

**MARSHALL COUNTY FISCAL COURT
ORDINANCE #05-02**

**AN ORDINANCE PROVIDING FOR THE LICENSING AND REGULATION OF
SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES.**

WHEREAS, sexually oriented businesses require special supervision from the public safety agencies of the 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 the County; and

WHEREAS, the Kentucky General Assembly has specifically granted to county fiscal courts the authority to regulate sexually oriented businesses, and the U.S. Court of Appeals for the Sixth Circuit has recognized that right in *C&H Entertainment, Inc. v. Jefferson County Fiscal Court*, 169 F.3d 1023 (6th Cir. 1999);

WHEREAS, the Fiscal Court 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 the 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 not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

WHEREAS, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and

WHEREAS, underage performers have been used in sexually oriented entertainment, both in films and in live performances; and

WHEREAS, the 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, the 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 the Fiscal Court to condone or legitimize the distribution of obscene material, and the 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 the County; and

WHEREAS, the Fiscal Court recognizes its constitutional duty to interpret, construe, and amend its laws and ordinances to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any ordinance, the County and the Fiscal Court accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Kentucky Constitutions, Kentucky Code, and the Kentucky Rules of Civil and Criminal Procedure; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment of the U.S. Constitution or § 1 of the Kentucky Constitution, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses.

NOW, THEREFORE, BE IT ORDAINED by the Marshall County Fiscal Court as follows:

ARTICLE I. IN GENERAL

Section 1. 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 the County, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the County. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither 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 of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Fiscal Court, and on findings, interpretations, and narrowing constructions incorporated in the cases of *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Los Angeles v. Alameda Books, Inc.*, 122 S. Ct. 1728 (2002); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990); *California v. LaRue*, 409 U.S. 109 (1972); as well as in the cases of

DLS, Inc. v. City of Chattanooga, 107 F.3d 403 (6th Cir. 1997); *East Brooks Books, Inc. v. City of Memphis*, 48 F.3d 220 (6th Cir. 1995); *Broadway Books v. Roberts*, 642 F.Supp. 486 (E.D. Tenn. 1986); *Bright Lights, Inc. v. City of Newport*, 830 F.Supp. 378 (E.D. Ky. 1993); *Richland Bookmart v. Nichols*, 137 F.3d 435 (6th Cir. 1998); *Déjà vu v. Metro Government*, 1999 U.S. App. LEXIS 535 (6th Cir. 1999); *Bamon Corp. v. City of Dayton*, 7923 F.2d 470 (6th Cir. 1991); *Triplett Grille, Inc. v. City of Akron*, 40 F.3d 129 (6th Cir. 1994); *Nightclubs, Inc. v. City of Paducah*, 202 F.3d 884 (6th Cir. 2000); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Déjà vu of Nashville, Inc., et al. v. Metropolitan Government of Nashville and Davidson County*, 274 F.3d 377 (6th Cir. 2001); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *Connection Distrib. Co. v. Reno*, 154 F.3d 281 (6th Cir. 1998); *Sundance Assocs. v. Reno*, 139 F.3d 804 (10th Cir. 1998); *American Library Association v. Reno*, 33 F.3d 78 (D.C. Cir. 1994); *Threesome Entertainment v. Strittmather*, 4 F.Supp.2d 710 (N.D. Ohio 1998); *J.L. Spoons, Inc. v. City of Brunswick*, 49 F.Supp.2d 1032 (N.D. Ohio 1999); *Déjà vu of Kentucky v. Lexington-Fayette Urban County Government*, 194 F.Supp.2d 206 (E.D. Ky. 2002); *Kentucky Restaurant Concepts, Inc. v. City of Louisville and Jefferson County*, 2002 U.S. Dist. LEXIS 11011 (W.D. Ky., June 12, 2002);

and other cases; and on testimony to Congress in 136 Cong. Rec. S 8987; 135 Cong. Rec. S. 14519; 135 Cong. Rec. S 5636; 134 Cong. Rec. E 3750; and reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Phoenix, Arizona - 1984; Minneapolis, Minnesota-1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas - 1977; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio - 1977 ; and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York Times Square study - 1994; Phoenix, Arizona -1995-98; and also on findings of physical abuse from the paper entitled "Stripclubs According to Strippers: Exposing Workplace Sexual Violence," by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from "Sexually Oriented Businesses: An Insider's View," by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000, and the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Fiscal Court finds:

(1) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are presently uncontrolled by the unlicensed operators of the

establishments. Further, there is presently no mechanism in this County to make the owners and operators of these establishments responsible for the activities that occur on their premises.

