Chief of Police have standing in an administrative revocation/suspension proceeding or any appeal of a denial, revocation or suspension.

(2) Conditions Resulting in Revocation/Suspension of Human Display Permit:

(a) A Human Display Permit shall be subject to revocation if, after the issuance of the initial permit:

(i) any permit holder of the Human Display Permit is convicted of a felony or specified criminal act;

(ii) any material information on the permit application which would likely have resulted in a denial of the permit is found to have been false when submitted; or

(iii) an individual or entity not listed on the permit application becomes an owner-operator, owner or operator of the Human Display Establishment and such owner-operator, owner or operator would have caused a disqualification if listed on the original permit application.

(b) A Human Display Permit shall be subject to revocation/suspension if, after the issuance of the initial permit, one or more employees of the Human Display Establishment have a cumulative total among them of four or more convictions for felonies or specified criminal acts, if the acts that lead to the convictions occurred on the licensed premises within a consecutive twelve-month period.

(c) A Human Display Permit shall be subject to revocation/suspension if, after the issuance of the initial permit, any one or more employees of that establishment have a cumulative total among them of four or more convictions or deferred adjudications for any of the following sections of this Article, if the violations that lead thereto have all occurred on the licensed premises on at least four separate calendar dates within a consecutive six-month period commencing on or after the effective date of this Ordinance:

(i) Section 21-300;

(ii) Section 21-301; or

(iii) Section 21-701, or any subsection thereof.

- (3) Conditions Resulting in Revocation/Suspension of Manager's, Floor-Manager's and Entertainer's Permits:
- (a) A Manager's, Floor-Manager's or Entertainer's Permit shall be subject to revocation if, after the issuance of the initial permit, the permit holder is convicted of a felony or specified criminal act.
  - (b) A Manager's, Floor-Manager's or Entertainer's Permit shall be subject to revocation/suspension if, after the issuance of the initial permit, the permit holder has a cumulative total of four or more convictions or deferred adjudications in the name of the permit holder for any of the following sections of this Article, if the violations occurred on at least four separate calendar dates within a consecutive twelve-month period commencing on or after the effective date of this Ordinance:
    - (i) Section 21-300;
    - (ii) Section 21-301; or
    - (iii) Section 21-701, or any subsection thereof.
- (4) Notice of Intention to Revoke/Suspend Permit:
- (a) If, on the basis of information and belief, the Chief of Police concludes that any permit issued under this Article is subject to revocation or suspension because of the existence of any of the conditions set forth in Sections 21-407(2) or 21-407(3) above, the Chief of Police shall initiate a revocation/suspension proceeding by sending a Notice of Intention to Revoke/Suspend Permit to the permit holder which shall detail the following:
    - (i) the factual basis for the intention to revoke/suspend the permit;
    - (ii) the provisions of this Article alleged to be violated;
    - (iii) the calendar date by which any request for contested case hearing is due; and,
    - (iv) the person or office with which any request for contested case hearing must be filed and the address at which any such request must be filed.



(b) The Notice of Intention to Revoke/Suspend Permit shall be sent to the permit holder via personal delivery or sent to the permit holder's last known address via United States ("U.S.") Postal Service, Certified Mail, Return Receipt Requested, and a copy shall be filed with the Hearing Officer or his designee for this purpose.

(5) Request for Contested Hearing Required Within 10 Business Days:

The permit holder shall have ten business days from the date of receipt of a Notice of Intention to Revoke/Suspend Permit in which to file a request for a contested case hearing with the person or office indicated on the Notice of Intention to Revoke/Suspend Permit. The request shall be filed via U. S. Postal Service, Certified Mail, Return Receipt Requested, or via personal delivery. A copy of the request shall be sent on the same date to the Chief of Police via U. S. Postal Service, Certified Mail, Return Receipt Requested, or via personal delivery. If filed by mail, the request shall be considered timely filed if the green return receipt card shows the item was properly addressed and received by the addressee on or before the tenth business day from the date the permit holder received the Notice of Intention to Revoke/Suspend Permit. If filed by delivery, the permit holder shall be responsible for obtaining a copy of the request stamped with the date of filing by the person or office receiving the request.

