

COMMISSIONERS' COURT OF ELLIS COUNTY AMENDED SEXUALLY ORIENTED BUSINESSES MINUTE ORDER NO. 228.21

AN ORDER AMENDING ORDER NO. 142.05 RE THE LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES IN UNINCORPORATED AREAS OF ELLIS COUNTY, TEXAS; INCORPORATING ADDITIONAL STUDIES; MODIFYING DEFINITIONS; MODIFYING CLASSIFICATION OF SEXUALLY ORIENTED BUSINESSES; PROVIDING PENALTIES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Commissioners' Court of Ellis County, Texas, finds that a substantial need exists to amend Order No. 142.05 regarding sexually oriented businesses within Ellis County; and

WHEREAS, the United States Supreme Court in *City of Renton v. Playtime Theater, Inc.*, 475 U.S. 41 (1986), held that local governments may rely upon the experiences of other jurisdictions in enacting local legislation to regulate sexually oriented businesses; and

WHEREAS, the United States Supreme Court in *Renton* and other cases has held that a local government may regulate such uses through content-neutral, time, place, and manner restrictions, so long as said regulations are designed to serve the government interest and do not unreasonably omit avenues of communication, and are not aimed at the content of protected speech within said establishments but rather at the secondary effects of said establishments on the surrounding communities; and

WHEREAS, the Commissioners' Court respects the Constitutional rights of its citizens, including the right to present certain types of entertainment that may not appeal to the entire population. Through this ordinance, it is the desire of the Commissioners' Court to balance its interests in maintaining its image of the County with the Constitutional rights of businesses that present sexually oriented entertainment there; and

WHEREAS, there are no sexually oriented businesses in the unincorporated area of Ellis County and there is the potential for future businesses that require special supervision from the public safety agencies of the county in order to protect and preserve the health, safety, and welfare of the customers of such businesses as well as the citizens of the County; and

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of the County which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation, drug use or gambling; and

WHEREAS, there is convincing documented evidence that sexually oriented

businesses, because of their very nature have a deleterious effect on businesses and residential areas, causing increased crime and the downgrading of property values, and WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to community blight and downgrading the quality of life in the adjacent area; and

WHEREAS, the Commissioners' Court desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of community blight; and

WHEREAS, it is not the intent of this order to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the Commissioners' Court to condone or legitimize the promotion of obscene material, and the Commissioners' Court recognizes that state law prohibits the promotion of obscene materials, and expects and encourages state enforcement officials to enforce state obscenity statutes against any such illegal activities in Ellis County; and

WHEREAS, the Commissioners' Court conducted a public workshop on December 16, 2004, and a public hearing on January 24, 2005, to consider the Amended Sexually Oriented Business Order; and

WHEREAS, the following studies and reports regarding the adverse secondary effects associated with sexually oriented businesses were placed on file with the County Clerk for review by the Commissioners' Court prior to the public hearing:

1. A report prepared by the Amarillo, Texas Planning Department entitled "A Report on Zoning and Other Methods of Regulating Adult Entertainment in Amarillo;"
2. A report prepared by the Beaumont, Texas Planning Department entitled "Regulation of Adult Uses;"
3. "Report on the Secondary Impact of Adult Use Businesses in the City of Denver," prepared by multiple city departments for Denver City Council;
4. "Interoffice Correspondence; Subject, Documentation of Secondary Effects of Sexually Oriented Businesses," Bruce W. McClendon, Director of Planning, Fort Worth;
5. A report by Richard McCreary, Ph.D., and James W. Meeker, J.D., Ph.D., entitled "Final Report to the City of Garden Grove: The Relationship Between Crime and Adult Business Operations on Garden Grove Boulevard;"
6. A report prepared by the Indianapolis, Indiana Department of

Metropolitan Development Division of Planning entitled "Adult Entertainment businesses in Indianapolis: An Analysis";

7. "Study of Sexually Oriented Businesses in Kansas City," Eric Damian Kelly, FAICP and Connie B. Cooper, FAICP, Kansas City, Missouri;
8. A report prepared by the Los Angeles, California Department of City Planning entitled "Study of the Effects of the Concentration of Adult Entertainment Establishments in the City of Los Angeles;"
9. A report by the Newport News, Virginia Department of Planning Development entitled "Adult Use Study;"
10. "Adult Entertainment Study," prepared by the Department of City Planning, New York City;
11. A report by the Oklahoma City, Oklahoma Community Development Department Planning Division entitled "Adult Entertainment businesses in Oklahoma City: A Survey of Real Estate Appraisers;"
12. "Adult Business Study," by city of Phoenix Planning Department;
13. "Survey of Appraisers in Monroe County, New York," Summer 2000. For detailed results of the survey, see Kelly and Cooper, Everything You Always Wanted to Know about Regulating Sex Businesses, Planning Advisory Service Report No. 495-96. Chicago: American Planning Association, 2000; pages 51-57.
14. "Effects on Surrounding Area of Adult Entertainment Business in Saint Paul,"¹¹ City of Saint Paul Division of Planning, Department of Planning and Management; and Community Crime Prevention Project, Minnesota Crime Control Planning Board;
15. A report of the Seattle, Washington Department of Construction and land use entitled "Directors Report: Proposed Land Use Code Text Amendment - Adult Cabarets";
16. A memorandum from the Assistant Chief of Police of the City of Tucson, Arizona to the City Prosecutor entitled "Adult Entertainment Ordinance";
17. A report of the Whittier, California Planning Department Staff entitled "Amendment to Zoning Regulations; Adult Business in C-Z Zone with Conditional Use Permit";
18. National Law Center for Children and Families, "NLC Summaries of SOB Land Use Studies";
19. "Everything you Always Wanted to Know about Regulating Sex Businesses," Planning Advisory Services Report, American Planning Association, Eric Damian Kelly, FAICP and Connie B. Cooper, FAICP; and

20. "Survey of Appraisers," completed for the City of Fort Worth, Texas by Eric Damian Kelly, FAICP and Connie B. Cooper, FAICP.
21. "Crime-Related Secondary Effects, Secondary Effects of 'Off-Site' Sexually-Oriented Businesses" completed by Alexi Alexander, JD, Larry Bush, MA, and Mark Vasquez, BA. 2008.
22. "Crime Risk in the Vicinity of a Sexually Oriented Business: A Report to the Centralia City Attorney's Office" completed by Richard McCleary, 2004.
23. "Study of Sexually Oriented Business" by Duncan Associates and Cooper Consulting, August 2012.
24. "Background, Analysis and Recommendations: Zoning Amendments Related to Sex Businesses." by Duncan Associates and Cooper Consulting, December 2010.
25. "Regulating Adult Oriented Businesses." By Duncan Associates and Cooper Consulting, December 11, 2006.
26. "Sexually-Oriented Business Study." By Duncan Associates. July 2000.
27. "Summary of Key Reports: Negative Secondary Effects of Sexually Oriented Business. Report to the Los Angeles City Attorney. Irvine, CA. by R. McCleary (2000).
28. Report of the Minnesota Office of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses.