(2) Certain employees of unregulated sexually oriented businesses defined in this ordinance as adult theatres 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 unregulated 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 unregulated 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, or for the purpose of purchasing or selling illicit drugs.

(6) Numerous 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 salmonella, campylobacter and shigella infections, chlamydial, myoplasmal and ureoplasmal infections, trichomoniasis and chancroid.

(7) According to research from the Kaiser Family Foundation, an estimated 650,000 to 900,000 Americans are infected with HIV. The number of new HIV infections occurring each year is now about 41,000. Men and women of all races are most likely to be infected by sexual contact.

(8) Statistics compiled by the Centers for Disease Control and Prevention reveal that as of December, 2000, the State of Kentucky had 3,345 people living with AIDS. See State Health Facts Online, <http://www.statehealthfacts.org/cgi-bin/healthfacts.cgi?action=profile&area=Kentucky&category=HIV%2fAIDS&subcategory=Cumulative+AIDS+Cases>.

(9) The Centers for Disease Control and Prevention estimate that as many as 1 in 3 people with HIV/AIDS do not know they are infected.

(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. See, e.g. Findings of U.S. Dept. of Health & Human Services.

(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 through 15 raise substantial governmental concerns.

(17) Sexually oriented businesses have operational characteristics that 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 County. 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 in 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 and

will prevent the further secondary effects of dissemination of illegal obscenity, child pornography, and to minors, materials harmful to them;

(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 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 employment in sexually oriented businesses for a specified period of years serves to prevent distribution of illegal material, to prevent conduct which leads to the transmission of sexually transmitted diseases, and to preclude the establishment of criminal enterprises within the County.

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

Section 2. Definitions.

For purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

“Adult Bookstore, Adult Novelty Store, or Adult Video Store” means a commercial establishment which has significant or substantial portion of its stock-in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale or rental, for any form of consideration, of any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas”;

(b) Instruments, devices, or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

The term “Adult Bookstore, Adult Novelty Store, or Adult Video Store” shall also include a commercial establishment which regularly maintains one or more “Adult Arcades.” “Adult Arcade” means 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 regularly 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 their emphasis upon matter exhibiting or describing "specified sexual activities" or specified "anatomical areas."

"Adult Cabaret" means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

"Adult motel" means a motel, hotel, 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, other photographic reproductions, or live performances which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

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

"Adult Motion Picture Theater" means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the exhibition or description of "specified sexual activities" or "specified anatomical areas" are regularly shown for any form of consideration.

"Controlling Interest" means the power, directly or indirectly, to direct the operation, management or policies of a business or entity, or to vote twenty percent (20%) or more of any class of voting securities of a business. The ownership, control, or power to vote twenty per cent or more of any class of voting securities of a business shall be presumed, subject to rebuttal, to be the power to direct the management, operation or policies of the business.

"Distinguished or Characterized by an Emphasis Upon" means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films "which are distinguished or characterized by an emphasis upon the exhibition or description of Specified Sexual Activities or Specified Anatomical areas," the films so described are those whose dominant or principal character and theme are the exhibition or description "specified anatomical areas" or "specified sexual activities."

“Employ, Employee, and Employment” describe and pertain to any 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. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

“Establish or Establishment” shall mean and include 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; or
- (c) The addition of any sexually oriented business to any other existing sexually oriented business.

“Hearing Officer” shall mean the Judge/Executive of the Marshall County Fiscal Court or a designee of the Judge/Executive.

“Licensee” shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

“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, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

“Operate or Cause to Operate” shall mean to cause to function or to put or keep in a state of doing business. “Operator” means any persons on the premises of a sexually oriented business who is authorized to exercise overall operational control of the Business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

“Person” shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

“Regularly Features or Regularly Shown” means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of

the films or performances offered as a part of the ongoing business of the sexually oriented business.

“Semi-Nude or State of Semi-Nudity” shall mean a state of dress in which opaque clothing covers no more than the genitals, anus, anal cleft or cleavage, pubic area, vulva, and nipple and areola of the female breast, as well as portions of the body covered by supporting straps or devices. This definition 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 that the areola and nipple are not exposed in whole or in part.

