

**CITY OF COFFEE CITY, TEXAS**

ORDINANCE NO. 20110725-002

**AN ORDINANCE OF THE CITY OF COFFEE CITY, TEXAS, PROVIDING FOR THE LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES IN THE CITY; PROVIDING A FINE NOT TO EXCEED TWO THOUSAND DOLLARS (\$2,000.00) FOR EACH OFFENSE AND A SEPARATE OFFENSE SHALL BE DEEMED COMMITTED UPON EACH DAY DURING OR ON WHICH A VIOLATION OCCURS; PROHIBITING NUDITY IN COMMERCIAL ESTABLISHMENTS; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING A SEVERABILITY CLAUSE; REPEALING ALL CONFLICTING ORDINANCES; DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, there is the potential for the location of sexually oriented businesses in the CITY OF COFFEE CITY, Texas ("City") and such businesses require special supervision from the public safety agencies of the City to protect and preserve the health, safety and welfare of the patrons of such businesses as well as the citizens of the City; and

**WHEREAS**, the City Council of the CITY OF COFFEE CITY, Texas ("Council") 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 City which demands reasonable regulation of sexually oriented businesses 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**, the regulation of the hours of operation of sexually oriented businesses is a legitimate and reasonable means of protecting the safety, health, and welfare of the patrons of such businesses as well as the citizens of the City; and

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

**WHEREAS**, the Council reviewed detailed studies and statistical analyses, including, but not limited to, a June 2008 survey of Texas real estate appraisers concerning the effect of sexually oriented businesses on real estate market values in a community; and

**WHEREAS**, the June 2008 survey of Texas real estate appraisers generally concluded that a vast majority of real estate appraisers believed a sexually oriented business located in close proximity to community shopping centers or single family homes resulted in a negative effect on the community and this negative effect can reduce property values throughout the community; and

**WHEREAS**, the Council reviewed detailed studies and statistical analyses, including, but not limited to, a June 2008 report by Dr. Richard McCleary, Ph.D. which concluded that “[i]n terms of total crime, [sexually oriented businesses] are risky places. As one moves toward an average [sexually oriented business], victimization risk (defined loosely, as the probability of becoming a crime victim) rises. As one moves away, victimization diminishes;” and

**WHEREAS**, Dr. McCleary further concluded that “[a]t any distance, ambient victimization risk is significantly lower for [other] addresses than [sexually oriented business] addresses. This relationship holds for distances greater than 1,000 feet, approximately two long city blocks;” and

**WHEREAS**, Dr. McCleary cited additional research and studies and also independently concluded that [a]lcohol aggravates a [sexually oriented business’] already-high ambient crime risk by lowering the inhibitions and clouding the judgments of the [sexually oriented business’] patrons....[sexually oriented businesses] that serve alcohol or that are located near liquor-serving businesses pose accordingly larger and qualitatively different ambient public safety hazards;” and

**WHEREAS**, an intensive case study of San Antonio, Texas-based sexually oriented businesses concluded that ambient victimization risk extends for at least 1,000 feet in every direction of a sexually oriented business; 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 and rural blight and downgrading the quality of life in the adjacent area; and

**WHEREAS**, the Council 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**, it is not the intent of this Ordinance to suppress any speech activities protected by the First Amendment to the United States Constitution, but to enact a contentneutral Ordinance that addresses the secondary effects of sexually oriented businesses; and

**WHEREAS**, it is not the intent of the Council to condone or legitimize the promotion of obscene materials; and

**WHEREAS**, the Council recognizes that applicable state law prohibits the promotion of obscene materials, and the Council expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in both the CITY OF COFFEE CITY, Texas and Henderson County, Texas; and



**WHEREAS**, there is an increasing commercial exploitation of human sexuality by owners and operators of commercial establishments where alcoholic beverages are served or offered for sale for consumption on the premises, or where alcoholic beverages are permitted to be consumed; and

**WHEREAS**, such exploitation takes place in the form of employing or permitting persons to perform or exhibit their nude or semi-nude bodies to other persons as an inducement to such other persons to purchase alcoholic beverages or to consume alcoholic beverages while on the premises; and

**WHEREAS**, such exploitation is further often accompanied by serious and dangerous criminal activity, such as the possession or use of controlled substances, the proliferation of drug-related activity, prostitution, disorderly conduct, assaults, and similar criminal conduct; and

**WHEREAS**, the direct result of such exploitation in the context of the location where it is permitted (i.e., where alcohol is served or consumed) threatens the preservation of property values of adjoining and adjacent properties and neighborhoods; and

**WHEREAS**, the direct result of such exploitation is the moral degradation and disturbances of the peace and good order of the community; and

**WHEREAS**, such commercial exploitation of such nude and semi-nude acts are adverse to the public's interest and the quality of life, tone of commerce, and total community environment in the City.

