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EL PASO COUNTY COMMISSIONERS COURT ORDER

RELATING TO LICENSING REQUIREMENTS AND REGULATIONS

FOR SEXUALLY ORIENTED BUSINESSES WITHIN EL PASO COUNTY

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WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as citizens of the County; and

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

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

WHEREAS, the Commissioners Court desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from

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crime; preserve the quality of life; preserve the character of surrounding neighborhoods and deter the spread of urban blight; and

WHEREAS, the County of El Paso recognizes its constitutional duty to interpret, construe, and amend its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any Order, the County of El Paso and the Commissioners Court accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Texas Constitutions, Texas State Statutes, and the Texas Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this Order to suppress any speech activities protected by the United States Constitution or the Texas Constitution, but to enact legislation to further the content-neutral governmental interests of the County of El Paso, to-wit, the controlling of secondary effects of sexually oriented businesses.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSIONERS COURT OF THE COUNTY OF EL PASO:

That the current Sexually Oriented Business Order of El Paso County be repealed and replaced with the following:

Article One: Rationale and Findings

- A. Purpose. It is the purpose of this Order to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the County of El Paso, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County of El Paso. The provisions of this Order 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 effect of this Order to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Order to condone or legitimize the distribution of obscene material.
- B. Findings and Rationale. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Commissioners Court, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L. C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Fantasy Ranch, Inc. v. City of Arlington*, No. 04-11337, 2006 WL 2147559 (5th Cir. 2006); *N.W. Enters. v. City of Houston*, 352 F.3d 162 (5th Cir. 2003); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *BGHA, LLC v. City of Universal City*, 210 F. Supp. 2d (W.D. Tex. 2002), *af'd* 340 F.3d 295 (5th

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Cir. 2003); *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Woodall v. City of El Paso*, 49 F.3d 1120 (5th Cir. 1995); *J&B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362 (5th Cir. 1998); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988); *TK's Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994); *Heideman v. South Salt Lake City*, 342 F.3d 1182 (10th Cir. 2003); *Lady J. Lingerie, Inc. v. City of Jacksonville*, 973 F. Supp. 1428 (M.D. Fla. 1997), *af'd* 176 F.3d 1358 (11th Cir. 1999); *Ctr for Fair Public Policy v. Maricopa County*, 336 F.3d 1152 (9th Cir. 2003); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Reliable Consultants, Inc. v. City of Kennedale*, Case No. 4:05-CV-166-A (N.D. Tex., May 16, 2005); *Sensations, Inc. v. City of Grand Rapids*, 2006 WL 2504388 (W.D. Mich., Aug. 28, 2006); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003);

And based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas – 1986; Indianapolis, Indiana – 1984; Garden Cove, California – 1991; Houston, Texas – 1983; Phoenix, Arizona – 1979, 1995-98; Chattanooga, Tennessee – 1999-2003; Minneapolis, Minnesota – 1980; Los Angeles, California – 1977; Whittier, California – 1978; Spokane, Washington – 2001; St. Cloud, Minnesota – 1994; Littleton, Colorado – 2004; Oklahoma County of El Paso, Oklahoma – 1986; Dallas, Texas – 1997, 2004; Greensboro, North Carolina – 2003; Kennedale, Texas – 2005; Effingham, Illinois – 2005; Amarillo, Texas – 1977; El Paso, Texas – 1986; New York, New York Times Square – 1994; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota),

The Commissioners Court finds:

- (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, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (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.
- (3) Each of the foregoing negative secondary effects constitutes a harm, which the County of El Paso has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the County of El Paso's rationale for this Order, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the County of El Paso's interests in regulating sexually oriented businesses extend to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the County of El Paso. The County of El Paso finds that

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the cases and documentation relied on in this Order are reasonably believed to be relevant to said secondary effects.

