

ORDINANCE NO. 96-03-01 \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BYNUM TEXAS, CREATING A NEW CHAPTER IN THE CODE OF ORDINANCES OF THE CITY OF BYNUM, TEXAS, RELATING TO THE REGULATION OF SEXUALLY ORIENTED BUSINESSES; PROVIDING A PURPOSE; PROVIDING DEFINITIONS; REGULATING THE LOCATION OF SEXUALLY ORIENTED BUSINESSES; REQUIRING A LICENSE FOR OPERATION OF A SEXUALLY ORIENTED BUSINESS; PROVIDING APPLICATION PROCEDURES; PROVIDING ISSUANCE PROCEDURES; PROVIDING SUSPENSION AND REVOCATION PROCEDURES; PROHIBITING TRANSFER OF LICENSE; REQUIRING DISPLAY OF LICENSE AND SIGN; PROVIDING THIRTY DAYS FOR BUSINESSES CURRENTLY OPERATING TO APPLY FOR A LICENSE; PROVIDING FOR ADDITIONAL REGULATIONS REGARDING MANAGER STATIONS, VISIBILITY, CONTINUOUS WALLS AND ILLUMINATION; PROVIDING AN AMORTIZATION PERIOD FOR NONCONFORMING USES; DESIGNATING OFFENSES UP TO CLASS A MISDEMEANORS; PROVIDING EACH DAY A VIOLATION OCCURS SHALL CONSTITUTE A SEPARATE OFFENSE; PROVIDING DEFENSES; PROVIDING PENALTIES; PUBLICATION OF CAPTION; PROVIDING A SEVERABILITY CLAUSE; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE; AND STATEMENT OF COMPLIANCE WITH OPEN MEETINGS ACT.

WHEREAS, it is recognized by the City Council of the City of Bynum , Texas that there are some uses which, because of their very nature, are recognized as having serious deleterious operational characteristics, particularly when several of them are concentrated in a single area or areas, thereby having a harmful effect upon the adjacent properties; and

WHEREAS, the City Council further finds that special regulation of these uses is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhoods; and

WHEREAS, the City Council further finds that the City has a compelling interest in preserving and stabilizing neighborhoods, particularly those of a residential character, which compelling interest justifies the restriction on location of certain businesses which have been found to have a blighting effect on such neighborhoods; and

WHEREAS, the regulations contained herein neither have the purposes nor effect of imposing any content limitations on those who produce adult books, films or photographs or their ability to make them available to whom they desire and that these regulations neither have the purpose nor effect of restricting in any way the purpose or viewing of these materials by those who desire to view them; and

WHEREAS, these regulations will not significantly affect any person's ability to engage in the business herein regulated and will not significantly affect any person's ability to frequent any of the businesses herein regulated because within the City of Bynum there are sufficient business locations and/or buildings which are lawfully and reasonably available to accommodate any demand which exists for these businesses; and

WHEREAS, the City Council of the City of Bynum makes the following findings with regard to Sexually Oriented businesses:

1. The City Council of the City of Bynum finds that Chapter 211 of the Local Government Code of the Vernon's Code Annotated authorizes cities to divide cities regulate the use of property within the districts for the purpose of promotion for the health, safety and morals of the public, and for the protection of the general welfare of the community;

2. The City Council of the City of Bynum finds that Chapter 211 of the Local Government Code of the Vernon's Code Annotated authorizes home rule cities to promulgate and enforce all ordinances necessary to protect health, life and property of the public, and to preserve the good government, order and security of such cities and their inhabitants;

3. The City Council of the City of Bynum finds that Sexually Oriented Businesses in the City of Bynum require special supervision from the public safety agencies of the City of Bynum in order to protect and preserve the health, safety and welfare of the patrons of such businesses as well as the citizens of the City of Bynum;

4. The City Council of the City of Bynum finds that there is convincing evidence that Sexually Oriented Businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the consequent downgrading of property values. Numerous studies, reports, and findings concerning the harmful effects of adult entertainment uses on surrounding land uses and neighborhoods have been produced including the following, which are summarized as follows:

- a. DETROIT, MICHIGAN—The Detroit Adult Entertainment Use Regulations were adopted in 1972

as part of an "Anti-Skid Row Ordinance" that prohibited an adult entertainment business within 500 feet of a residential area or within 1000 feet of any two other regulated uses. The term applied to a variety of other sexual entertainment establishments, including adult theaters, adult bookstores, cabarets, bars, taxi dance halls, and hotels. During the hearings on the ordinance, the City introduced extensive documentation that demonstrated the adverse socioeconomic and blighting impacts that adult entertainment uses have on surrounding development, including decreased residential and commercial uses and an increased number of package stores and lounges. The documentation consisted of reports and affidavits from sociologists, urban planners and real estate experts, as well as some laymen on the cycle of decay expected in Detroit from the influx and concentration of such establishments.

b. AMARILLO, TEXAS---In 1977, the Amarillo Planning Department prepared a report entitled, A Report on Entertainment Uses in Amarillo. The report concluded that adult entertainment uses have adverse impacts on surrounding land uses, and that those impacts can be distinguished from those of other businesses. The study found that street crime rates are considerably above the City's average in areas immediately surrounding the adult-only businesses, and that late at night, during their primary operating hours, these businesses create unique problems of noise, glare and traffic.

