

Sec. 243.003. AUTHORITY TO REGULATE. (a) A municipality by ordinance or a county by order of the commissioners court may adopt regulations regarding sexually oriented businesses as the municipality or county considers necessary to promote the public health, safety, or welfare.

(b) A regulation adopted by a municipality applies only inside the municipality's corporate limits.

(c) A regulation adopted by a county applies only to the parts of the county outside the corporate limits of a municipality.

(d) In adopting a regulation, a municipality that has in effect a comprehensive zoning ordinance adopted under Chapter 211 must comply with all applicable procedural requirements of that chapter if the regulation is within the scope of that chapter.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.004. EXEMPT BUSINESS. The following are exempt from regulation under this chapter:

(1) a bookstore, movie theater, or video store, unless that business is an adult bookstore, adult movie theater, or adult video store under Section 243.002;

(2) a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under the license held; or

(3) a business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.005. BUSINESS LICENSED UNDER ALCOHOLIC BEVERAGE CODE: BUSINESS HAVING COIN-OPERATED MACHINES. (a) A business is not exempt from regulation under this chapter because it holds a license or permit under the Alcoholic Beverage Code authorizing the sale or service of alcoholic beverages or because it contains one or more

coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Revised Statutes.

(b) A regulation adopted under this chapter may not discriminate against a business on the basis of whether the business holds a license or permit under the Alcoholic Beverage Code or on the basis of whether it contains one or more coin-operated machines that are subject to regulation or taxation, or both, under Chapter 8, Title 132, Revised Statutes.

(c) This chapter does not affect the existing preemption by the state of the regulation of alcoholic beverages and the alcoholic beverage industry as provided by Section 1.06, Alcoholic Beverage Code.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.006. SCOPE OF REGULATION. (a) The location of sexually oriented businesses may be:

- (1) restricted to particular areas; or
- (2) prohibited within a certain distance of a school, regular place of religious worship, residential neighborhood, or other specified land use the governing body of the municipality or county finds to be inconsistent with the operation of a sexually oriented business.

(b) A municipality or county may restrict the density of sexually oriented businesses.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.007. LICENSES OR PERMITS. (a) A municipality or county may require that an owner or operator of a sexually oriented business obtain a license or other permit or renew a license or other permit on a periodic basis for the operation of a sexually oriented business. An application for a license or other permit must be made in accordance with the regulations adopted by the municipality or county.

(b) The municipal or county regulations adopted under this chapter may provide for the denial, suspension, or revocation of a license or other permit by the municipality or county.

(c) A district court has jurisdiction of a suit that arises from the denial, suspension, or revocation of a license or other permit by a municipality or county.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 417, Sec. 1, eff. June 7, 1991.

Sec. 243.0075. NOTICE BY SIGN. (a) An applicant for a license or permit issued under Section 243.007 for a location not currently licensed or permitted shall, not later than the 60th day before the date the application is filed, prominently post an outdoor sign 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.

(b) A person who intends to operate a sexually oriented business in the jurisdiction of a municipality or county that does not require the owner or operator of a sexually oriented business to obtain a license or permit shall, not later than the 60th day before the date the person intends to begin operation of the business, prominently post an outdoor sign 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 owner and operator.

(c) The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size. The municipality or county in which the sexually oriented business is to be located may require the sign to be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language.

Added by Acts 1999, 76th Leg., ch. 1109, Sec. 3, eff. Sept. 1, 1999. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 648 (S.B. 1030), Sec. 1, eff. June 17, 2011.

Sec. 243.008. INSPECTION. A municipality or county may inspect a sexually oriented business to determine compliance with this chapter and regulations adopted under this chapter by the municipality or county.

Added by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.009. FEES. A municipality or county may impose fees on applicants for a license or other permit issued under this chapter or for the renewal of the license or other permit. The fees must be based on the cost of processing the applications and investigating the applicants.

Added by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.010. ENFORCEMENT. (a) A municipality or county may sue in the district court for an injunction to prohibit the violation of a regulation adopted under this chapter.

(b) A person commits an offense if the person violates a municipal or county regulation adopted under this chapter. An offense under this subsection is a Class A misdemeanor.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, Sec. 87(p), eff. Aug. 28, 1989. Renumbered from Sec. 243.008 and amended by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.

Sec. 243.011. EFFECT ON OTHER LAWS. This chapter does not legalize anything prohibited under the Penal Code or other state law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987. Renumbered from Sec. 243.009 by Acts 1989, 71st Leg., ch. 837, Sec. 1, eff. Aug. 28, 1989.



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

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August 29, 2008

The Honorable David H. Aken
San Patricio County Attorney
San Patricio County Courthouse, Room 108
Sinton, Texas 78387

Opinion No. GA-0658

Re: Maximum distance that a county may require that a sexually oriented business be located from a residence, church, elementary school, and other designated facilities (RQ-0680-GA)

Dear Mr. Aken:

Chapter 243, Local Government Code, authorizes municipalities and counties to regulate sexually oriented businesses—sometimes referred to as adult businesses or adult entertainment businesses. *See* TEX. LOC. GOV'T CODE ANN. §§ 243.001–.011 (Vernon 2005). You explain that San Patricio County has adopted the following regulation in relation to sexually oriented businesses:

The operation of sexually oriented businesses is prohibited on premises that are located within 1300 feet of:

- (1) a residential property;
- (2) a church;
- (3) a public or private elementary school;
- (4) a child care facility;
- (5) a public park;
- (6) another sexually oriented business¹

In relation to such locational restrictions, you ask the following questions:

- 1) Would a regulation requiring that certain sexually oriented businesses be located a minimum of 2000 feet from designated places (as indicated above) exceed the legislative authority granted to counties?

¹Letter from Honorable David H. Aken, San Patricio County Attorney, to Honorable Greg Abbott, Attorney General of Texas, at 1 (Feb. 19, 2008) (on file with the Opinion Committee, *also available at* <http://www.texasattorneygeneral.gov>) [hereinafter Request Letter].

2) What is the maximum distance from designated places (as indicated above) that a county can require that sexually oriented businesses be located without exceeding the legislative authority granted to counties?

Request Letter, *supra* note 1, at 2.

I. Analysis

A. State Statute

It is long held that a county commissioners court may exercise only those powers expressly granted by the Texas Constitution or the Legislature together with such implied powers as are necessary to accomplish the powers expressly conferred. TEX. CONST. art. V, § 18(b); *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 28 (Tex. 2003); *Canales v. Laughlin*, 214 S.W.2d 451, 453 (Tex. 1948); *Anderson v. Wood*, 152 S.W.2d 1084, 1085 (Tex. 1941). Chapter 243, Local Government Code, authorizes a county to adopt regulations regarding sexually oriented businesses that are considered necessary to promote the public health, safety, or welfare. See TEX. LOC. GOV'T CODE ANN. § 243.003(a) (Vernon 2005). Section 243.006 expressly authorizes a county to impose certain locational restrictions on such businesses:

- (a) The location of sexually oriented businesses may be:
 - (1) restricted to particular areas; or
 - (2) prohibited within a certain distance of a school, regular place of religious worship, residential neighborhood, or other specified land use the governing body of the municipality or county finds to be inconsistent with the operation of a sexually oriented business.
- (b) A municipality or county may restrict the density of sexually oriented businesses.

Id. § 243.006.

Section 243.006(a) does not specify a particular distance requirement between sexually oriented businesses and other land uses. And we find no per se requirement established in the case law construing chapter 243. The decision about the distance a sexually oriented business should be located from other specified land uses is thus implicitly left to the discretion of the governing body. See *id.* This discretion is not unfettered, however, but must be exercised within the confines of the federal and state constitutions, as discussed below. Thus, as a practical matter, the exact distance requirement permissible in a county will depend on the application of constitutional principles to the

facts and circumstances of the county.² We understand the focus of your questions to be on a county's authority under statute and, thus, advise you only generally as to the constitutional issues raised by your questions.

B. Constitutional Considerations

While sexually oriented business regulations have been challenged on numerous constitutional grounds, locational limitations have been challenged principally³ as an abridgement of free speech⁴ protections. *See, e.g., SDJ, Inc. v. City of Houston*, 837 F.2d 1268, 1275–77 (5th Cir. 1988); *Laredo Rd. Co.*, 389 F. Supp. 2d at 743–44; *Smartt v. City of Laredo*, 239 S.W.3d 869, 872 (Tex. App.—Amarillo 2007, no pet.); *Schleuter v. City of Fort Worth*, 947 S.W.2d 920, 926–27 (Tex. App.—Fort Worth 1997, no pet.). This is the case because “[e]rotic non-obscene printed matter, films, and live entertainment are sheltered by the First Amendment” as speech. *Woodall v. City of El Paso*, 49 F.3d 1120, 1122 (5th Cir. 1995); *see also FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 250 (1990) (Scalia, J. concurring in part and dissenting in part) (“Since this Court first had occasion to apply the First Amendment to materials treating of sex, . . . we have been guided by the principle that ‘sex and obscenity are not synonymous.’ The former, we have said, the Constitution permits to be described and discussed. The latter is entirely unprotected . . .”) (citations omitted).

