

ZAPATA COUNTY
Mary Jayne Villarreal-Bonoan
COUNTY CLERK
Zapata, Tx 78076

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To PUBLIC THE SEXUALLY ORIENTED BUSINESS

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(Parties listed above are for Clerks reference only)

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County of Zapata

I hereby certify that this instrument was filed for record in my office on the date and time stamped hereon and was recorded on the volume and page of the named records of Zapata County, Texas.

Mary Jayne Villarreal Bonoan
Mary Jayne Villarreal-Bonoan, County Clerk

First Amendment to an Order Regulating and Establishing a Licensing Procedure for Sexually Oriented Businesses.

It is the finding of the Zapata County Commissioners Court that:

1. Sexually oriented businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the community where they locate; and,
2. Sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and, 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; and,
3. Licensing is a legitimate means of accountability to ensure that operators and employees of sexually oriented businesses comply with reasonable regulations, and to ensure that operators do not allow their establishments to be used as places of illegal sexual activity or solicitation; and,
4. There is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and,
5. It is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics and secondary impacts, particularly when they are located in proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and,
6. The Commissioners Court wants to prevent 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 blight; and,
7. It is not the intent of the Commissioners Court to suppress any speech activities protected by the First Amendment, but to enact a content neutral order that addresses the secondary affects of sexually oriented businesses as well as the health problems associated with such businesses; and,
8. It is not the intent of the Commissioners Court to condone or legitimize the distribution of obscene materials, and the Commissioners Court recognizes that Local Government and federal law prohibits the distribution of obscene materials and expects and encourages Local Government enforcement officials to enforce Local Government and federal obscenity statutes against any such illegal activities in Zapata County.

9. Zapata County Commissioners Court is empowered to issue, suspend and revoke business licenses and to regulate sexually oriented businesses by Section 243.001 *et seq* as well as Section 83.001 *et seq* of the Texas Local Government Code.

Be it ordered by the Zapata County Commissioners Court that:

Section 1, Title I, Chapter I Sexually Oriented Business Regulations are enacted and as follows:

5-15-101. Purpose.

It is the purpose of this order to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of Zapata County ("the County"), and to establish reasonable and uniform regulations to prevent the deleterious location and 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, or to condone or legitimize the distribution of obscene materials.

5-15-102. Findings.

Based on the adverse secondary effects of adult uses on the community, and on findings incorporated in the cases of *County of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 426 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. County of Newport, Ky*, 479 U.S. 92 (1986); *United Local Government s v. O'Brien*, 391 U.S. 367 (1968); *DLS, Inc. v. County of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1 986); *Hang On, Inc. v. County of Arlington*, 65 F.3d 1248 (5th Cir. 1995); and *South Florida Free Beaches, Inc. v. County of Miami*, 734 F.2d 608 (11th Cir. 1984), as well as studies conducted in other cities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma County, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and findings reported in the Final Report of the Attorney General's Commission on Pornography (I 986), the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, Local Government of Minnesota), and statistics obtained from the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, the Commissioners Court finds that:

(a) sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments, and there

is presently no mechanism to hold owners of these establishments responsible for the activities that occur on their premises.

(b) crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. See, e.g., studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.

(c) sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. See, e.g., *California v. LaRue*, 409 U.S. 109, 111 (1972). The offering and providing of such booths and/or cubicles encourages such activities, which creates unhealthy conditions. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

(d) persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses, for the purpose of engaging in sex within those premises. See, e.g., *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698 (1986); see also Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.

(e) at least fifty communicable diseases may be spread by activities occurring in sexually oriented businesses including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections, and shigella infections. See, e.g., Study of Fort Meyers, Florida.

(f) for the period 1985 through 1995, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 523,056. See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(g) the total number of cases of early (less than one year) syphilis in the United States reported during the ten year period 1985-1995 was 367,796. See, e.g., Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(h) the number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,250,581 cases reported during the period 1993-1995. See, e.g. Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

(i) the surgeon general of the United Local Government s in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.

- (j) according to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. See, e.g. Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
- (k) sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.
- (l) numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. See, e.g., Final Report of the Attorney General's Commission on Pornography (1986) at 377.
- (m) nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity (see, e.g., *Barnes v. Glen Theatre*, 501 U.S. 560, 583 (1991)), and increases the likelihood of drug-dealing and drug use. See, e.g., *Kev, Inc. v. Kitsap County*, 793 F.2d 1053; 1056 (9th Cir. 1 986).
- (n) these findings raise substantial governmental concerns.
- (o) sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
- (p) a reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore non-existent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the County. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
- (q) the disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.
- (r) it is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct this order is designed to prevent or who are likely to be witnesses to such activity.