c. LOS ANGELES, CALIFORNIA---A November, 1984 report, The Current Status of Pornography and its Effect on Society, prepared by the Los Angeles Police Department's Vice Division, identifies the adverse effects of concentrating adult entertainment businesses. The study compared the popular Detroit plan, which disperses adult entertainment businesses, and the Boston plan, which has a single, concentrated adult business section in a specific area of the town. The Detroit plan was upheld by the U.S. Supreme Court in Young v. American Mini-Theaters, Inc. and was endorsed by area police officers, businessmen, realtors, appraisers and residents. The report states, "The proliferation and clustering of sex-oriented businesses adversely impacts the crime rate in adjacent areas . . . The overwhelming increase in prostitution, robberies, assaults, thefts and proportionate growth in police personnel deployed throughout Hollywood are all representative of the blighting that the clustering of adult entertainment establishments has on the entire community." Therefore, the L.A. Planning Department recommended the Detroit plan with the requirement of not less than 1000 feet between sexually oriented businesses and regulation of signs and other forms of advertising.

d. INDIANAPOLIS, INDIANA---In 1984, Indianapolis surveyed real estate experts on the impact that adult entertainment uses had on surrounding property values. A random sample (20 percent) of the national membership of the American Institute of Real Estate appraisers was used. The opinion survey found that an adult bookstore located in the hypothetical neighborhood described would have a negative impact on residential property values of premises located within one block of the site.

e. PHOENIX, ARIZONA---A 1979 Planning Department study compared three study areas containing adult entertainment uses with three control areas that had similar demographic and land use characteristics but not adult entertainment businesses. Their study indicated that, on the average, "In the three study areas, property crimes were 36 percent higher, violent crimes were 4 percent higher, and sex crimes were over 600 percent higher than in the control areas."

f. ST. PAUL, MINNESOTA---In 1978, the Planning Department of St. Paul completed a study of Effects of Surrounding Area of Adult Entertainment Businesses. The study concluded: (1) that there was a statistically significant correlation between neighborhood deterioration as reflected in housing values and crime rates and the location of adult entertainment businesses; (2) the statistical relationship was still significant after taking into account certain marketing factors, and; (3) there was a stronger correlation with neighborhood deterioration after establishment of an adult entertainment business than before.

g. BEAUMONT, TEXAS---The serious, objectionable effects of the concentration of adult entertainment uses in Beaumont was clearly illustrated in the commercial revitalization plan for the Charlton-Pollard neighborhood that was prepared by the City's Planning Department in May of 1981. The plan described the economic decline that followed the establishment of adult entertainment uses in a specific neighborhood. It was noted that the growing presence of adult businesses drive away neighborhood commercial stores. Limitation may be accomplished by zoning and specific use permits in some zones. Spacing between adult entertainment businesses is critical and would vary based on what is in the vicinity of such business.

h. SEATTLE, WASHINGTON---In 1976, the City of Seattle amended its zoning ordinance providing for the gradual elimination of nonconforming adult theaters. The Seattle Department of Construction and Land Use prepared a report addressing the Proposed Land Use Code Text Amendment which regulated adult cabarets. This report is divided into two areas: (1) the intent of the proposal, as defined by its boundaries and rationale; and (2) a review of prior court cases as they relate to adult cabaret policies. The proposed zoning ordinance amendments are recommended based on the evidence that neighborhood property values will be

negatively impacted due to the incompatibility of such businesses with other property uses and that residents fear that some of the people attracted by adult theaters may constitute a threat to the comfort and safety of the residents. Evidence was presented in the report which indicated that adult theaters were not compatible with adjacent residences and other types of uses such as churches, schools, etc.

i. AUSTIN, TEXAS—In May of 1986 the Austin Planning Department published a report on adult businesses in Austin. An analysis of crime rates in Austin was conducted by comparing areas with adult businesses to areas without adult businesses. Four study areas were chosen that did not contain adult businesses. Two study areas were chosen containing only one adult business each, and two study areas were chosen containing two adult businesses each.

Within the study areas containing adult businesses, sex crimes were found to be from two to nearly five times the city-wide average. Also sex-related crime rates were found to be 66% higher in study areas containing two adult businesses as compared to study areas containing only one business.

Austin conducted a survey of 120 real estate appraisers and lending institutions. Eighty-eight percent (88%) of those responding indicated a belief that an adult bookstore would decrease residential property values within one block, and 59% felt that residential property would decrease within three blocks. A survey of three adult businesses in Austin revealed that only three customers had addresses within one mile of an adult business and 44% of all customers visiting the adult bookstore had addresses outside the City of Austin.

j. HOUSTON—Results after committee completed several phases of research (including public hearings, executive sessions, draft of proposed ordinance, public hearings regarding the ordinance, and executive sessions with legal counsel to refine ordinance) included the conclusion that a new SOB ordinance would not be a "knee-jerk" reaction to public opinion, but rather a necessary regulation of enterprises which have the potential to severely negatively impact the community. Decreased property values, increased crime, ancillary activities (such as prostitution), crude advertising, possible corruption of children and overall decrease in quality of life were all documented as concerns related to current and future adult businesses in Houston. Therefore, the committee drafted as strong an ordinance as was possible while maintaining a careful balance between the rights of the person who do not wish to be exposed to such businesses and the rights of the persons who wish to operate or patronize such businesses.

k. OKLAHOMA CITY—The Planning Division of the Community Development Department of the City of Oklahoma City, Oklahoma sent 100 surveys to professional real estate appraisers in order to develop a data base regarding adult entertainment businesses. The survey asked the appraisers' opinions as to the effects of a sole adult bookstore locating on an arterial street that borders a middle income residential neighborhood. 74% of the appraisers felt there would be a negative impact on residential and commercial property values within one block of the adult bookstore. While the impact dissipates as the distance from the site increases, 50% felt residential property would be negatively impacted and 41% felt commercial property would be negatively impacted at a distance of three blocks away. Comments from the survey included the following: "an immediate transition begins, with the better quality businesses moving out and a lower class business moving in;" "attracts undesirables; threat to residents' feeling of safety and security;" and "tends to prevent economic improvement in the area."

