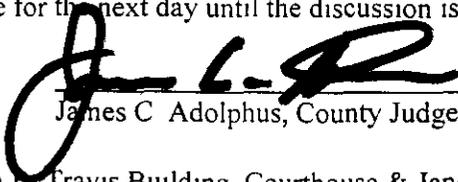


NOTICE OF SPECIAL MEETING  
FORT BEND COUNTY COMMISSIONERS COURT  
7TH FLOOR, WM. B. TRAVIS BUILDING, RICHMOND, TEXAS  
TUESDAY, APRIL 27, 1999  
7:00 O'CLOCK P.M.  
AGENDA

- 1 Call to Order
- 2 Invocation and Pledge of Allegiance by Commissioner Meyers
- 3 Hold public hearing on the following matter
  - A Takings Impact Assessment on Adopting the Regulations for Sexually Oriented Businesses in the Unincorporated Area of Fort Bend County pursuant to Chapter 2007, Texas Government Code
- 4 Discuss and consider the Takings Impact Assessment on Adopting the Regulations for Sexually Oriented Businesses in the Unincorporated Area of Fort Bend County pursuant to Chapter 2007, Texas Government Code
- 5 Discuss and consider Adopting the Regulations for Sexually Oriented Businesses in the Unincorporated Area of Fort Bend County
- 6 Meet in Closed Session to discuss the following matters
  - A Consultation with Attorney as authorized by Texas Gov Code, Sec 551/
- 7 Reconvene Open Session and consider taking action on the following Closed Session matters
  - A Consultation with Attorney
- 8 Discuss and consider the appointment of a hearing official to conduct hearings on health and safety as authorized by the Sexually Oriented Business Regulations
- 9 Discuss and consider the fees for Class 1 and Class 2 permits pursuant to Section 243 009, Texas Local Government Code
- 10 Accept for the record the Sexually Oriented Business Regulations' legislative history

In the event any of the foregoing items are not covered in the time allocated on the date of this agenda, the County may order a continuance for the next day until the discussion is completed on all items

  
James C. Adolphus, County Judge

Notice of meeting/agenda posted at William B. Travis Building, Courthouse & Jane Long Annex, Richmond, Texas on Friday, April 9, 1999 by Mandi Bronsell

FILED - RECORD  
TIME 12:40  
APR 23 1999  
AM  
PM

*Bonnie Thibodeau*  
County Clerk Fort Bend Co. Texas

**ORDER OF THE FORT BEND COUNTY COMMISSIONERS COURT  
ADOPTING THE REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES  
IN THE UNINCORPORATED AREA OF FORT BEND COUNTY, TEXAS**

On this, the 27 day of April 1999, the Commissioners Court of Fort Bend County, being duly convened at a regular meeting of the Court, upon motion of Commissioner Patterson, seconded by Commissioner O'Shieles, duly put and unanimously carried, adopted the following

**WHEREAS**, on March 31, 1998 the Commissioners Court of Fort Bend County, Texas ordered and completed the creation of a Committee to draft SOB Regulations Pursuant to the order of the Commissioners Court the Committee reviewed and considered the following

numerous studies from various cities, including Houston, Texas, and Austin, Texas, which document the effects of sexually oriented businesses on crime and property values,

testimony expressing the concerns of citizens about the change of the character of family oriented residential and business neighborhoods when sexually oriented businesses locate nearby,

maps showing ample, available real estate in the unincorporated area of Fort Bend County accessible by highways and roads, where sexually oriented businesses can locate in compliance with the regulations,

legal advice about the limitations on this type of regulation imposed by the Constitutions of the United States and Texas,

sexually oriented business regulations adopted by other jurisdictions in Texas, and around the United States, and the findings of the governmental bodies that adopted them, and

**WHEREAS**, at the direction of this Commissioners Court the Committee held four (4) public hearings to receive comments from proponents and opponents of sexually oriented businesses and these hearings were duly conducted on June 16, June 18, June 23 and June 25, in 1998