**NOW, THEREFORE**, pursuant to the authority granted by the United States Constitution, Texas Constitution, and laws of the State of Texas, including, but not limited to, Chapter 243 of the *Texas Local Government Code*, **BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COFFEE CITY, TEXAS:**

### **Section 1. Findings of Fact.**

All of the above premises are hereby found to be true and correct legislative and factual findings of the CITY OF COFFEE CITY and are hereby approved and incorporated into the body of this Ordinance as if copied in their entirety.

### **Section 2. Sexually Oriented Businesses**

The CITY OF COFFEE CITY, Texas New Ordinance "Sexually Oriented Businesses:" is in effect.

#### **(A) Purpose and Intent**

(1) It is the purpose of this Section to regulate sexually oriented businesses to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the concentration of sexually oriented businesses within the City. The provisions of this Section have neither the purpose nor the effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Section to restrict or deny access by adults to sexually oriented materials protected by the First Amendment of the United States Constitution, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. The prohibition of the promotion of obscene material not protected by the First Amendment of the United States Constitution is enforceable through separate criminal sanctions under the *Texas Penal Code*.

(2) It is the intent of the Council that this Section of the Ordinance is promulgated pursuant to Chapter 243 of the *Texas Local Government Code*.

(B) Definitions

(1) *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 maintained to show images to five (5) 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* or *Adult Video Store* means a commercial establishment that as one of its principal business purposes offers for sale or rental for any form of consideration, any one or more of the following:

(a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, other visual representations which depict or describe "specified sexual activities" or "specified sexual areas;" or

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

(3) *Adult Cabaret* means a night club, bar, restaurant, or similar commercial establishment that regularly features:

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

(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 that:

(a) offers accommodations to the public for any form of consideration; provides patrons with closed circuit television transmissions, films, motion pictures, videocassettes, 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 type of photographic reproductions; or

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

(c) allows a tenant or occupant of a sleeping room to sublet 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 that are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas.”

(5) *Adult Tanning Salon* means a commercial establishment which provides facilities for tanning the human skin, such as tanning beds, suntan lights, or other similar facilities, and regularly features for the entertainment of its clientele:

(a) Persons who appear in a state of nudity; or

(b) Live performances or style shows of lingerie performed by persons who appear in a state of nudity or which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

(6) *Adult Theater* means a theater, concert hall, auditorium, or similar commercial establishment that regularly features persons who appear in a state of nudity or live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities.”

(7) *Chief of Police* means the Chief of Police of the CITY OF COFFEE CITY, Texas or their designated agent.

(8) *Child Care Facility* means a building used as a day nursery, children's boarding home, child placement agency, religious or charitable encampment for children or any other place for the care or custody of children under eighteen (18) years of age.

(9) *Church* means a building in which persons regularly assemble for worship, intended primarily for purposes connected with faith, or for propagating a particular form of belief.

(10) *Employee* means any person who performs services, work, or contributions in the daily operation of a sexually oriented business and under the businesses' control, including, but not limited to, those individuals compensated by salary, hourly basis, gratuities, tips, or those who do not earn wages or a salary but provide contributions towards the daily operation of a sexually oriented business.

(11) *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.

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

(13) *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 any existing business, whether or not a sexually oriented business, to any sexually oriented business;

- (c) The addition of any sexually oriented business to any other existing sexually oriented business;
- (d) The relocation of any sexually oriented business; or
- (e) A location of place of business.

(14) *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.

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

(16) *Nudity* or a *State of Nudity* means:

- (a) the appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or
- (b) a state of dress that fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.
- (c) this definition shall not include a mother in the act of nursing her child.

(17) *Operates* or *Causes to be Operated* means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

(18) *Person* means an individual, proprietorship, partnership, corporation, association, or other legal entity.

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

(20) *Sexual Encounter Center* means a business or commercial enterprise that, as one of its primary 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.

(21) *Sexually Oriented Business* shall mean those businesses defined by Section 243.002 of the *Texas Local Government Code*, including all amendments thereto, and shall mean a sex parlor, nude studio, modeling studio, love parlor, adult bookstore, adult movie theater, adult video arcade, adult movie arcade, adult video store, adult motel, or other commercial enterprise the primary business of which is the offering of a service or the selling, renting, or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer.