Article Two: Definitions

For purposes of this Order, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

- A. “*Adult Bookstore*” or “*Adult Video Store*” shall mean an establishment 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, compact discs, digital video discs, or other visual representations which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas.
- B. “*Adult Cabaret*” shall mean a nightclub, bar, juice bar, restaurant, bottle club, or other commercial establishment, whether or not alcoholic beverages are served, whose principal business is the offering to customers of live entertainment that features persons who appear semi-nude.
- C. “*Adult Lounge*” shall mean an adult cabaret, as defined above, which is a permitted or licensed premises pursuant to the Texas Alcoholic Beverage Code, where alcoholic beverages may be served or sold.
- D. “*Adult Motion Picture Theater*” or “*Adult Movie Theatre*” shall mean an establishment, that contains a room with a screen or projection area, whose primary business is the exhibition to customers of films, motion pictures, videocassettes, digital video disc, slides, any electronically produced media, or similar photographic reproductions which are distinguished by or characterized by an emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas or intended to provide sexual stimulation or sexual gratification to such customers and are regularly shown to more than five persons for any form of consideration.
- E. “*Characterized by*” shall mean describing the essential character or quality of an item. As applied in this Order, no business will be classified as a sexually oriented business by virtue of showing, selling, or renting materials rated NC- 17 or R by the Motion Picture Association of America.
- F. “*Conduct any business in a sexually oriented business*” shall mean any person who engages in any one (1) or more of the following:
 - 1. Operates a cash register, cash drawer, or other depository on the premises of the sexually oriented business where cash funds or records of credit card or other credit transactions generated in any manner by the operation of the sexually oriented business or the activities of the premises of the sexually oriented business;
 - 2. Displays or takes orders from any customer for any merchandise, goods,

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entertainment or other services offered on the premises of the sexually oriented business;

3. Delivers or provides to any customer any merchandise, goods, entertainment, or other services offered on the premises of the sexually oriented business;
 4. Acts as a door attendant to regulate entry of customers or other persons into the premises of the sexually oriented business; or
 5. Supervises or manages other persons in the performance of any of the foregoing activities on the premises of the sexually oriented business.
- G. “*County of El Paso*” shall mean County of El Paso, Texas.
- H. “*Employee*” shall mean any person, whether or not the person is designated as an employee, independent contractor, agent or otherwise, who renders any service whatsoever to the customers of a sexually oriented business, works in or about a sexually oriented business or who conducts any business in a sexually oriented business and who receives or has the expectation of receiving any compensation from the operator, or customers of the sexually oriented business. By way of example, rather than limitation, the term includes the operator and other management personnel, clerks, dancers, models and other entertainers, food and beverage preparation and service personnel, door persons, bouncers, and cashiers. It is expressly intended that this definition cover not only conventional employer-employee relationships but also independent contractor relationships, agency relationships and any other scheme or system 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.
- I. “*Establish*” or “*Establishment*” shall mean and include any of the following:
1. The opening or commencement of any sexually oriented business as a new business; or
 2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; or
 3. The addition of any sexually oriented business to any other existing sexually oriented business.
- J. “*Hearing Officer*” shall mean an attorney who is licensed to practice law in Texas, and retained to serve as an independent tribunal to conduct hearings under this Order.
- K. “*Influential Interest*” shall mean any of the following: (1) the actual power to operate the sexually oriented business or control the operation, management or policies of the sexually oriented business or legal entity which operates the sexually oriented business, (2) ownership of a financial interest of thirty percent (30%) or more of a business or of

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any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, managing member, managing director, etc.) in a legal entity which operates the sexually oriented business.

- L. “*Licensee*” shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In the case of an “employee” it shall mean the person in whose name the sexually oriented business employee license has been issued.
- M. “*Manager*” shall mean any person who supervises, directs, or manages any employee of a sexually oriented business or any other person who conducts any business in a sexually oriented business with respect to any activity conducted on the premises of the sexually oriented business, including any on-site manager.
- N. “*Nudity or a State of Nudity*” shall mean the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.
- O. “*On-Site Manager*” shall mean a person charged by an owner or operator of a sexually oriented business with the responsibility for direct supervision of the operation of the sexually oriented business and with monitoring and observing all areas of the sexually oriented business to which customers are admitted at all times during which the sexually oriented business is open for business or customers are on the premises of the sexually oriented business.
- P. “*Operate or Cause to Operate*” shall mean to cause to function or to put or keep in a state of doing business.
- Q. “*Operator*” shall mean any person on the premises of a sexually oriented business who causes the business to function or who puts or keeps in operation the business or who is authorized to manage the business or exercise overall operational control of the business premises. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.
- R. “*Own,*” “*Owner,*” or “*Owners*” shall mean the proprietor if a sole proprietorship, all partners (general and limited) if a partnership, or all officers, directors and persons holding ten (10) percent or more of the outstanding shares if a corporation.
- S. “*Permit Office*” shall mean the office established by the El Paso County Commissioners Court to issue, renew, suspend and revoke permits for sexually oriented businesses and employees of sexually oriented businesses
- T. “*Person*” shall mean an individual, proprietorship, partnership, corporation, association, or other legal entity.

