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THE REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES IN THE UNINCORPORATED AREAS OF WALLER COUNTY

As Adopted by Commissioners' Court
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SECTION I - AUTHORITY, FINDINGS, PURPOSE AND INTENT

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

(b) The Commissioners' Court of Waller County makes the following findings:

(1) That sexually oriented businesses require special supervision in order to protect and preserve the health, safety, and welfare of the patrons of such businesses as well as the citizens of the communities where they locate;

(2) That sexually oriented businesses are used for unlawful sexual activities including prostitution and sexual liaisons of a casual nature that can facilitate the spread of sexually transmitted diseases;

(3) That sexually oriented businesses provide enhanced opportunities for employee or independent contractor participation in various forms of criminal activities such as prostitution, lewd conduct, indecent exposure, obscenity law violations and related crimes that are associated with sexual conduct or sexually-oriented materials;

(4) That sexually transmitted diseases are a legitimate public health concern that demands reasonable regulation of sexually oriented businesses in order to protect the health and well being of the public;

(5) That permitting sexually oriented businesses is a legitimate means of accountability to help ensure that operators of sexually oriented businesses comply with reasonable regulations and to help ensure that enterprise operators do not knowingly or carelessly allow their establishments to be used as places of illegal sexual activity or solicitation;

(6) That there is convincing documented evidence that sexually oriented businesses have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them;

(7) That sexually oriented businesses, due to their nature, have objectionable operational characteristics especially when they are located in proximity to each other. Such proximity contributes to urban blight and downgrades the quality of life in adjacent areas;

(8) That sexually oriented businesses can exert dehumanizing influences on

churches, schools, and day care centers; have negative effects on property values; can contribute to increased criminal activities in surrounding areas and exert the same types of negative community influences on other forms of land uses;

(9) That persons who are employed in sexually oriented businesses should be subject to verification that they have not been convicted of certain crimes relating to the foregoing findings;

(10) That caressing and fondling between patrons and nude or semi-nude entertainers of sexually oriented businesses and the practice of patrons providing gratuities to such employees by placing such gratuities in articles of clothing worn by such entertainers or in orifices or folds of their bodies constitutes overtures and opportunities for illegal activities and transactions such as prostitution and the sale of controlled substances;

(11) That the continuation of the distance requirement of 1500 feet of sexually oriented businesses from various types of establishments will help provide additional protection to the community from the adverse effects of sexually oriented businesses without depriving such businesses of adequate opportunities to locate within unincorporated areas of Waller County; and

(12) That the Commissioners' Court wants to help prevent adverse effects caused by sexually oriented businesses. The Court also desires to help protect the health, safety and welfare of its citizenry; help protect the public from increased crime; help preserve the quality of life; help preserve property values and the character of surrounding neighborhoods and help deter the spread of urban blight;

(b) It is the intent of the Commissioners' Court of Waller County to exercise its regulatory powers permitted under Chapter 243 of the Local Government Code and to enact a content neutral order that addresses the secondary effects of sexually businesses as well as the health problems associated with such businesses. The Commissioners' Court desires to establish reasonable and uniform regulations of sexually oriented businesses to promote and protect the health, safety and general welfare of the citizens of Waller County. The Court also desires to prohibit business activities that 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) These regulations have neither the purpose nor effect of imposing a limitation or

restriction of the content of any communicative material, including sexually oriented material. Similarly, it is not the intent nor effect of these regulations to restrict or deny access by adults to sexually oriented material protected by the First Amendment of the United States, to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market or to suppress any speech activities protected by the First Amendment. The promotion of obscene material (not protected by the First Amendment) is enforceable through separate criminal sanctions under the penal code.

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

SECTION II - ADMINISTRATION

(a) The Commissioners' Court hereby designates the Sheriff of Waller County, or his duly authorized representative(s) ("Sheriff") to accept applications for a sexually oriented business permit and to certify compliance with the location requirements. The Commissioners' Court also designates the Sheriff of the Waller County to investigate, deny, issue, attach conditions to, suspend and revoke Sexually Oriented Business Permits (SOBPs) pursuant to the above authority and these regulations.

(b) The Sheriff may enforce these regulations. An appeal shall not automatically stay the effect of the Sheriff's determination. The Sheriff is authorized to investigate Sexually Oriented Businesses' Service Provider Records and to investigate and enforce the Operating Requirements imposed on Sexually Oriented Businesses. These Requirements are set forth in Section XVII and in Section XXV of these regulations.

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

(d) Sections 243.010(a) and (b) of the Local Government Code, as amended, authorize Waller County to prosecute a violation of these regulations as a Class A Misdemeanor.

(e) The revocation or suspension of a SOBP shall not prohibit the imposition of a criminal penalty and the imposition of a criminal penalty shall not prevent the revocation or suspension of an SOBP pursuant to these regulations.

SECTION III - AREA COVERED BY REGULATIONS

(a) These regulations shall apply to sexually oriented business enterprises located in

the unincorporated areas of the County. These regulations shall also apply to sexually oriented business enterprises located in that portion of the extraterritorial jurisdiction of any city within the County that is also located in the unincorporated area of the County.

SECTION IV - DEFINITIONS

As used in these regulations:

(a) Adult Bookstore , Adult Video Store, or Adult Paraphernalia Store: a commercial establishment which as one of its principal business purposes offers for sale or rental for money or any other form of compensation or 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 which depict or describe specified sexual activities or specified anatomical areas, as defined in this section; or

(2) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities, as defined in this section.

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

(c) Adult Cabaret: a nightclub, bar, restaurant, or similar commercial establishment that features:

(1) persons who appear totally nude, 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, video reproductions, 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 money or any other form of compensation or consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other reproductions which are characterized by specified sexual activities or specified anatomical areas, as defined in this section; or has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions; or

(2) offers a sleeping room for rent for a period of time that is less than (10) hours;
or,

(3) allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than 10 hours.

