

ORDER OF THE COMMISSIONERS COURT
OF HENDERSON COUNTY REGULATING THE LICENSING
OF SEXUALLY ORIENTED BUSINESSES

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

Comms.
Court
Minutes

WHEREAS, there is a potential for future sexually oriented businesses in the unincorporated area of Henderson County that require special regulation from the public safety agencies of the County in order to protect and preserve the health, safety, and welfare of the patrons of such businesses, as well as, the citizens of the County; and

WHEREAS, the Commissioners' Court finds that sexually oriented businesses can potentially be 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 which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

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

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature have a harmful 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 close proximity to each other, thereby contributing to urban and rural blight and downgrading the quality of life in the adjacent area; and

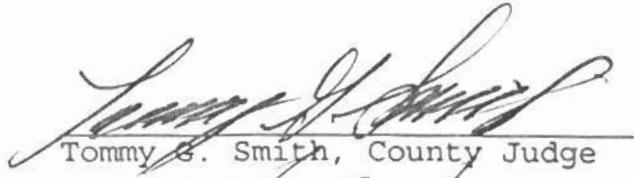
WHEREAS, the Commissioners' Court desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizens; protect the citizens from increase crime, preserve the quality of life; preserve the property values and character of surrounding neighborhoods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

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

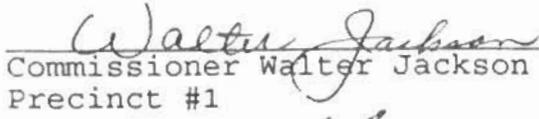
WHEREAS, it is not the intent of the Commissioners' Court to condone or legitimize the promotion of obscene material, and the Commissioners' Court recognizes that the prohibition of obscene material (not protected by the First Amendment) is enforceable through separate criminal sanctions under the Texas Penal Code.

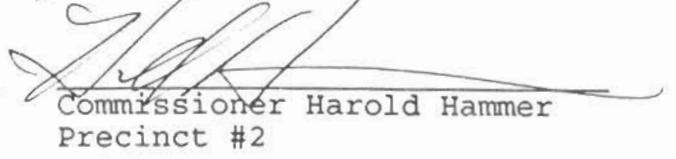
PURSUANT to the authority granted by the Constitution and 243.001 et. seq. Texas Local Government Code, the **Sexually Oriented Businesses Order** attached hereto is hereby ENACTED BY THE COMMISSIONERS' COURT OF HENDERSON COUNTY, TEXAS.

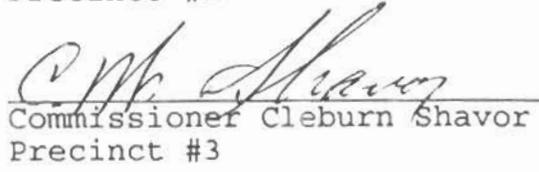
Signed this 12th day of February, 1996.

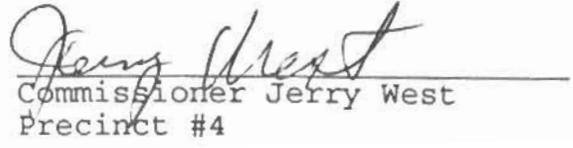


Tommy G. Smith, County Judge


Commissioner Walter Jackson
Precinct #1


Commissioner Harold Hammer
Precinct #2


Commissioner Cleburn Shavor
Precinct #3


Commissioner Jerry West
Precinct #4

SEXUALLY ORIENTED BUSINESS ORDER

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SEC.1A-1. Purpose and Intent.

(a) It is the purpose of this Order to regulate sexually oriented businesses to promote the health, safety, and general welfare of the citizens of Henderson County by minimizing the detrimental effects of sexually oriented businesses to residential and business neighborhoods and to establish reasonable and uniform regulations to prevent the unrestricted locating of sexually oriented businesses within the unincorporated areas of Henderson County. The provisions of this Order have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this Order to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors for sexually oriented entertainment to their intended market. The promotion of obscene material (not protected by the First Amendment) is enforceable through separate criminal sanctions under the Texas Penal Code.

