

ECTOR COUNTY ORDINANCE REGULATING SEXUALLY ORIENTED
BUSINESSES AS AMENDED ON MARCH 23rd, 2015

Section 1 **AUTHORITY, FINDINGS, PURPOSE, AND INTENT**

- (a) This Ordinance is hereby adopted by the Commissioners Court of Ector County, Texas, acting in its capacity as the governing body of Ector County, Texas. These regulations are promulgated pursuant to and in conformity with Chapter 243 of the Texas Local Government Code, as amended.
- (b) In adopting this Ordinance, the Commissioners Court of Ector County, Texas takes notice of and considers the legislative history of Chapter 243 of the Texas Local Government Code, as well as other relevant data, including its own appointed committee's report on the issue, similar studies performed by other counties and municipalities within the State of Texas, and reports of related criminal activity as set forth in public records and documented by the Ector County Sheriff's Office.
- (c) The Commissioner's Court of Ector County finds that Sexually Oriented Businesses are detrimental to the public health, welfare, and safety as a result of their negative effect on crime, economic activity, and surrounding property values. Furthermore, sexually oriented businesses contribute to urban blight and have a dehumanizing effect on the local community.
- (d) This Ordinance is intended to minimize and control the adverse secondary effects associated with Sexually Oriented Businesses and thereby protect the public health, safety, and welfare. This Ordinance is not intended to limit or restrict the content of any communicative material, including sexually oriented material. Similarly, this Ordinance is not intended to restrict or deny consenting adults access to sexually oriented material that is otherwise protected by the First Amendment, or to deny the distributors or retailers of sexually oriented materials access to their intended market.

Section 2 DEFINITIONS

As used in this Ordinance:

- (a) **“Church”** means a place where people regularly assemble for activities intended primarily for purposes connected with religious worship or for propagating a particular form of religious belief.
- (b) **“Entertainer”** means any person, whether an employee or independent contractor, who engages in an act or performance, such as a play, skit, reading, revue, fashion show, modeling performance, pantomime, role playing, encounter session, scene, song, dance, musical rendition or striptease, that involves the display or exposure of Specified Sexual Activities or Specified Anatomical Areas.
- (c) **“Licensee”** means a person in whose name a license to operate a sexually oriented business had been issued, as well as the individual listed as an applicant on the application for a license.
- (d) **“Nude” or “Nudity”** means the appearance of a human bare buttock, anus, genitalia, pubic region, or female breast.
- (e) **“Person”** includes an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (f) **“Semi-nude”** means clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the person is female, or any portion of the genitals or buttocks.
- (g) **“Sexual Contact”** includes:
 - (1) Any touching of any part of the genitalia or anus;
 - (2) Any touching of the breasts of a female without the written consent of the female;
 - (3) Any offer or agreement to engage in any activity described in Paragraph (A) or (B);
 - (4) Kissing without the consent of both persons;
 - (5) Deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual

assault, prostitution, and promotions of prostitution as described in Chapters 21, 22, and 43, Penal Code, or any offer or agreement to engage in such activities;

- (6) Any behavior, gesture, or expression that may reasonably be interpreted as inappropriately seductive or sexual; or
 - (7) Inappropriate sexual comments about or to a client, including sexual comments about a person's body.
- (h) **“Sexually Oriented Business”** means a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.
- (1) The term includes but is not limited to the following:
 - (A) **“Adult Movie Arcade”** or **“Adult Video Arcade”** means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled image-producing devices are maintained to show images displayed are distinguished or characterized by the depicting or describing of Specific Sexual Activities or Specified Anatomical Areas.
 - (B) **“Adult Bookstore”** or **“Adult Video Store”** means a commercial establishment which as one of its principal business purpose, offers for sale or rent, any one (1) or more of the following:
 - (i) Books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes or reproductions, slides, or other visual representations which depict or describe Specified Sexual Activities or Specified Anatomical Areas; or

- (ii) Instruments, devices, or paraphernalia which are designed for use in connection with Specified Sexual Activities.
- (C) **“Adult Cabaret”** means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:
 - (i) Persons who appear in a State of Nudity;
 - (ii) Live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities; or
 - (iii) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depictions of descriptions of Specified Sexual Activities or Specified Anatomical Areas.
- (D) **“Adult Movie Theater”** means a commercial establishment where films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown and are characterized by the depiction or description of Specified Sexual Activities or Specified Anatomical Areas.
- (E) **“Adult Theater”** means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a State of Nudity or live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities.
- (F) **“Nude Studio”** or **“Modeling Studio”** means any place where a person who appears in a State of Nudity or displays Specified Anatomical Areas to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by other persons who pay money or any form of consideration.
- (G) **“Love Parlor”** or **“Sex Parlor”** means a business establishment that allows a person to engage in Sexual Contact or perform Specified Sexual Activities for compensation.

