STATE OF TEXAS §

COUNTY OF SMITH §

ORDER OF THE COMMISSIONERS COURT OF SMITH COUNTY, TEXAS PURSUANT TO TEX. LOC. GOV'T CODE CHAPTER 243 ADOPTING THE SEXUALLY ORIENTED BUSINESS ORDER FOR COUNTY REGULATION OF SEXUALLY ORIENTED BUSINESS

On this the 23rd day of March, 2009, pursuant to the authority granted by the Constitution and Chapter 243 of the Local Government Code of the State of Texas, the Commissioners Court of Smith County, Texas, has adopted the Sexually Oriented Business Order effective on this day in and for the best interest of Smith County.

Honorable Judge Joel Baker
Chairman of Commissioners Court

Jeff Warr, Commissioner
Precinct One

William McGinnis, Commissioner
Precinct Two

Terry Phillips, Commissioner
Precinct Three

JoAnn Hampton, Commissioner
Precinct Four

STATE OF TEXAS
COMMISSIONERS COURT FOR SMITH COUNTY
SEXUALLY ORIENTED BUSINESSES ORDER
07-94-017
EFFECTIVE MARCH 23, 2009 AS AMMENDED

AN ORDER PROVIDING FOR LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES IN UNINCORPORATED AREAS OF SMITH COUNTY, TEXAS.

WHEREAS, there are sexually oriented businesses in the unincorporated area of Smith County and there is the potential for future business 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 patrons of such businesses as well as the citizens of the County;

WHEREAS, the Commissioners Court finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature;

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

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;

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, decrease the desirability of using areas surrounding them for residential purposes and for establishing and operating businesses, causing increased crime and the downgrading of property values;

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 urban and rural blight and downgrading the quality of life in areas surrounding them;

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 urban and rural blight;

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 Smith County.

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 SMITH COUNTY, TEXAS:

SEXUALLY ORIENTED BUSINESS ORDER

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ORDER OF THE COMMISSIONERS COURT
07-94-017

SEC. 1A-1 PURPOSES AND INTENT

(a) 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 regulate the concentration of sexually oriented businesses within the county. 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 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 Texas Penal Code.

(b) It is the intent of the Commissioners Court that the regulations concerning location contained in this order are promulgated pursuant to § 243.001 et. seq. Local Government Code, as they apply to sexually oriented business.

SEC. 1A-2 DEFINITIONS

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

(2) ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:

(A) books, magazines, periodicals or other printed mater, or photographs, films, motion pictures, video cassettes, compact discs (CDs), video reproductions, slides, digital video discs (DVDs), or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas;" or

(B) instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."

(3) ADULT CABARET means a nightclub, bar, restaurant, tanning salon, carwash or similar commercial establishment which regularly features:

(A) persons who appear in a state of nudity;

(B) live performances characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or

(C) films, motion pictures, video cassettes, compact discs (CDs), video reproductions, slides, digital video discs (DVDs), other visual representations, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(4) ADULT MOTEL means a hotel, motel or similar commercial establishment which:

(A) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmission, films, motion pictures, video cassettes, compact discs (CDs), video reproductions, slides, digital video discs (DVDs), other visual representations, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas;" and has a sign visible from the public right-of-way that advertises the availability of this adult-type of service listed above;

(B) offers a sleeping room for rent for a period of time that is less than 10 hours; or

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

(5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, compact discs (CDs), video reproductions, slides, digital video discs (DVDs), other visual representations, or similar photographic reproductions are regularly shown and are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(6) 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."

(7) ADULT VIDEO STORE means a facility that has any world-wide media storage format, including but not limited to any analog, digital, and/or electronic media storage format(s) for purchase by exchange of consideration.

(8) APPLICANT means a person who must apply for a license or permit by this act.

(9) APPROVE or APPROVAL means, for license or permit applications the Sheriff reviews, the application meets the requirements set forth in this order.

(10) 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 (15) years of age.

(11)CHURCH or PLACE OF RELIGIOUS 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.

(12) CRIMINAL DISTRICT ATTORNEY means the elected Criminal District Attorney of Smith County, Texas, or his designated agent.

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

(14)ESCORT AGENCY means a business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

(15) ESTABLISHMENT means and includes any of the following:

(A) the opening or commencement of any sexually oriented business as a new business;

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

(C) the addition of any sexually oriented business to any other existing sexually oriented business; or

(D) the relocation of any sexually oriented business.

(16)FILM AND VIDEO means any world-wide media storage format, including but not limited to any analog, digital, and/or electronic media storage format(s).

