HARDIN COUNTY, KENTUCKY
ORDINANCE NO. 143, SERIES 1999

AN ORDINANCE RELATING TO DEFINITIONS OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES; PROVIDING FOR ADDITIONAL MISCELLANEOUS REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES.

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

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

WHEREAS, the concern over sexually transmitted diseases is a legitimate health concern of Hardin County which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do no knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

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

WHEREAS, Hardin County Fiscal Court has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this County; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

WHEREAS, it is not the intent of the Hardin County Fiscal Court to condone or legitimize the distribution of obscene material, and the Hardin County Fiscal Court recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in Hardin County.

BE IT ORDAINED BY THE FISCAL COURT OF COUNTY OF HARDIN, COMMONWEALTH OF KENTUCKY AS FOLLOWS:

SECTION I. PURPOSE AND FINDINGS.

(A) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of Hardin County, and to establish reasonable and uniform regulations thereon. The provisions of this ordinance have neither the purpose or effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

(B) Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Hardin County Fiscal Court, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41(1986), *Young v. American Mini Theatres*, 426 U.S. 50(1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560(1991), and on studies in other communities including, but not limited to, Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis; Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; AustSeattle, Washington, Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council finds:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make the owners of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of sexually oriented businesses defined in this ordinance as adult theaters and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.

(3) Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows.

(4) Offering and providing such space encourages such activities, which creates unhealthy conditions.

(5) Persons frequent certain adult theatres, adult arcades, and other sexually oriented

businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

(6) At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection(HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.

(7) Since 1981 and to the present, there has been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus(HIV) in the United States--600 in 1982, 2,200 in 1983, 4,600 in 1984, 8,555 in 1985 and 253,448 through December 31, 1992.

(8) As of June 1981 through June 1997, there have been 2,401 reported cases of AIDS in the State of Kentucky. This figure does not include diagnosed with HIV alone. Twenty-one people who were infected with the AIDS virus were under the age of thirteen.

(9) Since 1981 and to the present, there have been an increasing cumulative number of persons testing positive for the HIV antibody test in Kentucky.

(10) The number of cases of early (less than one year) syphilis in the United States reported annually has risen, with 33,613 cases reported in 1982 and 45,200 through November of 1990.

(11) The number of cases of gonorrhea in the United States reported annually remains at a high level, with over one-half million cases being reported in 1990.

(12) The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.

(13) According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.

(14) Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.

(15) Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.

(16) The findings noted in paragraphs number 1 through15 raise substantial governmental

concerns.

(17) Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

(18) A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.

(19) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theatres.

(20) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working such establishments.

(21) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.

(22) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct which this ordinance is designed to prevent or who are likely to be witnesses to such activity.

(23) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational assumption that the applicant may engage in that conduct in contravention of this ordinance.

(24) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

(25) The general welfare, health, morals and safety of the citizens of Hardin County will be promoted by the enactment of this ordinance.

SECTION II. DEFINITIONS.

(1) ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, 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."

(2) ADULT BOOKSTORE, ADULT NOVELTY STORE OR ADULT VIDEO STORE means a commercial establishment which, as one of its principal purposes, referred and defined to in Section II, Subsection 12, offers for sale or rental for any form of consideration any one or more of the following:

(a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas", or

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

(3) ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:

(a) persons who appear in a state of nudity or semi-nude; or

(b) live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or

(c) films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

(4) ADULT MOTEL means a hotel, motel or similar commercial establishment which:

(a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; and

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

(c) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten(10) hours.

(5) ADULT MOTION PICTURE THEATER means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of "specified sexual activities" or specified anatomical areas."

(6) ADULT THEATER means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

(7) EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.

(8) ESCORT means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

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

(10) ESTABLISHMENT means and includes any of the following:

(a) the opening or commencement of any sexually oriented business as a new business;
(b) the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
(c) the additions of any sexually oriented business to any other existing sexually oriented business; or
(d) the relocation of any such sexually oriented business.

(11) LICENSEE means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.

(12) PRINCIPAL USE means a substantial or significant use. Evidence that an establishment maintains more than ten(10) percent of its stock in trade in material distinguished or characterized

by an emphasis in sexual activities; or that it devotes more than fifteen(15) percent of its floor space which is open to either the public generally or to members of the public other than minors or more than a total of one hundred sixty(160) square feet to the display of material distinguished or characterized by emphasis on sexual activities; or that it provides entertainment, either live or on film or video tape, and that said entertainment more than ten(10) percent of the time is distinguished or characterized by an emphasis on sexual activities; or that it advertises in a manner visible from the outside of the business premises the availability of material or entertainment distinguished or characterized by an emphasis on sexual activities shall establish that the establishment is engaging in an adult entertainment activity as a principal use.