WHEREAS, such studies differentiate between the secondary effects of sexually oriented business that provide on-site entertainment and those that are retail facilities that sell goods intended for off-site consumption; and

WHEREAS, the Commissioners' Court recognizes that some of the cited studies included bars without sexually oriented entertainment among the businesses studied, the Commissioners' Court finds, nevertheless, that addressing the establishments that have live, sexually-oriented entertainment is a more critical issue than that of bars without such entertainment, for these reasons:

1. Bars in Texas are already regulated by the State, and those state regulations directly address many of the concerns that arise with the service of alcohol; and,
2. The interaction between dancers who are paid to work with very limited clothing and the customers who pay to see them work in the establishments with live entertainment creates a sexually charged environment and the opportunity to negotiate for the provision of sexual services that do not involve dancing or other protected expression and that are simply unacceptable under the standards of the County and its citizens; and

WHEREAS, the Commissioners' Court adopted Order No. 93-258 on November, 1993;
and

WHEREAS, based on the secondary effects studies, testimony, case law and other

information before it, the Commissioners' Court has made the following legislative findings of fact:

1. That certain conduct occurring on the premises of sexually oriented business is detrimental to the public health, safety and general welfare of the citizens of the County and, therefore, such conduct must be regulated; and
2. That sexually oriented businesses are associated with and promote prostitution, illegal drug use and other criminal activity which constitute an immediate threat to the public peace, health, morals and safety; and
3. That regulation of sexually oriented businesses is necessary because in the absence of such regulation, significant criminal activity, including prostitution, illegal drug use and disruptive behavior and high-risk sexual conduct that may result in health hazards, has historically and regularly occurred in communities across the US; and
4. That sexually oriented businesses have a deleterious effect on businesses and residential areas, causing increased crime and downgrading of property values; these deleterious effects create a legitimate concern of the County to protect property values, business interests and generally protect the County from community blight associated with sexually oriented business; and
5. That it is recognized that sexually oriented business have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to community blight; and
6. That sexually oriented videos and films shown in sexually oriented motion picture video viewing booth areas are available for viewing, purchase or rental in other businesses which are less harmful to the health, safety and welfare of the community, and therefore sexually oriented motion picture video viewing booth areas should be prohibited where allowed in favor of other venues or regulated for maximum visibility; and
7. That the secondary effects precipitated by establishment of a sexually oriented business can be substantially mitigated by requiring separation of the sexually oriented business from schools, places of worship, residential uses, places of public assembly public parks, and child care facilities, and from one another; and
8. That the secondary effects precipitated by establishment of a sexually oriented business that involves on-site entertainment are greater than the effects precipitated by establishment of a sexually oriented business that involves sales of goods to be used off-site, necessitating greater separation of such uses from residential uses, places of public assembly, public parks, child day care centers, other sensitive uses and from one another; and
9. That certain sexually oriented businesses involving sexually oriented touching and other sexually oriented activities between employees and customers, or between customers promote prostitution and other criminal behavior, and thus should be prohibited or located at the maximum distance from sensitive uses and from other sexually oriented businesses, such businesses including sexually oriented encounter center, sexually oriented motion picture video viewing arcades and massage parlors; and

10. That at the present time there are no sexually oriented businesses known to be operating in the County; and
11. That at the present time there are no sexually oriented businesses that have filed for application in the County; and
12. That experiences in other communities show that uses such as sexually oriented encounter centers, massage parlors, sexually oriented motels, sexually oriented modeling studios and sexually oriented video viewing arcades and booths create the opportunity for high risk sexual activity, prostitution, drug use and other criminal activity, and create the logistical difficulties and risk of physical endangerment for police officers responsible for policing such businesses; that these highly problematic uses do not involve First Amendment protected speech, or such protected speech is available in other venues which are less harmful to the health, safety and welfare of the community, and are associated with deleterious effects, and therefore such businesses should be prohibited within Ellis County, Texas; and
13. That experiences in other communities show that private booths and viewing kiosks and other small and private spaces in sexually oriented businesses create the opportunity for high risk sexual activity, prostitution, drug use and other criminal activity, and create the logistical difficulties and risk of physical endangerment for police officers responsible for policing such businesses; that for these reasons it is essential that movies, performances and other activities at sexually oriented businesses be permitted only in large rooms that are open and visible to management, other patrons, and enforcement and police officers who may visit the establishment during operating hours.

WHEREAS, the Commissioners' Court amended Order No. 93-258 regarding sexually oriented businesses with its Amended Order No. 16.05 on January 24, 2005.

WHEREAS, it is the intent of the Commissioners' Court that this revised Amended Order will supplement and supersede such Amended Order; and

WHEREAS, on April 1, 2009, the Texas Legislature passed House Bill 2278 related to certain regulations on owners, operators, managers, or employees of sexually oriented entertainment businesses; and

WHEREAS, in *Combs v. Texas Entertainment Association, Inc.* 347 S.W. 277 (Tex. 2011) the Texas Supreme Court affirmed HB 2278 regarding a governmental entity's ability to charge a fee related to the operation of sexually oriented businesses applying an intermediate scrutiny test under the First Amendment; and

WHEREAS, Tex. Loc. Gov't Code ch. 243 expressly authorizes Ellis County to regulate the adverse secondary effects of sexually oriented businesses; and

WHEREAS, the Commissioners' Court hereby finds that the provisions of the Amended Sexually Oriented Businesses Order are in compliance with the provisions of Chapter 243;

Pursuant to the authority granted by the Constitution and 243.001 et. seq. Local Government Code of the State of Texas, BE IT ENACTED BY THE COMMISSIONERS' COURT OF ELLIS COUNTY, TEXAS:

AMENDED ORDER OF THE COMMISSIONERS' COURT

SEC. IA-1. PURPOSE AND INTENT.

1. *Purpose.* It is the purpose of this order to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the county, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the county, and to prevent the location of such businesses in proximity to residential uses, schools, places of worship, places of public assembly, public parks and child-care facilities. The provisions of this order have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this order 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 lawfully presented sexually oriented entertainment to their intended market. The promotion of obscene material (not protected by the First Amendment) is enforceable through separate criminal sanctions under the penal code.

2. *Statutory authority.* It is the intent of the Commissioners' Court that the locational regulations of this are promulgated pursuant to 243.001 et. seq. Local Government Code, as they apply to sexually oriented businesses.

SEC. IA-2. DEFINITIONS.

The following terms used in this amended order shall have the meanings hereinafter defined:

Applicant means an Owner or Operator, including any spouse of an individual owner, or any other entity required to submit any documentation for applying for a Sexually Oriented Business License;

Cabaret or theater, sexually oriented means an establishment which provides or allows the provision of sexually oriented live entertainment to its customers or which holds itself out to the public as an establishment where sexually oriented live entertainment is available. Signs, advertisements or an establishment name including verbal or pictorial allusions to sexual stimulation or gratification or by references to "adult entertainment," "strippers," "showgirls," "exotic dancers," "gentleman's club," "XXX" or similar terms, shall be considered evidence that an establishment holds itself out to the public as an establishment where sexually oriented live entertainment is available.

Child-care facility means a building used as a day nursery, children's boarding home, child placing agency or other place for the care or custody of children under fifteen years (15) of age.

County Director of Development or *Director* means the Ellis County Director of Development or his designated agent.

Customer means any person who:

- (1) Is allowed to enter a business in return for the payment of an admission fee or any other form of consideration or gratuity; or
- (2) Enters a business and purchases, rents, or otherwise partakes of any material, merchandise, goods, entertainment, or other services offered therein; or
- (3) Enters a business other than as an owner, employee, entertainer, vendor, serviceperson, or delivery person; or
- (4) Receives a service by a business regulated under this order.

