

ORDINANCE NO. 2004-10-26-001

**AN ORDINANCE OF THE CITY OF KEMPNER, TEXAS, REGULATING SEXUALLY ORIENTED BUSINESSES; PROVIDING DEFINITIONS; PROVIDING FOR DISTANCE AND LOCATION REQUIREMENTS; PROVIDING FOR LICENSING REQUIREMENTS; AND PROVIDING FOR OTHER MATTERS WITH RESPECT TO SEXUALLY ORIENTED BUSINESSES; PROVIDING A PENALTY; PROVIDING SEVERABILITY, OPEN MEETINGS AND EFFECTIVE DATE CLAUSES; AND PROVIDING FOR RELATED MATTERS.**

**WHEREAS**, the City of Kempner (herein "City") desires to regulate the areas and locations in which sexually oriented businesses may be located;

**WHEREAS**, Chapter 243, *Tex. Loc. Gov't Code*, authorizes the City to adopt regulations regarding sexually oriented businesses necessary to promote the public health, safety, or welfare;

**WHEREAS**, provision should be made for the review, approval and issuance of licenses prior to sexually oriented businesses being located within the City;

**WHEREAS**, included in this ordinance are reasonable licensing procedures which have been determined to be appropriate mechanisms to place the burden on the owners and operators of the Sexually Oriented Businesses;

**WHEREAS**, such licensing procedures will place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of Kempner, making it appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein;

**WHEREAS**, several cities have conducted studies to determine the effects that a concentration of sexually oriented businesses have on crime rates, property values and public health and morals;

**WHEREAS**, the Legislature has found that the unrestricted operation of certain sexually oriented businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity.

**WHEREAS**, the City Council takes notice of such studies and findings, and finds it is in the public interest to disperse sexually oriented businesses to protect the public health, safety, morals and general welfare.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KEMPNER, TEXAS, THAT:**

**Section 1. Findings of Fact.** The above and foregoing recitals are hereby found to be true and

correct and are incorporated herein as findings of fact. The City Council hereby further finds and determines that the rules, regulations, terms, conditions, provisions and requirements of this ordinance are reasonable and necessary to protect the public health, safety and quality of life.

**Section 2. Purpose and Intent.** It is the purpose of this Ordinance to regulate sexually oriented businesses to promote the public health, safety, morals and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. The provisions of this Ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or effect of this Ordinance to restrict or deny access by adults to distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this Ordinance to condone or legitimize the distribution of obscene materials.

**Section 3. Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning.

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

(ii) "Adult Bookstore" or "Adult Video Store" means a commercial establishment which, as one of its principal business purposes, offers for sale or rental for any form of consideration any one or more of the following:

(A) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, compact disc visual discs, digital visual discs, computer pictures, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas"; or

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

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

(iii) "Adult Cabaret" means a commercial establishment that regularly features the offering to customers of live entertainment that:

(A) is intended to provide sexual stimulation or sexual gratification to such customers; and

(B) is distinguished by or characterized by an emphasis on matter depicting, simulating, describing, or relating to "specified anatomical areas" or "specified sexual activities."

(iv) "Adult Motel" means a hotel, motel or similar commercial establishment which:

(A) Offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, compact visual discs, digital visual discs, computer pictures, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; including those that have a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or

(B) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

(C) 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.

(v) "Adult Motion Picture Theater" means commercial establishments where, for any form of consideration, films, motion pictures, video cassettes, compact visual discs, digital visual discs, computer pictures, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

(vi) "Escort" means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a body rub, bathing of the body, or striptease for another person for the purpose of sexual arousal.

(vii) "Escort Agency" means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip or other consideration.

(viii) "Establishment" means and includes any of the following;

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

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

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

(D) The relocation of any sexually oriented business.