(b) It is the intent of the Henderson County Commissioners' Court that the locational regulations of this Order are promulgated pursuant to 243.001 et. seq. of Texas Local Government Code, as they apply to sexually oriented businesses.

SEC. 1A-2 Definitions.

In this Order:

(1) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug operated or electronically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished

or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical area" as defined in Sec. 1A-2 Subsections (25 & 26) of this Order.

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

(A) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical area" as defined in Sec. 1A-2 Subsections (25 & 26) of this Order; or

(B) Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities" as defined in Sec. 1A-2 Subsection (26) of this order.

(3) ADULT CABARET means a night club, bar, restaurant, or similar commercial establishment which regularly features:

(A) Persons who appear in a state of nudity; or

(B) Live performances which are characterized by the exposure of "specified anatomical area" or by "specified sexual activities" as defined in Sec. 1A-2 Subsections (25 & 26) of this Order; or

(C) Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" of "specified anatomical area" as defined in Sec. 1A-2 Subsections (25 & 26) of this Order.

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

(A) Offers accommodations to the public for any form of consideration; provides patrons which closed-circuit television transmissions, film, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depictions or description of "specified sexual activities" or "specified anatomical areas" as defined in Sec. 1A-2 Subsections (25 & 26) of this Order; and has a sign visible from the public right-of-way which 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 10 hours; or

(C) Allow 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.

(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 and are characterized by the depiction or description of "specified sexual activities" or "specified anatomical area" as defined in Sec. 1A-2 Subsections (25 & 26) of this Order.

(6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical area" or by "specified sexual activities" as defined in Sec. 1A-2 Subsections (25 & 26) of this Order.

(7) APPLICANT means a person who must apply for a license by this Act.

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

(9) CHURCH or PLACE OF RELIGIOUS WORSHIP means a building in which persons regularly assemble for worship, intended primarily for purposes connected with faith, or for propagating a particular form of belief.

(10) 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.

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

- (12) ESTABLISHMENT means and includes any of the following:
- (A) The opening or commencement of any sexually oriented business as a new business;
 - (B) The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
 - (C) The addition of any sexually oriented business to any other existing sexually oriented business;
 - (D) The relocation of any sexually oriented business; or
 - (E) A location and place of business.

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

(14) NUDE MODELING STUDIO means any place where a person who appears in a state of nudity or displays "specified anatomical areas" as defined in Sec. 1A-2 Subsection (25) of this Order is provided to be observed, sketched, drawn, painted, sculptures, photographed, or similarly depicted by other persons who pay money or any form of consideration.

(15) NUDITY or a STATE OF NUDITY means:

- (A) The appearance of a human bare buttock, anus, male genitals, female genitalia, pubic regions or female breasts; or
- (B) A state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitalia, pubic region or areola of the female breast.

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

(17) PUBLIC PARK means a tract of land maintained by the Federal, State or a Local Government for the recreation and enjoyment of the general public.

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

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

(20) RESIDENCE means a structure that is adapted for the overnight accommodation of persons, and includes:

- (A) Each separately secured or occupied portion of the structure; and
- (B) Each structure appurtenant to or connected with the structure.

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

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

- (A) Physical contact in the form of wrestling or tumbling between persons or 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.

(23) 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 modeling studio, sexual encounter center, or other commercial enterprise, the primary business of which is the offering of a service or the selling, renting or exhibiting, or devices, or any other items intended to provide sexual stimulation or sexual gratification to the customer.

(24) SHERIFF means the Sheriff of Henderson County or his designated agent.

(25) SPECIFIED ANATOMICAL AREAS means human genitals in a state of sexual arousal.

(26) 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;

(27) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor area occupied by the business by more than twenty-five (25) percent, as the floor area exists on the effective date of this Order.

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

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

SEC. 1A-3 CLASSIFICATION.