(s) the fact that an applicant for a sexually oriented business or employee license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this order, and the barring of such individuals from operation or employment in sexually oriented businesses for a period of ten years for a previous felony conviction serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(t) this order is necessary and proper to provide for safety, to preserve health, and to promote the prosperity, improve the morals, peace and good order, comfort and convenience of the County and its inhabitants, and is authorized on that basis by Section 243.001 *et seq* of the Texas Local Government Code.

5-15-103. Definitions.

For purposes of this chapter the following words shall have the meanings given. However, acts prohibited elsewhere in this chapter are not permitted merely by being included within these definitions.

(a) "Adult Arcade" means any place to which the public is permitted or invited wherein coin-operated or token-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five 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. "

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

(1) books, magazines, periodicals or other printed matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations that

depict or describe "specified sexual activities" or "specified anatomical areas"; or

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

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as "adult bookstore" or "adult video store." Such other business purposes will not serve to exempt such commercial establishments from being categorized as an "adult bookstore" or "adult video store" so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials that depict or describe "specified sexual activities" or "specified anatomical areas." A principal business purpose need not be a

primary use of an establishment so long as it is a significant use based upon the visible inventory or commercial activity of the establishment.

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

(1) persons who appear in a state of semi-nudity; or

(2) 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

(3) persons who engage in erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.

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

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

(2) offers a sleeping room for rent for a period of time that is less than twenty-four hours; or

(3) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four hours.

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

(f) "Adult Theater" means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear, in person, in a state of semi-nudity.

(g) "Director" means the Zapata County Director of Planning and Redevelopment at the Zapata Economic Development Commission.

(h) "Employee" means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other

compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

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

(j) "Escort agency" means a person or 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.

(k) "Establishment" means and includes any of the following:

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

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

(3) the additions of any sexually oriented business to any other existing sexually oriented business; or

(4) the relocation of any sexually oriented business; or

(5) a sexually oriented business or premises on which the sexually oriented business is located.

(l) "Licensed day-care center" means a facility licensed by the State of Texas whether situated within the County or not, that provides care, training, education, custody, treatment or supervision for more than twelve children under fourteen years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

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

(n) "Nude model studio" means any place where a person who appears in a Local Government of nudity or semi-nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration.

(o) "Nudity" or "a state of nudity" means the appearance of a human bare buttock, anus, anal cleft or cleavage, pubic area, male genitals, female genitals, or vulva, with less than a fully opaque covering; or a female breast with less than a fully opaque covering of any

part of the nipple; or human male genitals in a discernibly turgid state even if completely and opaquely covered.

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

(q) "Premises" means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license.

(r) "Semi-nude" or "semi-nudity" means:

(1) for a female, a state of dress in which opaque clothing covers no more, or little more, than the nipple and areola of the female breast, the genitals, pubic region and anus; or

(2) for a male, a state of dress in which opaque clothing covers no more, or little more, than the genitals, pubic region and anus.

(s) "Sexual encounter center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

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

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

(t) "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.

(u) "Specified anatomical areas" means:

(1) the human male genitals in a discernibly turgid state, even if fully and opaquely covered;

(2) less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

(v) "Specified criminal activity" means any of the following offenses:

(1) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution, or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure;

indecent with a child; sexual assault; molestation of a child; or any similar sex-related offenses to those described above under the criminal or penal code of this state, other states, or other countries.

(2) for which:

(i) less than five 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 ten 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 felony offense;

(iii) less than ten years have elapsed since the date of the last conviction or the date of release from confinement imposed for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four month period;

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(w) "Specified sexual activities" means and includes any of the following:

(1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts, whether covered or uncovered;

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

(3) masturbation, actual or simulated; or

(4) excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

(x) "Transfer of ownership or control" of a sexually oriented business means and includes any of the following:

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

(2) the transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or

(3) the establishment of a trust, gift, or other similar legal device that transfers the

ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

5-15-104. Classification of licenses.