**WHEREAS**, the Committee has submitted to this Court its report and has submitted a proposed draft of regulations which the Committee recommends be adopted by this Court for the regulation of sexually oriented businesses in Fort Bend County, Texas, and

**WHEREAS**, the Commissioners Court of Fort Bend County, Texas has considered the Fort Bend County Commissioners Court Committee Report On Proposed Regulations For Sexually Oriented Businesses, including and incorporating the Exhibits contained in Appendix I to the report, and

**WHEREAS**, the Commissioners Court of Fort Bend County, Texas adopts the findings of the Committee, as follows

1. Chapter 243 of the Texas Local Government Code authorizes counties to adopt regulations restricting the location and operation of commercial enterprises whose primary business is the offering of a service or the selling, renting, or exhibition of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer
2. Chapter 243 of the Texas Local Government Code authorizes counties to require an owner or operator of a sexually oriented business, as defined in that chapter, to obtain and maintain a permit for the operation of that enterprise, and a county may provide for the denial, suspension or revocation of a permit
3. Sexually oriented businesses, including adult bookstores and movie theaters, have a distinct and unique impact on the character of the neighborhood in which they are located. The location of a sexually oriented business in a residential or business neighborhood oriented towards families contributes to the decline of the neighborhood by: lowering property values, elevating criminal activity, and changing the characteristics of the neighborhood so as to make the neighborhood unappealing for use by families with children
4. Customers of sexually oriented businesses are often drawn from a much wider area than would be attracted to non-sexually oriented businesses and the behavior and attitudes associated with the employees and patrons of sexually oriented businesses are inconsistent with the character of residential and business areas oriented to families with children
5. There is a documented relationship between sexually oriented businesses and significant increases in the incidents of crime, particularly property crimes and sexual crimes
6. Elevated criminal activity around sexually oriented businesses requires that additional law enforcement resources be allocated to control that criminal activity to protect the health and safety of patrons, employees and the general public. This burdens government and the general public with the costs of this additional enforcement directly associated with the presence of the sexually oriented businesses. Regulation of these businesses is a reasonable step to significantly reduce criminal activity associated with permitted businesses and thereby reduce the burden on law enforcement resources
7. Control of the adverse effects of sexually oriented businesses can protect the public health, safety and welfare by reducing crime, preserving the quality of life, preserving property values and the character of surrounding neighborhoods

8 Sexually oriented businesses require special supervision from the public safety agencies of the County to protect and preserve the health, safety and welfare of the patrons of these businesses, the residents of Fort Bend County, and the employees of these businesses

9 *Local government permitting is a legitimate and reasonable means of accountability to ensure that individuals who engage in sexually oriented businesses in Fort Bend County comply with reasonable regulations and ensure that the owners and operators of sexually oriented businesses do not knowingly participate in illegal activities*

10. The requirement that a reasonable period of time elapse between when an individual is convicted of a crime generally associated with sexually oriented businesses and when that individual can get a permit from the County to participate in this industry will discourage involvement in the criminal culture of prostitution, drugs and money crimes associated with sexually oriented businesses

11. Reasonable regulation of the individuals who engage in sexually oriented businesses, based on previous criminal behavior generally associated with sexually oriented businesses, advances the significant governmental interests of: crime prevention, protection of the public health and safety, protection of residential and business neighborhoods, and efficient allocation of governmental resources

12 There is convincing documented evidence that the close proximity of sexually oriented businesses interferes with the following types of property uses child care facilities, educational institutions, dwellings, hospitals, public buildings, public parks, or places of religious worship

13 Because of the elevated criminal activity around sexually oriented businesses, the close proximity of these businesses increases safety hazards to individuals who frequent facilities and locations near sexually oriented businesses, and to the employees and patrons of the businesses themselves.

