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ORDINANCE NO. 440.5

**AN ORDINANCE RELATING TO THE AMENDMENT OF
ORDINANCE NO. 440.4 PROVIDING REGULATION OF
SEXUALLY ORIENTED BUSINESSES AND THEIR EMPLOYEES**

WHEREAS, the Fiscal Court of the County of Simpson is concerned about the secondary effects and impacts of sexually oriented businesses such as adult amusement arcades, adult book stores, adult cabarets, adult motels, adult motion picture theaters, adult stage theaters, commercial sexual entertainment centers and escort agencies; and

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

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

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

WHEREAS, it is not the intent of the 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

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WHEREAS, KRS 67.083 grants Fiscal Courts the authority to enact ordinances regulating adult establishments or commercial enterprises offering adult entertainment and adult entertainment activities, and this ordinance amends Ordinance No. 440.4.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF SIMPSON, COMMONWEALTH OF KENTUCKY, after the passage, approval and publication of this ordinance, as follows:

SECTION I. PURPOSE AND FINDINGS

I (a). Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations relating to sexually oriented businesses. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent or 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.

I (b). Findings. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in reports made available to the Fiscal Court, and on Findings incorporated in the cases of *City of Renton v. Play Time Theaters, Inc.*, 475 U.S. 41 (1986), *Young vs. American Mini Theaters*, 426 U.S. 50 (1976), *FW/PBS, Inc. v. City of Dallas*, 493 U. S. 215 (1990), *Barnes v. Glen Theater, Inc.*, 501 U.S. 560 (1991), *City of Erie v. Pap's A.M.*, 120 S. Ct. 1382 (2000); and on studies in other communities including, but not limited to: Dallas, Texas; Town and Village of Ellicottville, New York; St. Mary's, Georgia; Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Seattle, Washington; Oklahoma City, Oklahoma; Cleveland, Ohio; and Beaumont, Texas; and also on findings from the report of the Attorney General's Working Group on the regulation of sexually oriented businesses, (June 6, 1989, State of Minnesota), the Fiscal Court finds:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are

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

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

3. Sexual acts occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicals for viewing films, videos or live sex shows.

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

5. Persons frequent certain adult theaters, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.

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

7. Since 1981 and to the present, there have been an increasing cumulative number of reported cases of AIDS caused by the human immunodeficiency virus (HIV) in the United States. Through December 31, 1997, there have been 619,690 reported cases of AIDS in the United States.

8. As of December 31, 2003, there have been 4,071 reported cases of AIDS in the Commonwealth of Kentucky, according to the Kentucky HIV/AIDS Semi-Annual Report obtained through the Kentucky Cabinet for Health Services, Department for Public Health.

9. 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 in infected blood and blood components, and from an infected mother to her newborn.

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

11. 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 operators of the facilities to self-regulate those activities and maintain those facilities.

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

13. The findings noted in paragraphs 1 through 12 raise substantial governmental concerns.

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

15. 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 theaters.

16. The general welfare, health and safety of the citizens of the County will be promoted by the enactment of this ordinance.

SECTION II. DEFINITIONS

II. For purposes of this ordinance, certain terms and words are defined as follows, unless the context clearly indicates or requires a different meaning:

1. "Adult Amusement Arcade" means any place to which the public is permitted or invited wherein coin operated, slug operated, or for any form of consideration, electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disk players, or other image producing devices are regularly maintained to show images to five (5) or fewer persons per machine at any one (1) 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 Book Store", "Adult Novelty Store", or "Adult Video Store", means a commercial establishment which, as one of its principal 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, or other visual representations which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; or

(b) Instruments, devices, or paraphernalia which are designed for use in connection with

“specified sexual activities”.

A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing “specified sexual activities” or “specified anatomical areas” and still be characterized as “Adult Book Store”, “Adult Novelty Store”, or “Adult Video Store”. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an “Adult Book Store”, “Adult Novelty Store”, or “Adult Video Store” so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which are characterized by the depiction or description of “specified sexual activities” or “specified anatomical areas”.

3. “Adult Cabaret” means a night club, bar, restaurant, or similar commercial establishment which regularly features:

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

(b) Live performance 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 Entertainment Center” means any use or building or portion thereof which contains or is used for commercial entertainment where the patron gives or takes any form of consideration to engage in personal contact with or to allow personal contact by employees, devices or equipment or by personnel provided by the establishment or to view a series of dance routines, strip performances or other choreography provided by the establishment which appeals to the prurient interest of the patron including, but not limited to bath houses, massage parlors and related or similar activities

5. “Adult Motel” means a hotel, motel, or similar commercial establishment which:

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

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type 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 subrent the room for a period of time

that is less than ten (10) hours.