Sexually oriented businesses are classified as follows: (a) adult arcades; (b) adult bookstores or adult video stores; (c) adult cabarets; (d) adult motels; (e) adult motion picture theaters; (f) adult theaters; (g) escort agencies; (h) nude model studios; and (i) sexual encounter centers.

5-15-201. Sexually Oriented Business License Required.

(a) It is unlawful for any person to operate a sexually oriented business without a valid sexually oriented business license.

(b) It is unlawful for any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license, except if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.

(c) An application for a sexually oriented business license must be made on a form provided by the County.

(d) The application must be accompanied by a sketch or a diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. It 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. Prior to issuance of a license, the premises must be inspected by the health department, fire department, building department, zoning department and Sheriff's department.

(e) The applicant shall provide such information (including fingerprints) as necessary to enable the County to determine whether the applicant meets the qualifications established under this order. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

(f) If a person who wishes to own or operate a sexually oriented business is an individual, he must sign the application for a business license as applicant. If a person who wishes to operate a sexually oriented business is other than a single individual, each individual who has a ten percent or greater interest in the business must sign the application for a business license as applicant.

(g) Applications for a business license, whether original or a renewal must be made by the intended operator of the enterprise. The following information shall be provided on the application form:

- (1) The name, street address (and mailing address if different) of the applicant(s);
- (2) A recent photograph of the applicant(s);
- (3) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;
- (4) The name under which the establishment is to be operated and a general description of the services to be provided. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, the fictitious name must be stated together with documents proving legal entitlement to the name;
- (5) Whether the applicant, or a person residing with the applicant, has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;
- (6) Whether the applicant, or a person residing with the applicant, has had a previous license under this order or other similar sexually oriented business order from another County or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a sexually oriented business order whose business license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended or revoked as well as the date of denial, suspension or revocation;
- (7) Whether the applicant or a person residing with the applicant holds any other licenses under this order or other similar sexually oriented business order from another County or county and, if so, the names and locations of such other licensed businesses;
- (8) The classification of license for which the applicant is filing;
- (9) The telephone number of the establishment;
- (10) The address and legal description of the tract of land on which the establishment is to be located;
- (11) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;
- (12) If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the

expected startup date is to be more than ten days following the date of issuance of the business license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the same;

(h) Each application for a business license shall be accompanied by the following:

- (1) Payment of the application fee;
 - (2) If the establishment is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto, or if a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
 - (3) If the establishment is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto, or if a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;
 - (4) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed;
 - (5) If the persons identified as the fee owner(s) of the tract of land are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the establishment for the purpose of the operation of the establishment;
 - (6) A current certificate and straight-line drawing prepared within thirty days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses, established religious institution/synagogue, school, public park or recreation area, or family-oriented entertainment business within one thousand feet of the property. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted; and
 - (7) Any of items (2) through (6), above shall not be required for a renewal application if the applicant Local Government states that the documents previously furnished the Director with the original application or previous renewals thereof remain correct and current.
- (i) Every application for a license shall contain a statement certifying that the applicant has personal knowledge of the information contained in the application, that the information contained therein and furnished therewith is true and correct; and the applicant has read the provisions of this order.

(j) A separate application and business license shall be required for each sexually oriented business classification.

(k) The Director shall approve or deny issuance of the license within forty-five days of receipt of the completed application. The Director shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

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

(2) An applicant is under the age of eighteen years;

(3) An applicant or a person with whom the applicant is residing has been denied a license by the County to operate a sexually oriented business within the preceding twelve months, or whose license to operate a sexually oriented business has been revoked within the preceding twelve months;

(4) An applicant or a person with whom the applicant is residing is overdue in payment to the County in taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business;

(5) An applicant or a person with whom the applicant is residing has been convicted of a "specified criminal activity;"

(6) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, the Sheriff's department, or the building department as being in compliance with applicable laws and orders;

(7) The license fee required under this order has not been paid;

(8) An applicant of the proposed establishment is in violation of, or is not in compliance with, one or more of the provisions of this order.

(l) The license issued shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the classification for which the license is issued. 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.

(m) The health department, fire department, building department, Sheriff's department and zoning department shall complete their certification that the premises are in compliance or not in compliance within twenty days of receipt of the completed application by the Director. The certification shall be promptly presented to the Director.

(o) In the event that the Director determines that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in writing of the reasons for the denial within forty five days of the receipt of the completed application by the Director, provided that the applicant may request, in writing at any time before the notice is issued, that such period be extended for an additional period of not more than ten days in order to make modifications necessary to comply with this order.