(6) Hearing Within 20 Business Days of Request:

Upon proper request as set forth above, and except in the case of a continuance granted in accordance with the requirements of this Article, each party with standing to contest is entitled to an opportunity to respond and to present evidence and argument on each allegation in the Notice of Intention to Revoke/Suspend Permit at a hearing to be held within 20 business days after the date of filing of their request as shown by the date of filing stamped on the request.

(7) Result of Request or Failure to Request Hearing:

If no request for contested case hearing is timely filed, the Hearing Officer shall revoke or suspend the permit in question and issue a Notice of Revocation/Suspension in accordance with the criteria of this Article. If a request for contested case hearing is timely filed, the Hearing Officer shall conduct a contested case hearing in accordance with the provisions of this Article.

(8) Notice of Hearing Not Less Than 10 Business Days from Hearing Date:

Notice of a hearing in a contested case shall be sent or delivered to the person requesting a hearing not less than 10 business days from the date of the hearing; shall include a statement of the time, place, and nature of the hearing; and shall be sent via personal delivery or U. S. Postal Service, Certified Mail, Return Receipt Requested to the last known address of the person. Notice of a hearing in a contested case shall be considered timely if properly addressed and postmarked not less than 10 business days from the date of the hearing and received not less than seven business days from the date of the hearing as evidenced by the delivery date noted on the green return receipt card.

(9) Representation by Counsel —

Each party to a contested case is entitled to:

- (a) the assistance of counsel, at the party's expense, before the hearing officer; or
- (b) expressly waive the right to assistance of counsel in writing or on the record before the hearing officer.

(10) Status of Permit During Hearing —

While a contested case is pending, and prior to the final decision of the Hearing Officer regarding revocation or suspension, a permit remains valid unless:

- (a) it expires without timely application for renewal;
- (b) it is voluntarily withdrawn or surrendered by the permit holder; or
- (c) the permit holder commits an act or omission contrary to the provisions of this Article which otherwise invalidates the permit.

This section shall not apply during any judicial appeal following the decision of the Hearing Officer.

(11) Applicable Rules:

Except as otherwise indicated herein, the Texas Rules of Evidence and the Texas Rules of Civil Procedure shall apply to a contested case.

- (12) The following additional rules shall apply to any contested case hearing pursuant to this Article:
- (a) In each contested case before the hearing officer, the City Attorney, or his designated representative shall represent the Chief of Police.
  - (b) A contested case may not be continued, except upon express written agreement of all parties to the contested case, or upon showing of good cause for a period not to exceed twenty days.
  - (c) *Ex parte* communications in connection with any issue of fact or law between any party and the hearing officer are strictly prohibited, except on notice and opportunity for each party to participate.
  - (d) In a contested case, either party may request a court reporter to transcribe the hearing. The party requesting a transcript of the hearing shall bear the cost for production of the transcript.
  - (e) If there be any conflict between the Texas Rules of Evidence and the Texas Rules of Civil Procedure and the rules set forth in this Article, the rules in this Article shall prevail.
- (13) Record — The record in a contested case shall include the following:
- (a) a File Stamped Copy of Notice of Intention to Revoke/Suspend Permit;
  - (b) the request for a hearing and any written response to the Notice of Intention to Revoke/Suspend Permit;
  - (c) a statement of matters officially noticed;
  - (d) questions and offers of proof, objections, and rulings on them;
  - (e) each decision, opinion, or report prepared by the hearing officer at the hearing;
  - (f) all documents, data and other evidence submitted to or considered by the hearing officer used in making his or her decision; and,
  - (g) the record shall be filed with the Municipal Court for the City of San Antonio.