Display means the act of exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, or public sidewalk, or from the property of others or from any portion of the premises where items and material other than sexually oriented media are offered for sale or rent to the public.

Employee means any person who renders any service whatsoever for or to the customers of an establishment subject to this Ordinance or who works in or about an establishment subject to this Ordinance.

Encounter center, sexually oriented means a business or enterprise that, as one of its principal purposes, offers physical contact between two or more persons when one or more of the persons is nude or semi-nude or in a state of nudity or semi-nudity for the purpose of engaging in specified sexually activity or touching specified anatomical areas.

Entertainer, sexually oriented means a person who receives any type of remuneration or payment either directly or indirectly to provide entertainment to customers at a sexually oriented business; entertainment may consist of dancing singing, modeling, acting, other forms of performing, or individual conversations with customers.

Entertainment, off-site sexually oriented means sexually oriented entertainment that is offered for consumption off the premises of an

establishment. *Off-site sexually oriented entertainment* includes sexually oriented media stores and sexually oriented novelty stores.

Entertainment, on-site sexually oriented means sexually oriented entertainment that is offered to customers for their consumption while on the premises of the sexually oriented establishment, including dancing singing, modeling, acting, other forms of performing, or individual conversations with customers, or viewing of sexually oriented media. *Entertainment, on-site sexually oriented* does not include the perusal of sexually oriented media, or other merchandise covers for the purpose of purchase or rental. *On-site sexually oriented entertainment* includes sexually oriented cabarets or theaters, sexual oriented motion picture theaters, sexually oriented motion picture video viewing arcades, sexually oriented encounter centers, massage parlors, and sexually oriented modeling studios.

Entertainment, sexually oriented live means any of the following activities, when performed by a sexually oriented entertainer at a sexually oriented business: dancing, singing, talking, touching, modeling (including lingerie or photographic), gymnastics, acting, other forms of performing, or individual conversations with customers or sexually oriented media.

Escort means a person who is held out to the public to be available for hire for monetary consideration in the form of a fee, commission, or salary, and who for said consideration consorts with or accompanies or offers to consort with or accompany, another or others to or about social affairs, entertainments, or places of amusement or within any place of public resort or within any private quarters. For purposes of this order, *escort* shall not include any person who would be understood by a reasonably prudent persons providing "babysitting" services or working as an assisted living companion to the elderly, infirm, disabled, or handicapped, and shall further not include licensed health professionals.

Escort customer means a customer or any person who contracts with or employs, or for monetary consideration, hires an escort, individually or through an escort service.

Escort, sexually oriented means an escort who:

- (1) works for (either as an agent, employee, or independent contractor), or is referred to a customer by a sexually oriented escort service; or
- (2) either advertises that sexual conduct will be provided, or works for (either as an employee, agent, or independent contractor), or is referred to a customer by a sexually oriented escort service that so advertises; or

- (3) offers to provide or does provide acts of sexual conduct to an escort customer, or accepts an offer or solicitation to provide acts of sexual conduct for a fee from an escort customer or a prospective escort customer.

Escort service, sexually oriented means an escort service that operates in any of the following manner:

- (1) collects money (whether paid in advance or paid after the promised proscribed act) for the promise of sexually oriented entertainment or specified sexually activities or prostitution services by its escorts; or
- (2) employs or contracts with a sexually oriented escort, or refers or provides to a customer a sexually oriented escort; or
- (3) engages in fraudulent, misleading, or deceptive advertising that is designed to make the prospective customer believe that sexually oriented entertainment or specified sexually activities or prostitution services will be provided; or
- (4) uses as escorts persons known to have violated the law regarding prostitution, and refuses to cease the use of such a person; or
- (5) operates a sexually oriented escort service as a "call girl" operation; or
- (6) advertises, solicits or offers that sexually oriented entertainment or specified sexually activities will be provided to a customer, or that such escorts will be provided, referred, or introduced to a customer.

Establishment means any business regulated by this order.

Gross floor area means the total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture video viewing arcades, service areas, behind-counter areas, areas used for storage of sexually oriented media, restrooms (whether or not labeled "public"), stage areas, and aisles, hallways, and entryways serving such areas.

Licensee means the owner in whose name a license to operate a sexually oriented business has been issued.

Massage means touching, stroking, kneading, stretching, friction, percussion, and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body (excluding an

osseous tissue manipulation or adjustment).

Massage parlor means any business in which massages are offered as one of the business's primary services by a person who is not registered as a "massage therapist" under the State of Texas Massage Therapy Registration Act or which provides massages by touching specified anatomical areas or engaging in specified sexual activities.

Massage therapy means the profession in which a registered massage therapist applies massage techniques with the intent of positively affecting the health and well-being of the customer in accordance with the standards of the State of Texas' Massage Therapy Registration Act, Texas Occupations Code, Chapter 455.

Massage therapist means a person who is registered under the State of Texas Massage Therapy Registration Act.

Media means anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything that is or may be used as a means of communication. *Media* includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, CD-ROMS, DVDs, other magnetic media, and undeveloped pictures.

Media, sexually oriented means magazines, books, videotapes, movies, slides, CDs, DVDs or other devices used to record computer images, or other media which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas."

Media viewing booth, sexually oriented, means any booth, kiosk, cubicle, stall, or compartment that is designed, constructed or used to hold or seat customers and is used for presenting videos or viewing publications by any photographic, electronic, magnetic, digital, or other means or medium (including, but not limited to, film, video or magnetic tape, laser disc, CD-ROMs, books, DVDs, magazines or periodicals to show images of "specified sexual activities" or "specified anatomical areas" for observation by customers therein. The term "booth," "arcade booth," "previews booth," and "video arcade booth" shall be synonymous with the term "sexually oriented video viewing booth."

Media store, sexually oriented means an establishment that rents and/or sells sexually oriented media, and that meets any of the following three tests:

- (1) More than forty percent (40%) of the gross floor area is devoted to sexually oriented media; or
- (2) More than forty percent (40%) of the stock in trade consists of sexually oriented media; or
- (3) The business advertises or holds itself out in any forum as a "XXX," "adult" or "sex" business, or otherwise as a sexually oriented business, other than sexually oriented media outlet, sexually oriented motion picture theater, or sexually oriented cabaret.

Modeling studio, sexually oriented means any place where a person who appears nude or semi-nude or in a state of nudity or semi-nudity and is to be observed for purposes of sketching, drawing, painting, sculpturing, photographing, or similar depiction by other persons who pay money or any form of consideration, or an establishment or business that provides the services of live models modeling lingerie, bathing suits, or similar wear to individuals, couples, or small groups with the purpose or result of providing sexually oriented entertainment. *Modeling studio, sexually oriented* shall not include a proprietary school licensed by the State of Texas or a college, junior college, or university supported entirely or in part by public taxation; a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

Motel, sexually oriented means a hotel, motel, or similar commercial establishment that meets any of the following criteria:

- (1) Provides as its main business accommodations to the public for any form of consideration for the purpose of viewing sexually oriented 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;" or
- (2) Marketed as or offered as "adult," "XXX," "couples," or "sexually oriented"; or
- (3) Offers a sleeping room for a period of less than 10 hours or allows a tenant or occupant to rent the room for a period of time of less than 10 hours.

Motion picture video viewing arcade, sexually oriented means a building or portion of a building wherein coin-operated, slug-operated, or for any other form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-

producing devices are maintained to show images of "specified sexual activities" or "specified anatomical areas."