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

(18) NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by another person who pays money or any form of consideration.

(19)NUDITY or a STATE OF NUDITY means:

(A) the appearance of a human bare buttock, anus, male genitals, female genitals, pubic region or female breasts; or

(B) a state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, pubic region or areola of the female breast.

(20) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(21) PUBLIC PARK means a tract of land dedicated or maintained by the federal, state, or a local government for the recreation and enjoyment of the general public.

(22) RESIDENTIAL DISTRICT means a single family, duplex, townhouse, multiple family or mobile home district.

(23) RESIDENTIAL USE means a single family, duplex, multiple family, or "mobile home park, mobile home subdivision, and campground" used as a residence.

(24) SEMI-NUDE means a state of dress in which clothing covers no more than the genitals, pubic region, areola of the female breast, and/or portions of the body covered by supporting straps or devices.

(25) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

(A) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(B) activities between male and female persons and/or persons of the same sex when one or more of the persons is in the state of nudity or semi-nude.

(26) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.

(27) SHERIFF means the Sheriff of Smith County or his designated agent.

(28)SPECIFIED ANATOMICAL AREAS means human genitals.

(29) SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

(A) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;

(B) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(C) masturbation, actual or simulated; or

(D) excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above.

(30) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor area occupied by the business by more than twenty percent (20%), as the floor area exists on the date of creation of the business.

(31) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(A) the sale, lease, or sublease of the business;

(B) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or

(C) 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 ownership or control.

SEC. 1A-3 CLASSIFICATION

Sexually oriented businesses are classified as follows:

(1) adult arcades;

(2) adult bookstores or adult video stores;

(3) adult cabarets;

(4) adult motels;

(5) adult motion picture theaters;

(6) adult theaters;

(7) escort agencies;

(8) nude model studios; and/or

(9) sexual encounter centers.

SEC. 1A-4 LICENSE REQUIRED AND DUTIES OF APPLICANT

(A) The following are required to be licensed:

(1) All owners, clerks, and employees of a sexually oriented business are required to be licensed to operate or work in said business.

(2) All corporations or directors of any sexually oriented business and their employees.

(3) All partners in any sexually oriented business and their employees.

(B) The following are required to obtain a permit for employment:

(1) All managers or supervisors are required to obtain a Manager Permit.

(2) All entertainers are required to obtain an Entertainer Permit.

(3) All non-entertainer employees are required to obtain an Employee Permit.

(C) No person may work for any sexually oriented business without having on his or her person at all times while at work an appropriate identification card showing that he or she is currently licensed or permitted. Such identification shall be available at all times for inspection and shall be worn on the left breast of said employee during working periods.

(D) All potential employees and/or clerks of sexually oriented businesses must comply with Sec. 1A-4(A), (B), (C), (H), (I); 1A-8; 1A-9; 1A-10; 1A-15; 1A-16; 1A-17; 1A-18; and not be in violation of Sec. 1A-5(a)(1), (3), (4), (6), (8), or (10) before being issued an identification card to work at the business. Application forms will be provided by the Sheriff and the determinations of the compliance must be made by him within sixty (60) days from time of application.

(E) 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 a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with Section 1A-19 of this order shall submit a diagram meeting the requirements of Section 1A-19. All requirements concerning location must be approved by the Sheriff within sixty (60) days from the time the application is filed.

(F) The applicant for a sexually oriented business license must be qualified according to the provision of this order.

(G) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has or intends to have at least twenty percent (20%) interest in the business as delineated in subsection (A) above must sign the application for

a license as applicant and each applicant shall be considered a licensee if the license is granted.

(H) The fact that a person possesses any other valid license required by law does not exempt him from the requirement of obtaining a sexually oriented business license. A person who operates a sexually oriented business and possesses another business license shall comply with the requirements and provisions of this order as well as the requirements and provisions of the laws concerning the other license.

(I) Each applicant shall attach two copies of a recent photo to his or her application form.