l. CLEVELAND—Statistics provided from the National Conference on the Blight of Obscenity (which was held in Cleveland) conclude that "areas which house pornography shops had a much higher crime rate than other areas of the city." At the conference, experienced detectives reported on the impact of pornography on a city both in the form of individual cases, such as one female murder victim's assailant visited a pornography shop within hours of the murder and sexual assault, and statistics, including the following regarding the City's 204 census tracts of property of which 15 of these contain pornography outlets:

\* During 1976 when crime decreased 8.1% in the city overall, 12 of these 15 particular tracts had an increase in crime or remained the same. Also, the two highest crime-ridden tracts in the town contain 8 of the 26 local pornography shops.

\* There was an average of 20.5 robberies per census tract; however, of the 15 tracts containing pornography shops the average was 40.5 (double the city-wide average). Moreover the one tract that contains five such shops had 136 robberies take place although only 730 people live in that tract compared to the most populous tract (5,210 people) had only 14 robberies.

\* 498 rapes occurred in 1976 which is an average of 2.4 per tract but the rate in each of the 15 tracts was two to four times the average. Of the three tracts where rapes occur the most frequently, 2 of the 3 contain pornography shops and the 3rd tract borders a tract which contains such shops. The rate in these 3 tracts is 7 times the city average.

5. The City Council of the City of Bynum finds that from the studies that have been presented, concentrations of Sexually Orientated Businesses within a community have a serious harmful physical, social, and economic effect on surrounding areas 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 areas. The studies show that regulations requiring the dispersion of Sexually Oriented Businesses are justified. The studies also show that because of their very nature, Sexually Oriented Businesses uses can and should be regulated;

6. The City Council of the City of Bynum finds that the studies conducted in other cities and states throughout the country have shown a decline in neighborhoods, and neighborhood oriented commercial, religious, and institutional facilities when exposed to adult entertainment facilities;

7. The City Council of the City of Bynum finds that the Supreme Court has upheld the validity of such municipal controls which disperse these kinds of activities;;

8. The City Council of the City of Bynum finds that there will be adequate locations for Sexually Oriented Businesses within the City of Bynum after passage of this ordinance;

9. The City Council of the City of Bynum finds that the unrestricted location of certain sexually oriented businesses may be detrimental to the public health, safety and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity and; therefore, require immediate remedial legislation;

10. The City Council of the City of Bynum finds that in Renton v. Playtime Theatres, Inc., 475 U.S. 41 (1986), the Supreme Court reiterated Young v. American Mini Theaters, 427 U.S. at 71, in according "high respect" to "a city's 'interest in attempting to preserve the quality of urban life;'"

11. The concern over sexually transmitted diseases is a legitimate health concern which the City Council determines demands reasonable regulation of adult entertainment establishments in the City in order to protect the health and well-being of the citizens. Therefore regulations in this ordinance include measures which are reasonably expected to discourage anonymous sex, indecent exposure, prostitution and public lewdness at adult entertainment establishments. Such measures include, but are not limited to, requirements such as manager stations, open (unobstructed view of) booths/rooms, overhead lighting, and minimum four foot walls with no apertures, holes or other openings. Numerous studies, cases and witnesses confirm these measures will promote public health and general welfare by inhibiting illegal activities which tend to promote the spread of sexually transmitted diseases including HIV.

12. The City Council of the City of Bynum finds that licensing is a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulation of their business, and that licensing is a legitimate and reasonable means of ensuring that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

13. The City Council of the City of Bynum is relying on the findings and studies listed above and as presented in public hearings and is attempting to benefit the public welfare by proposing this ordinance.

14. The City Council of the City of Bynum is aware that under case law from the U.S. Supreme Court, such as City of Renton v. Playtime Theaters, Inc., 475 U.S. 50 (1986), this Council is allowed to rely on the experience of other cities in enacting legislation to regulate adult entertainment uses.

15. It is the express intent of the City Council of the City of Bynum to ensure that the adverse effects created by Sexually Oriented Businesses are minimized and controlled so as not to cause or contribute to crime, increased blighting, or downgrading of adjacent property and the surrounding neighborhood by restricting their proximity to a church, cemetery, government building, place of religious worship, day care facility, school, hospital, boundary of a residential or historic district as defined in this chapter; a public park, or the property line of a lot devoted to a residential use as defined in this chapter.

16. The regulations established herein are intended to protect and preserve the quality of life, property values, integrity and character of the City's neighborhoods and other districts, deter the spread of urban blight, and protect the citizens of the City of Bynum from the objectionable effects of Sexually Oriented Businesses.

17. The City Council of the City of Bynum finds that in accordance with case law, such as Lakeland Lounge v. City of Jackson, Mississippi, 973 F.2d 1255 (5th Cir. 1992), the city staff and the City Council have worked diligently over several months with each other and with numerous expert sources across the United States studying the effects of sexually oriented businesses and regulation of such businesses.

18. The City Council of the City of Bynum finds that its concern regarding the secondary effects of such adult businesses and the welfare of the public, rather than the desire to suppress free expression, have led to the passage of this ordinance.

19. The City Council of the City of Bynum finds that it is necessary, expedient and in the best interest of the citizenry to regulate the operation and location of adult entertainment establishments for the purpose of stemming a potential increase in the criminal activities and disturbances of the peace and good order of the community, maintaining property values, preventing injuries to residential neighborhoods and other districts, and protecting and preserving the quality of life.