(14) Decision of the Hearing Officer —

If a request for a contested case hearing has been filed timely, the Hearing Officer shall conduct a *de novo* contested case hearing and shall make one of the following findings:

- (a) If the contested case is one for which the permit is subject to suspension, the Hearing Officer shall, based on the Hearing Officer's determination that the alleged offense occurred and the severity of the offense, either: order a 60-day suspension of the permit; or, deny the suspension.
- (b) If the Hearing Officer finds that any of the conditions set forth in this Article exists that would make the permit subject to revocation, the Hearing Officer shall, on the basis of the severity of the offense, either: revoke the permit or order a 60-day suspension of the permit.

If the Hearing Officer does not make the requisite findings, then the permit revocation or suspension is deemed as being denied.

W. Section 21-408. Notice of Revocation/Suspension

- (1) A final decision or order by the Hearing Officer shall be issued in writing, and shall:
  - (a) include findings of fact and conclusions of law, separately stated;
  - (b) contain a concise and explicit statement of the underlying facts supporting the findings;
  - (c) if a party submits proposed findings of fact, the decision or order shall include a ruling on each proposed finding;
  - (d) be rendered not later than five business days after the date on which the hearing is finally closed;
  - (e) be provided to all parties via personal delivery or via United States Postal Service, Certified Mail, Return Receipt Requested; and,

- (f) be considered timely if:
  - (i) for personal delivery, a party receives notice not later than three business days from the date on which the decision is rendered; or
  - (ii) for postal delivery, the decision or order is postmarked not later than three business days from the date on which the decision is rendered.
  
- (2) Following a final decision in a contested case, any revocation or suspension of the permit in question shall take effect upon the date of delivery of the notice of the Hearing Officer's decision or such other date as may be set by the Hearing Officer and stated in the notice.
  
- (3) Any act authorized by a permit shall be unauthorized and in violation of this Article upon and after the effective date of any suspension of the permit until the suspension expires.
  
- (4) Any act authorized by a permit shall be unauthorized and in violation of this Article upon and after the effective date of any revocation of the permit unless and until a new permit, if any, is applied for and granted pursuant to the terms of this Article. If a permit has been revoked because of crimes or activities occurring on the premises of a Human Display Establishment, the owner-operator of the Human Display Establishment is disqualified from receiving or holding any permit under this Article for a period of one calendar year from the effective date of the revocation.
  
- (5) If a permit is suspended or revoked because of crimes or activities occurring on the premises of the Human Display Establishment, each and every individual, person, or association which is an owner-operator of a Human Display Establishment at the time of any suspension or revocation of the Human Display Permit for that establishment shall be considered to have had a permit suspended or revoked as if they held the permit in their own name for purposes of determining whether they are qualified to participate in another permit application under this Article. If a permit is suspended or revoked because of crimes or activities of one or more of the permit holders which did not occur on the licensed premises, then only that individual(s) shall be considered to have had a permit suspended or revoked for purposes of determining whether they are eligible to participate in another permit application under this Article.

X. Section 21-500. Judicial Appeal

- (1) If a respondent is entitled to receive a permit under the provisions of Sections 21-401, 21-402, 21-403, or 21-404, and if after timely filing a request for the permit pursuant to the provisions of Section 21-400(10) the Chief of Police refuses or fails to issue the permit, then the respondent shall have thirty calendar days from the expiration of the deadline in Section 21-400(10) in which he may file suit for a writ of mandamus or other available remedy in a Judicial District Court of Bexar, County, Texas.
- (2) If an application is denied or a permit revoked or suspended, then:
  - (a) a respondent shall have forty-five calendar days from the date of receipt of Notice of Rejection or Notice of Revocation/Suspension in which to file suit for writ of mandamus or other available remedy in a Judicial District Court of Bexar County, Texas; and
  - (b) the respondent shall waive any appeal or cause of action if suit is not filed within the time specified herein.
- (3) If a Hearing Officer renders a decision adverse to the Chief of Police, then:
  - (a) the Chief of Police shall have forty-five calendar days from the date that a Notice of Revocation/Suspension is issued in which to file suit for writ of mandamus or other available remedy in a Judicial District Court of Bexar County, Texas; and,
  - (b) the Chief of Police shall waive any appeal or cause of action if suit is not filed within the time specified herein.
- (4) Any appeal to State Court of this Article is entitled to preferential setting and to be set for trial at the earliest practicable date. Any appeal from the decision of the trial court shall be accelerated.
- (5) Any appeal to a Judicial District Court of Bexar County, Texas shall be based on the substantial evidence standard.