(13) NUDE MODEL STUDIO means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of Kentucky or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:

(a) that 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
(b) where in order to participate in a class a student must enroll at least three days in advance of the class; and
(c) where no more than one nude or semi-nude model is on the premises at any one time.

(14) NUDITY or a STATE OF NUDITY means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

(15) PERSON means an individual, proprietorship, partnership, corporation, association, or other legal entity.

(16) SEMI-NUDE or in a SEMI-NUDE CONDITION means the showing of the female breast below a horizontal line across the top of the areola at its highest point of or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

(17) SEXUAL ENCOUNTER CENTER means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:

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

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

(18) SEXUALLY ORIENTED BUSINESS means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, escort agency, nude model studio, or sexual encounter center.

(19) SPECIFIED ANATOMICAL AREAS means:

(a) the human male genitals in a discernibly turgid state, even if completely and opaquely covered; or
(b) less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola.

(20) SPECIFIED CRIMINAL ACTIVITY means any of the following offenses:

(a) prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;

(b) for which:

(1) 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;
(2) 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
(3) less than five years have elapses since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
(c) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.

(21) SPECIFIED SEXUAL ACTIVITIES means any of the following:

(a) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts;
(b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy; or
(c) excretory functions as part of or in connection with any of the activities set forth in (a) through

(b) above.

(22) SUBSTANTIAL ENLARGEMENT of a sexually oriented business means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this ordinance takes effect.

(23) TRANSFER OF OWNERSHIP OR CONTROL of a sexually oriented business means and includes any of the following:

(a) the sale, lease, or sublease of the business;
(b) the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
(c) the establishment of a trust gift or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION III. CLASSIFICATION.

Sexually oriented businesses are classified as follows:

(1) adult arcades;
(2) adult bookstores, adult novelty stores, or adult video stores;
(3) adult cabarets;
(4) adult motels;
(5) adult motion picture theaters;
(6) adult theaters;
(7) escort agencies;
(8) nude model studios; and
(9) sexual encounter centers

SECTION IV. LICENSE REQUIRED.

(A) It is unlawful:

(1) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by Hardin County pursuant to this ordinance.
(2) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by Hardin County pursuant to this ordinance.
(3) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this ordinance.

(B) An application for a license must be made on a form provided by Hardin County.

(C) All applicants must be qualified according to the provisions of this ordinance. The application may request and the applicant shall provide such information (including fingerprints) as to enable Hardin County to determine whether the applicant meets the qualifications established in this ordinance.

(D) If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each individual who has a 20 percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following Section and each applicant shall be considered a licensee if a license is granted.

(E) The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents;

(1) If the applicant is:

(a) an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 18 years of age;
(b) a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
(c) a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.

(2) If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state 1) the sexually oriented business's fictitious name and 2) submit the required registration documents.

(3) Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this ordinance, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.

(4) Whether the applicant, or a person residing with the applicant, has had a previous license under this ordinance or other similar sexually oriented business ordinances from another city or country denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this ordinance whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked as well as the date of denial, suspension or revocation.

(5) Whether the applicant or a person residing with the applicant holds any other licenses under this

ordinance or other similar sexually oriented business ordinance from another city or county and, if so, the names and locations of such other licensed businesses.

(6) The single classification of license for which the applicant is filing.

(7) The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.

(8) The applicant's mailing address and residential address.

(9) A recent photograph of the applicant(s).
(10) The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.

(11) 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 it 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.

(12) If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty(150) square feet of floor space, films, video cassettes, other video reproductions, of live entertainment which depict specified sexual activities or specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in Section XIII.

(F) Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by Hardin County the following information:

(1) The applicant's name or any other name(including "stage" names) or aliases used by the individual
(2) Age, date, and place of birth;
(3) Height, weight, hair and eye color;
(4) Present residence address and telephone number;
(5) Present business address and telephone number;
(6) Date, issuing state and number of driver's permit or other identification card information;
(7) Social Security number; and
(8) Proof that the individual is at least eighteen(18) years of age.

(G) Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

(1) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the Hardin County Sheriff's Office. Any fees for the photographs and fingerprints shall be paid by the applicant.
(2) A statement detailing the license history of the applicant for the five(5) years immediately

preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.

(3) A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.

SECTION V. ISSUANCE OF LICENSE.

(A) Upon the filing of said application for a sexually oriented business employee license, Hardin County shall issue a temporary license to said applicant. The application shall then be referred to the appropriate county departments for an investigation to be made on such information as is contained on the application. The application process shall be completed within thirty(30) days from the date the completed application is filed. After the investigation, Hardin County shall issue a license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) The applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or requires more information on the application form;

(2) The applicant is under the age of eighteen(18) years;

(3) The applicant has been convicted of a "specified criminal activity" as defined in this ordinance;

(4) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this ordinance; or

(5) The applicant has had a sexually oriented business employee license revoked by Hardin County within two(2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Section X.