(ix) "Home Occupation" means a commercial use customarily carried on in the home by members of the occupant family without structural alterations in the principal building or any of its rooms, without the installation of machinery or additional equipment other than that customary to normal household operations, without the employment of additional persons, and which does not cause the generation of other than normal noise, pedestrian and vehicular traffic. It is an accessory to a residential use subject to the following limitations: (a) the home occupation shall be conducted entirely within a dwelling unit which is the bona fide residence of the practitioner(s); (b) the residential character of the lot and dwelling shall be maintained; the exterior of the dwelling shall not be structurally altered; and no additional buildings shall be added on the property to accommodate the home occupation; (c) the occupation shall not produce external noise, vibration, smoke, odor, fumes, electrical interference or waste run-off outside the dwelling unit or on the property surrounding the dwelling unit; and (d) no vehicle used in connection with the home occupation which requires a commercial driver's license to operate shall be parked on any street adjacent to the property.

(x) "Licensee" means:

(A) a person in whose name a license to operate a sexually oriented business has been issued;

(B) each individual listed as an applicant on the application for a license;

(C) each individual who is an officer of a sexually oriented business for which a license has been issued under this chapter, regardless of whether the individual's name or signature appears on the license application;

(D) each individual who has a 20 percent or greater ownership interest in a sexually oriented business for which a license has been issued under this chapter, regardless of whether the individual's name or signature appears on the license application; and

(E) each individual who exercises substantial de facto control over a sexually oriented business for which a license has been issued under this chapter, regardless of whether the individual's name or signature appears on the license application.

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

(xii) "Nudity" or a "State of Nudity" means:

(A) the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or

(B) a state of dress that fails to completely and opaquely cover a human buttock, anus, male genitals, female genitals, or any part of the female breast or breasts that is situated below a point immediately above the top of the areola.

(xiii) "Person" shall mean and include an individual human, partnership, co-partnership firm, company, limited liability partnership or other partnership or other such company, joint venture, joint stock company, trust, estate, governmental entity, association or corporation or any other legal entity, or their legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

(xiv) "Residential Purpose" means any lot, tract or parcel of land within the City that: (i) was laid out and platted for the location of a residential dwelling and has a dwelling located on the lot, tract or parcel and no commercial, retail or industrial uses; or (ii) is occupied and used in part as a residential dwelling and in part as a home occupation.

(xv) "Semi-Nude" means a state of dress in which clothing covers no more than the genitals, pubic region, and/or areola of the breast, as well as portions of the body covered by supporting straps or devices.

(xvi) "Sexual Encounter Center" means a business or commercial enterprise that, as one of its primary business purposes, offers any of the following for consideration:

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

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

(xvii) "Sexually Oriented Business" means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency, nude model studio, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

(xviii) "Specified Anatomical Areas" means:

(A) any of the following, or any combination of the following, when less than completely and opaquely covered:

(i) any human genitals, pubic region, or pubic hair;

(ii) any buttock; or

(iii) any portion of the female breast or breasts that is situated below a point immediately above the top of the areola; or

(B) human male genitals in a discernibly erect state, even if completely and opaquely covered.

(xix) "Specified Sexual Activities" means and includes any of the following:

(A) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;

(B) Sex acts, normal or perverted, actual or stimulated, including intercourse, oral copulation, or sodomy;

(C) Masturbation, actual or simulated; or

(D) Excretory functions as part of or in connection with any of the activities set forth in (A) through (C) above.

(xx) "Transfer of Ownership or Control" of a sexually oriented business means and includes any of the following:

(A) The sale, leasing or subleasing of the business;

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

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

**Section 4. Classification.** Sexually oriented businesses are classified as follows:

- (i) Adult arcades;
- (ii) Adult bookstores or adult video stores;
- (iii) Adult cabarets;
- (iv) Adult motels;
- (v) Adult motion picture theaters;
- (vi) Escort agencies;
- (vii) Nude model studios; and
- (viii) Sexual encounter centers.

**Section 5. Location.**

- (i) The following uses may be licensed within the City by with issuance of a License issued in compliance with this ordinance:

- (A) Adult arcades;
- (B) Adult bookstores or adult video stores;
- (C) Adult cabarets;
- (D) Adult motels;
- (E) Adult motion picture theaters;
- (F) Escort agencies;
- (G) Nude model studios; and
- (H) Sexual encounter centers.