- (2) The term excludes:
 - (A) Any business operated by or employing licensed psychologist, licensed physical therapists, licensed athletic trainers, licensed cosmetologist, or licensed barbers performing functions under the licensed held;
 - (B) Any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts; and
 - (C) Any retail establishment whose primary business is the offering of wearing apparel for sale to customers.
- (i) **“Specified Anatomical Areas”** includes the human genitals, anus, pubic region, and female breast.
- (j) **“Specified Sexual Activities”** includes any of the following:
 - (1) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast;
 - (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 (A) through (C) above.
- (k) **“State of Nudity”** means appearing nude or semi-nude
- (l) **“Substantial Enlargement”** of a Sexually Oriented Business means a twenty-five percent (25%) increase in floor area occupied by the business as measured from the date the effective license was issued.

Section 3 LICENSE REQUIRED

- (a) A person commits an offense if he operates a Sexually Oriented Business without a valid license issued pursuant to the terms of this Ordinance.

- (b) An application for a Sexually Oriented Business license must be made on a form provided by the Sheriff. 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 designated scale or marked with dimensions of the interior of the premises to an accuracy of six inches.
- (c) The applicant must be qualified according to the provisions of this Ordinance, and the premises must be inspected and found to be in compliance with the law by the Ector County Health Department, Ector County Sheriff, and Ector County Engineer within 21 days after receipt of any application.
- (d) If the applicant is an individual, he must sign the application in his individual capacity. If the applicant is an entity, each individual holding at least a twenty percent (20%) interest in the business entity must sign the application. Each applicant must be qualified under Section 4 and each applicant shall be considered a Licensee if a license is granted.
- (e) The fact that a person possesses a valid theater license, dance hall license, or public house of amusement license does not exempt him for the requirement of obtaining a Sexually Oriented Business license. A person who operates a Sexually Oriented Business and possesses a theater license, public house of amusement license or dance hall license shall comply with the requirements and provisions of this section.

Section 4 **ISSUANCE OF LICENSE**

- (a) The Sheriff shall approve or deny the issuance of a license within 30 days after receipt of an application. The Ector County Sheriff shall approve the issuance of a license unless he finds one or more of the following to be true:
 - (1) An applicant is under 18 years of age;
 - (2) An applicant is overdue in his payment to Ector County for taxes; fees, including the license fee required by this chapter; fines; or penalties assessed against him or imposed

upon him in relation to a Sexually Oriented Business. The Ector County tax assessor shall make this determination and report his findings to the Sheriff within thirty (30) days from the date the application is filed;

- (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 has been convicted of violating a provision of this Ordinance, other than the offense of operating a Sexually Oriented Business without a license, within two (2) years immediately preceding the application. The Ector County Sheriff shall make this determination and report his findings within thirty (30) days from the time the application is filed.
- (5) The premises to be used for the Sexually Oriented Business have not been approved by the Ector County Health Department, Ector County Sheriff, or Ector County Engineer as being in compliance with the applicable laws and regulations. Reports of compliance or non-compliance with this Ordinance must be completed by the sheriff within thirty (30) days from the time the application filed.
- (6) An application of the proposed establishment is in violation of or is not in compliance with any section of this Ordinance.
- (7) An applicant has been convicted of a crime
 - (A) Involving:
 - (i) Any of the following offenses as set forth in Chapter 43 of the Texas Penal Code:
 - (aa) prostitution;
 - (bb) promotion of prostitution;
 - (cc) aggravated promotion of prostitution;

- (dd) compelling prostitution;
- (ee) obscenity;
- (ff) sale, distribution, or display of harmful material to a minor;
- (gg) sexual performance by a child;
- (hh) an employment harmful to children;
- (ii) possession or promotion of child pornography;

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

- (aa) public lewdness;
 - (bb) indecent exposure;
 - (cc) indecency with child;
- (iii) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code; or
- (iv) Prohibited sexual conduct, solicitation of a child, or harboring a runaway child as set forth in Chapter 25 of the Texas Penal Code;

(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 later, if the conviction is of a misdemeanor offense;
- (ii) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is later, 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 imposed for the last conviction, whichever is later, if the convictions are of two or more misdemeanor

offenses or combination of misdemeanor offenses occurring within a 24 month period.

