

**THE REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES  
IN THE UNINCORPORATED AREAS OF FANNIN COUNTY, TEXAS**

**TABLE OF CONTENTS**

|             |   |
|-------------|---|
| SEC. I      | AUTHORITY   |
| SEC. II     | ADMINISTRATION  |
| SEC. III    | AREA COVERED BY REGULATIONS   |
| SEC. IV     | DEFINITIONS   |
| SEC. V      | SOBP REQUIRED   |
| SEC. VI     | SOBP DISPLAYED  |
| SEC. VII    | ENFORCEMENT   |
| SEC. VIII   | SOBP APPLICATION  |
| SEC. IX     | REQUIREMENTS FOR EXISTING ENTERPRISES                                     |
| SEC. X      | DUTIES OF THE APPLICANTS AND PERMITEES                                    |
| SEC. XI     | PUBLIC HEARING ON HEALTH AND SAFETY                                       |
| SEC. XII    | ISSUANCE OR DENIAL  |
| SEC. XIII   | REVOCATION OR SUSPENSION  |
| SEC. XIV    | SOBP EMPLOYEE RECORDS   |
| SEC. XV     | NOTICE  |
| SEC. XVI    | TEMPORARY SOBP PROVISIONS   |
| SEC. XVII   | SOBP RENEWALS   |
| SEC. XVIII  | INVESTIGATION   |
| SEC. XIX    | INSPECTIONS   |
| SEC. XX     | TRANSFER PROHIBITED   |
| SEC. XXI    | LOST SOBP OR BADGE  |
| SEC. XXII   | OPERATING REQUIREMENTS OF ENTERPRISES                                     |
| SEC. XXIII  | ADDITIONAL REGULATIONS FOR ADULT MOTELS                                   |
| SEC. XXIV   | EXTERIOR PORTIONS OF ENTERPRISES  |
| SEC. XXV    | REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS |
| SEC. XXVI   | PERSONS YOUNGER THAN EIGHTEEN PROHIBITED FROM ENTRY                       |
| SEC. XXVII  | OPERATIVE DATE  |
| SEC. XXVIII | SEVERABILITY  |

**STATE OF TEXAS  
COMMISSIONERS COURT OF FANNIN COUNTY  
SEXUALLY ORIENTED BUSINESS ORDER**

**AN ORDER PROVIDING FOR THE LICENSING AND REGULATION OF SEXUALLY ORIENTED  
BUSINESSES IN UNINCORPORATED AREAS OF FANNIN COUNTY, TEXAS.**

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

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

**WHEREAS**, there is convincing documented evidence that sexually oriented businesses have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties, and

**WHEREAS**, it is recognized that sexually oriented businesses have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban and rural blight and downgrading the quality of life in areas surrounding them, and

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

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

**WHEREAS**, it is not the intent of this Order to suppress any speech activities protected by the United States Constitution or the Texas Constitution, but to enact an Ordinance to further the content-neutral government interests in the County of Fannin, to-wit, the controlling of secondary effects of sexually oriented businesses.

Pursuant to the authority granted by the Constitution and Chapter 243 and Chapter 234 of the Local Government Code of the State of Texas, **BE IT ENACTED BY THE COMMISSIONERS COURT OF FANNIN COUNTY TEXAS.**

## **SECTION 1- AUTHORITY AND FINDINGS**

(a) These regulations are promulgated pursuant to and in conformity with Chapter 243 of the Local Government Code of Texas, as amended, and Chapter 234 of the Local Government Code of Texas, as amended.

(b) It is the purpose of the Commissioners Court of Fannin County to exercise its police power, as established under Chapters 234 and 243 of the Local Government Code, to establish reasonable and uniform regulation of sexually oriented businesses to promote and protect the health, safety and general welfare of the citizens of Fannin County, and to prohibit business activities which merely serve as a front for activities prohibited by the Texas Penal Code, including but not limited to prostitution and the promotion of prostitution.

(c) The regulations are promulgated based on evidence of the adverse secondary effects of sexually oriented businesses presented in reports made available to the Commissioners Court and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004), *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002), *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000), *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *LLEH, Inc. v. Wichita County*, 289 F.3d 358 (5<sup>th</sup> Cir. 2002), *J&B Entertainment, Inc., v. City of Jackson*, 152 F.3d 362 (5<sup>th</sup> Cir. 1998), 2008 Texas City Attorney Association (TCAA) Crime-Related Secondary Effects Study of Sexually Oriented Businesses, and "Adult Entertainment Businesses in Indianapolis, An Analysis," 1984.

(d) The provisions of these regulations have neither the intent nor the effect of imposing limits or restrictions on the content of any communicative material, including sexually oriented material; nor is it the intent or effect of this regulation to restrict or deny adults access to sexually oriented material protected by the First Amendment.

(e) These regulations do not legalize anything prohibited under the Texas Penal Code and any other law or regulation.

## **SECTION II - ADMINISTRATION**

(a) The Commissioners Court hereby designates and directs the Director of Developmental Services to investigate, deny, issue, attach conditions, suspend, and revoke Sexually Oriented Business Permits (SOBPs) pursuant to the above authority and these regulations. The Commissioners Court may designate and direct others to carry out those duties. Any Peace Officer certified by the State of Texas may enforce these regulations. An appeal shall not automatically stay the effect of the Director's determination.

(b) Pursuant to Section 243.007(c) of the Local Government Code the District Court has jurisdiction over a suit which arises from the denial, suspension or revocation of a SOBP by the County.

(c) Section 243.010(a) and (b) of the Local Government Code, as amended, authorizes Fannin County to prosecute a violation of these regulations as a Class A misdemeanor.

(d) Section 234.104 of the Local Government Code, as amended, authorizes Fannin County to impose a civil penalty of not more than \$1,000.00 on a person who violates the prohibition on massage parlors as set forth in these regulations. Further, Section 234.105 of the Local Government Code, as amended, authorizes Fannin County to prosecute a person who intentionally or knowingly operates a massage parlor in violation of the prohibition as set forth in these regulations with a Class A misdemeanor. Additionally, Section 234.103 authorizes the Fannin County Attorney or District Attorney to bring suit to enjoin the operation of a massage parlor in violation or threatened violation of the prohibition as set forth in these regulations if the massage parlor has previously violated the prohibition.

(e) The revocation or suspension of a SOBP 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 SOBP pursuant to these regulations.

### **SECTION III - AREA COVERED BY REGULATIONS**

(a) These regulations apply to enterprises located in the extraterritorial jurisdiction of any city within the County and the unincorporated area of Fannin County.

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

### **SECTION IV – DEFINITIONS**

As used in these regulations:

(a) Adult Arcade: any place the public is allowed or invited where image producing devices are maintained to show images to five or fewer persons per device at any one time and where the images so displayed are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section. Devices covered in this definition include machines that produce still or motion pictures, are coin or slug operated, are electronically or mechanically controlled, and include computer monitors.

(b) Adult Bookstore or Adult Video Store: an establishment that as its primary business purpose offers for sale or rental, for any form of consideration, any one or more of the following:

- (1) books, magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes or video reproductions, computer programs, slides or other visual representations that depict or describe specified sexual activities or specified anatomical areas as defined in this section; and
- (2) instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities as defined in this section.