²We note that distance requirements greater than those you propose here have, under certain circumstances, been upheld. *See, e.g., Laredo Rd. Co. v. Maverick County*, 389 F. Supp. 2d 729, 747 (W.D. Tex. 2005) (holding that a one mile—5,280 foot—distance requirement in a rural county did not violate the First Amendment but striking the regulations down for other constitutional infirmities). And county regulations prohibiting sexually oriented businesses within a specified distance of the type of land uses you list—residential property, churches, schools, child care facilities, and public parks—have likewise been upheld. *See, e.g., Lindsay v. Papageorgiou*, 751 S.W.2d 544, 545, 549 (Tex. App.—Houston [1st Dist.] 1988, writ denied) (holding that Harris County regulations that required a sexually oriented business permit applicant to certify it was located a minimum of 1,500 feet from any child care facility, church, dwelling, hospital, public building, public park or school did not exceed the authority of the statutory predecessor to section 243.006).

³Locational regulations have been challenged on various other grounds. In *Kaczmarek v. State*, for instance, the manager of an adult lounge unsuccessfully argued that a city ordinance prohibiting a sexually oriented business from being located within 750 feet of any school, church, or licensed day care violated article I, section 6 of the Texas Constitution which provides that “no preference shall ever be given to any religious society or mode of worship.” *Kaczmarek v. State*, 986 S.W.2d 287, 289, 291 (Tex. App.—Waco 1999, no pet.). And, in *Papageorgiou*, the owner and operator of a sexually oriented business unsuccessfully argued that a county's locational regulations amounted to a taking of her property in violation of article I, section 19 of the Texas Constitution. *Papageorgiou*, 751 S.W.2d at 550; *see also MJR'S Fare of Dallas, Inc. v. City of Dallas*, 792 S.W.2d 569, 574 (Tex. App.—Dallas 1990, writ denied) (involving an unsuccessful takings challenge to a city's locational regulations).

⁴The First Amendment of the United States Constitution provides that “Congress shall make no law . . . abridging the freedom of speech” and has been made applicable to the States through the Due Process Clause of the Fourteenth Amendment. U.S. CONST. amend. I; *id.* amend. XIV, § 1; *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963). The Texas Constitution provides that “no law shall ever be passed curtailing the liberty of speech or of the press.” TEX. CONST. art. I, § 8. Courts have held that, as applied to sexually oriented business regulations, the same level of protection is afforded under both the Texas and United States Constitutions. *See Woodall v. City of El Paso*, 49 F.3d 1120, 1127–28 (5th Cir. 1995); *Kaczmarek*, 986 S.W.2d at 291; *2300, Inc. v. City of Arlington*, 888 S.W.2d 123, 127 (Tex. App.—Fort Worth 1994, no writ).

Despite the fact that such materials and activities may be constitutionally protected, they may be regulated to minimize their adverse secondary effects. The United States Supreme Court, in *City of Renton v. Playtime Theatres, Inc.*, established that a local government may constitutionally impose content-neutral time, place, and manner restrictions on sexually oriented businesses if the local government can show a substantial governmental interest in regulating the business and if the regulations do not unreasonably limit alternative avenues of communication. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 46–47 (1986); see *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425, 433–34 (2002) (reaffirming the analytical framework in *Renton*).⁵

Locational restrictions are content-neutral time, place, and manner regulations “if they do not ban [sexually oriented] businesses throughout the whole of a jurisdiction and are ‘designed to combat the undesirable secondary effects of such businesses’ rather than to restrict the content of their speech *per se*.” *Encore Videos, Inc. v. City of San Antonio*, 330 F.3d 288, 291 (5th Cir. 2003) (quoting *Renton*).

If the local regulation is a content-neutral time, place, and manner regulation,⁶ the court then inquires whether the regulation is narrowly tailored to serve a significant government interest and whether the regulation leaves open ample alternative avenues of communication. See *Schleuter*, 947 S.W.2d at 926 (citing *Renton*); see also *Renton*, 475 U.S. at 47 (“‘content-neutral’ time, place, and manner regulations are acceptable so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication”).

A local regulation “‘is sufficiently well tailored if it effectively promotes the government’s stated interest.’” *Schleuter*, 947 S.W.2d at 927; but see *Encore Videos*, 330 F.3d 288 at 293 n.6 (indicating that the Fifth Circuit has adopted a new narrow tailoring standard in this context: “A time, place, and manner regulation meets the narrow tailoring standard if it ‘targets and eliminates no more than the exact source of the evil it seeks to remedy.’”) (quoting *Frisby v. Schultz*, 487 U.S. 474, 485 (1988)).

Under Fifth Circuit jurisprudence, whether a local regulation furthers a substantial governmental interest is a two-part inquiry: (1) does a substantial governmental interest actually exist, and (2) does the regulation further that interest. See *Fantasy Ranch, Inc.*, 459 F.3d at 558–59; see also *Encore Videos*, 330 F.3d 288 at 293 (“This approach arguably conflicts with *City of Renton*,

⁵While recognizing the United States Supreme Court is unquestionably the final arbiter regarding the interpretation of this test, we note that this test is construed in different ways in different courts as exemplified in *Encore Videos*. See *Encore Videos*, 330 F.3d at 293 (discussing its interpretation of the substantial government interest standard). Our discussion of the various prongs of this test here is intended to be general in nature and does not seek to highlight every tension and distinction that may exist among these courts and their interpretations of this test.

⁶“If the government’s interest is indeed related to the suppression of content, then that regulation of symbolic speech is subject to strict scrutiny.” *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546, 554 (5th Cir. 2006). Under a strict scrutiny standard, the local government faces the daunting task of showing that its content-based regulation “is a precisely drawn means of serving a compelling state interest.” *Consol. Edison Co. v. Pub. Serv. Comm’n*, 447 U.S. 530, 540 (1980) (emphasis added).

which mandates only that a statute be ‘designed to serve a substantial government interest’ and does not require evidence of effectiveness.”) (quoting *Renton*, 475 U.S. at 47).

In relation to locational limitations, the question of whether a regulation leaves open ample alternative avenues of communication is an inquiry into whether “the areas left available are inadequate to satisfy the demand for sexually oriented business locations.” *Schleuter*, 947 S.W.2d at 927–28; *see also Smith v. State*, 866 S.W.2d 760, 764 (Tex. App.—Houston [1st Dist.] 1993, writ ref’d) (holding a city’s locational regulations left open alternative avenues of communication where the ordinance did not totally ban or limit the number of adult bookstores); *Papageorgiou*, 751 S.W.2d at 550 (holding that a county’s locational regulations allowed reasonable avenues of communication where they did “not totally ban operation of all such enterprises in the county” or “limit the enterprises in number”).

Renton establishes that commercial viability is not a factor in determining whether land is “available.” *Renton*, 475 U.S. at 54; *see also Papageorgiou*, 751 S.W.2d at 550 (citing to *Renton* for the notion that a county has no duty to insure a commercially viable site). The Fifth Circuit has interpreted *Renton* to mean that while property does not have to be commercially desirable, it must be both physically and legally available. *See Woodall*, 49 F.3d at 1124.; *Schleuter*, 947 S.W.2d at 928. Assuming that sites are available, a court will also consider whether “the demand for sexually oriented business locations exceeds the number of locations available.” *Schleuter*, 947 S.W.2d at 929.

Free speech challenges against locational regulations often center around the issue of whether alternative avenues of communication are available. Unfortunately, there is no exact percentage of land or number of sites that one can identify as necessary to meet constitutional standards. Determining whether a regulation leaves “adequate alternative avenues of communication” is highly fact sensitive and may vary significantly from one geographic location to another.⁷

II. Conclusion

When faced with local legislation that increased distance requirements as to sexually oriented businesses, as you propose to do here, the Fifth Circuit explained that a governing body “has the prerogative of experimenting with different possible solutions to [local] problems even when dealing with First Amendment interests.” *N.W. Enters., Inc. v. City of Houston*, 352 F.3d 162, 177 (5th Cir. 2003) (quoting district court with approval). While section 243.006(a) gives a county discretion to impose locational restrictions, such discretion must be exercised in light of constitutional constraints as applied to the facts and circumstances of the jurisdiction at issue.

⁷Locational limitations may be implicated in challenges under other first amendment theories not otherwise discussed herein. In *Kaczmarek*, for example, the manager of an adult business challenged a city ordinance as an unconstitutional prior restraint on free speech arguing that the chief of police had unbridled discretion in administering the ordinance. *Kaczmarek*, 986 S.W.2 at 290. The court rejected the argument in part because the ordinance contained detailed procedures for measuring the distance limitations.