(B) A license granted pursuant to this section shall be subject to annual renewal upon the written application of the applicant and a finding by Hardin County that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The renewal of the license shall be subject to the payment of the fee as set forth in Section VI.

(C) Within 30 days after receipt of a completed sexually oriented business application, Hardin County shall approve or deny the issuance of a license to an applicant. Hardin County shall approve the issuance of a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

(1) An applicant is under eighteen(18) years of age.

(2) An applicant or a person with whom applicant is residing is overdue in payment to Hardin County of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.
(3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
(4) An applicant or a person with whom the applicant is residing has been denied a license by Hardin County to operate a sexually oriented business within the preceding twelve(12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve(12) months.
(5) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this ordinance.
(6) The premises to be used for the sexually oriented business have not been approved by the health department, fire department, and the building official as being in compliance with applicable laws and ordinances.
(7) The license fee required by this ordinance has not been paid.
(8) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this ordinance.

(D) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to Section III. All licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

(E) The health department, fire department, and the building official shall complete their certification that the premises are in compliance prior to issuance of a license by Hardin County.

(F) A sexually oriented business license shall issue for only one classification as found in Section III.

SECTION VI. FEES.

(A) Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a $500 non-refundable application and investigation fee.

(B) In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to Hardin County an annual non-refundable license fee of $5,000 within thirty(30) days of license or renewal.

(C) Every application for a sexually oriented business employee license (whether for a new license or for renewal of an existing license) shall be accompanied by an annual $50 non-refundable application, investigation, fingerprinting and license fee.

(D) All license applications and fees shall be submitted to the Hardin County Treasurer.

(A) An applicant or licensee shall permit representatives of the Hardin County Sheriff's Department,

Health Department, Fire Department, Zoning Department, or other Hardin County departments or agencies to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(B) A person who operates a sexually oriented business or his agent or employee commits a violation if he refuses to permit such lawful inspection of the premises at any time it is open for business.

SECTION VIII. EXPIRATION OF LICENSE.

(A) Each license shall be effective as of 1/1 of a given year and shall expire annually on 12/31 and may be renewed only by making application as provided in Section IV. Application for renewal shall be made at least thirty(30) days before the expiration date, and when made less than thirty(30) days before the expiration date, the expiration of the license will not be affected. There shall be no proration of any fees applicable.

(B) When Hardin County denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial. If, subsequent to denial, Hardin County finds that the basis for denial of the renewal license has been corrected or abated, the applicant may be granted a license if at least ninety(90) days have elapsed since the date denial became final.

SECTION IX. SUSPENSION.

(A) Hardin County shall suspend a license for a period not to exceed thirty(30) days if it determines that a licensee or an employee of a licensee has:

(1) violated or is not in compliance with any section of this ordinance;
(2) refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

SECTION X. REVOCATION.

(A) Hardin County shall revoke a license if a cause of suspension in Section IX occurs and the license has been suspended within the preceding twelve(12) months.

(B) Hardin County shall revoke a license if it determines that:

(1) a licensee gave false or misleading information in the material submitted during the application process;
(2) a licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;
(3) a licensee has knowingly allowed prostitution on the premises;
(4) a licensee knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;
(5) except in the case of an adult motel, a licensee has knowingly allowed any act of sexual

intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or

(6) a licensee is delinquent in payment to the City, County, or State for any taxes or fees past due.

(7) any person or entity presently holding a business license who is found to be in violation of this Ordinance shall be subject to revocation of said license.

(C) When Hardin County revokes a license, the revocation shall continue for one(1) year, and the licensee shall not be issued a sexually oriented business license for one(1) year from the date the revocation became effective. If, subsequent to revocation, Hardin County finds that the basis for revocation has been corrected or abated, the applicant may be granted a license if at least ninety(90) days have elapsed since the date the revocation became effective.

(D) After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek prompt judicial review of such administrative action in any court of competent jurisdiction. The administrative action shall be promptly reviewed by the court.

(E) If any license holder is convicted of three or more violations within the one year license period then said license shall be revoked and licensee shall be prohibited from applying again for a one year period from the date of revocation.

SECTION XI. TRANSFER OF LICENSE.

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

SECTION XII. ADDITIONAL REGULATIONS FOR ADULT MOTELS.

(A) Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten(10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

(B) A person commits a violation if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or subrents a sleeping room to a person and, within ten(10) hours from the time the room is rented, he rents or subrents the same sleeping room again.

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

SECTION XIII. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY EXPLICIT FILMS, VIDEOS OR LIVE ENTERTAINMENT IN VIEWING ROOMS.