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- U. “*Premises*” shall mean the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a sexually oriented business license.
- V. “*Principal business activity*” shall mean where the commercial establishment:
1. Has a substantial portion of its displayed merchandise which consists of said items; or
 2. Has a substantial portion of the wholesale value of its displayed merchandise which consists of said items; or
 3. Has a substantial portion of the retail value of its displayed merchandise which consists of said items; or
 4. Derives a substantial portion of its revenues from the sale or rental, for any form of consideration of said items; or
 5. Maintains a substantial section of its interior business space for the sale or rental of said items; or
 6. Maintains an “adult arcade,” which 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 regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are characterized by their emphasis upon matter exhibiting specified sexual activities or specified anatomical areas.
- W. “*Regularly*” means and refers to the consistent and repeated doing of the act so described.
- X. “*Semi-Nude or State of Semi-Nudity*” means 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 shall include the lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breasts exhibited by a bikini, dress, blouse, shirt, leotard or similar wearing apparel provided the areola is not exposed in whole or in part.
- Y. “*Sexual Device*” means any three (3) dimensional object designed and marketed for stimulation of the male or female human genitals, anus, female breast, or for sadomasochistic use or abuse of oneself or others and shall include devices such as dildos, vibrators, penis pumps, and physical representations of the human genital organs. Nothing in this definition shall be construed to include devices primarily intended for protection against sexually transmitted diseases or for preventing pregnancy or devices primarily intended for medical or healthcare use.

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- Z. “*Sexual Device Shop*” means a commercial establishment that regularly features sexual devices. Nothing in this definition shall be construed to include any pharmacy, drug store, medical clinic, or any establishment primarily dedicated to providing medical or healthcare products or services, nor shall this definition be construed to include commercial establishments which do not restrict access to their premises by reason of age.
- AA. “*Sexually Oriented Business*” means an “adult bookstore,” an “adult video store,” an “adult cabaret,” an “adult lounge,” an “adult motion picture theater,” an “adult movie theatre,” or a “sexual device shop.”
- BB. “Sheriff’s Office” means the El Paso County Sheriff’s Office.
- CC. “*Specified Anatomical Areas*” means and includes:
1. Less than completely and opaquely covered: human genitals, pubic regions, buttock, and female breast below a point immediately above the top of the areola; and
 2. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.
- DD. “*Specified Criminal Activity*” means any of the following specified crimes for which less than five (5) years elapsed since the date of conviction or the date of the release from confinement imposed for that conviction, whichever is the later date:
1. Prostitution; promotion of prostitution; aggravated promotion of prostitution; compelling prostitution; obscenity; sale, distribution, or display of harmful material to minor; sexual performance by a child; employment harmful to children; or possession or promotion of child pornography as defined in Chapter 43 of the Texas Penal Code;
 2. Public lewdness; indecent exposure; or indecency with a child as defined in Chapter 21 of the Texas Penal Code;
 3. Sexual assault or aggravated sexual assault as defined in Chapter 22 of the Texas Penal Code;
 4. Criminal attempt, solicitation, or conspiracy to commit any of the foregoing offenses as defined by Chapter 15 of the Texas Penal Code; or
 5. Any offense in another jurisdiction that, had the predicate act(s) been committed in Texas, would have constituted any of the foregoing offenses.
- EE. “*Specified Sexual Activity*” means any of the following:
1. Intercourse, oral copulation, masturbation, or sodomy; or
 2. Excretory functions as part of or in connection with any of the activities described in (1) above.

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- FF. “*Substantial*” means at least thirty-five percent (35%) of the item(s) so modified.
- GG. “*Transfer of Ownership or Control*” of a sexually oriented business shall mean any of the following:
1. The sale, lease, or sublease of the business;
 2. The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or
 3. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
- HH. “*Viewing Room or Booth*” shall mean the room, booth or area where a patron of a sexually oriented business would ordinarily be positioned while watching a film, videocassette, digital video disc, any electronically produced media or other video production which are characterized by their emphasis upon the display of specified sexual activities or specified anatomical areas.

Article Three: Classifications and Scope

The classifications for sexually oriented businesses shall be as follows:

- A. Adult bookstore or adult video store; or
- B. Adult cabaret or adult lounge; or
- C. Adult motion picture theater or adult movie theatre; or
- D. Sexual device shop.