S U M M A R Y

Local Government Code section 243.006(a) authorizes a county to, among other things, prohibit a sexually oriented business from locating “within a certain distance of a school, regular place of religious worship, residential neighborhood, or other specified land use . . . [found] to be inconsistent with the operation of” such a business. TEX. LOC. GOV’T CODE ANN. § 243.006(a) (Vernon 2005). Section 243.006(a) does not establish any particular distance requirement between sexually oriented businesses and other land uses, but implicitly leaves this decision to the discretion of the governing body adopting the restriction. That discretion must be exercised within the confines of the federal and state constitutions, as interpreted by the courts. The exact distance that a county may require a sexually oriented business be located from other land uses is a fact-sensitive inquiry.

Very truly yours,


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2017
SHORT ANSWERS TO
COMMON QUESTIONS

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REGULATION OF SEXUALLY ORIENTED BUSINESSES

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The  symbol indicates sections that have been updated since the previous publication.

1. What is a sexually oriented business?

Local Government Code Chapter 243 defines a sexually oriented business as a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video store, adult motel, or other commercial enterprise, which has as its primary business the offering of a service or selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.¹

2. What entities are specifically exempted from regulation under Local Government Code Chapter 243?

The statute exempts two types of businesses from regulation as a sexually oriented business: (a) a bookstore, movie theater, or video store, as distinguished from the adult version of such a business; and (b) a business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist or licensed barber performing functions authorized under their license.²

¹ Local Government Code §243.002

² Local Government Code §243.004

3. Does a county have the authority to regulate sexually oriented businesses?

Yes. Chapter 243 of the Local Government Code notes that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety and welfare, and that the purpose of the chapter is to provide local governments a means of remedying this problem.³ The statute specifically provides that Chapter 243 does not diminish the authority of a local government to regulate sexually oriented businesses with regard to any matters.⁴ A court of appeals has stated "... it is apparent that the Legislature intended to provide a broad framework for regulation of certain "sexually oriented businesses" while authorizing municipalities and counties to enact ordinances within that framework."⁵

4. What types of location restrictions are allowed?

A county may restrict a sexually oriented business to a particular area, or prohibit a sexually oriented business from being located within a certain distance of a school, regular place of religious worship, residential neighborhood, or other location the commissioners court finds is inconsistent with the operation of a sexually oriented business. The commissioners court may also restrict the number of sexually oriented businesses that operate in a specified area. The commissioners court must take into account First Amendment and other state and federal constitutional considerations. The specific distances that a county may require sexually oriented businesses to be located from other land uses is a fact-sensitive determination.⁶

5. Does a sexually oriented business have to be licensed?

A county may require the owner or operator of a sexually oriented business to get a license or permit if the county has adopted regulations.⁷ A county may charge a fee for the license or permit. The fee must be based on the cost of processing the applications and investigating the applicant.⁸ The county's adopted regulations may provide for denial, suspension or revocation of the license or permit. An owner

³ Local Government Code §243.001(a)

⁴ Local Government Code §243.001(b)

⁵ State v. Chacon, 273 S.W.3d 375, 379 (Tex. App. 2008)

⁶ Tex. Att'y Gen. Op. No. GA-658 (2008)

⁷ Local Government Code §243.007

⁸ Local Government Code §243.009

or operator can file suit in district court to contest the denial, suspension or revocation of the permit or license.⁹

6. How can the county enforce its regulation of a sexually oriented business?

The county can apply for an injunction in district court to prohibit the violation of a regulation. A person who violates a regulation is also subject to Class A misdemeanor charges.¹⁰ A county can also inspect a sexually oriented business to determine whether the business is complying with Chapter 243 of the Local Government Code and the county regulations.¹¹

7. Is a sexually oriented business required to post a sign?

Yes. A person who intends to operate a sexually oriented business in a county that does not regulate sexually oriented businesses is required to erect an outdoor sign stating that a sexually oriented business is intended to be located on the premises, and giving the name and business address of the operator. The sign must be affixed by the 60th day before the intended date of commencement of operation.¹²

In a county that regulates sexually oriented businesses, an applicant for a license must erect an outdoor sign stating that a sexually oriented business is intended to be located on the premises. The sign must also state the name and business address of the applicant. The sign must be affixed at least 60 days before the date of the application for a license or permit.¹³

In both regulated and unregulated counties, the sign must measure at least 24 inches by 36 inches, with letters at least 2 inches in size. A county may require the sign to be in both English and a language other than English, if it is likely that a substantial number of residents in the area speak a language other than English.¹⁴

8. How old does a person have to be to work at a sexually oriented business?

Pursuant to Labor Code §51.016, a person must be at least 18 years of age to work at a sexually oriented business (this requirement does not apply to an independent

⁹ Local Government Code §243.007

¹⁰ Local Government Code §243.010

¹¹ Local Government Code §243.008

¹² Local Government Code §243.0075(b)

¹³ Local Government Code §243.0075(a)

¹⁴ Local Government Code §243.0075(c)

contractor who performs repair, maintenance or construction services at the sexually oriented business). The sexually oriented business is required to keep paperwork showing proof of age for all employees for at least 2 years after the person leaves employment with the sexually oriented business. The sheriff is authorized to check the paperwork if there is good reason to believe an underage person was hired within the two years preceding the date of the inspection. Failure to maintain a record or intentionally or knowingly hindering an inspection is an offense. An offense under Chapter 51 of the Labor Code is a Class B misdemeanor.¹⁵

9. May a sex offender be affiliated with a sexually oriented business?

No. A sex offender may not own or partly own a sexually oriented business or serve as a director, officer, operator, manager or employee of a sexually oriented business.¹⁶ A sexually oriented business, if it knows a person is a sex offender, may not contract with the person to operate or manage the business or employ the person as an officer, operator, manager or other employee.¹⁷

10. May a sexually oriented business obtain an alcoholic beverage permit?

Yes, under certain circumstances. The Texas Alcoholic Beverage Commission or its administrator must hold a hearing before granting or denying an original application for a mixed beverage permit, private club registration permit, wine and beer retailer's permit or retail dealer's on-premise license if a sexually oriented business is to be operated on the premises to be covered by the license. The commission and the administrator are required to give due consideration to the recommendations of the county judge. The commission and the administrator may also give consideration to a written recommendation by the commissioners court. A hearing must be held on a renewal permit if a petition signed by 50% of the residents who live within 300 feet of the sexually oriented business is presented to the commission.¹⁸

¹⁵ Labor Code §51.031

¹⁶ Business and Commerce Code §102.002

¹⁷ Business and Commerce Code §102.003

¹⁸ Alcoholic Beverage Code § 11.43(c)

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**SEXUALLY ORIENTED BUSINESS REGULATIONS
VAL VERDE COUNTY, TEXAS**

WHEREAS, 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 communities where they are located, and;

WHEREAS, Val Verde County (the "County") finds that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

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

WHEREAS, permitting and/or licensing is a legitimate 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; and

WHEREAS, 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

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, 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

WHEREAS, the County 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

WHEREAS, it is not the intent of these regulations to suppress any speech activities protected by the First Amendment, but to enact content neutral regulations that address the secondary effects of sexually oriented businesses as well as the health problems associated with such businesses; and

WHEREAS, it is not the intent of the County to condone or legitimize the distribution of obscene materials, and the County recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the County.

SECTION I
Purpose and Intent

It is the purpose of these regulations to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the County. The provisions of these regulations 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 these regulations 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. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene materials.

SECTION II
Definitions

- (1) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five 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 that, 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 matter, or photographs, films, motion picture, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities," or "specified anatomical areas,"
or
 - (B) 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 invoke the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as an 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 which 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.

- (3) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment that regularly features:
- (A) persons who appear in a state of semi-nudity; or
 - (B) live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities;" or
 - (C) 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
 - (D) persons who engage in lewd, lascivious or erotic dancing or performances that are intended for the sexual interests or titillation of an audience or customers.
- (4) ADULT MOTEL means a hotel, motel, or similar commercial establishment that:
- (A) 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
 - (B) offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
 - (C) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than twenty-four (24) hours.
- (5) 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."
- (6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances that are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."
- (7) DIRECTOR means the VAL VERDE County Judge and such employee(s) of the County as he may designate to perform the duties of the director pursuant to these regulations.
- (8) 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.

- (9) 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.
- (10) ESTABLISHMENT means and includes any of the following:
- (A) the opening or commencement of a 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 additions of any sexually oriented business to any other existing sexually oriented business; or
 - (D) the relocation of any sexually oriented business.
- (11) LICENSED DAY-CARE CENTER means a facility licensed by the State of Texas, whether situated within the city or not, that provides care, training, education, custody treatment or supervision for more than twelve (12) children under fourteen (14) 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 (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.
- (12) PERMITTEE AND/OR LICENSEE means a person in whose name a permit and/or license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a permit and/or license.
- (13) 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 other persons who pay money or any form of consideration.
- (14) NUDITY or a STATE OF NUDITY means the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.
- (15) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.
- (16) SEMI-NUDE means a state of dress in which clothing covers no more than the human bare

buttock, anus, male genitals, female genitals, or female breast without a fully opaque complete covering of the breast below a point immediately above the top of the areola, or human male genitals in a discernibly turgid state even if completely and opaquely covered.

