

## **TITLE VIII: BUSINESS REGULATIONS**

### **Chapter**

- 80. AMUSEMENTS**
- 81. AUTO SALVAGE AND JUNK DEALERS**
- 82. PEDDLERS, SOLICITORS, AND ITINERANT MERCHANTS**
- 83. PAWNBROKERS**
- 84. SEXUALLY ORIENTED BUSINESSES**
- 85. OIL AND GAS DRILLING**
- 86. SALE AND PURCHASE OF ALCOHOLIC BEVERAGES**

## CHAPTER 80: AMUSEMENTS

### Section

#### **Carnivals, Circuses, and Tent Shows**

- 80.01 Permit required; exemptions
- 80.02 Application for permits
- 80.03 Consideration of application
- 80.04 Approval or denial of permit; appeal
- 80.05 Compliance with permit conditions and applicable laws and ordinances

#### **Carnivals, Circuses, and Tent Shows<sup>1</sup>**

##### **§ 80.01 Permit Required; Exemptions**

It shall be unlawful for any person, group, or organization to hold a circus, carnival, or tent show without first obtaining a permit from the City. This section shall not apply to funeral processions, school functions such as pep rallies, fundraisers, marching bands, etc., provided such conduct is under the immediate direction and supervision of appropriate school authorities or a government agency.

##### **§ 80.02 Application for Permits**

(a) Any person desiring to hold a circus, carnival, or tent show within the City shall make an application in writing to the City Secretary at least forty-five (45) days prior to the date such circus, carnival, or tent show is to be conducted.

(b) The application for a permit shall be on forms furnished by the City which shall set forth the following information:

- (1) The name, address, and telephone number of the person, sponsor, group, or organization desiring such permit;
- (2) The name, address, and telephone number of the person who will be responsible for the conduct of the circus, carnival, or tent show;
- (3) The proposed date(s) the circus, carnival, or tent show is to be held;
- (4) The proposed location of the circus, carnival, or tent show;
- (5) A description of the proposed circus, carnival, or tent show which is to be held; and

---

<sup>1</sup> **State law references** - Municipalities are authorized to regulate, license, or tax exhibitions, shows, or amusements through V.T.C.A., Local Government Code, § 215.032; authority to regulate treatment and disposition of animals is found in V.T.C.A., Health & Safety, Chapter 821.

(6) Any additional information which the City may deem pertinent as to whether a permit should or should not be issued.

(c) Each application for a permit shall be accompanied with a permit fee as provided for in the Schedule of Fees (Appendix A of this Code) before its consideration. This fee shall be nonrefundable regardless of whether the permit is granted or denied.

### **§ 80.03 Consideration of Application**

(a) Upon the filing of an application for a permit for a circus, carnival, or tent show, the City Secretary shall cause or make an investigation to determine whether or not the proposed event is in conflict with any laws or ordinances and not detrimental to the public health, safety, and welfare. When reviewing the permit application the following concerns, and any other information as may otherwise be obtained, shall be considered before approving any permit:

- (1) The proposed event will not substantially interrupt the safe and orderly movement of traffic, both vehicular and pedestrian;
- (2) The proposed event will not require the diversion of so great a number of police officers of the City to properly police the event that customary protection to the City will not be available;
- (3) The concentration of persons, animals and vehicles will not unduly interfere with proper fire and ambulance service to all portions of the City;
- (4) The conduct of the event is not reasonably likely to cause injury to persons or property or to provoke disorderly conduct or create a disturbance;
- (5) The event is for a meaningful purpose and is of sufficient interest to the general public to justify any inconvenience it may cause;
- (6) The event has been planned to ensure that the general safety, health, and welfare of all persons is provided as is reasonably possible.

(b) The City Manager shall consult with the Chief of Police and any other City officials and/or staff deemed to have an interest in or information regarding the desirability of issuing a permit under the terms of this ordinance.

### **§ 80.04 Approval Or Denial of Permit; Appeal**

After completion of his investigation, the City Manager shall make a recommendation to the City Council regarding approval of the permit. The City Council shall then approve or disapprove the permit. If approved, the City Secretary shall then issue a permit to the applicant.

### **§ 80.05 Compliance with Permit Conditions and Applicable Laws and Ordinances**

It shall be unlawful for any person participating in any parade for which a permit hereunder has been issued to fail to comply with all directions and conditions of such permit and all applicable laws and ordinances.

## CHAPTER 81: AUTO SALVAGE AND JUNK DEALERS

### Section

#### **Junk Dealers**

- 81.01 Definitions
- 81.02 Dealer's license requirements; fee; term; renewal
- 81.03 Sign display
- 81.04 Junkwagon license
- 81.05 Delivery of reports
- 81.06 Alteration of entries in book of record or blank report prohibited
- 81.07 Serial number to be attached to article; dealer to retain junk ten days; exception
- 81.08 Identification of seller of junk required
- 81.09 Purchase or possession of items from which manufacturer's serial number has been removed prohibited
- 81.10 Purchases from minors

#### **Wrecking Yards**

- 81.20 "Motor vehicle wrecking yards" defined
- 81.21 Standards generally
- 81.22 Signs
- 81.23 Compliance with this code and other ordinances
- 81.24 Compliance of yards existing on September 1, 1975

#### **Junk Dealers**

### **§ 81.01 Definitions**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them in this section.

Dealer in junk and junk shop. Any person buying, selling, receiving for storage, or in any way acquiring or dealing in junk as defined in this chapter. This shall not include licensed pawnbrokers, the operator of a junk wagon, as herein defined, nor any person, purchasing junk from a licensed junk dealer exclusively.

Junk. Scrap iron, tin, brass, copper, lead, zinc or any other scrap metals and their alloys; bones, rags, cloth, rubber, rope, tinfoil, bottles, old cotton, mechanical garden tools, or utensils; dismantled or used plumbing fixtures, appliances or parts; dismantled gas fixtures, fittings, pipes, appliances or parts; dismantled or used water heaters, fixtures, fittings, pipes or parts; used lawn hose or harness; doors, window sash or glass, metals or parts thereof; or any character of unserviceable building or building materials, or houses to be wrecked. The term "junk" shall include unserviceable or second hand automobiles purchased from the general public for the

purpose of being dismantled, together with the purchase of unserviceable or used parts and accessories, not including tires and tubes.

Junk wagon. Every wagon operating in the City for the purpose of purchasing, collecting or gathering up or selling junk throughout the City or any portion thereof.

### **§ 81.02 Dealer's License Requirements; Fee; Term; Renewal**

Every dealer shall obtain from the City an annual license to pursue his business, and shall pay therefor five hundred (\$500.00). Such license shall be granted for a period of one year and shall be renewed by the dealer at the annual expiration thereof, and in addition thereto, the dealer shall pay on each junk wagon operated by such dealer the amount of the license fee hereinafter prescribed for operators of junk wagons.

### **§ 81.03 Sign Display**

The license issued to a junk dealer in accordance with this chapter shall be displayed in his place of business so that it can be seen by his patrons. The license issued to the operator of a junk wagon shall be displayed on the wagon for which it was issued, so that it can be seen by the person dealing with such junkwagon operator.

### **§ 81.04 Junkwagon License**

Every person operating any junk wagon within the City shall obtain from the assessor and collector of taxes an annual license for the privilege of operating such wagon so operated. Such license shall be granted for a period of one year and shall be renewed by such person at the annual expiration thereof.

### **§ 81.05 Delivery of Reports**

The duplicate of the report required by the preceding section shall be delivered to the Chief of Police before 10:00 A.M. of the day following the date of such purchase or deposit of any article of junk.

### **§ 81.06 Alteration of Entries in Book of Record or Blank Report Prohibited**

It shall be unlawful for any such dealer to alter, change or obliterate any entry in the book of record or report blank.

### **§ 81.07 Serial Number to Be Attached To Article; Dealer to Retain Junk Ten Days; Exception**

Each article of junk purchased by or deposited with a junk dealer shall have written or stamped thereon or attached thereto the serial number of the report made to the chief of police of the

purchase or deposit of such article, which number shall at all times be kept plain and legible. Each article of junk purchased by or deposited with such dealer shall be retained by him in its original form, shape and condition for a period of ten days after such purchase or deposit, during which time such article shall not be sold or permitted to be redeemed or removed from the place of business of such dealer; provided, that the chief of police may release the same by written order at any time prior to the expiration of the ten day period.

#### **§ 81.08 Identification of Seller of Junk Required**

Any person selling or depositing any amount of junk with a dealer who is not well and personally known to the dealer shall be identified by some reputable citizen known to the dealer, whose signature and address shall be placed on the report required by § 81.05.

#### **§ 81.9 Purchase Or Possession of Items from Which Manufacturer's Serial Number Has Been Removed Prohibited**

A junk dealer shall not purchase or receive for deposit nor have in his possession any article of junk from which the manufacturer's serial number or brand has been removed or obliterated.

#### **§ 81.10 Purchases from Minors**

No junk dealer or operator of a junk wagon shall purchase or receive in pledge or on deposit for any purpose any article from any minor or which may be owned or claimed by or in the possession or control of any minor, unless the parents or guardian of such minor shall state in writing that such transaction took place with the parents' or guardian's full knowledge and consent, which written statement shall be signed by such parents or guardian and have thereon the address and telephone number, if any, of such parents or guardian, and shall be delivered to the chief of police with the report of such purchase or deposit.

### **Wrecking Yards**

#### **§ 81.20 "Motor Vehicle Wrecking Yards" Defined**

"Motor vehicle wrecking yards!" shall mean any lot or premises upon which used or wrecked motor vehicles are dismantled for the purpose of obtaining parts therefrom or where wrecked motor vehicles, bodies, parts or equipment are stored or kept.

#### **§ 81.21 Standards Generally**

It shall be unlawful for any person to establish, operate or maintain, or cause to be established, operated or maintained, any motor vehicle wrecking yard or business unless the same shall provide and conform to the following minimum standards and requirements:

(1) No building shall be located closer to the street right-of-way than is permitted by State law and/or zoning regulations of the City.

(2) No motor vehicle body, frame, part or accessory shall be displayed within the front yard or side yard setback area.