(22) *Specified Anatomical Areas* means human genitals in a state of sexual arousal.

(23) *Specified Sexual Activities* means and includes any of the following:

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

(b) sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy;

(c) masturbation, actual or simulated; or

(d) excretory functions as part of or in connection with any of the activities set forth in (a) through (c), above.

(24) *Substantial Enlargement* of a sexually oriented business means the increase in floor area occupied by business by more than twenty (20%) percent, as the floor area exists on the date of passage of this Section.

(25) *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 that 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 that transfers the ownership 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.

(C) *Classification of Sexually Oriented Businesses* Sexually oriented businesses are classified as follows:

(1) Adult arcades;

(2) Adult bookstores or adult video stores;

(3) Adult cabarets;

(4) Adult motels;

(5) Adult motion picture theaters;

(6) Adult tanning salons;

(7) Adult theaters;

(8) Escort agencies;

(9) Nude model studios; and

(10) Sexual encounter centers.

(D) *License Requirements*

(1) A person commits an offense if he operates a sexually oriented business without a valid license, issued by the City for the particular type of business.



(2) An application for a license must be made on a form provided by the Chief of Police. The application form shall be sworn to and shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of the total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches (6").

(3) The applicant must be qualified according to the provisions of this Section and the premises must be approved by the City's Department of Planning and Development as in compliance with all health and safety, building codes, or any other statute, ordinance, or other federal, state or local law applicable to the premises.

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

(5) The following are required to be licensed:

(a) All owners, clerks, and employees of a sexually-oriented business are required to be licensed to operate or work in said business. The term "employees" includes persons who work in a sexually-oriented business for gratuities, tips, and/or other compensation, including those who do not earn wages or a salary.

(b) All corporations or directors of corporations of any sexually-oriented business and their employees.

(c) All partners in any sexually-oriented business and their employees.

(d) All executive officers, directors, corporations, partners, and their employees which are associated with any sexually-oriented business requiring a license under this Section.

(6) No person shall work for any sexually-oriented business without having at all times while at work, a valid current driver's license or a state-issued identification card which depicts a picture of the person and indicates the person's date of birth.

(7) All potential employees and/or clerks of sexually-oriented businesses must comply with all portions of this Ordinance before being issued an identification card to work at the business. Application forms will be provided by the Chief of Police and the determination of compliance must be made by the Chief of Police within thirty (30) days from time of application.

(8) The fact that a person possesses any other valid license required by law does not exempt that person from the requirement of obtaining a sexually-oriented business license. A person who operates a sexually-oriented business and possesses another business license shall comply with the requirements and provisions of this Section, as well as the requirements and provisions of the laws concerning the other license.

(9) Each applicant shall attach two copies of a recent photo to the application form.



(10) The application shall be accompanied by the following:

(a) Payment of the application fee in full;

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

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

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

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

(E) Issuance of License

(1) The Chief of Police shall approve the issuance of a license to an applicant within thirty (30) days after receipt of an application unless they find one or more of the following to be true:

(a) An applicant is under eighteen (18) years of age;

(b) An applicant or an applicant's spouse is overdue in his payment to the City of Coffee City taxes, fines, or penalties assessed against them or imposed upon them in relation to a sexually oriented business;

(c) 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.

(d) An applicant or an applicant's spouse has been convicted of a violation of a provision of this Section, other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.

(e) An applicant is residing with a person who has been denied a license by the City to operate a sexually oriented business within the preceding twelve (12) months, or residing with a person whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.

(f) The premises to be used for the sexually oriented business have not been approved by the City's Department of Planning and Development as being in compliance with all health and safety, building codes, or any other statute, ordinance, or other federal, state or local law applicable to the premises.

(g) The license fee required by this Section has not been paid.

(h) An applicant has been employed in a sexually oriented business in a managerial capacity within the preceding twelve (12) months and has demonstrated that he is unable to operate or manage a sexually oriented business premises in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(i) An applicant for the proposed establishment is in violation of or is not in compliance with any portion of this Ordinance.