6. "Adult Motion Picture Theater" means a commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly shown which are characterized by the dominant depiction or description of "specified sexual activities" or "specified anatomical areas."

7. "Adult Stage Show Theater" means a theater, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."

8. "County" shall mean the County of Simpson, Kentucky.

9. "Fiscal Court Clerk" shall mean the Fiscal Court Clerk of the County of Simpson, Kentucky or his or her designee.

10. "Employee" shall mean 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 and whether or not said person is paid a salary, wage or other compensation by the operator of said business. "Employee" does not include a person exclusively on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods on the premises.

11. "Entertainer" means any person who provides sexually oriented entertainment in a sexually oriented business whether or not an employee of the business and whether or not a fee is charged or accepted for such entertainment.

12. "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.

13. "Escort Agency" means a person or business association who furnishes, offers to furnish, or

advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.

14. "Establishment" means any sexually oriented business, whether existing or opening of such business; the conversion of an existing business, whether or not a sexually oriented business to any sexually oriented business; the additions of any sexually oriented businesses to any other sexually oriented business; or the relocation of any sexually oriented business.

15. "Licensed Massage Therapist" is any person who has graduated from a 500 hour Massage Therapy School, accredited by a state licensure board or its equivalent and who possesses a valid state license from any state which regulates the same by means of a written examination; or may include a nurse, physician, occupational therapist, physical therapist, podiatrist or chiropractor.

16. "Manager" means any person who manages, directs, administers, or is in charge of, the affairs and/or the conduct of a sexually oriented business.

17. "Massage Parlor" means an establishment providing massages, for hire, by persons other than a licensed health care professional, including but not limited to those activities that rub, stroke, knead, or tap the body with the hand or any other instrument, or both, for the purpose of or engaging in sexual gratification or as related to specified Sexual Activities. This definition also includes those activities listed within the definition of "Sexual Encounter Center." This does not include any licensed or sanctioned athletic activity that generally employs or uses the services of a physical trainer and/or those listed in the definition of Licensed Massage Therapist.

18. "Nude", "Nudity" or a "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.

19. "Person" means an individual, proprietorship, partnership, corporation, association, or other legal entity.

20. "Regularly" means a consistent or substantial course of conduct, such that the sexually explicit films or performances exhibited constitute a substantial portion of the films or performances offered as a part of the ongoing businesses of the sexually oriented business.

21. "Semi-nude" or in a "semi-nude condition" means the showing of the female breast below a horizontal line across the top of the areolae at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areolae is not exposed in whole or in part.

22. "Sexual Activities" shall mean depiction of human genitals in a state of sexual stimulation, acts of human masturbation, sexual intercourse or sodomy, holding or erotic touching of human genitals, pubic region, buttocks or breasts.

23. "Sexual Encounter Center" means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration 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.

24. "Sexually Oriented Business" means an adult amusement arcade, adult book store, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult stage theater, escort agency, or sexual encounter center.

25. "Specified Anatomical Areas" means the following areas on a human body that are less than completely and opaquely covered:

(a) The human male genitals in a discernibly turgid state, even if completely and opaquely covered; or

(b) Less than completely and opaquely covered human genitals, pubic region, buttocks, or a female breast below a point immediately above the top of the areola.

26. "Specified Sexual Activities" means any of the following:

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

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

(c) Human genitals in a state of sexual stimulation, arousal or tumescence;

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(d) Acts of human analigus, bestiality, buggery, cunnilingus, coprophagy, coprophilia, fellation, flagellation, masochism, necrophilia, pederasty, pedophilia, sadism, sadomasochism; or

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

SECTION III. CLASSIFICATION

III. Sexually Oriented Businesses are classified as follows:

- (a) Adult amusement arcades;
- (b) Adult book stores, adult novelty stores, or adult video stores;
- (c) Adult cabarets;
- (d) Adult entertainment centers;
- (e) Adult motels;
- (f) Adult motion picture theaters;
- (g) Adult stage show theaters;
- (h) Escort agencies;
- (i) Massage parlors; or
- (j) Sexual encounter centers.