(ii) No use listed in subsection 5.(i) above shall be established within one thousand (1,000) feet of any of the following uses in existence prior to the beginning of such business:

- (A) A church, chapel, or other regular place of religious worship;
- (B) A public or private day-care, elementary, secondary school or institute of higher learning;
- (C) A public park, library, or playground;
- (D) The property line of a lot used for residential purposes; or
- (E) Within one thousand (1,000) feet of another sexually oriented business, whether located within or outside of the City limits.

(iii) For the purpose of this Section, 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 as described in 5. (ii) above; or from the closest exterior wall of the structure in which a sexually oriented business is proposed to be located to the nearest exterior wall of any other sexually oriented business.

(iv) For the purposes of this Section, if sexually oriented businesses cannot be located within a minimum of 3% of the existing properties within the City limits, including all nonconforming use sexually oriented businesses, due to limitations as set forth in this Section, the City will upon written request from an applicant review the current restrictions and shall allow distance alterations as necessary so that a minimum of 3% of the City, cumulatively within the City limits, can be occupied by a Licensed sexually oriented business, including all nonconforming use sexually oriented business.

**Section 6. Sexually Explicit Films and Videos.**

(i) 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 one hundred fifty (150) square feet of floor space, a film, video cassette, compact visual disc, digital visual disc, computer picture, slide, or other video reproduction which depicts “specified sexual activities” or “specified anatomical areas”, shall comply with the following requirements:

(A) The application for a special use license for a sexually oriented business 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 licensed. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram 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 one (1) foot. The Building Official 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 is correct and has not been altered since it was prepared.

(B) The application shall be sworn to be true and correct by the applicant.

(C) No alteration in the configuration or location of a manager's station may be made without the prior approval of an amendment to the special use license.

(D) 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 premise.

(E) 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 licensed 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 licensed 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.

(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 view area specified in the above subsection (E) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times and to ensure that no patron is licensed access to any area of the premises which has been designated as an area in which patrons will not be licensed in the application filed pursuant to Subsection (A) of this subsection.

(G) No viewing room may be occupied by more than one person at any time.

(H) The premise shall be equipped with overhead lighting fixtures of sufficient

intensity to illuminate every place to which patrons are licensed access at an illumination of not less than one (1.0) foot-candle as measured at the floor level.

(I) 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.

(ii) A person having a duty under subsection (A) through (I) of subsection (i) above commits a misdemeanor if he or she knowingly fails to fulfill that duty.

**Section 7. Exemptions.** It is a defense to prosecution under this ordinance that a person appearing in a state of nudity did so in a modeling class operated:

(i) By a proprietary school, licensed by the State of Texas; a college, junior college or university supported entirely or partly by taxation;

(ii) By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or

(iii) In a structure:

(A) Which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and

(B) Where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and

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

**Section 8. License.** All sexually oriented businesses located within the City limits must have a license as provided herein. Each person having ownership interest, control or owning the property upon which the sexually oriented business is to be located must have filled out an application and his or her name must appear on the license (herein "Applicant").

(i) License Required. A commercial establishment that is a sexually oriented business as herein defined, shall at all times of operation within the City limits have a valid license.

(A) A person commits an offense if that person conducts business as a sexually oriented business within the City unless a valid license has been issued by the City for the conduct of such business.

(B) A person commits an offense if that person conducts business as a sexually oriented business within the City limits unless the person has a valid license which is posted at or near the principal public entrance to the business in such a manner that it will be conspicuous to patrons who enter the premises, or behind the bar in a

conspicuous manner.

(C) Every licensee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the operation of the sexually oriented business on the licensed premises. A licensee commits an offense if the licensee attempts to avoid such responsibility by creating any device, scheme or plan which surrenders control of the employees, premises or business of the licensee to persons other than the licensee.

(ii) Issuance or Denial of Any License. A license, renewal or transfer license shall be issued unless one (1) or more of the following conditions exists:

(A) The applicant has located the sexually oriented business in violation of this Ordinance.

(B) The applicant(s) failed to supply all of the information required on the application.

(C) The applicant, or any one applicant, gave fraudulent or untruthful information on the application. This does not apply to clerical errors.