(j) An applicant or an applicant's spouse has been convicted of a crime:

(1) Involving:

(i) Any of the following offenses as described in Chapter 43 of the *Texas Penal Code*:

- (a) Prostitution;
- (b) Promotion of prostitution;
- (c) Aggravated promotion of prostitution;
- (d) Compelling prostitution;
- (e) Obscenity;
- (f) Sale, distribution, or display of harmful material to a minor;
- (g) Sexual performance by a child; or
- (h) Possession of child pornography;

(ii) Any of the following offenses as described in Chapter 21 of the *Texas Penal Code*:

- (a) Public lewdness;
- (b) Indecent exposure; or
- (c) Indecency with a child;

(iii) Sexual assault or aggravated sexual assault as described in Chapter 22 of the *Texas Penal Code*;

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

(v) Criminal attempt, conspiracy, or solicitation to commit any of the foregoing offenses;

(2) For which:

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

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



(iii) Less than five (5) 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 (2) or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

(3) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or applicant's spouse.

(2) The license to operate a sexually oriented business, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually oriented business. The license to operate a sexually oriented business 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 copy of all employee licenses shall be maintained on the premises.

#### (F) License Fee

The annual fee for a sexually oriented business license shall be five hundred (\$500.00) dollars. The annual fee for an employee of a sexually oriented business to maintain a license shall be fifty (\$50.00) dollars. The license fees may be amended by the City Council by amending this Ordinance in the future.

#### (G) Notice by Sign

(1) An applicant for a license or permit for a location not previously licensed or permitted shall, not later than the 60th day before the date the application is filed, prominently post an outdoor sign at the location stating that a sexually oriented business is intended to be located on the premises and providing the name and business address of the applicant.

(2) Each applicant for a business license shall, upon the filing of the application and payment of the filing fee, place signs (at least 24 inches by 36 inches in size) which provide notification and information specifically stating "SEXUALLY-ORIENTED BUSINESS LICENSE APPLICATION PENDING" and the date on which the application was filed. All lettering on the signs must be at least 1 1/2 inches by two inches in size for each letter on the sign. The signs must be of sufficient quantities to be placed upon the property so as to identify it as being subject to a proposed sexually oriented license. The sign shall be both in English and a language other than English if it is likely that a substantial number of the residents in the area speak a language other than English as their familiar language. It shall be the duty of each applicant as to each particular application to erect said signs along all the property's public road or highway frontage so as to be clearly visible from the public road or highway. If a property does not have a public road or highway frontage, then signs shall be placed upon the property in a manner to maximize the view of said sign when approached from the customary means of approaching the property. One sign shall be erected for each 300 foot increment of each public road or highway frontage on said property existing, or any part thereof. Said signs shall be erected not less than 14 days after the filing of the application for the sexually-oriented business license and remain erected until the application has been approved by the Chief of Police.

(3) Every applicant for a sexually-oriented business license shall give notice of the application by publication at the applicant's expense in two consecutive issues of a newspaper of general circulation published in the city. Such notice shall be printed not less than 14 days after the application is filed with the Chief of Police. The notice shall be printed in ten-point boldface type at a minimum and shall

include the following:

- (a) The fact that an application for a sexually-oriented business license has been filed with the city;
  - (b) The exact location of the place of business for which the permit is sought;
  - (c) The names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and
  - (d) If the applicant is a corporation, the names and titles of all officers.
- (4) An applicant for a renewal permit on an existing business at the time of the passage of this Ordinance is not required to publish notice or meet the posting requirements above.

#### (H) Inspection

- (1) An applicant or licensee shall permit representatives of the Police Department, Fire Department, and/or any other City personnel required 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.
- (2) The provisions of this Section shall not apply to areas of an adult motel that are currently being rented by a customer as a permanent or temporary habitation.

#### (I) Expiration of License

- (1) Each license shall expire one (1) year from the date of issuance and may be renewed only by making application as provided in Section (D). Application for renewal should be made as least thirty (30) days before the expiration date, and when made less than thirty days before the expiration date, the expiration of the license shall not be affected.
- (2) When the Chief of Police 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, the Chief of Police finds that the basis for denial of renewal of the 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.

#### (J) Suspension

The Chief of Police shall suspend a license for a period not to exceed thirty (30) days if it is determined that a licensee or an employee of a licensee has:

- 1. Violated or is not in compliance with any portion of this Ordinance;
- 2. Engaged in excessive use of alcoholic beverages while on the sexually oriented business premises;
- 3. Refused to allow an inspection of the sexually oriented business premises as authorized by this Section;
- 4. Knowingly permitted gambling by any person on the sexually oriented business premises; or



5. Demonstrated inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner, thus necessitating action by law enforcement officers.