- (17) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal 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 a state of nudity or semi-nude.
- (18) 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.
- (19) SPECIFIED ANATOMICAL AREAS means the male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals.
- (20) 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.
- (21) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five (25%) percent, as the floor areas exist on the effective date of this document.
- (22) 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 that form 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 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.

**SECTION III
Classification**

Sexually oriented businesses are classified as follows

- (1) adult arcades;
- (2) adult bookstores or adult video;
- (3) adult cabarets;
- (4) adult motels;
- (5) adult motion picture theaters;
- (6) adult theaters;
- (7) escort agencies;
- (8) nude model studios; and
- (9) sexual encounter centers.

**SECTION IV
Permit and/or License Required**

- (1) It shall be unlawful for a person to operate a sexually oriented business without a valid permit and/or license, issued by the director.
- (2) An application for a permit and/or license must be made on a form provided by the County of VAL VERDE. 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. 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.
- (3) The applicant must be qualified according to the provisions of these regulations and the premises must be inspected and found to be in compliance with the law by any health department, fire department, and building official.
- (4) If a person who wishes to operate a sexually oriented business is an individual, he must sign

the application for a permit and/or license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a ten (10%) percent or greater interest in the business must sign the application for a permit and/or license as applicant. If a corporation is listed as owner of a sexually oriented business or as the entity that wishes to operate such a business, each individual having a ten (10%) percent or greater interest in the corporation must sign the application for a permit and/or license as applicant.

- (5) The fact that a person possesses other types of state or city permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business permit and/or license.
- (6) Applications for a permit, whether original or a renewal, must be made to the Director by the intended operator of the enterprise. Applications must be submitted by hand-delivery to the office of the Director or the Director's designee during regular working hours. Application forms shall be supplied by the Director. The intended operator shall be required to give the following information on the application form:
 - (A) The name, street address (and mailing address if different) and Texas driver's license number of the intended operator and the name and street address (and mailing address if different) of the owner(s);
 - (B) The name under which the establishment is to be operated and a general description of the services to be provided;
 - (C) The telephone number of the establishment;
 - (D) The address, and legal description of the tract of land on which the establishment is to be located;
 - (E) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the permit is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the permit is sought; and
 - (F) 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 permit) If the expected startup date is to be more than ten (10) days following the date of issuance of the permit, 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.
- (7) The application shall be accompanied by the following:
 - (A) Payment of the application fee in full;

- (B) If the establishment is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto;
 - (E) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto;
 - (F) 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;
 - (E) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto;
 - (F) 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;
 - (G) If the persons identified as the fee owner(s) of the tract of land in item (6) 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 owner(s) or proposed owner(s) 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; and
 - (H) Any of items (B) through (G), above shall not be required for a renewal application if the applicant states that the documents previously furnished to the director with the original application or previous renewals thereof remain correct and current.
- (8) The application shall contain a statement under oath that:
- (A) The applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct; and
 - (B) The applicant has read the provisions of this article.
- (9) A separate application and permit shall be required for each sexually oriented business.

**SECTION V.
Issuance of Permit and/or License.**

- (1) The Director shall approve the issuance of a permit and/or license to an applicant within thirty (30) days after receipt of an application and remit it for inspection unless he finds one or more of the following to be true:

- (A) An applicant is under eighteen (18) years of age;
 - (B) An applicant or an applicant's spouse is overdue in his payment to the county for taxes, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business;
 - (C) An applicant has failed to provide information reasonably necessary for issuance of the permit and/or license or has falsely answered a question or request for information on the application form;
 - (D) An applicant is residing with a person who has been denied a permit and/or license by the county to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months;
 - (E) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, building official and zoning official as being in compliance with applicable laws and regulations;
 - (F) The permit and/or license fee required by these regulations has not been paid; and
 - (G) An application of the proposed establishment is in violation of or is not in compliance with any of the provisions of these regulations.
- (2) The permit and/or 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 permit and/or 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.
- (3) Any health department, fire department, and building official shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the Director. The certification shall be promptly presented to the Director.
- (4) In the event that the Director determines that an applicant is not eligible for a permit, the applicant shall be given notice in writing of the reasons for the denial within forty five (45) days of the receipt of its application by the Director, provided that the applicant may request, in writing, that such period be extended for an additional period of not more than ten (10) days at any time before the notice is issued in order to make modifications necessary to comply with these regulations.
- (5) An applicant may appeal the decision to the county of the director's denial by filing a written notice of appeal with the County Judge's Office within fifteen (15) days after the applicant is given notice 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 submit a memorandum in response to the memorandum filed by the applicant. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Commissioner's Court shall vote to either uphold or overrule the Director's decision. The County Judge shall abstain from said vote. Such vote shall be taken within twenty-one (21) calendar days after the date on which the County receives the notice of appeal. However, all parties shall be required to comply with the Director's decision during the pendency of the appeal.

SECTION VI
Fees

The annual fee for a sexually oriented business permit and/or license is Five Hundred (\$500.00) Dollars. This fee is to be used to be deposited in the general fund of the county and will be used solely to pay for the cost of the administration and enforcement of this regulations.

SECTION VII
Inspection

An applicant, or permittee and/or licensee shall permit representatives of the Val Verde County Sheriff's Office, or other County or State departments or any other authorized agencies 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.

SECTION VIII
Expiration of Permit and/or License

- (1) Each permit and/or license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section V above. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the expiration of the permit and/or license will not be affected.
- (2) When the Director denies renewal of a license, the applicant shall not be issued a permit and/or license for one year from the date of denial. If, subsequent to denial, the Director finds that the basis for denial of the renewal permit and/or license has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date denial became final.

SECTION IX.
Suspension

The Director shall suspend a permit and/or license for a period not to exceed thirty (30) days if he determines that permittee and/or licensee or an employee of a permittee and/or licensee has:

- (A) violated or is not in compliance with any section of these regulations;

- (B) become impaired or intoxicated through the use of alcoholic beverages while on the sexually oriented business premises;
- (C) refused to allow an inspection of the sexually oriented business premises as authorized by these regulations; or
- (D) knowingly permitted gambling by any person on the sexually oriented business premises.

SECTION X
Revocation

- (1) The Director shall revoke a permit and/or license if a cause of suspension in Section IX occurs and the permit and/or license has been suspended within the proceeding twelve (12) months.
- (2) The Director shall also revoke a permit and/or license if he determines that:
 - (A) a permittee and/or licensee gave false or misleading information in the material submitted during the application process;
 - (B) a permittee and/or licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;
 - (C) a permittee and/or licensee or an employee has knowingly allowed prostitution on the premises;
 - (D) a permittee and/or licensee or an employee knowingly operated the sexually oriented business during a period of time when the permittee's and/or licensee's permit and/or license was suspended;
 - (E) a permittee and/or licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sexual conduct to occur in or on the permitted and/or licensed premises;
 - (F) a permittee and/or licensee is delinquent in payment to the County or State for any taxes for fees past due;
 - (G) the owner or operator of the permitted establishment knowingly allowed a person under eighteen (18) years of age to enter an establishment; or
 - (H) that there was a change of owner or operator for which a transfer application was not timely filed.

- (3) When the Director revokes a permit and/or license, the revocation shall continue for one (01) year, and the permittee and/or licensee shall not be issued a sexually oriented permit and/or license for one (01) year from the date revocation became effective. If, subsequent to revocation, the Director finds that the basis for the revocation has been corrected or abated, the applicant may be granted a permit and/or license if at least ninety (90) days have elapsed since the date the revocation became effective.

- (4) After denial of an application by the Director and County, or denial of a renewal of an application, or suspension or revocation of a permit and/or license by the Director, the applicant or licensee or permittee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

SECTION XI.

Transfer of Permit and/or License.

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

SECTION XII. Locational Restrictions.

Sexually oriented businesses shall be permitted in any commercial district provided that:

- (1) the sexually oriented business may not be operated within 1,500 feet of
 - (A) a church, synagogue or regular place of religious worship;
 - (B) a public or private elementary or secondary school;
 - (C) a boundary of any residential district;
 - (D) a public park;
 - (E) a licensed day-care center, or
 - (F) another sexually oriented business.

- (2) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business.

- (3) For the purpose of these regulations, 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, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot, or licensed day care center.

- (4) For purposes of Subsection (3) of this section, the distance between any two sexually oriented business uses 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.

SECTION XIII.