- (c) Adult Cabaret: a nightclub, bar, restaurant, or similar commercial establishment that features:
  - (1) persons who appear semi-nude or in a state of nudity as defined in this section;
  - (2) live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities as defined in this section; or
  - (3) films, motion pictures, computer simulations, video cassettes, slides or other reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section.
- (d) Adult Motel: a hotel, motel or similar commercial establishment that:
  - (1) offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section; and
  - (2) offers a sleeping room for rent for a period of time that is less than ten (10) hours or allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- (e) Adult Motion Picture Theater: a commercial establishment that regularly shows, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section.
- (f) Adult Theater: a theater, concert hall, auditorium or similar commercial establishment that regularly features live performances characterized by the exposure of specified anatomical areas defined in this section.
- (g) Allow: to let happen, cause, suffer, or permit, including the failure to prevent.
- (h) Applicant: the individual or entity submitting the application for a SOBP. Where appropriate this includes a designated agent of the applicant.
- (i) Cashier: any employee who handles cash or any other form of payment from clients of an enterprise for services or products provided including any form of electronic payments or handling transactions through internet based accounts.
- (j) Child Care Facility: a facility used as a day nursery, children's boarding home, child placement agency or other place for the care or custody of children under fifteen (15) years of age, licensed by the State of Texas pursuant to Chapter 42 of the Texas Human Resource Code;
- (k) Church or Place of Religious Worship: a facility, including all structures and grounds, at which persons regularly assemble for worship, intended primarily for purposes connected with faith or for propagating a particular form of belief.
- (l) City: an incorporated city, town or village;
- (m) Commissioners Court: the Commissioners Court of the County;

(n) Conduct business in or at an enterprise: a person who does any one or more of the following shall be deemed to be conducting business at an enterprise:

(1) Operates a cash register, cash drawer or other depository on the premises of the enterprise where cash funds or records of credit card or other credit transactions generated in any manner by the operation of the enterprise or the activities conducted therein are kept;

(2) Displays or takes orders from any patron for any merchandise, goods, entertainment or other services offered on the premises of the enterprise;

(3) Delivers or provides to any patron any merchandise, goods, entertainment or other services offered on the premises of the enterprise;

(4) Acts as a door attendant to regulate entry of patrons or other persons into the enterprise premises;

(5) Supervises or manages other persons in the performance of any of the foregoing activities on the premises of the enterprise; or

(6) Anyone who causes another to do any of the foregoing activities on the premises of the enterprise.

(7) Anyone engaging directly, or through officers, agents and employees, in any activity in pursuit of gain.

(o) County: Fannin County, Texas

(p) Director: the Director of Development Services or the Director of Development Services designated agent.

(q) Dwelling: a house, duplex, apartment, townhouse, condominium, mobile home or any other building used as a residence;

(r) Employee: any person who works in or about an enterprise and renders any service whatsoever to the patrons of an enterprise and receives compensation for such service or work from the enterprise operator or owner of the enterprise or from the patrons thereof, or who otherwise conducts business in an enterprise.

(s) Enterprise: see Sexually Oriented Business.

(t) Enterprise Operator: a manager or other natural person principally in charge of a Sexually Oriented Business.

(u) Escort: an individual who, for consideration, agrees or offers to privately model, dance or

similarly perform for another person, or to act as a private companion, guide or date for another person and offers a service intended to provide sexual stimulation or sexual gratification to a patron.

(v) Escort Agency: a business that, for consideration, furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes and offers a service intended to provide sexual stimulation or sexual gratification to a patron.

(w) EM Director: the Director of Emergency Management for Fannin County or the Director of Emergency Management's designated agent.

(x) Hospital: a building used to provide in-patient medical care for the sick or injured and licensed pursuant to the Texas Hospital Licensing Law, Chapter 241 of the Texas Health and Safety Code, or operated by an agency of the Federal Government.

(y) Interested Party: any person who owns or leases real property within two thousand (2,000) feet of an enterprise; the Director, any official who is elected by residents of Fannin County including the Sheriff but specifically excepting all magistrates elected in Fannin County; and the applicant.

(z) Live Exhibition: a live performance by one or more individuals in front of at least one patron, including but not limited to, dancing, modeling, sword swallowing, juggling, acrobatic acts, wrestling, pantomime, role playing, encounter session, singing, striptease, play, skit, reading, revue, fashion show, or musical rendition.

(aa) Nude, Nudity or State of Nudity: being entirely unclothed; or any state of dress which fails to opaquely cover a human buttock, the anus, genitalia, or areola of a female breast.

(aa) Massage Parlor: a business establishment that conveys a message, express or implied, of providing massage services and that allows:

(1) a nude person to provide massage services to a patron;

(2) a person to engage in sexual contact for compensation; or

(3) a person to provide massage services in clothing intended to arouse or gratify the sexual desire of any person.

For this definition of massage parlor, the terms "nude" and "sexual contact" have the meaning assigned by Section 234.101(2), Local Government Code.

(bb) Opaque: not transparent to any degree; an opaque article of clothing completely blocks visibility to the underlying skin or raiment; not see-through.

(cc) Owner: the proprietor of an enterprise if a sole proprietorship, all general partners of an enterprise if a partnership, or the corporation and all officers, directors, and persons holding fifty

percent (50%) or more of the outstanding shares of an enterprise if a corporation, any member of a LLC filed in any state or foreign jurisdiction. In addition to the preceding, a person is considered an owner of an enterprise for purposes of these regulations if s/he

- (1) is issued an Assumed Name of an enterprise;
- (2) takes out a lease for an enterprise;
- (3) opens an account for utilities for an enterprise;
- (4) receives a certificate of compliance for the building;
- (5) receives the profits of an enterprise;
- (6) pays for an advertisement for an enterprise;
- (7) signs for an alarm permit for an enterprise; or

(8) signs for a license issued by the Texas Alcoholic Beverage Commission to an enterprise.  
(dd) Patron: any customer or client of an enterprise, including members of the public or club member invited or admitted to a Class I enterprise. This definition shall not include the employees or permitted Class II performers at a Class I enterprise.

(ee) Peace officer: a peace officer as described in Article 2.12, Code of Criminal Procedure, having jurisdiction in the unincorporated areas of Fannin County.

(ff) Person: an individual, partnership, corporation, association or other legal entity.

(gg) Public Building: a building used by Federal, State, or local government that is open to the general public.

(hh) Public Park: a tract of land dedicated for public use and accessible to the general public for recreational purposes, not including public roads, walkways, casements and rights-of-way. This term shall include locations owned by non-profit organizations that provide educational and recreational facilities.

(ii) Recipient: the person for whom a Class II SOBP is intended to permit to conduct business at the enterprise.

(jj) Regulations: regulations of Fannin County, Texas, for the operation of Sexually Oriented Businesses.

(kk) SOBP: Sexually Oriented Business Permit issued and regulated pursuant to these regulations.



(1) The classifications of SOBPs are as follows:

(a) A Class I SOBP applies to an enterprise and must be obtained by an owner or enterprise operator for each location of any sexually oriented business operating in unincorporated Fannin County. This is meant to apply to an independent contractor performing at but not employed by a sexually oriented business; additionally, the Director will issue an independent contractor a badge that references its Class I SOBP.

(b) A Class II SOBP applies to an individual who is an employee, enterprise operator, owner, or any other person otherwise offering a service or selling, renting or exhibiting devices or any other items intended to provide sexual stimulation or sexual gratification, but is not required if the individual has a Class I SOBP as an independent contractor. A Class II SOBP may be obtained by the recipient or by the enterprise operator or owner on behalf of the recipient; however, the recipient must accompany the enterprise owner or operator to submit the application. A Class II SOBP is specific to an individual and Class I SOBP and may not be transferred. The owner or enterprise operator must keep records of the individuals who have been issued a Class II SOBP for their enterprise. A recipient of a Class II SOBP will also be issued a badge that references its Class II SOBP.

(II) School: a facility, including all attached playgrounds, dormitories, stadiums and other appurtenances which are part of the facility, used for the primary purpose of instruction or education, including primary and secondary schools, colleges and universities, both public and private.

(mm) Semi-nude: any state of dress which opaquely covers no more than a human buttock, anus, genitalia, and areolas of a female breast.