SECTION IV. GENERAL RESTRICTIONS, REQUIREMENTS AND CONDITIONS FOR SEXUALLY ORIENTED BUSINESSES

IV. All sexually oriented businesses classified under Section III of this ordinance shall comply with the following requirements:

(a) Except as otherwise provided by laws which may be more restrictive, no owner or operator of an establishment shall knowingly permit a person under eighteen (18) years of age to be employed by or enter the establishment.

(b) An establishment must have an employee on duty at all times in which the business is open and must be positioned at a station in the premises which is located in such a manner that the entrance can be monitored at all times. Any person who reasonably appears to be under the age of eighteen (18) shall be requested to verify

his/her age. All Persons under the age of eighteen (18) discovered in the establishment shall be immediately escorted out of the premises.

(c) No establishment, except for an adult motel, shall remain open at any time between the hours of nine o'clock (9:00) p.m. and nine o'clock (9:00) a.m., Monday through Saturday. Further, no establishment, except for an adult motel, shall be open on Sunday or any holiday legally recognized by the Commonwealth of Kentucky.

(d) No act of Specified Sexual Activities including, but not limited to sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact shall be permitted in or on the licensed premises of any sexually oriented business, except legal sexual activity permitted by the laws of the Commonwealth of Kentucky in an adult motel. No owner, operator, licensee, or employee of a sexually oriented business shall knowingly permit these activities to occur on the licensed premises.

(e) All sexually oriented businesses in operation in the County on the effective date of this ordinance shall comply with the terms and conditions hereof within one hundred and twenty (120) days after the effective date of this ordinance. Provided, however, that any sexually oriented business in operation in the County on the effective date of this ordinance shall, to the extent not in compliance with section XIV of the ordinance, be deemed a non-conforming use.

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

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

1. Any wall or partition which is situated so as to create a viewing area in which any amusement device or viewing screen is located shall be constructed of not less than one hour fire-restrictive material and shall contain no hole or other perforation.

2. The interior of the premises shall be configured in such a manner that there shall be an unobstructed view from a manager's or cashier's station of every area of the premises to which any patron is

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permitted access for any purpose excluding restrooms. The view required in this section must be by direct line of sight from the manager's or cashier's station. No manager's or cashier's station shall exceed a size or area of thirty-two (32) square feet.

3. No viewing room or booth shall be obstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials. No patron shall be permitted access to any area of the premises which has been designated as an area to which patrons are not permitted.

4. No viewing room or booth shall be occupied by more than one person at any time. No owner, operator, or employee shall knowingly permit any viewing room or booth to be occupied by more than one person at any time.

5. No restroom shall contain any video reproduction devices or equipment.

6. 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 ten (10) foot candles as measured at floor level.

7. It shall be the duty of the owner, operator or employee to ensure that the illumination described above is maintained at all times that any patron or customer is present in the premises.

8. No owner, operator or employee shall allow openings of any kind to exist between viewing rooms or booths.

9. No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

10. The owner, operator and/or employees shall, during each business day, cause the walls between the viewing booths to be regularly inspected to determine if any openings or holes exist.

11. All floor coverings in viewing rooms or booths shall be non-porous, easily cleanable surfaces, with no rugs or carpeting.

12. There must be at least one employee on duty and situated at the manager's station at all times that any patron is present inside the premises.

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SECTION VI. INSPECTION

VI. All sexually oriented businesses shall, upon initial licensure or renewal of licensure, permit representatives of the County, including representatives of the Sheriff's Department, Fire Department, or other County departments or agencies to inspect the premises of a sexually oriented business for the purpose of ensuring compliance with the law.

SECTION VII. REGULATIONS PERTAINING TO LIVE PERFORMANCES

VII (a). It shall be a violation of this Ordinance for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

VII (b). It shall be a violation of this Ordinance for a person to knowingly or intentionally in a sexually oriented business appear in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor.

VII (c). It shall be a violation of this Ordinance 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.

VII (d). It shall be a violation of this Ordinance for any employee, while semi-nude, to knowingly or intentionally touch a customer or the clothing of a customer.

VII (e). It shall be a violation of this Ordinance for any manager of a sexually oriented business to knowingly or negligently allow an employee of the business to violate these regulations. It shall be a defense to prosecution that the manager was powerless to prevent the violation.

VII (f). Notwithstanding anything to the contrary, for the purposes of this Ordinance, an act by an employee shall be imputed to the sexually oriented business manager for purposes of finding a violation of this Ordinance only if the manager knowingly or negligently allowed such act to occur on the premises. It shall be a defense to prosecution that the manager was powerless to prevent the act.