14 Child care facilities, educational institutions, dwellings, hospitals, public buildings, public parks, and places of religious worship are places which children and the general public frequent and these places serve valuable and necessary functions in our general culture The public should be able to go to these places without being exposed to the adverse secondary effects of sexually oriented businesses

15 The elevated criminal activity around sexually oriented businesses creates an environment inconsistent with the remedial purposes of a penal institution, requiring that sexually oriented businesses be located at least one mile from a penal institution is a reasonable requirement to ensure that sexually oriented businesses do not interfere with the rehabilitation of the inmates

16 An increase in safety hazards to patrons and employees may be created by close proximity to penal institutions from which criminals are released who have repeatedly engaged in violent or sexual crimes as these businesses attract and/or incite this behavior. It is a reasonable measure to protect the health and safety of the patrons, employees, and general public to require that sexually oriented businesses be required to locate at least one mile from a penal institution.

17 Sexually oriented businesses are not compatible with the goals of educational institutions at any level, including higher education.

18 Texas law prohibits prostitution, lewd conduct, and obscenity and these regulations do not condone or legitimize any such activity. A permit issued pursuant to these regulations only authorizes the operation of a sexually oriented business in compliance with the law of Texas and the United States.

19 Fort Bend County does not have the authority to issue permits for patently illegal activity and a business which serves merely as a front for prostitution is illegal and will not be issued a permit by Fort Bend County.

20 The following categories of sexually oriented businesses have historically and consistently served only as fronts for prostitution and are not protected under the First Amendment of the Constitution of the United States: sexually oriented modeling studios, sexually oriented escort agencies, sexually oriented escorts; sexually oriented encounter centers.

21 Fort Bend County, by issuing sexually oriented business permits for businesses which are commonly known to serve merely as fronts for prostitution, would appear to condone prostitution and could create the expectation that prostitution may occur with impunity within its jurisdiction. Therefore, no permits should be issued by Fort Bend County for sexually oriented modeling studios, sexually oriented escort agencies, sexually oriented escorts, sexually oriented encounter centers, and any other business which serves merely as a front for prostitution.

22 Sexually oriented businesses have been shown to be used for sexual activities which create a significant threat to the public health because of the sexual transmission of disease. These sexual activities include prostitution and sexual liaisons of a casual nature.

23 Concern over sexually transmitted diseases is a legitimate concern related to the operation of sexually oriented businesses which demands reasonable regulation to protect the health and safety of the patrons and employees of the businesses, as well as the public at large.

24 Configuration and lighting of adult arcades to provide direct supervision by the employees of the arcade will discourage sexual encounters at these locations. Such encounters are a threat to public health and may violate the Penal Code.

25 Total nudity in a sexually oriented business, except within the dressing areas not accessible or visible to patrons, significantly increases the probability of lewd acts, acts of prostitution, expectations of acts of prostitution, and physical and sexual assaults on performers and employees. The requirement that a performer or employee, even while engaged in activities protected by the First Amendment, wear sufficient clothing to cover the person's entire pubic region, genitals and anus does not deprive a performance of the erotic message being conveyed, but merely makes the message slightly less graphic and imposes only an incidental limitation on the message.

26. There has been a dramatic change in the nature of sexually oriented businesses over the past twenty years. A category of sexually oriented businesses developed that can be described as high-end, high-dollar clubs, mainly topless clubs. These can be distinguished from the back street businesses known in the 1970's, but nonetheless, the common denominators of all sexually oriented businesses, money and sex, remain. These two elements, usually combined with alcohol or associated with the use of prohibited drugs, continues to encourage and attract criminal activity such as lewd conduct, prostitution, drug dealing, and assaults even in the midst of the apparent glitter and glamour. In addition, an element of more sophisticated crimes, such as money laundering, credit card fraud, and similar crimes has appeared because of the lucrative nature of these businesses. Through reasonable control of sexually oriented businesses, the detrimental secondary effects can be reduced, while maintaining the entertainment aspect of these businesses.