NOW, THEREFORE, pursuant to the authority granted by the Constitution and the Texas Local Government Code, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BYNUM , TEXAS:

1: "Sexually Oriented Businesses" of the Code of Ordinances is hereby adopted to read as follows:

#### SEXUALLY ORIENTED BUSINESSES

- SECTION 1. Purpose and intent.
- SECTION 2. Definitions.
- SECTION 3. Classification.
- SECTION 4. License required.
- SECTION 5. Issuance of license.
- SECTION 6. Fees.
- SECTION 7. Inspection.
- SECTION 8. Expiration of license.
- SECTION 9. Suspension.
- SECTION 10. Revocation.
- SECTION 11. Appeal.
- SECTION 12. Transfer of license.
- SECTION 13. Location of sexually oriented businesses.
- SECTION 14. Exemption from location restrictions.
- SECTION 15. Additional regulations for escort agencies.
- SECTION 16. Additional regulations for nude model studios.
- SECTION 17. Additional regulations for adult theaters and adult motion picture theaters.
- SECTION 18. Additional regulations for adult motels.
- SECTION 19. Regulations pertaining to exhibition of sexually explicit films or videos.
- SECTION 20. Additional regulations pertaining to visibility, continuous walls and illumination at all sexually oriented businesses.
- SECTION 21. Additional regulations for adult cabarets.
- SECTION 22. Display of sexually explicit material to minors.
- SECTION 23. Enforcement.
- SECTION 24. Injunction.
- SECTION 25. Amendment of this chapter.

**SECTION 1. PURPOSE AND INTENT.**

(a) The Texas Legislature has found that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public, health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity. Tex. Local Govmt. Code Ann. Section 243.001(a). The purpose of this chapter to regulate sexually oriented businesses is to promote the health, safety, morals, and general welfare of the citizens of the city, to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the city, to deter sexually related criminal activity occurring in and around sexually oriented businesses and to protect the health of patrons and employees of such businesses from sexually transmitted diseases. The provisions of this chapter 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 chapter 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.

(b) It is the intent of the city council that the locational regulations of Section 13 of this chapter are promulgated pursuant to Tex. Local Govmt. Code Ann. Chapter 243 as they apply to a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other similar commercial enterprise the primary business of which is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. It is the intent of the city council that all other provisions of this chapter are promulgated pursuant to the Bynum City Charter and Tex. Local Govmt. Code Ann. Chapter 243 and Subchapter D of Chapter 215.

(c) It is the intent of the City Council to protect and preserve the health, safety and welfare of the patrons of "adult oriented establishments," as well as the health, safety and welfare of the town's citizens. Statistics and studies performed by a substantial number of cities and towns in the United States and research by the staff of the City of Bynum indicate the following:

(1) Large numbers of persons, primarily male, frequent such "adult oriented establishments," especially those which provide closed booths, cubicles, studios and rooms for the private viewing of so-called "adult" motion pictures and/or video tapes and/or live entertainment; and

(2) such closed booths, cubicles, studios and rooms have been user by patrons, clients or customers of such "adult oriented establishments" for the purpose of engaging in certain sexual acts; and

(3) male and female prostitutes have been known to frequent such establishments in order to provide sex for hire to the patrons, clients or customers of such establishments within such booths, cubicles and rooms; and

(4) doors, curtains, blinds and/or other closures installed in or on the entrances and/or exits of such booths, cubicles, studios and rooms which are closed while such booths, cubicles, studios and rooms are

in use encourage patrons using such booths, cubicles, studios and rooms to engage in sexual acts therein with prostitutes and/or with other members of the same sex, thereby promoting and encouraging prostitution and the commission of sexual acts which cause blood, semen and urine to be deposited on the floor and/or walls of such booths, cubicles, studios and rooms, which deposits could prove detrimental to the health and safety of other persons who may come into contact with such deposits; and

(5) the reasonable regulation and supervision of such "adult oriented establishments tends to discourage such sexual acts and prostitution, and thereby promotes the health, safety and welfare of the patrons, clients and customers of such establishments.

(6) The continued unregulated operation of adult oriented establishments including, without limitation, those specifically cited in this provision, is and would be detrimental to the general welfare, health and safety of the citizens of Bynum.

(7) Such reasonable regulations are within the powers granted to the City by the Constitution and laws of the State of Texas in order to protect the public health, safety and welfare and have been enacted by this Ordinance without any intention of limiting or restricting the contents of any communicative materials or of denying or restricting the rights of any adult to obtain, view, distribute, exhibit, or sell any sexually oriented materials protected by the United States and/or State Constitution.

## **SECTION 2. DEFINITIONS.**

In this chapter:

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

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

(A) books, magazines, periodicals or other printed 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 areas"; or

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

(3) **ADULT CABARET** means a nightclub, bar, restaurant, 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 areas" or by "specified sexual activities"; or

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

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

(A) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way 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) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 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 which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(6) **ADULT TANNING SALONS** means a business or commercial enterprise that, as one of its primary business purposes, furnishes, offers to furnish, or advertises to furnish anyone who appears in a state of nudity or displays "specified anatomical areas" for a fee, tip, or other consideration.

(7) **ADULT THEATER** means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(8) **DIRECTOR OF PUBLIC SAFETY** means the director of public safety of the City of Bynum or his designated agent.

(9) **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, garments, apparel, devices or other such items or who agrees or offers to privately perform a striptease for another person.

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

(11) **ESTABLISHMENT** means and includes any of the following:

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

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

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

(D) the relocation of any sexually oriented business.

(E) a location and place of business.

(12) **HISTORIC DISTRICT** means a historic overlay zoning district .