Y. Section 21-600. Human Display Establishment: Hours of Operation.

- (1) A Human Display Establishment shall not allow customers or patrons onto the premises during the following hours of any day: 2:15 a.m. through 7:00 a.m.
- (2) It shall be unlawful for a Human Display Establishment to allow customers or patrons onto the premises during the proscribed hours as provided in Section 21-600(1).

Z. Section 21-601. Human Display Establishment: Posting of Permit.

- (1) The Human Display Permit shall be framed and posted the main entrance of the establishment, in such a manner that it is plainly visible to the general public entering the establishment, at a height of no less than four (4.0) feet and no more than six (6.0) feet from the ground. It shall be unlawful to obstruct from plain view a posted Human Display Permit.
- (2) It shall be unlawful to fail or refuse to post the Human Display Permit as mandated in this Article.
- (3) If a Notice of Revocation is delivered, the Chief of Police shall remove the Human Display Permit from the wall of the Human Display Establishment; post the Notice of Revocation on the exterior wall next to the front entrance of the Human Display Establishment; and, post a copy of the Notice of Revocation on the exterior side of each door that may serve as an entrance or exit to the Human Display establishment.
- (4) It shall be unlawful for an individual other than the Chief of Police to destroy or remove a posted Notice of Revocation.

AA. Section 21-602. Human Display Establishment: Records.

- (1) The owner-operator, manager, or floor-manager of any Human Display Establishment shall keep on the premises a register of all employees of the Human Display Establishment that includes all information detailed at Section 21-401(3) herein for each employee plus a copy of a photographic identification card issued by governmental authority of the United States of America or any State, possession, commonwealth, or territory thereof to the employee and:

- (a) each employee's true name;
  - (b) aliases;
  - (c) gender;
  - (d) height;
  - (e) weight;
  - (f) color of hair and eyes;
  - (g) date of birth;
  - (h) date of initial employment;
  - (i) date of termination, if applicable; and
  - (j) specific job or employment duties.
- (2) The register shall be maintained for all current employees and ex-employees employed at any time during the preceding thirty-six months, except that the ordinance shall not operate to require this information prior to its effective date.
  - (3) It shall be unlawful to fail to maintain the register; or, fail or refuse to present the register to a peace officer upon request.

BB. Section 21-700. Holder of a Manager's, Floor-Manager's Permit.

- (1) Each individual who holds a Manager's or Floor-Manager's Permit shall display his or her valid permit to a peace officer upon request while upon the premises of the Human Display Establishment for which the permit is authorized.
- (2) Each individual who holds a Manager's or Floor-Manager's Permit and is currently on duty at the Human Display Establishment, is required to display their title of Manager or Floor-Manager, on their person in such a manner that they are easily identifiable to all customers or patrons.
- (3) In prosecuting a violation of Section 21-300 herein, it shall be presumed that the actor did not have a valid permit unless a valid permit was displayed in accordance with Section 21-700(1) herein.
- (4) It shall be unlawful for a manager or floor-manager to fail to display his or her valid permit upon request of a peace officer while upon the premises of the Human Display Establishment for which the permit is authorized.

CC. Section 21-701. Duties of Owners, Employees and Customers.

- (1) Notwithstanding any other provision in this Article, owners are not criminally culpable for violations of employees, except that owners remain criminally culpable for their own and personal violations.