(e) Adult Movie Picture Theater - a commercial establishment where for money or any other form of compensation or consideration, films, motion pictures, video cassettes or video reproductions, slides or similar photographic reproductions are regularly shown and 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 which regularly features live performances characterized by the exposure of specified sexual activities or specified anatomical areas, as defined in this section.

(g) Allow: to let happen, cause, suffer, or permit, including the failure to prevent.

(h) Applicant: the individual or entity submitting the application for a SOBP. Where appropriate, this includes a written designated agent of the applicant.

(I) Cashier: any employee who handles money or any other form of compensation or consideration from clients of an enterprise for services or products provided.

(j) Child Care Facility: a building 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 Resources Code.

(k) Church or Place of Religious Worship: a facility, including all structures and grounds, at which persons regularly assemble for worship, intended primarily for purposes connected with faith or for propagating a particular form of belief.

(l) City: an incorporated city, town, or village.

(m) Commissioners' Court: the Commissioners' Court of Waller County, Texas.

(n) Conviction: this term encompasses a defendant adjudged guilty of the offense charged. This term also encompasses a defendant who has entered a plea of guilty or nolo contendere to the offense in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated.

(o) County: Waller County, Texas.

(p) Dwelling: a house, duplex, apartment, townhouse, condominium, mobile home or any other building used for residential purposes, whether single family or multi-family, attached or detached, and regardless of whether tenant or owner occupied.

(q) Employee: any person who works in or about an enterprise and renders any service whatsoever to the patrons of an enterprise and receives money or any other form of compensation or consideration for such service or work from the enterprise operator or owner of the enterprise or from the patrons thereof, excepting those persons who have an independent contractor relationship with the enterprise.

(r) Enterprise Operator: an owner, manager or other natural person principally in charge of a Sexually Oriented Business Enterprise (SOBE).

(s) Entertainment Service: any service provided by a cashier, enterprise owner, server, employee or independent contractor or other similarly employed person at the sexually oriented business enterprise. This definition does not include persons providing repairs or maintenance to the premises or equipment.

(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) Sheriff: the Sheriff of the Waller County or his designated representative.

(w) Hospital: A building used to provide in-patient medical care for the sick or injured. It is licensed pursuant to the Texas Hospital Licensing Law, Chapter 241 of the Texas Health and Safety Code, or is operated by an agency of the federal government, or is a convalescent facility licensed pursuant to Chapter 242 of the Texas Health and Safety Code.

(x) Interested Party: any person who owns or leases real property within fifteen hundred (1,500) feet of an sexually oriented business enterprise; any county official who is elected by residents of Waller County including the Sheriff, but specifically excepting all magistrates elected in Waller County and the applicant.

(y) Live Exhibition: a live performance by one or more individuals conducted in front of at least one patron. Live exhibitions include but are not limited to, dancing, modeling, sword swallowing, juggling, acrobatic acts, wrestling and pantomime.

(z) Nude Modeling Studio: any place where a person who appears in a state of nudity or displays specified anatomical areas, as such term is defined in this section, to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by another person who pays money or any form of consideration.

(aa) Nudity or State of Nudity:

(1) the appearance of a human bare buttock, anus, male genitals, female genitalia, pubic region or female breasts; or,

(2) a state of dress which fails to opaquely cover a human buttock, anus, male genitalia, female genitalia, pubic region or areola or a female breast.

(3) This includes material that is painted or applied to the body, such as paint, liquid latex or employment of any device or covering intended to give the appearance of or simulate the parts of the body listed in (1) or (2).

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

(bb) Operate or Cause to be Operated: Cause to function or to put or keep in

operation. A person may be found to be operating or causing to be operated a sexually oriented business enterprise whether or not that person is an owner, part owner, or licensee of the business.

(cc) Patron: any paying or non paying customer or client of a sexually oriented business enterprise including members of the public or club members invited or admitted to a sexually oriented business enterprise.

(dd) Penal Institution: a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

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

(ff) Principal Business or Primary Business:

(1) a business where 50% or more of gross floor area is devoted to the sale, display or inventory of items that depict or describe specified sexual activities or specified anatomical areas, as defined herein, or that are designed for use in connection with specified sexual activities, as defined herein; or,

(2) a business where 50% or more of gross receipts is derived from the sale or rental of items that depict or describe specified sexual activities or specified anatomical areas, as defined herein, or that are designed for use in connection with specified sexual activities.

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

(hh) Public Park - A tract of land maintained by a federal, state, or local government 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 also include locations owned by non-profit organizations that provide educational and recreational facilities.

(ii) Regulations: Regulations of Waller County, Texas, for the operation of Sexually Oriented Business Enterprises (SOBEs).

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

(kk) Semi-nude: any state of dress in which clothing or other matter opaquely covers no more than a human buttocks, anus, male and female genitalia or areola of a female breast, as well as portions of the body covered by supporting straps or devices.

(ll) Server: an individual who serves patrons food or beverages in a sexually oriented business enterprise, including waiters, waitresses, hosts, hostesses, and bartenders.

(mm) 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 totally nude, semi-nude or in a state of nudity.

(nn) Sexually Oriented Business Enterprise (SOBE) : 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. The commercial enterprises or activities described above shall be subject to regulation under this order at any location at which they may occur, whether conducted within a building, a temporary enclosure or out of doors.

The term SOBE shall not be construed to include a:

(1) business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers that as the primary business purpose, performs functions authorized under the license held; or

(2) business operated by or employing a licensed physician or licensed chiropractor that as a major business purpose is engaged in practicing the healing arts;

(3) 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;

(4) 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;

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

(6) tanning facility that is properly licensed pursuant to Ch. 145 of the Texas Health and Safety Code, the Tanning Facility Act.