(p) An applicant may appeal the decision of the Director regarding a denial to the County Commissioners Court by filing a written notice of appeal with the County Clerk within fifteen days after service of notice upon the applicant of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may, within fifteen days of service upon him of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the County Commissioners Court. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the County Commissioners Court shall vote either to uphold or overrule the Director's decision. Such vote shall be taken within twenty-one calendar days after the filing of the appeal. However, all parties shall be required to comply with the Director's decision during the pendency of the appeal.

(q) A license may annually be renewed upon the written application of the applicant and a finding by the Director that the applicant has not been convicted of any "specified criminal activity" or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 5-15-203.

5-15-202. Sexually Oriented Business Employee License Required.

(a) It is unlawful for any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the Director pursuant to this order, except if the employment is of limited duration and for the sole purpose of repair and/or maintenance of machinery, equipment, or the premises.

(b) The applicant shall provide such information (including fingerprints) as necessary to enable the County to determine whether the applicant meets the qualifications established under this order. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

(c) Each application for an employee license shall be accompanied by payment of the application fee. Application forms shall be supplied by the Director, and shall include the following information:

- (1) the applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;
 - (2) age, and date and place of birth;
 - (3) height, weight, hair color, and eye color;
 - (4) present residence address and telephone number;
 - (5) present business address and telephone number;
 - (6) date, issuing state, and number of photo driver's license, or other state- issued, identification card information;
 - (7) Social Security Number; and
 - (8) proof that the individual is at least eighteen years old.
- (d) Attached to the application form for a license shall be the following:
- (1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Sheriff's department. Any fees for the photographs and fingerprints shall be paid by the applicant.
 - (2) A statement detailing the license history of the applicant for the five years immediately preceding the date of the filing of the application, including whether such applicant, in this or any other city, county, state, or country, has ever had any license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, Local Government the name(s) under which the license was sought and/or issued, the name(s) of the issuing or denying jurisdiction, and describe in full the reason(s) for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
 - (3) A statement whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" and, if so, the "specified criminal activity" involved, the date, place and jurisdiction of each.
- (e) Every application for a license shall contain a statement certifying that the applicant has personal knowledge of the information contained in the application, that the information contained therein and furnished therewith is true and correct; and the applicant has read the provisions of this order.

(f) The fact that a person possesses other types of state, city or county permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business or employee license.

(g) The application shall then be referred to the appropriate county departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty days from the date of the completed application. After the investigation, the Director shall issue an employee license unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

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

(2) The applicant is under the age of eighteen years;

(3) The applicant has been convicted of a "specified criminal activity;"

(4) The sexually oriented business employee license is to be used for employment in a business prohibited by local or Local Government law, statute, rule, or regulation, or prohibited by a particular provision of this order; or

(5) The applicant has had a sexually oriented business employee license revoked by the County within two years of the date of the current application.

(h) The license issued shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The employee shall keep the license on his or her person at all times while engaged in employment or performing services on the sexually oriented business premises so that said license may be available for inspection upon lawful request.

(i) The license shall be subject to annual renewal upon the written application of the applicant and a finding by the Director that the applicant has not been convicted of any "specified criminal activity" or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a license shall be made within thirty days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 5-15-203.

5-15-203. Suitable locations for Operation of Sexually Oriented Business.

Operation of Sexually Oriented Businesses Prohibited Certain Distance From Religious Buildings, Residential Neighborhood, Schools, Public Parks, Licensed Day Care Centers, Existing Businesses Geared Towards Child or Family Entertainment, or Adults Only Businesses Licensed for On Premises Beer or Alcohol Consumption, or Another Sexually Oriented Business.

(1) the sexually oriented business may not be operated within 1000 feet of a church, synagogue or regular place of religious worship, a residential neighborhood, a public or private elementary or secondary school, or the boundary of a public park, a licensed day-care center, an existing entertainment business that is oriented primarily towards children or family entertainment, an adults-only business licensed for on-premise beer or alcohol consumption, or another sexually oriented business.

(2) For the purpose of this order, 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, synagogue, regular place of worship, public or private elementary or secondary school, public park, licensed day care center, child or family entertainment business, or an adults-only business licensed for on-premise beer or alcohol consumption.