(3) The owner or operator of each motor vehicle wrecking yard shall enclose the entire area back of the front yard and side yard setback area with a solid fence of wood or masonry construction of a height of eight (8) feet. Such fence shall be constructed along the property line and along the building setback line on each motor vehicle wrecking yard.

(4) No motor vehicle bodies, frames, parts or accessories shall be stacked or permitted to exceed a height of seven (7) feet at any location on the lot or premises used for a motor vehicle wrecking yard except inside of a building or structure with four walls and a roof.

### **§ 81.22 Signs**

Each sign located upon a motor vehicle wrecking yard lot or premises shall comply with the sign regulations of the City.

### **§ 81.23 Compliance with This Code and Other Ordinances**

Each motor vehicle wrecking yard shall comply with this Code and other applicable ordinances of the City.

### **§ 81.24 Compliance of Yards Existing On September 1, 1975**

(a) Each motor vehicle wrecking yard or business existing in the City on September 1, 1975 shall reduce the height of all motor vehicles, bodies, frames and accessories not enclosed within a building within ninety (90) days from such date on all property being used as a motor vehicle wrecking yard within one hundred (100) feet of any adjoining property zoned a dwelling district use under the zoning regulations.

(b) Each existing motor vehicle wrecking yard shall construct the fence required by this division within one year from September 1, 1975. All property not fenced within one year as required by this section shall be deemed to be abandoned as a motor vehicle wrecking yard use.

(c) Each motor vehicle wrecking yard or business existing in the City on September 1, 1975 shall conform to all of the standards and requirements set forth in this division within one year from such date.



## CHAPTER 82: PEDDLERS, SOLICITORS, AND ITINERANT MERCHANTS

### Section

- 82.01 Peddler or solicitor defined
- 82.02 Permit required
- 82.03 Application for permit
- 82.04 Bond required
- 82.05 Investigation of applicant
- 82.06 Issuance and duration of permit
- 82.07 Permit fees
- 82.08 Permit must be carried
- 82.09 Revocation of permit
- 82.10 Permit not transferable
- 82.11 Refusal to leave premises prohibited
- 82.12 No peddling where posted
- 82.13 Hours when peddling prohibited
- 82.14 Exemptions

### **§ 82.01 Peddler or Solicitor Defined**

For the purpose of this chapter, a "peddler", "itinerant vendor", "itinerant merchant", or "solicitor" shall mean any person, partnership, firm, or corporation going from place to place in the City soliciting, exhibiting, selling, canvassing, or taking orders for or offering to sell or take orders for any goods, wares, merchandise, food stuffs, services, and subscriptions to magazines or publications. The same shall also include any person, partnership, firm, or corporation soliciting, exhibiting, selling, canvassing, or taking orders for or offering to sell or take orders for any goods, wares, merchandise, food stuffs, services, and subscriptions to magazines or publications upon or from a truck or other vehicle whether on the streets or from any property whatever in the City, whether public or private. Anyone who solicits orders and, as a separate transaction, makes deliveries to purchasers as a part of a scheme or design to evade these provisions shall be deemed a "peddler", "itinerant merchant", or "solicitor".

### **§ 82.02 Permit Required**

It shall be unlawful for any person, partnership, firm, or corporation to peddle, sell, solicit, exhibit, or take orders or offer to take orders for any goods, wares, merchandise, food stuffs, services, and subscriptions to magazines or publications without first having obtained a permit to do so from the City Secretary.

### **§ 82.03 Application for Permit**

(a) Any person desiring to obtain a permit as required by this chapter shall make written application to the City Secretary. The application shall show at least the following:

- (1) The name of the applicant and his address;
- (2) The name and address of the person or firm the applicant represents;
- (3) A physical description and the social security number and driver's license number of the applicant;
- (4) A record indicating any prior conviction of a felony or misdemeanor involving theft, fraud, robbery, or perjury;
- (5) The name of the immediate last preceding three municipalities in which the applicant works;
- (6) The product or service offered or to be offered for sale;
- (7) Whether the applicant will demand, accept, or receive payment or deposit of money in advance of final delivery of any product or service ordered;
- (8) The date the permit was issued; and
- (9) The period of time such applicant wishes to take orders in the City.

(b) In addition, there shall also be attached to each application for a permit the following:

- (1) A recent photographic likeness of the applicant's face as well as any person(s) working with the applicant; and
- (2) Satisfactory proof that the applicant represents the company or individual he purports to represent.

(c) In addition, the applicant may be required to submit to fingerprinting. Such fingerprinting shall be kept as a permanent record with the application.

(d) No permit shall be issued until such written application has been filed with the City Secretary for a period of 24 hours.

#### **§ 82.04 Bond Required**

(a) If the application shows the applicant is to take orders for future delivery, he shall give a bond signed as surety by some surety company authorized to do business in Texas, condition for the final delivery of goods or services in accordance with the terms of such order obtained and also conditioned to indemnify any and all purchases or customers for any and all defects and material or workmanship that may exist in the article sold by the principal in such bond, at the time of delivery, that may be discovered by such purchaser or customer within 30 days after delivery. Such bond shall be in the sum of not less than \$1,000 and shall remain in full force and effect for the entire duration of the license permit.

(b) Any bona fide charitable, religious, educational, or philanthropic organization or any person engaged in interstate commerce shall not be required to give a surety bond, even though orders may be taken for future delivery.

#### **§ 82.05 Investigation of Applicant**

It shall be the duty of the City Secretary to investigate each person that has made an application for a permit.

#### **§ 82.06 Issuance and Duration of Permit**

Upon completion of the investigation, the City Secretary shall issue or refuse to issue a permit. All permits issued shall be valid for a period of one year, unless sooner revoked.

#### **§ 82.07 Permit Fees**

Each applicant for a permit under this chapter shall be charged a permit fee as prescribed in the Schedule of Fees (Appendix A of this Code). Such fee shall be paid by the person desiring such permit and is payable at the time of application. This fee shall not be prorated nor refunded regardless of whether a permit is issued. No fee shall be charged to persons offering for sale agricultural products, meats, poultry, or other articles of foods grown or produced by such persons. The permit shall be issued to such person by the City Secretary upon satisfactory proof that they have produced or grown the product(s) should be peddled and such license shall so state. No fee shall be charged to any bona fide charitable, religious, educational, or philanthropic organization, or persons engaged in interstate commerce. The term "interstate commerce" means soliciting, selling, or taking orders, or offering to take orders, for any goods or services which, at the time the order is taken, are in or will be produced in any federal, district, or territory, any commonwealth, or any state other than the state of Texas, and shipped or introduced into this City in the fulfillment such orders.

#### **§ 82.08 Permit Must Be Carried**

It shall be unlawful for any peddler, itinerant merchant, or solicitor to engage in any activity for which a permit is required by this chapter, unless he carries such permit on his person while so engaged. Every peddler, itinerant merchant, or solicitor shall display his permit on request of any person and failure to so display such permit shall be grounds for revocation and shall constitute a violation of this chapter.

#### **§ 82.09 Revocation of Permit**

After such permit has been issued and the City finds that the permit was obtained by false presentation in the application or that the permit holder has committed any act or practice that violates § 17.46 et seq., Texas Business & Commerce Code, otherwise known as the Texas Deceptive Trade Practice Act, or has committed any crime or misdemeanor involving moral turpitude or any violation of this chapter or any other City ordinance or state or federal law, the City may revoke such permit by giving written notice to the holder and a hearing held. Such notice shall be given by depositing same in the United States mail, certified or registered mail, return receipt requested, addressed to the permittee at the address stated on the license application. Such hearing shall be held not less than ten (10) days after the service of such notice.

### **§ 82.10 Permit Not Transferable**

No permit issued under this Chapter shall be transferable or signable nor give authority to more than one person to engage in business as a peddler, itinerant merchant, or solicitor, but any person having obtained such permit may have the assistance of one or more person in conducting such business.

### **§ 82.11 Refusal to Leave Premises Prohibited**

It shall be unlawful for any peddler, itinerant vendor, or solicitor who enters upon premises owned, occupied, or leased by another person to willfully refuse to leave such premises after having been notified by the owner or possessor of such premises or his agent.

### **§ 82.12 No Peddling Where Posted**

It shall be unlawful for any peddler, itinerant vendor, or solicitor to enter upon any private premises when the same is posted with a sign stating "no peddlers allowed" or "no solicitation allowed" or other words to such effect.

### **§ 82.13 Hours When Peddling Prohibited**

It shall be unlawful for any peddler, itinerant vendor, or solicitor to engage in the business of peddling at any time between sunset and 30 minutes after sunrise, except when the peddler, itinerant vendor, or solicitor has specific invitation and appointment with the customer.

### **§ 82.14 Exemptions**

The following persons, partnerships, firms, or corporations shall be exempt from the permit provisions of this chapter

(a) Ordinary commercial travelers who sell or exhibit for sale goods or services to local firms or businesses and not to residences;

(b) Daily deliveries of milk, bakery, and other food products, liquor deliveries, or newspaper deliveries; and

(c) Insurance salesmen, real estate salesmen, and other professionals licensed by the state, except that insurance salesmen shall personally solicit only at the specific request of the owner or occupant of the business or residence at which the solicitation is being made.



**CITY OF OVERTON, TEXAS**  
 1200 S. Commerce St. \* P.O. Drawer D  
 Overton, TX 75684 \* Phone: 903-834-3171

<p><b>Solicitor / Peddler / Itinerant Vendor</b></p> <p>Permit #: _____</p> <p>Application Fee: _____</p> <p>Permit Fee: _____</p>
--

**APPLICANT INFORMATION**

Name of Applicant \_\_\_\_\_

Date of Birth \_\_\_\_\_ Driver's License # \_\_\_\_\_ State \_\_\_\_\_

Address \_\_\_\_\_ Phone #: \_\_\_\_\_

Other communities solicited in last twelve (12) months \_\_\_\_\_

Companies represented in last twelve (12) months \_\_\_\_\_

**BUSINESS INFORMATION**

Sole Proprietorship Yes  No

Legal Name of Business Entity \_\_\_\_\_

Permanent Business Address (NO P.O. Box) \_\_\_\_\_

State of Incorporation or Filing of Partnership/ Articles of Incorporation/Assumed Name \_\_\_\_\_

Sales Tax Number \_\_\_\_\_ Business Phone \_\_\_\_\_

**EMPLOYEE INFORMATION**

[Attach separate listing for additional employees that will be working the City of Overton]

Employee Name \_\_\_\_\_

Date of Birth \_\_\_\_\_ DL # \_\_\_\_\_ State \_\_\_\_\_

Permanent Address \_\_\_\_\_ Phone# \_\_\_\_\_

Employee Name \_\_\_\_\_

Date of Birth \_\_\_\_\_ DL # \_\_\_\_\_ State \_\_\_\_\_

Permanent Address \_\_\_\_\_ Phone# \_\_\_\_\_

Employee Name \_\_\_\_\_

Date of Birth \_\_\_\_\_ DL # \_\_\_\_\_ State \_\_\_\_\_

Permanent Address \_\_\_\_\_ Phone# \_\_\_\_\_

As the employer of individuals whose names are listed in this application, I accept the responsibilities imposed by State Law for the acts of my employees. [Initial] \_\_\_\_\_

Yes  No; Has the applicant or any employee listed above been found guilty of any criminal offense in any Court in this State or any other State?