(D) The applicant, or any one applicant, has been convicted of a felony for which not less than ten (10) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, or a misdemeanor for which less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever date is the later date, of a crime in any state involving:

(1) Public lewdness, indecent exposure, or indecency with a child as described in the Texas Penal Code;

(2) Prohibited sexual conduct, enticing a child, harboring a runaway child, or sale or purchase of a child as described in the Texas Penal Code;

(3) 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, employment harmful to children, or possession or promotion of child pornography as defined in the Texas Penal Code;

(4) Facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

(5) Required to be registered as a sex offender in this or any other state (in which case the time limitations above shall apply from the time the individual ceases to be required to be registered as a sex offender); or

(6) Any similar offense to those described above under the criminal or penal code of another state, other political subdivision of the U.S., Country, political subdivision of another Country, or Code of Military Justice.

(E) Any applicant, or any one applicant, refuses to provide a complete and current NCIC and TCIC criminal history of Applicant obtained by Applicant from the Texas Department of Public Safety. The criminal history must be completed within 15 days of the date the application is submitted to the Building Official.

(F) License fees are not paid in full.

(iii) Application Requirements. Initial license requests for a special use license require each owner, having 10% or more interest in the sexually oriented business, to submit a complete application and to update the application as changes in ownership occur (herein the "Applicant" or "Licensee"). The information required in this subsection must be provided with each application and, as changes occur, updated information within ten (10) days of any change in the information required in the application.

(A) The following information must be provided on the application form:

(1) The name, street address (and mailing address if different) of the Applicant and each and every owner with greater than 10% ownership interest;

(2) Two copies each of recent photographs of the Applicant showing full face and each side face profile;

(3) A complete set of fingerprints on forms from the Police Department;

(4) A complete and current NCIC and TCIC criminal history of Applicant obtained by Applicant from the Texas Department of Public Safety. The criminal history must be completed within 15 days of the date the application is submitted to the Building Official.

(5) The Applicant's driver's license number, Social Security number, and, if applicable, his/her state or federally issued tax identification number;

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

(7) If the Applicant intends to operate the Sexually Oriented Business under a name other than that of the Applicant; he or she must state (a) the Sexually Oriented Business's assumed name and (b) submit the required registration documents;

(8) Whether the Applicant has ever been convicted, or is awaiting trial on

pending charges, of a crime specified in Section 8 (ii)(D) and, if so, the nature of the offense(s) and the date, place, and jurisdiction of each offense;

(9) Whether the Applicant has had a previous license or special use license under this Ordinance or other similarly Sexually Oriented Business ordinance from another city or county denied, suspended or revoked, including the name and location of the Sexually Oriented Business for which the license or special use license was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the Applicant is or has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is or was licensed under a Sexually Oriented Business ordinance whose license or special use license has previously been denied, suspended or revoked, including the name and location of the Sexually Oriented Business for which the license or special use license was denied, suspended or revoked, as well as the date of denial, suspension or revocation;

(10) Whether the Applicant holds any other license or special use license under this Ordinance or other similar Sexually Oriented Business ordinance from another city or county and, if so, the names and locations of such other licensed businesses;

(11) The address, and legal description of the tract of land on which the establishment is to be located;

(12) If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the license or special use license is sought, and the date on which the establishment began operations as a Sexually Oriented Business at the location for which the special use license is sought; and

(13) If the establishment is not in operation, the expected startup date (which must be expressed in number of days from the date of issuance of the special use license). If the expected startup date is to be more than ten days following the date of issuance of the special use license, then a detailed explanation of the construction, repair or remodeling work or other cause of the expected delay and a statement of the owner's time schedule and plan for accomplishing the construction, repair or remodeling work.

(B) All applications for a special use license must include the following:

(1) If the establishment is a State of Texas corporation, a certified copy of the articles of incorporation, together with all amendments thereto.

(2) If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state, together with all amendments thereto.

(3) If the establishment is a limited partnership formed under the laws of the State of Texas, a certified copy of the certificate of limited partnership, together with all amendments thereto.

(4) If the establishment is a foreign limited partnership, a certified copy of the certificate of limited partnership and the qualification documents, together with all amendments thereto.

(5) Proof of the current fee ownership of the tract of land on which the establishment is to be situated in the form of a copy of the recorded deed along with the current address(es) and telephone number(s) of the owner(s).