(J) Each applicant for a business license shall, not later than the 60th day before the date the application is filed, prominently place outdoor signs at the location stating that a sexually oriented business is intended to be located on the premises and providing the name and business address of the applicant. The sign must be at least twenty-four (24) inches by thirty-six (36) inches in size and must state "FUTURE LOCATION OF A SEXUALLY ORIENTED BUSINESS" and the date on which the application will be filed. All lettering on the signs must be at least one and one half (1½) inches by two (2) inches in size for each letter on the sign. The signs must be of sufficient quantities to be placed upon the property so as to identify it as being subject to a proposed sexually oriented license. It shall be the duty of each applicant as to each particular application to erect said signs along all the property's public road or highway frontage so as to be clearly visible from the public road or highway frontage, then signs shall be placed upon the closest available right of way and upon the property. One sign shall be erected for each three hundred-foot (300) increment of each public road or highway frontage on said property existing or any part thereof. Once application has been made, all signs must be changed to read "SEXUALLY ORIENTED BUSINESS LICENSE APPLICATION PENDING" and must have the same characteristics as stated above. Said signs shall be erected until the application has been approved by the Sheriff.

(K) Every applicant for a sexually oriented business license shall give notice of the application by publication at his own expense in two (2) consecutive issues of a newspaper of general circulation and published in Smith County, Texas. The notice shall be printed no smaller than 10-point boldface type and shall include: (1) the fact that a sexually oriented business license has been applied for; (2) the exact location of the place of business for which the permit is sought; (3) the names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and (4) if the applicant is a corporation, the name and titles of all officers. Such notice

shall be printed not less than fourteen (14) days after the application is filed with the Sheriff.

(L) An existing sexually oriented business at the time of the passage of this order is not required to comply with this order unless an action is taken which constitutes the "establishment" of a sexually oriented business as defined in Section 1A-2 of this order.

(M) An individual seeking a Manager Permit, Entertainer Permit, or Employee Permit must apply by submitting an application to the Sheriff's Office with the applicable application fee. An application may be obtained at the Sheriff's Office. Once the Sheriff's Office has received the application, it will be reviewed and approved or denied within fourteen (14) days from the date the Sheriff's Office receives the application. After the application has been approved or denied, written notice shall be sent to applicant.

SEC. 1A-5 ISSUANCE OF LICENSE

(A) The Sheriff shall approve the issuance of a license to an applicant within sixty (60) days after receipt of an application unless he finds one or more of the following to be true:

(1) An applicant is under eighteen (18) years of age.

(2) An applicant or an applicant's spouse is overdue in his payment to the county of taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business. The county tax assessor shall make this determination and report his findings to the Sheriff within fifty (50) days from the time 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 or an applicant's spouse has been convicted of a violation of a provision of this order, other than the offense of operating a sexually oriented business without a license within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect. The Sheriff of Smith County shall make this determination.

(5) The premises to be used for the sexually oriented business have not been approved by the Sheriff as being in compliance with this order. Reports of compliance or non-compliance with this order. Reports of compliance or non-compliance with this order must be completed by the Sheriff within sixty (60) days from the time the application is filed.

(6) The annual license fee or annual application processing fee required by this order was not paid within fourteen (14) days of the submission of an application for or renewal of a license.

(7) An applicant has failed to comply with the requirements of Sec. 1A-4(I), (J), or (K) unless exempt under 1A-4(A)(1).

(8) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding twelve (12) months and has demonstrated that he is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(9) An applicant or the proposed establishment is in violation of or is not in compliance with Section 1A-7, 1A-12, 1A-13, 1A-15, 1A-16, 1A-17, 1A-18, 1A-19, or 1A-20.

(10) An applicant or an applicant's spouse has been convicted of a crime:

(a) Involving:

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

(aa) prostitution;

(bb) promotion of prostitution;

(cc) aggravated promotion of prostitution;

(dd) compelling prostitution;

(ee) obscenity;

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

(gg) sexual performance by a child;

(hh) possession 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 a child;

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

(iv) Incest, solicitation of a child, or harboring a runaway child as described in Chapter 25 of the Texas Penal Code;

(v) Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

(b) For which:

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

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

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

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

(C) An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection (A) (10) may qualify for a sexually oriented business license only when the time period required by Section 1A-5(A)(10)(b) has elapsed.

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

SEC. 1A-6 FEES

(A) The initial application fee for a sexually oriented business license is $700, and said fee shall be paid at the time of the initial application.

(B)The annual fee for a sexually oriented business license is $500.00 and said fee shall be paid within fourteen (14) days of the submission of an application for renewal of a license.

(C)Manager Permits for managers or supervisors of a sexually oriented business are $400, and must be renewed annually.

(D) Entertainer Permits for entertainers of a sexually oriented business are $200, and must be renewed annually.

(E)Employee Permits for non-entertainer employees of a sexually oriented business are $200, and must be renewed annually.

(F) The renewal fee for Manager Permits, Entertainer Permits, and Employee Permits shall be $50.