*If "Yes," identify the individual, offense, State of conviction and penalty imposed:*

Yes  No; Does the applicant or any employee listed above have any unpaid civil judgments against him/her in any State or U.S. possession arising from a business activity which would have been covered this Section?

*If "Yes," identify the unpaid civil judgments against him/her and explain:*

## CHAPTER 83: PAWNBROKERS

### Section

- 83.01 Definitions
- 83.02 Hours of operation
- 83.03 Register of transactions

### **§ 83.01 Definitions**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Pawnbroker. A person who pursues the business of lending money upon interest and receiving on deposit any personal property as security for the payment of such loan and interest.

Pawnshop establishment. The place of business where the business of a pawnbroker is transacted.

### **§ 83.02 Hours of Operation**

It shall be unlawful for any person owning or operating a pawnshop establishment, to keep open his store or place of business for the transaction of any business pertaining to such occupation, or to engage in it, conduct or carry on the business, in whole or in part, directly or indirectly, between the hours of 7:00 P.M. and 8:00 A.M.; provided, that on Saturdays the stores and places of business may open for business at 8:00 A.M. and remain open until, but not later than, 8:00 P.M., and shall remain closed on Sundays until the following Monday morning at 8:00 A.M.

### **§ 83.03 Register of Transactions**

(a) Each pawnbroker shall keep a well-bound book to be kept open for inspection in which he shall register all his transactions as a broker at the time the same occurs. Such register shall show:

- 1) Date of transaction.
- 2) Name and address of pawnbroker.
- 3) An accurate description and serial number, if any, of the article pawned.
- 4) The time and the amount for which the article is pawned; its probable value and the rate of interest agreed upon.
- 5) Name and address of person pawning article.

6) The signature and address of person pawning article. In the event the person pawning the article cannot write, then the pawnbroker receiving the article in pawn will make notation in his own handwriting in the space for the person's signature as follows: "cannot write".

7) Name of person receiving article in pawn.

8) The final disposition made of such property and if sold, the name and address of purchaser and the amount for which each article was sold.

(b) The register shall be made in duplicate and a duplicate sheet showing the above information, except the showing as to final disposition thereof, shall be delivered to the person pawning the article at the time of the transaction. The register book and all articles pawned shall be subject to inspection by police officers at all times.

(c) The register shall be made in duplicate and a duplicate sheet showing the above information, except the showing as to final disposition thereof, shall be delivered to the person pawning the article at the time of the transaction. The register book and all articles pawned shall be subject to inspection by police officers at all times.

(d) The register shall be kept by the pawnbroker at his place of business until the most recent transaction appearing therein is two years old.



## **CHAPTER 84: SEXUALLY ORIENTED BUSINESSES**

### Section

- 84.01 Purpose and intent
- 84.02 Definitions
- 84.03 Classifications of sexually oriented businesses
- 84.04 License required
- 84.05 Issuance of license
- 84.06 License fees for sexually oriented businesses
- 84.07 Inspection
- 84.08 Expiration of license
- 84.09 Suspension
- 84.10 Revocation
- 84.11 Appeal
- 84.12 Transfer of license
- 84.13 Location of sexually oriented businesses
- 84.14 Exemptions from locational restrictions
- 84.15 Additional regulations for escort services
- 84.16 Additional regulations for nude model studios
- 84.17 Additional regulations for adult theaters and adult motion picture theaters
- 84.18 Additional regulations for adult motels
- 84.19 Regulations pertaining to exhibition of sexually explicit films or videos
- 84.20 Display of sexually explicit material to minors
- 84.21 Enforcement
- 84.22 Injunctive relief

### **§ 84.01 Purpose And Intent**

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

(b) It is the intent of the City Council of the City of Overton that the locational regulations of § 84.13 of this chapter are promulgated pursuant to Chapter 243 of the Texas Local Government Code.

### **§ 84.02 Definitions**

In this chapter:

(a) Adult Arcade means any place to which the public is permitted wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines. Projectors or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one (1) time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."

(b) Adult Bookstore or Adult Video Store means a commercial establishment that as one of its principal business purposes offers for sale or for rental any form of consideration any one or more of the following:

(1) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe "specified sexual activities" or "specified anatomical areas", or

(2) Instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities".

(c) Adult Cabaret means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:

(1) Persons who appear in a state of nudity or semi-nudity, including topless dancers, nude dancers or strippers, male or female; or

(2) Live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

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

(d) Adult Motel means a hotel, motel or similar commercial establishment that:

(1) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right-of-way which advertises the availability of this type of photographic reproduction; or

(2) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

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

(e) Adult Motion Picture Theater means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

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

(g) Child Care Facility means a building used as a day nursery, children's boarding home, child placement agency, religious or charitable encampment for children, or any other place for the care or custody of children under sixteen (16) years of age.

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

(i) Mayor means the City of Overton's Mayor and/or his designated agent.

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

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

(l) Establishment means and includes any of the following:

(1) The opening or commencement of any sexually oriented business as a new business;

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

(3) The addition of any sexually oriented business to any other existing sexually oriented business; or

(4) The relocation of any sexually oriented business.

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

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

(o) Nudity or a State of Nudity means:

(1) The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or

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

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

(q) Person means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(r) Residential District means a single family, duplex, townhouse, multiple family or mobile home district or area so designated by such uses.

(s) Residential Use means property used for single family, duplex, multiple family, Mobile Home Park, mobile home subdivision, or campground purposes.

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

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

(v) Sexual Encounter Center means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

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

(w) Sexually Oriented Business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(x) Specified Anatomical Areas means human genitals in a state of sexual arousal.

(y) Specified Sexual Activities means and includes any of the following:

- (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
- (2) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) Masturbation, actual or simulated; or
- (4) Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

(z) Substantial Enlargement of a sexually oriented business means the increase in floor area occupied by the business by more than twenty (20) percent, as the floor area existed on the date of the enactment of this chapter.

(AA) Transfer of Ownership or Control of a sexually oriented business means and includes any of the following:

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

### **§ 84.03 Classifications of Sexually Oriented Businesses**

Sexually oriented businesses are classified as follows:

- (a) Adult arcades;
- (b) Adult bookstores or adult video stores;
- (c) Adult cabarets;

- (d) Adult motels;
- (e) Adult motion picture theaters;
- (f) Adult theaters;
- (g) Escort agencies;
- (h) Nude model studios; and
- (i) Sexual encounter centers.

#### **§ 84.04 License Required**

(a) A person commits an offense if he operates a sexually oriented business without a valid license issued by the City of Overton for the particular type of business.

(b) An application for a license must be made on a form provided by the Mayor. The application form shall be sworn to and shall (1) include the name and address of the applicant; (2) state whether the applicant meets each of the requirements set forth in § 84.05 of this chapter; (3) include the name and address of each person required to sign the application pursuant to § 84.04(d) of this chapter, and the name, address and type of entity (if applicable) of each person or entity owned or controlled by such person that owns or controls an interest in the business to be licensed; and (4) such other matters, consistent with this chapter, is may be specified in the application form. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6"). Applicants who must comply with § 84.19 of this chapter shall submit a diagram meeting the requirements of § 84.19 of this chapter.

(c) The applicant must be qualified according to the provisions of this chapter and the premises must be inspected and found to be in compliance with the law by the City Manager.

(d) If a person who wishes to operate a sexually oriented business is an individual, he or she must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a twenty percent (20%) or greater interest in the business must sign the application for a license as applicant Each applicant must be qualified under § 84.05 of this chapter and each applicant shall be considered a licensee if a license is granted.

#### **§ 84.05 Issuance of License**

(a) The City Manager shall approve the issuance of a license to an applicant within thirty (30) days after receipt of an application unless the City Council finds one or more of the following to be true:

- (1) An applicant is under eighteen (18) years of age.
- (2) An applicant or an applicant's spouse is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.
- (3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
- (4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this Chapter other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
- (5) The license fee required by this chapter has not been paid.
- (6) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding twelve (12) months and has demonstrated an inability to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.
- (7) An applicant or the proposed establishment is in violation of or is not in compliance with § 84.07, § 84.12, § 84.13, § 84.15, § 84.16, § 84.17, § 84.18, § 84.19, or § 84.20 of this chapter.
- (8) The premises to be used for the sexually oriented businesses are not in compliance with all applicable City laws, regulations and City Council orders.
- (9) An applicant or an applicant's spouse has been convicted of a crime involving
  - (1) any of the following offenses as described in Chapter 43 of the Texas Penal Code:
    - (aa) prostitution;
    - (bb) promotion of prostitution;
    - (cc) aggravated promotion of prostitution;
    - (dd) compelling prostitution;
    - (ee) obscenity;

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

(gg) sexual performance by a child; or

(hh) possession of child pornography;

(ii) For which:

(aa) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of misdemeanor offense;

(bb) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(cc) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(10) An applicant or an applicants spouse has been convicted of a crime involving

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

(aa) public lewdness;

(bb) indecent exposure; or

(cc) indecency with a child;

(ii) For which:

(aa) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of misdemeanor offense;

(bb) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or

(cc) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the



convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

- (11) An applicant or an applicants spouse has been convicted of a crime involving
- (i) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
  - (ii) Incest, solicitation of a child, or harboring a runaway child as described in Chapter 25 of the Texas Penal Code; or
  - (iii) Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

(B) For which:

- (i) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of misdemeanor offense;
- (ii) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
- (iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicants spouse.