(K) Revocation

(1) The Chief of Police shall revoke a license if a cause of suspension occurs and the license has been suspended within the preceding twelve (12) months.

(2) The Chief of Police shall revoke a license if it is determined that:

(a) A licensee gave false or misleading information in the material submitted to the Chief of Police during the application process;

(b) A licensee, an agent or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;

(c) A licensee, an agent or an employee has knowingly allowed prostitution on the premises;

(d) A licensee, an agent or an employee knowingly operated a sexually oriented business during a period of time when the licensee's license was suspended;

(e) A licensee has been convicted of an offense listed in Section (E)(1)(j)(1) for which the time period required in Section (E)(1)(j)(2) has not lapsed;

(f) On two (2) or more occasions within a twelve (12) month period, a person or persons committed an offense, occurring in or on the licensed premises, of a crime listed in Section (E)(1)(j)(1), for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time of offenses were committed;

(g) A licensee, an agent or an employee has knowingly allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in or on the licensed premises. The term "sexual contact" shall have the same meaning as it is defined in Section 21.01, *Texas Penal Code*; or

(h) A licensee is delinquent in payment to the City for hotel occupancy taxes, ad valorem taxes, sales taxes or other taxes related to the sexually oriented business.

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

(4) Subsection (2)(g) does not apply to adult motels as grounds for revoking the license unless the licensee, agent or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(5) When the Chief of Police 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 revocation became effective. If, subsequent to revocation, the Chief of Police finds that the basis for the 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.

If the license was revoked under Subsection (2)(e), an applicant may not be granted another license until the appropriate number of years required under Section (E)(1)(j)(2) has elapsed since the termination of any sentence, parole or probation.

(L) Appeal

If the Chief of Police denies the issuance of a license, or suspends or revokes a license, they shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of his action and the right to an appeal. Upon receipt of written notice of the denial, suspension, or revocation, the applicant or licensee whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal to a District Court of the State of Texas maintaining jurisdiction over the appeal. An appeal to the state district court must be filed within thirty (30) days after the receipt of notice of the decision of the Chief of Police. The applicant or licensee shall bear the burden of proof in court.

(M) Transfer of License

A licensee shall not transfer its 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.

(N) Location of Sexually Oriented Business

(1) Sexually Oriented Businesses are prohibited in all areas of the City other than those areas zoned Industrial (I) by the City's Zoning Ordinance.

(2) A person commits an offense if they operate or cause to be operated a sexually oriented business within one thousand (1,000') feet of:

- (a) A church and/or a regular place of religious worship;
- (b) A school, including but not limited to a public or private elementary school or secondary school;
- (c) A park, including, but not limited to, a public park adjacent to any residential district, as defined in the City's Zoning Ordinance;
- (d) A hospital;
- (e) The property line of a lot devoted to residential use as defined in the City's Zoning Ordinance;
- (f) A day-care and/or child-care facility;
- (g) A boundary of the Central Business District (CBD) as defined in the City's Zoning Ordinance;
- (h) Any building or structure in which alcoholic beverages are offered for sale;
- (i) Any state, county, or municipal building to include, but not limited to, court house, city hall, post office, department of human services; or



(j) Any other specified land use the Council finds to be inconsistent with the operation of a sexually oriented business.

(3) A person commits an offense if they cause or permit the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within one thousand (1,000') feet of another sexually oriented business.

(4) A person commits an offense if they cause or permit the operation, establishment, or maintenance of more than one (1) sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

(5) For the purposes of Subsection (2) of this Section, measurement shall be in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises prohibited in Subsection (2).

(6) For the purposes of Subsection (3) of this Section, the distance between any two (2) sexually oriented businesses shall be measured in a straight line, without regard to any intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

(7) Any sexually oriented business lawfully operating on the effective date of this Ordinance that is in violation of Subsections (1), (2), or (3) of this Section shall be deemed a nonconforming use. The nonconforming use will be permitted to continue for a period not to exceed twelve (12) months, unless sooner terminated for any reason or voluntarily discontinued for a period of thirty (30) days or more. Such nonconforming use shall not be increased, enlarged, extended or altered except that the use may be changed to a conforming use. If two (2) or more sexually oriented businesses are within one thousand feet (1,000') of one another and otherwise in a permissible location, the sexually oriented business which was first established and continually operating at a particular location is the conforming use and the later-established business(es) is nonconforming.