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

(pp) Sexually Oriented Modeling Studio: any place where a person appears in a state of nudity or displays specified anatomical areas as defined herein, to be observed, sketched, drawn, painted, sculpted, photographed or similarly depicted by another person who pays money or any other form of compensation or consideration.

This does not include modeling classes operated by a:

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

(2) 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,

(3) structure:

(I) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and,

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

(iii) where no more than one nude or semi-nude model is on the premises at any one time.

(qq) Sheriff: The Sheriff of Waller County or his deputies, or his reserve deputies who hold a permanent peace officers license issued under Chapter 415 of the Texas Government Code.

(rr) Specified Anatomical Areas: human genitals in a state of sexual arousal, whether clothed or nude.

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

(1) the 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.

(tt) Totally Nude: a person shall be considered to be totally nude as this term is used in this definition if the person's entire pubic region, genitals or anus is not opaquely covered or if it is covered with a material that is painted or applied to the body, such as paint, liquid latex or the employment of any device or covering used with the intention of giving the appearance of or simulating a human bare buttock, anus, male genitals, female genitalia, the pubic region or a female breast.

(uu) Transfer of Ownership or Control - Includes:

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

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

(3) the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business.

SECTION V - CLASSIFICATIONS

(a) Sexually Oriented Business Enterprises are classified as follows:

(1) adult movie arcades or adult arcade;

(2) adult bookstores, adult video stores, or adult paraphernalia stores;
(3) adult cabarets;
(4) adult motels;
(5) adult movie picture theaters;
(6) adult theaters;
(7) escort agencies and escorts;
(8) nude modeling studios or sexually oriented modeling studios;
(9) sexual encounter centers;

(b) The determination of whether an enterprise is a sexually oriented business enterprise (SOBE) shall be made by the Sheriff. This determination may be appealed to the Commissioners' Court.

(c) The commercial enterprises or activities enumerated in this section shall be subject to regulation under this order at any location at which they may occur, whether conducted within a building, temporary enclosure, or out of doors.

SECTION VI - SOBP REQUIRED FOR ENTERPRISES

(a) No person shall conduct business as a SOBE at any location in the areas of Waller County covered by these regulations without a valid Sexually Oriented Business Permit (SOBP) issued in accordance with these regulations. It shall be an offense to operate a SOBE without a valid SOBP.

(1) A separate application and SOBP shall be required for each SOBE.

(2) Each location or structure located thereon of a SOBE is a separate enterprise for the purposes of these regulations.

(3) A SOBE open or operating without an SOBP is a public nuisance enjoinable under these regulations.

SECTION VII - SOBP DISPLAYED

(a) The SOBP for a SOBE shall be displayed at all times in an open and conspicuous place in the SOBE for which it was issued.

SECTION VIII - ENFORCEMENT

(a) As stated in Chapter 243 of the Local Government Code of Texas, the County may file suit in District Court for an injunction to prohibit a violation of these regulations. In addition, the person is also subject to prosecution for criminal violations.

(b) The County District Attorney is hereby authorized to file suit to enjoin violations of these regulations. A suit may be initiated upon information received from private citizens or any law enforcement agency.

(c) A person commits an offense if the person violates any one or more of these regulations. The criminal penalty for a violation of any one or more of these regulations is a Class A misdemeanor. A Class A misdemeanor is defined by and carries the penalties described by the Texas Penal Code.

SECTION IX - SOBP APPLICATION

(a) To obtain an SOBP, a complete application shall be filed with the Sheriff.

(1) The application shall be filed on the form provided by the Sheriff or on an accurate and legible copy of that form.

(2) The applicant shall apply in person at the Waller County Sheriff's Department.

(3) The hours applications may be submitted will be established by the Sheriff.

(4) A notice of deficiencies shall be mailed by the Sheriff 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.

(5) A receipt shall be mailed by the Sheriff to the applicant within five (5) business days of submission of a complete application to the Sheriff. The SOBP application receipt is required to be displayed in clear view at the premises of an SOBE. Failure to do so will constitute an offense.

(b) All applications shall provide the following information. The information in subsections (1) and (2) immediately below will be made available to the public when an application is received:

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

(2) A general description of the SOBE, which shall include the address of the SOBE and the services and products which will be offered. The permit shall be valid only for the address provided in the application.

(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 that 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 SOBE under an assumed name, a copy of the assumed name certificate filed in compliance with Chapter 36 of the Texas Business and Commerce Code.

(5) If the SOBE 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.

(6) A non-refundable fee of $1,000 shall be paid in the form of a money order or cashier's check to Waller County. Cash will not be accepted.

(7) 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;

(ii) the applicant has read and understands these regulations; and,

(iii) the applicant authorizes the Sheriff to seek such information from any third party or entity he requires 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 three (3) years immediately preceding the date of the application, indicating the dates of each residence and including the present address and telephone number of the applicant;

(2) the applicant's business, occupation and employment history for the three (3) years immediately preceding the date of application, indicating the applicable dates and addresses;

(3) documentation that the applicant is a least eighteen (18) years of age;

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

(5) two photographs of the applicant taken at the time of the application by the Sheriff. One photograph will be affixed to the SOBP. The other photograph will be retained by the Sheriff. New photographs may be required by the Sheriff upon application for renewal of the SOBP;

(6) the applicant's criminal history, which shall consist of a statement of: any and all criminal convictions. The term "criminal convictions" encompasses a defendant adjudged guilty of the offense charged. The term also encompasses a defendant who has entered a plea of guilty or nolo contendere to the offense in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated. The term shall not include Class C misdemeanor traffic violations.