- (b) The fact that a conviction is being appealed shall have no effect on the disqualifications of the applicant.
- (c) An applicant who has been convicted of an offense listed in Section 4(7) (A) of this Ordinance, for which the required time period has elapsed since the date of conviction or the date of release from confinement imposed for the conviction, may qualify for a Sexually Oriented Business license only if the Ector County Sheriff determines that the applicant is presently fit to operate a Sexually Oriented Business. In determining an applicant's present fitness under this section, the Ector County Sheriff shall consider the following factors:
 - (1) The extent and nature of the applicant's past criminal activity;
 - (2) The applicant's age at the time of the commission of the crime;
 - (3) The amount of time that has elapsed since the applicant's last criminal activity;
 - (4) The applicant's conduct and work activity prior to and following the related criminal activity;
 - (5) Evidence of the applicant's rehabilitation or rehabilitative efforts while incarcerated or following release; and
 - (6) Other evidence of the applicant's present fitness, including letters of recommendation from attorneys, law enforcement officials, and correctional officers who prosecuted, arrested, or had custodial responsibility for him, as well as other persons in the community.
- (d) It is the responsibility of the applicant, to the extent possible, to secure and provide to the Ector County Sheriff with the evidence required to determine his present fitness under Subsection (c) of this section.
- (e) The license, if granted, shall, on its face, state the name of the person or persons to whom it is

granted, the expiration date, and the address of the Sexually Oriented Business. The license shall be posted in a conspicuous place at or near the entrance to the Sexually Oriented Business so that it may be easily read at any time.

- (f) In the event the Ector County Sheriff has not approved or denied the issuance of the license within thirty (30) from the filing of the application based upon reports, or a lack thereof, from the Ector County Health Department, Ector County Sheriff, Ector County Engineer, and Ector County Tax Assessor, the Ector County Sheriff shall issue the license.

Section 5 APPLICATION

- (a) Any person, partnership, firm, association, or corporation desiring to obtain a Sexually Oriented Business license shall apply to the Ector County Clerk, who shall refer each application to the Ector County Sheriff's Office for appropriate investigation.
- (b) Each application shall be accompanied by the bond required by this article and a nonrefundable application fee of fifteen hundred dollars (\$1,500.00), which is required to defray the actual costs of processing said license application, and which fee reflects the actual cost of processing the permit application in accordance with section 243.009 of the Local Government Code. The granting of a license under this article shall not be deemed evidence or proof that the license holder has complied with requirements and provisions of any other ordinances.
- (c) No portion of any fee collected under this section shall be returned after a license has been issued or refused. Each license shall be effective when issued and shall expire one year from the date of issue as shown on the face of the license.

Section 6 APPLICATION CONTENTS

- (a) An applicant shall file with the Ector County Clerk a typed and fully completed application, including all attachments or submissions as may be required. The application should contain the following information and material:
 - (1) The date of birth and full legal name, including any and all names by which the

person has been known during the last five (5) years, of the applicant.

- (2) If the applicant is a corporation, the exact corporate name, state of incorporation and principal place of business for the corporation.
- (3) If the applicant is an individual, his or her current address.
- (4) The applicant's prior two (2) addresses or principal place of business immediately preceding the present address, and the dates of residency at each address.
- (5) The street address at which the applicant will conduct the Sexually Oriented Business activity, and the name under which the business will be conducted.
- (6) A description of the Sexually Oriented Business to be operated by the applicant, including a description of any service to be provided or a generic description of product to be sold, rented, or utilized which qualifies the business as a Sexually Oriented Business.
- (7) The telephone number(s) of the Sexually Oriented Business.
- (8) The legal description of the parcel of land on which the Sexually Oriented Business is to be located. The application shall include legible and complete copies of the recorded record establishing current ownership of the parcel.
 - (i) If the applicant is not the owner of record of the parcel, the application shall include a complete and legible copy of the lease, if any, and such other documentation as may be necessary to show that the applicant has the legal right to occupy and use the premises for the purposes described in the application.
- (9) The date on which the applicant became owner of the business for which a license is sought, and the date on which the business began operations at the location for which a license is sought.
- (10) Written proof that the applicant is at least eighteen (18) years of age, or is at least

twenty-one (21) years of age when the sale or consumption of alcohol beverages would be an aspect of the venture.