(13) **LICENSED DAY-CARE CENTER** means a facility licensed by the State of Texas that provides care, training, education, custody, treatment or supervision for more than four children under fourteen years of age, where such children are not related by blood, marriage or adoption to the owner or operator of the facility, for less than twenty-four hours a day, regardless of whether or not the facility is operated for a profit or charges for the service it offers.

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

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

(16) **OPERATES OR CAUSES TO BE OPERATED** means to cause to function or to put or keep in operation. 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.

(17) **NUDITY or a STATE OF NUDITY** means:

(A) entirely unclothed; or

(B) clothed in a manner that simulates or leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the person is female, or any portion of the genitals or buttocks.

(C) This definition shall not include a mother in the act of nursing her child.

(18) **PERSON** means an individual, proprietorship, partnership, corporation, association, or other

legal entity.

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

(20) **RESIDENTIAL USE** means a single family, duplex, multiple family, or "mobile home park, mobile home subdivision, and campground" and shall include premises which contain habitable rooms for nontransient occupancy and which are designed primarily for living, sleeping, cooking and eating therein. A premises which is designed primarily for living, sleeping, cooking and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes.

(21) **SCHOOL** means a building where persons regularly assemble for the purpose of instruction or education together with the playgrounds, stadium and other structures or grounds used in conjunction therewith. The term is limited to :

(1) Public or private schools used for primary or secondary education, in which any regular kindergarten or grades one (1) through twelve (12) classes are taught; and

(2) Special educational facilities in which students who have physical or learning disabilities receive specialized education in lieu of attending regular classes in kindergarten or grades one (1) through twelve (12) classes.

(22) **SEMI-NUDE** means a state of dress in which clothing covers no more than the genitals, pubic region, buttocks, and any part of the female breast below the top of the areolae, as well as portions of the body covered by supporting straps or devices.

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

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

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

(24) **SEXUALLY ORIENTED BUSINESS** means a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, adult cabaret, escort agency or other commercial enterprise the primary business of which is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

(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 25 percent, as the floor area exists on February 13, 1996..

(28) **TOPLESS** means a female clothed in a manner that simulates or leaves uncovered or visible through less than fully opaque clothing any portion of her breasts below the top of the areola. (as taken from the Texas Penal Code, Section 43.251, Employment Harmful to a Minor with the addition of the words "simulates or".)

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



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

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

(C) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

### **SECTION 3. CLASSIFICATION.**

Sexually oriented businesses are classified as follows:

- (1) adult arcades;
- (2) adult bookstores;
- (3) adult video stores;
- (4) adult cabarets;
- (5) adult motels;
- (6) adult motion picture theaters;
- (7) adult theaters;
- (8) escort agencies;
- (9) nude studios
- (10) modeling studios;
- (11) love parlors;
- (12) sex parlors;
- (13) sexual encounter centers; and
- (14) adult tanning salons.

### **SECTION 4. LICENSE REQUIRED.**

(a) A person commits an offense if he operates a sexually oriented business without a valid license, issued by the city for the particular type of business. A separate application and permit shall be required for each such business.

(b) An application for a license must be made on a form provided by the Director of Public Safety. The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches. Applicants who must comply with Section 19 of this chapter shall submit a diagram meeting the requirements of Section 19.

(c) The applicant must be qualified according to the provisions of this chapter.

(d) 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 a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a license is granted.

(e) An applicant shall be required to give the following information on the application form:

(1) The name, street address and mailing address (if different) and Texas driver's license number of the intended operator(s) and the owners;

(2) The name under which the enterprise is to be operated and a general description of the services to be provided;

(3) The telephone number of the sexually oriented business;

(4) The address and legal description of the tract of land on which the sexually oriented business is to be located;

(5) If the sexually oriented business is in operation, the date on which the owner(s) acquired the sexually oriented business for which the permit is sought, and the date on which the sexually oriented business began operations as an sexually oriented business at the location for which the permit is sought;

(6) If the sexually oriented business is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the permit.) If the expected startup date is to be more than ten (10) days following the date of issuance of the permit, then a detailed explanation of the construction, repair or remodeling work or other cause of the unexpected delay and a statement of the owner's time schedule and plan for accomplishing the same;

(7) The application shall be accompanied by the following:

(aa) A certified copy of the assumed name certificate filed in compliance with the Assumed Business or Professional Name Act (Texas Revised Civil Statutes, Annotated, Business and Commerce Code, Chapter 36) if the sexually oriented business is to be operated under an assumed name;

(bb) If the sexually oriented business is a Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(cc) If the sexually oriented business is a foreign corporation, a certified copy of the articles of incorporation, together with all amendments thereto;

(dd) If the sexually oriented business is a limited partnership formed under the laws of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto, filed in the Secretary of State under the Texas Limited Partnership Act (Article 6132a Vernon's Texas Civil Statutes);

(ee) If the sexually oriented business is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto, filed in the Secretary of State under the Texas Limited Partnership Act (Article 6132a Vernon's Texas Civil Statutes);

(ff) Proof of the current fee ownership of the tract of land on which the sexually oriented business is to be situated in the form of the recorded deed;

(gg) If the persons identified as the fee owner(s) of the tract of land in (7)(ff) are not also the owners of the sexually oriented business, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the sexually oriented business to have or obtain the use and possession of the tract or portion thereof that is to be used for the sexually oriented business for the purpose of the operation of the sexually oriented business;

(8) A statement under oath that the applicant has personal knowledge of the information contained in the application and that the information contained therein and furnished therewith is true and correct and that the applicant has read the provisions of this article.

(f) The applicant must state on the application for a license which single type of sexually oriented business, as listed in Section 3, the applicant will be operating. Operating any other type of Sexually Oriented Business at this location is a violation according to the provisions of this chapter.