- (2) Each manager, floor-manager, entertainer, and owner-operator shall comply with the provisions of this Article.
- (3) Each temporary manager, temporary floor-manager, and temporary entertainer shall comply with the provisions of this Article.
- (4) Each employee, customer, and patron shall comply with the provisions of this Article.
- (5) Each manager, floor-manager, temporary manager, and temporary floor-manager, and owner-operator shall ensure that each employee, customer, and patron complies with the provisions of this Article.
- (6) It shall be unlawful for a Manager, Floor-Manager, Temporary Manager, or Temporary Floor-Manager, or owner-operator to allow the conduct described in Section 21-701(5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), or (16) of this Article. Whenever an employee, customer, or patron fails to comply Section 21-701(5), (6), or (7), (8), (9), (10), or (12), (13), (14), (15), or (16) of this Article, it shall be presumed that a Manager or Floor-Manager, Temporary Manager, or Temporary Floor-Manager, allowed the prohibited conduct if the Manager, Floor-Manager, Temporary Manager, or Temporary Floor-Manager was present on the premises at the time of the violation.
- (7) Three Foot Rule:
  - (a) It shall be unlawful for any person to intentionally or knowingly entertain or appear in a state of semi-nudity on the premises of a Human Display Establishment unless the person is more than three (3.0) feet from any patron or customer.
  - (b) It shall be unlawful for a patron or customer on the premises of a Human Display Establishment to intentionally or knowingly approach within three (3.0) feet or less of a person who is entertaining or appearing in a state of semi-nudity.
- (8) It shall be unlawful for any person entertaining or appearing in a state of semi-nudity at a Human Display Establishment to accept a gratuity unless it is placed in a receptacle provided for receipt of gratuities or delivered hand-to hand without touching and with the hand of each person extended at least one and a half (1.5) feet away from the body of that person. The receptacle may not be located on any person or their clothing.

- (9) It shall be unlawful for any licensee hereunder or operator of a Human Display Establishment to allow any room within the establishment to be used for the purpose of live semi-nude entertainment unless the room is marked with a sign in typeface no less than one (1.0) inch in length per letter in such a manner that it is plainly visible to the general public at a height of no less than four (4.0) feet and no more than six (6.0) feet from the ground stating, "Three Foot Rule - It is a violation of the San Antonio City Code for a customer or patron to intentionally or knowingly approach within three feet or less of any person who is in a state of semi-nudity or entertaining."
- (10) It shall be unlawful for any employee to be in a state of semi-nudity, or to perform specified sexual activities while in the presence of any customer or patron and while in an area within the Human Display Establishment not subject to the direct line of sight of a manager or floor-manager.
- (11) It shall be unlawful for any employee to entertain while in a lavatory, or in a stairway or elevator used as access between floors.
- (12) It shall be the duty of the owner-operator to ensure that there exists at least one Manager for a Human Display Establishment and it shall be the duty of each owner-operator or Manager of a Human Display Establishment to ensure there are a sufficient number of Managers or Floor Managers — stationed in such a manner — so that all patrons and customers are in view of at least one Floor-Manager at all times, excepting patrons and customers in the lavatory.
- (13) It shall be unlawful for a Manager, Floor-Manager, owner-operator, or operator on the premises of any Human Display Establishment to allow any individual to be on the premises of a Human Display Establishment who is younger than eighteen years of age. It shall be presumed that a Manager, or Floor-Manager allowed the individual to be on the premises if the Manager, or Floor-Manager was present on the premises at the time the underage individual was present.
- (14) It shall be unlawful for any individual to be on the premises of any Human Display Establishment who is younger than eighteen years of age.
- (15) It shall be the duty of the owner-operator, or operator of any Human Display Establishment to conform the interior of the premises to the specifications provided in this Article.