Motion picture theater, sexually oriented means a commercial theater establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are frequently shown that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" or that are marketed as or offered as "adult," "XXX" or "sexually oriented." Frequently shown films, motion pictures, videocassettes, slides or other similar photographic reproductions as characterized herein do not include sexually oriented speech and expressions that take place inside the context of some larger form of expression. This definition does not include any type of facility that would meet the definition of a sexually oriented motion picture video viewing arcade.

Motion picture video viewing area, sexually oriented means any area designed, constructed, or used to hold or seat customers and is used for presenting motion pictures or viewing publications by any photographic, electronic, magnetic, digital, or other means or medium (including, but not limited to, film, video or magnetic tape, laser disc, CD-ROMs, books, DVDs, magazines or periodicals) to show images of "specified sexual activities or "specified anatomical areas" for observation by customers therein. This definition does not include any building that would meet the definition of a sexually oriented motion picture theater.

Novelty store, sexually oriented means an establishment offering for sale or rent any of the following categories: sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices and the sale of such items is the primary business of the commercial enterprise, taking into consideration any of the following:

- (1) the value realized from the sale and/or rental of sexually oriented toys or novelties;
- (2) the floor area devoted to sexually oriented toys or novelties; or
- (3) the amount of inventory constituting sexually oriented toys or novelties.

Nudity or state of nudity means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft with less than fully opaque covering, or the showing of the covered male genitals in a discernibly turgid state. For purposes of this definition, body paint, body dyes, tattoos, liquid latex, whether wet or dried, and other similar substances shall not be considered a fully opaque covering.

Operator means a person or entity designated by the owner to be responsible for the operation of a business regulated under this order at a particular location at a particular time; when the owner, proprietor, or other principal in the business is present, such person may be considered the operator.

Owner means the individual owner of an establishment, or if the legal owner is a corporation, partnership, or limited liability company, the term shall include all general partners, any limited partner with a financial interest of ten percent (10%) or more, all corporate officers and directors, and any shareholder or member with a financial interest of ten percent (10%) or more. "Owner" includes the spouse(s) of any of the above individuals, as well as any lessee of the premises.

Person means an individual, firm, partnership, joint-venture, association, independent contractor, corporation (domestic or foreign), limited liability company, trust, estate, assignee, receiver or any other group or combination acting as a unit.

Place of public assembly means an auditorium, civic center, city hall or courthouse.

Place of worship 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.

Premises means the physical location at which a business operates; as used in this order, the term shall include all parts of that physical location, both interior and exterior, which are under the control of the subject business, through ownership, lease or other arrangement.

Primary entertainment means entertainment that characterizes the establishment, as determined (if necessary) from a pattern of advertising as well as actual performances.

Public park means a tract of land maintained by the federal, state, or a local government for the recreation and enjoyment of the general public.

Residential use means a structure designed or intended for human habitation, including a single-family dwelling, duplex, townhouse unit or complex, apartment or multiple-family dwelling unit or complex, mobile home park, or recreational vehicle site.

Sadomasochistic practices means flagellation or torture by or upon a person clothed or naked, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed or naked.

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.

Semi-nude or state of semi-nudity means the showing of the female areola or nipple with less than fully opaque covering. Showing of any other part of the anatomy defined under *nude* or *state of nudity* shall constitute being nude or in a state of nudity. For purposes of this definition, body paint, body dyes, tattoos, liquid latex, whether wet or dried, and other similar substances shall not be considered a fully opaque covering.

Sensitive use means a place of worship, school, public park, place of public assembly, residential use or childcare facility.

Sexually oriented business means any of the following businesses: *sexually oriented cabaret or theater; sexually oriented encounter center; massage parlor, sexually oriented media store; sexually oriented motel; sexually oriented motion picture theater; sexually oriented motion picture video viewing arcade; sexually oriented modeling studio; sexually oriented novelty store;* or any other similar business establishment whose primary purpose is to offer sexually oriented entertainment or materials. This generic term does not describe a specific land use; each such business shall be considered a separate business for purposes of licensing.

Sexually oriented business license means any license applied for under this order.

Sexually oriented toys or novelties means instruments, devices, or paraphernalia either designed as representations of human genital organs or female breasts or designed or marketed primarily for use to stimulate human genital organs.

Sheriff means the Sheriff of Ellis County or his designated agent.

Specified anatomical areas mean any of the following:

- (1) Less than completely and opaquely covered human male or female genitals, pubic area, vulva, anus, or anal cleft or the human female areola or nipple; or
- (2) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified criminal act means any sexual offense, prostitution, rape, statutory rape or other sexually related offense or as defined by criminal statutes in other

states or by federal laws addressing similar or related offenses; or an offense as defined in Chapters 21, 22, 25 and 43 of the Texas Penal Code; or an offense involving controlled substances, illegal drugs or narcotics, or gambling as defined in federal or state laws in any of the states. *Specified criminal act* also includes any criminal attempt, conspiracy, or solicitation to commit any of the enumerated offenses.

Specified sexual activities means acts of human masturbation, sexual intercourse, or sodomy. *Specified sexual activities* include, but are not limited to the following: bestiality, erotic or sexual stimulation with objects or mechanical devices, acts of human anilingus, cunnilingus, fellatio, flagellation, masturbation, sadism, sadomasochism, sexual intercourse, sodomy, or any excretory functions as part of or in connection with any of the activities set forth above with any person on the premises. This term shall include apparent sexual stimulation of another person's genitals whether clothed or unclothed.

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 effective date of this order.

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

SEC. 1A-3. CLASSIFICATION.

Sexually oriented businesses are classified as follows:

1. *Class I sexually oriented business.* Establishments offering for sale or rent off-site sexually oriented entertainment, including the following uses, shall be classified as Class I sexually oriented businesses:

- (A) Sexually oriented media store; and
- (B) Sexually oriented novelty store.

2. *Class II sexually oriented business.* Establishments offering for consumption of on- site sexually oriented entertainment that, when lawfully conducted, does not involve physical contact or other sexually oriented activities between customers and entertainers, or between customers, including the following uses, shall be classified as Class II sexually oriented businesses.

- (A) Sexually oriented cabaret or theater; and
- (B) Sexually oriented motion picture theater.

3. *Prohibited businesses.* The following sexually oriented businesses are prohibited in Ellis County due to the experiences in other communities that demonstrate these uses create the opportunity for high-risk sexual activity, prostitution, drug use and other criminal behavior while posing logistical difficulties and physical endangerment risks for enforcement and police officers in monitoring these businesses, and uses involving sexually oriented media viewing booths or arcades are associated with deleterious effects and access to such media is available in other venues which are less harmful to the health, safety and welfare of the community.

- (A) Sexually oriented escort service;
- (B) Sexually oriented encounter center;
- (C) Massage parlor;
- (D) Sexually oriented modeling studio;
- (E) Sexually oriented motel;
- (F) Sexually oriented motion picture video viewing area;
- (G) Sexually oriented media viewing booth; and
- (H) Any permitted sexually oriented business that includes as part of its business any business designated in subsections (A) through (G).

SEC. 1A-4. LOCATION STANDARDS FOR SEXUALLY ORIENTED BUSINESSES

1. *Sensitive uses.* The following uses located in the unincorporated area of Ellis County shall be considered sensitive uses for purposes of determining the location of a sexually oriented business.