Pursuant to Local Government Code §243.003(c) the scope of this Order shall be limited to only those sexually oriented businesses listed above whose premises are outside the corporate limits of a municipality.

Article Four: License Required

- A. *Business License*. It shall be unlawful for any person to engage in, conduct, or operate a sexually oriented business in the County of El Paso without a valid sexually oriented business license.
- B. *Employee License*. It shall be unlawful for any person to be an “employee,” as defined in this Order, of a sexually oriented business in the County of El Paso without a valid sexually oriented business employee license, except that a person who is a licensee under a valid sexually oriented business license shall not be required to also obtain a sexually oriented business employee license.

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- C. *Application.* An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the permit office a completed application made on a form provided by the permit office. A sexually oriented business may designate an individual with an influential interest in the business to file its application for a sexually oriented business license in person on behalf of the business. The application shall be signed as required by subsection (D) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information and/or items required in this subsection (C), accompanied by the appropriate licensing fee:
1. The applicant's full legal name and any other names used by the applicant in the preceding five (5) years. Applicant is also required to include mother's maiden name.
 2. Current address of the applicant.
 3. Written proof of age, in the form of a driver's license or a copy of a birth certificate accompanied by a picture identification document issued by a governmental agency.
 4. A current photograph of applicant.
 5. If the application is for a sexually oriented business license, the business name, location, mailing address, and phone number of the sexually oriented business.
 6. If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.
 7. A statement of whether an applicant has been convicted of or has pled guilty or nolo contendere to a specified criminal activity as defined in this Order, and if so, each specified criminal activity involved, including the date, place and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.
 8. A statement of whether any sexually oriented business in which an applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - a. Been declared by a court of law to be a nuisance; or
 - b. Been subject to a court order of closure or padlocking.
 9. An application for a sexually oriented business license shall be accompanied by a legal description of the property where the business is located and 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 shall 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 are required to comply with the stage, booth and/or room configuration requirements of this Order shall submit a diagram indicating that the setup and configuration of the premises meets the requirements of the applicable

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regulations.

At the time of filing an application, the filing applicant shall present himself or herself to the Sheriff's Office headquarters during regular public fingerprinting hours for the purpose of being fingerprinted.

The information provided pursuant to this subsection (C) shall be supplemented in writing by certified mail, return receipt requested, to the permit office within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

- D. *Signature.* A person who seeks a sexually oriented business employee license under this section shall sign the application for a license. If a person who seeks a sexually oriented business license under this section is an individual, he or she shall sign the application for a license as applicant. If a person who seeks a sexually oriented business license is other than an individual, each person with an influential interest in the sexually oriented business or in a legal entity that controls the sexually oriented business shall sign the application for a license as applicant. Each applicant must be qualified under this Order and each applicant shall be considered a licensee if a license is granted.

Article Five: Issuance of License

- A. *Business License.* Upon the filing of a completed application for a sexually oriented business license, the permit office shall immediately issue a Temporary License to the applicant if the completed application is from a pre-existing sexually oriented business that is lawfully operating in the County of El Paso, and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business license. The Temporary License shall expire upon the final decision of the County of El Paso to deny or grant an annual license. Within twenty (20) days of the filing of a completed sexually oriented business license application, the permit office shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The permit office shall issue a license unless:

1. An applicant is less than eighteen (18) years of age.
2. An applicant has failed to provide information required by this Order for issuance of a license or has falsely answered a question or request for information on the application form.
3. The license application fee required by this Order has not been paid.
4. The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Order or is not in compliance with locational requirements of the this Order.
5. Any sexually oriented business in which the applicant has had an influential

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interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):

- a. Been declared by any court of law in this state or any other state a nuisance; or
 - b. Been subject to an order of closure or padlocking in this state or any other state.
6. An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Order.
- B. *Employee License.* Upon the filing of a completed application for a sexually oriented business employee license, the permit office shall immediately issue a Temporary License to the applicant if the applicant seeks licensure to work in a licensed sexually oriented business and the completed application, on its face, indicates that the applicant is entitled to an annual sexually oriented business employee license. The Temporary License shall expire upon the final decision of the County of El Paso to deny or grant an annual license. Within twenty (20) days of the filing of a completed sexually oriented business employee license application, the permit office shall either issue a license to the applicant or issue a written notice of intent to deny a license to the applicant. The permit office shall issue license unless:
1. An applicant is less than eighteen (18) years of age.
 2. An applicant has failed to provide information required by this Order for issuance of a license or has falsely answered a question or request for information on the application form.
 3. The license application fee required by this Order has not been paid.
 4. Any sexually oriented business in which the applicant has had an influential interest, has, in the previous five (5) years (and at a time during which the applicant had the influential interest):
 - a. Been declared by any court of law in this state or any other state a nuisance; or
 - b. Been subject to an order of closure or padlocking in this state or any other state.
 5. An applicant has been convicted of or pled guilty or nolo contendere to a specified criminal activity, as defined in this Order.
- C. The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at