SEC. 1A-7 INSPECTION

(A) An applicant or licensee shall permit representatives of the Sheriff's Department and representatives of the Office of the Criminal District Attorney to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(B) A person who operates a sexually oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the Sheriff's Department or a representative of the Office of the Criminal District Attorney at any time it is occupied or open for business.

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

SEC. 1A-8 EXPIRATION OF LICENSE

(A) Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 1A-4. Application for renewal should be made at least sixty (60) days before the expiration date, and when made less than sixty (60) days before the expiration date, the expiration of the license will not be affected.

(B) When the Sheriff denies renewal of a license, the applicant shall not be issued a license for one (1) year from the date of denial. If, subsequent to denial, the Sheriff finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date denial became final.

SEC. 1A-9 SUSPENSION

The Sheriff shall suspend a license for a period not to exceed thirty (30) days if he determines that a licensee has:

(1) Violated or is not in compliance with any portion of this order;

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

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

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

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

SEC. 1A-10 REVOCATION

(A) The Sheriff shall revoke a license if a cause of suspension in section 1A-9 occurs and the license has been previously suspended within the preceding twelve (12) months.

(B)The 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 an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) A licensee or an employee has knowingly allowed prostitution on the premises;

(4) A licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(5) A licensee has been convicted of an offense listed in Section 1A-5(A)(10)(a) for which the time period required I Section 1A-5(A)(10)(b) has not elapsed;

(6) On two (2) or more occasions within a twelve (12) month period, a person or persons committed an offense occurring in or on the licensed premises or a crime listed in Section 1A-5 (A)(10)(a), for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;

(7) A licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code; or

(8) A licensee is delinquent in payment to the county for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the sexually oriented business.

(C) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(D) Subsection (B)(7) does not apply to adult motels as a ground for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contract to occur in a public place or within public view.

(E) When the Sheriff revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date revocation become effective.

SEC. 1A-11 APPEAL

If the Sheriff denies the issuance of a license or permit, or suspends or revokes a license or permit, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. The aggrieved party may appeal the decision of the Sheriff by filing a petition in a district court in Smith County; said appeal shall be on a trial de novo basis. Filing an appeal in a district court stays the Sheriff's decision to suspend or revoke a license or permit until the district court makes a final decision. If no appeal is taken within thirty (30) days after written notice of suspension or revocation is mailed, the Sheriff's decision shall become final.

SEC. 1A-12 TRANSFER OF LICENSE

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

SEC. 1A-13 LOCATION OF SEXUALLY ORIENTED BUSINESSES

(A) A person commits an offense if he operates or causes to be operated a sexually oriented business within 2,500 feet of:

(1) A church or place of religious worship;

(2) A public or private elementary or secondary school;

(3) A child care facility;

(4) A boundary of residential district as defined in this order;

(5) A public park;

(6) The property line of a lot devoted to a residential use as defined in this order; or

(7) Another sexually oriented business.

(B) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 2,500 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, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(D) For the purposes 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 of a church or place of religious worship, or public or private elementary or secondary school, a child care facility, or to the nearest boundary of an affected public park, residential district, or lot devoted to residential use.

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

(F) Any sexually oriented business lawfully operating that is in violation of Subsections (A), (B), or (C) of this section shall be deemed a nonconforming use. Such use will be permitted to continue for a period not to exceed six (6) months, unless sooner terminated for any such reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within 2,500 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(es) is/are nonconforming.

(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 license, of a church or place of religious worship, public or private elementary or secondary school, public park, residential district, or residential lot within 2,500 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

(H) All locational requirements of this section must be approved by the Sheriff at the time the application is filed.

SEC. 1A-14 <u>EXEMPTION FROM LOCATION RESTRICTIONS</u>

(A) If the Sheriff denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 1A-13 of this order, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the county judge a written request for an exemption from the locational restrictions of Section 1A-13.

(B) If the written request is filed with the county judge within the ten (10) day limit, a permit and license appeal board shall consider the request. The county judge shall set a date for the hearing within sixty (60) days from the date the written request is received. A board shall consist of five (5) residents of Smith County, one from each of the commissioner's precincts as appointed by the precinct commissioners and one appointed by the county judge. Each board member will serve a one (1) year term, with the chairperson of the board being appointed by a majority vote of the five (5) member board.