27 Extensive public input, specifically solicited both from public hearings and direct correspondence, and from all areas of the county, shows that sexually oriented business severely violate the community standard. Furthermore, sexually oriented businesses are overwhelmingly opposed, by residents, business leaders, school officials, civic leaders and church leaders. The presence of sexually oriented businesses would have an unacceptable negative effect on the quality of life and well being of the community. The sexually oriented businesses have no material existing or probable base of support or acceptance by those who have a primary interest and responsibility for the growth and development of Fort Bend County currently, or in the foreseeable future, and

**WHEREAS**, the Committee found that no person under the age of twenty-one (21) should be admitted to a sexually oriented business or permitted to provide services, as defined in Chapter 243 of the Local Government Code, as a sexually oriented business and although this Court agrees with the finding of the Committee, the Legislature of the State of Texas has set the age of eighteen (18) as the age of majority in Texas except as limited by the Alcoholic Beverage Code. Therefore, until the State Legislature amends Chapter 243 of the Local Government Code to grant authority to Fort Bend County to institute an age restriction of twenty-one (21) years of age, or otherwise grants such authority to Fort Bend County, this Court cannot set an age limit inconsistent with the law of Texas, and

**WHEREAS**, the Commissioners Court of Fort Bend County, Texas has considered the matter and deems it appropriate to adopt Regulations for Sexually Oriented Businesses in the Unincorporated Area of Fort Bend County, Texas, to protect the public health and safety, and prevent the decline of residential and business neighborhoods, and prevent the growth of criminal activities in Fort Bend County, Texas

**THEREFORE, PURSUANT TO THESE FINDINGS, IT IS ORDERED** by the Commissioners Court of Fort Bend County, Texas acting as the governing body of Fort Bend County, Texas,

That the regulations attached hereto, entitled "Regulations for Sexually Oriented Businesses in the Unincorporated Area of Fort Bend County, Texas" are adopted as the regulations of Fort Bend County, and the officials of Fort Bend County are directed to perform such duties as are required of them under said procedures. The effective date of these regulations is April 27, 19 99

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**THE REGULATIONS FOR SEXUALLY ORIENTED  
BUSINESSES IN THE UNINCORPORATED AREA  
OF FORT BEND COUNTY, TEXAS**

**SECTION I - AUTHORITY**

- (a) These regulations are promulgated pursuant to and in conformity with Chapter 243 of the Local Government Code of Texas, as amended
- (b) It is the purpose of the Commissioners Court of Fort Bend County to exercise its police power, as established under Chapter 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 Fort Bend 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 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
- (d) 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 Sheriff or his duly authorized agents to investigate, deny, issue, attach conditions, suspend and revoke Sexually Oriented Business Permits (SOBP's) pursuant to the above authority and these regulations. Any Peace Officer certified by the State of Texas may enforce these regulations. An appeal shall not automatically stay the effect of the Sheriff'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 an SOBP by the County
- (c) Section 243 010(a) and (b) of the Local Government Code, as amended, authorizes Fort Bend County to prosecute a violation of these regulations as a Class A misdemeanor
- (d) The revocation or suspension of an 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 an 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 Fort Bend County.
- (b) Incorporated cities or towns in Fort Bend County that execute cooperative agreements with Fort Bend 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**

- (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 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 subrent 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 an 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 any enterprise for services or products provided.
- (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 the 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) **Convalescent home** a building furnishing food, shelter and minor medical treatment for the elderly and licensed pursuant to the procedure in Chapter 242 of the Texas Health and Safety Code
- (o) **County** Fort Bend County, Texas,

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

(q) 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; excepting individuals who have a valid Class II SOBP working at the enterprise under a written contract

(r) Enterprise: a sexually oriented business enterprise is 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 the customer. This definition includes but is not limited to 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

(1) Enterprises are classified as follows:

(i) Class I enterprises conduct business regularly at a specific location

(ii) Class II enterprises are individuals who offer, for compensation, a service intended to provide sexual stimulation or sexual gratification to patrons at any location in the County, unless that individual is any employee of a Class I enterprise working at the location permitted under a Class I SOBP

(2) The term enterprise 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 752, Acts of the 69th Legislature, Regular Session, 1985 (Article 4512K, Vernon's Texas Civil Statutes), as amended,