(6) If the Person(s) identified as the fee owner(s) of the tract of land are not also the owners of the establishment, then the lease, purchase contract, purchase option contract, lease option contract or other document(s) evidencing the legally enforceable right of the owners or proposed owners of the establishment to have or obtain the use and possession of the tract or portion thereof that is to be used for the purpose of the operation of the establishment together with the correct address and telephone number of each person with an ownership interest in the property.

(7) If the property is owned by other than a natural person, the complete name, address and telephone of each person with an interest in the entity must be included in the application.

(8) A current certificate and straight-line drawing prepared within 30 days prior to application by a registered land surveyor depicting the property lines of any established use listed in Section 5 (ii) within 1,000 feet of the property to be certified. For purposes of this Section, a use is considered existing or established if it is in existence at the time an application is submitted.

(9) The application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale no smaller than ¼ inch equals one foot and with marked dimensions of the placement of the building on the tract of land, and the interior of the premises to an accuracy of plus or minus six inches. All locational requirements must be approved by the Building Official within 60 days from the time the application is filed.

(10) Any of items (1) through (9) above will not be required for a renewal application if they were previously presented and the Applicant states that the documents previously furnished to the Building Official with the original application or previous renewals thereof remain correct and current.

- (b) Every application for a license must contain a statement made under oath that:
- (1) The Applicant has personal knowledge of the information contained in the application, and that the information contained therein and furnished therewith is true and correct; and,
  - (2) The Applicant has read the provisions of this Ordinance.
- (c) The Applicant for a Sexually Oriented Business license must be qualified according to the provisions of this Ordinance.
- (d) If the Applicant who wishes to operate a Sexually Oriented Business is an individual, that individual must sign the application for a license as Applicant. If the Applicant who wishes to operate a Sexually Oriented Business is other than an individual, each individual who has greater than a 10% interest in the business must sign and provide all the information required by the application for a license as an Applicant and will be considered an Operator if a license is granted.
- (e) The fact that a Person possesses any other valid license, certificate or license required by law does not exempt him from the requirement of obtaining a Sexually Oriented Business license. A Person who operates a Sexually Oriented Business and possesses another business license, certificate or license must comply with the requirements and provisions of this Ordinance as well as the requirements and provisions of the law concerning the other license, certificate or license.
- (f) All applications must include a non-refundable application fee of \$2,500.00. An application will not be considered to have been filed until all applicable fees are paid and all information required by the application form has been submitted.
- (g) The Applicant must supplement an application with new information received after the date the application was deemed completed. Licensees must supplement application information within ten (10) days of any change in information provided in the application.
- (h) All Sexually Oriented Businesses located within the City and in operation as a lawful use conforming to the zoning ordinance before the effective date of this Ordinance are granted a one-time waiver of the application fee. Upon satisfactory completion of the application and surrender of the existing business' current certificate of occupancy, a new special use license will be issued.
- (i) A copy of all applications and supporting documentation for special use licenses will be maintained by the Building Official.
- (j) Upon receipt of an application or supplemental information, the Building Official will review the application to determine if all required and necessary information has been submitted. The Building Official will issue a letter within a

reasonable time after receipt of the application or supplemental information and advise the Applicant whether supplemental information must be submitted. The Applicant must provide any supplemental information within 30 days or the application will be returned and the filing fee forfeited.

(iv) Public Notice of Pending Application

(A) After the Building Official has issued a letter advising the Applicant that the application is complete, the Building Official will cause signs (at least 24 inches by 36 inches in size) to be placed on the property subject to the proposed special use license of occupancy that provide notification by specifically stating, with letters at least three inches wide and six inches tall, "SEXUALLY ORIENTED BUSINESS LICENSE APPLICATION PENDING". All lettering on the signs other than above described, will be at least 1 and ½ inches x 2 inches in size for each letter on the sign. The sign will also include the name, city and state of residence of each Applicant, the date on which the application was filed, and the time and place of the hearings. The signs will be placed on the property in sufficient quantities and locations to identify the property as being subject to a proposed sexually oriented special use license of occupancy. One sign will be erected on each lot corner to identify the boundaries of the property in addition to one sign for each 300 foot increment of each public road or highway frontage on the property existing or any part thereof. The signs will be erected within seven days after the Building Official has issued a letter advising the Applicant that the application is complete and will remain erected until the application has been approved or denied by the City Council.