A sign in a form to be prescribed by the City Commission and summarizing the provisions of Paragraphs

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(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 VIII. RECORD KEEPING REQUIREMENTS

VIII. Each sexually oriented business shall maintain and retain for a period of two (2) years beyond the last date of employment, the full name, date of birth, last known address, date of termination, and social security number of all persons employed by the sexually oriented business.

SECTION IX. ESTABLISHMENT LICENSES.

IX.(a) General Requirements. No person shall own or operate a sexually oriented business establishment as defined hereinabove without a sexually oriented business license. No person shall own or operate an unlicensed sexually oriented business establishment.

IX.(b) Application Process. The owner of a sexually oriented business establishment shall apply for a license with the Fiscal Court Clerk. The applicant shall complete an application on the form prescribed by the County and shall submit the following information:

(1) The name and business address of the establishment, including any assumed or fictitious names under which the establishment is or will be operated.

(2) The name, including any assumed or fictitious name or alias, business address, social security or tax identification number, date of birth (including proof of date of birth through a valid birth certificate, driver's license, or other picture identification document issued by a governmental agency) of the owner and every officer, partner, director, or person performing a similar function to an officer, partner or director and the names and addresses of any individual who owns ten percent or more of the partnership, corporation, limited liability corporation or company, or limited liability partnership that is the owner of the establishment.

(3) In the event the owner of the sexually oriented business establishment is not the owner of record of the real property on which the establishment is located or to be located, the application shall include a notarized statement from the owner of record of the real property acknowledging that a sexually oriented business establishment is located or to be located on the real property upon the issuance of the license. The applicant also shall furnish the name and address of the owner of record of the real property and a copy of the lease or rental

agreement or memorandum thereof.

(4) The name, including any assumed or fictitious name or alias, business address, date of birth, social security number, and photograph of all persons engaged in the day to day management of the licensed premises. All persons who at any time shall be responsible for attending the entrance of the establishment for the purpose of compliance with this chapter shall be included in this subsection.

(5) The name, including any assumed or fictitious name or alias, business address, date of birth, social security number, and photograph of the individual designated by the applicant to undertake to keep the applicant, if licensed, at all times in compliance with the restrictions, requirements, and conditions set forth in this chapter, together with the written statement of the individual stating that he has received a copy of this chapter and that he willfully undertakes on behalf of the applicant to comply therewith.

(6) The name, including any assumed or fictitious name or alias, business address, date of birth, social security number, and photograph of the individual designated by the applicant to be responsible for keeping current the information required hereunder at all times together with a written statement stating that he has received a copy of this chapter and that he willfully undertakes on behalf of the applicant the duty to comply with the requirements therein pertaining to the disclosure of information.

(7) The name and address of any rental agent of the property on which the establishment is located.

(8) The nature of the activity or activities to be engaged in at such location.

(9) A criminal record report for the applicants, owners, officers, directors, partners, employees or other persons whose names are required pursuant to this section together with a list of all criminal convictions of such persons within the last five years for the offenses listed in this chapter. Any person who is on parole shall submit with the application the terms of the parole.

(10) The name and mailing address of the owner to whom notice will be given in case of violations or other matters affecting the license hereunder.

(11) Applicant must submit to fingerprinting by the Sheriff's Department.

(12) Applicant cannot owe any fees or taxes of any kind or nature to the County.

(13) Applicant's premises must meet all established zoning, fire, building, and/or plumbing codes and

cannot provide direct interior access to residential living quarters.

(14) Applicant shall file a floor plan exhibiting all entrances, exits, stairways, and all rooms in the building and their intended use for purposes of providing emergency services.

IX.(c) Supplemental Information. The information required by section (b) of this section shall be at all times current even after the granting of the sexually oriented business license. It shall be the responsibility of the owner or other person designated in the licensee's application to notify the Fiscal Court Clerk in writing no later than 48 hours after the effective date of any change, alteration or modification in any information contained in the application.

IX.(d) Review Process. The Fiscal Court Clerk shall inspect the premises within 20 days after the application has been submitted. The Fiscal Court Clerk shall issue a license if all restrictions, requirements, conditions, and all applicable requirements of this chapter have been met pursuant to the time limits set forth in the Ordinance. The Fiscal Court Clerk shall grant or deny a license application within 25 days of the filing of such application.