(7) fingerprints of the applicant taken and maintained by the County Sheriff's Department for the purpose of establishing identification.

(8) a copy of the applicant's valid driver's license or Texas Department of Transportation identification card;

(9) Other identification and information as determined by the Sheriff to be reasonably necessary in order to confirm the validity of information provided in the application;

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

(d) If the applicant is a corporation, partnership, joint venture, or other similar business entity, the applicant shall also provide:

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

(3) a general partnership shall provide the name and residential address of each of the partners;

(4) a limited partnership shall provided the name and residential address of its general and limited partners and a copy of the certificate of limited partnership filed with the Office of the Secretary of State, and amendments included.

(5) if one or more of the general or limited partners is a corporation the information required of corporate applicants shall be included in the application in addition to the requirements for general or limited partnerships;

(6) a joint venture or other similar entity shall provide the names and residential addresses of the participants and their valid drivers license numbers or Texas Department of Transportation identification card numbers if the participants are individuals; if any participant is a corporation or partnership, the applicable information required in items (1), (2), (3), (4) or (5) above shall be provided.

(e) As to each person required to be identified in this section IX, the application shall also contain:

(1) a statement as to any ownership interest that person has in any other SOBE in Waller County, Texas;

(2) a description as to any management, supervisory, or oversight responsibility that person will have in the SOBE;

(3) a valid driver's license number or Texas Department of Transportation identification card number; and

(4) certification as to each officer, director, partner or participant that s/he has not been convicted of any of the crimes listed in Section XV(e)(1)(iv).

(f) Applicants shall also provide:

(1) the name and residential address of each Enterprise Operator;

(2) the street address, the mailing address and full legal description of the parcel of land on which the SOBE is to be located;

(3) the name and mailing address of each owner of the real property at which the business is to be located and a complete and fully executed copy of any lease or rental agreement;

(4) 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; and

(5) 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 XXVII of these regulations are also required to conform to the provisions of that section.

(6) A certification provided by a registered professional land surveyor that the proposed enterprise will be located at least 1,500 feet from the protected uses described in Section X.

SECTION X - LOCATION REQUIREMENTS

(a) The SOBE must be located a minimum of one thousand five hundred (1,500) feet from each of the property uses including:

(1) a child care facility,

(2) a church or place of religious worship,

(3) a dwelling,

(4) a hospital,

(5) a public building,

(6) a public park,

(7) a school;

(8) another sexually oriented business enterprise;

(9) a penal institution; and

(10) where not more than two (2) other sexually oriented business enterprises are located within a distance of two thousand (2,000) feet of the proposed location.

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

(c) For the purposes of this subsection, measurements shall be made in a straight line from the nearest portion of the proposed SOBE property line to the nearest portion of the property line of the property uses listed above. These distance restrictions apply to an identified property use whether or not the building or appurtenance used for an identified property use is located within the unincorporated area of Waller County.

(d) A previously permitted SOBE lawfully operating as a conforming use is not rendered a nonconforming use by the location of a protected property use described above subsequent to the conforming operation of the enterprise.

(e) Once permitted, a SOBE shall not cause the structure to be enlarged or relocated on the property in such a manner to bring it in noncompliance with the location regulations. It shall be an offense to do so.

(f) All currently permitted SOBEs that are not in compliance with the required location from specified property uses will be grand fathered with regard to the property distance requirements. They will also receive a permit acknowledging they were operating prior to the enactment of these regulations following the Sheriff's receipt of their application and payment of their fee.

(g) Any currently permitted SOBEs that are in violation of the location requirements listed in this Section shall not increase, enlarge, extend or alter their SOBE or acquire adjoining or adjacent lands unless such change or acquisition of such adjoining or adjacent lands shall make it a conforming use to the location requirements.

SECTION XI - NOTIFICATION OF PUBLIC AND INTERESTED PARTIES

(a) Posting. The applicant shall, not later than the 30th day before the date the application is filed with the Sheriff, post outdoor signs at the property where the proposed SOBE will be located. The following is required:

(1) Sign(s) shall be at least 24" in width x 36" in height in size and legibly state that a SOBP application will be filed with the Waller County Sheriff's Department.

(2) Sign(s) shall state that a sexually oriented business is intended to be located on the premises, the name and business address of the applicant, the date the application will be filed with the Sheriff, and the phone

number for the division of the Waller County Sheriff's Department handling the permits. Sign(s) shall inform the public that persons can contact that office for more information about the application.

(3) Each letter on the sign(s) must be at least 1.5 inches x 2 inches in size.

(4) It shall be the duty of the applicant to erect and maintain each sign so that it is in a location clearly visible from the public sidewalk, road, or highway. If a side of the property is longer than three hundred (300) feet, one sign shall be erected in each three hundred (300) foot increment of the property.

(5) The sign(s) remain in place until the application has been approved or denied by the Sheriff.

(6) If the Sheriff determines that the sign(s) have not been erected or maintained pursuant to the requirements of this subsection, a written notice shall be issued to the applicant identifying the deficiencies. In addition, no action shall be taken on the application until the sign(s) have been erected and maintained as required.

(b) Notice. Every applicant for a new SOBP license shall give notice of the application to all owners and lessees of real property within fifteen hundred (1,500) feet of property on which the SOBP is requested. It is the applicant's responsibility to determine who the property owners and lessees are. Waller County Central Appraisal District Records may be used for making this determination. A copy of the list of those persons notified with their addresses must be provided to the Sheriff. These owners and lessees are interested parties (as the term is defined in these regulations) in any public hearing process connected with the SOBP, including revocation hearings. The owners and lessees of these properties shall be notified as required in this subsection even if the property is not located in the unincorporated area of Waller County. Owners and lessees of property within fifteen hundred (1,500) feet of the proposed location that are not within the unincorporated areas of Waller County, Texas shall have the same rights under this subsection as the residents of the unincorporated areas of Waller County. The following is also required:

(1) Notices to the owners and lessees shall be sent within two (2) business days after the date the Sheriff issues the receipt for the application. The notice sent 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 Section IX (b) (1) and (2). The "Notice to Interested Parties" shall also contain the procedures for requesting and

appearing at the hearing.