- (11) The height, weight, and color of hair and eyes of the applicant.
- (12) Two (2) portrait photographs, at least two inches by two inches (2" x 2") in size, taken within six (6) months of the date of the application, of the applicant.
- (13) The employment history of the applicant, going back five (5) years from the date of application, setting forth the name, telephone number and address for each employer, nature of employment, and the dates of employment. A complete and accurate description of previous self-employment shall be included.
- (14) All felony and misdemeanor convictions of the applicant, and the applicant's spouse, involving any of the offenses described in Section 4 (a) (7).
- (15) A complete set of fingerprints of the applicant as recorded by the Odessa Police Department.
- (16) The name, including any aliases and stage names by which the person has been known during the last five (5) years; date of birth; current residence address; and a clear, legible copy of a current photo identification of each person employed or intended to be employed by the applicant in the Sexually Oriented Business.
- (17) Such other information and identification as the Ector County Sheriff may require in order to establish the truth of the matters required to be set forth in the application.
- (18) A written statement signed by the applicant stating that: He/she has read all of the provisions of this Ordinance relating to the operation of a Sexually Oriented Business; that he/she has had the opportunity to review the same with such counsel as he/she has deemed desirable and that he/she understands the same; that he/she has a continuing duty to report any change in the status of information

submitted in the application; and that he/she intends to operate a Sexually Oriented Business as defined in and regulated by this code.

- (19) The name and local address of each individual who will manage, direct, or control the premises and operations of the permitted establishment or venture.
- (20) The application shall be signed and verified by each applicant that the information contained therein, including each attachment or enclosure, is true and correct.

Section 7 APPLICATION ATTACHMENTS

- (a) The application fee required by Section 5(b).
- (b) A surety bond, letter of credit, or other approved surety in the amount of five thousand dollars (\$5,000.00). The bond shall be executed and acknowledged by the license holder as principal and by a corporation licensed to transact fidelity and surety business in the State of Texas as surety. The bond shall be continuous in form and run concurrently with the license period, and shall be in favor of the county for the benefit of any person injured by any act of the principal or the principals' agent or employee, and shall be subject to claim by any person injured thereby.
- (c) A certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act (Texas Revised Civil Statutes Annotated, Business and Commerce Code, chapter 36) if the applicant is to operate the business under an assumed name.
- (d) If the applicant is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto.
- (e) If applicant is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the office of the secretary of state under the Texas Limited Partnership Act (article 6132a-1, Vernon's Texas Civil Statutes).
- (f) If the applicant is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed in the

office of the secretary of state under the Texas Limited Partnership Act (article 6132a-1, Vernon's Texas Civil Statutes).

Section 8 **FEES**

- (a) The fee, original and renewal, for a Sexually Oriented Business license is fifteen hundred dollars (\$1,500.00).
- (b) The annual fee for non-Entertainers of a Sexually Oriented Business is fifty dollars (\$50.00) and must be renewed annually.
- (c) The annual fee for Entertainers of a Sexually Oriented Business is fifty dollars (\$50.00) and must be renewed annually.

Section 9 **CRITERIA FOR APPROVING ENTERTAINERS**

- (a) A person seeking an entertainer permit must apply by submitting an application to the Ector County Sheriff's Office. An application may be obtained at the Sheriff's Office.
- (b) Once the Sheriff's Office has received the application, it will be reviewed and approved or denied within fifteen (15) days from the date the Sheriff's Office receives the application. After the application has been approved or denied, a written notice shall be sent to the applicant and the referring business.
- (c) The application should contain the following information and material:
 - (1) The date of birth and full legal name, including any and all names (any aliases and stage names) by which the person has been known during the last five (5) years, of the applicant;
 - (2) The applicant's prior two (2) addresses and current address;
 - (3) The telephone number(s) of the applicant;
 - (4) Written proof that the applicant is at least eighteen (18) years of age;
 - (5) The height, weight, and color of hair and eyes of the applicant;
 - (6) Two (2) portrait photographs, at least two inches by two inches (2" x 2") in size,

taken within six (6) months of the date of the application, of the applicant;

- (7) The employment history of the applicant, going back five (5) years from the date of application, setting forth the name, telephone number and address for each employer, nature of employment, and the dates of employment. A complete and accurate description of previous self-employment shall be included;
- (8) All felony and misdemeanor convictions of the applicant, involving any of the offenses described in Section 9 (d) (4);
- (9) A complete set of fingerprints of the applicant as recorded by the Odessa Police Department;
- (10) Such other information and identification as the Ector County Sheriff may require in order to establish the truth of the matters required to be set forth in the application;
- (11) A written statement signed by the applicant stating that: He/she has read all of the provisions of this Ordinance relating to the entertainer permit; that he/she has had the opportunity to review the same with such counsel as he/she has deemed desirable and that he/she understands the same; that he/she has a continuing duty to report any change in the status of information submitted in the application; and that he/she intends to work in the Sexually Oriented Business as defined in and regulated by this code.