(A) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty(150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

(1) Upon application for a sexually oriented license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two(32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six(6) inches. Hardin County may waive the foregoing diagram for renewal applications if the application adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
(2) The application shall be sworn to be true and correct by the applicant.
(3) No alteration in the configuration or location of a manager's station may be made without the prior approval of Hardin County.
(4) It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
(5) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
(6) It shall be the duty of the licensee to ensure that the view area specified in subsection (5) remains unobstructed by any doors, curtains, partition, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to subsection (1) of this Section.
(7) No viewing room may be occupied by more than one person at any time.
(8) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5) foot-candles as measured at the floor level.
(9) It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
(10) No licensee shall allow openings of any kind to exist between viewing rooms or booths.
(11) No person shall make or attempt to make an opening of any kind between viewing booths or

rooms.

(12) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
(13) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
(14) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight(48) inches of the floor.
(15) It shall be the duty of the licensee of the premises to ensure that an employee who is 18 years of age or older shall be present at any and all entrances to the premises. This employee shall verify that any individual who enters the premises is 18 years of age or older.

(B) A person having a duty under Subsection (1) through (15) of Subsection (A) above commits a violation if he knowingly fails to fulfill that duty.

SECTION XIV. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.

(A) An escort agency shall not employ any person under the age of 18 years.

(B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 18 years.

(C) No escort agency or employee of an escort agency shall offer or provide sexual services for money or any other form of consideration.

SECTION XV. ADDITIONAL REGULATIONS FOR NUDE MODEL STUDIOS.

(A) A nude model studio shall not employ any person under the age of 18 years.

(B) A person under the age of 18 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 18 years was in a restroom not open to public view or visible to any other person.

(C) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

(D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

SECTION XVI. ADDITIONAL REGULATIONS CONCERNING PUBLIC NUDITY.

(A) It shall be a violation for a person who knowingly and intentionally, in a sexually oriented

business, appears in a state of nudity or depicts specified sexual activities.

(B) It shall be a violation for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten(10) feet from any patron or customer and on a stage at least two feet from the floor.

(C) It shall be a violation for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.

(D) It shall be a violation for an employee, while semi-nude, to touch a customer or the clothing of a customer.

SECTION XVII. PROHIBITION AGAINST CHILDREN IN A SEXUALLY ORIENTED BUSINESS.

A person commits a violation if the person knowingly allows a person under the age of 18 years on the premises of a sexually oriented business.

SECTION XVIII. HOURS OF OPERATION

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 12 a.m. midnight and eight o'clock(8:00) A.M. on weekdays and Saturdays, and 12:00 A.M. midnight and noon(12:00) P.M. on Sundays.

SECTION XIX. EXEMPTIONS.

(A) It is a defense to prosecution under Section XVI that a person appearing in a state of nudity did so in a modeling class operated:

(1) by a proprietary school, licensed by the State of Kentucky; a college, junior college, or university supported entirely or partly by taxation;
(2) by a private college or university which maintains and operates educational programs in which credits are transferrable to a college, junior college, or university supported entirely or partly by taxation; or
(3) in a structure:
(a) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
(b) where, in order to participate in a class a student must enroll at least three(3) days in advance of the class; and
(c) where no more than one nude model is on the premises at any one time.

SECTION XX. INJUNCTION. BOOK 48 PAGE 202 BOOK 3 PAGE 167

A person who operates or causes to be operated a sexually oriented business without a valid license is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates is a separate offense or violation.

SECTION XXI. SEVERABILITY.

If any section, subsection, or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections, and clauses shall not be affected.

SECTION XXII. CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION XXIII. EFFECTIVE DATE.

This ordinance shall be enforced from and after March 22, 1999.

SECTION XXIV. PENALTY.

Violation of this ordinance shall be deemed a violation, misdemeanor, and upon conviction the violator shall fined not less than twenty(20) dollars nor more than two hundred fifty(250) dollars plus court costs. Any person violating this ordinance may also be found guilty of a civil offense. The civil fine shall be not less than twenty(20) dollars nor more than two hundred fifty(250) dollars. The civil fine shall be paid directly to Hardin County. If the fine is not paid within thirty(30) days from the date of notification, then Hardin County may recover said fine in a civil action in a court of proper jurisdiction. Hardin County may also obtain injunctions or abatement orders to insure compliance with this ordinance or pursue administrative remedies when appropriate, including injunctions and abatement proceedings. Each day a sexually oriented business so operates is a separate offense or violation.

READ THE FIRST TIME this 9th day of March, 1999.

READ, ADOPTED AND APPROVED this 22nd day of March, 1999.

GLEN D. DALTON
HARDIN COUNTY JUDGE/EXECUTIVE

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ATTESTED TO:

Kenneth L. Tabb BOOK 48 PAGE 203

KENNETH L. TABB
HARDIN COUNTY CLERK