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

(3) Each property owner and lessee so notified shall have fifteen (15) days from the date the Sheriff issues the receipt for the application to file a request for a public hearing. The public hearing will be conducted as provided in Section XIV.

SECTION XII - APPLICATION REQUIREMENTS FOR EXISTING ENTERPRISES

(a) All currently permitted SOBEs shall submit a complete renewal application for an SOBP pursuant to these regulations within sixty (60) days of the effective date of these regulations. Applicants for such renewal permits must furnish the information requested of new applicants (See Section IX). Otherwise, the regulations prescribed in Section XX will be followed in determining whether the renewal application will be granted.

(b) A County SOBP issued prior to the effective date of these regulations shall be valid for an SOBE until a final determination is made on the application under the new regulations. The receipt for the new SOBP application shall be attached to the existing SOBP.

(c) An existing SOBE that was not required to obtain a permit under the previous regulatory structure, if there are any, may continue to operate until the Sheriff's determination on the SOBP application is final.

(d) The SOBP application receipt is required to be displayed in clear view at the premises of an SOBE. Failure to do so will constitute an offense.

(e) Any SOBE which operates in the areas of the 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.

SECTION XIII - ONGOING DUTIES OF APPLICANT AND HOLDERS OF SOBPs

(a) Applicants and holders of SOBPs 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 two (2) business days after the occurrence

of:

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

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

(3) an enterprise operator shall notify the Sheriff when the enterprise operator learns that any employee or independent contractor providing entertainment or services at the SOBE has been formally charged with a crime listed under Section XV(e)(1)(iv) and the crime is alleged to have occurred on the premises of the SOBE.

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

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

SECTION XIV - PUBLIC HEARING ON HEALTH AND SAFETY

(a) When the Sheriff receives a written request for a public hearing concerning a SOBP application, the Sheriff shall confirm that it is:

(1) from an applicant or interested party;

(2) that the request specifically identifies the SOBP application at issue;

(3) that the request is timely filed; and

(4) that the request specifically identifies health and safety concerns affected by the SOBE.

(b) If the request meets the criteria above, the Sheriff shall then initiate the public hearing procedure, as follows:

(1) A hearing official, 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 County voting precinct where the enterprise is to be located, or within an adjacent County voting 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 fifteen (15) days in advance, stating the date, time and place of the hearing. The Sheriff shall make a copy of the Notice of Hearing available to the public by posting at the County Courthouse.

(5) The Sheriff shall notify all Interested Parties requesting a hearing of the hearing by sending them a copy of the written Notice of Hearing at least ten (10) days in advance.

(6) Publicizing the hearing in a newspaper shall be the responsibility of the applicant who requested the permit. The publication must be in a newspaper of general circulation in Waller County and must be at least 3 columns by 5 inches and located in retail display. The Sheriff shall make available to the public a copy of any request for hearing and the Notice of Hearing.

(7) The Sheriff shall place a Notice of Hearing sign at the location identified in the application containing the time and place of the hearing.

(8) 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 Waller County Sheriff's Department and the applicant must republish the notice using the procedure set forth in subsection (6) above.

(9) The applicant may request that a court reporter make a record of the hearing.

The applicant must:

(I) make this request at least five (5) days prior to the hearing, and

(ii) bear the cost of making an official record and one additional (1)

transcript for the County.

(10) 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.

(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 subsections (a) above or (d) below shall not extend the period of time in which a request for hearing may be filed.

(d) If the Sheriff receives a request for a public hearing after the SOBP has been issued or renewed, the late request shall be attached to the SOBP records. Thereafter a hearing shall be scheduled when the next renewal application is filed if I) the late request identifies health and safety concerns affected by the SOBE; ii) the concerns were not addressed in the current SOBP; iii) the request was filed by an Interested Party; and iv) the requesting party still desires to have a hearing. Upon determining all these conditions exist, the Sheriff shall initiate the hearing as set out in subsection (a).

(e) 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 SOBE and to allow the applicant to address these concerns:

(1) Applicants and Interested Parties are entitled to the assistance of counsel obtained at their own expense.

(2) Applicants and 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.

(4) Participants in the proceeding may be allowed to 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 relationship of the evidence to health and safety concerns directly related to the SOBP at issue, and conditions that 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 proceedings.

(f) 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 needed 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.

(g) 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 all Interested Parties who requested 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.

(h) 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 XV - ISSUANCE OR DENIAL

(a) An 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 for applicant's application for the permit.

(b) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the SOBE. The license shall be and remain posted in a conspicuous place at or near the entrance to the SOBE so that it may be easily read at any time.

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

(d) If the Sheriff finds that the determination of 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, general or limited 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 (2) years have elapsed since the date of conviction or the date of release from confinement and supervision (if applicable) imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense;

(ii) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction and supervision (if applicable), whichever is the later date, if the conviction is a felony offense; or

(iii) less than five (5) years have elapsed since the date of the last

conviction or the date of release from confinement and supervision (if applicable) for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within a 24-month period.