(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
- (s) **Enterprise Operator** a manager or other natural person principally in charge of a Sexually Oriented Business Enterprise
- (t) **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 the customer
- (u) **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 the customer
- (v) **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
- (w) **Interested Party** any person who owns or leases real property within fifteen hundred (1,500) feet of an enterprise, any official who is elected by residents of Fort Bend County including the Sheriff but specifically excepting all magistrates elected in Fort Bend County, and the applicant
- (x) **Live Exhibition** a live performance by one or more individuals conducted in front of at least one patron, including but not limited to, dancing, modeling, sword swallowing, juggling, acrobatic acts, wrestling and pantomime
- (y) **Nudity or State of Nudity** any state of dress which *is transparent or* fails to opaquely cover a human buttock, anus, male genitalia, female genitalia or areola of a female breast
- (z) **Patron** any customer or client of an enterprise, including members of the public or club members 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
- (aa) **Person** an individual, partnership, corporation, association or other legal entity
- (bb) **Public Building** a building used by Federal, State, or local government that is open to the general public

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

(dd) **Regulations** regulations of Fort Bend County, Texas for the operation of Sexually Oriented Business Enterprises.

(ee) **SOBP** Sexually Oriented Business Permit issued and regulated pursuant to this regulation

(ff) **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

(gg) **Semi-nude** any state of dress which *does not transparently or opaquely* cover no more than a human buttock, anus, male genitalia, female genitalia or areola of a female breast.

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

(ii) **Sexually Oriented Business** a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other 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

(jj) **Sexually Oriented Modeling Studio** 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 or similarly depict or observe

(kk) **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

(ll) **Sheriff.** The Sheriff of Fort Bend County or the Sheriff's designated agent.

(mm) **Specified Anatomical Areas** human genitals in a state of sexual arousal, whether clothed or nude

(nn) 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.

(oo) Totally Nude a person shall be considered totally nude as this term is used in this regulation if the person's entire pubic region, genitals or anus is not opaquely *or is transparently* covered

(pp) Transfer of Ownership or Control

(1) the sale, lease or sublease of the business, or

(2) transfer of a controlling interest in the business whether by sale, exchange, gift or other means

## **SECTION V - SOBP REQUIRED FOR ENTERPRISES**

No person shall conduct business as either a Class I or Class II sexually oriented business enterprise at any location in the area of Fort Bend 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 location of a Class I enterprise is a separate enterprise for the purposes of these regulations

(c) An individual who is a Class II enterprise shall be issued a single SOBP and badge number.

(d) an enterprise without an SOBP is a public nuisance enjoined under these regulations

## **SECTION VI - SOBP DISPLAYED**

- (a) The SOBP for a Class I enterprise shall be displayed at all times in an open and conspicuous place in the enterprise for which it was issued
- (b) The SOBP for a Class II enterprise shall be available at any premises where the individual is conducting business. In addition, the individual shall wear a clearly visible badge issued by the Sheriff showing the SOBP number any time she/he is conducting business as an enterprise as defined in these regulations.

## **SECTION VII - INJUNCTION**

- (a) A person who violates these regulations 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) The County Attorney is hereby authorized to file suit to enjoin violation 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 Sheriff. The application shall be filed on the form provided by the Sheriff or an accurate and legible copy of that form. The applicant shall apply in person at the Sheriff's office. The hours when applications can be submitted will be established by the Sheriff. 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 Sheriff
- (b) All applications 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
    - (i) A Class I SOBP shall be valid only for the address provided in the application

(ii) A Class II application must contain the residential address of the applicant

(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) A non-refundable fee, established by the Fort Bend County Commissioners Court, shall be paid in the form of a money order or cashier's check or bank check.