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or near the entrance to the sexually oriented business so that it may be read at any time that the business is occupied by patrons or is open to the public. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing.

Article Six: Fees

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: five-hundred-fifty dollars (\$550) for the initial fee for a sexually oriented business license and three-hundred-fifty dollars (\$350) for annual renewal; fifty dollars (\$50) for the initial sexually oriented business employee license and twenty-five dollars (\$25) for annual renewal.

Article Seven: Inspection

Sexually oriented businesses and sexually oriented business employees shall permit the Sheriff's Office and/or the permit office and their agents to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Order, during those times when the sexually oriented business is occupied by patrons or is open to the public. This section shall be narrowly construed by the County of El Paso to authorize reasonable inspections of the licensed premises pursuant to this Order, but not to authorize a harassing or excessive pattern of inspections.

Article Eight: Expiration and Renewal of License

- A. Each license shall remain valid for a period of one (1) calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in this Order.
- B. Application for renewal of an annual license should be made at least ninety (90) days before the expiration date of the current annual license. If an application for renewal is made less than ninety (90) days before the expiration date, the expiration of the current license will not be affected.

Article Nine: Suspension

- A. *Business License.* The permit office shall issue a written notice of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this Order or has knowingly allowed an employee to violate this Order.
- B. *Employee License.* The permit office shall issue a written notice of intent to suspend a sexually oriented business employee license for a period not to exceed thirty (30) days if the employee has knowingly violated this Order.

Article Ten: Revocation

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- A. The permit office shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the licensee knowingly violates this Order on two (2) or more occasions within a twelve (12) month period.
- B. The permit office shall issue a written notice of intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if:
 - 1. The licensee has knowingly given false information in the application for the sexually oriented business license or the sexually oriented business employee license;
 - 2. The licensee has knowingly or recklessly engaged in or allowed possession, use or sale of controlled substances on the premises of the sexually oriented business;
 - 3. The licensee knowingly or recklessly engaged in or allowed prostitution on the premises of the sexually oriented business;
 - 4. The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was finally suspended or revoked; or
 - 5. The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the premises of the sexually oriented business.
- C. The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned or reversed on appeal, that conviction shall be treated as null and of no effect for revocation purposes.
- D. When, after the notice and hearing procedure described in this Order, the County of El Paso revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date the revocation becomes effective.

Article Eleven: Hearing; License Denial, Suspension, Revocation; Appeal

- A. When the permit office issues a written notice of intent to deny, suspend, or revoke a license, the permit office shall immediately send such notice, which shall include the specific grounds under this Order for such action, to the applicant or licensee (respondent) by personal delivery or certified mail. The notice shall be directed to the most current business address or other mailing address on file with the permit office for the respondent. The notice shall specify a date, not less than ten (10) days nor more than twenty (20) days after the date the notice is issued, on which the hearing officer shall conduct a hearing on the permit office's written notice of intent to deny, suspend, or revoke the license.

At the hearing, the respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel (at respondent's expense), present evidence

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and witnesses on his or her behalf, and cross-examine any of the permit office's witnesses. The permit office shall also be represented by counsel, and shall bear the burden of proving the grounds for denying, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended at the request of the respondent to meet the requirements of due process and proper administration of justice. The hearing officer shall issue a written decision, including specific reasons for the decision pursuant to this Order, to the respondent within five (5) days after the hearing. The decision shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction.

If the decision is to deny, suspend, or revoke the license, the decision shall become effective on the thirtieth (30th) day after it is rendered. If the hearing officer's decision finds that no grounds exist for denial, suspension, or revocation of the license, the hearing officer shall, contemporaneously with the issuance of the decision, order the permit office to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. If the respondent is not yet licensed, the permit office shall contemporaneously therewith issue the license to the applicant.