- (16) It shall be the duty of the owner-operator of any Human Display Establishment to notify the Chief of Police and the Director of Development Services, or his duly authorized representative, that the location is ready for the inspections required under this Article prior to the expiration of any applicable deadline contained herein.
- (17) It shall be the duty of the owner-operator of a Human Display Establishment to post, display, and maintain free of obstruction, the following notices with typeface no less than one (1.0) inch in length per letter, at entrance of the establishment, in such a manner that they are plainly visible to the general public at a height of no less than four (4.0) feet and no more than six (6.0) feet from the ground:
- (a) "Three Foot Rule - It is a violation of the San Antonio City Code for a customer or patron to intentionally or knowingly approach within three feet or less of any person who is in a state of semi-nudity or entertaining."
  - (b) "No Minors - No individual under the age of eighteen is allowed inside the premises."
  - (c) "Patrons' conduct is being observed by management. Illegal conduct will not be permitted."
  - (d) The notices shall include the appropriate City of San Antonio ordinance number.
- (18) It shall be unlawful to fail to post the notices required by Section 21-701(15).

SECTION 2. Severability. If any provision, section, subsection, sentence, clause or phrase of this Ordinance, or the application of same to any person or sets of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereby, and all provisions of this Ordinance are declared to be severable for that purpose.

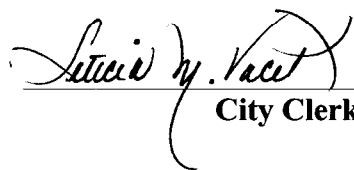
SECTION 3. The City Clerk of the City of San Antonio, Texas, is hereby directed to publish this ordinance in a newspaper published in the City of San Antonio, Texas as authorized by the City Charter of the City of San Antonio.

SECTION 4. Except as otherwise specified in this Section 4, this Ordinance shall become effective ninety days after the date of passage. Section 21-405 of the Article, and the sections of the Article implicated therein for the performance of the Chief's duties, are effective ten days after the date of passage of this Ordinance so that the Chief of Police may: issue forms; receive applications and nonrefundable processing fees for the permits described herein; issue permits as described herein; and make determinations under the Article about whether or not to issue or deny permits, seek suspension of permits, or seek revocation of permits. Section 21-407 of the Article, and the sections of the Article implicated therein for the performance of the Hearing Officer's duties, are effective ten days after the date of passage of this Ordinance so that the Hearing Officer may perform duties regarding contested hearings.

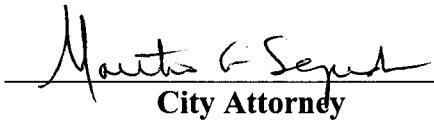
PASSED AND APPROVED on this the 9<sup>th</sup> day of June, <sup>2005</sup>~~2004~~ 9<sup>th</sup>

  
MAYOR PRO TEM

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

# Agenda Voting Results

**Name:** 19.

**Date:** 06/09/05

**Time:** 06:24:05 PM

**Vote Type:** Multiple selection

**Description:** An Ordinance amending Ordinance No. 100190 and sections of Chapter 21, Article IX of the City Code, stating findings that recognize the adverse secondary effects upon the public's health, safety and welfare resulting from the activities of Human Display Establishments, of public places where semi-nude topless dancing and fully nude dancing occur, and of public places where a state of nudity or semi-nudity generally exists; prohibiting nudity or semi-nudity or a state of nudity or semi-nudity in a public place; establishing exceptions to prosecution; establishing a licensing scheme for Human Display Establishments whereby compliance with the scheme serves as an exception to prosecution; setting permit fees of \$50.00 to \$375.00; providing penalties and enforcement including fines up to \$2,000.00 per violation; authorizing suit to enjoin illegal activity and to enforce this ordinance; providing a severability clause and an effective date. [Presented by Martha Sepeda, Acting City Attorney; J. Rolando Bono, Interim City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. McNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
ENRIQUE M. BARRERA	DISTRICT 6		x		
JULIAN CASTRO	DISTRICT 7	Not present			
ART A. HALL	DISTRICT 8		x		
KEVIN WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR ED GARZA	MAYOR	Not present			