(d) The Ector County Sheriff shall approve the issuance of a permit unless he finds one or more of the following to be true:

- (1) An applicant is under 18 years of age;
- (2) An applicant is overdue in his payment to Ector County for taxes; fees, including the permit fee required by this chapter; fines. The Ector County tax assessor shall make this determination and report his findings to the Sheriff within thirty (30) days from the date

the application is filed;

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

(4) An applicant has been convicted of a crime

(A) Involving:

(i) Any of the following offenses as set forth in Chapter 43 of the Texas Penal Code:

(aa) prostitution;

(bb) promotion of prostitution;

(cc) aggravated promotion of prostitution;

(dd) compelling prostitution;

(ee) obscenity;

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

(gg) sexual performance by a child;

(hh) an employment harmful to children;

(ii) possession or promotion of child pornography;

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

(aa) public lewdness;

(bb) indecent exposure;

(cc) indecency with child;

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

(iv) Prohibited sexual conduct, solicitation of a child, or harboring a runaway

child as set forth in Chapter 25 of the Texas Penal Code;

(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 later, if the conviction is of a misdemeanor offense;
 - (ii) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is later, 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 imposed for the last conviction, whichever is later, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within a 24 month period.
- (e) If the business hiring the applicant conducts its own background check, the applicant shall be allowed to work at the business while waiting on the Ector County Sheriff's Office to issue the license. In the event the applicant is denied a license and was allowed to work by the business, the business shall be fined \$500.

Section 10 **INSPECTIONS**

- (a) An applicant or Licensee shall permit representatives of the Ector County Sheriff, Ector County Health Department, Ector County Fire Department and Ector County Engineer to inspect the premises of a Sexually Oriented Business for the purpose of insuring compliance with the law and this Ordinance, 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 under this Ordinance if he refuses to permit a lawful inspection of the premises by a representative of the Ector County Sheriff, Ector County Health Department, or Ector County

Engineer at any time it is occupied or open for business.

Section 11 **EXPIRATION OF LICENSE**

- (a) Each Sexually Oriented Business license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 3. If application for renewal of a valid license is made thirty (30) days prior to the expiration date, the enterprise may continue to operate pending the inspection period.
- (b) When the Ector County Sheriff denies renewal of a license, the applicant may reapply after ninety (90) days. If the Sheriff later discovers that the basis for denial has been corrected or otherwise abated, the applicant may be granted a license if at least 90 days have elapsed since the date denial became final.
- (c) The applicant shall have a continuing duty, during the term of renewal, to notify the Sheriff's Office of any change in the status of any information required to be submitted on the application for the license.
- (d) The notices required by this section shall be given in writing, signed by the applicant, and delivered or postmarked to the Ector County Sheriff within thirty (30) days of the change in status, unless otherwise specifically provided for.

Section 12 **SUSPENSIONS**

- (a) The Ector County Sheriff shall suspend a license for a period not to exceed 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 any section of this Ordinance;
 - (2) Refused to allow an inspection of the Sexually Oriented Business premises as authorized by this ordinance.
 - (3) Demonstrated an inability to operate or manage a Sexually Oriented Business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

Section 13 **REVOCATION**

- (a) The Ector County Sheriff shall revoke a license if a cause for suspension as set forth in Section 12 occurs and the license had been suspended within the preceding 12 months.
- (b) The Ector County Sheriff shall revoke a license if he determines that:
 - (1) A Licensee gave false or misleading information in the material submitted to the Sheriff during the application process;
 - (2) A Licensee or any employee has knowingly allowed the possession, use, or sale of a controlled substances on the premises;
 - (3) A Licensee or an employee knowingly allowed prostitution on the premises;
 - (4) A Licensee or any employee knowingly operated the Sexually Oriented Business during a period of time when the Sexually Oriented Business license was suspended;
 - (5) A Licensee has been convicted of an offense listed in Section 4(7)(A) and the requisite time period has not elapsed;
 - (6) On two or more occasions within a 12 month period, a person or persons committed an offense occurring in or on the licensed premise of a crime listed in Section 4(a) 7(A), for which a conviction has been obtained, and the persons or persons were employees of the Sexually Oriented Business at the time the offenses were committed.
 - (7) A Licensee or an employee knowingly allowed any Specified Sexual Activity to occur in or on the licensed premises.
 - (8) A licensee is delinquent in payment to Ector County for ad valorem taxes, or any other taxes related to the Sexually Oriented Business.
- (c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- (d) When the Ector County Sheriff revokes a license, the revocation shall continue for one year, and the Licensee shall not be issued a Sexually Oriented Business license for one year from the date of revocation. If the license was revoked under Section 13(b)(5), an applicant may not be granted

another license until the appropriate number of years required under Section (4)(7)(B) has elapsed.