“Semi-Nude Model Studio” means any place where a person, who regularly appears in a state of semi-nudity is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

It is a defense to prosecution for any violation of this ordinance that a person appearing in a state of semi-nudity or semi-nudity did so in a modeling class operated:

By a college, junior college, or university supported entirely or partly by taxation;

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

(b) In a structure:

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

(2) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

“Sexually Oriented Entertainment Activity” means the sale, rental, or exhibition for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances which are characterized by an emphasis on the exposure or display of specific sexual activity.

“Specified Anatomical Areas” shall mean human genitals, anus, cleft of the buttocks, or the female breast.

“Specified Criminal Activity” means any of the following offenses:

(a) K.R.S. §§ 510.040, 510.050, or 510.060 (rape in the first, second, or third degree); K.R.S. §§ 510.070, 510.080, or 510.090 (sodomy in the first, second, or third degree); K.R.S. §§ 510.110, 510.120, or 510.130 (sexual abuse in the first, second, or third

degree); K.R.S. § 510.140 (sexual misconduct); § 510.150 (indecent exposure); K.R.S. § 517.050 (falsifying business records); K.R.S. §§ 529.020, 529.030, 529.040, or 529.050 (prostitution, promoting prostitution in the first, second, or third degree); K.R.S. §§ 529.070, (permitting prostitution); K.R.S. §§ 531.020, 531.030, 531.040 (distributing obscene matter, distributing obscene matter to minors, using minors to distribute obscene matter); K.R.S. 218A.140, et seq. (offenses relating to controlled substances); any offense listed in K.R.S. § 531.300 through § 531.370 (sexual exploitation of minors offenses); engaging in organized crime (K.R.S. § 506.120) relating to a sexually oriented business; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses in other jurisdictions that, if the acts would have constituted any of the foregoing offenses if the acts had been committed in Kentucky; 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 elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.

“Specified Sexual Activity” means any of the following:

(a) sex acts, normal or perverted, including intercourse, oral copulation, masturbation or sodomy; or

(b) excretory functions as a part of or in connection with any of the activities described in (a) above.

“Transfer of Ownership or Control” of a sexually oriented business shall mean 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.

“*Viewing Room*” shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

Section 3. Classification.

Sexually oriented businesses shall be classified as follows:

- (1) Adult bookstores, adult novelty stores, adult video stores;
- (2) Adult cabarets;
- (3) Adult motels;
- (4) Adult motion picture theaters;
- (5) Semi-nude model studios.

Section 4. License required.

(a) It shall be unlawful for any person to operate a sexually oriented business in the Marshall County without a valid sexually oriented business license.

(b) It shall be unlawful for any person to be an “employee,” as defined in this Chapter, of a sexually oriented business in the Marshall County without a valid sexually oriented business employee license.

(c) An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the County Clerk a completed application made on a form provided by the County Clerk. The application shall be signed by the applicant and notarized. An application shall be considered complete when it contains the information required in Paragraphs 1 through 5 as follows:

- (1) The applicant’s full true name and any other names used in the preceding five (5) years.
- (2) Current business address or another mailing address of the applicant.
- (3) Written proof of age, in the form of a copy of a birth certificate and a picture identification document issued by a governmental agency.
- (4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

(5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(6) A statement of whether the applicant has been convicted or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, the specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

The information provided pursuant to Paragraphs 1 through 6 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the County Clerk within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) An application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall 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. Applicants who are required to comply with Sections 14 and 18 of this chapter shall submit a diagram indicating that the premises meets the requirements of those sections.

(e) If a person who wishes to operate a sexually oriented business is an individual, he shall 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 officer, director, general partner or other person who will participate directly in decisions relating to management and control of the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a license is granted.

(f) The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the County Clerk on a confidential basis, except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order.

Section 5. Issuance of license.

(a) Upon the filing of a completed application under Section 4(c) for a sexually oriented business license, the County Clerk shall immediately issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the County to deny or grant the license. Within forty (40) days of the initial filing date of the completed application, the Clerk shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Clerk shall approve the issuance of a license unless one or more of the following is found to be true:

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

(2) An applicant has failed to provide information as required by Section 4 for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Chapter has not been paid.

(4) An applicant has been shown to have committed a violation of Section 7(a), Section 10(b), Section 18(a), (b), or (c) of this Chapter within the previous year.