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

(a) prostitution,
promotion of prostitution,
aggravated promotion of prostitution,
compelling prostitution,
obscenity,
sale, distribution, or display of harmful material to a minor, sexual performance by a child, or possession of child pornography as described in Chapter 43 of the Texas Penal Code;

(b) public lewdness,
indecent exposure, or
indecency with a child as described in Chapter 21 of the Texas Penal Code;

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

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

(e) gambling,
gambling promotion,
keeping a gambling place,
communicating gambling information,
possession of gambling devices or equipment, or
possession of gambling paraphernalia as described in Chapter 47 of the Texas Penal Code;

(f) forgery,
credit card abuse,
or commercial bribery as described in Chapter 32 of the Texas Penal Code;

(g) a criminal offense as described in Chapter 481, Subchapter D of the Health and Safety Code;

(h) a criminal offense as described in Chapter 34 of the Texas Penal Code;

(i) criminal attempt,
conspiracy, or
solicitation to commit any of the foregoing offenses;
or any other offense in another state that, if committed in this state, would have been punishable as one or more of the aforementioned offenses; or

(j) a violation of these regulations described in XXV(a)

(2) The SOBE, as proposed, is a prohibited SOBE pursuant to Section XXV(b); the SOBE does not meet all the requirements of these regulations; or the SOBE 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 SOBE or for another SOBE located at the same business location within the twelve (12) month period immediately preceding the date the application was filed;

(6) An applicant is delinquent in the payment to the county of fees, fines or penalties assessed or imposed regarding the operation of a SOBE or has allowed any of its ad valorem taxes, whether on the property subject to these regulations or any other real or personal property owned by the applicant, owed to County or to any taxing jurisdiction which levies ad valorem taxes on property owned in County to become delinquent: provided that nothing herein shall impair the right of the applicant to challenge, in accordance with the requirements of Chapters 41 and 42 of the Tax Code, the appraised value of any of its property if but only if it follows all steps to perfect that challenge in the year in which the disputed appraisal is rendered;

(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 the 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 XIV. These conditions shall address the public health and safety concerns identified in the hearing.

(g) An SOBP shall be valid for one (1) year from the date it is issued, unless the SOBP is revoked or suspended pursuant to these regulations; the SOBE is sold or transferred; or the SOBP is canceled by written request of the applicant.

(h) In the event 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 does not prohibit the County, in litigation on appeal, from presenting evidence of additional or alternative facts that support denial of the SOBP.

SECTION XVI - <u>REVOCATION OR SUSPENSION</u>

(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 Enterprise Operator negligently allowed a person under eighteen (18) years of age to remain on the premises of the SOBE during the hours of operation;

(2) three (3) or more violations of any of the offenses contained in Section XV(e)(1)(iv) have occurred on the premises of an SOBE within a period of eight (8) months and the Enterprise Operator failed to make a reasonable effort to prevent the occurrence of such violations;

(3) the Enterprise Operator 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 SOBP application form;

(5) the SOBE 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 Enterprise Operator and the Enterprise Operator 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 Operator commits or is convicted of a criminal offense listed in Section XV(e)(1)(iv) of these regulations.

(8) an employee, independent contractor or other person providing services at the SOBE has failed to provide to the Enterprise Owner the information required under Section XVII of these regulations.

(9) an employee, independent contractor or other person providing services at the SOBE has provided false information in the records required under Section XVII and the Enterprise Owner has relied on the information as being accurate when in fact it was not.

(10) the Enterprise Operator is allowing employees, independent contractors or other persons who have been convicted of a crime listed in Section XVII(d) and whose time after conviction has not passed to work or provide services at the SOBE.

(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) business day after notice is provided pursuant to these regulations.

(c) The SOBE 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 grounds for the revocation. The hearing will be held as soon as is reasonably possible but preferably within fourteen (14) business days of the request for hearing. The SOBE and the Sheriff will be provided an opportunity to present evidence, cross examine witnesses. They also may 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 exist 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 an SOBP if the SOBP is suspended. Reasonable conditions may be attached to an SOBP by the hearing examiner based on the evidence presented at the hearing.

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

(g) Upon the finding that any item in (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. But revocation shall take immediate effect upon notice being sent, subject to reinstatement resulting from appeal when there is a necessity for immediate action to protect the public from injury or imminent danger.

(I) a revocation shall be in effect for a minimum of a year. After a year a SOBP could be applied for again. The circumstances surrounding the revocation may be considered by the Sheriff.

SECTION XVII - SOBE SERVICE ENTERTAINMENT SERVICE PROVIDER RECORDS

(a) An Enterprise Operator has the duty to keep the following information on file on site and readily available for inspection by the Sheriff or the Sheriff for each employee and independent contractor or other person providing Entertainment Services at the enterprise. The Sheriff will provide a standard format for these

records. An Enterprise Operator has the duty to verify the accuracy of all information required by the Sheriff or the Sheriff:

(1) the full legal name, professional or performing names and any other names used by the employee, independent contractor or other person (collectively sometimes called "person" within this Section) providing services;

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

(3) the current home address and telephone number of the person providing services;

(4) the person's height, eye color, natural hair color, and current hair color;

(5) a photograph of the person taken within one (1) month immediately preceding the initial date of employment or service and updated every year;

(6) a description of the capacity in which the person is employed, contracted for; or loaned to; and

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

(8) a Department of Public Safety (DPS) background check on the person either obtained by the Enterprise Operator or furnished to him by the person. A DPS background check based on date of birth and other applicable information is sufficient if the person desires to work for the Enterprise Owner for a cumulative number of less than ten (10) working days in a consecutive period of one hundred eighty (180) calendar days. In all other instances, a DPS background check based on fingerprints and date of birth and other applicable information is required.

b) An Enterprise Operator has the duty to maintain and make immediately available records for inspection, and copying, by the Sheriff or the Sheriff on any person providing Entertainment Services at the time of the request.