- (A) a place of worship;
- (B) a school;

- (C) a public park;
- (D) a place of public assembly;
- (E) a child care facility; and
- (F) a residential use.

2. *Separation distance.*

- (A) No Class I sexually oriented business shall be located within one thousand five hundred (1500) feet of a sensitive use.
- (B) No Class II sexually oriented business shall be located within two thousand (2000) feet of a sensitive use.

3. *Distance between businesses.* No sexually oriented business within the unincorporated area of Ellis County shall be located closer than the distance prescribed by this section for separation from sensitive uses from another sexually oriented business of the same class. The separation requirement for sexually oriented businesses of different classes shall be the greater of the distances prescribed by this section for separation from sensitive uses. For purposes of this section, measurements shall be taken from an established sexually oriented business regardless of whether such business is located in an incorporated or an unincorporated area of Ellis County.

4. *Multiple businesses prohibited.* Any establishment containing or constituting more than one defined sexually oriented business of any class shall be prohibited.

5. *Measurement of distances.* Measurement of the distances prescribed by this section 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 place of worship, school, or public park, place of public assembly, child care facility, or a residential use situated on a platted and recorded lot 1.5 acres or less in area, or a proposed lot that has received final plat approval for residential use of 1.5 acres or less. If the residential use is located on a lot or parcel which exceeds 1.5 acres in size, the distances prescribed by this section shall be measured from a point fifty (50) feet from the closest exterior wall of the residential use. The distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to intervening structures or objects, from the nearest property line of the premises on which each business is located.

6. *Pre-established business.* A lawfully operating sexually oriented business shall not be rendered unlawful by the location of a sensitive use, subsequent

to the grant or renewal of a sexually oriented business license, closer to the business than the separation requirements prescribed by this section. This provision applies only to the renewal of a valid license, and does not apply when an application for a sexually oriented business license is submitted after the license or period of authorized non-conformity has expired, the license has been revoked, or the licensed sexually oriented business has been abandoned.

7. *Abandonment.* A licensed sexually oriented business shall be considered abandoned when its operation has been discontinued voluntarily for a period exceeding sixty (60) days.

8. *Non-conforming business.* Any sexually oriented business lawfully operating on the date of any amendment to this order that is rendered non-conforming with respect to the separation requirements established by such amendment thereafter shall be deemed a nonconforming use. Such use will be permitted to continue for a period not to exceed one (1) year, unless sooner destroyed, abandoned or terminated for any reason. Such non-conforming use shall not be increased, enlarged, extended or altered within such period. If two sexually oriented businesses are within prescribed separation requirements on the effective date of an amendatory order that increases such distance requirements, the sexually oriented business which was first established and continually operating at a particular location shall be deemed the conforming use and the later established business shall be deemed non-conforming.

9. *Frontage on a publicly dedicated roadway.* All sexually oriented business must be located on a lot fronting on a paved, publicly dedicated roadway.

SEC. 1A-5. ADDITIONAL STANDARDS FOR SEXUALLY ORIENTED BUSINESSES AND SEXUALLY ORIENTED MEDIA DISPLAY.

I. *Exterior design.* The premises of all sexually oriented businesses will be so constructed as to ensure that the interior of the premises is not observable from the exterior of the building.

- (A) In addition, all windows will be covered to prevent viewing of the interior of the building from the outside and all doorways not constructed with an anteroom or foyer will be covered so as to prevent observation of the interior of the premises from the exterior of the building.
- (B) Light sources shall be oriented toward the center of the site or shielded so as to not be visible from the property line. This applies to refractory lenses which extend beyond the lighting fixture

and are designed to redirect the lighting source horizontally. This does not apply to neon or internally lit signs, or to decorative lighting with 15 watts or less per bulb.

- (C) The minimum average intensity of lighting for on-site parking and walkway areas shall be 1.5 foot-candles.
- (D) Signage shall conform to any applicable regulations of the extraterritorial jurisdiction of a municipality.
- (E) Parking areas shall not be obscured by an opaque fence, wall, obscuring vegetation or other barrier from views from the public roadway where the business takes access.

2. *Design of Entertainment Area.* The premises of a Class II or Class III sexually oriented business shall be designed so that all entertainment on the premises takes place only in a location and manner meeting all of the following conditions:

- (A) In an open room of at least six hundred (600) square feet unobstructed by any interior walls or other structures that shield the view of activities occurring within the room; however, a sexually oriented motel may provide entertainment in rooms having at least two hundred and fifty (250) square feet per room.
- (B) On a stage, elevated at least thirty-six (36) inches above the level on which customers sit or stand; and
- (C) On a stage with a horizontal separation of at least thirty-six (36) inches between the edge of the stage or platform and the nearest space to which customers shall have access - the horizontal separation shall be physically enforced by a partial wall, rail or other physical barrier, which may be located either on the stage (to keep the entertainers back from the edge) or on the floor (to keep the customers back from the stage).

3. *Interior design for sexually oriented cabarets or theaters, and motion picture theaters.* The interior of the premises shall be configured in such a manner that there is an unobstructed view of the premises to which any customer is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which customers are

permitted access at an illumination of not less than one (1.0) foot candle as measured at the floor level.

4. *Sexually oriented media display.*

- (A) This subsection shall apply to any establishment in which sexually oriented media at any time constitutes or occupies more than ten percent (10%) but not more than forty percent (40%) of the store's inventory or merchandise displayed for sale or rental (not including store rooms, stock areas, bathrooms, or any portion of the business not opened to the public) at any time.
- (B) Sexually oriented media in an establishment to which this subsection applies shall be kept in a separate room or section of the store, which room or section shall:
 - (1) Be physically and visually separate from the rest of the store by an opaque wall or durable material reaching at least eight (8) feet high or to the ceiling, whichever is less;
 - (2) Be located so that the entrance to it is as far as reasonably practicable from media or other inventory in the store likely to be of particular interest to children; and
 - (3) Have access controlled by electronic or other means to provide assurance that persons under age eighteen (18) will not gain admission and that the general public will not accidentally enter such room or section.

SEC. 1A-6. LICENSE REQUIRED FOR SEXUALLY ORIENTED BUSINESS.

1. *License required.* It shall be unlawful for any person to operate or maintain a sexually oriented business in the County unless the owner, operator or lessee thereof has obtained a sexually oriented business license from the County, or to operate such business after such license has expired or has been revoked or suspended by the County, or following abandonment of the business.

2. *Employment in unlicensed business prohibited.* It is unlawful for any entertainer, server, employee, operator or owner to knowingly perform any work, service or entertainment directly related to the operation of an unlicensed sexually oriented business.

3. *Presumptions.* The failure to post a sexually oriented business license in the manner required herein shall be prima facie evidence that such business has not obtained such a license. In addition, it shall be prima facie evidence that any entertainer, employee, or owner who performs any business, service or entertainment in a sexually oriented business in which a sexually oriented business license is not posted in the manner required herein had knowledge that such business is not licensed.

4. *One license per business.* A separate license is required for each sexually oriented business. A sexually oriented business license shall be issued only for the sexually oriented business use listed on the application and only for single described premises. Any change in the type of sexually oriented business use shall invalidate the outstanding sexually oriented business license and require the licensee to obtain a new license for the change in use. The establishment or maintenance of more than one sexually oriented business in the same building, structure or portion thereof is prohibited.

5. *Term of license.* All sexually oriented business licenses shall be issued for a period of one year, subject to annual renewal.