(8) A sexually oriented business lawfully operating as a conforming use is not rendered a nonconforming use by the location, subsequent to the grant or renewal of the sexually oriented business license, of a location prohibited by Subsection (1), within one thousand feet (1,000') of the sexually oriented business. This provision applies only to the renewal of a valid license, and does not apply when an application for a license is submitted after a license has expired or has been revoked.

#### (O) Additional Regulations For Escort Agencies

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

(2) A person commits an offense if they act as an escort or agree to act as an escort for any person under the age of eighteen (18) years.

#### (P) Additional Regulations For Nude Model Studios

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

(2) A person under the age of eighteen (18) years commits an offense if they appear in a state of nudity or semi-nudity in or on the premises of a nude model studio. It is a defense to prosecution under this Section if the person under eighteen (18) years was in a restroom not open to public view or persons of the opposite sex.

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

(4) A nude 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.

#### (Q) Additional Regulations For Adult Theaters And Motion Picture Theaters

(1) A person commits an offense if they knowingly allow a person under the age of eighteen (18) years to appear in a state of nudity or semi-nudity in or on the premises of an adult theater or adult motion picture theater.

(2) A person under the age of eighteen (18) years commits an offense if they knowingly appear in a state of nudity or semi-nudity in or on the premises of an adult theater or adult motion picture theater.

(3) It is a defense to prosecution under Subsections (1) and (2) of this Section if the person under eighteen (18) years was in a restroom not open to the public view or persons of the opposite sex.

#### (R) Additional Regulations For Adult Motels

(1) Evidence that a sleeping room in a hotel, motel, or similar commercial establishment has been rented and vacated two (2) or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this Section.

(2) A person commits an offense 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 business license, they rent or subrent a sleeping room to a person and, within ten (10) hours from the time the room is rented, they rent or subrent the same sleeping room again.

(3) For purposes of Subsection (2) of this Section, the terms "rent" or "subrent" shall mean the act of permitting a room to be occupied for any form of consideration.

#### (S) Regulations Pertaining To Exhibition Of Sexually Explicit Films Or Videos

(1) 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 or less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:



(a) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one (1) or more manager's stations, the location of all overhead lighting fixtures, which lights are controlled by which switches and designating a portion of the premises in which patrons are not permitted. Only agents or employees shall have access to light switches. 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 inches (6"). The Chief of Police may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies under oath that the configuration for the premises has not been altered since it was prepared.

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

(c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Chief of Police.

(d) It is the duty of the owners and operator of the premises to ensure that at least one (1) employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.

(e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from the 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 have 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 (1) of the manager's stations. The view required in this Subsection must be by direct line of sight from the manager's station.

(f) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present on the premises to ensure that the view area specified in Subsection (1)(e) of this Section remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present on the premises and 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)(a) of this Section.

(g) 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 one (1.0) footcandle as measured at the floor level.

(h) It shall be the duty of the owners and operator and it also shall be the duty of any agents and employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present on the premises.

(2) A person having a duty under Subsection (1)(a) through (1)(g), above, commits an offense if he or she knowingly fails to fulfill that duty. (T) Additional Regulations for Adult Cabarets, Adult Tanning Salons, and Sexual Encounter Centers

(1) Any dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur on a platform which is raised at least two feet from the level of the floor.

(2) No dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur closer than ten feet to any patron or clientele.

(3) No patron or clientele shall directly pay or give any gratuity to any person, employee or otherwise, who shall dance or participate in any show, exhibition or performance while in a state of nudity or seminude.

(4) No person, employee or otherwise, shall solicit or accept any gratuity from any patron or clientele in return for dancing or participating in any show, exhibition or performance while in a state of nudity or seminude.

(5) A minimum of two signs at least 18 inches square bearing red letters a minimum of two inches high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice: **"GRATUITIES FOR PERFORMERS ARE PROHIBITED BY LAW."** (Cite in smaller letters the applicable ordinance provision)"

#### (U) Display Of Sexually Explicit Material To Minors

(1) A person commits an offense if, in a business establishment open to persons under the age of seventeen (17) years, they display a book, pamphlet, newspaper, magazine, film, or video cassette, the cover of which depicts, in a manner calculated to arouse sexual lust or passion for commercial gain or to exploit sexual lust or perversion for commercial gain, any of the following:

(a) Human sexual intercourse, masturbation, or sodomy;

(b) Fondling or other erotic touching of human genitals, pubic region, buttocks, or the female breast;

(c) Less than completely and opaquely covered human genitals, buttocks, or that portion of the female breast below the top of the areola; or

(d) Human male genitals in a discernibly turgid state, whether covered or uncovered;

(2) In this Section "display" means to locate an item in such a manner that, without obtaining assistance from an agent or employee or the business establishment:

(a) It is available to the general public for handling and inspection; or

(b) The cover, outside packaging on the item or contents of the item is visible to members of the general public.