(nn) Server: an individual who serves patrons food or beverages in an enterprise, including waiters, waitresses, hosts, hostesses and bartenders.

(oo) Sexually Oriented Business: a 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 a patron. This definition includes but is not limited to: massage parlors; sex parlors; nude studios; modeling studios; love parlors; adult bookstores; adult movie theaters; adult video arcades; adult movie arcades; adult video stores; adult motels; adult cabarets; escort agencies; and sexual encounter centers. Certain sexually oriented businesses are prohibited under Article XXII(b) of these regulations; the sexually oriented businesses that are not prohibited must be permitted in accordance with these regulations.

(1) The terms sexually oriented business and enterprise are synonymous and shall not be construed to include:

(i) a business operated by or employing licensed psychologists, licensed physical

therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers that, as the major business purpose, performs functions authorized under the license held;

(ii) any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts as the major business purpose;

(iii) a massage establishment which is properly registered under Chapter 455, Occupations Code;

(iv) a bookstore, movie theater or video store, unless that business is an adult bookstore, adult movie theater, or adult video store as defined in these regulations;

(v) a theater, concert hall, auditorium or similar commercial establishment unless that business is an adult theater as defined in these regulations; or

(vi) a tanning facility that is properly licensed pursuant to Ch. 145 of the Texas Health and Safety Code, the Tanning Facility Act, as amended by the Acts of 1995, 74th Legislature, Ch. 684.

(pp) Sexually Oriented Modeling Studio: consisting of any place or premises ~~a place~~ where for any form of consideration, a person models semi-nude or in a state of nudity, or displays specified anatomical areas as defined in this section, for other persons to sketch, draw, paint, sculpt, photograph, electronically record, or similarly depict or observe.

(qq) Sexual Encounter Center: a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:

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

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

(rr) Sheriff: the Sheriff of Fannin County or the Sheriff's designated agent.

(ss) Specified Anatomical Areas:

(1) human genitals, pubic region or pubic hair;

(2) buttock;

(3) female breasts; or

(4) any combination of the foregoing.

(tt) Specified Sexual Activities: includes any of the following:

- (1) fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts, whether clothed or nude;
- (2) sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;
- (3) masturbation, actual or simulated; or
- (4) excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.

(uu) Transfer of Ownership or Control:

- (1) the sale, lease or sublease of an enterprise; or
- (2) transfer of a controlling interest in an enterprise whether by sale, exchange, gift or other means.

## **SECTION V - SOBP REQUIRED**

No person shall conduct business as or at a sexually oriented business at any location in the area of Fannin County covered by these regulations without a valid Sexually Oriented Business Permit (SOBP) issued in accordance with these regulations.

- (a) A separate application and SOBP shall be required for each enterprise.
- (b) Each physical address or location of an enterprise is a separate enterprise for the purposes of these regulations and SOBP requirement.
- (c) An individual who is an employee, enterprise operator, owner, or any other person otherwise offering a service or selling, renting or exhibiting devices or any other items intended to provide sexual stimulation or sexual gratification must be issued a Class II SOBP and badge number to conduct such business for a sexually oriented business.
- (d) An enterprise without a Class I SOBP or employing or contracting with individuals who are required by these regulations to have a Class II SOBP but do not is enjoined under these regulations.

## **SECTION VI - SOBP DISPLAYED**

- (a) The Class I SOBP for an enterprise shall be displayed at all times in an open and conspicuous place in the enterprise for which it was issued. If the owner or enterprise operator is operating as an independent contractor, the independent contractor must provide his/her SOBP to the owner or enterprise operator of the sexually oriented business wherein and for the duration of time business is conducted; further, the independent contractor must display the badge issued with the Class I SOBP while conducting

business. The owner, enterprise operator, and enterprise are responsible for ensuring compliance with the Class I SOBP requirements.

(b) The Class II SOBP for an individual shall be made available at any premises where the individual is conducting business. In addition, the individual shall wear a clearly visible badge issued by the Director showing the SOBP number any time s/he is conducting business at an enterprise as defined in these regulations. The owner, enterprise operator, individual, and enterprise are responsible for ensuring compliance with the Class II SOBP requirements.

## **SECTION VII – ENFORCEMENT**

(a) A person that violates the prohibition on massage parlors as set forth in these regulations is subject to civil penalties, criminal penalties, and injunctive relief pursuant to Chapter 234 of the Local Government Code. A person who violates these regulations, other than the prohibition on massage parlors, is subject to a suit to enjoin operation of the enterprise pursuant to Section 243.010 of the Texas Local Government Code and is also subject to prosecution for criminal violations.

(b) For a first offense, a person who violates the prohibition on massage parlors as set forth in these regulations is subject to a civil penalty of no more than \$1,000.00 and a criminal penalty of a Class A misdemeanor. For all subsequent violations of the prohibition on massage parlors, a person is subject to the civil penalty and criminal penalty of the first offense, and is also subject to a suit to enjoin the operation or threatened operation of a massage parlor.

(c) The Fannin County Attorney is hereby authorized to file suit to recover a civil penalty and/or enjoin violations of these regulations. The Fannin County District Attorney is hereby authorized to file suit to prosecute a criminal penalty for violations of these regulations. A suit may be initiated upon information received from private citizens or any law enforcement agency.

## **SECTION VIII - SOBP APPLICATION**

(a) To obtain a Class I or Class II SOBP, a complete application shall be filed with the Director. The application shall be filed on the form provided by the Director or an accurate and legible copy of that form. The applicant shall apply in person at the Director's office. The hours when applications can be submitted will be established by the Director. A notice of deficiencies shall be mailed to the applicant within five (5) business days of receipt of the application if all the information required by these regulations has not been provided in the application. A receipt shall be mailed to the applicant within five (5) business days of submission of a complete application to the Director.

(b) All applicants for a Class I SOBP shall provide the following information. The information in subsections (1) and (2) will be made available to the public when a Class I application is received:

(1) The full legal name and any other name used by the applicant.

(2) A general description of the enterprise, which shall include the address of the enterprise and the services and products which will be offered.

(a) A Class I SOBP shall be valid for only one physical location of an enterprise. If an enterprise has more than one physical location, a separate SOBP must be obtained for each physical location.

(3) The applicant's complete business license or permit history including any permit or license which has been issued to the applicant by any agency, board, City, County, or State, and any professional or vocational license or permit. This shall include those which have expired or are currently in effect and shall include any license or permit that has been denied, or was issued to the applicant and subsequently revoked or suspended. If there have been licenses or permits which were denied, revoked or suspended, the permit history shall include the reason for that action.

(4) If the applicant intends to operate the enterprise under an assumed name, a copy of the assumed name certificate filed in compliance with Chapter 36 of the Texas Business and Commerce Code. If the enterprise is licensed under the Texas Alcoholic Beverage Code the application shall be filed and the enterprise shall conduct business under the name shown on the liquor license. If the applicant is an individual, the applicant's valid driver's license number or Texas Department of Transportation identification card number shall be included.

(5) The name and residential address of each enterprise operator and owner.

(6) The name and address of the owner of the real property at which the business is to be located and a copy of any lease or rental agreement.

(7) A reliable estimate of the number of employees, including a description of the capacities in which they will be employed; a general description of the management structure for the enterprise; a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Enterprises subject to Section XXV of these regulations are required to conform to that section.

(8) A current inspection report from the EM Director.

(9) A certification that the proposed enterprise will be located:

(a) a minimum of one (1) mile from any existing or planned child care facility, school, dwelling, hospital, public building, public park, or church or place of religious worship, "planned" means that steps have been taken toward the facility's or structure's development including but not limited to a permit received, a plat approved, design work started, a bond received, or an order approved by a governmental entity's governing body;

(b) a minimum of one (1) mile from a penal institution as defined by the Penal Code; and

(c) not more than two (2) other Class I enterprises are located within a distance of two (2) miles of the proposed location.