(5) The sexually oriented business premises is not in compliance with the interior configuration requirements of this Chapter or is not in compliance with locational requirements established in the applicable zoning regulations.

(6) An applicant has been convicted of a specified criminal activity, as defined in this ordinance.

(b) Upon the filing of a completed application for a sexually oriented business employee license, the Clerk shall issue a Temporary License to the applicant, which Temporary License shall expire upon the final decision of the County to deny or grant the license. Within forty (40) days of the initial filing date of the receipt of a completed application, the Clerk shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Clerk shall approve the issuance of a license unless one or more of the following is found to be true.

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

(2) An applicant has failed to provide information as required by Section 4 for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Chapter has not been paid.

(4) An applicant has been shown to have committed a violation of Section 7(a), Section 10(b), Section 18(a), (b), or (c) of this Chapter within the previous year.

(5) An applicant has been convicted of a specified criminal activity, as defined in this ordinance.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. A sexually oriented business employee shall keep the employee's license on

his or her person or on the premises where the licensee is then working or performing and shall produce such license for inspection upon request by a law enforcement officer or other County official performing functions connected with the enforcement of this Chapter.

Section 6. Fees.

(a) The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as follows: one hundred dollars (\$100) for the initial fee for a sexually oriented business license and fifty dollars (\$50) for annual renewal; fifty dollars (\$50) for the initial sexually oriented business employee license and twenty-five dollars (\$25) for annual renewal.

Section 7. Inspection.

(a) Sexually oriented businesses and sexually oriented business employees shall permit officers or agents of the Marshall County to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually oriented business is occupied by patrons or is open for business. A licensee's knowing or intentional refusal to permit such an inspection shall not constitute a misdemeanor, but shall constitute a violation of this section for purposes of license denial, suspension, and/or revocation. This section shall be narrowly construed by the County to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

(b) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

Section 8. Expiration of license.

(a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in Section 4 and Section 6.

(b) Application for renewal should be made at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected.

Section 9. Suspension.

(a) The County shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this Chapter.

(b) The County shall issue a written letter of intent to suspend a sexually oriented business employee license if it is determined that the employee has knowingly violated this Chapter.

Section 10. Revocation.

(a) The County shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license if two or more causes of suspension in Section 9 occur within a twelve-month (12-mo.) period.

(b) The County shall issue written intent to revoke a sexually oriented business license or a sexually oriented business employee license if the Clerk determines that:

(1) The licensee has knowingly given false information in the application for the sexually oriented business license.

(2) The licensee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(3) The licensee has knowingly allowed prostitution on the premises;

(4) The licensee knowingly operated the sexually oriented business during a period of time when the license was suspended;

(5) The licensee has knowingly allowed any specified sexual activity to occur in or on the licensed premises.

(c) The fact that a conviction is being appealed shall have no effect on the revocation of the license.

(d) Nature of Revocation. When, after the notice and hearing procedure described in Section 11, the Hearing Officer revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for one (1) year from the date revocation becomes effective, provided that, if the conditions of Section 11(b) are met, a Provisional License will be granted pursuant to that section. If, subsequent to revocation, the County Clerk finds that the basis for the revocation based on subsection (b)(1) of this section has been corrected or abated, the applicant shall be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under subsections (b)(2), (b)(3), (b)(4) or (b)(5) of this section, an applicant may not be granted another license until at least one (1) year has elapsed.

Section 11. Hearing; denial, revocation, and suspension; appeal.

(a) If the County Clerk determines that facts exist for denial, suspension, or revocation of a license under this chapter, the County shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds thereof, by personal delivery, or by certified mail. The notification shall be directed to the most current business address or other mailing address on file with the County Clerk for the respondent. Within ten (10) working days of receipt of such notice, the respondent may provide to the County Clerk a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended, or revoked.

Within five (5) days of the receipt of respondent's written response, the County Clerk shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding. Within ten (10) working days of the receipt of respondent's written response, the Hearing Officer shall conduct a hearing at which respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the County's witnesses. The County shall also be represented by counsel, and shall bear the burden of proving the grounds for deny, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written opinion within five (5) days after the hearing.