#### (V) Violations

(1) It shall be a violation of this Section for any person to own or operate a sexually oriented business at a location inside the corporate limits of the City unless the sexually oriented business possesses a valid license issued by the Chief of Police in accordance with the terms of this Section.



(2) It shall be a violation of this Section for any person to be employed at or work at a sexually-oriented business at a location inside the corporate limits of the City unless the person shall possess a valid license issued by the Chief of Police in accordance with the terms of this Section. This includes individuals who work for gratuities or other compensation but may not earn wages or a salary.

(3) It shall be a violation of this Section for any person to employ, in a sexually-oriented business at a location inside the corporate limits of the City a person under the age of 18 years. This includes individuals who work for gratuities or other compensation but may not earn wages or a salary.

(4) It shall be a violation of this Section for a person under the age of 18 years to appear in a state of nudity or semi nude in or on the premises of a sexually-oriented business. 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 persons of the opposite sex.

(5) It shall be a violation of this Section for a person to knowingly allow a person under the age of 18 years to appear in a state of nudity or semi nude in or on the premises of a sexually-oriented business. 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 persons of the opposite sex.

(6) It shall be a violation of this Section for a person to appear in a state of nudity in an area of a sexually-oriented business which can be viewed from the public right-of-way, a public street, sidewalk, or any other public area.

(7) It shall be a violation of this Section for an employee of a sexually-oriented business who appears in a state of nudity or seminude to fondle or caress any patron or clientele of the sexually-oriented business, and it shall be unlawful for any patron or clientele of any sexually-oriented business to fondle or caress any employee of a sexually-oriented business who appears in a state of nudity or seminude.

#### (W) Enforcement

(1) The violation of any such provision of this Ordinance shall be punished by a fine not exceeding \$2,000.00 in all cases arising under ordinances governing fire safety, zoning, or public health and sanitation, including dumping of refuse, and not exceeding \$500.00 in all other cases; provided, however, that no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the State of Texas. Each day any violation of this Section or of any Ordinance shall continue shall constitute a separate offense.

(2) It is a defense to prosecution under this Section that a person appearing in a state of nudity or semi-nudity did so in a modeling class operated:

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

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

(c) In a structure:

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

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

(3) Where no more than one (1) nude or semi-nude model is on the premises at any time.

(3) It is a defense to prosecution under this Section that each item of descriptive, printed film, or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.

(X) Exempt Businesses

The following businesses are exempt from regulation under this Ordinance:

(1) A bookstore, movie theater, or video store, unless that business is an adult bookstore, adult movie theater, or adult video store as defined by this Ordinance;

(2) A business operated by or employing a licensed psychologist, licensed physical therapist, licensed athletic trainer, licensed cosmetologist, or licensed barber engaged in performing functions authorized under the license held; or

(3) A business operated by or employing a licensed physician or licensed chiropractor engaged in practicing the healing arts.

(Y) Injunctive Relief

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section (N) is subject to a suit for injunction as well as prosecution for criminal violations.

(Z) Hours of Operation

No sexually oriented business, except for a sexually oriented motel, may remain open at any time between the hours of two o'clock (2:00) a.m. and eight o'clock (8:00) a.m. On weekdays and Saturdays, and two o'clock (2:00) a.m. and Noon (12:00) p.m. on Sundays.

(AA) Prohibition Against Children in a Sexually Oriented Business

A licensee, operator, or employee commits an offense if the licensee, operator or employee knowingly allows a person under the age of eighteen (18) years on the premises of a sexually oriented business.



### **Section 3. Prohibition of Nudity in Commercial Establishments**

#### **(A) Purpose**

The purpose of this Section is to prohibit certain acts of commercial exploitation of human sexuality in commercial establishments within the city limits of the CITY OF COFFEE CITY, Texas, where alcoholic beverages are served, offered for sale for consumption on the premises, or permitted to be consumed on the premises, and to reduce the likelihood of criminal activity, moral degradation and disturbances of the peace and good order of the community, to prohibit lewd and unlawful activity, such as prostitution and the proliferation of controlled substances, all of which may occur when such commercial exploitation is permitted in such places, and to promote the preservation of property values of neighborhoods and adjacent properties.