Section 14 **APPEAL**

- (a) The Ector County Commissioner's Court and the Ector County Judge shall appoint a license appeal board. This board shall consist of five members. Each member of the Commissioner's Court shall appoint one member to serve on the board. The initial board shall consist of three members with a two year term and two members with one year term. The board members initially appointed shall draw to determine the length of their service. Thereafter, each member appointed shall serve a two year term. The members shall be citizens of Ector County who have no conflict of interest with any of the matters to be considered by the license appeal board. The board shall convene within thirty (30) days of its initial selection for the purpose of electing a chairperson. The board shall meet each year on a convenient date in the month of June for the purpose of electing a chairperson.
- (b) If the Ector County Sheriff 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 request, written notice of his action and the right to an appeal. An appeal may be filed by giving written notice of the aggrieved party's intent to appeal to the County Judge of Ector County, Texas, within thirty (30) days of the receipt of the notice that a license should be denied, suspended, or revoked. The license appeal board shall convene within twenty (20) days of the County Judge's receipt of written notice of appeal with a quorum of at least 3 members. The board may hear evidence from any interested party. The appeal board shall make a determination either affirming the Sheriff's decision or reversing the Sheriff's decision at the close of the hearing.
- (c) The filing of a notice of appeal as directed above shall stay the denial, suspension, or revocation of a license pending the determination of the license appeal board. If the appeal board affirms the Sheriff's decision, any time that accrues on the suspension or revocation before appeal is filed

pursuant to this section shall be credited against the original period of suspension or revocation.

The remaining period of suspension or revocation shall commence on the appeal board's determination to affirm the Sheriff's decision.

- (d) The aggrieved party may appeal the decision of the license appeal board to a district court in the Ector County on a trial de novo basis. Filing an appeal in district court stays the decision of the appeal board in suspending or revoking a license until the district court makes a final decision. All decisions of the license appeal board become final within thirty (30) days.

Section 15 TRANSFER OF LICENSE

- (a) A Sexually Oriented Business license becomes null and void upon transfer by the Licensee unless the new, proposed Licensee's application has been approved by the Sheriff.
- (b) A person commits an offense if he operates a Sexually Oriented Business with a license issued to a different Licensee or designating a different location.

Section 16 LOCATION OF SEXUALLY ORIENTED BUSINESSES

- (a) A person commits an offense if he or his agents or employees operate a Sexually Oriented Business within 600 feet of:
 - (1) A church;
 - (2) A public or private elementary or secondary school;
 - (3) A public park;
 - (4) The property line of a residential lot.
- (b) A person commits an offense if he operates a Sexually Oriented Business or causes or allows the Substantial Enlargement of a Sexually Oriented Business within 600 feet of another Sexually Oriented Business.
- (c) A person commits an offense if he causes or permits the operation, establishment, or maintenance of more than one Sexually Oriented Business in the same building, structure, or portion thereof, containing another Sexually Oriented Business.

- (d) For the purpose of Subsection (a), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a Sexually Oriented Business is conducted, to the nearest property line of the premises if a church or a public or private elementary or secondary school, or to the nearest boundary of an affected public park, or lot containing residences.
- (e) For purpose of Subsection (b), the distance between any two Sexually Oriented Business 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 Sexual Oriented Business lawfully operating on the effective date of this Ordinance 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 unless the business transfers ownership or control of the licensed premises to another person or entity, unless the new proposed Licensee's application has been approved by the Sheriff, or otherwise discontinues business operations for a period of thirty (30) days or more, except as a result of *force majeure*. Such nonconforming use shall not be increased, enlarged, extended or altered, except that the use may be changed to a conforming use. If two or more Sexually Oriented Businesses are within 600 feet of one another and otherwise in a permissible location, the Sexually Oriented Business which was first established and continually operating at a particular location is the conforming use and the later-established business is the nonconforming use.
- (g) A Sexually Oriented Business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the Sexually Oriented Business licenses, of a church, public or private elementary or secondary school, public park, or lot containing a residence within 600 feet of the Sexually Oriented Business. This provision applies only to the renewal of a valid license, and does not apply when the application for a license is submitted after a license has expired or has been revoked.