(B) The City will give notice of the application and scheduled public hearings by publication in two consecutive issues of the City's official newspaper. The notices will be printed in 10-point boldface type and will:

- (1) include the fact that a Sexually Oriented Business license has been applied for;
- (2) include the exact location, including the street address, of the place of business for which the certificate is sought;
- (3) include the names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners;
- (4) include, if the Applicant is a corporation, the names and titles of all officers, directors and shareholders of 10% or more of the corporation;
- (5) include the dates and times of the public hearings; and
- (6) be published at least 15 days before each public hearing.

(v) Renewal of License. Licenses shall be valid for one (1) year from the issuance of the license. Licenses must be renewed annually by all persons having ownership interest or control of the sexually oriented business and all persons owning the property upon which the sexually oriented business is located. Failure to renew the license voids the license.

(vi) License Transfers. A license is personal to the persons designated in the application. A license may not be transferred except pursuant to and in compliance with this section. A transfer application must be filed within thirty (30) days of any change of persons designated on the current license. A transfer application shall allow continuation of business under an existing license while a new application is being processed. Any transfer application shall require and be treated in all respects as an original license application. In the event that a transfer application is not timely filed, then the existing license shall be invalid for any purpose relating to the operation of business.

(vii) Revocation of License. Any violation of this Ordinance shall constitute grounds for revocation of a license. A license shall be revoked for any of the following violations:

(A) The licensee(s) have located the sexually oriented business in violation of this Ordinance.

(B) The licensee(s) failed to supply all of the information required on the application.

(C) The licensee(s) gave fraudulent or untruthful information on the application. This does not apply to clerical errors.

(D) The licensee, or any one licensee, has been convicted of a felony for which not less than ten (10) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, or a misdemeanor for which less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever date is the later date, of a crime in any state involving:

(1) Public lewdness, indecent exposure, or indecency with a child as described in the Texas Penal Code;

(2) Prohibited sexual conduct, enticing a child, harboring a runaway child, or sale or purchase of a child as described in the Texas Penal Code;

(3) 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, employment harmful to children, or possession or promotion of child pornography as defined in the Texas Penal Code;

(4) Facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses; or

(5) Any similar offense to those describe above under the criminal or penal code of another state, other political subdivision of the U.S., Country, political subdivision of another Country, or Code of Military Justice.

(E) More than four criminal offenses are committed on the licensed premises in any consecutive twelve month period which fall in one or more of the following categories:

(1) Public lewdness, indecent exposure, or indecency with a child as described in the Texas Penal Code;

(2) Prohibited sexual conduct, enticing a child, harboring a runaway child, or sale or purchase of a child as described in the Texas Penal Code;

(3) 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, employment harmful to children, or possession or promotion of child pornography as defined in the Texas Penal Code; or,

(4) Facilitation, attempt, conspiracy or solicitation to commit any of the foregoing offenses.

(F) Allow any person under the age of eighteen, not otherwise licensed by the Laws of Texas to view the material contained on the premises is licensed to enter the premises.

(viii) Appeal. All denials and revocations of license applications and renewals must be appealed to the City Council.

(A) If an application for issuance or renewal of a license is denied a license or a license is revoked, upon notice of the denial or revocation of a license, the aggrieved applicant or licensee shall have ten (10) days to appeal to the decision to the City Council.

(B) The appeal of a revocation of a license to the City Council shall abate the revocation of the license until such time as the City Council may hold a public hearing.

(ix) License Fee. Each application for a license, including annual renewal or transfer, shall be accompanied by a \$2,500.00 application fee for a license. In addition to the fees required for an initial license, the applicant at the time of making an initial application shall pay a fee of \$750.00, as the estimated costs of professional fees for the City to conduct a

survey (the “Survey Fees”) to ensure the proposed sexually oriented business is in compliance with the location restrictions set forth in Section 5. The City shall refund any unused portions of the \$750.00 or bill the Applicant for additional professional fees. The Applicant shall pay all professional fees of the City. Should a Licensed sexually oriented business enlarge by adding additional square footage to enlarge the actual building, the Applicant shall pay the Survey Fees to permit the City to conduct a survey to ensure the enlargement will not come within the prohibited distance established in Section 5 (ii). Additionally, for each applicant identified thereon, there shall be an additional \$25.00 fee.