If a court action challenging the County's decision is initiated, the County shall prepare and transmit to the court a transcript of the hearing within ten (10) days after the issuance of the Hearing Officer's written opinion. If a response is not received by the County Clerk in the time stated or, if after the hearing the Hearing Officer finds that grounds as specified in this Ordinance exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five (5) days after the Hearing Officer sends, by certified mail, written notice to the respondent that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Hearing Officer finds that no grounds exist for denial, suspension, or revocation of a license, then within five (5) days after the hearing, the Hearing Officer shall order the County Clerk to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. The County Clerk shall contemporaneously therewith issue the license to the applicant.

(b) When a decision to deny, suspend or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal or challenge such action to any court of competent jurisdiction. Upon the filing of any court action to appeal, challenge, restrain, or otherwise enjoin the County's enforcement of the denial, suspension, or revocation, the County shall immediately issue the aggrieved party a Provisional License. The Provisional License shall allow the aggrieved party to continue operation of the sexually oriented business or to continue employment as a sexually oriented business employee and will expire upon the court's entry of a judgment on the

aggrieved party's appeal or other action to restrain or otherwise enjoin the County's enforcement.

(c) Application of Ordinance During Temporary License or Provisional License Periods. Sexually oriented businesses or sexually oriented business employees operating or working under Temporary Licenses (as provided for in Section 5(a)), Provisional Licenses (as provided for in Section 11(b)), or *De Facto* Temporary Licenses (as provided for in Section 17) shall be subject to the provisions of Section 12, Section 13, Section 14, Section 15, Section 17, and Section 18 of this Ordinance.

Section 12. Transfer of license.

A licensee shall not transfer his or 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 sexually oriented business license application.

Section 13. Hours of operation.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m., provided that, a sexually oriented business which has obtained a license to sell alcoholic beverages from the State of Kentucky or Marshall County may remain open to sell alcoholic beverages under the terms of that license, but may not conduct sexually oriented entertainment activity between 12:00 midnight and 6:00 a.m.

Section 14. Regulations pertaining to exhibition of sexually explicit films or videos.

(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, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all manager's stations, viewing rooms, overhead lighting fixtures, video cameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. 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 shall be oriented to the north or to some designated street or object and shall 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 inches. The Clerk may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was

previously submitted and certifies that the configuration of the premises 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 or viewing room may be made without the prior approval of the County Clerk.

(4) It shall be the duty of the operator, and of any employees present on the premises, 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 Paragraph 1 of this subsection.

(5) The interior 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 one (1.0) foot candle as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(6) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

(7) It shall be the duty of the operator, and of any employees present on the premises, to ensure that not more than one person is present in a viewing room at any time. No person shall enter a viewing room that is occupied by another person.

(8) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no openings of any kind exist between viewing rooms. No person shall make an attempt to make an opening of any kind between viewing rooms.

(9) It shall be the duty of the operator, or of any employee who discovers two or more patrons in a viewing room or discovers any person making or attempting to make an opening of any kind between viewing rooms, to immediately escort such persons from the premises.

(10) It shall be the duty of the operator, or of any employee, who discovers an opening of any kind between viewing rooms to immediately secure such rooms, and prevent entry into them by any patron until such time as the wall between the rooms has been repaired to remove the opening. Removal and repairing openings between viewing rooms shall be in a manner that is as structurally substantial as the original wall construction.

(11) It shall be the duty of the operator, at least once each business day, to inspect the walls between viewing rooms for openings of any kind, documented by appropriate logs.

(12) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- (i) That no loitering is permitted in viewing rooms.
- (ii) That the occupancy of viewing rooms is limited to one person.
- (iii) That sexual activity on the premises is prohibited.
- (iv) That the making of openings between viewing rooms is prohibited.
- (v) That violators will be required to leave the premises.
- (vi) That violations of Subparagraphs (b), (c) and (d) of this paragraph

are unlawful.

(13) It shall be the duty of the operator to ensure that floor coverings in viewing rooms are nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) It shall be the duty of the operator to ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of or permanently covered by nonporous easily cleanable material.

(15) It shall be the duty of the operator to ensure that premises are clean and sanitary. Such duty shall be fulfilled if the operator complies with the following cleaning procedures:

(i) The operator shall maintain a regular cleaning schedule of at least two cleanings per day, documented by appropriate logs.