(d) this subsection shall apply only to property uses in existence at that location at least thirty (30) days prior to the date of application.

(e) for the purposes of this subsection, measurements shall be made in a straight line from the nearest portion of the building or appurtenances used by the enterprise to the nearest portion of the building or appurtenances that is used for the purposes identified in subsections (a), (b) or (c) above. These distance restrictions apply to an identified purpose whether or not the building or appurtenances used for an identified purpose is located within the unincorporated area of Fannin County.

(10) The applicant shall post signs at the property where the proposed enterprise will be located. The signs shall be at least 24 inches x 36 inches in size and legibly state that a Sexually Oriented Business Permit Application has been filed with the Fannin County Director's Office. It shall also state the date the application was filed and the phone number for the Director's Office. The sign shall inform the public that persons can contact that office for more information about the application. Each letter on the sign must be at least 1.5 inches x 2 inches in size. It shall be the duty of the applicant to erect each sign so that it is in a location clearly visible from the public sidewalk, road or highway. A sign shall be placed on each side of the property visible from a public sidewalk, road or highway. If a side of the property is longer than three hundred feet, one sign shall be erected in each three hundred-foot increment of the property. The signs shall be erected within seven (7) days after the filing of the application for the SOBP and remain until the application has been approved or denied by the Director. If the Director determines that the signs have not been erected pursuant to the requirements of this subsection, a written notice shall be issued to the applicant identifying the deficiencies and no action shall be taken on the application until the signs have been erected as required.

(11) Every applicant for a Class I SOBP shall give written notice of the application to all owners and lessees of real property within two thousand (2,000) feet of property on which the SOBP is requested. These owners and lessees are interested parties in any public hearing process connected with the SOBP, including revocation hearings. The owners of these properties shall be notified as required in this subsection even if the property is not located in the unincorporated area of Fannin County. Owners of property within two thousand (2,000) feet of the proposed location that are not within the unincorporated area of Fannin County, Texas shall have the same rights under this subsection as the residents of the unincorporated area of Fannin County.

(i) Notice shall be sent within ten (10) days after the application is filed with the Director and shall contain a legible copy of the "Notice to Interested Parties" included in the

application form provided by the Director and shall contain the information described in subsection (b) items (1) & (2).

(ii) Notice shall be given by posting the notice in the U.S. Mail, properly addressed and postage prepaid.

(iii) Each property owner and lessee so notified shall have fourteen (14) days to file a request for a public hearing as provided in Section XI. The "Notice to Interested Parties" shall contain the procedures for requesting the hearing.

(12) A statement under oath that:

(a) the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct; and

(b) the applicant has read and understands these regulations.

(13) The applicant shall authorize the Director to seek information to confirm any statements set forth in the application.

(c) All applicants for a Class II SOBP shall provide the following information and must be accompanied by the recipient:

(1) The full legal name and any other name used by the applicant.

(2) The full legal name and any other name used by the recipient.

(3) Each of the recipient's residential addresses for the three (3) years immediately preceding the date of the application, indicating the dates of each residence and including the present address and telephone number of the recipient.

(4) The recipient's business, occupation and employment history for the three (3) years immediately preceding the date of application, indicating the applicable dates and addresses.

(5) Documentation that the recipient is at least eighteen (18) years of age.

(6) The recipient's height, eye color and natural hair color: the Director shall take two photographs of the recipient at the time of the application, one photograph shall be affixed to the SOBP and one photograph shall be retained by the Direct, new photographs may be required by the Direct's Office upon application for renewal of the SOBP.

(7) The recipient's criminal history which shall consist of a statement of: any and all criminal convictions and the date and place thereof; any charge which the recipient entered a plea of nolo contendere or for which recipient received deferred adjudication; but it shall not include Class C misdemeanor traffic violations.

(8) The Director may require the recipient to furnish fingerprints for the purpose of establishing identification.

(9) Other identification and information as reasonably necessary in order to confirm the validity of information provided in the application.

(10) A mailing address where the applicant can be reliably contacted.

(11) A statement under oath that:

(i) The applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct; and

(ii) The applicant has read and understands these regulations.

(12) The applicant and recipient shall authorize the Director to seek information to confirm any statements set forth in the application.

(d) Applications for both Class I and Class II SOBPs must be accompanied by a non-refundable fee, established by the Fannin County Commissioners Court. The fee shall be paid in the form of a money order, cashier or bank check.

(e) If the applicant is a corporation, Limited Liability Company, partnership, joint venture, or other similar business entity the applicant shall also include:

(1) a Texas corporation shall provide a copy of the Articles of Incorporation with amendments; names and residential addresses of all current officers and directors; and the name and address of each stockholder holding more than 5% of the stock of the corporation;

(2) a foreign corporation shall provide a copy of the certificate of authority to transact business in Texas, with all amendments; names and residential addresses of current officers and directors; and names and addresses of each stock holder holding more than 5% of the stock of the corporation;

(3) a general or limited partnership shall provide the name and residential address of each of the partners, including limited partners, if the applicant is a limited partnership formed under the laws of Texas, a copy of the certificate of limited partnership filed with the Office of the Secretary of State, and amendments included, if one or more of the partners is a corporation the information required of corporate applicants shall be included in the application in addition to these requirements;

(4) a Texas Limited Liability Company shall provide a copy of the certificate of existence, names and residential addresses of all members of the Limited liability Company.

(5) a foreign Limited Liability Company shall provide a copy of the certificate of authority to



transact business in Texas, names and residential addresses of all members of the Limited liability Company.

(6) if the applicant is a joint venture or other similar entity, the names and residential addresses of the participants and their valid driver's license numbers or Texas Department of Transportation identification card numbers are required if the participants are individuals, if any participant is a corporation or partnership, the applicable information required in items (1), (2), or (3) above shall be provided; and

(7) as to each person required to be identified in this section, the application shall also contain: a statement as to any ownership interest that person has in any other enterprise in Fannin County, Texas; a description as to any management, supervisory, or oversight responsibility that person will have in the enterprise; a valid driver's license number or Texas Department of Transportation identification card number; and a certification as to each officer, director, partner or participant that s/he has not been convicted of any of the crimes listed in Section XII(e)(1)(iv).

(f) All owners or enterprise operators of the enterprise are individually responsible for ensuring the Class I SOBP and all Class II SOBPs are in compliance with these regulations regardless of the amount of time each has been either an owner or enterprise operator of the enterprise.

## **SECTION IX – REQUIREMENTS FOR EXISTING ENTERPRISES**

(a) If an existing Class I enterprise is in violation of the location restrictions of Section VIII(e)(4) the enterprise may submit verified proof that the business has not recouped the owner's investment prior to the date of application in lieu of the certification required in that section. The required documentation shall include:

- (1) the amount of the owner's investment in the existing enterprise to the date the proof is submitted;
- (2) the life expectancy of the enterprise;
- (3) the existence or nonexistence of lease obligations, as well as any contingency clauses therein permitting termination of the lease;
- (4) proof of the income of the enterprise since it commenced operation and a projection of yearly income, this may be in the form of tax returns or reliable financial statements; and
- (5) a proposed schedule for amortization of the investment, to be considered in light of the intent of these regulations.

(b) Upon evaluation of the proof and a finding that a proposed amortization is reasonable under

the circumstances, the Director shall approve a Contingent SOBP. The Director may consult with the County Auditor and other county representatives in determining the reasonableness of the amortization proposal. The Contingent SOBP shall specifically state the reasons that the SOBP would have been denied but for the fact that the enterprise was in existence prior to enactment of these regulations.

(c) The Contingent SOBP shall be renewed only through the amortization period. No SOBP shall be issued for that location beyond that period unless circumstances change so as to bring the enterprise into compliance with these regulations. The Contingent SOBP shall be subject to revocation and suspension pursuant to these regulations.

