

(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

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

(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 an 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.

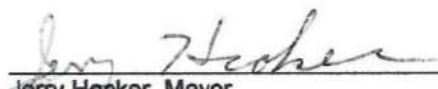
**3. SEVERABILITY.** If any provision, section, sentence, clause or phrase of the Ordinance, or the application of same to any person or set of circumstances, if for any reason is held to be unconstitutional, void, or invalid (or for any reason unenforceable), the validity of the remaining portion of 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 13 th day of February, 1996.

  
Jerry Hooker, Mayor

ATTEST:

  
Jeanie Goff, City Secretary