Section 17 **EXEMPTION FROM LOCATION RESTRICTIONS**

- (a) If the Ector County Sheriff denies the issuance of a license to an applicant because the location of the Sexually Oriented Business establishment is in violation of Section 16 of this Ordinance, the applicant may, not later than 10 calendar days from receiving notice of the denial, file a written request for an exemption from the location restrictions of Section 16 with the Ector County Judge.
- (b) If the written request is filed with the Ector County Judge within the 10 day limit, the permit and license appeal board, selected in accordance with Section 14 of this Ordinance, shall consider the request. The Ector County Judge shall set a date for the hearing within sixty (60) days from the date the written request is received.
- (c) A hearing by the board may proceed if at least three of the board members are present. The board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.
- (d) The permit and license appeal board may, in its discretion, grant an exemption from the locational restriction of Section 16(a) if it finds that:
 - (1) The Sexually Oriented Business will not have a detrimental effect on nearby properties or otherwise negatively affect the public health, safety, and welfare;
 - (2) That the location of the proposed Sexually Oriented Business will not decrease the surrounding property values, downgrade the quality of life in the adjacent areas, or contribute to urban blight;
 - (3) 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
 - (4) All other applicable provisions of this Ordinance will be observed.
- (e) The board 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 permit and license appeal board is final.

- (f) If the board grants the exemption, the exemption is valid for one year from the date of the board's decision. Upon the expiration of such exemption, the Sexually Oriented Business is in violation of the location restriction of Section 16(a) until the applicant applies for and receives another exemption.
- (g) If the board denies the exemption, the applicant may not re-apply for an exemption until at least 12 months have elapsed from the date of the board's decision.
- (h) The grant of an exemption does not exempt the applicant from any other provisions of this Ordinance other than the locational restrictions of Section 16(a).

Section 18 ADDITIONAL REGULATIONS FOR ADULT CABARET

- (a) No person performing nude, as defined in this ordinance, at an Adult Cabaret shall do so less than six (6) feet from the nearest patron and on a stage less than eighteen (18) inches above floor level.
- (b) No owner or operator shall allow any location within the Adult Cabaret to be used for the purpose of live nude exhibitions unless it is marked with clear indications of the six (6) foot zone. The absence of this demarcation will create a presumption that there have been violations of these regulations during performances in the unmarked area.
- (c) No person shall offer or accept a gratuity at the Adult Cabaret unless it is done pursuant to this section.
 - (1) Gratuities being offered to any person performing on a stage must be placed in a receptacle provided for receipt of gratuities.
 - (2) Gratuities being offered to any employee in or about the non-stage area of the Adult Cabaret shall be placed into the hand of the employee or into a receptacle provided by the employee.

- (3) An operator or his agents or employees commits an offense by allowing a patron to place a gratuity on the person or into the clothing of an employee.
- (d) If the premises contains two or more separate areas, the operator shall maintain each room with at least one wall or door equipped with clear windows or openings of at least three feet in width and two feet in height located no less than three feet above the floor but no less than two feet below the ceiling for viewing into the entire area and all activity therein. An operator commits an offense under this section if he knowingly fails to fulfill this duty.

Section 19 **ADDITIONAL REGULATIONS FOR NUDE STUDIOS OR MODEL STUDIOS**

- (a) A Nude Model Studio shall not employ any person under the age of 18 years.
- (b) A person under the age of 18 years commits an offense if he appears in a State of Nudity in or on the premises of a Nude Studio or Model Studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.
- (c) A person commits an offense if he appears in a State of Nudity or knowingly allows another to appear in a State of Nudity in an area of a Nude Studio or Model Studio, which can be viewed from the public right of way.
- (d) A Nude Studio or Model Studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

Section 20 **ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOVIE THEATERS**

- (a) A person commits an offense if he knowingly allows a person under the age of 18 years to appear in a State of Nudity in or on the premises of an adult theater or adult motion picture theater.
- (b) A person under the age of 18 years commits an offense if he knowingly appears in a State of Nudity in or on the premises of an adult theater or adult motion picture theater.
- (c) It is a defense to prosecution under Subsection (a) and (b) of this section if the person under 18

years was in a restroom, not open to public view or persons of the opposite sex.