6. *Transfer prohibited.* A licensee shall not transfer his license to other persons or entities, 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.

7. *License format.* Each sexually oriented business license shall identify the class and type of business; state the street address and legal description of the premises at which the business is to be operated; state that the license is not transferable to other persons or entities; and identify the calendar year and month for which it is issued.

8. *Additions to license.* A person or other entity controlling more than ten percent (10%) of the sexually oriented business may be added to an existing license by providing the required licensing background information and successfully passing the required background checks. If such addition is interpreted by the County Director of Development to be a license transfer, it shall be prohibited.

SEC. IA-7. LICENSE APPLICATION PROCEDURES.

1. *Application contents.* All persons desiring to secure a license to operate a sexually oriented business shall make a verified application with the Ellis County Director of Development. All applications shall be submitted in the

name of an owner of the sexually oriented business, who shall be deemed the applicant. The application shall be signed by the applicant and notarized. If the applicant is a corporation, the application shall be signed by its president. If the applicant is a partnership, the application shall be signed by a partner. If the applicant is a limited liability company, the application shall be signed by the managing director. In all other instances where the owner is not an individual, the application shall be signed by an authorized representative of the owner. The Director shall require proof of authorization before accepting an application. All applications shall be submitted on a form supplied by the Ellis County Director of Development and shall require all of the following information:

- (A) The name of the sexually oriented business and the class and type of sexually oriented business to be operated on the licensed premises.
- (B) The street address and legal description of the premises at which the sexually oriented business is to be operated.
- (C) The name, any aliases, mailing address for receipt of notices, home address and telephone number, occupation, date and place of birth and social security number, and fingerprints of each individual owner and each operator of the premises. If the owner is a partnership, this information shall be supplied for each general or limited partner. If the owner is a corporation or limited liability company, the same information shall be supplied for all stockholders or members who own more than ten percent (10%) interest in the company.
- (D) The tax identification number and registered agent if the owner is required to have a tax identification number or registered agent, or designation of an owner or operator for purposes of notice and service of process. It shall be the duty of the applicant to update such information during the term of the license.
- (E) The name, address and telephone number of the owner of the premises, if different from above, where the sexually oriented business will be located.
- (F) A statement from the applicant whether the applicant and each person required to be identified in the application pursuant to this section, is previously operating in this or

another city, county or state, has had a sexually oriented business license of any type, and if that license has ever been revoked or suspended, and if so, the reason for the suspension or revocation and the business activity subject to the suspension or revocation.

- (G) A statement from the applicant and each person required to be identified in the application pursuant to this section that each such person has not been convicted of, or released from confinement for conviction of, or received an order of deferred adjudication on, any felony, whichever is later, within five (5) years immediately preceding the application, or has not been convicted or, nor received an order of deferred adjudication on, a misdemeanor or municipal or county ordinance violation, or released from confinement for conviction of a misdemeanor or municipal or county ordinance violation, whichever event is later, within two (2) years immediately preceding the application, where such felony, misdemeanor or municipal or county ordinance violation constitutes a Specified Criminal Act.
- (H) The applicant and each person required to be identified in the application pursuant to this section shall attach two copies of a recent photo to his or her application form.
- (I) A statement signed under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct and that the applicant has read the provisions of the Ellis County Amended Code regulating sexually oriented businesses.

2. *Schematic diagram required.* Upon application for a sexually oriented business license, the application shall be accompanied by a schematic diagram of the interior premises showing a plan thereof specifying the location of one or more operator of stations and the location of all overhead lighting fixtures and designating any portion of the premises in which customers will not be permitted. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. The diagram shall also provide exterior information to identify points of egress and ingress, parking, loading, fencing, lighting and signage. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of

plus or minus six inches. The County Director of Development may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the internal and external configuration of the premises has not been altered since it was prepared.

3. *Incomplete application.* Failure to provide the information and documentation required herein shall constitute an incomplete application and shall not be processed by the County. The Ellis County Director of Development shall notify the applicant whether or not the application is complete within ten (10) calendar days of the date the application is received by the Ellis County Director of Development. In the event the Director has determined that the application is incomplete, the notification sent by first class certified mail to the applicant shall include a written explanation of the reason(s) why the application is incomplete.

4. *Application fee.* An application fee of \$500 shall be submitted with each initial or renewal application for a sexually oriented business. The Commissioners' Court may change the application fees from time to time.

SEC. 1A-8. PROCESSING OF AND DECISION ON LICENSE APPLICATION

1. *Posting of notice.* Each applicant for an initial sexually oriented business license shall, at least 60 days prior to the filing of the application for the license, place a sign of the size and lettering as required by the Director, but in no event less than 24 inches by 36 inches and in two-inch lettering, which provides notification and information specifically stating A SEXUALLY ORIENTED BUSINESS LICENSE APPLICATION IS PROPOSED TO BE FILED WITH ELLIS COUNTY and the date on which the application is proposed to be filed. The applicant shall erect the sign along the property's public road frontage so as to be clearly visible and legible from the public road. One sign shall be erected for each five hundred (500) foot increment of each public road frontage on said property existing or any part thereof. The sign shall remain on the premises until a decision is rendered on the application.

2. *Application processing.* Upon receipt of a complete application and the required filing fee for a sexually oriented business license, the Ellis County Director of Development shall immediately transmit one copy of the application to the Ellis County Sheriff and the Ellis County Fire Marshal for investigation of the application. It shall be the duty of the Ellis County Sheriff to investigate such application to determine whether the information contained in the application is accurate and whether the application meets the requirements herein regarding the absence of Specified Criminal Acts. It shall be the duty of the Ellis County Fire Marshal to determine whether the structure where the sexually oriented business will be conducted complies with the requirements and meets the standards of the applicable fire code. The Ellis County Sheriff and Fire Marshal shall report the results of their investigation to the Ellis County Director of Development not later

than fourteen (14) calendar days from the date the application is deemed complete by the Director. The Director shall investigate and determine whether the application meets all other requirements of this order.

3. *Decision.* The Ellis County Director of Development shall approve or disapprove the application based upon his own investigation and the reports of the Sheriff and Fire Marshal within sixty (60) days from the date the application is deemed complete by the Director, in accordance with the criteria in Section 1A-10. The Director shall approve the issuance of a license only if the appropriate license fee has been paid, the applicant is qualified and all the applicable requirements set forth herein are met. The applicant shall be notified in writing of the Director's decision within ten (10) calendar days thereof.

4. *Renewal of license.* A license issued under this subchapter may be renewed by making application to the Director of Development on application forms provided for that purpose. Licenses shall expire on the last day of the calendar month during which the license was issued or renewed during the previous year. Renewal applications for such licenses shall be submitted no earlier than sixty (60) days prior to the expiration of the license. Upon timely application thereof, a license issued under the provisions of this subchapter shall be renewed by issuance of a new license upon demonstration that the criteria for issuance of the original license have been met at the time the application is submitted for renewal.

SEC. 1A-9. APPEAL OF LICENSE DECISION.

1. *Appeals Board.* The Commissioners' Court of Ellis County shall serve as the appeals board for licenses issued under this order.

2. *Appeal processing.* An applicant may appeal an unfavorable decision of the Director of Development by filing a written petition with the County Clerk requesting a hearing on the denial of the application within ten (10) calendar days of the date the applicant receives notification of the Director's decision. The appeal shall be scheduled to be heard within twenty (20) calendar days of the date the petition is received in the office of the County Clerk. The County Clerk shall give written notice to the applicant of the time and place for the hearing on the appeal.