(C) A hearing by the board may proceed if at least three (3) 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 restrictions of Section 1A-13 if it makes the following findings:

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

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

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

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

(5) That all other applicable provisions of this order 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. Decisions of the permit and license appeal board are appealable to a district court of this county by trial de novo. Appeal from the permit and license appeal board must be made by filing a petition in a district court of this county within thirty (30) days from the date of the decision of the appeal board. After thirty (30) days, all decisions of the permit and appeal board become final.

(F) If the board grants the exemption, the exemption is valid for one (1) year from the date of the board's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 1A-13 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 twelve (12) months have elapsed since the date of the board's action.

(H) The grant of an exemption does not exempt the applicant from any other provisions of this order other than the locational restrictions of Section 1A-13.

SEC. 1-A-15 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES

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

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

SEC. 1A-16 ADDITIONAL REGULATION FOR NUDE MODEL STUDIOS

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

(B) A person commits an offense if he allows another person under the age of eighteen (18) to appear in a state of nudity in or on the premises of a nude model studio. A person under the age of eighteen (18) years commits an offense if he appears in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under eighteen (18) years was in a restroom not open to public view for the purpose of using the facilities therein, and was not involved in a specified sexual activity.

(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 model studio premises which can be viewed from the public right of way.

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

SEC. 1A-17 ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURES THEATERS

(A) A person commits an offense if he allows a person under the age of eighteen (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 eighteen (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 Subsections (A) and (B) of this section if the person under eighteen (18) years was in a restroom not open to public view for the purpose of using the facilities therein, and was not involved in a specified sexual activity.

SEC. 1A-18 ADDITIONAL REGULATIONS FOR ADULT MOTELS

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

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

(C) For purposes of Subsection (B) of this section, the terms "rents" and "subrents" mean the act of permitting a room to be occupied for any form of consideration.

SEC. 1A-19 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS

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

(1) Upon application 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 (1) or more manager's station 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 a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior or the premises to an accuracy of plus or minus six (6) inches. The Sheriff may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

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

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

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

(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one (1) of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. Viewing booths must be separated by open space by at least twelve (12) inches from the exterior walls of any other viewing booths.

(6) It shall be the duty of the owner(s) and operators(s), and it shall also be the duty of any agents and employees present in the premises to ensure that the area specified in Subsection (5) remains unobstructed by any doors, walls, merchandise, display racks, or other materials at all times that any patron is permitted access to any area of the premises which has been designated as

an area in which patrons will not be permitted in the application filed pursuant to Subsection (1) of this section.

(7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1) footcandle as measured at the floor level.

(8) It shall be the duty of the owner(s) and operator(s) and it shall also be the duty of any agents and employees present in the premises to ensure that the 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) – (8) of Subsection (A) above commits an offense if he fails to fulfill that duty.

(C) All locational requirements of this section must be approved by the Sheriff within sixty (60) days from the time the application is filed.

SEC. 1A-20 DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS

(A) A person commits an offense if, in a sexually oriented business establishment open to persons under the age of seventeen (17) years, he displays books, magazines, periodicals or other printed mater, or photographs, films, motion pictures, video cassettes, compact discs (CDs), video reproductions, slides, digital video discs (DVDs), or other visual representations, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following;

(1) Human sexual intercourse, masturbation, or sodomy;

(2) Fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;

(3) Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or

(4) Human male genitals in a discernibly turgid state, whether covered or uncovered.

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

(1) It is available to the general public for handling and inspection; or

(2) The cover or outside packaging on the item is visible to members of the general public.

SEC. 1A-21 DEFENSES

(A) It is a defense to prosecution under Section 1A-4(A), 1A-13, or 1A-16(D) that a person appearing in a state of nudity did so in a modeling class operated:

(1) By a proprietary school licenses by the state of Texas; a 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 transferrable to a college, junior college, or university supported entirely or partly by taxation;

(3) In a structure:

(a) Which has no sign visible from the exterior of the structure and no other advertising that indicates a need 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.

(B) It is a defense to prosecution under Section 1A-4(A) or Section 1A-(13) 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.

SEC. 1A-22 ENFORCEMENT

(A) As stated in Chapter 243 of the Local Government Code of Texas, the county may sue in district court for an injunction to prohibit the violation of a regulation of this order.

(B) As stated in Chapter 243 of the Local Government Code of Texas, an offense under this Subsection is a Class A misdemeanor.

SEC. 1A-23 SEVERABILITY

The terms, provisions, and conditions of this order are severable. If any provision of this order 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 order 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.

SEC. 1B-1 TIME OF EFFECT

This order takes effect at 12:00 p.m. on the day it is adopted by a majority vote of the Smith County Commissioners Court during a properly held meeting.