Section 21 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS
OR VIDEO

- (a) A person who operates or causes to be operated a Sexually Oriented Business which exhibits on the premises in a viewing room of less than 150 square feet of floor space, a film, video cassette, or other video reproduction which depicts Specified Sexual Activities or Specified Anatomical Areas, shall comply with the following requirements:
- (1) Upon applications for a Sexually Oriented Business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty- two 32 square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however each diagram should be oriented to the north or to some designated street or object and should be drawn to designated scale or with marked dimensions sufficient to show the various internal measurements within six inches. The Ector County Sheriff may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certified that the configuration of the premises had not been altered since it was prepared.
 - (2) The application shall be sworn to and be corrected 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 Ector County Sheriff.
 - (4) It is the duty of the owners and operator of the premises to ensure that at least one licensed 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 reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be deemed open to any patron who is permitted access for any purpose from at least one line of sight from the manager's station.
 - (6) It shall be the duty of the owners, and operator, and any agents and employees present in the premises, to ensure that the viewing area specified in Subsection (5) remains unobstructed by any doors, walls, merchandise, display racks, or other materials and that patrons are never present in the area which has been designated as an area in which patrons will not be permitted access in the application filed pursuant to Subsection (1) of this section.
 - (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access. An illumination described above, is maintained at all times that any patron is present in the premises.
- (b) A person having a duty under Subsection (1) through (7) of Subsection (a) above commits an offense if he knowingly fails to fulfill that duty.

Section 22 DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS

- (a) A person commits an offense if, in a business establishment licensed or required to be licensed under this Ordinance, he displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts Specified Sexual Activities or Specified Anatomical Areas, that can be viewed by minor
- (b) For the purposes of this section, "display" means to locate an item in such a manner that, without

obtaining assistance from an employee of the business establishment:

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

Section 23 **ENFORCEMENT**

- (a) The violation of any provision of this ordinance, whether it be an act or omission, is a misdemeanor and shall be punished as provided by section 243.010 (b) of the Texas Local Government Code, as amended. Each day a violation continues shall constitute and be punishable as a separate offense.
- (b) The revocation or suspensions of any license shall not prohibit the imposition of a criminal penalty, and the imposition of a criminal penalty shall not prevent the revocation or suspension of a license.
- (c) The violation of any provision of this ordinance is a Class A misdemeanor.
- (d) It is a defense to prosecution under Section 3, 16, or 19 that a person appearing in State of Nudity did so in modeling class operated:
 - (1) By a proprietary school licensed by the State of Texas; or a college, junior college, or university supported entirely or partly by taxation;
 - (2) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
 - (3) In a structure:
 - (a) Which has no sign visible from the exterior of the structure and no other advertising that indicated a nude person is available for viewing; and
 - (b) Where in order to participate in a class a student must enroll at least three days in advance of the class; and
 - (c) Where no more than one nude model is on the premises at any one time.

- (e) It is a defense to prosecution under Section 3(a) of Section 16(a) that each item of descriptive, printed, film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.

Section 24 **INJUNCTION**

- (a) The County Attorney, or his assigns, shall bring suit in district court to enjoin the operation of an enterprise without a valid license. However, nothing in this paragraph shall prevent the enforcement of the Penal Code of the State of Texas pending issuance of the injunction by the Court.

Section 25 **AMENDMENT OF THIS ORDINANCE**

- (a) Any section of this ordinance may be amended by a majority vote of the Ector County Commissioner's Court.

Section 26 **GRACE PERIOD**

- (a) All persons required by this Ordinance to obtain a Sexually Oriented Business license are hereby granted a grace period, beginning the effective date of this Ordinance and ending ninety (90) days from the effective date of this ordinance.

Section 27 **EFFECTIVE DATE**

- (a) This Ordinance becomes effective immediately upon its passage by the Ector County Commissioners' Court.

Section 28 **VALID COURT ACTION**

- (a) Should any section, clause or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this Ordinance, or any other Ordinance of order of the Commissioner's Court as a whole or any part thereof, other than the part so declared to be invalid.

Section 29 **SCOPE**

- (a) This ordinance applies only to that portion of Ector County located outside of the corporate city

limits.

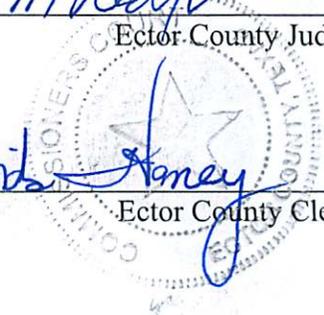
Section 30 **SEVERABILITY**

- (a) The terms, provisions, and conditions of this ordinance are severable. If any provision of this ordinance is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provisions shall be fully severable and this ordinance shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by said severance.

March 23, 2015
Date

Jim M. Reilly
Ector County Judge

Jmd Honey
Ector County Clerk

The seal of the Commissioners of Ector County, Texas, is visible in the background. It features a five-pointed star in the center, surrounded by the text "COMMISSIONERS OF ECTOR COUNTY, TEXAS" and "1856".