## **SECTION 5. ISSUANCE OF LICENSE**

(a) The Director of Public Safety shall approve the issuance of a license by city manager to an applicant within 30 days after receipt of an application unless the City officials or staff finds one or more of the following to be true:

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

(2) An applicant or an applicant's spouse is overdue in payment to the city of taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually oriented business.

(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 chapter, other than the offense of operating a sexually oriented business without a license, within two years immediately preceding the application.

(5) Any fee required by this chapter has not been paid.

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

(7) An applicant or the proposed establishment is in violation of or is not in compliance with Section 7, 12, 13, 15, 16, 17, 18, 19, 20, 21, or 22.

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

(A) involving:

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

(aa) prostitution;

(bb) promotion of prostitution;

(cc) aggravated promotion of prostitution;

(dd) compelling prostitution;

(ee) obscenity;

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

(gg) sexual performance by a child;

(hh) possession of child pornography;

Code: (ii) any of the following offenses as described in Chapter 21 of the Texas Penal

(aa) public lewdness;

(bb) indecent exposure;

(cc) indecency with a child;

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

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

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

(B) for which:

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

(iii) less than five 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 24-month period.

(b) The fact that a conviction is being appealed has no effect on the disqualification of the applicant or applicant's spouse under Subsection (a).

(c) An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection (a)(8)(A) may qualify for a sexually oriented business license only when the time period required by Subsection (a)(8)(B) has elapsed.

(d) The Director of Public Safety, upon approving issuance of a sexually oriented business license, shall send to the applicant, by certified mail, return receipt requested, written notice of that action and state where the applicant must pay the license fee and obtain the license. The Director of Public Safety's approval of the issuance of a license does not authorize the applicant to operate a sexually oriented business until the applicant has paid all fees required by this chapter and obtained possession of the license.

(e) The license, if granted, must 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 must 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.

(f) Next to the license a sign at least twenty-four (24) inches square bearing red letters a minimum of two (2) inches high on a white background 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 providing the following notice: "Indecent exposure, prostitution, public lewdness, and other such acts are illegal on these premises. These laws are strictly enforced and violators will be prosecuted to the full extent of the law. Therefore, you could receive up to one year in prison and be fined up to \$4,000.00 if convicted of such acts."

#### **SECTION 6. FEES.**

(a) The annual fee for a sexually oriented business license is \$750.00.

(b) In addition to the fees required by Subsection (a), an applicant for an initial sexually oriented business license shall, at the time of making application, pay a nonrefundable fee of \$250.00 for the city to conduct a survey to ensure that the proposed sexually oriented business is in compliance with the locational restrictions set forth in Section 13.

#### **SECTION 7. INSPECTION.**

(a) An applicant or licensee shall permit representatives of the police department, health department, fire department, building inspection division or any representative of the City of Bynum 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 police 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.

**SECTION 8. EXPIRATION OF LICENSE.**

Each license expires one year from the date of issuance, except that a license issued pursuant to a locational restriction expires on the date the exemption expires. A license may be renewed only by making application as provided in Section 4. Application for renewal should be made at least 30 days before the expiration date, and when made less than 30 days before the expiration date, the expiration of the license will not be affected by the pendency of the application.

**SECTION 9. SUSPENSION.**

The Director of Public Safety shall suspend a license for a period not to exceed 30 days if he determines that a licensee or an employee of a licensee has:

- (1) violated or is not in compliance with Section 7, 12, 13, 15, 16, 17, 18, 19, 20, 21, or 22 of this chapter;
- (2) engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- (3) refused to allow an inspection of the sexually oriented business premises as authorized by this chapter;
- (4) knowingly permitted gambling by any person on the sexually 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.

**SECTION 10. REVOCATION.**

(a) The Director of Public Safety shall revoke a license if a cause of suspension in Section 9 occurs and the license has been suspended within the preceding 12 months.

(b) The Director of Public Safety shall revoke a license if the Director of Public Safety determines that:

- (1) a licensee gave false or misleading information in the material submitted to the Director of Public Safety 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 5(a)(8)(A) for which the time period required in Section 5(a)(8)(B) has not elapsed;
- (6) on two or more occasions within a 12-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 5(a)(8)(A) for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;
- (7) a licensee or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, Texas Penal Code; or
- (8) a licensee is delinquent in payment to the city for hotel occupancy taxes, ad valorem taxes, or sales taxes related to the sexually oriented business.

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

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

(e) When the Director of Public Safety 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 Director of Public Safety finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least 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 5(a)(8)(B) has elapsed.

#### **SECTION 11. APPEAL.**

If the Director of Public Safety denies the issuance or renewal of a license, or suspends or revokes a license, the Director of Public Safety shall send to the applicant or licensee, by certified mail, return receipt requested, written notice of the action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the applicant or licensee whose application for a license or license renewal has been denied or whose license has been suspended or revoked has the right to appeal to the state district court. An appeal to the state district court must be filed within 30 days after the receipt of notice of the decision of the Director of Public Safety. The applicant or licensee shall bear the burden of proof in court.

#### **SECTION 12. TRANSFER OF LICENSE.**

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

#### **SECTION 13. LOCATION OF SEXUALLY ORIENTED BUSINESSES.**

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

- (1) a church;
- (2) a school;
- (3) a boundary of a residential or historic district as defined in this chapter;
- (4) a public park;
- (5) the property line of a lot devoted to a residential use as defined in this chapter; or
- (6) a hospital;
- (7) licensed day-care center;
- (8) buildings and property owned or leased by the city, county, state or federal government; and
- (9) cemeteries.