Non-Conforming Uses

- (1) Any business lawfully operating on the effective date of these regulations that is in violation of the locational or structural configuration requirements of these regulations shall be deemed a non-conforming use. The non-conforming use will be permitted to continue for a period not to exceed two years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such non-conforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,500 feet of one another and otherwise in a permissible location, the sexually oriented business that was first established and continually operating at a particular location is the conforming use and the later-established business(es) is non-conforming.
- (2) A sexually oriented business lawfully operating as a conforming use is not rendered a non-conforming use by the location, subsequent to the grant or renewal of the sexually oriented business permit and/or license, of a church, Synagogue, or regular place of religious worship, public or private elementary or secondary school, licensed day-care center, public park, or residential district within one thousand (1,500) feet of the sexually oriented business. This provision applies only to the renewal of a valid permit and/or license, and does not apply when an application for a permit and/or license is submitted after a permit and/or license has expired or has been revoked.

SECTION XIV

Additional Regulations for Adult Motels

- (1) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishment has been rented and vacated two 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 as that term is defined in this chapter
- (2) It is unlawful if a person, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented permit and/or

license, rents or sub rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub rents the same sleeping room again

- (3) For purposes of subsection (2) of this section, the terms "rent" or "sub rent" mean the act of permitting a room to be occupied for any form of consideration

SECTION XV

Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos

- (1) 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 (50) 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 permit and/or license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required, however, each diagram should be oriented to the north or to some designated street or object and should be drawn to 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 (6) 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) The application shall be sworn to be true and correct by the applicant
 - (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 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 have 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 each 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 owners and 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) 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 in the application titled pursuant to Subsection (1) of this section.
- (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 one (1.0) foot-candle as measured at the floor level.
- (I) It shall be the duty of the owners and 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

SECTION XVI

Exterior Portions of Sexually Oriented Businesses

- (1) It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.
- (2) It shall be 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 these regulations.
- (3) It shall be 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 following conditions are met:
 - (A) The establishment is a part of a commercial multi-unit center; and
 - (B) 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.

- (4) Nothing in this article shall be construed to require the painting of an otherwise unpainted exterior portion of a sexually oriented business.

SECTION XVII

Signage

- (1) Notwithstanding any other county regulations to the contrary, it shall be unlawful for the owner or 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 (1) primary sign and one (1) secondary sign, as provided herein.
- (2) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:
 - (A) not contain any flashing lights;
 - (B) be a flat plane, rectangular in shape;
 - (C) not exceed seventy-five (75) square feet in area; and
 - (D) not exceed ten (10) feet in height or ten (10) feet in length.
- (3) Primary signs shall contain no photographs, silhouettes, drawings or pictorial representations in any manner, and may contain only the name of the enterprise.
- (4) Each letter forming a word on a primary sign shall be of solid color, and each such letter shall be the same print-type, size and color. The background behind such lettering on the display surface of a primary sign shall be of a uniform and solid color.
- (5) Secondary signs shall have only one (1) display surface. Such display surface shall:
 - (A) be a flat plane, rectangular in shape;
 - (B) not exceed (twenty) (20) square feet in area;
 - (C) not exceed five (5) feet in height and four (4) feet in width; and
 - (D) be affixed or attached to any wall or door of the enterprise.
- (6) The provisions of item (A) of subsection (2) and subsection (3) and (4) shall also apply to secondary signs.

SECTION XVIII

Persons Younger Than Eighteen Prohibited from Entry; Attendant Required

- (1) It shall be unlawful to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time that the sexually oriented business is open for business.
- (2) It shall be the duty of the operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance to the sexually oriented business at all times during such sexually oriented businesses' regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless such attendant asked for and was furnished:
 - (A) a valid operator's, commercial operator's, or chauffeur's driver's license; or
 - (B) a valid personal identification certificate issued by the State of Texas reflecting that such person is eighteen (18) years of age or older.

SECTION XIX

Massages or Baths Administered by Person of Opposite Sex

It shall be unlawful for any establishment, regardless of whether it is a public or private facility, to operate as a massage salon, massage parlor or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex.

SECTION XX

Exemptions

It is a defense to prosecution under these regulations that a person appearing in a state of nudity did so in a modeling class operated:

- (A) by a proprietary school, licensed by the State of Texas; a college, junior college or university supported entirely or partly by taxation; or
- (B) 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.

SECTION XXI.

Notices

- (1) Any notice required or permitted to be given by the Director or any other county office, division, department or other agency under these regulations to any applicant, operator or

owner of an establishment may be given either by personal delivery or by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the permit, or transfer application that has been received by the Director, or any notice of address change that has been received by the Director. Notices mailed as above shall be deemed given upon their deposit in the United States mail. In the event that any notice given by mail is returned by the postal service, the Director or his designee shall cause it to be posted at the principal entrance to the establishment.

- (2) Any notice required or permitted to be given to the Director by any person under these regulations shall not be deemed given until and unless it is received in the office of the Director.
- (3) It shall be the duty of each owner who is designated on the permit application and each operator to furnish notice to the Director in writing of any change of residence or mailing address.

SECTION XXII

Injunction

A person who operates or causes to be operated a sexually oriented business without a valid permit and/or license or otherwise violates these regulations is subject to a suit for injunction as well as prosecution for criminal violations

SECTION XXIII

Separability

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

SECTION XXIV

Conflicting Regulations Repealed

All regulations or parts of regulations in conflict with the provisions of these regulations are hereby repealed.

SECTION XXV

Effective Date

These Regulations shall be enforced from and after the ____ day of December 2018.

Hon. Efrain V. Valdez
Val Verde County Judge

Hon. Martin Wardlaw
Val Verde Commissioner, Pct. #1

Hon. Lewis G. Owens
Val Verde Commissioner, Pct. #2

Hon. Robert Beau Nettleton
Val Verde Commissioner, Pct. #3

Hon. Gustavo Flores
Val Verde Commissioner, Pct. #4

ATTEST:

Hon. Generosa Gracia-Ramon
Val Verde County Clerk

#17

(ADOPTED)

**THE REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES
IN THE UNINCORPORATED AREA OF
VAL VERDE COUNTY, TEXAS**

SECTION I – AUTHORITY

- (a) These regulations are promulgated pursuant to and in conformity with Chapter 243 of the Texas Local Government Code, as amended, and Chapter 234 of the Local Government Code, as amended.
- (b) It is the purpose of Val Verde County Commissioners Court in adopting these regulations to regulate sexually oriented businesses and massage parlors in order to promote the health, safety, moral and general welfare of the citizens of the unincorporated areas of Val Verde County, Texas, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the unincorporated areas of Val Verde County. The regulations have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor the effect of these regulations 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. Neither is it the intent nor effect of these regulations to condone or legitimize the distribution of obscene material.
- (c) Val Verde County Commissioners Court finds that:
 - (1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including but not limited to personal and property crimes, potential spread of diseases, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, sexual assault and exploitation, prostitution, and human trafficking; and
 - (2) Sexually oriented businesses should be separated from sensitive land uses to minimize the impact of their secondary effects upon such uses, and should be separated from other sexually oriented businesses, to minimize the secondary effects associated with such uses and to prevent an unnecessary concentration of sexually oriented businesses in one area.
- (d) These regulations do not legalize anything prohibited under the Texas Penal Code and any other law or regulation.

SECTION II – ADMINISTRATION

- (a) The Commissioners Court of Val Verde County designates and directs the Val Verde County Sheriff or his duly authorized agent to investigate, deny, issue, attach conditions, suspend and revoke Sexually Oriented Business Permits (SOBPs) pursuant to the above authority and these regulations. An appeal shall not automatically stay the effect of the Sheriff's determination.
- (b) Pursuant to §243.007(c) of the Local Government Code, as amended, the District Court has jurisdiction over a suit which arises from the denial, suspension, or revocation of a SOBP.

SECTION III – AREA COVERED BY REGULATIONS

- (a) These regulations apply to enterprises located in the extraterritorial jurisdiction of any city and the unincorporated areas of Val Verde County.
- (b) Incorporated cities or towns in Val Verde County that execute cooperative agreements with Val Verde County and adopt ordinances substantially similar to these regulations may utilize the permitting procedures set out herein. The incorporated city or town may adopt different distancing restrictions than those contained in these regulations and shall support its distancing restrictions by a finding that there are locations within the incorporated area which are available for use as sexually oriented enterprises under the designated distance.

SECTION IV – DEFINITIONS

As used in these regulations:

- (a) *Adult Arcade*: shall mean an enterprise the public is allowed or invited where image producing devices are maintained to show images to five or fewer persons per device at any one time and where the images so displayed are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in these regulations. Devices covered in this definition include machines that produce still or motion pictures, are coin or slug-operated, are electronically or mechanically controlled, and include computer monitors.
- (b) *Adult Bookstore or Adult Video Store*: shall mean an enterprise which, as one of its principal business activities, offers for sale or rental, for any form of consideration, any one or more of the following: books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes or video reproductions, computer programs, slides, instruments, devices, paraphernalia, compact discs, digital video discs or other visual representations that depict or describe specified sexual activities or specified anatomical areas as defined in these regulations.