Sexually oriented businesses are classified as follows:

- (1) Adult arcades;
- (2) Adult bookstores or adult video stores;
- (3) Adult cabarets;
- (4) Adult motels;
- (5) Adult motion picture theaters;
- (6) Adult theaters;
- (7) Escort agencies;
- (8) Nude modeling studios; and
- (9) Sexual encounter centers.

(a) The following are required to be licensed:

- (1) All owners, clerks, and employees of a sexually oriented business are required to be licensed to operate or work in said business. The term "employees" includes dancers or others who work or perform in a sexually oriented business for tips or other compensation, and do not earn wages or a salary.
- (2) All corporations or directors of corporations of any sexually oriented business and their employees.
- (3) All partners in any sexually oriented business and their employees.
- (4) All executive officers, corporations, partners, and lien holders and their employees which are associated with any sexually oriented business requiring a license under this Order.

(b) No person shall work for any sexually oriented business without having on his or her person, at all times while at work, a valid current Texas driver's license or a State issued identification card which depicts a picture of the person and indicates the person's date of birth.

(c) All potential employees and/or clerks of sexually oriented businesses must comply with Sec. 1A-4(a)(b)(c)(h), 1A-6(b), 1A-6, 1A-7, 1A-9, 1A-10, 1A-15, 1A-16, 1A-17, 1A-18 as outlines in this Order and not be in violation of Sec. 1A-5(a)(1), (3), (4), (6), (8) or (10) as outlined in this Order before being issued an identification card to work at the business. Application forms will be provided by the Henderson County Sheriff and the determination of compliance must be made by him within sixty (60) days from time of application.

(d) An application for a sexually oriented business license must be made on a form provided by the Henderson County Sheriff. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Applicants who must comply with Section 1A-20 of this Order shall submit a diagram meeting the requirements of Section 1A-20 of this Order. The designated scale must be clearly marked in the right corner of the sketch or diagram. All locational requirements must be approved by the Henderson County Sheriff within forty-five (45) days from the time of the application is filed.

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

(f) If a person who wishes to operate a sexually oriented business is an individual, he must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has an interest in the business must sign the application for a license as applicant and shall be considered a licensee if a license is granted.

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

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

(i) Each applicant for a business license shall, upon the filing of the application and payment of the filing fees, place signs (at least 24 inches x 36 inches in size) which provide notification and information specifically stating "SEXUALLY ORIENTED BUSINESS LICENSE APPLICATION PENDING" and the date on which the application was filed. All lettering on the signs must be at least 1 and 1/2 inches x 2 inches in size for each letter on the sign. The signs must be of sufficient quantities to be placed upon the property so as to identify it as being subject to a proposed sexually oriented license. It shall be the duty of each applicant as to each particular application to erect said signs along all the property's public road or highway frontage, then signs shall be placed upon the closest available right-of-way, and upon the property. One sign shall be erected for each three hundred foot increment of each public road or highway frontage on said property existing, or any part thereof. Said signs shall be erected not less than fourteen (14) days after the filing of the application for the sexually oriented business license and remain erected until the application has been approved by the Henderson County Sheriff.

(j) Every applicant for a sexually oriented business license shall give notice of the application by publication at his own expense in two consecutive issues of a newspaper of general circulation published in Henderson County, Texas. The notice shall be printed in 10-point boldface type and shall include the following: (1) the fact that a sexually oriented business license has been applied for; (2) the exact location of the place of business for which the permit is sought; (3) the names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and (4) if the applicant is a corporation, the names and titles of

all officers. Such notice shall be printed not less than fourteen (14) days after the application is filed with the Henderson County Sheriff.

(k) An applicant for a renewal permit on an existing business at the time of the passage of this Order is not required to publish notice or meet the posting requirements of (i) and (j) of Sec. 1A-4.

(1) All applicants must file a sworn affidavit that the application is true and correct.

(1) If the applicant is a partnership, all partners must file sworn affidavits that the application is true and correct.

(2) If the applicant is a corporation, the President and the Secretary must file sworn affidavits that the application is true and correct.