(b) A person commits a misdemeanor if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1,000 feet of another sexually oriented business.

(c) A person commits a misdemeanor 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 if he causes or permits the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(d) For the purposes of Subsection (a), measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a church, school, licensed day-care center, government building, cemetery or hospital or to the nearest boundary

of an affected public park, residential district, historic 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 lawfully operating on February 13, 1996, that is in violation of Subsections (a), (b), or (c) of this section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed eighteen (18) months, unless sooner terminated for any reason or voluntarily discontinued for a period of 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) A sexually oriented business fully 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, school, public park, residential district, historic district, residential lot, licensed day-care center, government building, cemetery, or hospital within 1,000 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.

#### **SECTION 14. EXEMPTION FROM LOCATION RESTRICTIONS.**

(a) If the Director of Public Safety denies the issuance of a license to an applicant because the location of the sexually oriented business establishment is in violation of Section 13 of this chapter, then the applicant may, not later than 10 calendar days after receiving notice of the denial, file with the city secretary a written request for an exemption from the locational restrictions of Section 13.

(b) If the written request is filed with the city secretary within the 10-day limit, the City Council of the City of Bynum shall consider the request. The city secretary shall set a date for the hearing within 60 days from the date the written request is received.

(c) A hearing by the City Council of Bynum may proceed if at least a quorum of the council members are present. The City Council shall hear and consider evidence offered by any interested person. The formal rules of evidence do not apply.

(d) The City Council of Bynum may, in its discretion, grant an exemption from the locational restrictions of Section 13 if it makes the following findings:

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

(2) that the granting of the exemption will not violate the spirit and intent of this chapter of the city code;

(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 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 urban renewal or restoration; and

(5) that all other applicable provisions of this chapter will be observed.

(e) The City Council 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. The decision of the City Council is final.

(f) If the City Council grants the exemption, the exemption is valid for one year from the date of the City Council's action. Upon the expiration of an exemption, the sexually oriented business is in violation of the locational restrictions of Section 13 until the applicant applies for and receives another exemption.

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

(h) The grant of an exemption does not exempt the applicant from any other provisions of this chapter other than the locational restrictions of Section 13.

**SECTION 15. 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/she acts as an escort or agrees to act as an escort for any person under the age of 18 years.

**SECTION 16. ADDITIONAL REGULATIONS FOR NUDE STUDIO or MODELING STUDIO**

(a) A NUDE STUDIO or MODELING STUDIO shall not employ any person under the age of 18 years.

(b) A person commits an offense if he/she knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of a nude studio or 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 under the age of 18 years commits an offense if he/she appears in a state of nudity in or on the premises of a NUDE STUDIO or 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.

(d) A person commits an offense if he/she appears in a state of nudity or knowingly allows another to appear in a state of nudity in an area of a NUDE STUDIO or MODELING STUDIO premises which can be viewed from the public right of way.

(e) A NUDE STUDIO or MODELING STUDIO shall not place or permit a bed, sofa, mattress or futon in any room on the premises, except that a sofa may be placed in a reception room open to the public.

**SECTION 17. ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS.**

(a) A person commits an offense if he/she 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/she 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.

(d) Every act or omission by an employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(e) An operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator shall be subject to the penalties imposed by this Ordinance.

**SECTION 18. ADDITIONAL REGULATIONS FOR ADULT MOTELS.**

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

(b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or



similar commercial establishment that does not have a sexually oriented business license, he rents or subrents a sleeping room to a person and, within 10 hours from the time the room is rented, he rents or subrents the same sleeping room again.

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

(d) Every act or omission by an employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(e) An operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator shall be subject to the penalties imposed by this Ordinance.

#### **SECTION 19. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS.**

(a) In order to decrease the possibility of lewd behavior (such as anonymous, public sexual encounters which cause the spread of STD's and HIV), 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 300 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 patrons will not be permitted. A manager's station may not exceed 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 inches. The Director of Public Safety 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 Director of Public Safety 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 every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two 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.

(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 view area specified in Subsection (5) remains unobstructed by any doors, walls, curtains, partitions or any other opaque coverings, 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/she knowingly fails to fulfill that duty.

(c) Every act or omission by an employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(d) An operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator shall be subject to the penalties imposed by this Ordinance.

## **SECTION 20. ADDITIONAL REGULATIONS PERTAINING TO VISIBILITY, CONTINUOUS WALLS AND ILLUMINATION AT ALL SEXUALLY ORIENTED BUSINESSES**

(a) Every sexually oriented business shall be physically arranged in a manner that the entire interior portion of any areas into which patrons are permitted access (including all booths, cubicles, rooms and stalls except adult motel rooms and toilet facilities) shall be clearly visible from the common areas of the premises and the visibility into such areas shall not be blocked or obscured by doors, screens, curtains, partitions, drapes, merchandise, display racks, other materials, or any other opaque obstruction whatsoever.

(b) All interior walls, partitions or other dividers of any areas into which patrons are allowed access (including all booths, cubicles, rooms and stalls except adult motel rooms and toilet facilities) shall be continuous from the floor to four feet (4') high with no apertures, holes or other openings.

(c) 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 all interior walls, partitions or other dividers of any areas into which patrons are allowed access and designating any area into which patrons will not be permitted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Director of Public Safety 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. The application shall be sworn to be true and correct by the applicant. No alteration in the configuration or location of an interior wall, partition or other divider may be made without the prior approval of the Director of Public Safety or his designee.

(d) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises to ensure that the view area specified in Subsection (a) remains unobstructed by any doors, walls, curtains, partitions, any other opaque coverings, 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 (c) of this section.