3. *Decision.* The Commissioners' Court of Ellis County shall issue a decision with findings within ten (10) calendar days after any hearing held in accordance with this section in accordance with the criteria in Section 1A-10. The minutes of the Commissioners' Court meeting shall show the action taken on the application, and if the license is granted, the Commissioners' Court shall direct the Director to issue the proper license.

4. *Notification of decision on appeal.* If the application for a license is

disapproved on appeal, the applicant shall be sent a letter of notification by registered or certified mail within five (10) calendar days to the applicant's last known mailing address, and the letter of notification shall state the basis for such disapproval. Any applicant aggrieved by the decision may seek judicial review in the appropriate court.

5. *Judicial review.* An applicant may seek judicial review of the denial of a license by the Ellis County Director of Development or following the decision of the Commissioners' Court on his appeal, at his election.

SEC. 1A-10. CRITERIA FOR DECISION ON SEXUALLY ORIENTED BUSINESS LICENSES.

No license for a sexually oriented business shall be issued or renewed if one or more of the following conditions exist:

1. The applicant knowingly failed to supply all of the information requested on the application.

2. The applicant knowingly gave materially false, fraudulent or untruthful information on the application.

3. The applicant, any other owner, the spouse of any owner, or any operator has been convicted, released from incarceration for conviction or has received an order of deferred adjudication on any Specified Criminal Act during the time period set forth herein.

4. The applicant or any other owner has had a sexually oriented business license or comparable license revoked or suspended during the past five (5) years.

5. The proposed business does not meet locational standards of sec. 1A-4.

6. The proposed business does not meet the design standards for the particular type of business required by sec. 1A-5.

7. For renewal applications, a suspension or revocation proceeding is pending, in which case the decision on the application shall be rendered following the outcome of the suspension or revocation proceeding.

8. The applicant is not in compliance with Texas Business and Commerce Code Chapter 102, Sexually Oriented Businesses.

SEC. 1A-11. STANDARDS OF OPERATION.

It shall be unlawful for any sexually oriented business, or operator, entertainer or employee of a sexually oriented business, or any customer of any sexually oriented business, while on or about the premises of the business to knowingly fail to adhere to the following standards of operation, as applicable:

1. *Standards for sexually oriented entertainment.* A sexually oriented business offering sexually oriented entertainment shall comply with the following standards:
 - (A) A sexually oriented cabaret or modeling studio shall assure that no person other than an entertainer may occupy a stage constructed in accordance with section I-AS for purposes of providing sexually oriented entertainment during the course of any performance.
 - (B) Entertainment at a sexually oriented cabaret or modeling studio is restricted to the elevated stage area as prescribed in section I-AS; and
 - (C) Tips for entertainers shall be collected only in containers that are accessible to customers and not located on the stage.
 - (D) Sexually oriented entertainment shall take place in an open room in accordance with section I-A5.
2. *Establishment license.* A sexually oriented business shall post the license issued under this order in a conspicuous, easily viewable location, at eye level, in the portion of the business that is frequented by its customers and that is well lighted.
3. *Age restriction.* No person under the age of eighteen (18) years, whether an employee or customer of the establishment, shall be permitted on the premises of any sexually oriented business, or in any area reserved for the display of sexually oriented media in an establishment subject to section I-A-5(5).
4. *On-site attire.* The operator of any sexually oriented business shall not permit any entertainer, server or other employee to appear nude or semi-nude or in a state of nudity or semi-nudity on the premises.
5. *Exterior display.* No sexually oriented business will be conducted in any manner that permits the observation of live performers engaged in an erotic depiction or dance or media or any other material or persons depicting, describing or relating to specified sexual activities or specified anatomical areas, or persons in a state of nudity or semi-nudity, to be observed from any exterior location by

display, decoration, sign, show window or other opening.

6. *Specified criminal acts and specified sexual activities prohibited.* No operator shall permit any employee, server, entertainer or customer of a sexually oriented business to engage in any specified criminal act or any specified sexual activity on the premises of the business.

7. *Terms of license.* It shall be the duty of the owners and operators to ensure that all of the terms of the sexually oriented business license, including the standards in section IA-5 of this order, are continuously maintained, and to ensure that no customer is permitted access to any area of the premises which has been designated as an area in which customers will not be permitted pursuant to the terms of the license and the standards of this order.

8. *Manager on duty.* It is the duty of the operator of the premises to ensure that a manager is on duty at all times that any customer is present inside the premises.

9. *Interior and Exterior Building Standards.* All sexually oriented business shall maintain the required standards of interior and exterior design prescribed in section I-A5. No alteration of building's exterior or interior design or premises shall be undertaken without written authorization from the Director of Development.

10. *Inspections.* Any sexually oriented business shall be deemed to have consented to periodic entry into and inspection of the business premises by the Sheriff's Department and County Department of Development for the limited purpose of determining whether such business enterprise is in compliance with this section. Such entry and inspection shall take place during hours when such business is open to the public, provided, however, that the owner may request a different time for inspection. 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 Sheriff's Department at any time it is occupied or open for business.

SEC. IA-12. SUSPENSION AND REVOCATION OF LICENSE

1. *Review for compliance.* When the Director of the Department of Development has information that there has been a violation of any provision of this order by a licensee or at a licensed premises, or any of the conditions required for the issuance of a license have changed, or that anything on the application for the license may have been untrue or incomplete, then the Director shall schedule a hearing before the Commissioners' Court in accordance with the provisions of this section.

2. *Hearing on suspension or revocation.* Where a hearing is required under this section, written notice shall be sent to the licensee within five (5) calendar days of the complaint. The date of the hearing shall occur no less than ten (10) and no more than thirty (30) calendar days after written notice has been sent to the licensee that a

complaint has been filed with the Director. The hearing shall be to make findings of fact in the matter.

- (A) Notice of such hearing shall be in writing, and shall set forth the reason for the hearing or the complaint against the licensee, and shall be served upon the licensee in person or by registered or certified mail to the address listed in the license application. If the Director is not able to serve notice upon the licensee in person, and any notice sent by mail is returned by the postal service, the Sheriff shall cause such notice to be posted at the principal entrance of the sexually oriented business, and such posting shall be a valid means of service.
- (B) An applicant, licensee, or complainant shall have full right to be represented by counsel and to produce witnesses and other evidence, and to pose questions to all witnesses who appear before him. Oral evidence shall be taken only upon oath or affirmation. All proceedings in such hearings shall be recorded and transcribed as required by law. The Commissioners' Court may receive evidence relevant to the issues from the applicant or licensee or from other sources.

3. *Decision on alleged violation and notice.* The Commissioners' Court shall issue findings of fact and an order within thirty (30) calendar days of the close of the hearing. The Court may dismiss the complaint, or suspend or revoke a license previously issued, or renew or refuse to renew a license previously issued. The Court's order shall be served upon the applicant, licensee or complainant in person or by registered or certified mail to the applicant's, licensee's or complainant's last known address. If the Director is not able to serve such order upon the licensee, or applicant, in the manner stated in this subsection, the Sheriff shall cause such order to be posted at the principal entrance of the regulated use, and such posting shall be a valid means of service. If the Commissioners' Court finds and concludes from the evidence that the applicant or licensee has violated any of the provisions listed in this order, the Court may suspend or revoke the license in accordance with the standards in subsections 5 or 6, as the case may be, or in the case of a renewal application, refuse to renew such license, in accordance with the provisions of license renewal.