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

#### **§ 84.06 License Fees for Sexually Oriented Businesses**

The annual fee for a sexually oriented business license shall be as prescribed in in the Schedule of Fees (Appendix A of this Code).

#### **§ 114.07 Inspection**

(a) An applicant or licensee shall permit representatives of the Police Department of the City of Overton to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

(b) A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the Police Department at any time it is occupied or open for business.

(c) The provisions of this section do not apply to areas of an adult motel that are currently being rented by a customer for use as a permanent or temporary habitation.

#### **§ 84.08 Expiration of License**

Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in § 84.04. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the license will not be affected.

#### **§ 84.09 Suspension**

The Mayor shall suspend a license for a period not to exceed thirty (30) days if he determines that a licensee or an agent or employee of a licensee has:

(1) Violated or is not in compliance with § 84.07, § 84.12, § 84.13, § 84.15, § 84.16, § 84.17, § 84.18, § 84.19, or § 84.20 of this chapter;

(2) Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;

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

(4) Knowingly permitted gambling by any person on the sexually oriented business premises;  
or

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

#### **§ 84.10 Revocation**

(a) The Mayor shall revoke a license if a cause of suspension in § 84.09 of this chapter occurs and the license has been suspended within the preceding twelve (12) months.

(b) The Mayor shall revoke a license if he determines that:

- (1) A licensee gave false or misleading information in the material submitted to the Mayor during the application process;
  - (2) A licensee, an agent or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
  - (3) A licensee, an agent or an employee has knowingly allowed prostitution on the premises;
  - (4) A licensee, an agent or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
  - (5) A licensee has been convicted of an offense listed in § 84.05 for which the time period required in § 84.05 has not elapsed;
  - (6) On two (2) or more occasions within a 12-month period, a person or persons committed an offense, occurring in or on the licensed premises, of a crime listed in § 84.05 for which a conviction has been obtained, and the person or persons were agents or employees of the sexually oriented business and the time the offenses were committed;
  - (7) A licensee or agent or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensee's premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code; or
  - (8) A licensee is delinquent in payment to the City of Overton for any ad valorem taxes, sales or other taxes related to the sexually oriented business.
- (c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (d) Subsection (b)(7) of this section does not apply to adult motels as a ground for revoking the license unless the licensee, agent or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.
- (e) When the City Manager revokes a license the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation became effective. If, subsequent to revocation, the City Manager finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (b)(5) of the section, an applicant may not be granted another license until the appropriate number of years required under § 84.05 have elapsed.

## **§ 84.11 Appeal**

If the City Manager denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action and the right of an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the licensee whose application has been denied or whose license has been suspended or revoked shall have the right to appeal to the state district court. An appeal to the state district court must be filed within thirty (30) days after the receipt of notice of the decision. The licensee shall bear the burden of proof in court.

## **§ 84.12 Transfer of License**

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

## **§ 84.13 Location of Sexually Oriented Businesses**

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

- (1) A church;
- (2) A school;
- (3) A child care facility;
- (4) A boundary of a residential district;
- (5) A public park;
- (6) The property line of a lot devoted to residential use; or
- (7) Any building or structure in which alcoholic beverages are offered for sale.

(b) A person commits an offense if he or she causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business located within one thousand feet (1,000) of another sexually oriented business.

(c) A person commits an offense if he or she causes or permits the operation, establishment, or maintenance of more than one (1) sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business.

(d) For the purpose of Subsection (a) of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted to the nearest property line of the premises of a church, school, child care facility or building or structure in which alcoholic beverages are offered for sale, or to the nearest boundary of an affected public park, residential district, or residential lot.

(e) For the purposes of subsection (b) of this section, the distance between two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(f) Any sexually oriented business lawfully operating on the effective date of this chapter that is in violation of Subsections (a), (b), or (c) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed twelve (12) months, unless sooner terminated for any reason, or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming use shall not be increased, enlarged, extended, or altered except that the use may be for changes to a conforming use. If two (2) or more sexually oriented

businesses are within one thousand feet (1,000) of one another and otherwise in a permissible location, the sexually oriented business which was at first established and continually operating at a particular location is the conforming use and the later established business is nonconforming.

(g) A sexually oriented business lawfully operated as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, or a church school, child care facility, public park, residential districts or residential lot, or any building or structure in which alcoholic beverages are offered for sale, within one thousand feet (1,000) of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

#### **§ 84.14 Exemptions from Locational Restrictions**

(a) If the Mayor denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of any section of this chapter, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the Mayor a written request for an exemption from the locational restrictions of this chapter.

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

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

(d) The City Council may, in its discretion, grant an exemption from the locational restrictions of this chapter if it makes the following findings:

(1) That the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;

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

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

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

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

(e) The City Council shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. The decision of the City Council is final.

(f) If the City Council grants the exemption, the exemption is valid for one (1) year from the date of the City Council's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of this chapter until the applicant applies for and receives another exemption.

(g) If the City Council denies the exemption, the applicant may not reapply for an exemption until at least twelve (12) months have elapsed since the date of the City Council's action.

(h) The grant of an exemption does not exempt the applicant from any other provisions of this chapter, other than the locational restrictions.

#### **§ 84.15 Additional Regulations for Escort Agencies**

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

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

#### **§ 84.16 Additional Regulations for Nude Model Studio**

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

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

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

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

#### **§ 84.17 Additional Regulations for Adult Theaters and Adult Motion Picture Theaters**

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

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

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

#### **§ 84.18 Additional Regulations for Adult Motels**

(a) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time of less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this chapter.

(b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or subrents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

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

#### **§ 84.19 Regulations Pertaining To Exhibition of Sexually Explicit Films or Videos**

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

(1) Upon application of a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more managers stations, the location of all overhead lighting fixtures and switches, which lights are controlled by which switches, and designating any portion of the premises in which patrons will not be permitted. Only agents or employees shall have access to light switches. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted if granted. A professionally prepared diagram in the nature of an engineers or architects blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches (6"). The Mayor may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously



submitted and certifies that the configuration for the premises has not been altered since it was prepared.

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

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

(4) It is the duty of the owners and operator of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the managers stations. The view required in this subsection must be by direct line of sight from the manager's station.

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

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

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

(b) A person having a duty under subsections (a)(1) through (a)(8), above, commits an offense if he or she knowingly fails to fulfill that duty.

#### **§ 84.20 Display of Sexually Explicit Material to Minors**

(a) A person commits an offense, if, in a business establishment open to persons under the age of seventeen (17) years, he displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for

commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

- (1) Human sexual intercourse, masturbation, or sodomy;
- (2) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts.
- (3) Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or
- (4) Human male genitals in a discernibly turgid state, whether covered or uncovered;

(b) In this section "display" means to locate an item in such a manner that, without obtaining assistance from an agent or employee of the business establishment:

- (1) It is available to the general public for handling and inspection; or
- (2) The cover, outside packing on the item or contents of the items is visible to members to the general public.

#### **§ 84.21 Enforcement**

(a) Except as provided by subsection (b) of this section, any person violating § 1-112 of this chapter, upon conviction, is punishable by a fine not to exceed \$500 for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

(b) If the sexually oriented business involved is a nude model studio or sexual encounter center, then violation of § 1-103(a) or § 1-112 of this chapter is punishable as a class A misdemeanor.

(c) Except as provided by subsection (b) of this section, above, any person violating a provision of this chapter other than § 1-112, upon conviction, is punishable by a fine not to exceed \$3,000 for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

(d) It is a defense to prosecution under § 1-103 (a), § 1-112 of this chapter that each item of descriptive, printed film, or video material offered for sale or rental, taken as a whole, contains serious literary artistic, political, or scientific value.

#### **§ 84.22 Injunctive Relief**

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of § 84-13 of this chapter is subject to a suit or injunction as well as prosecution for criminal violations.

## CHAPTER 85: OIL AND GAS DRILLING

### Section

#### **General Provisions**

- 85.01 Definitions
- 85.02 Oil and gas inspector, appointment; compensation; duty to enforce chapter
- 85.03 Location in or obstruction of streets
- 85.04 Location near residence or buildings
- 85.05 Drilling unit map designated
- 85.06 Bond required prior to drilling
- 85.07 Only one well per drilling unit permitted; proviso
- 85.08 Notice required to re-work well; exception
- 85.09 Derrick and rig; watchman required
- 85.10 Pits
- 85.11 Casing generally
- 85.12 Setting and cementing casing
- 85.13 Valves and blow out preventers
- 85.14 Drilling fluid
- 85.15 Drill stem tests
- 85.16 Tubing
- 85.17 Bradenheads
- 85.18 Christmas tree and well head connections
- 85.19 Premises to be kept clean and sanitary
- 85.20 Mufflers required
- 85.21 Pumping wells to be equipped with electric motors
- 85.22 Location of storage tanks; right-of-way for pipe lines
- 85.23 Fence required upon completion
- 85.24 No smoking signs to be posted
- 85.25 Venting and flaring of gas
- 85.26 Disposal of salt water
- 85.27 Abandonment and plugging procedure
- 85.28 Oil tax; collection; lien
- 85.29 Violations

#### **Permit to Drill or Operate**

- 85.30 Drilling permit required
- 85.31 Application contents
- 85.32 Notice and publication
- 85.33 Permit fee; refund
- 85.34 Issuance; contents; effect
- 85.35 Termination
- 85.36 Holder of major interest in drilling unit entitled to permit

## **§ 85.01 Definitions**

For the purpose of this chapter the following words and terms shall have the scope and meaning defined and set out in connection with each:

(a) Person shall include both the singular and the plural, and shall mean and include any person, individual, firm, partnership, association, corporation, club, society, cooperative, trust, municipal corporation, or political subdivision whatsoever.

(b) Well shall mean any hole or bore to any sand, formation, strata, or depth, which is drilled, bored, sunk, dug, or put down for the purposes of either exploring for or ascertaining the existence of any oil, gas, or liquid hydrocarbons for the purpose of producing and recovering any oil, gas, or liquid hydrocarbon.