(c) All records must be updated every six months for employees and every time an

independent contractor or other person providing services contracts to perform if the periods between performance are greater than six months apart. In addition, all records shall include a time record reflecting the times and dates each employee, independent contractor or such person worked. These records shall be available for random inspection by the Sheriff or the Sheriff during the hours of operation of the SOBE. All records shall be retained for at least a period of two (2) years from creation. Upon written request, the Enterprise Operator has a duty to provide a copy of the records to the Sheriff or the Sheriff within one (1) business day of the request.

(d) Any person providing services that provides false information to an Enterprise Operator pursuant to this section violates these regulations and is subject to prosecution.

(e) An Enterprise Operator shall not hire, engage or otherwise retain the services of an individual as an employee, an independent contractor or in any other capacity if:

(1) The individual was convicted of any of the crimes listed below and

(I) less than two (2) years have elapsed since the date of conviction or the date of release from confinement and supervision (if applicable) imposed for the conviction, whichever is the later date, if the conviction is a misdemeanor offense;

(ii) less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction and supervision (if applicable), whichever is the later date, if the conviction is a felony offense; or

(iii) less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement and supervision (if applicable) for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within a 24-month period.

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

(a) prostitution,
promotion of prostitution,
aggravated promotion of prostitution,
compelling prostitution,

obscenity,
sale, distribution, or display of harmful material to a minor, sexual performance by a child, or
possession of child pornography as described in Chapter 43 of the Texas Penal Code;

(b) public lewdness,
indecent exposure, or
indecency with a child as described in Chapter 21 of the Texas Penal Code;

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

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

(e) gambling,
gambling promotion,
keeping a gambling place,
communicating gambling information,
possession of gambling devices or equipment, or
possession of gambling paraphernalia as described in Chapter 47 of the Texas Penal Code;

(f) forgery,
credit card abuse, or
commercial bribery as described in Chapter 32 of the Texas Penal Code;

(g) a criminal offense as described in Chapter 481, Subchapter D of the Health and Safety Code;

(h) a criminal offense as described in Chapter 34 of the Texas Penal Code; or,

(I) criminal attempt,
conspiracy, or
solicitation to commit any of the foregoing offenses;
or any other offense in another state that, if committed in

this state, would have been punishable as one or more of the aforementioned offenses.

SECTION XVIII - NOTICE

(a) Any notice required to be given by the Sheriff under these regulations to any applicant 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. Personal notice shall be deemed served when delivered to an Enterprise Operator or, if the Enterprise Operator is not available, posted at the entrance to the SOBE. If the notice is served or posted, the individual serving or posting the notice will note the time and date of his action on a copy of the notice posted and return the copy to the Sheriff.

(c) If a notice given by mail is returned by the postal service as undeliverable, it will be presumed the Enterprise Operator did not comply with the affirmative duty to notify the Sheriff of any change of address. This presumption may be rebutted by the enterprise owner showing there was error on the part of the Post Office.

SECTION XIX - TEMPORARY SOBP PROVISIONS

(a) If the Sheriff fails to take action on an application within the times specified, or if the hearing officer fails to timely conduct or give notice of the decision after the hearing the applicant shall be entitled to an immediate issuance of a temporary SOBP upon written demand. The applicant must file the demand 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 if the delay is wholly or partially caused by the action or inaction of the applicant.

SECTION XX - SOBP RENEWALS

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

(b) An annual non-refundable renewal fee of $1,000 will accompany the application for renewal to defray costs of inspections and investigation. Only money orders

or cashier checks will be accepted. Personal, business checks or checks from corporations will not be accepted.

(c) The renewal application must 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) Certification the SOBE is in operation. The permit will not be renewed if the SOBE has not commenced operation as proposed in the initial SOBP application.

(d) The Sheriff shall determine if the permit may be renewed based on the information contained in the renewal application. The renewal permit will be denied upon a finding of any of the conditions identified in Section XV(e)(1)(iv). Notice of renewal or denial will 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 SOBE fails to file its renewal application prior to the expiration of the existing SOBP, the SOBE must file an application for a new SOBP and the application shall be considered as any new application.

(g) Any interested Party may file a request for a public hearing with the Sheriff prior to issuance of a new SOBP. A request for a public hearing will not necessarily entitle the requesting party to receive one. Only if a request for a public hearing specifically identifies existing public health and safety concerns connected with the operation of that SOBE that did not exist when the original permit was granted will a public hearing be held. Any such public hearing will be conducted as provided for in Section XIV.

(1) The general public and all Interested Parties may present to the hearings officer new information to support recommendations to the Sheriff for denial or for conditions relating to public health and safety to be attached to the SOBP upon renewal.

(2) The request for a public hearing may be filed at any time during the year, but the hearing will be scheduled when the application for renewal of the 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 or denies the renewed SOBP based on the recommendations of the hearings official. The fact that there is a pending public hearing does not revive an SOBP that lapses under the provisions of subsections (e) and (f) above.

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

SECTION XXI - INVESTIGATION

(a) Upon receiving the application for an SOBP or an application for renewal, the Sheriff shall perform an investigation to determine compliance with these regulations.

SECTION XXII - INSPECTIONS

(a) The Sheriff shall make such reasonable, periodic inspections of the premises of all SOBES that are permitted under these regulations as they deem necessary.

SECTION XXIII - TRANSFER PROHIBITED

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

SECTION XXIV - LOST OR DESTROYED SOBP

(a) If an SOBP is lost or destroyed, a replacement may be obtained by filing a lost SOBP application and paying a lost permit fee of $250.

(b) A replacement SOBP will be issued immediately upon confirmation of the identity of the applicant through the Sheriff's Records. 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 that an SOBP was lost or stolen. A SOBE may not conduct business as an SOBE, in the areas covered under these regulations, until a replacement SOBP is obtained.