SEC. 1A-5 ISSUANCE OF LICENSE.

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

(1) An applicant is under 18 year of age.

(2) An applicant or an applicant's spouse is overdue in his payment to Henderson County of: taxes, fees, fines, or penalties assessed against him or imposed upon him in relation to a sexually oriented business. The Henderson County Tax Assessor shall make this determination and report his findings to the Henderson County Sheriff within forty-five (45) days from the time the application is filed.

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

application form.

- (4) An applicant or an applicant's spouse has been convicted of a violation of a provision of this Order, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application. The fact that a conviction is being appealed shall have no effect. If the license is denied because the Applicant or the Applicant's spouse has been convicted of a violation of this Order and his or her case has been appealed then at a later date the conviction is overturned, then Henderson County Sheriff's Department shall review the application for the license for approval within 30 days of being notified by the Applicant of being found innocent.
- (5) The premises to be used for the sexually oriented business have not been approved by the Henderson County Sheriff as being in compliance with this Order. Reports of compliance or non-compliance with this Order must be completed by the Henderson County Sheriff within forty-five (45) days from the time the application is filed.
- (6) The license fee required by this Order has not been paid.
- (7) An applicant has failed to comply with the requirements of Sec. 1A-4(i), (j) or (k) of this Order unless exempt under Sec. 1A-4(l) of this Order.
- (8) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding twelve (12) months, and has demonstrated that he is unable to operate or manage a sexually oriented business premises in a peaceful, and law-abiding manner, thus necessitating action by law enforcement officers two separate occasions.
- (9) An applicant or the proposed establishment is in violation of, or is not in compliance with Sections 1A-7, 1A-8, 1A-13, 1A-14, 1A-16, 1A-17, 1A-18, 1A-19, 1A-20 or 1A-21 of this Order.

- (10) An applicant or an applicant's spouse has been convicted of a crime
- (A) Involving:
- (i) any of the following offenses as described in Chapter 43 of the Texas Penal Code:
 - (aa) Prostitution;
 - (bb) Promotion of Prostitution;
 - (cc) Aggravated promotion of Prostitution;
 - (dd) Compelling Prostitution;
 - (ee) Obscenity;
 - (ff) Sale, distribution, or display of harmful material to a minor;
 - (gg) Sexual performance by a child
 - (hh) Possession of Child Pornography.
 - (ii) Any of the following offenses as described in Chapter 21 of the Texas Penal Code;
 - (aa) Public Lewdness;
 - (bb) Indecent Exposure;
 - (cc) Indecency with a Child;
 - (iii) Sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
 - (iv) Incest, solicitation of a child, or harboring a runaway child as described in Chapter 25 of the Texas Penal Code;
 - (v) Criminal Attempt, conspiracy, or solicitation to commit any of the foregoing offenses as described in the Texas Penal Code;
- (B) For which:
- (i) less than two (2) years have elapsed since the date of conviction, or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

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

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse. If the license is denied because the Applicant or the Applicant's spouse has been convicted of a violation of this Order and his/her case has been overturned, then the Henderson County Sheriff's Department shall review the application for the license for approval within 30 days of being notified by the Applicant of being found innocent.

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

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

(e) It shall be the duty of the Henderson County Sheriff to report the findings under Section 1A-5(a)(10) and 1A-5(c) of this Order within forty-five (45) days from the time the application is filed.

(11) No license shall be issued if the applicant is in violation of any Health and Safety statutes or ordinances of the State of Texas or of Henderson County, Texas.

(12) Any sexually oriented business which is in operation on the effective date of this Order shall have thirty (30) days within which time to file an application with the Henderson County Sheriff. During the sixty (60) day period as described in Section 1A-16(a) of this Order said applicant who was in business on the effective date of this Order cannot otherwise be regulated by this Order.

SEC. 1A-6 FEES.

(a) The annual fee for a sexually oriented business license is \$500.00.

(b) Each employee of a sexually oriented business shall pay a \$50.00 annual fee with each application.