(c) Permittee shall mean the person to whom is issued a permit for the drilling and operation of a well under this chapter.

(d) Drilling Unit shall mean one contiguous body or block of land composed of one or more tracts or lots of land, comprising a total surface area of twenty (20) acres of land subject to a tolerance of five per cent (5%), more or less, provided that the separation of such tracts or lots by streets or alleys shall not serve to render such tracts or lots not contiguous for purposes of this chapter.

(e) Technical Terms All technical or oil and gas industry words or phrases used herein and not specifically defined herein shall have that meaning customarily attributable thereto by prudent operators in the oil and gas industry.

## **§ 85.02 Oil And Gas Inspector; Appointment; Compensation; Duty to Enforce Chapter**

The City Council may at any time appoint an oil and gas inspector and set his compensation. It shall be the duty of the oil and gas inspector to enforce the provisions of this chapter.

## **§ 85.03 Location In Or Obstruction of Streets**

No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is within any of the streets or alleys of the City and no street or alley shall be blocked or encumbered or closed in any drilling or production operation, except by special permit by order of the City Council, and then only temporarily.

## **§ 85.04 Location near Residence or Buildings**

No well shall be drilled and no permit shall be issued for any well to be drilled at any location which is nearer than two hundred (200) feet of any residence, building, or structure without the applicant having first secured the written permission of the owner or owners thereof.

#### **§ 85.05 Drilling Unit Map Designated**

The drilling, completion and operation of only one completed well for oil to each reservoir may be authorized by permit of the City Council, as provided in this chapter, on each drilling unit shown and designated on the official map of the City on file in the office of the City Secretary. Such map being the representation of the territory within the entire City and being Exhibit "A", and it is hereby referred to and made a part hereof for all purposes. It shall be unlawful to commence or complete more than one well in each reservoir on each such unit; provided that in the event a well is lost or abandoned as a dry hole, the permittee may relocate the well on the drilling unit involved and drill and complete such relocated well under the permit for the first well by filing a plat and certificate showing the abandonment of the first well and the location of the second well.

#### **§ 85.06 Bond Required Prior To Drilling**

In the event a permit be issued by the City Council under the terms of this chapter for the drilling and operation of a well, no actual drilling operations shall be commenced until a surety bond, duly executed by permittee, as principal, and by a reliable surety company authorized to do business in the state, as surety, in the amount and upon the conditions prescribed in this section shall be filed with and approved in writing by the City Secretary or until an instrument executed by the surety as hereinafter prescribed is filed with and approved, in writing, by the City Secretary of the City which makes the drilling and operation of such well subject to the terms and conditions of two surety bonds totaling two hundred thousand dollars (\$200,000.00) in the aggregate, previously filed by permittee hereunder. Such bond filed by applicant shall be in the sum of not less than one hundred thousand dollars (\$100,000.00) and shall run to the City, for the benefit of the City and all persons concerned, conditioned that the permittee will comply with the terms and conditions of this chapter in the drilling and operation of the well; that the permittee will promptly restore the streets and sidewalks and other public property of the City which may be disturbed or damaged in the operations to their former conditions, as near as practicable; that the permittee will promptly clear all premises of all litter, trash, waste, and other substances used, allowed, or occurring in the drilling or producing operations and will grade, level, and restore such property to the same surface condition, as near as practicable, as existed when operations for the drilling of the well were first commenced; and that the permittee will pay to the owners of any buildings, improvements, goods, or chattels located on the property any extra cost of insurance of such property imposed by reason of the granting of the permit or the operations carded on thereunder and that the permittee will promptly pay and discharge any liability imposed by law for damages on account of injury to property, either public or private, or bodily injury, including death suffered by any person, resulting from the drilling operations, production and maintenance of such well, equipment, facilities, or appurtenances thereto; and that the permittee will indemnify and hold the City harmless from

any and all liability growing out of or attributable to the granting of such permit. Such bond filed by a permittee hereunder shall become effective on or before the date filed with the City Secretary and remain in force and effect until the expiration of the term of the permit issued, subject to the right of the surety company to cancel same after thirty (30) days written notice of such intention has been given to the City Secretary but the privilege of cancellation shall not affect any liability which may have arisen hereunder unto the time the bond is actually cancelled. Permittee in the event of cancellation of the surety bond above provided for shall automatically suspend his right to operate under his permit until such time as permittee shall furnish another bond as required by this chapter. Each bond shall accrue to the benefit of any person with reference to the conditions above stated and may be sued upon by him.

If in accordance with the provisions of this section a permittee has filed with the City two one hundred thousand dollar (\$100,000.00) surety bonds to cover the drilling and operation of wells under this chapter, the permittee may drill and operate an additional well or wells hereunder without filing an additional surety bond as specified above, provided the permittee files with the City Secretary an instrument, approved at the City Secretary, duly executed by the surety company named as surety, in each of the permittee's bonds on file with the City agreeing that such bonds are in full force and effect in the aggregate sum of two hundred thousand dollars (\$200,000.00) and that the terms and conditions of each bond shall thereafter likewise apply to the drilling and operation of the additional well or wells named therein.

The City Council may waive the requirement for a surety bond as described in this section as to any permittee when it finds and determines that such permittee is financially responsible and capable of meeting obligations for amounts in excess of \$200,000.00. Upon such a determination, the City Council may allow the permittee to file with the City Secretary, in lieu of any surety bond, a letter of acceptance and indemnity binding and obligating such permittee to abide by the conditions prescribed in this section for surety bonds and to indemnify and hold the City harmless from any and all liability growing out of or attributable to the granting of any and all permits held by such permittee.

#### **§ 85.07 Only One Well per Drilling Unit Permitted; Proviso**

It shall be unlawful to drill to each reservoir more than one well on each drilling unit; provided that in the event a well is lost or abandoned as a dry hole, the permittee may relocate the well on the drilling unit involved and drill and complete such relocated well under the permit required in section 115.40 for the first well by filing a plat and certificate showing the abandonment of the first well and the location of the second well.

#### **§ 85.08 Notice Required To Re-work Well; Exception**

Any operator desiring to rework a well shall give the City Council written notice of his intent prior to the commencement of operations, except in an emergency, in which event an operator may proceed without notice.

### **§ 85.09 Derrick And Rig; Watchman Required**

It shall be unlawful for any person to use or operate in connection with the drilling or reworking of any well within the City limits any wooden derrick or any steam-powered rig and all engines shall be equipped with adequate mufflers approved by the City Council. It shall likewise be unlawful to permit any derricks to remain on the premises or drilling site for a period longer than thirty (30) days after completion or abandonment of the well. At all times from the start or erection of a derrick, or a mat, or a gin-pole, until the well is abandoned and plugged, or completed as a producer and enclosed with a fence as provided in this chapter, the permittee shall keep a watchman on duty on the premises.

### **§ 85.10 Pits**

Only portable slush-tanks for mud or water shall be permitted in connection with the drilling and reworking operation. Such tanks and their contents shall be removed from the premises and the drilling site within ten (10) days after completion of the well.

### **§ 85.11 Casing Generally**

The productive string shall be new pipe and shall have a mill test of twenty-one hundred (2,100) pounds for wells six thousand (6,000) feet or less in depth. The surface casing shall be new pipe and shall have a mill test of eleven hundred (1,100) pounds.

### **§ 85.12 Setting And Cementing Casing**

No well shall be drilled within the City limits without properly setting surface casing to a minimum depth of two thousand (2,000) feet. No well shall be drilled within the City limits without cementing the surface casing by the pump and plug method with sufficient cement to completely fill all of the annular space behind such casing to the surface of the grounds. No well shall be drilled within the City without cementing the production string by the pump and plug method with sufficient cement to completely fill all the annular space behind the production string to at least six hundred (600) feet above the highest oil and/or gas bearing horizon. In the event a protection string of casing is used, no well shall be drilled within the City without cementing the protection string by the pump and plug method with sufficient cement to completely fill all the annular space behind the protection string to at least six hundred (600) feet above the highest oil and/or gas bearing horizon.

### **§ 85.13 Valves and Blow out Preventers**

No well shall be drilled within the City limits without properly equipping the surface casing, when set, with at least two (2) ram type blow-out preventers, one of which shall be equipped with blind rams and the other pipe rams. On each well drilled, a valve cock or kelley cock shall be installed on the kelley used.



Each blow-out preventer shall be tested at least once every twenty-four (24) hour period and all control equipment shall be in good working condition and order at all times. Drilling fluid return lines shall be equipped with flow valves where the return line is connected below the top blow-out preventer.

#### **§ 85.14 Drilling Fluid**

All operators shall be required to drill with fluid of sufficient weight to exceed the formation pressure anticipated in the Overton Townsite.

#### **§ 85.15 Drill Stem Tests**

It shall be unlawful for any person in connection with the drilling and reworking operations of any well within the City limits to take and to complete any drill stem test or tests except during daylight hours and then only if the well effluent during the test is produced through an adequate oil and gas separator to storage tanks, and the effluent remaining in the drill pipe at the time the tool is closed is flushed to the surface by circulating drilling fluid down the annulus and up the drill pipe.

#### **§ 85.16 Tubing**

All tubing used in any well within the City limits, drilling to a depth of six thousand (6,000) feet or less, shall be J-55.

#### **§ 85.17 Bradenheads**

Each well drilled within the City limits shall be equipped with a bradenhead with a test pressure of not less than six thousand (6,000) pounds per square inch. Bradenheads shall not be welded. The bradenhead installed on the surface casing shall be equipped with fittings having a test pressure rating of not less than six thousand (6,000) pounds per square inch. The bradenhead pressure shall be checked at least once each calendar month and if pressure is found to exist, proper remedial measures shall be immediately taken to eliminate the source and the existence of the pressure.

#### **§ 85.18 Christmas Tree and Well Head Connections**

The Christmas tree and all well head connections on each well drilled within the City limits shall be as follows:

(a) On all wells completed at a depth above four thousand (4,000) feet the Christmas tree and well head connections shall have at least a minimum working pressure of two thousand (2,000) pounds per square inch and a minimum test pressure of at least four thousand (4,000) pounds per square inch;

(b) On all wells completed to a depth of from four thousand and one (4,001) to seven thousand (7,000) feet the Christmas tree and well head connections shall have at least a minimum working pressure of three thousand (3,000) pounds per square inch and a minimum test pressure of at least six thousand (6,000) pounds per square inch;

(c) On all wells completed below a depth of seven thousand (7,000) feet the Christmas tree and well head connections shall be at least a working pressure of five thousand (5,000) pounds per square inch and a minimum test pressure of at least ten thousand (10,000) pounds per square inch.