(d) Upon a finding that the proposal is not reasonable under the circumstances, the Director shall make a reasonable counter-proposal or recommendation and the applicant may re-submit a revised proposal within fifteen (15) days of notice of the Director's determination and counter-proposal. If the revised proposal is again found to be unreasonable by the Director, the Director shall make a final determination to deny the SOBP.

(e) Any enterprise or individual that operates in the area of Fannin County affected by these regulations at the time these regulations become effective shall have sixty (60) days from the effective date to come into compliance with these regulations, subject only to the provisions for a Contingent SOBP based on location.

## **SECTION X – DUTIES OF THE APPLICANTS AND ENTERPRISES**

(a) The applicant/enterprise/individual shall be under a continuing affirmative duty while the application is pending and during the effective dates of the SOBP to notify the Director of any of the following events. Notice is to be provided in writing and delivered no later than seven (7) days after the occurrence of:

(1) address and/or name change of the applicant;

(2) revocation or suspension of any permits or licenses listed in the applicant's permit history;

(3) an enterprise required under these regulations to operate with a Class I SOBP shall notify the Director when the enterprise learns that an individual required under these regulations to operate with a Class II SOBP has been formally charged with a crime listed under Section XII(e)(1)(iv) and the crime is alleged to have occurred on the premises of the enterprise.

(b) The enterprise shall comply with the conditions attached to the SOBP pursuant to Section XI or Section XII(f). Each and every day the enterprise fails to comply with a SOBP condition is a violation of these regulations.

(c) An enterprise shall notify the Director immediately if a SOBP or badge is lost or stolen. If notice of loss has not been provided to the Director and an SOBP or badge is found in the possession of any person other than the enterprise, it shall be presumed that the enterprise had knowledge of the illegal use of the SOBP or badge, and participated in the attempt to transfer the permit.

## **SECTION XI - PUBLIC HEARING ON HEALTH AND SAFETY**

(a) When the Director receives a written request for a public hearing concerning a Class I SOBP application, the Director shall confirm that it is: from an interested party; that the request specifically identifies the SOBP application at issue; that the request is timely filed; and that the request specifically identifies health and safety concerns affected by the enterprise. The Director shall then initiate the public hearing procedure as follows:

(1) The Director shall notify the County Judge that a hearing has been requested. The County Judge shall set a date for a Commissioners Court to conduct the public hearing.

(2) The Director shall send the applicant a written Notice of Hearing at least ten days in advance stating the date, time and place of the hearing and shall make a copy of the Notice of Hearing available to the public.

(3) Publicizing the hearing shall be the responsibility of the interested party who requested the hearing. The Director shall make available to the public a copy of any request for hearing and the Notice of Hearing.

(4) The Director shall place a sign at the location identified in the application containing the time and place of the hearing.

(5) The hearing may be rescheduled by the County Judge for good cause, including, for example, a large number of requests for a hearing that indicate strong public interest in the matter. The hearing may be rescheduled a second time if rescheduling was due to emergency circumstances such as extreme weather conditions. If rescheduled, the new Notice of Hearing shall be available to the public at the Director's Office.

(6) The applicant may request that a court reporter make a record of the hearing. The applicant must make this request at least two (2) days prior to the hearing and bear the cost of making an official record and one (1) transcript for the County. The hearing official shall arrange for the court reporter to take the record of the hearing, including exhibits and testimony. One copy of the transcript shall be provided to the County Judge to become the property of the County.

(b) If a request for a public hearing is received by the Director after the SOBP has been issued or renewed, the hearing shall be scheduled when the next renewal application is filed. The Director shall confirm that the request identifies health and safety concerns affected by the enterprise that are not addressed in the current SOBP and that the request is filed by an interested party. The request shall then be attached to the SOBP records. When a renewal application is submitted, the Director shall initiate the hearing as set out in subsection (a).

(c) If the request for public healing is deficient, the Director shall return it to the person who submitted the request with a notation stating the deficiency. A request that does not comply

with the requirements stated in (a) or (b) above shall not extend the period of time in which a request for hearing may be filed.

(d) The hearing shall be conducted by the hearing official under the following guidelines. The hearing official shall liberally construe these guidelines to allow the public input to protect the health and safety of a community affected by the location of an enterprise and to allow the applicant to address these concerns:

(1) interested parties are entitled to the assistance of counsel;

(2) interested parties may expressly waive the right to counsel;

(3) the hearing official shall, upon prior request, provide for appropriate facilities for any disabled person to be able to participate in the hearing, this shall include, but not be limited to: interpreters for deaf or hearing impaired participants, wheel chair access and special seating arrangements; and

(4) participants in the proceeding may supply interpreters for language translation and the hearing official shall accommodate the translation of the proceeding.

(5) the hearing official may exclude evidence that is irrelevant, immaterial, or unduly repetitious. Relevance and materiality shall be evaluated by the relation of the evidence to health and safety concerns directly related to the SOBP at issue, and conditions which may be attached to the SOBP to address those concerns. The hearing is not limited to the health and safety concerns specifically identified in the hearing request.

(6) if no request is made by the applicant for an official record, any person may record, videotape or transcribe the hearing provided there is no interference with the proceedings. The hearing official shall have the power to limit any interference with the proceeding.

(e) The hearing official may continue the hearing to a date no later than ten (10) days after the initial hearing if:

(1) the hearing has lasted at least two and one half (2 ½) hours and it appears to the hearing official that a significant amount of time is still required to fully present the public concerns and potential solutions to those concerns; or

(2) issues have been raised at the hearing requiring additional research in order to develop appropriate conditions to be attached to the SOBP or that the parties need additional time to develop a solution to issues identified at the hearing.

(3) A continuance shall not be for the purpose of delay or for developing new evidence.

(f) After the conclusion of the public hearing, the Commissioners Court shall produce a written statement containing the Commissioners court's findings of public health and safety concerns

and recommendations for conditions to be attached to the SOBP. The recommendations shall be forwarded to the Director, the applicant and the interested party who requested the hearing. When the hearing official determines that public health and safety concerns exist, the Director shall attach conditions as part of the SOBP. If no official record of the hearing has been requested the hearing official's statement shall be the official record of the public hearing. The hearing official may consult with the Director for the purpose of developing appropriate conditions to address the health and safety concerns shown at the hearing.

(g) If evidence is produced at the hearing that would support denial of the SOBP, the Commissioners Court shall provide that information to the Director, who shall investigate whether the evidence warrants denial or revocation of the SOBP under these regulations.

## **SECTION XII - ISSUANCE OR DENIAL**

(a) A Class I SOBP shall be issued within sixty (60) business days of submission of a complete application, unless the application is denied. The sixty (60) business days shall run from the date the Director issues the receipt pursuant to Section VIII(a).

(b) A Class II SOBP shall be issued within ten (10) business days unless the application is denied. The ten (10) days shall run from the date the Director issues the receipt pursuant to Section VIII(a).

(c) The Director shall defer determination whether to issue a SOBP until final disposition of any charge of any of the crimes listed in subsection XII(e)(1)(iv) that is pending or arises during the investigation period. No temporary SOBP shall be issued before there is a final determination of the criminal charge.

(d) If the Director finds that the determination on whether a SOBP can be issued cannot be made within the time period stated in subsection (a) above, a written notice stating the reasons for the delay shall be sent to the applicant within that time period.

(e) The SOBP shall be denied upon the finding by the Director of any of the following facts:

(1) The recipient or applicant, or if the applicant is a corporation, partnership, or other business entity, any officer, director, partner or participant required to be identified in the application, was convicted of any of the crimes listed below and

(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 a 24-month period.