(e) The premises of the view area specified in Subsection (a) 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.

(f) It shall be the duty of the owners and operator and it shall also be the duty of any agents and employees present in the premises to ensure that the illumination described above, is maintained at all times that any patron is present in the premises.

(g) A person having a duty under Subsections (a) through (f) of this provision commits an offense if he/she knowingly fails to fulfill that duty.

(h) Every act or omission by an employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(i) An operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator shall be subject to the penalties imposed by this Ordinance.

#### **SECTION 21. ADDITIONAL REGULATIONS PERTAINING TO ADULT CABARETS.**

(a) Any dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur on a platform which is raised at least two feet (2') from the level of the floor.

(b) No dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur closer than four feet (4') to any patron or clientele.

(c) Every act or omission by an employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(d) An operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator shall be subject to the penalties imposed by this Ordinance.

#### **SECTION 22. DISPLAY OF SEXUALLY EXPLICIT MATERIAL TO MINORS.**

(a) A person commits an offense if, in a business establishment open to persons under the age of 17 years, he 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 that, without obtaining assistance from an employee of the business establishment:

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

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

(c) Every act or omission by an employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.

(d) An operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this Ordinance shall be deemed the act or omission of the operator for purposes of determining whether the operator shall be subject to the penalties imposed by this Ordinance.

### **SECTION 23. ENFORCEMENT.**

(a) Except as provided by Subsection (b), any person violating Section 13 of this chapter, upon conviction, is punishable as a Class A misdemeanor by a fine not to exceed \$4,000 for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

(b) If the sexually oriented business involved is an adult cabaret or other adult establishment not within the definition of Section 243.002 of the Local Government Code, then violation of Section 13 of this chapter is punishable as a Class C misdemeanor.

(c) Any person violating a provision of this chapter other than Section 13, upon conviction, is punishable by a fine not to exceed \$500 as a Class C misdemeanor for each offense and a separate offense shall be deemed committed upon each day during or on which a violation occurs.

(d) It is a defense to prosecution under Section 4(a), 13, or 16(d) 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, junior 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 days in advance of the class; and

(C) where no more than one nude model is on the premises at any one time.

(e) It is a defense to prosecution under Section 4(a) or Section 13 that each item of descriptive, printed, film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.

(f) For a period of eighteen (18) months after passage of this ordinance, it is a defense to prosecution under Section 19 if the sexually oriented business was in operation at its present location on the date of passage of this ordinance and that the business is working toward compliance with Section 19 such that the business is projected to be in compliance by the end of eighteen (18) months after passage of this ordinance.

(g) For a period of eighteen (18) months after passage of this ordinance, it is a defense to prosecution under Section 20 if the sexually oriented business was in operation at its present location on the date of passage of this ordinance and that the business is working toward compliance with Section 20 such that the business is projected to be in compliance by the end of eighteen (18) months after passage of this ordinance.

(h) For a period of eighteen (18) months after passage of this ordinance, it is a defense to prosecution under Section 21(a) if the sexually oriented business was in operation at its present location on the date of passage of this ordinance and that the business is working toward compliance with Section 21 such that the business is projected to be in compliance by the end of eighteen (18) months after passage of this ordinance.

(i) Any sexually oriented business in operation on the date of passage of this ordinance will be entitled to thirty (30) days to fully complete an application for a license. During such thirty (30) days, said business will be granted a grace period regarding enforcement of this chapter. Moreover, if the application is completed in full during said 30 day period, then this period shall be extended to said business until the licensing decision is made under Section 5 by the Director of Public Safety.

(j) The revocation or suspension of any license shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of a license.

**SECTION 24. INJUNCTION.**

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 13 of this chapter is subject to a suit for injunction as well as prosecution for criminal violations.

**SECTION 25. AMENDMENT OF THIS CHAPTER.**

Sections 13 and 14 of this chapter may be amended only by vote of the city council.

**2. PUBLICATION.** Publication shall be made one (1) time in the official publication of the City of Bynum, Texas, after final passage, which publication shall contain the caption stating in substance the purpose of the ordinance.

**3. SEVERABILITY.** If any provision, section, sentence, clause or phrase of the Ordinance, or the application of same to any person or set of circumstances, if for any reason is held to be unconstitutional, void, or invalid (or for any reason unenforceable), the validity of the remaining portion of this Ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intention of the City Council of the City of Bynum in adopting and of the Mayor in approving this Ordinance, that no portion hereof or provision or regulation contained herein shall become inoperative or fail by any reason of any unconstitutionality or invalidity of any other portion, provision or regulation.

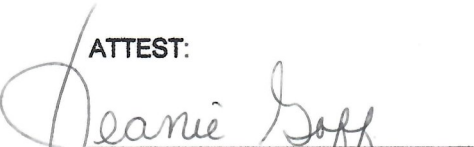
**4. REPEAL OF EXISTING ORDINANCES.** To the extent of any prior ordinance of the City of Bynum (or any provision, clause, phrase, sentence or paragraph contained therein) conflicts with this ordinance, said conflicting ordinance, provision, clause, phrase, sentence or paragraph is hereby repealed.

**5. EFFECTIVE DATE.** That this ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the laws of the State of Texas and the Charter of the City of Bynum, Texas.

**6. OPEN MEETINGS.** That it is hereby officially found and determined that the meeting at which this ordinance is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act. TEX. GOV'T CODE ANN., Chapter 551 (Vernon 1994).

PASSED AND APPROVED in regular session of the City Council of the City of Bynum, Texas, on the 13th day of February, 1996.

  
Jerry Hooker, Mayor

ATTEST:  
  
Jeanie Goff, City Secretary