In the event the surface shut-in pressure of any well in the City limits exceeds two thousand (2,000) pounds per square inch, the flow string of the Christmas tree shall be equipped with an automatic closing safety valve in addition to the regular control valves.

### **§ 85.19 Promises to Be Kept Clean and Sanitary**

The premises shall be kept in a clean and sanitary condition, free from rubbish of every character, to the satisfaction of the health officer and the City at all times drilling operations or reworking operations are being conducted and as long thereafter as oil and/or gas is being produced therefrom.

### **§ 85.20 Mufflers Required**

Motive power for all operations after completion of drilling operations shall be electric or property muffled gas or gasoline engines, such mufflers to be approved by the City Inspector.

### **§ 85.21 Pumping Wells to Be Equipped With Electric Motors**

All pumping wells within the City shall be equipped with electric motors.

### **§ 85.22 Location of Storage Tanks; Right-of-Way for Pipe Lines**

(a) All crude oil storage tanks shall be located outside the City limits.

(b) In order to enable the holder of each permit required by this chapter to remove oil, gas, water, or other products from each drilling unit within the City limits to a point or points beyond the City limits, the holder of each permit issued under this chapter for the drilling and operation of a well for oil or gas in the City is hereby granted rights-of-way and easements on, over, under, along, or across the City streets, sidewalks, alleys, and other City property in the City for the purpose of constructing, laying, maintaining, repairing, replaying and removing pipe lines, so long as production or operations may be continued under any permit-issued pursuant to this chapter: Permittees, shall not interfere with or damage existing water, sewer, or gas lines or the facilities of public utilities located on, under, or across the course of such rights-of-way. All crossings for pipe lines under all paved or black topped streets shall be bored or jacked.

### **§ 85.23 Fence Required Upon Completion**

Any person who completes any well as a producer shall have the obligation to enclose such well, together with its surface facilities, by a substantial smooth net wire fence sufficiently high and properly built so as to ordinarily keep persons and animals out of the enclosure, with all gates thereto to be kept locked when the permittee or his employees are not within the enclosure.

### **§ 85.24 No Smoking Signs To Be Posted**

Printed signs reading: "DANGEROUS - NO SMOKING ALLOWED" or similar wording shall be posted in conspicuous places on each producing drilling unit.

### **§ 85.25 Venting and Flaring Of Gas**

No person engaged in drilling or operating any well shall permit gas to escape or be vented into the air within the City limits.

### **§ 85.26 Disposal of Salt Water**

Every permittee shall make adequate provisions for the disposal of all salt water or other impurities which he may bring to the surface, such disposal to be made in such manner as to not contaminate the water supply, present or prospective, or to injure surface vegetation.

### **§ 85.27 Abandonment And Plugging Procedure**

Whenever any well is abandoned it shall be the obligation of the permittee and the operator of the well to set a cast iron bridge plug in the top of all the remaining completion and protection casing sections and a one hundred (100) foot cement plug pumped below and above each such bridge plug; and to set a cast iron bridge plug as low as possible in the surface casing and a one hundred (100) foot cement plug pumped below and above such bridge plug. No surface string or conductor string of casing may be pulled and removed from a well. The production string of casing may be removed from a point one hundred (100) feet or more above the shoe of the protection string. The protection string of casing may be removed from a point one hundred (100) feet or more above the shoe of the surface string of casing. Whenever any such well is abandoned and plugged, it shall be the further obligation of the permittee and the operator of the well to cut the surface casing off at least six (6) feet below the surface of the ground, to place at least a twenty-five (25) foot cement plug in the top of the casing, and to weld the top of the casing completely shut with the resulting hole being completely filled to the surface of the ground and duly tamped. Any additional provisions or precautionary measures prescribed by the state or the railroad commission of the state in connection with abandonment and plugging of a well shall be complied with by the permittee.

### **§ 85.28 Oil Tax; Collection; Lion**

(a) In addition to all other taxes provided by law, there is hereby levied a tax on oil produced within the City of two cents (\$.02) per barrel of forty-two (42) standard gallons. Such tax shall be computed upon the total barrels of oil produced or salvaged through the earth within the City and shall be based upon tank tables showing one hundred per cent (100%) of production and exact measurements of contents. The tax herein levied on oil shall be two per cent (2%) of the market value of said oil whenever the market value thereof is below one dollar (\$1.00) per barrel of forty two (42) standard gallons. The market value of oil, as that term is used herein, shall be the actual market value thereof, plus any bonus or premiums or any other things of value paid therefor or which such oil will reasonably bring if produced in accordance with the laws of the United States, State of Texas, and the City.

(b) The tax hereby levied shall be a liability of the producer of oil and it shall be the duty of such producer to keep accurate records of all oil produced, making semi-annual reports as required by this chapter.

(c) The purchaser of oil shall pay the tax on all oil purchased and deduct tax so paid from payment due producer or other interest holder, making such payments so deducted to the City Secretary by legal tender or cashier's check payable to the City Secretary, provided that if the oil produced is not sold during the semi-annual period in which produced, then the producer shall pay the tax at the same rate and in the same manner as if the oil were sold.

(d) The tax levied herein shall be paid semi-annually on or before the thirty-first (31st) day of each August on oil produced during the preceding first six (6) months of the calendar year and on or before the thirty-first (31st) day of each January on oil produced during the preceding last six (6) months of the preceding calendar year by the purchaser or producer as the case may be, but in no event shall a producer be relieved of responsibility for the tax until same shall have been paid, and provided, in event the amount of the tax herein levied shall be withheld by a purchaser from payments due a producer and the purchaser fails to make payment of the tax to the City, as provided herein, the producer, upon paying such tax, shall be subrogated to the right of the City to collect from the purchaser the tax, penalties, and interest which may have otherwise accrued by failure to make payments as required by this section.

(e) It is further provided that unless such payment of tax on all oil produced during any six (6) months period shall be made on or before the dates specified above, such payment shall become delinquent and a penalty of five per cent (5%) of the amount of the tax shall be added, whereupon such tax and penalty shall bear interest at the rate of three per cent (3%) per annum from the date due until date paid.

(f) The tax herein levied shall be borne ratably by all interested parties, including royalty interests, and producers and/or purchasers of oil are hereby authorized and required to withhold from any payment due interested parties the proportionate tax due.

(g) The City shall have a lien in and upon each oil well and the equipment incident thereto, together with the respective interest of all parties therein, to secure the payment to the City of all taxes due hereunder on oil produced from such oil wells. This lien shall be in addition to any other liens and methods provided herein or by law for the collection of taxes.

## **§ 85.29 Violations**

Any violation of the law of the state or any rules, regulations, or requirements of any state or federal regulatory body having jurisdiction in reference to drilling, completing, equipping, operating, producing, maintaining, or abandoning an oil or gas well or related appurtenances, equipment or facilities, fire protection, blow-out protection, safety protection, or convenience of persons or property shall also be a violation of this chapter and shall be punishable in accordance with the provisions of § 10. 10 of this Code.

## **Permit To Drill or Operate**

### **§ 85.30 Drilling Permit Required**

It shall be unlawful and an offense for any person acting either for himself or acting as agent, employee, independent contractor, or servant of any other person, to commence to drill, to drill or to operate, any well within the City limits, or to work upon or assist in any way in the prosecution or operation of any such well, without a permit for the drilling and operation of such well having first been issued by the authority of the City Council in accordance with the terms and provisions of this chapter.

### **§ 85.41 Application Contents**

Every application for a permit to drill and operate a well upon a drilling unit shall be in writing, signed by the applicant or by some person duly authorized to sign same on his behalf, and it shall be filed with the City Secretary.

No application shall request a permit to drill or operate but one well to each reservoir on a drilling unit, and the said application shall contain full information, including the following:

- (1) The date of the application.
- (2) Name of the applicant.
- (3) Address of the applicant.
- (4) Proposed site of the well accompanied by a plat of the drilling unit showing the description of the lots, blocks or tracts owned or controlled by applicant.
- (5) Name of the fee owner or owners.
- (6) Name of the lease owner or owners.
- (7) Brief description of the land.

(8) The application shall have attached to it a certified or Photostat copy of the dew, oil and gas lease, or drilling contract with the owners of land covering the lot, block, or tracts in said drilling unit over which the applicant has control, together with abstracts of title or certificates of title satisfactory to the City Council, to the end that the application will show what proportion and what parts of the drilling unit the applicant owns in fee, or holds under lease, or drilling contract from the owners, and applicant must own in fee or hold under lease or drilling contract from the owners over fifty per cent (50%) of the acreage within a drilling unit before a permit may be issued.

(9) Type of derrick to be used.

(10) Whether the well shall be drilled as an oil or gas well.

(11) The proposed depth of the well.

(12) Motive power of rig that is to be used.

(13) Within thirty (30) days after the completion of a well within the City limits, the operator shall submit to the City Council copies of Railroad Commission of Texas Forms 2 and 3, and electric log. This data shall be classified as "secret" by the City Council for a period of six (6) months.

#### **§ 85.42 Notice And Publication**

At least ten (10) days prior to the date of hearing on the application, a copy of notice in the form herein prescribed shall be sent by registered mail to each owner and lessee of lots, blocks, and tracts in said drilling unit not owned by or under lease to the applicant, addressed to the last known address of such land/or lease owners, if known to the applicant. A copy of such notice shall likewise be published at the cost of applicant in every issue of an official paper of the City for ten (10) days prior to the date of such hearing, or for two consecutive weeks if the paper is published weekly. If the official paper is published weekly, the publication shall be made in one issue thereof before date of hearing. Such notice shall state the lot and block number on which the applicant is asking for a permit to drill and the date and place of hearing, and shall be in words and figures as follows:

"Notice is hereby given that \_\_\_\_\_ acting under and pursuant to the terms and provisions of AN ORDINANCE REGULATING THE DRILLING, COMPLETION, AND OPERATION OF OIL WELLS WITHIN THE LIMITS OF THE CITY OF OVERTON, TEXAS, AND PROVIDING FOR THE PUBLIC SAFETY IN CONNECTION THEREWITH, being Ordinance No. \_\_\_\_\_, did, on the \_\_\_\_\_ day of \_\_\_\_\_ file with the City Secretary of the City of Overton an application for a permit to drill a well for oil and/or gas upon Lot No. \_\_\_\_\_, Block No. \_\_\_\_\_, Overton Townsite, in a drilling unit of \_\_\_\_\_ acres described as follows:

(Description)

A hearing upon such application will be held in the office of the City Secretary of the City of Overton, Texas, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_.M.