(6) 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

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

(c) If the applicant is an individual, the applicant shall also provide

(1) each of the applicant's residential addresses for the five (5) years immediately preceding the date of the application, indicating the dates of each residence and including the present address and telephone number of the applicant,

(2) the applicant's business, occupation and employment history for the five (5) years immediately preceding the date of application, indicating the applicable dates and addresses,

- (3) documentation that the applicant is at least eighteen (18) years of age,
  - (4) the applicant's height, eye color and natural hair color the Sheriff shall take two photographs of the applicant at the time of the application, one photograph shall be affixed to the SOBP and one photograph shall be retained by the Sheriff, new photographs may be required by the Sheriff's Office upon application for renewal of the SOBP,
  - (5) The Applicant's criminal history which shall consist of a statement of any and all criminal convictions and the date thereof, any charge to which the applicant entered a plea of nolo contendere or for which applicant received deferred adjudication, but it shall not include Class C misdemeanor traffic violations,
  - (6) The Sheriff may require the applicant to furnish fingerprints for the purpose of establishing identification
  - (7) Other identification and information as reasonably necessary in order to confirm the validity of information provided in the application,
  - (8) A mailing address where the applicant can be reliably contacted
- (d) If the applicant is a corporation, 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 officer and directors, and names and addresses of each stockholder holding 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 applicant shall be included in the application in addition to these requirements;
  - (4) if the applicant is a joint venture or other similar entity, the names and residential addresses of the participants and their valid driver 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

(5) 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 Fort Bend County, Texas; a description as to any management, supervisory, or oversight responsibility that person will have in the enterprise, a valid drivers license number or Texas Department of Transportation identification card number, and a certification as to each officer, director, partner or participant that he/she has not been convicted of any of the crimes listed in Section XII(e)(1)(iv)

(e) Applicants for a Class I SOBP shall also provide

(1) the name and residential address of each enterprise operator,

(2) 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,

(3) 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 XXIV of these regulations are required to conform to that section.

(4) A certification that the proposed enterprise will be located

(i) a minimum of fifteen hundred (1,500) feet from any child care facility, school, dwelling, hospital, public building, public park, or church or place of religious worship, or convalescent home

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

(iii) not more than two (2) other Class I enterprises are located within a distance of two thousand (2,000) feet of the proposed location

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

(v) For the purposes of this subsection, measurements shall be made in a straight line from the nearest portion of the building or appurtenance that is used by the enterprise to the nearest portion of the building or appurtenance that is used for the purposes identified in subsections (i), (ii), or (iii) above. These distance restrictions apply to an identified purpose whether or not the building or appurtenance used for an identified purpose is located within the unincorporated area of Fort Bend County.

(5) 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 Fort Bend County Sheriff's Office. It shall also state the date the application was filed and the phone number for the Sheriff'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 SOBPA and remain until the application has been approved or denied by the Sheriff. If the Sheriff 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.

(6) Every applicant for a Class I SOBPA shall give written notice of the application to all owners and lessees of real property within fifteen hundred (1,500) feet of property on which the SOBPA is requested. These owners and lessees are interested parties in any public hearing process connected with the SOBPA, 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 Fort Bend County. Owners of property within fifteen hundred (1,500) feet of the proposed location that are not within the unincorporated area of Fort Bend County, Texas shall have the same rights under this subsection as the residents of the unincorporated areas of Fort Bend County.

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

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

(a) All existing enterprises that were not previously required to obtain permits shall submit a complete application for an SOBP pursuant to these regulations within sixty (60) days of the effective date of these regulations

(b) An existing enterprise may continue to operate until the Sheriff's determination on the SOBP application is final. The SOBP application receipt is required to be displayed in clear view at the premises of a Class I enterprise and is to be readily available at any location at which a Class II enterprise conducts business

(c) 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

(d) Upon evaluation of the proof and a finding that a proposed amortization is reasonable under the circumstances, the Sheriff shall approve a Contingent SOBP. The Sheriff 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.

(e) 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.