- (c) *Adult Cabaret*: shall mean a nightclub, bar, juice bar, restaurant, bottle club, bikini bar or other enterprise, whether or not alcoholic beverages are served, that features:
- (1) persons who appear semi-nude or nude;
 - (2) live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities; or
 - (3) films, motion pictures, computer simulations, videos, slides or other reproductions which are characterized by the depiction of or description of specified anatomical areas or specified sexual activities.
- (d) *Adult Lounge*: shall mean an adult cabaret, as defined above, which is permitted or licensed by the Texas Alcoholic Beverage Code, where alcoholic beverages may be served or sold.
- (e) *Adult Motel*: shall mean a hotel, motel or similar enterprise that:
- (1) offers accommodations to the public for any form of consideration and provides customers with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in these regulations; and
 - (2) offers a sleeping room for rent for a period of time that is less than ten (10) hours or allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- (f) *Adult Motion Picture Theatre or Adult Movie Theatre*: shall mean an enterprise that contains a room with a screen or projection area for customers to view films, motion pictures, videocassettes, digital video discs, slides, any electronically produced media or similar photographic reproductions depicting, describing or relating to specified sexual activities or specified anatomical areas or intended to provide sexual stimulation or sexual gratification.
- (g) *Adult Theatre*: shall mean a theatre, concert hall, auditorium or similar enterprise that regularly features live performances characterized by the exposure of specified anatomical areas as defined in these regulations.
- (h) *Allow*: shall mean to let happen, cause, suffer, or permit, including failure to prevent.
- (i) *Applicant*: shall mean the individual or entity submitting the application for a SOBP. Where appropriate, this includes a designated agent of the applicant.
- (j) *Cashier*: shall mean any employee who handles cash or any other form of payment from clients of an enterprise for services or products provided.
- (k) *Child Care Facility*: shall mean a facility used as a day nursery, children's boarding

home, child placement agency, or other place for the care or custody of children under fifteen (15) years of age, licensed by the State of Texas pursuant to Chapter 42 of the Texas Human Resource Code.

(l) *Church or Place of Religious Worship*: shall mean a facility, including all structures and grounds, at which persons regularly assemble for worship, intended primarily for purposes connected with faith or for spreading a form of belief.

(m) *City*: shall mean an incorporated city, town or village.

(n) *Commissioners Court*: shall mean the Commissioners Court of Val Verde County.

(o) *Conduct Business*: shall mean to do one or more of the following:

- (1) Operate a cash register, cash drawer or other depository on the premises of the enterprise where cash funds, records of cash and credit card transactions are kept;
- (2) Display or take orders from customers for any merchandise, goods, entertainment or other services offered on the premises of the enterprise;
- (3) Deliver or provide to customers any merchandise, goods, entertainment, or other services offered on the premises of the enterprise;
- (4) Act as a door attendant to regulate entry into the enterprise;
- (5) Supervise or manage other persons in the performance of activities on the premises of the enterprise; or
- (6) Cause another to do any of the foregoing activities on the premises of the enterprise.

(p) *County*: shall mean Val Verde County, Texas.

(q) *Customer*: shall mean any person, patron, or client including members of the public or club members invited to a Class I enterprise. This definition does not include employees required to have a Class II permit.

(r) *Dwelling*: shall mean a house, duplex, apartment, townhouse, condominium, mobile home, or any other building used as a residence.

(s) *Employee*: shall mean a person who works for or conducts business in a sexually oriented business, a person who receives or expects to receive compensation from the operator or customers of the sexually oriented business and shall include but is not limited to operators, managers, clerks, dancers, models, entertainers, food and beverage workers, servers, door persons, bouncers, and cashiers. It is expressly intended that this definition include employer-employee relationships, independent contractor relationships, agency

relationships and any other arrangement whereby the “employee” has an expectation of receiving compensation, tips or other benefits from the sexually oriented business or its customers in exchange for services performed on the premises. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

- (t) *Escort*: shall mean an individual who, for consideration, agrees or offers to privately model, dance or perform for another person, or to act as a private companion, guide or date for another person and offers a service intended to provide sexual stimulation or sexual gratification.
- (u) *Escort Agency*: shall mean a business that, for consideration, furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes and offers a service intended to provide sexual stimulation or sexual gratification.
- (v) *Enterprise*: shall mean an organization, venture, individual, sole proprietorship, partnership, corporation, limited liability company, association, union, other legal entity, or group of individuals associated in fact, that have related activities, unified operation or common control, and a common business purpose.
- (w) *Fire Marshall*: shall mean the Val Verde County Fire Marshal or the Val Verde County Fire Marshal’s designated agent.
- (x) *Hospital*: shall mean a building used to provide in-patient medical care for the sick or injured and licensed pursuant to the Texas Hospital Licensing Law, Chapter 241 of the Texas Health and Safety Code, or operated by the federal government.
- (y) *Interested Party*: shall include the applicant; any person who owns or leases real property within fifteen hundred (1,500) feet of an enterprise; and any official who is elected by the residents of Val Verde County including the Val Verde County Sheriff but specifically excepting all magistrates elected in Val Verde County.
- (z) *Live Exhibition*: shall mean a live performance by one or more individuals in front of at least one customer, including but not limited to dancing, modeling, sword swallowing, juggling, acrobatic acts, wrestling, pantomime, role playing, encounter session, singing, striptease, reading, revue, fashion show, musical rendition or performing a play skit or fashion show.
- (aa) *Manager*: shall mean any person who supervises, directs, controls or manages any employee of an enterprise or any other person who conducts any business in an enterprise with respect to any activity conducted on the premises, including any on-site manager.
- (bb) *Massage Parlor*: shall mean a business that advertises or conveys a message, express or implied, that massage services are provided and allows:
 - (1) a customer to receive massage services by a person who is nude, as defined in §455.202(d)(2) of the Texas Occupations Code;

- (2) a person to engage in sexual contact for compensation, with sexual contact as defined in §455.202(d)(2) of the Texas Occupations Code; or
- (3) a person to provide massage services in clothing intended to arouse or gratify the sexual desire of any person.
- (cc) *Nude*: shall mean entirely unclothed or clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts or any portion of the genitals or buttocks.
- (dd) *On-Site Manager*: shall mean a person responsible, on a temporary or permanent basis, for supervision of the operation, monitoring and observing of all areas of the enterprise to which customers enter during regular business hours.
- (ee) *Opaque*: shall mean not transparent to any degree; an opaque article of clothing completely blocks visibility to the underlying skin; not see-through.
- (ff) *Operate*: shall mean to cause to function or to put or keep in a state of doing business.
- (gg) *Operator*: shall mean any person on the premises of the enterprise who operates or is authorized to manage the enterprise, whether or not that person is an owner, part-owner or licensee of the enterprise.
- (hh) *Owner*: shall mean the proprietor of an enterprise if a sole proprietorship; all general partners of an enterprise that is a partnership; a member of a limited liability company; or the corporation and all officers, directors, and persons holding fifty percent (50%) or more of the outstanding shares of an enterprise if a corporation; and a person is considered an owner of an enterprise for purposes of these regulations if the person:
- (1) takes out a lease for an enterprise;
 - (2) opens an account for utilities for an enterprise;
 - (3) receives a certificate of compliance for the building;
 - (4) receives the profits of an enterprise;
 - (5) pays for an advertisement for an enterprise;
 - (6) signs for an alarm permit for an enterprise;
 - (7) signs for a license issued by the Texas Alcoholic Beverage Commission to the enterprise.
- (ii) *Peace Officer*: shall mean a peace officer as described in Article 2.12 of the Texas Code of Criminal Procedure having jurisdiction in the unincorporated areas of Val Verde County.

- (jj) *Person*: shall mean an individual, proprietorship, partnership, corporation, limited liability company, association, or other legal entity.
- (kk) *Premises*: shall mean the real property where the enterprise is located, and all appurtenances, buildings, grounds, private walkways, and parking lots adjacent to the enterprise.
- (ll) *Principal business activity*: shall exist where the enterprise has a substantial portion of sexually oriented items and:
- (1) displayed merchandise consists of said items;
 - (2) wholesale value of displayed merchandise consists of said items;
 - (3) retail value of displayed merchandise consists of said items;
 - (4) revenues from the sale or rental, for any form of consideration of said items; or
 - (4) interior business space for the sale or rental of said items.
- (mm) *Public Building*: shall mean a building used by a federal, state or local government that is open to the public.
- (nn) *Public Park*: shall mean a tract of land dedicated to public use and accessible to the public for recreational purposes, not including public roads, walkways, easements and right-of-ways.
- (oo) *Regulations*: shall mean regulations of Val Verde County, Texas for the operation of sexually oriented businesses and massage parlors.
- (pp) *Regularly*: shall mean consistent and repeated doing of the act so described.
- (qq) *School*: shall mean a facility, including all attached playgrounds, dormitories, stadiums, and other appurtenances which are part of the facility used for the primary purpose of instruction or education, including primary and secondary schools, colleges, and universities both public and private.
- (rr) *Semi-Nude*: shall mean the showing of the female breast below a horizontal line across the top of the areola and extending across the width of the breast at that point, or the showing of the male or female buttocks. This definition includes the lower portion of the female breast, but shall not include any portion of the cleavage of the female breasts exhibited by a bikini, dress, blouse, shirt, leotard or similar apparel provided the areola is not exposed in whole or in part.
- (ss) *Server*: shall mean an individual who serves customers food or beverages in an enterprise, including waiters, waitresses, hosts, hostesses and bartenders.