(c) Fees in Sec. 1A-6(a)(b) are subject to change with 60 days notice with approval by Henderson County Commissioners' Court.

SEC. 1A-7 VIOLATIONS.

(a) It shall be a violation of this Order for any person to own or operate a sexually oriented business at a location in the parts of Henderson County outside the corporate limits of a city unless the sexually oriented business possesses a valid license issued by the Henderson County Sheriff's Department in accordance with the terms of this Order.

(b) It shall be a violation of this Order for any person to be employed at or work at a sexually oriented business at a location in the parts of Henderson County outside the corporate limits of a city unless the person shall possess a valid license issued by the Henderson County Sheriff's Department in accordance with the terms of this Order. This subsection includes individuals who dance or perform for tips or other compensation but may not earn wages or a salary.

(c) It shall be a violation of this Order for any person to employ, in a sexually oriented business at a location in parts of Henderson County outside the corporate limits of a city, a person under the age of 18 years. This subsection includes individuals who dance or perform for tips or other compensation but may not earn wages or a salary.

SEC 1A-8 INSPECTION.

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

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

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

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

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

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

- (1) violated or is not in compliance with any portion of this Order;
- (2) engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (3) refused to allow an inspection of the sexual oriented business premises as authorized by this Order.
- (4) knowingly permitted gambling by any person on the sexual oriented business premises;
- (5) demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

(a) The Henderson County Sheriff shall revoke a license if a cause of suspension in Section 1A-10 of this Order occurs and the license has been suspended within the preceding twelve (12) months.

(b) The Henderson County Sheriff shall revoke a license if he determines that:

- (1) a licensee gave false or misleading information in the material submitted to the Henderson County Sheriff during the application process;
- (2) a licensee or an employee has knowingly allowed possession, use or sale of controlled substances on the premises;
- (3) a licensee or an employee has knowingly allowed prostitution on the premises;
- (4) a licensee or an employee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
- (5) a licensee has been convicted of an offense listed in Section 1A-5(a)(11)(A) for which the time period required in Section 1A-5(a)(10)(B) has not elapsed;
- (6) on two or more occasions within a twelve (12) month period, a person or persons committed an offense occurring in, or on the licensed premises of a crime listed in Section 1A-5(a)(10)(A), for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time of the offenses were committed;
- (7) a licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code; or

- (8) a licensee is delinquent in payment to Henderson County for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the sexually oriented business.
- (9) a licensee has violated a health and/or safety statute or ordinance as listed in Section 11.

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

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

(e) When the Henderson County Sheriff revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the Henderson County Sheriff finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (b)(5), an applicant may not be granted another license until the appropriate number of years required under Section 1A-5(a)(10)(B) has elapsed.

SEC 1A-12 APPEAL.

If the Henderson County Sheriff denies the issuance of a license, or suspends or revokes a license, he shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. The aggrieved party may appeal the decision of the Henderson County Sheriff to a district court in this county on trial de novo basis.

Filing an appeal in a district court stays the Henderson County Sheriff in suspending or revoking a license until the district court makes a final decision. All decisions of the Henderson County Sheriff become final within thirty (30) days. The applicant or licensee shall bear the burden of proof in court.

SEC. 1A-13 TRANSFER OF LICENSE.

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

SEC. 1A-14 LOCATION OF SEXUALLY ORIENTED BUSINESSES.

(a) A person commits an offense if he operates or causes to be operated a sexually oriented business within 1,500 feet of:

- (1) a church or place of religious worship;
- (2) a public or private elementary or secondary school;
- (3) a child care facility;
- (4) a boundary of residential district as defined in this Order;
- (5) a public park;
- (6) the property line of a lot devoted to a residential use as defined in this Order; or
- (7) a residence;

(b) A person commits an offense if he operates or causes to be operated a sexually oriented business within 1,000 feet of another sexually oriented business.

(c) A person commits an offense if he causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase in floor area of any sexually oriented

business in any building, structure, or portion thereof containing another sexually oriented business.