- B. If any court action challenging a license denial, suspension, or revocation is initiated, the County of El Paso shall prepare and transmit to the court a transcript of the hearing within ten (10) days after receiving written notice of the filing of the court action. The County of El Paso shall comply with any expedited schedule set by the court, and shall facilitate prompt judicial review of the proceedings. The following shall apply to any sexually oriented business that is lawfully operating as a sexually oriented business, or any sexually oriented business employee that is lawfully employed as a sexually oriented business employee, on the date on which the completed business or employee application, as applicable, is filed with the permit office: Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the County of El Paso's enforcement of the denial, suspension, or revocation, the permit office shall immediately issue the respondent a Provisional License. The Provisional License shall allow the respondent to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the respondent's appeal or other action to restrain or otherwise enjoin the County of El Paso's enforcement.

Article Twelve: Transfer of License

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

Article Thirteen: Situs of Sexually Oriented Business

- A. No person shall own, operate or conduct any business in a sexually oriented business within one thousand feet of the following:
1. A church;

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2. A public or private elementary or secondary school;
 3. A nursery school, kindergarten, child care center, day nursery or day care center;
 4. A university, college, vocational or business school;
 5. A boundary of any residential district;
 6. A public park adjacent to a residential district;
 7. The property line of a lot devoted to any residential use;
 8. Another sexually oriented business, including but not limited to, an adult bookstore, adult motion picture theater, or nude live entertainment club.
- B. For the purposes of this section, measurements shall be made in a straight line, from the nearest portion of the building or structure used as a part of the premises of a regulated use to the nearest property line of any uses listed in this section.
- C. Any sexually oriented business lawfully in existence on the date this Order is approved by commissioners court, and not in compliance with this Article, shall be deemed a nonconforming use and shall comply with all of the provisions of this Article regulating said uses. In the case of any such uses being located within one thousand feet of each other, the use first established and continually operating shall be allowed to continue to operate at its location, provided such use complies with all other provisions of this Order.
- D. The subsequent establishment of any use set forth in this section within one thousand (1,000) feet of a previously existing use regulated by this section shall not render such use a nonconforming or unlawful use.
- E. The regulations in this Article are intended to be land use controls meant to regulate the harmful secondary effects of such uses only, and shall not be construed as being intended to limit access by adults to sexually oriented material, activity, or expression protected by the First Amendment of the United States Constitution.
- F. Signage. The owner or operator of an adult entertainment use may erect, construct and maintain signs as long as the sign is affixed to the building and contains nothing more than the name of the business.
- G. If any article, section, subsection, clause or any portion of the regulations in this Order regulating adult bookstores, adult motion picture theaters and nude live entertainment clubs is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Order regulating such uses. (Ord. 16261 § 1, 2006; Ord. 9326 § 1, 1988; Ord. 8926 (part), 1987: prior code § 25-63.5)

Article Fourteen: Hours of Operation and Supervision of Premises

- A. No sexually oriented business shall be or remain open for business between 2:00 a.m.

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and 6:00 a.m. on any day.

- B. The licensee or manager named and approved with respect to issuance of a permit or the holder of the current manager's permit, shall be present on the premises of a sexually oriented business at all times when the establishment is in operation.

Article Fifteen: Regulations Pertaining to Exhibition of Sexually Explicit Films or Videos on Premises

A. A person who operates or causes to be operated a sexually oriented business which exhibits in a booth or viewing room on the premises, through any mechanical or electronic image-producing device, a film, video cassette, digital video disc, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements:

1. Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all operator's stations, booths or viewing room, overhead lighting fixtures, and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain equipment for displaying films, video cassettes, digital video discs, any electronically produced media or other video productions. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall 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 permit office 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. It shall be the duty of the operator, and of any employees present on the premises, to insure 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.
3. The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.
4. It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.
5. It shall be the duty of the operator to post conspicuous signs, in well-lighted entry areas of the business, stating all of the following:

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- a. Occupancy of viewing rooms less than 150 square feet is limited to one person.
 - b. Sexual activity on the premises is prohibited.
 - c. Making of openings between viewing rooms is prohibited.
 - d. Violators will be required to leave the premises.
 - e. Violations of these regulations are unlawful.
6. It shall be the duty of the operator to enforce the regulations articulated in (5)(a) through (d) above.
 7. The interior of the premises shall be configured in such a manner that there is an unobstructed view from an operator's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. An operator's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more operator's stations designated, then the interior 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 operator's stations. The view required in this paragraph must be by direct line of sight from the operator's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each operator's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.
- B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Article Sixteen: Loitering, Exterior Lighting, Visibility, and Monitoring Requirements