(b) It is illegal for sexually oriented businesses to deliver any services whatsoever off premises from the business location in the heavy commercial zone. No delivery of products, maid service, or any other personal service, may be rendered in any other zone, or to any other location in the heavy commercial zone.

5-15-204. Fees.

The annual fee for a sexually oriented business license, whether new or renewal, is Five Hundred Dollars (\$500.00). The annual fee for a sexually oriented business employee license, whether new or renewal, is Fifty Dollars (\$50.00). These fees are to be used to pay for the cost of the administration and enforcement of this order.

5-15-205. Inspection.

An applicant or licensee shall permit representatives of the Sheriff's Department, Health Department, Fire Department, Building Department, or other County or state departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law at any time it is open for business. It is unlawful to refuse such an inspection.

5-15-206. Expiration of License.

(a) Each license shall expire one year from the date of issuance.

(b) An application for renewal of an existing license should be made at least thirty days before the expiration date. If an application for renewal is made less than thirty days before the expiration date, the license will expire as scheduled and remain invalid until a new license is issued.

(b) When the Director denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

5-15-207. Unlawful Acts.

The following acts unlawful:

- (a) any violation of, or non-compliance with the requirements of, this order;
- (b) intoxication on the premises of a sexually oriented business;
- (c) refusal to promptly allow inspection of the premises as authorized by this order;
- (e) permitting gambling by any person on the premises;
- (f) permitting the possession, use, or sale of controlled substances on the premises;
- (h) permitting the sale, use, or consumption of alcoholic beverages on the premises;
- (i) permitting prostitution on the premises;
- (j) permitting any act of sexual intercourse, sodomy, oral copulation, masturbation, or other any other specified sexual activity or conduct to occur in or on the premises;

5-15-208. Suspension or Revocation of License.

(a) The County Commissioners Court may suspend or revoke a license upon any basis set out in this section, or if it determines that a licensee or an employee of a licensee has:

- (1) committed any unlawful act set out in this order;
- (2) is delinquent in payment to the County or Local Government for any taxes or fees; or
- (3) has attempted to sell his business or employee license, or has sold, assigned, or transferred ownership or control of the sexually oriented business to a non-licensee;

(b) When the County Commissioners Court revokes a license, the revocation shall continue for one year, and the licensee shall not be issued a sexually oriented license for one year from the date revocation became effective.

5-15-209. No Transfer of License.

A licensee shall not transfer his/her 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.

5-15-210. Hours of Operation.

Sexually oriented businesses may be open only between the hours of 12 p.m. to 2 a.m. It is unlawful to be open to the public during any other hours.

5-15-301. Additional Regulations for Adult Motels.

(a) Evidence that a sleeping room in a hotel, motel, or a similar commercial enterprise has been rented and vacated two or more times in a period of less than ten hours creates a rebuttable presumption that the enterprise is an adult motel.

(b) It is unlawful if a person in control of a sleeping room in a hotel, motel, or similar commercial enterprise that does not have a sexually oriented business license, rents or sub-rents a sleeping room to a person and, within ten hours from the time the room is rented, rents or sub-rents the same sleeping room again. The terms "rent" and "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

5-15-302. Additional Regulations for Escort Agencies.

It is unlawful for an escort agency to employ a person under the age of 18 years, or for a person under the age of 18 to act, agree to act, or attempt to act as an escort.

5-15-303. Additional Regulations for Nude Model Studios.

(a) Nudity is prohibited in a nude model studio. However, an exception may be granted in the reasonable discretion of the Licensing Supervisor upon a finding that the operation is in fact a bona fide art instruction business.

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

(c) It is unlawful for a person under the age of 18 years to appear in a state of nudity in or on the premises of a nude model studio.

(d) It is unlawful to appear in a state of nudity, or with knowledge, allow another to appear in a state of nudity or semi-nudity, in an area of a nude model studio premises which can be viewed from the public right of way.

(e) 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.

(f) It is a defense to prosecution under this order that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated by either a proprietary school licensed by the State of Texas, a college, junior college, or university supported entirely or partly by taxation, or by 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.

5-15-304. Additional Regulations Concerning Public Nudity.

(a) It is unlawful for a person to appear live in a state of nudity in a sexually oriented business.

(b) It is unlawful for a person to appear live in a state of semi-nudity unless the person is an employee who is at least ten feet from any patron or customer and on a stage at least two feet above the floor.