Proof of notice shall be made by the applicant by filing with the City Secretary an affidavit of the printer or publisher of the paper in which the notice is published containing a copy of the notice, and stating the issue in which and period of time during which the notice was published, and an affidavit of the applicant showing the date and persons to whom and the addresses to which the notice was mailed by the applicant, and proof that such addresses are the last addresses of the persons involved known to the applicant.

At the time fixed in such notice a hearing on such application shall be held in the office of the City Secretary.

#### **§ 85.43 Permit Fee; Refund**

(a) The fee for a permit required by this chapter shall be as prescribed in the Schedule of Fees (Appendix A of this Code), which amount, in cash, shall accompany the application.

(b) If the permit for under this chapter be refused or if the applicant has notified the City Council in writing that he does not elect to accept the permit as tendered and wishes to withdraw his application or if the bond or surety instrument of the applicant be not approved and the applicant notifies the City Council in writing that he wishes to withdraw his application, then upon the happening of any of these events, the fee filed with the application shall be returned to the applicant, except there shall be retained therefrom by the City the sum of one hundred dollars (\$100.00) as a processing fee.

#### **§ 85.44 Issuance; Contents; Effect**

The City Council within thirty (30) days after the filing of the application for a permit to drill and operate a well shall determine whether or not the application complies in all respects with the provisions of this chapter, and if it does, the City Council shall issue a permit for the drilling and operation of the well applied for, conditioned upon applicant filing before commencement of drilling operations thereunder, the surety bond or surety instrument prescribed in section 115.06.

The City Council shall have the power, and reserves the authority, to refuse any application for a permit when by reason of location of the proposed well and the character and value of the permanent improvements already erected on the drilling unit in question or adjacent thereto and the use to which the land and surroundings are adapted for civic purposes, or for sanitary reasons, the drilling of an oil or gas well will be a serious disadvantage to either the health, safety, morals, or welfare of the City and its inhabitants.

Each permit issued shall:



(1) By reference have incorporated therein all the provisions of this chapter with the same force and effect as if this chapter were copied verbatim in the permit.

(2) Specify the well location with particularity to lot number, block number, name of addition or subdivision, or other available correct legal description.

(3) Contain and specify that the terms of such permit shall be for a period of six (6) months from the date of the permit and as long thereafter as the permittee is engaged in continuous drilling or reworking operations or oil or gas is produced in commercial quantities from the well drilled pursuant to such permit; provided that if at any time after discovery of oil or gas the production thereof in commercial quantities shall cease, the term shall not terminate if the permittee commences additional reworking operations within six (6) months thereafter, and if they result in the production of oil or gas, so long thereafter as oil or gas is produced in commercial quantities from such well.

(4) Contain and specify such conditions as are by this chapter authorized.

(5) Specify the total depth to which the well may be drilled.

(6) Contain and specify that no actual drilling operations shall be commenced until the permittee shall file and have approved an indemnity bond in the designated principal amount and conditioned as specified in section 85.06. The permit issued under this section in duplicate originals, shall be signed by the City Secretary and prior to delivery to the permittee shall be signed by the permittee, with one original to be retained by the City and one by the permittee. When so signed, it shall constitute the permittee's drilling and operating license and the contractual obligation of the permittee to comply with the terms of this permit and bond, as required in section 85.06 of this chapter.

#### **§ 85.45 Termination**

When a permit shall have been issued, the same shall terminate and become inoperative without any action on the part of the City unless within six (6) months from the date of issuance actual drilling of the well designated therein shall have commenced. The cessation for a like period of the drilling or reworking operations, or the cessation of the production of oil or gas from the well after production shall have commenced shall operate to terminate and cancel the permit and the well shall be considered as abandoned for-all purposes of this chapter, and it shall be unlawful thereafter to continue the operation or drilling of such well without the issuance of another permit.

#### **§ 85.46 Holder of Major Interest in Drilling Unit Entitled To Permit**

In the event an application for a permit for drilling, completion and operation of a well for oil or gas shall be made by any person not owning or not holding oil and gas leases or drilling contracts

from the owners of all lots, blocks, or parcels of land included in or embraced within a drilling unit as shown upon the map referred to in section 85.05 a permit shall be issued to such applicant, his heirs, successors, and assigns only upon the following conditions in addition to such other conditions as may be provided in other sections of this chapter: The applicant shall be free to enter into such contracts and agreements with the owners of such other lots, blocks, or tracts as lie may be able to make. If agreements are not reached with all owners of lots, tracts and blocks within the drilling unit, then the owner or owners, of any given lot or lots, block or blocks, tract or tracts, shall have the right or option, by notice to the permittee given in writing within thirty (30) days after the issuance of a permit for a well on the drilling unit involved, either (1) to treat his interest as a working interest and contribute toward the actual cost and expense of drilling, completing, and operating said well with all necessary appurtenances currently each month in the proportion that the number of square feet in area owned by him in the drilling unit bears to the number of square feet embraced in said unit, and thereupon receive the same proportion of the oil produced and saved from such well or its value at the well at the option of the permittee and a like proportion of natural gas produced, saved and utilized, or sold or the value of same at the well at the option of the permittee; or (2) to treat his interest as a royalty interest and receive delivered free of cost in the pipe line to which the well may be connected, a share of all oil produced and saved from such well equal to one-eighth (1/8) of the proportion of the whole quantity of oil so produced and saved that the number of square feet in the area owned by him bears to the number of square feet in such drilling unit, or at the election of the permittee to receive such proportion of the value the well of the oil so produced, and to receive a like proportion of the gas and casinghead gas produced, saved and utilized, or sold, or at the election of the permittee the value at the well of such proportion of gas or casinghead gas produced, saved and utilized, or sold. If any owner does not exercise the right and adoption above provided, the obligation shall then be upon the permittee, his heirs, successors, and assigns, to make settlement with such owner on the terms provided in option 2 above, providing for the payment of a one-eighth (1/8) royalty. If the owner of a lot or lots, block or blocks, tract, or tracts shall exercise option 1 above and treat his interest as a working interest, as therein provided, the permittee shall be entitled to reimburse himself for such owner's proportionate part of the costs out of such owner's proportionate part of the oil, gas, and casinghead gas, or the value thereof before making deliveries of products or settlement for the value thereof, if option 1 is exercised by the owner of any lot of lots, block or blocks, tract or tracts, such owner shall, within the time provided for notice of his election above set forth, file with the City Secretary a bond or other obligation executed by such owner as principal and by an authorized surety company as surety, in which such principal and surety agree, bind and obligate themselves to pay to the permittee, his heirs, successors, and assigns, currently each month that proportion of the actual and necessary costs and expenses involved in the drilling, completion, and operation of such well that the number of square feet embraced within the lot or lots, block or blocks, tract, or tracts of such owner bears to the total of square feet in such drilling unit, such bond to be approved by the mayor and held by the City Secretary for the benefit of the beneficiaries therein. Permits shall be issued in all such cases upon the condition that the permittee, his heirs, successors, and assigns shall make settlement in accordance with the provisions hereof.

**CHAPTER 86: SALE AND PURCHASE OF ALCOHOLIC BEVERAGES**

**General Provisions**

Section

86.01	General Purpose
86.02	Definitions
86.03	Reserved
86.04	Permits Required
86.05	Permit Fees Established
86.06	Payment of Permit Fees
86.07	Issuance of Permits
86.08	Cancellation and Suspension of Permits
86.09	Violations & Procedures for Application & Compliance
86.10	Retail Sales of Alcohol near Churches, Public or Private Schools & Public Hospitals
86.11	Sale of Beer and/or Wine in Residential Area Prohibited
86.12	Hours of Sale of Beer or Wine
86.13	No outside consumption
86.14	Warning Signs Required
86.15	Failures to require and properly check identification
86.16	Penalties & Fine Schedule
86.17	Penalty; Other Remedies
86.18	Consumption of Alcohol

**DIVISION. 1. GENERALLY**

**CHAPTER 86: SALE AND PURCHASE OF ALCOHOLIC BEVERAGES INCLUDING MIXED BEVERAGES**

**§ 86.01 PURPOSE**

The purpose of alcoholic beverage regulations is to protect the public health, safety and welfare of the City’s citizens.

**§ 86.02 DEFINITIONS**

For the purposes of this ordinance, all definitions of words, terms and phrases as set forth in the Texas Alcoholic Beverage Code are adopted and made a part of this Ordinance.

*Business.* An establishment, including but not limited to a general merchandise or food store and/or shop of any size or motor vehicle fueling station, filling or service station engaged or an establishment primarily engaged in the selling of alcoholic beverages including mixed beverages to the general public and rendering services incidental to the sale of such goods.

Church. A building which is primarily used for religious purposes by a group of persons organized for religious purposes.

Open Container. A container that is no longer sealed.

Permit. An authorization granted by the City for sale of alcoholic beverages including mixed beverages within the City.

Person. A natural or association of natural persons, trustee, receiver, partnership, corporation, limited liability company, organization or the manager, agent, servant or employee or any of them.

Private School. A parochial school shall mean a school that offers a course of instruction for students in one or more grades from kindergarten through grade 12 and has more than 100 students enrolled and attending courses at a single location.

Public. A place that is accessible to or shared by all members of the community.

Public Hospital. An establishment that:

- (1) Offers services, facilities, and beds for use for two or more unrelated individuals requiring diagnosis, treatment, or care for illness, injury, deformity, abnormality, or pregnancy;
- (2) Regularly maintains, at a minimum, clinical laboratory services, diagnostic x-ray services, treatment facilities, including surgery or obstetrical care, and other definitive medical or surgical treatment of similar extent; and
- (3) Is licensed to operate as a hospital by the Texas Department of State Health Services or its successor.