(iv) The crimes considered in applying this section are:

- (a) prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity, sale, distribution, or display of harmful material to a minor, sexual performance by a child, or possession of child pornography as described in Chapter 43 of the Texas Penal Code;
- (b) public lewdness, indecent exposure, or indecency with a child as described in Chapter 21 of the Texas Penal Code;
- (c) sexual assault or aggravated sexual assault as described in Chapter 22 of the Texas Penal Code;
- (d) incest, solicitation of a child or harboring a runaway child as described in Chapter 25 of the Texas Penal Code;
- (e) gambling, gambling promotion, keeping a gambling place, communicating gambling information, possession of gambling devices or equipment, or possession of gambling paraphernalia as described in Chapter 47 of the Texas Penal Code;
- (f) forgery, credit card abuse or commercial bribery as described in Chapter 32 of the Texas Penal Code;
- (g) a criminal offense as described in Chapter 481. Subchapter D of the Health and Safety Code;
- (h) a criminal offense as described in Chapter 34 of the Texas Penal Code;
- (i) criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses; or any other offense in another state that, if committed in this state, would have been punishable as one or more of the aforementioned offenses;
- (j) a criminal offense as described in Chapter 352, Subchapter B of the Texas Local Government Code;
- (k) a violation of Chapter 455 of the Texas Occupations code; or
- (l) a violation of these regulations described in Section XXII(a).

(3) The enterprise, as proposed, is a prohibited enterprise pursuant to Section XXII(b); the enterprise does not meet all the requirements of these regulations; or the enterprise is otherwise prohibited by local, state or federal law;

(4) The applicant has knowingly made a misleading statement of a material fact by omitting or falsifying information in the application for the SOBP;

(5) The applicant, if an individual, is under eighteen (18) years of age;

(6) The applicant or enterprise operator has had a SOBP revoked for the same enterprise within the one-hundred eighty (180) day period immediately preceding the date the application was filed;

(7) An applicant is delinquent in the payment to the county of taxes, fees, fines or penalties assessed or imposed regarding the operation of a sexually oriented business;

(8) The application or renewal fee required by these regulations has not been paid; or

(9) An applicant or enterprise operator has owned or been employed in a managerial capacity of a business or location within the preceding twelve (12) months and during that period that business or location constituted a common or public nuisance as defined in Chapter 125 of the Texas Civil Practice and Remedies Code.

(f) The Director shall attach reasonable conditions on a SOBP pursuant to the recommendations of the hearing officer if a public hearing was held under Section XI. These conditions shall address the public health and safety concerns identified in the hearing.

(g) A Class I SOBP shall be valid for one (1) year from the date it is issued, a Class II SOBP shall be valid until the individual's next birth date, unless the SOBP is revoked or suspended pursuant to these regulations; the enterprise is sold or transferred, or the SOBP is cancelled by written request of the applicant. The renewal fee for the initial Class II SOBP will be reduced to reflect proration of the application fee based on the portion of the year for which the initial SOBP was valid.

(h) In the event that the Director determines that the SOBP is denied pursuant to these regulations, the applicant shall be given written notice of the reason for that determination. The written notice provided under this section does not prohibit the County, in litigation on appeal, from presenting evidence of additional or alternative facts that support denial of the SOBP.

### **SECTION XIII - REVOCATION OR SUSPENSION**

(a) The Director shall have the authority and power to initiate a proceeding to revoke or suspend a SOBP if there is probable cause to believe that one or more of the following events or conditions has occurred:

(1) the owner or enterprise operator negligently allowed a person under eighteen (18) years of age to remain on the premises of the enterprise during the hours of operation;

(2) three (3) or more violations of any of the offenses contained in Section XII(e)(1)(iv) have occurred on the premises of a Class I enterprise within a period of eight (8) months and the

owner or enterprise operator failed to make a reasonable effort to prevent the occurrence of such violations;

(3) the enterprise, owner, enterprise operator, or recipient negligently failed to comply with a duty specifically imposed by these regulations.

(4) the applicant provided materially false, fraudulent or untruthful information on the original or renewal application form;

(5) the enterprise has been closed for business for a period of thirty (30) consecutive days unless the closure is due to circumstances beyond the control of the owner and the owner is proceeding with due diligence to reopen the establishment;

(6) the SOBP should not have been issued pursuant to these regulations; or

(7) the enterprise, enterprise owner, or recipient is convicted of a criminal offense contained in Section XII(e)(1)(iv).

(b) If probable cause is found to believe any of the stated events or conditions occurred, the Director shall forward to the SOBP holder or its designated agent a written notice of revocation. The notice shall set out the reasons for the action. Subject to a request for hearing pursuant to this section, the revocation shall become final on the eleventh (11<sup>th</sup>) day after delivery of the notice.

(c) The enterprise or its designated agent shall have the opportunity to appear before a hearing examiner appointed by the Commissioners Court upon written request submitted to the Director within ten (10) business days of delivery of the notice of revocation. The hearing examiner shall not have participated in any investigation of the alleged grounds for the revocation. The hearing shall be held within fourteen (14) business days of the request for hearing and the enterprise and the Director shall be provided an opportunity to present evidence, cross examine witnesses and be represented by legal counsel. The rules of civil evidence for a non-jury trial shall apply.

(d) Upon finding that the facts presented at the hearing support a finding that grounds exists for revoking or suspending the SOBP, the hearing examiner may request that the parties present relevant evidence to show whether suspension or revocation of the SOBP is more appropriate. The hearing examiner may also request that evidence be presented for the purpose of identifying appropriate conditions to be attached to a Class II SOBP if the SOBP is suspended. Reasonable conditions may be attached to a Class II SOBP by the hearing examiner based on the evidence presented at the hearing.

(e) If the hearing examiner determines that a SOBP should be revoked, the hearing examiner shall issue a written order revoking the SOBP, effective when notice is provided to the enterprise pursuant to these regulations.

(f) If the hearing examiner determines, based upon the nature of the violations, that a suspension in lieu of revocation is appropriate, operation of the SOBP may be suspended for a period of time not to exceed two (2) months. The hearing examiner shall issue a written order



suspending the SOBP and attaching conditions, if applicable, effective upon notice to the enterprise pursuant to these regulations.

(g) Upon the finding that item (a)(4), (5), (6) or (7) of this section has been violated revocation of the SOBP shall be mandatory.

(h) Revocation shall be subject to the hearing provisions of this section except revocation shall take Immediate effect upon notice by the Director, subject to reinstatement resulting from an appeal when:

(1) there is a necessity for immediate action to protect the public from injury or imminent danger; or

(2) a SOBP was issued based on a material misrepresentation in the application and but for the material misrepresentation, the SOBP would not have been issued. This revocation shall be appealed as though the SOBP had been denied using the procedure set out in Section II of these regulations.

#### **SECTION XIV - SOBP EMPLOYEE RECORDS**

(a) Before an enterprise may employ a person, the enterprise must obtain a complete background and criminal history check of the person. An enterprise may not employ a person, who would be required to have a Class II SOBP, if the person would not be eligible for a Class II SOBP under Section XII.

(b) An enterprise has the duty to keep the following information on file on site for each person employed at the enterprise:

(1) the full legal name, professional or performing names and any other names used by the employee;

(2) a photocopy of the employee's valid driver's license or Texas Department of Transportation identification card;

(3) the current address and telephone number of the employee;

(4) employee's height, eye color and natural hair color;

(5) a photograph of the employee taken within one (1) month of the date of employment and updated every year;

(6) The complete background and criminal history check made prior to the offer of employment and an annual background and criminal history check made no later than one month after the anniversary of the date of employment;

(7) a description of the capacity in which the employee is employed; and

(8) if the employee is employed in a capacity that involves serving liquor to patrons, evidence of certification through completion of a Texas Alcoholic Beverage Commission approved seller training program, under the V.T.C.A., Alcoholic Beverage Code Sect. 106.14.