(d) For the purposes of Subsection (a), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church or place of religious worship, or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot.

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

(f) Any sexually oriented business already operating on the effective date of this Order that is in violation of Subsections (a), (b), or (c) of this section shall be deemed a nonconforming use. Such use will be permitted to continue for a period not to exceed six (6) months, subject to extensions, unless sooner terminated for any such reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

(g) The Henderson County Sheriff may, in his direction, grant an extension for operation beyond the six (6) month period as stated in Subsection (f) above, if the owner or operator of the

existing sexually oriented business proves that he is unable to recoup his investment in such existing business by that date. In order to secure an extension of time, the owner or operator must submit to the Henderson County Sheriff's Department a written request for such extension sixty (60) days prior the expiration of the six (6) month period in Subsection (f) above. No application for extension received by the Henderson County Sheriff's Department after this date will be considered. Such written request shall set forth the following information:

- (1) the amount of the owner's investment in the existing enterprise through the effective date of this Order;
- (2) the amount of such investment that has been or will be realized through the date of the filing of the application for an extension as set out above;
- (3) the life expectancy of the existing enterprise;
- (4) the existence or non-existence of lease obligations, as well as, any contingency clauses therein permitting termination of such lease.

This information shall be supported by relevant documentary evidence such as financial statements and tax records. Copies of such documentary evidence must be attached to the request for extension.

The Henderson County Sheriff's Department shall notify an applicant for an extension, of the place and time of the hearing to be held on such request before the Henderson County Sheriff. After such hearing, the Henderson County Sheriff shall issue a written order on the request for the extension. The decision of the Henderson County Sheriff in this regard is appealable to a district court of this county within thirty (30) days from the date of the final decision of the Henderson County Sheriff. Extensions that are granted shall specify a date certain for closure, and shall not be valid for operation at any other location.

(h) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a church or place of religious worship, public or private elementary or secondary school, public park, residential district, or residential lot within 1,500 feet of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

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

SEC. 1A-15 EXTENSION FROM LOCATION RESTRICTIONS.

(a) If the Henderson County Sheriff denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 1A-14 of this Order, then the applicant may, not later than ten (10) calendar days after receiving notice of the denial, file with the Henderson County Judge a written request for an exemption from the locational restrictions of Section 1A-14.

(b) If the written request is filed with the Henderson County Judge within the ten (10) day limit, the Permit and License Appeal Board shall consider the request. The Henderson County Judge shall set a date for the hearing within sixty (60) days from the date the written request is received. The Permit and License Appeal Board shall consist of five residents of Henderson County, one from each of the Commissioners' precincts as appointed by the Precinct Commissioners, and one appointed by the Henderson County Judge. Each board member will serve a one (1) year term, with the Chairperson of the board being appointed by a majority vote of the

five (5) member board.

(c) A hearing by the Board may proceed if at least three (3) of the board members are present. The Board shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

(d) The Permit and License Appeal Board may, in its discretion, grant an exemption from the locational restrictions of Section 1A-14 if it makes the following findings:

- (1) that the location of the proposed sexually oriented business will not have a detrimental effect on nearby properties or be contrary to the public safety or welfare;
- (2) that the granting of the exemption will not violate the spirit and intent of this Order;
- (3) that the location of the proposed sexually oriented business will not downgrade the property values or quality of life in the adjacent areas or encourage the development of urban or rural blight;
- (4) that the location of an additional sexually oriented business in the area will not be contrary to any program of neighborhood conservation nor will it interfere with any efforts of renewal or restoration; and
- (5) that all other applicable provisions of this Order will be observed.

(e) The Board shall grant or deny the exemption by a majority vote. Failure to reach a majority vote shall result in denial of the exemption. Disputes of fact shall be decided on the basis of a preponderance of the evidence. Decisions of the Permit and License Appeal Board are applicable to a district court of Henderson County. Appeals from the Permit and License Appeal Board must be made in writing to a district court of this County within thirty (30) days from the date of the final decision of the Appeal

Board. After thirty (30) days, all decisions of the permit and Appeal Board become final.