- A. It shall be the duty of the operator of a sexually oriented business to: (1) post conspicuous signs stating that no loitering is permitted on such property; (2) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (3) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within an operator's station.
- B. It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

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- C. No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

Article Seventeen: Penalties and Enforcement

- A. A person who knowingly engages in or an employee, operator, applicant or licensee who permits another person to engage in a specified sexual activity on the premises of a sexually oriented business shall be guilty of a Class A misdemeanor. A person who engages in any violation of this Order other than a specified sexual activity violation shall be guilty of a Class C misdemeanor. Each day a violation is committed, or permitted to continue, shall constitute a separate offense.
- B. Any premises, building, or other structure in which a sexually oriented business, as defined in this Order, is repeatedly operated or maintained in violation of the provisions of this Order shall constitute a public nuisance and shall be subject to abatement proceedings initiated by the County of El Paso in a court of competent jurisdiction. Three violations of this Order in a twelve-month period shall constitute repeated operation or maintenance as discussed in the preceding sentence.
- C. The El Paso County Attorney's Office is hereby authorized to institute civil proceedings necessary for the enforcement of this Order to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the County of El Paso, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal or administrative proceedings as may be authorized by other provisions of this Order, or any of the laws in force in the County of El Paso or to exempt anyone violating this Order or any part of the said laws from any penalty which may be incurred.

Article Eighteen: Applicability of Order to Existing Businesses

All existing sexually oriented businesses and sexually oriented business employees are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of ninety (90) days following the effective date of this Order. By the end of said ninety (90) days, all sexually oriented businesses and sexually oriented business employees must conform to and abide by the requirements of this Order.

Article Nineteen: Prohibited Conduct

It is unlawful for a sexually oriented business licensee to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations:

- A. It shall be a violation of this Order for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.
- B. It shall be a violation of this Order for a person to knowingly or intentionally, in a

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sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from all patrons and on a stage at least eighteen (18) inches from the floor in a room of at least six hundred (600) square feet.

- C. It shall be a violation of this Order for any employee, who while appearing semi-nude, in a sexually oriented business, to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.
- D. It shall be a violation of this Order for any person to knowingly allow a person under the age of eighteen (18) years to come or remain on the premises of a sexually oriented business as an employee or patron.

A sign in a form to be prescribed by the permit office, and summarizing the provisions of subsections (A), (B), (C), and (D) shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

Article Twenty: Scienter Required to Prove Violation or Business Licensee Liability

This Order does not impose strict liability. Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless mental state is necessary to establish a violation of a provision of this Order. Notwithstanding anything to the contrary, for the purposes of this Order, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for the purposes of finding a violation of this Order, or the purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability was imputed was powerless to prevent the act.

Article Twenty-One: Failure of County of El Paso to Meet Time Frame Not to Risk Applicant/Licensee Rights

In the event that a County of El Paso official is required to act pursuant to this Order within a prescribed time, and fails to act within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the County of El Paso official under this Order, and not completed in time prescribed, includes approval of condition(s) necessary for approval by the County of El Paso of an applicant or licensee's application for sexually oriented business employee's license (including a renewal), the license shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the County of El Paso's action has passed.

Article Twenty-Two: Severability

This Order and each section and provision of said Order hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said Order, or the application thereof to any person or circumstance is held to be invalid, the

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remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this Order be invalidated, such invalidation shall not affect the enforceability of the substantive aspects of this Order.

Article Twenty-Three: Effective Date

Except as otherwise provided herein, upon adoption the provisions of this Order shall apply to the activities of all sexually oriented businesses and sexually oriented business employees defined herein, whether such businesses or activities were established or commenced before, on or after the effective date of this Order. No later than ninety (90) days following the effective date of this Order, all existing sexually oriented businesses must apply for a license as required by this Order. Further, no later than one hundred and eighty (180) days following the effective date of this Order, all existing sexually oriented businesses must make any and all necessary changes to the interior configuration of the regulated business premises to conform to this Order. All employees of existing sexually oriented businesses must make application for a license pursuant to this Order no later than ninety (90) days following the effective date of this Order and thereafter, within ten (10) days of becoming an employee subject to this Order.