(c) The enterprise has the duty to maintain and make available these records for inspection, and copying, by the Director. The Director will provide a standard format for these records. The records shall include a time record reflecting the times and dates each employee worked. These records shall be available for inspection by the Director during the hours of operation of the enterprise upon twenty-four (24) hours' notice. These records shall be retained for at least a period of two (2) years from creation. Upon written request, the enterprise has a duty to provide a copy of the records to the Director within seven (7) business days of the request.

(d) An owner or enterprise operator of an enterprise shall maintain a log of all Class I or Class II SOBP recipients conducting business at the enterprise and list the duties of those recipients. The owner or enterprise operator must turn over the log to the Director upon request.

(e) Any employee who provides false information to an enterprise pursuant to this section violates these regulations.

(f) An enterprise has the duty to have the employee information available regarding any individual working at the enterprise. This information must be maintained by the enterprise regardless of whether these regulations require the employee to have a valid Class II SOBP.

## **SECTION XV - NOTICE**

(a) Any notice required to be given by the Director under these regulations to any applicant or enterprise or enterprise operator may be given by personal delivery or by United States mail, postage prepaid, addressed to the most recent address as specified in the application for the SOBP or the most recent notice of address change.

(b) Mailed notice shall be deemed served three (3) days after deposit in the United States Mail.

(c) In the event that notice given by mail is returned by the postal service as undeliverable it shall be presumed that the enterprise or recipient did not comply with the affirmative duty to notify the Director of any change of address, unless the enterprise or recipient can show there was error on the part of the Post Office, and;

(1) in the case of notice in connection with a Class I SOBP the Director shall have the notice posted at the entrance to the enterprise; or

(2) in the case of notice in connection with a Class II SOBP the Director shall have the notice posted at the entrance to the enterprise and shall suspend the SOBP until the applicant/recipient contacts the Director with a current address. An individual with a SOBP that is suspended pursuant to this section who continues to conduct business at an enterprise shall be in violation each and every day that s/he conducts business in Fannin County.

## **SECTION XVI - TEMPORARY SOBP PROVISIONS**

Failure of the Director to take timely action or give notice of his action on an application, or failure by the County Judge or Commissioners Court to timely conduct or give notice of the decision pursuant to a hearing, shall entitle the applicant to the immediate issuance of a temporary SOBP upon written demand. Demand shall be filed by the applicant with the Director. A temporary SOBP shall be valid only until notice of the Director's action on the application or the hearing examiner's order. This section shall not apply where delay is caused by the action or inaction of the applicant.

## **SECTION XVII - SOBP RENEWALS**

(a) SOBP renewal applications must be filed not more than thirty (30) days prior to the expiration date of the SOBP. The form for renewal application shall be provided by the Director.

(b) An annual nonrefundable renewal fee, to be set by the Fannin County Commissioners Court shall accompany the application for renewal to defray costs of inspections and investigation. The fee shall be paid in the form of cash, money order, cashier or bank check.

(c) The renewal application shall contain:

(1) Certification by the applicant that there have been no changes in the information provided in the initial application or the information which has changed since the initial application, supported by related documentation as required in the initial application.

(2) An application for a Class I SOBP renewal shall contain a certification that the enterprise is in operation. A Class I SOBP will not be renewed if the enterprise has not commenced operation as proposed in the initial SOBP application.

(3) A current inspection report from the EM Director.

(d) The Director shall determine whether the permit maybe renewed based on the information contained in the renewal application. The renewal permit shall be denied upon a finding of any of the conditions identified in Section XII(e). Renewal or denial shall be issued within fourteen (14) days of receipt of the completed renewal application or by the expiration date of the previous SOBP whichever period is longer.

(e) If a renewal application is submitted less than fifteen (15) days before the previous SOBP expires, there shall be no temporary SOBP issued to extend the SOBP. The original SOBP will expire and until the Director's determination on renewal, there will be no valid SOBP for operation during that period

(f) If an applicant fails to file its renewal application prior to the expiration of the existing SOBP, the applicant must file an application for a new SOBP and the application shall be considered as any new application.

(g) Upon written request of any interested party, filed with the Director prior to issuance of a new Class I SOBP and specifically identifying existing public health and safety concerns connected with the operation of that enterprise, a public hearing will be held as provided for in Section XI.

(1) The general public and all interested parties may present to the Commissioners Court Information to support recommendations to the Director for conditions relating to public health and safety to be attached to the SOBP upon renewal.

(2) The request for a public hearing may be filed at any time during the year, but the hearing will be scheduled when the application for renewal of the Class I SOBP is filed. If issuance of the renewal is delayed solely to accommodate the need for the public hearing, the existing SOBP shall be automatically extended until the Director issues the renewed SOBP based on the recommendations of the hearing official. The fact that there is a pending public hearing does not revive a SOBP that lapses under the provisions of subsections (e) and (f) above.

(h) If a permit has been suspended pursuant to Section XIII of these regulations, the renewed permit will be suspended until the suspension period has elapsed.

## **SECTION XVIII – INVESTIGATION**

Upon receiving the application for a SOBP or all application for renewal, the Director shall conduct an investigation to determine compliance with these regulations.

## **SECTION XIX – INSPECTIONS**

(a) A peace officer shall make reasonable, periodic inspections of the premises of all permitted sexually oriented businesses in unincorporated Fannin County to determine compliance with these regulations.

(b) Director shall make reasonable, periodic inspections of the premises of all sexually oriented businesses in unincorporated Fannin County.

## **SECTION XX - TRANSFER PROHIBITED**

(c) A Class I SOBP issued under these regulations is not transferable, assignable or divisible and it is a violation of these regulations for any person to attempt to do so. Upon transfer by bequest or operation of law upon the death of the enterprise, the SOBP will continue in effect for forty-five (45) days after the death of the enterprise. Upon the filing of a new application and posting the application with the prior SOBP, the enterprise may continue to operate until the final determination on the new SOBP. If no application is filed within the forty-five (45) days, the enterprise shall be in violation of these regulations each and every day it continues to operate without a new SOBP.

(d) A Class II SOBP and accompanying badge issued under these regulations are not transferable, assignable or divisible and it is a violation of these regulations for any person to attempt to do so. If the recipient of the Class II SOBP ceases to conduct business at the enterprise, the owner

or enterprise operator must inform the Director. The Class II SOBP and accompanying badge become ineffective and inoperative when the recipient ceases to conduct business at the enterprise.

#### **SECTION XXI - LOST SOBP OR BADGE**

(a) If an SOBP or badge is lost or destroyed, a replacement may be obtained by filing a lost SOBP/badge application and paying a lost SOBP/badge fee.

(b) A replacement SOBP or badge shall be issued immediately upon confirmation of the identity of the applicant through the Director's records.

(1) A replacement badge number will be assigned for a replacement Class II SOBP.

(2) A replacement SOBP will expire on the same date as the original SOBP.

(c) It shall not be a defense to prosecution for conducting business without an SOBP or failure to display a badge that an SOBP or badge was lost or stolen. The enterprise may not conduct business as an enterprise, in Fannin County, Texas, until s/he obtains a replacement SOBP or badge.

(d) A SOBP or badge found in the possession of any person other than the enterprise may be immediately seized by the Director, the Sheriff or any law enforcement officer. The authorized SOBP holder may reclaim the permit or badge from the Director's Office.