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

(g) Any enterprise which operates in the area of Fort Bend 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 shall be under a continuing affirmative duty while the application is pending and during the effective dates of the SOBP to notify the Sheriff 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) a Class I enterprise shall notify the Sheriff when the enterprise learns that a Class II enterprise 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 Class I 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 an SOBP condition is a violation of these regulations

(c) An enterprise shall notify the Sheriff immediately if an SOBP badge is lost or stolen If notice of loss has not been provided to the Sheriff 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 Sheriff receives a written request for a public hearing concerning a Class I SOBP application, the Sheriff 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 Sheriff shall then initiate the public hearing procedure, as follows:

(1) A hearing official, who is a resident of the County, appointed by Commissioners Court, shall be contacted by the Sheriff and a date set for the public hearing

(2) The hearing shall be scheduled at a public building within the precinct where the enterprise is to be located, or within an adjacent precinct

(3) The hearing shall be scheduled either on a weekday at 7 00 p m , or on a Saturday morning at 9 30 a m

(4) The Sheriff 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

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

(6) The Sheriff shall place a sign at the location identified in the application containing the time and place of the hearing

(7) The hearing may be rescheduled by the hearing official 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 Sheriff's Office.

(8) 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 hearing official to become the property of the County.

(b) If a request for a public hearing is received by the Sheriff after the SOBP has been issued or renewed, the hearing shall be scheduled when the next renewal application is filed. The Sheriff 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 Sheriff shall initiate the hearing as set out in subsection (a).

(c) If the request for public hearing is deficient, the Sheriff 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 hearing official shall produce a written statement containing the official'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 Sheriff, the Applicant and the interested party who request the hearing. When the hearing official determines that public health and safety concerns exist, the Sheriff 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 Sheriff 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 hearing official shall provide that information to the Sheriff, 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 forty-five (45) days of submission of a complete application, unless the application is denied. The forty-five (45) days shall run from the date the Sheriff issues the receipt pursuant to Section VIII(a).

(b) A Class II SOBP shall be issued within seven (7) days unless the application is denied. The seven (7) days shall run from the date the Sheriff issues the receipt pursuant to Section VIII(a)

(c) The Sheriff shall defer determination whether to issue an 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 charges

(d) If the Sheriff finds that the determination on whether an 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 Sheriff of any of the following facts

(1) The 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 a 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) criminal offense as described in Chapter 481, Subchapter D of the Texas 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 offense, 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, or
  - (j) a violation of these regulations described in Section XXII(a).
- (2) 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,
- (3) The applicant has knowingly made a misleading statement of a material fact by omitting or falsifying information in the application for the SOBP,
- (4) The applicant, if an individual, is under eighteen (18) years of age;
- (5) The applicant or enterprise operator has had an SOBP revoked for the same enterprise within the one hundred eighty (180) day period immediately preceding the date the application was filed;
- (6) 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,

(7) The application or renewal fee required by these regulations has not been paid,  
or

(8) 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 Sheriff shall attach reasonable conditions on an 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 canceled by written request of the applicant. The renewal fee for the initial Class II SOBP will be reduced to reflect proration or the application fee based on the portion of the year for which the initial SOBP was valid.

(h) In the event that the Sheriff 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 Sheriff shall have the authority and power to initiate a proceeding to revoke or suspend an 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 or enterprise operator 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 or enterprise owner 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 Sheriff 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 (11th) 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 Sheriff 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 ground's for the revocation. The hearing shall be held within fourteen (14) business days of the request for hearing and the enterprise and the Sheriff 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 Sheriff, 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) an 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) A Class I 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 immediately preceding the date of employment and updated every year;

(6) a description of the capacity in which the employee is employed, and

(7) 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 Sec 106 14

(b) The enterprise has the duty to maintain and make available these records for inspection, and copying, by the Sheriff. The Sheriff 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 Sheriff during the hours of operation of the enterprise upon twenty-four (24) hour 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 Sheriff within seven (7) business days of the request.

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

(d) The Class I enterprise has the duty to have the employee information available regarding any individual working at an enterprise unless that individual has a valid Class II SOBP available at the premises.