#### **(B) Prohibition**

(1) It shall be unlawful for any person maintaining, owning, or operating a commercial establishment located within the boundaries of the city, at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcoholic beverages are permitted to be consumed:

- (a) To suffer or permit any female person, while on the premises of said commercial establishment, to expose that area of the human female breast at or below the top of the areola thereof;
- (b) To suffer or permit any female person, while on the premises of said commercial establishment, to use any device or covering which is intended to give the appearance of or simulate such portions of the human female breasts;
- (c) To suffer or permit any person, while on the premises of said commercial establishment, to expose his or her genitals, pubic area, buttocks, anus or anal cleft or cleavage; or
- (d) To suffer or permit any person, while on the premises of said commercial establishment, to use any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus, anal cleft, or cleavage.

(2) It shall be unlawful for any female person, while on the premises of a commercial establishment located within the boundaries of the City, at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcoholic beverages are permitted to be consumed, to expose that area of the human female breast at or below the top of the areola thereof, or to use any device or covering which is intended to give the appearance or simulate such areas of the female breast as described herein.

(3) It shall be unlawful for any person, while on the premises of a commercial establishment located within the boundaries of the city, at which alcoholic beverages are served or offered for sale for consumption on the premises, or at which alcoholic beverages are permitted to be consumed, to expose his or her genitals, pubic area, buttocks, anus, or anal cleft or cleavage, or to use any device or covering which is intended to give the appearance of or simulate the genitals, pubic area, buttocks, anus or anal cleft or cleavage.

### **(C) Penalties**

The violation of any such provision of this Ordinance shall be punished by a fine not exceeding \$2,000.00 in all cases arising under ordinances governing fire safety, zoning, or public health and sanitation, including dumping of refuse, and not exceeding \$500.00 in all other cases; provided, however, that no penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the State of Texas. Each day any violation of this Section or of any Ordinance shall continue shall constitute a separate offense.

### **(D) Injunctive Relief**

The City is and shall be hereby authorized to seek compliance with this Section by seeking injunctive relief in a court of proper jurisdiction to compel the operator, owner, or other violator of this Section as the same shall be established, to comply with the terms and provisions thereof. The ability of the city to seek injunctive relief hereunder shall not be subject to, nor shall it be a prerequisite thereof, that the city has sought compliance with this Section by application of penalties and sanctions as otherwise set out in this Section.

## **Section 4. Repealer**

All ordinances or parts of ordinances, orders, resolutions, rules, regulations, policies or provisions in force when the provisions of this Ordinance becomes effective which are inconsistent or in conflict with the terms and provisions contained in this Ordinance are hereby repealed only to the extent of such conflict.

## **Section 5. Severability**

If any section, subsection, clause, phrase or provision of this Ordinance, or any application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void, or unconstitutional, the remaining sections, subsections, clauses, phrases and provisions of this Ordinance, or any application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

## **Section 6. Emergency**

The public importance of this measure and the fact that it is in the best interest of the City to immediately enact this Ordinance, rules, regulations, policies, and provisions to properly safeguard the health, safety, morals, public peace, and public welfare of the citizens of the City creates an emergency and an urgent public necessity requiring that the rule providing for ordinances to be read and voted upon at more than one meeting of the City Council be suspended, and requiring that this Ordinance be passed and take effect as an emergency measure, and such rule and provisions are accordingly suspended, and this Ordinance is passed as an emergency measure by a four-fifths (4/5) favorable vote of all Council members, and shall take effect and be in full force from and after its passage.

## **Section 7. Effective Date**

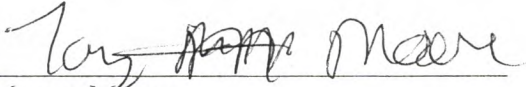
This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.



## Section 8. Proper Notice and Meeting

It is hereby officially found and determined that the meeting at which this Ordinance was adopted was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the *Texas Government Code*.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF**  
**Coffee City, TEXAS** on this 25<sup>th</sup> day of July, 2011.

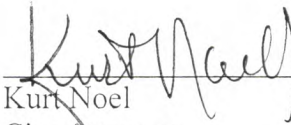


Tony Moore, Mayor

**ATTESTED AND CORRECTLY APPROVED AS TO FORM:**  
**RECORDED:**



Angela Jones  
City Secretary



Kurt Noel  
City Attorney