4. *License to remain in effect.* Until a decision has been reached by the Commissioners' Court in the proceedings under this section, the license of the sexually oriented business shall remain in effect.

5. *Criteria for suspension.* Upon a finding of a violation of any of the following provisions of this order by the Commissioners' Court, the sexually oriented business license shall be suspended:

- (A) Sexually oriented entertainment taking place in violation of design standards in section IA-5.

- (B) Operating with an expired license in violation of section IA-8(4).
- (C) Others occupying a stage in violation of section IA-11(1)(A).
- (D) Entertainment taking place in a cabaret or modeling studio other than on a stage in violation of section IA-11(1)(B).
- (E) Tips collected in violation of section IA-11(1)(C).
- (F) Establishment license not posted in violation of section IA-11(2).
- (G) Persons under 18 years old on premises in violation of section IA-11(3)
- (H) Entertainer, server or employee nude or semi-nude or in state of nudity or semi-nudity in violation of section IA-11(4).
- (I) Exterior display of live performances, or media or material depicting specified sexual activities or specified anatomical areas in violation of section IA-11(5).
- (J) Customers in area of the premises which is not permitted in violation of section IA-11(7).
- (K) Manager not on duty during the time the business is open in violation of section IA-11(8).
- (L) Bed, sofa, or mattress in modeling studio in violation of section IA-11(9).
- (M) Sexually oriented motel room occupied two (2) or more times in less than 10 hours in violation of section IA-11(10).
- (N) Not maintaining the building's interior or exterior design standards or altering the building's exterior or interior design or premises without written authorization from the Director of Development in violation of section IA-11(11).
- (O) Prohibition of inspections by Sheriff's Department and Department of Development in violation of section IA-11(12).

6. *Criteria for revocation.* Upon a finding of a violation of any of the following provisions of this order by the Commissioners' Court, the sexually oriented business license shall be revoked:

- (A) Operation of a sexually oriented business prohibited under section IA-3(4).
- (B) Operation of multiple sexually oriented businesses on licensed premises in violation of section IA-4(4) or section IA-6(4).
- (C) Transfer of ownership in violation of section IA-6(6).
- (D) The owner/operator gave false or fraudulent information in the application required under section IA-7 or otherwise acquired the license under false pretenses.
- (E) Any grounds for denying a license application for a sexually oriented business pursuant to section IA-10(1), (2), (3) or (4).
- (F) The owner/operator knowingly allowed occurrence of specified criminal act or specified sexual activity in violation of section IA-11(6).
- (G) Operation of sexually oriented business during a period of suspension imposed under section IA-12.
- (H) A sexually oriented business license shall be revoked automatically upon finding by the Commissioners' Court that the license has been suspended at least two times in the preceding 12-month period.

7. *Duration of suspension or revocation.* A suspension of a sexually oriented business license shall remain in effect for a period of sixty (60) days, during which time the licensee shall not be issued a license for any other sexually oriented business. A revocation of a sexually oriented business license shall remain in effect for a period of one (1) year, during which time the licensee shall not be issued a license for any other sexually oriented business.

8. *Judicial review.* Any license holder aggrieved by the decision of the Commissioners' Court to suspend or revoke such license under the provisions of this section may seek judicial review in a manner provided by law. The Ellis County Director of Development may stay the suspension or revocation of the ordinance pending judicial review for a period of not more than thirty (30) calendar days upon petition of an owner of the sexually oriented business.

SEC. IA-13 ENFORCEMENT AND CLASSIFICATION OF VIOLATIONS.

The following acts shall be a Class A misdemeanor and shall be subject to such penalties as are provided under Texas law. A separate offense shall be deemed committed upon each day during or on which a violation occurs.

1. Operation of a sexually oriented business prohibited under section IA-3(4).
2. Sexually oriented entertainment taking place in violation of design standards in section IA-5.
3. Operation of multiple sexually oriented businesses on licensed premises in violation of section IA-4(4) or section IA-6(4).
4. Transfer of ownership in violation of section IA-6(6).
5. The owner/operator gave false or fraudulent information in the application required under section IA-7 or otherwise acquired the license under false pretenses.
6. Operating with an expired license in violation of section IA-8(4).
7. Any grounds for denying a license application for a sexually oriented business pursuant to section IA-10(1), (2), (3) or (4).
8. Others occupying a stage in violation of section IA-11(1)(A).
9. Entertainment taking place in a cabaret other than on a stage in violation of section IA-11(1)(B).
10. Tips collected in violation of section IA-11(1)(C).
11. Establishment license not posted in violation of section IA-11(2).
12. Persons under 18 years old on premises in violation of section IA-11(3).
13. Entertainer, server or employee nude or semi-nude or in state of nudity or semi-nudity in violation of section IA-11(4).
14. Exterior display of live performances, or media or material depicting specified sexual activities or specified anatomical areas in violation of section IA-11(5).
15. The owner/operator knowingly allowed occurrence of specified criminal act or specified sexual activity in violation of section IA-11(6).

16. Customers in area of the premises which is not permitted in violation of section IA-11(7).

17. Manager not on duty during the time the business is open in violation of section IA-11(8).

18. Not maintaining the building's interior or exterior design standards or altering the building's exterior or interior design or premises without written authorization from the Director of Development in violation of section IA-11(11).

19. Prohibition of inspections by Sheriff's Department or Department of Development in violation of section IA-11(12).

20. Operation of sexually oriented business during a period of suspension imposed under section IA-12.

21. Suspension of a sexually oriented business license at least two (2) times in the preceding 12-month period.

23. Operation of sexually oriented business during a period of suspension or revocation imposed under Section IA-12.

22. An establishment open to persons under the age of eighteen (18) years that is not subject to section IA-5(5), makes available sexually oriented media in such a manner that: (1) it is available to the general public for handling and inspection without assistance from an employee of the business; or (2) the cover or outside packaging on the item is visible to members of the general public.

23. Any other violation of this order or Tex. Loc. Gov't Code chapter 243.

SEC. IA 14. RECITALS AND FINDINGS.

All of the facts and other matters set forth in the "Whereas" clauses that form the preamble to this order are hereby adopted as findings of fact in support of this Amended Order. The "Whereas" clauses are found to be true and correct and are incorporated into the body of this order as if set forth in their entirety.


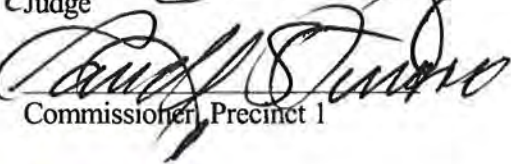
SEC. IA 15 SEVERABILITY.

If any section, article, paragraph, sentence, clause, phrase or word in this amended order, or application thereto, or any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of this amended order; and the Commissioners' Court hereby declares it would have passed such remaining portions of the amended order despite such invalidity, which remaining portions shall remain in force and effect.

SEC. IA-16 EFFECTIVE DATE.

This amended order shall become effective from and after the date of its passage, and it is accordingly so ordered.

PASSED and APPROVED on April 20, 2021.


Judge

Commissioner, Precinct 1

Absent
Commissioner, Precinct 2


Commissioner, Precinct 3


Commissioner, Precinct 4

Attest: 
Krystal Valdez
Ellis County Clerk