(ii) The operator shall provide an employee to check all areas for garbage, trash, body fluids and excrement and to remove and clean all areas with a disinfectant. All solid waste generated by the business shall be collected from the premises for disposal at a lawful solid waste disposal facility at least twice each week. Prior to collection solid waste shall be stored in a manner that prevents access by animals or members of the public and which will not facilitate the creation of a health nuisance.

(iii) Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video cameras, and windows and other surfaces.

(16) 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, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. A manager's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) 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 paragraph must be by direct line of sight from the manager's station. It is

the duty of the operator to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(17) It shall be the duty of the operator or manager of the business to ensure that no sexually oriented entertainment activity or visual depictions characterized by an emphasis on actual "specified anatomical areas" or "specified sexual activities" are visible from a public right of way adjacent to the establishment.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Section 15. Loitering and exterior lighting and monitoring requirements.

(a) It shall be the duty of the operator of a sexually oriented business to: (a) post conspicuous signs stating that no loitering is permitted on such property; (b) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and (c) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within a manager's station.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Section 16. Penalties and enforcement.

(a) A person who knowingly violates, disobeys, omits, neglects, or refuses to comply with or resists the enforcement of any of the provisions of this chapter shall be subject to a citation and a civil fine, not to exceed \$500.00, upon proper adjudication in a Court of competent jurisdiction. Each day the violation is committed, or permitted to continue, shall constitute a separate offense and shall be fined as such.

(b) The County Attorney is hereby authorized to institute civil proceedings necessary for the enforcement of this Chapter to prosecute, restrain, or correct violations hereof. Such proceedings, including injunction, shall be brought in the name of the County, provided, however, that nothing in this section and no action taken hereunder, shall be held to exclude such criminal proceedings as may be authorized by other provisions of the County code, or any of the laws or ordinances in force in the County or to exempt anyone violating this code or any part of the said laws from any penalty which may be incurred.

Section 17. Applicability of ordinance to existing businesses.

The provisions of this Ordinance shall apply to the activities of all sexually oriented businesses and sexually oriented business employees described herein, whether such businesses or activities were established or commenced before, on, or after the effective date of this ordinance. All existing sexually oriented businesses and sexually oriented business employees are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of one hundred eighty (180) days following the effective date of this ordinance. Within said 180 days, all sexually oriented businesses and sexually oriented business employees must make application for a license pursuant to this Chapter. Within said 180 days, sexually oriented businesses must make any necessary changes to the interior configurations of the regulated business premises to conform to this Chapter.

Section 18. Additional regulations concerning live public nudity.

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

- (a) It shall be a violation of this Chapter for a patron, employee, or any other person who knowingly or intentionally, in a sexually oriented business, appears in a state of nudity, regardless of whether such public nudity is expressive in nature.
- (b) It shall be a violation of this Chapter 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 six (6) feet from any patron or customer and on a stage at least nine (9) inches from the floor.
- (c) It shall be a violation of this Chapter for any employee, while semi-nude in a sexually oriented business, to knowingly or intentionally receive any pay or gratuity directly from any patron or customer or for any patron or customer to knowingly or intentionally pay or give any gratuity directly to any employee, while said employee is semi-nude in a sexually oriented business.
- (d) It shall be a violation of this Chapter for any employee, while semi-nude, to knowingly or intentionally touch a customer or the clothing of a customer.

A sign in a form to be prescribed by the County Clerk and summarizing the provisions of Paragraphs (a), (b), (c), and (d) of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

Section 19. Scierter required to prove violation or business licensee liability.

Notwithstanding anything to the contrary, for the purposes of this Chapter, an act by an employee that constitutes grounds for suspension or revocation of that employee's license

shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly allowed such act to occur on the premises.

Section 20. Severability.

This ordinance and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid.

The foregoing shall be published in the *Tribune Courier* on May 25, 2005.

First Reading: 5/3/05

Second Reading: 5/17/05

Passed by the Fiscal Court of Marshall County, Commonwealth of Kentucky on the 17th day of May, 2005, by Motion of Commissioner

Jerry G. English and seconded by Commissioner
Gordon Hargrove.

Commissioner Jerry English vote Aye

Commissioner Gordon Hargrove vote Aye

Commissioner Jerome "Hoppy" Hicks vote absent

Mike Miller Judge/EX
MIKE MILLER-COUNTY JUDGE EXECUTIVE

ATTEST: Dan Duke
DAN DUKE-COUNTY CLERK

AhFiscal2005(as)