## **§ 86.03 RESERVED**

### **DIVISION 2. PERMITS**

## **§ 86.04 REQUIRED**

It shall be unlawful for any person to manufacture, distill, brew, sell and/or possess for the purpose of sale any beer, wine or other alcoholic beverage including mixed beverages, or otherwise engage in any activity for which a license or permit is required by the Texas Alcoholic Beverage Code, as amended, within the City, unless the person has a current and unrevoked permit issued by the City.

## **§ 86.05 FEES ESTABLISHED**

- a) The city shall levy and collect one-half of the state fee collected for each permit issued under the Alcoholic Beverage Code for premises located within the corporate limits of the city.

- b) The city shall levy and collect one-half of the state fee for each license, except a temporary or agent's beer license, issued under the Alcoholic Beverage Code for premises located within the corporate limits of the city.

---

**State Law reference**— Authority for this section, V.T.C.A., Alcoholic Beverage Code § 11.38, 61.36.

- c) (c) Amended Fee Ordinance- ORDINANCE #: 2014-07-29B, APPENDIX “A” CITY OF OVERTON – SCHEDULE OF FEES is hereby amended to revise “Section X” as follows: The city shall levy and collect one-half of the state fee collected for each permit issued under the Alcoholic Beverage Code for premises located within the corporate limits of the city.
- d) Exemptions. The city adopts those exemptions from the permit fee requirement as provided in the Texas Alcoholic Beverage Code, section 11.38(d).
- e) Application and Inspection Fee. The application and inspection fee for verifying the information needed in applications and for approvals by the City shall be in the amount of \$50.00. ORDINANCE #: 2014-07-29B, APPENDIX “A” CITY OF OVERTON – SCHEDULE OF FEES is hereby amended to revise “Section X- Item 2” that establishes an Application and Inspection fee of \$50.00. APPENDIX “A” SCHEDULE OF FEES may be amended from time to time.

#### **§ 86.06 PAYMENT OF FEES**

All fees required under this Ordinance, except for the application and inspection fee, shall be paid in advance to the City Secretary for a two-year term at the same time that the state biennial fee is due and payable for each respective license and/or permit, including renewals thereof. All payments must be made by cash, cashier’s check, certified check, or money order.

#### **§ 86.07 ISSUANCE OF PERMIT**

- a) The office of the City Secretary shall, in the name of the City, issue and deliver to such applicant or person a permit (a receipt evidencing payment of the fee(s) shall be sufficient proof of a city permit) to engage in a business that sells alcoholic beverages including mixed beverages within the City of the character described in and authorized by the state permit held by such applicant or person. This permit issued in the name of the City shall authorize the conduct of such business upon the premises described in the state permit, and shall remain in full force only so long as the state permit remains in force. The City permit will be issued upon payment to the office of the City Secretary of the applicable fee(s) for a permit as required by this Ordinance and according to state law. The office of the City Secretary shall keep a record of all permits and/or receipts issued under this Ordinance.
- b) The permit shall be valid for only two (2) years from the date of its issuance. All permits issued under the terms of this Ordinance shall terminate at midnight on the day before the anniversary date of its issuance, and no receipt shall be issued covering a longer term than two (2) years. Upon expiration of any permit issued under this Ordinance, the applicant or person shall renew biennially thereafter during the time

that such person is engaged in the business of selling alcoholic beverages including mixed beverages within the City.

- c) Permit applications shall be filed with the office of the City Secretary.
- d) All permits issued under this ordinance shall be displayed in a conspicuous place at all times, on the premises for which the permit is issued.

## **§ 86.08 CANCELLATION AND SUSPENSION OF PERMITS**

A permit issued under this Ordinance may be canceled, denied, or revoked as provided under chapters 11 or 61 of the Texas Alcoholic Beverage Code, as amended. The City shall have all powers, duties and remedies permitted under state law.

### **DIVISION 3. VIOLATIONS AND PROCEDURES**

#### **§ 86.09 APPLICATION AND COMPLIANCE**

Before the City Secretary shall sign any city permit or application for a permit under the Texas Alcoholic Beverage Code, as amended, or any biennial renewal, the city permit and application shall be submitted to the appropriate city departments, as determined by the City Manager, to ensure that the city permit and application comply with all city ordinances and regulations and are for premises located in a wet area.

#### **§ 86.10 RETAIL SALES NEAR CHURCHES, PUBLIC HOSPITALS AND PUBLIC OR PRIVATE SCHOOLS**

- a) Distance requirements Churches, Day Care or Child Care Centers, Public or Private Schools and Public Hospitals. Alcoholic beverages shall not be sold by a dealer or person whose place of business is within three hundred (300) feet of a church or public hospital.
- b) Measurement requirements Churches and Public Hospitals.
  - (1) The measurement of the distance between the place of business where alcoholic beverages are sold and the church or public hospital shall be along the property lines of the street fronts and from front door to front door, and in a direct line across intersections. In places of business with one or more front doors, measurement shall begin at a point equidistant between the two front doors that are farthest apart.
- c) Measurement requirements Day Care or Child Care Centers Public or Private Schools.
  - (1) The measurement of the distance between the place of business where alcoholic beverages are sold and the public or private school shall be in a direct line from the property line of the public or private school to the property line of the place of business, and in a direct line across intersections.
- d) Variance procedures. The City Council may allow variances to the regulation when it determines that enforcement of the regulation in a particular instance is not in the best interest of the public, constitutes waste or inefficient use of land or other resources, creates an undue hardship on an applicant for a license or permit, does not serve its

intended purpose, is not effective or necessary, or for any other reason, if, after consideration of the health, safety and welfare of the public and the equities of the situation, determines that it is in the best interest of the community.

**§ 86.11 SALE OF ALL ALCOHOLIC BEVERAGES INCLUDING MIXED BEVERAGES IN RESIDENTIAL AREA PROHIBITED**

The sale of all alcohol including mixed beverages is prohibited at a location that is within residential zoned areas, or within residential zoning districts where residential uses are allowed. Residential areas include properties that allow vertical mixed use developments with a residential component, except the central business district. Under this ordinance, residential areas shall mean any property located in the following districts as described in the city's zoning ordinance, as amended from time to time:

- (1) Single-family residential detached (SF).
- (2) Multiple-family residential (MF).
- (3) HUD-Code manufactured home park district (MH).

**§ 86.12 SELLING OF ALCOHOLIC BEVERAGES RESTRICTED TO CERTAIN HOURS**

Any person, firm, or corporation authorized to offer for sale alcoholic beverages within the city limits will do so only during the hours authorized under V.T.C.A., Alcoholic Beverage Code Chapter. 105. Hours of Sale and Consumption.

**§ 86.13 FAILURES TO REQUIRE AND PROPERLY CHECK IDENTIFICATION**

- (a) All permittees, and/or their employees shall require and properly check identification before selling any alcoholic beverage to any customer to ensure an underage person is not sold and/or does not have in his/her possession alcoholic beverages while in a licensed business.
- (b) Identification" in this section shall mean any document issued by a governmental agency containing a description of the person, such person's photograph and giving such person's date of birth and shall include, without being limited to, a passport, military ID card, driver's license or state department of public safety ID card.

**§ 86.14 PENALTY; OTHER REMEDIES**

- (a) Any person violating or failing to comply with any of the provisions of this ordinance shall be fined, upon conviction, not less than one dollar (\$1.00) nor more than five hundred dollars (\$500.00), unless the violation involves fire safety, zoning, or public health and sanitation, in which case the person shall be fined an amount not to exceed two thousand (\$2,000.00). Each day any violation or noncompliance continues shall constitute separate and distinct offenses. The penalty provided herein shall be cumulative of other remedies provided by state

law, and the power of injunction as provided in sections 54.012 and 54.016 of the Texas Local Government Code, as may be amended, may be exercised in enforcing this ordinance, whether or not there had been a complaint filed.

- (b) The penal provisions imposed under this section are cumulative of all other remedies and nonexclusive. These penal provisions shall not be deemed nor construed to limit the availability of any remedy against any person or property otherwise provided by law, including without limitation fines, penalties, closure and injunction. The city retains all legal rights and remedies available to it pursuant to local, state and federal law.
- (c) A person who violates a provision of this ordinance in which a specific penalty is not provided, is guilty of a misdemeanor and, on conviction, is punishable as provided in Section 10.08 of this code. The term “specific penalty,” as used in this section, means a penalty that might be imposed as a result of a criminal prosecution.

#### **§ 86.15 CONSUMPTION OF ALCOHOL**

Possession of an open container of an alcoholic beverage or consumption of an alcoholic beverage in any public place inside the city limits of the City of Overton, Texas is prohibited except as provided and under the terms and conditions specified in the following Subsections:

- (a) Possession or consumption of alcoholic beverages is allowed by patrons, lessees or invitees of the Overton Golf Course; and
- (b) Possession or consumption of alcoholic beverages is allowed by lessees and/or their invitees within the confines of the Overton RV Park; and
- (c) Possession or consumption of alcoholic beverages is allowed by Lessees and their invitees of the Overton Community Building subject to the following requirements:
  - (i.) Lessee has completed and filed with the City a properly completed and executed Lease Agreement.
  - (ii.) Lessee has paid the requisite deposit needed to reserve the facility for its intended use.
  - (iii.) Lessee has secured the services of a commissioned licensed police officer to provide security during the event.

#### **§ 86.16 SEVERABILITY**

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable and, if any phrase, clause, sentence, paragraph or section of this ordinance shall be declared unconstitutional or otherwise invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the city council without the incorporation in this ordinance of any such invalid phrase, clause, sentence, paragraph or section.



**§ 86.17 PUBLICATION**

The City Secretary is hereby authorized and directed to cause the publication of the descriptive caption and penalty clauses of this Ordinance as an alternative method of publication provided by law.

**§ 86.18 EFFECTIVE DATE**

This Ordinance shall be effective immediately upon its passage and approval.

*(Adopted by Ordinance No. 2014-11-20Am Amended by Ordinance 2015-12-17A)*