SECTION XXV - 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, Enterprise Operator or other SOBP holder to negligently allow any person below the age of eighteen (18) years to remain upon the premises or within the confines of the SOBE during the hours of operation;

(2) for any employee, independent contractor or other person providing Entertainment Services or for the Enterprise Operator to request or suggest that any patron, employee, independent contractor or other such person providing Entertainment Services become totally nude at the premises of the SOBE;

(3) for any person or any employee, independent contractor or person providing Entertainment Services to engage in, or for an Enterprise Operator to allow another person to engage in sexual activities as defined herein or in: sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, public lewdness, indecent exposure or any other public sexual acts prohibited by law, or acts which simulate the aforesaid at or in a permitted SOBE.

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

(5) for any SOBE to own or lease or to construct or have installed any exterior sign, billboard, advertisement, display or other exterior promotional material located or situated upon the premises other than a flat wall sign attached to the front of the main building with the total allowable area of the sign limited to one square foot per foot of front lot frontage;

(6) for any SOBE to remain open for business between the hours of 2:30 a.m. and 6:59 a.m Monday through Saturday and 2:30 a.m. and 9:59 a.m. on Sunday;

(7) for any person to conduct business as an SOBE in the unincorporated areas of County without a valid SOBP issued in accordance with these regulations;

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

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

(10) for the Enterprise Operator to fail to comply with the conditions attached to the SOBP; each and every day the SOBE fails to comply with an SOBP condition is a violation of these regulations.

(11) for any employee, independent contractor or other person providing services at a SOBE to provide materially false identification information which is required to be provided under Section XVII to an Enterprise Operator;

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

(13) for any employee, independent contractor or other person performing at an enterprise to do so less than three (3) feet from the nearest patron and on a stage less than eighteen (18) inches above floor level;

(14) for any employee, independent contractor or other person present at a SOBE who is nude or in a state of nudity or performing or entertaining or while exposing any specified anatomical areas or while engaging in any specified sexual activities to make physical contact with or to touch in any manner through any method any patron of a SOBE otherwise than is specified in (17) and (18) below.

(15) for an Enterprise Operator to allow any location within the SOBE to be used for the purpose of Live Exhibitions unless it is marked with clear indications of the three (3) 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

(16) for any person to offer a tip, payment or gratuity to any entertainer, performer, independent contractor or other person dancing or performing on a stage or at any other area or location within the SOBE premises or for any entertainer, performer, independent contractor or other person dancing or performing on a stage or at any other area or location within the SOBE premises to accept a tip, payment or gratuity unless it is done pursuant to this section: specifically, tips, payments or gratuities being offered to or accepted by any entertainer, performer, independent contractor or other person dancing or performing on a stage or at any other area or location within the SOBE must be placed in a receptacle provided by the person for receipt of tips, payments or gratuities and not upon the body or into the clothing or accessories (such as a garter) of such person;

(17) for any person to offer a tip, payment or gratuity to any other employee, independent contractor or other person providing Entertainment Services within the SOBE premises (e.g. wait person or cashier) or for any such employee, independent contractor or other person providing Entertainment Services within the SOBE premises to accept a tip, payment or gratuity unless it is done pursuant to this section: specifically, tips, payments or gratuities being offered to or accepted by any other employee, independent contractor or other person providing Entertainment Services within the SOBE premises shall be placed into the hand of such person or into a receptacle provided by the person and not upon the body or into the clothing or accessories (such as a garter) of such person.

(18) for any SOBE to be configured in such a manner that the Sheriff or the Sheriff does not have an unobstructed view of every area of the premises from any other area of the premises to which any patron is allowed access for any purpose, excluding restrooms. There shall be no private rooms or cubicle-type areas into which patrons are allowed access at a SOBE.

(b) The following categories of SOBES are prohibited:

(1) sexually oriented modeling studios or nude modeling studios
(2) escort agencies;
(3) escorts;
(4) sexual encounter centers;
(5) any SOBE whose employees appear in a state of total nudity.

It is a violation of these regulations to engage in prohibited SOBES. Any

person found to be engaged or participating in the business of a prohibited SOBE will be subject to the penalties and enforcement provisions of these regulations.

(c) Each SOBE shall 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 SOBE:

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

The signs will be available at the Waller County Sheriff's Department. Each SOBE shall bear the cost of the sign and make payment to the County.

SECTION XXVI - 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 a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an SOBE Adult Motel under these regulations if the motel also provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section.

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

(c) An Adult Motel permitted pursuant to these regulations may have a resident manager living on site. This shall not be considered a dwelling under the location requirements of Section X.

(d) No individuals under the age of (18) eighteen may live on the site of an Adult Motel.

SECTION XXVII - REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS OR VIDEOS

(a) A person who operates or causes to be operated a SOBE other than an Adult Motel that exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, motion picture, video cassette, computer program, or other visual reproductions, depicting specified sexual

activities or specified anatomical areas, has the duty to comply with the following requirements:

(1) the SOBE 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;

(2) the interior of the premises shall be configured in such a manner that there is an unobstructed view from the owner, operator or manager's station of every area of the premises, excluding restrooms, to which any patron is allowed access for any purpose; and

(3) if the premises has two (2) or more owner, operator, or manager's stations designated, the interior of the premises must 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.

SECTION XXVIII - 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 a SOBE at any time the SOBE is open for business.

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

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

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

SECTION XXIX - OPERATIVE DATE

(a) The effective date of these regulations is September 1, 2001.

SECTION XXX - SEVERABILITY

(a) The Commissioners' Court of Waller County, Texas hereby declares that it adopts these regulations and each separate part hereof. If any part of these regulations is held invalid for any reason, the invalidity does not affect any other provisions or the application of these regulations that can be given effect without the invalid provision or application. To this end, the provisions of these regulations are declared to be severable.