**Section 9. Specific Violations.**

- (i) A person commits a misdemeanor if he or she:
  - (A) Operates or causes to be operated a sexually oriented business without a special use license. All sexually oriented businesses shall be located within the Industrial District zoning district unless such business qualifies as a non-conforming use.
  - (B) Operates or causes to be operated a sexually oriented business without a license to operate a sexually oriented business.
  - (C) Operates or causes to be operated a sexually oriented business within one thousand (1,000) feet of any of the following uses in existence prior to the beginning of such business:
    - (1) A church, chapel, or other regular place of religious worship;
    - (2) A public or private day-care, elementary, secondary school or institute of higher learning;
    - (3) A public park, library, or playground; or
    - (4) The property line of a lot used for residential purposes.
  - (D) Causes or licenses the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand (1,000) feet of another sexually oriented business.
  - (E) Causes or licenses the operation, establishment or maintenance of more than one sexually oriented business, as defined herein, in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure or portion thereof containing another sexually oriented business.
  - (F) Displays a sign visible from the public right-of-way or an adjoining property which is obscene.
- (ii) For the purpose of Subsection 9(i)(C) of this section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion

of the building or structure in which any, or any part of any, sexually oriented business is conducted, to the nearest property line of the premises described in subsection 9(i)(C).

(iii) For purposes of Subsection 9(i)(D) 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.

**Section 10. Nonconforming Uses.**

(i) Any sexually oriented business lawfully operating on the effective date of this Ordinance that is in violation of this Section shall be deemed a nonconforming use. The nonconforming use will be licensed to continue for a period not to exceed 10 years, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming uses shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two or more sexually oriented businesses are within 1,000 feet of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business is nonconforming.

(ii) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant of a special use license for a sexually oriented business, of a church, public or private day-care, elementary or secondary school, institute of higher learning, public park, library, or playground, or a residential lot within one thousand (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 and/or license has expired or has been revoked.

(iii) All non-conforming sexually oriented business uses in existence at the time of passage of this Ordinance within the City limits shall have sixty (60) days to apply for a license to operate such sexually orient business.

**Section 11. Interpretation.** Each sexually oriented business shall conform to all applicable ordinances, resolutions and regulations, as well as this ordinance. Whenever both a provision of this ordinance and any other provision of this ordinance, or any provision in any other law, ordinance, resolution, rule or regulation of any kind contains any restrictions covering any of the same subject matter, whichever restrictions are more restrictive or impose higher standards or requirements shall govern. An ambiguity in the ordinance shall be subject to the interpretation of the City Council. The City Council shall first interpret any ambiguity and issue a written interpretation of any ambiguity. Such interpretation shall be final.

**Section 12. Penalty.** Any person who shall violate any of the provisions of this ordinance, or shall fail to comply therewith, or with any of the requirements thereof, within the City limits shall be deemed guilty of an offense and shall be liable for a fine not to exceed the sum of two thousand dollars (\$2000.00). Each day the violation exists shall constitute a separate offense. Such penalty shall be in addition to all the other remedies permitted by law, including injunction against the

operation of a business in violation of this ordinance.

**Section 13. Effective Date.** This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Tex. Loc. Gov't. Code.

**Section 14. Severability.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable and, if any phrase, sentence, paragraph or section of this Ordinance should be declared invalid by the final judgment or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the City Council without the incorporation of this ordinance of any such invalid phrase, clause, sentence, paragraph or section. If any provision of this Ordinance shall be adjudged by a court of competent jurisdiction to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision, and to this end the provisions of this Ordinance are declared to be severable.

**Section 15. Open Meetings.** 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.

**PASSED AND APPROVED** on this 26th day of October, 2004.

**ATTEST:**

**CITY OF KEMPNER, TEXAS**

\_\_\_\_\_  
Frances Spinney, City Secretary

\_\_\_\_\_  
Roger Fancher, Mayor  
City of Kempner, Texas