(f) If the Board grants the exemption, the exemption is valid for six (6) months from the date of the Board's decision. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 1A-14 until the applicant applies for and receives another exemption.

(g) If the Board denies the exemption, the applicant may not re-apply for an exemption until at least twelve (12) months have elapsed since the date of the Board's actions.

(h) The granting of an exemption does not exempt the applicant from any other provisions of this Order other than the locational restrictions of Section 1A-14.

SEC. 1A-16 ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

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

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

SEC. 1A-17 ADDITIONAL REGULATIONS FOR NUDE MODELING STUDIOS.

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

(b) A person under the age of 18 years commits an offense if he appears in a state of nudity in or on the premises of a nude modeling studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open

to public view or persons of the opposite sex.

(c) A person commits an offense if he appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a nude modeling studio premises which can be viewed from the public right-of-way.

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

SEC. 1A-18 ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS.

(a) A person commits an offense if he knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.

(b) A person under the age of 18 years commits an offense if he knowingly appears in a state of nudity in or on the premises of an adult theater or adult motion picture theater.

(c) It is a defense to prosecution under Subsections (a) and (b) of this section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.

SEC. 1A-19 ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(a) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two 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 and that term is defined in this Order.

(b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license, he rents or 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.

(c) For purposes of Subsection (b) of this section, the terms "rent" and "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

SEC. 1A-20 REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.

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

- (1) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which persons 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 designated scale must be clearly marked in the right corner of the sketch or diagram. The Henderson County Sheriff may waive the foregoing diagram for renewal applications, if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

- (2) The application shall be sworn to be true and correct by the applicant.
- (3) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Henderson County Sheriff or his designee.
- (4) 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.
- (5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of very area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of 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. Viewing booths must be separated at least twelve (12) inches from the exterior walls of any other viewing booths by open space.

- (6) 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 area specified in Subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (1) of this section.
- (7) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) footcandle as measured at the floor level.
- (8) 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.

(b) A person having a duty under Subsections (1) through (8) of Subsection (a) above, commits an offense if he knowingly fails to fulfill that duty.

(c) All locational requirements of this section must be approved by the Henderson County Sheriff within forty-five (45) days from the time the application is filed.

SEC. 1A-21 DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS.

(a) A person commits an offense if, in a sexually oriented business establishment open to persons under the age of 17 years, he/she displays a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated

to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

- (1) human sexual intercourse, masturbation, or sodomy;
- (2) fondling or other erotic touching of human genitals, pubic region, buttocks, or female breasts;
- (3) less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or
- (4) human male genitals in a discernibly turgid state, whether covered or uncovered.

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

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

SEC. 1A-22 DEFENSES.

(a) It is a defense to prosecution under Section 1A-4(a), 1A-14, or 1A-17(d) of this Order that a person appearing in a state of nudity did so in a modeling class operated:

- (1) by a proprietary school licensed by the State of Texas; a college, or university supported entirely or partly by taxation;
- (2) by a private college or university which maintains and operates educational programs in which credits are transferrable to a college, junior college, or university supported entirely or partly by taxation; or
- (3) in a structure:
 - (A) which has no sign visible from the exterior of the structure and no other advertising that indicates a

- nude person is available for viewing; and
- (B) where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
 - (C) where no more than one nude model is on the premises at any one time.

(b) It is a defense to prosecution under Section 1A-4(a) or Section 1A-14 of this Order that each item of descriptive, printed, film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.

SEC. 1A-23 ENFORCEMENT.

(a) A person commits an offense if the person violates any provision or term of this Order. An offense for violating this Order is a Class A misdemeanor.

(b) The County may sue in district court for an injunction to prohibit the violation of any term or provision of this Order.

SEC. 1A-24 SEVERABILITY.

The terms, provisions, and conditions of this Order are severable.

SEC. 1B-1 TIME OF EFFECT.

This order takes effect on February 13, 1996 at 12:01 a.m.