- (tt) *Sexual contact* (as defined in Tex. Occ. Code §455.202(d)(2)) shall include:
- (1) any touching of any part of the genitalia or anus;
 - (2) any touching of the breasts of a female without the written consent of the female;
 - (3) any offer or agreement to engage in any activity described in (1) or (2) above;
 - (4) any kissing without the consent of both persons;
 - (5) any deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotions of prostitution as described in Chapters 21, 22, and 43, Penal Code, or any offer or agreement to engage in such activities;
 - (6) any behavior, gesture, or expression that may reasonably be interpreted as inappropriately seductive or sexual; or
 - (7) sexual comments about or to a client, including sexual comments about a person's body.
- (uu) *Sexual Device*: shall mean any three-dimensional object designed and marketed for stimulation of the male or female genitals, anus, female breast, or for sadomasochistic use or abuse of oneself or others and shall include but not be limited to devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. This definition does not include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy or devices primarily intended for medical or healthcare use.
- (vv) *Sexual Device Shop*: shall mean a commercial establishment that regularly features sexual devices. This definition does not include any pharmacy, drug store, medical clinic, or establishment primarily dedicated to providing medical or healthcare products or services.
- (ww) *Sexually Oriented Business*: shall mean a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of sexual devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. A massage parlor, as defined in these regulations, is not a sexually oriented business and may not be licensed under these regulations.
- (xx) *Modeling Studio*: shall mean an enterprise where for any form of consideration, a person models semi-nude or nude, or displays specified anatomical areas for other persons to sketch, draw, paint, sculpt, photograph, or similarly depict or observe.

- (yy) *Sexual Encounter Center*: shall mean a commercial enterprise that as one of the primary business purposes offers for any form of consideration:
- (1) Physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
 - (2) Activities between male and female persons and/or persons of the same sex when one or more of the persons is semi-nude or nude.
- (zz) *Sheriff*: shall mean the Sheriff of Val Verde County, Texas or the Sheriff of Val Verde County's designated agent.
- (aaa) *Specified Anatomical Areas*: shall mean human genitals, pubic region, pubic hair, buttock, or female breasts.
- (bbb) *Specified Sexual Activities*: shall mean any of the following:
- (1) Fondling or erotic touching of human genitals, pubic regions, buttocks, anus or female breasts, whether clothed or nude;
 - (2) Sex acts, actual or simulated, intercourse, oral copulation, or sodomy;
 - (3) Masturbation, actual or simulated; or
 - (4) Excretory functions in connection with any of the activities set forth in (1) through (3) above.
- (ccc) *Substantial*: shall mean at least thirty-five (35%) of the item(s) so modified.
- (ddd) *Transfer of Ownership or Control*: shall mean:
- (1) the sale, lease or sublease of the enterprise; or
 - (2) the transfer of securities which constitute a controlling interest in the enterprise, whether by sale, exchange, gift or other means.

SECTION V – SEXUALLY ORIENTED BUSINESS PERMIT (SOBP) REQUIRED

- (a) *Sexually Oriented Business* - No person shall conduct business as a sexually oriented business at any location in the areas of Val Verde County subject to these regulations without a valid Class I SOBP issued in accordance with these regulations. A separate application and SOBP shall be required for each enterprise. Each physical address or location of an enterprise is a separate enterprise for the purposes of these regulations.

- (b) *Employees* - All employees, operators, and owners, as defined in these regulations shall be required to obtain a Class II SOBP and badge number in order to conduct business or work for a sexually oriented business, except that a person who holds a Class I SOBP shall not also be required to obtain a Class II SOBP.
- (c) *Violation* - A sexually oriented business is in violation of these regulations if it operates without a Class I SOBP or it allows employees, operators, and other persons to conduct business or work in the enterprise without the Class II SOBP required by these regulations. All owners or enterprise operators are individually responsible for ensuring the Class I and Class II SOBPs are in compliance with these regulations regardless of the amount of time each has been either an owner or enterprise operator.
- (d) *Massage Parlors*- Massage parlors are prohibited in Val Verde County and shall not be eligible to receive a sexually oriented business permit.

SECTION VI – DISPLAY OF PERMIT

- (a) Sexually oriented businesses must display a valid Class I SOBP at all times in an open and conspicuous place in the enterprise for which it was issued.
- (b) All employees, operators, and owners required to have a Class II SOBP shall wear a clearly visible badge issued by the Sheriff showing the Class II SOBP number any time he or she is conducting business at the premises.
- (c) The owner, operator, employee and enterprise are responsible for ensuring compliance with the Class II SOBP requirements.

SECTION VII – PERMIT APPLICATION

- (a) *Procedure* – To obtain a Class I or Class II SOBP, an individual must fully complete an application provided by the Sheriff and provide all required information. The application may be presented to the Sheriff in person during hours established by the Sheriff or mailed to 295 FM 2523, Del Rio, Texas 78840. Within five (05) business days of submission of an application, a receipt shall be mailed to the applicant if the application is complete. A notice of deficiencies shall be mailed to the applicant if all the information required by these regulations has not been provided in the application.
- (b) *Application for a Class I SOBP* - An applicant for a Class I SOBP shall provide:
 - (1) the non-refundable fee established by Val Verde County Commissioners Court in the form of a money order, cashiers or bank check;
 - (2) his/her full legal name and any other name(s) used;
 - (3) a general description of the enterprise, the address of the enterprise, and the services and products which will be offered;

- (4) the history of all business licenses and permits issued to the applicant by any agency, board, city, county, or state;
- (5) the applicant's professional or vocational licenses or permits issued, denied, revoked or suspended and the current status of the licenses or permits;
- (6) a copy of the assumed name certificate filed in compliance with Chapter 36 of the Texas Business and Commerce Code, if the applicant intends to operate an enterprise under an assumed name;
- (7) if the applicant is a Texas corporation, a copy of the Articles of Incorporation with any amendments; names and residential addresses of all current officers and directors; and the name and address of each stockholder holding more than 5% of the corporation's stock;
- (8) if the applicant is a foreign corporation, a copy of the certificate of authority to transact business in Texas with all amendments; names and residential addresses of current officers and directors; and names and addresses of each stock holder holding more than 5% of the stock of the corporation;
- (9) if the applicant is a limited liability company, it shall provide a copy of its Certificate of Formation with any amendments; and names and residential addresses of all current members. If any of the members are a corporation, general or limited partnership, or other entity, the information required from that entity shall be included in the application as if it were an applicant;
- (10) if the applicant is a general or limited partnership, the names and residential addresses of each partner, including limited partners; if a Texas limited partnership, a copy of the limited partnership filed with the Office of the Secretary of State of Texas and amendments; if one or more of the partners is a corporation, the information required of corporate applicants shall be included in the application;
- (11) if the applicant is a joint venture or other similar entity, the names and residential addresses of each participant, and their valid driver's license numbers or Texas Department of Transportation identification card numbers; if one or more of the participants is a corporation or partnership, the information required of corporate applicants shall be included in the application;
- (12) all persons required to be identified in (7), (8), (9), (10) and (11) above shall provide a statement as to any ownership interest that person has in any other enterprise in Val Verde County, a description as to any management, supervisory, or oversight responsibility that person will have in the enterprise; a valid driver's license number or Texas Department of Transportation identification number; and a certification as to each officer, partner, or participant that he/she has not been convicted of any of the crimes listed in these regulations;