(c) It is unlawful for an employee, while in a state of semi-nudity in a sexually oriented business, to solicit any pay or gratuity from any patron or customer, or for any patron or customer to pay or give any gratuity to any such employee.

(c) It is unlawful for an employee, while in a state of semi-nudity in a sexually oriented business, to touch a patron or the clothing of a patron, or for a patron to touch any such employee.

5-15-305. Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos.

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

(a) 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 or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two square feet of floor area. The diagram shall also designate the place at which the business license 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 of the premises to an accuracy of plus or minus six inches. The Director 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.

(b) Every application for a license shall contain a statement certifying that the applicant has personal knowledge of the information contained in the application, that the information contained therein and furnished therewith is true and correct; and the applicant has read the provisions of this order.

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

- (d) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
- (e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire 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 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 the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (f) It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (e) of this section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the license application.
- (g) No viewing room may be occupied by more than one person at any time.
- (h) 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 five foot-candle as measured at the floor level.
- (i) It shall be the duty of the operator, 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.
- (j) No licensee shall allow an opening of any kind to exist between viewing rooms or booths.
- (k) No person shall make any attempt to make an opening of any kind between the viewing booths or rooms.
- (l) The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.
- (m) The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (n) The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight inches of the floor.

5-15-306. Exterior Portions of Sexually Oriented Businesses.

(a) It is unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from any point outside the establishment.

(b) It is unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner except to the extent permitted by the provisions of this order.

(c) It is unlawful for the owner or operator of a sexually oriented business to allow exterior portions of the establishment to be painted any color other than a single achromatic color. This provision shall not apply to a sexually oriented business if the establishment is a part of a commercial multi-unit center and the exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the business, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

5-15-307. Signage.

Notwithstanding any other County order, code, or regulation to the contrary, it shall be unlawful for the operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than the one outside sign. It shall have no more than two display surfaces. Each such display surface shall be a flat plane and shall not contain any flashing lights, shall not exceed seventy-five square feet in area, and shall not exceed ten feet in height or ten feet in length.

5-15-308. Sale, Use, or Consumption of Alcoholic Beverages Prohibited.

The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

5-15-309. Persons Under Eighteen Prohibited; Attendant Required.

(a) It is unlawful to allow a person who is younger than eighteen years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business.

(b) An attendant must be stationed at each public entrance to the sexually oriented business at all times during such sexually oriented businesses' regular business hours.

5-15-310. Massages Prohibited.

No massage therapy license shall be issued to, or upon the same premises as, or to an employee or business partner of, a sexually oriented business.

5-15-311. Hours of Operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 2:00 A.M. and 12:00 P.M.

5-15-312. Public Nuisance.

Any sexually oriented business operating without a valid business license is hereby declared to be a public nuisance, and may be summarily abated by closing the business or may be abated by either criminal or civil action.

5-15-313. Violation a Misdemeanor.

Any violation of this chapter is a Class B misdemeanor.

Section 2. Severability.

If any section, subsection, or clause of this order shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected thereby.

Section 3. Conflicting Orders Repealed.

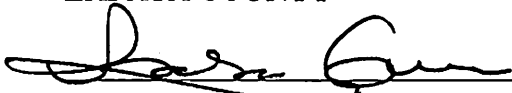
All orders or parts of orders in conflict with the provisions of this order are hereby repealed. However, any and all provisions in force immediately prior to this order shall continue in force hereafter for the purpose of any pending legal action, all rights acquired, penalties and forfeitures imposed, and any liabilities already incurred.

Section 4. Effective Date.

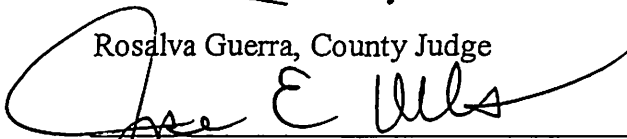
This order shall take effect immediately upon passage.

Amended this 9th day of March, 2009.

ZAPATA COUNTY



Rosalva Guerra, County Judge



Jose Emilio Vela, County Commissioner Pct. 1

Gabriel Villarreal

Gabriel Villarreal, County Commissioner Pct. 2

Joseph Rathmell

Joseph Rathmell, County Commissioner Pct. 3

Norberto Garza

Norberto Garza, County Commissioner Pct. 4

ATTEST:

Mary Jayne Villareal Bror

County Clerk