#### **SECTION XXII - OPERATING REQUIREMENTS FOR ENTERPRISES**

(a) The following shall be violations of these regulations punishable as authorized in Section 243.010(b) of the Local Government Code, and may be punishable as authorized in Chapter 234 of the Local Government Code, if applicable. Each day a violation continues constitutes, and is punishable as, a separate offense:

(1) for any employee, owner, or enterprise operator of an enterprise to negligently allow any person below the age of eighteen (18) years to remain upon the premises or within the confines of the enterprise during the hours of operation;

(2) for any person to be at an enterprise nude; however, private rooms at adult motels and designated dressing rooms for employees that are not visible or accessible to patrons are excepted from this prohibition;

(3) for any employee, owner or enterprise operator to request or suggest that any patron, employee or individual become nude at the premises of the enterprise;

(4) for any person to engage in, or any employee, owner or enterprise operator to allow another person to engage in, sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any other public sexual acts prohibited by law, or acts which simulate the aforesaid at or in a permitted premises;

(5) for any enterprise to exhibit advertisements, displays, or other promotional materials at the premises that are characterized by specified sexual activities or specified anatomical areas and are visible from a public road, sidewalk or other public place;

(6) for any person to conduct business as an enterprise in the area of Fannin County covered by these regulations without a valid Class I SOBP issued in accordance with these regulations;

(7) for an individual, who is required by these Regulations to have an SOBP, to conduct business at an enterprise or for an enterprise operator or owner to allow any person to conduct business of an enterprise in the area of Fannin County covered by these regulations without a valid Class II SOBP issued and displayed in accordance with these regulations;

(8) for any person to counterfeit, forge, change, deface, duplicate or alter an SOBP;

(9) for any person to knowingly make any false, fraudulent or untruthful material representation, written or oral, or in any other way knowingly conceal any material fact required in the SOBP application;

(10) for the owner or enterprise operator to fail to comply with the conditions attached to the SOBP pursuant to Section XI or Section XII(f); each and every day the enterprise fails to comply with a SOBP condition is a violation of these regulations;

(11) for an employee of an enterprise to provide materially false identification information to an enterprise under Section XIV;

(12) for any person to attempt to transfer, assign or devise an SOBP;

(13) for any person performing at an enterprise to do so less than six (6) feet from the nearest patron;

(14) for the owner or enterprise operator of an enterprise to allow any location within the enterprise to be used for the purpose of live exhibitions unless it is marked with clear indications of the six (6) foot zone, the absence of this demarcation will create a presumption that there have been violations of these regulations during performances in the unmarked area;

(15) for any person to offer or accept a gratuity at an enterprise unless it is done pursuant to this section: specifically, gratuities being offered to any person performing on a stage must be placed in a receptacle provided for receipt of gratuities and a tip or gratuity offered to any employee in or about the non-stage area of the enterprise shall be placed into the hand of the employee or into a receptacle provided by the employee and not upon the person or into the clothing of the employee; or

(16) for any person conducting business at an enterprise to be in a state of intoxication or otherwise under the influence of a controlled substance while conducting business at the

enterprise, or for an enterprise operator or owner to allow any person to conduct business at an enterprise in a state of intoxication or otherwise under the influence of a controlled substance.

(17) for an owner or enterprise operator of an enterprise to allow any person to offer a service or sell, rent or exhibit devices or any other items intended to provide sexual stimulation or sexual gratification without a valid SOBP.

(18) for an owner or enterprise operator of an enterprise to allow an independent contractor without a valid SOBP to conduct business at an enterprise.

(19) for an owner or enterprise operator of an enterprise to allow or for any person to offer a service or sell, rent or exhibit devices or any other items intended to provide sexual stimulation or sexual gratification in a private or secluded room in the enterprise.

(b) The following categories of enterprises are prohibited in Fannin County, Texas: sexually oriented modeling studios; escort agencies; escorts; encounter centers; any enterprise whose employees appear in a state of nudity; and massage parlors. It shall be a violation of these regulations to engage in these business activities in Fannin County, Texas. Each person found to be engaged and or participating in the business of such an enterprise shall be subject to the penalties and enforcement provisions of these regulations.

(c) An enterprise has the duty to maintain and make available a record reflecting the times, dates and business conducted by each Class II recipient at that location. The Director will provide a standard format for these records which shall require a sign-in/out sheet and notation of the SOBP badge number. These records shall be available for inspection by the Director during the hours of operation of the enterprise. These records shall be retained for at least a period of two (2) years from creation. Upon written request, the enterprise has a duty to provide a copy of the records to the Director within seven (7) days of the request. It shall be a violation of these regulations to falsify these records.

(d) Each enterprise shall have the duty to post a sign containing the following educational AIDS message at eye level adjacent to each entrance, in each public restroom and in any dressing room in an enterprise:

STOP AIDS. AVOID HIGH RISK BEHAVIOR. AVOID  
CONTACT WITH SEXUAL FLUIDS OR DIRTY  
NEEDLES. AIDS CAN BE TRANSMITTED BY SEX  
WITHOUT CONDOMS OR BY SHARING NEEDLES.

The signs shall be obtained from the Director's Office.

## **SECTION XXIII – EXTERIOR PORTIONS OF ENTERPRISES**

(a) It shall be unlawful for an owner or enterprise operator to allow the merchandise or activities

of the enterprise to be visible from any point outside such enterprise.

(b) It shall be unlawful for the owner or enterprise operator to allow exterior portions of the enterprise to be painted any color other than a single achromatic color. This provision shall not apply to an enterprise if the following conditions are met:

(1) The enterprise is a part of a commercial multi-unit center; and

(2) The exterior portions of each individual unit in the commercial multi-unit center, including the exterior portions of the enterprise, are painted the same color as one another or are painted in such a way so as to be a component of the overall architectural style or pattern of the commercial multi-unit center.

(c) Nothing in this Section shall be construed to require the painting of an otherwise unpainted exterior portion of an enterprise.

#### **SECTION XXIV - 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 (2) or more times in less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel that is an enterprise under these regulations if the motel also provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, digital videos recorded on any type of medium, or other reproduction which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section.

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

(c) An "Adult Motel" permitted pursuant to these regulations may have a resident manager living on site. This shall not be considered a dwelling under the distancing requirements of Section VIII(h), but no individuals under the age of eighteen (18) may live on site.

#### **SECTION XXV - REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS**

A person who operates or causes to be operated an enterprise other than an adult motel which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space a film, video cassette, digital videos recorded on any type of medium, computer programs, or other visual reproduction depicting specified sexual activities or specified anatomical areas has the duty to comply with the following requirements:

(a) 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, excluding lavatories, to which any patron is allowed access for any purpose;



(b) if the premises has two (2) or more designated manager's stations, the interior of the premises shall be configured so that there is an unobstructed, direct line of sight view from at least one (1) station to all portions of the premises where patrons are allowed access, excluding rest rooms; and

(c) the enterprise has the duty to maintain at least one (1) employee on duty and situated in each manager's station at all times when any patron is present inside the premises.

#### **SECTION XXVI - PERSONS YOUNGER THAN EIGHTEEN PROHIBITED FROM ENTRY**

(a) It shall be a violation of these regulations to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of an enterprise at any time that the enterprise is open for business.

(b) A Class I enterprise has the duty to station an attendant at each public entrance to the enterprise at all times during the enterprise's business hours. The attendant shall not allow any person under the age of eighteen (18) years of age to enter the enterprise. It shall be presumed that an attendant knew a person was under the age of eighteen (18) unless the attendant asked for and was furnished:

(1) A facially valid operator's, commercial operator's, or chauffeur's driver's license; or

(2) A facially valid personal identification certificate issued by the Texas Department of Public Safety reflecting that such person is eighteen (18) years of age or older.

#### **SECTION XXVII - OPERATIVE DATE**

The effective date of these Regulations for Sexually Oriented Businesses in the Unincorporated Area of Fannin County, Texas is November\_\_\_\_\_, 2023.

#### **SECTION XXVIII - SEVERABILITY**

The Commissioners Court hereby declares that it adopts these regulations and each separate part hereof. Any part of these regulations held to be invalid shall not affect the validity of the remaining portions.