- (13) if the enterprise uses a liquor license issued by the Texas Alcoholic Beverage Code, then the enterprise shall conduct business under the name shown on the liquor license;
 - (14) if the applicant is an individual, the applicant's valid driver's license number or identification card issued by the Texas Department of Transportation;
 - (15) the name and residential address of each operator and owner;
 - (16) if different from the operator or owner, the name and address of the owner of the real property at which the enterprise is to be located and a copy of any lease or rental agreement;
 - (17) a reliable estimate of the number of employees, their job descriptions, and a description of the management structure;
 - (18) a sketch or diagram showing the configuration of the premises and total floor space occupied by the enterprise; 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 to an accuracy of plus or minus six (06) inches;
 - (19) a current inspection report from the Val Verde County Fire Marshal;
 - (20) a certification that the location of the proposed enterprise does not violate the distance requirements of these regulations as specified in SECTION VII; and
 - (21) a statement under oath that: (i) the applicant has personal knowledge of the information contained in the application and the information is true and correct; (ii) the applicant has read and understands these regulations; and (iii) the applicant authorizes the Sheriff to seek information to confirm any statements set forth in the application.
- (c) *Post Signs* -An applicant for a Class I SOB shall post signs at least 24 inches x 36 inches in size at the property where the SOB will be located in a location that is clearly visible from all public sidewalks, roads, or highways. If a side of the property is longer than three hundred (300) feet, one sign shall be posted in each three hundred (300) foot increment of the property. The sign shall legibly state the date that a SOB application was filed with the Sheriff and a phone number for the Val Verde County Sheriff's Office. Each letter on the sign must be at least 2 inches in size. The signs shall be posted within seven (07) days after the filing of the application for the Class I SOB and remain until the application has been approved or denied by the Sheriff. If the Sheriff determines that the signs have not been posted pursuant to these regulations, a written notice shall be issued to the applicant identifying the deficiencies and no action shall be taken on the application until the signs have been posted as required.
- (d) *Written Notice* - within ten (10) business days after the application is filed with the Sheriff, the applicant for a Class I SOB shall give written notice of the application to all

owners and lessees of real property within fifteen hundred (1,500) feet of the property on which the SOBP is requested, even if not located in the unincorporated areas of Val Verde County. A legible copy of the "Notice to Interested Parties" shall be included in the application form, the applicant's full legal name, address and description of the enterprise, and services offered. These owners and lessees are interested parties in any public hearing process connected with the SOBP, including revocation hearings, and shall have the same rights whether or not the property they own is in the unincorporated areas of Val Verde County.

(e) *Employee Application for a Class II SOBP* - an applicant for a Class II SOBP shall provide the following information:

- (1) a non-refundable fee established by Val Verde County Commissioners Court in the form of a money order, cashiers or bank check;
- (2) his/her full legal name and any other names used by the applicant;
- (3) a mailing address where the applicant can be reliably contacted;
- (4) the applicant's present residential address, current telephone number, and residential addresses for the three (03) years immediately preceding the date of the application, indicating dates of residence for each;
- (5) the applicant's business, occupation, and employment history for the three (03) years immediately preceding the date of the application, indicating applicable dates and addresses;
- (6) any documentation proving that the applicant is at least eighteen (18) years of age;
- (7) the applicant's height, eye color, and natural hair color; the Sheriff shall take two photographs of the applicant at the time of application; one photograph will be affixed to the SOBP and one photograph shall be retained by the Sheriff; new photographs may be required by the Sheriff upon application for renewal of the SOBP;
- (8) the applicant's criminal history with all criminal convictions and the date and place thereof; any criminal charge which the applicant entered a guilty plea, a plea of nolo contendere or which the applicant received deferred adjudication; but shall not include Class C misdemeanor traffic violations;
- (9) fingerprints if required by the Sheriff for the purpose of establishing identification;
- (10) any other identification and information as reasonably necessary to confirm the validity of information provided in the application; and

- (11) a statement under oath that: (i) the applicant has personal knowledge of the information contained in the application; and the information is true and correct; (ii) the applicant has read and understands these regulations; (iii) and the applicant authorizes the Sheriff to seek information to confirm any statements set forth in the application.

SECTION VIII – DISTANCE REQUIREMENTS

- (a) Proposed sexually oriented businesses shall be located:
- (1) A minimum of one thousand five hundred (1,500) feet from any existing or planned child care facility, school, dwelling, hospital, public building, public park, or church or place of religious worship. “Planned” means that steps have been taken toward the facility’s or structure’s development, including but not limited to a permit received, a plat approved, design work started, a bond received, or an order approved by a governmental entity’s governing body;
 - (2) A minimum of one (01) mile from a penal institution as defined by the Penal Code; and
 - (3) Not more than two (02) other Class I enterprises are located within a distance of two thousand (2,000) feet of the proposed location.
- (b) Property uses are considered if they were in existence at least thirty (30) days prior to the date of application for a Class I SOBP.
- (c) Distance measurements shall be made in a straight line from the nearest portion of the building or appurtenance used by the enterprise to the nearest portion of the building or appurtenance of the property used for the purposes identified above.
- (d) Distance requirements apply to buildings with an identified purpose whether or not the building is located within the unincorporated area of Val Verde County.

SECTION IX – REQUIREMENTS FOR EXISTING ENTERPRISES

- (a) If an existing Class I enterprise is in violation of the distance restrictions, the enterprise may submit verified proof that the business has not recouped the owner’s investment prior to the date of the application in lieu of the certification required in that section. Required documentation shall include:
- (1) the amount of the owner’s investment in the existing enterprise to the date the proof is submitted;
 - (2) the life expectancy of the enterprise;

- (3) the existence or nonexistence of lease obligations and any contingency clauses permitting termination of the lease;
 - (4) proof of the enterprise's income since it commenced operation and a projection of yearly income, which may be in the form of tax returns or reliable financial statements;
 - (5) a proposed schedule for amortization of the investment, to be considered in light of the intent of these regulations.
- (b) Upon evaluation of the proof and a finding that a proposed amortization is reasonable under the circumstances, the Sheriff shall approve a Contingent SOBP. The Sheriff may consult with the County Auditor and other county representatives in determining the reasonableness of the amortization proposal. The Contingent SOBP shall specifically state the reasons that the SOBP would have been denied but for the fact that the enterprise was in existence prior to the enactment of these regulations.
 - (c) The Contingent SOBP shall be renewed only through the amortization period. No SOBP shall be issued for that location beyond that period unless circumstances change so as to bring the enterprise into compliance with these regulations. The Contingent SOBP shall be subject to revocation and suspension pursuant to these regulations.
 - (d) Upon a finding that the proposal is not reasonable under the circumstances, the Sheriff shall make a reasonable counter-proposal or recommendation and the applicant may re-submit a revised proposal within fifteen (15) days of notice of the Sheriff's determination and counter-proposal. If the revised proposal is again found to be unreasonable by the Sheriff, the Sheriff shall make a final determination to deny the SOBP.
 - (e) Any enterprise or individual that is subject to these regulations at the time they become effective shall have sixty (60) days from the effective date to come into compliance, subject only to the provisions for a Contingent SOBP based on location.

SECTION X – PUBLIC HEARING ON HEALTH AND SAFETY

- (a) When the Sheriff receives a written request for a public hearing before a Class I SOBP application is approved or renewed, the Sheriff shall confirm that it is: from an interested party; that the request specifically identifies the SOBP application at issue; that the request is timely filed; and that the request specifically identifies health and safety concerns affected by the enterprise. The Sheriff shall then initiate the public hearing procedure as follows:
 - (1) A hearing official, appointed by Commissioners Court, shall be contacted by the Sheriff and a date set for the public hearing.

- (2) The hearing shall be scheduled at a public building within the precinct where the enterprise is to be located, or within an adjacent precinct.
 - (3) The hearing shall be scheduled either on a weekday at 7:00 p.m., or on a Saturday morning at 9:30 a.m.
 - (4) The Sheriff shall send the applicant a written Notice of Hearing at least ten (10) days in advance stating the date, time and place of the hearing, shall make a copy of the Notice of Hearing available to the public and the Val Verde County Clerk shall post the notice in the same manner as other public notices are posted in the County of Val Verde at least ten (10) days in advance. The County shall also post the Notice of Hearing on its website in the manner normally used to post public notices of hearings.
 - (5) Publicizing the hearing shall be the responsibility of the interested party who requested the hearing. The Sheriff shall make available to the public a copy of any request for hearing and the Notice of Hearing.
 - (6) The Sheriff shall place a sign at the location identified in the application containing the time and place of the hearing.
 - (7) The hearing may be rescheduled by the hearing official for good cause, including, for example, a large number of requests for a hearing that indicate strong public interest in the matter. The hearing may be rescheduled a second time if rescheduling was due to emergency circumstances such as extreme weather conditions. If rescheduled, the new Notice of Hearing shall be available to the public at the Sheriff's Office.
 - (8) The applicant may request that a court reporter make a record of the hearing. The applicant must make this request at least three (03) days prior to the hearing and bear the cost of making an official record and one (01) transcript for the County. The hearing official shall arrange for the court reporter to take the record of the hearing, including exhibits and testimony. One copy of the transcript shall be provided to the hearing official to become the property of the County.
- (b) If a request for a public hearing is received by the Sheriff after the SOBP has been issued or renewed, the hearing shall be scheduled when the next renewal application is filed. The Sheriff shall confirm that the request identifies health and safety concerns affected by the enterprise that are not addressed in the current SOBP and that the request is filed by an interested party. The request shall then be attached to the SOBP records. When a renewal application is submitted, the Sheriff shall initiate the hearing as set out in subsection (a).
- (c) If the request for a public hearing is deficient, the Sheriff shall return it to the person who submitted the request with a notation stating the deficiency. A request that does not comply with requirements stated in (a) or (b) above shall not extend the period of time in which a request for hearing may be filed.