#### **SECTION XV - NOTICE**

(a) Any notice required to be given by the Sheriff 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 did not comply with the affirmative duty to notify the Sheriff of any change of address, unless the enterprise 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 Sheriff 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 Sheriff shall suspend the SOBP until the applicant / holder contacts the Sheriff with a current address. An individual that conducts business as an enterprise under a suspended SOBP pursuant to this section shall be in violation each and every day that he/she conducts business in Fort Bend County.

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

Failure of the Sheriff to take timely action or give notice of his action on an application, or failure by the hearing official or hearing examiner 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 Sheriff. A temporary SOBP shall be valid only until notice of the Sheriff'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 renewal application shall be provided by the Sheriff.
- (b) An annual nonrefundable renewal fee, to be set by the Fort Bend 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 a money order or cashier's 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.
- (d) The Sheriff shall determine whether the permit may be 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 Sheriff's determination on renewal, there will be no valid SOBP for operation during that period.
- (f) If an enterprise fails to file its renewal application prior to the expiration of the existing SOBP, the enterprise 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 Sheriff 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 hearings examiner information to support recommendations to the Sheriff for conditions relating to public health and safety to be attached to the SOBP 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 Sheriff 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 an SOBP or an application for renewal, the Sheriff shall conduct an investigation to determine compliance with these regulations

### **SECTION XIX - INSPECTIONS**

The Sheriff or his agent shall make reasonable, periodic inspections of the premises of all Class I enterprises permitted under these regulations

### **SECTION XX - TRANSFER PROHIBITED**

An SOBP issued under these regulations is not transferable, assignable or dividable 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

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

(a) If an SOBP or identification card 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 Sheriff's Records

- (1) A replacement identification badge number will be assigned to a Class II enterprise
  - (2) A replacement permit will expire on the same date as the original permit
- (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 Fort Bend County, Texas, until he/she obtains a replacement SOBP or badge.
- (d) An SOBP or badge found in the possession of any person other than the enterprise may be immediately seized by the Sheriff. The authorized SOBP holder may reclaim the permit or badge from the Sheriff'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. Each day a violation continues constitutes, and is punishable as, a separate offense
- (1) for any employee, owner, or enterprise operator of a Class I 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 totally nude, however, private rooms at adult motels and employee's designated dressing rooms 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 or employee become totally 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 act prohibited by law, or acts which simulate the aforesaid at or in a permitted premise,
  - (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 Fort Bend County covered by these regulations without a valid SOBP issued in accordance with these regulations;

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

(8) 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,

(9) 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 an SOBP condition is a violation of these regulations,

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

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

(12) for any person performing at an enterprise to do so less than six (6) feet from the nearest patron and on a stage less than eighteen (18) inches above floor level,

(13) for the owner or enterprise operator of a Class I 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; or

(14) 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 in the clothing of the employee

(b) The following categories of sexually oriented enterprises are prohibited in Fort Bend County, Texas modeling studios; escort agencies; escorts; sexual encounter centers, any enterprise whose employees appear in a state of total nudity; and any Class II enterprise that provides services in a state of total nudity. It shall be a violation of these regulations to engage in these business activities in Fort Bend 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) A Class I enterprise has the duty to maintain and make available a time record reflecting the times and dates each Class II enterprise worked at that location. The Sheriff 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 Sheriff 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 Sheriff within seven days of the request. It shall be a violation of these regulations to falsify these records.

(d) Each Class I 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 any Class I enterprise:

**STOP AIDS AVOID HIGH RISK BEHAVIOR OR 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 Sheriff's Office.

### **SECTION XXIII - 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 (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, slide or other reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section.

(b) For the purpose 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 distance requirements of Section VIII(e)(4)(i), but no individuals under the age of eighteen (18) may live on site.

### **SECTION XXIV - 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, 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 manager's stations designated, 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 restrooms, 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 that any patron is present inside the premises

#### **SECTION XXV - 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 drivers 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 XXVI - OPERATIVE DATE**

The effective date of these regulations is April 27, 1999.

#### **SECTION XXVII - 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