IX.(e) Prohibitions. No sexually oriented business establishment license shall be issued if the applicant or any operator, officer, director, partner or shareholder:

- (1) Is less than 18 years of age;
- (2) Has been convicted of any of the following offenses within the last five (5) years:
 - (a) Gambling, conspiracy to promote gambling, or possession of gambling records or gambling devices;
 - (b) Prostitution, promoting prostitution, permitting prostitution, solicitation for the purpose of prostitution or loitering for the purpose of prostitution;
 - (c) The sale, transfer, possession or use of any controlled substance;
 - (d) Sexual offenses including rape, sodomy, sexual abuse, sexual misconduct and indecent exposure;
 - (e) Distribution of obscene material to a minor, use of a minor to produce, promote, or distribute obscene material, advertising obscene materials, promoting the sale of obscenity;
 - (f) Unlawful transaction with a minor (as defined in KRS Chapter 530 or other similar laws), use of a minor in a sexual performance, promoting a sexual performance by a minor, or possession of or advertising matter

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portraying a sexual performance by a minor; or

(g) Murder, manslaughter, or felony assault (as defined in KRS Chapters 507 or 508 or similar laws).

(3) Has failed in the operation of a sexually oriented business to comply with any health, zoning, fire, or building code enacted or adopted by the County and has failed to correct such violation as provided in this chapter.

(4) An applicant has fails to fully and completely and/or falsely answer(s) a question or request for information on the license form.

(5) The proposed sexually oriented business is located in a zoning district other than a district in which sexually oriented businesses are allowed to operate under the Ordinance adopting the Zoning Regulations of the City of Franklin and Simpson County, Kentucky, as amended from time to time, or is not in compliance with the location restrictions established for sexually oriented businesses in the appropriate zoning district.

(6) If the business is a corporation or other entity which is required to be registered in the office of the Secretary of State, the representatives of the business entity must show documentary evidence that said business entity is authorized to do business in the Commonwealth of Kentucky.

IX.(f) Notice. If the Fiscal Court Clerk's inspection reveals a failure to comply with any provisions of this code, the Fiscal Court Clerk shall notify the applicant in writing of that fact, stating what failures have been discovered, allowing a reasonable time to correct such defects and informing the applicant of the appeal procedure if the applicant does not agree with the Fiscal Court Clerk's decision or finding.

IX.(g) No Transfer of License. The sexually oriented business establishment license issued under this section does not authorize the operation of a sexually oriented business establishment at any place other than the address designated in the application and such license is not transferable. A transfer is deemed to occur when the business is sold, leased or subleased; when securities which constitute a controlling interest in the business are sold or otherwise exchanged; or a trust, gift, or other similar legal device is established which transfers the ownership or control of the business, except for a transfer by bequest or other operation of law upon the death of the natural person possessing the ownership or control of the business.

IX.(h) Access to License Premises. The application for or the granting of a sexually oriented business license is deemed to permit periodic inspections by law enforcement officers, or other persons designated or

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authorized by the Fiscal Court Clerk, of all areas of any establishment requiring a license under this chapter for the purpose of verifying compliance with the terms and conditions of this chapter. It shall be unlawful for an applicant, licensee, owner or operator of a sexually oriented business to refuse to permit a law enforcement officer or authorized person to inspect the premises at any time during normal business hours of the establishment.

IX.(i) Application and License Fee. No fee shall be due or payable in the County in connection with a license application.

IX.(j) Expiration. Each license shall expire on June 30 of each calendar year, unless earlier suspended or revoked. Application for a new license should be made at least 30 days prior to the expiration date. If a licensee and/or applicant fails to submit a renewal application within ninety (90) days of the expiration of the prior license, the license will be considered to have lapsed and the provisions of this ordinance relating to suspension and, if the facts and circumstances warrant, revocation shall apply.

IX.(k) Suspension. A written intention to suspend a license for a period not to exceed thirty (30) days shall be issued if it is determined that the applicant, owner, operator, or an employee thereof has violated any provision of this chapter, has been on the sexually oriented establishment premises while intoxicated or in a disorderly condition (consistent with the definition of disorderly conduct contained in KRS Chapter 525), has refused to allow an inspection of the premises, or has knowingly permitted any violation of state law to occur on the premises.

IX.(l) Revocation.

(1) The Fiscal Court Clerk shall issue a written statement of intent to revoke a sexually oriented business license if a cause of suspension in section IX.(k) occurs and the license has been suspended within the preceding twelve (12) months.

(2) The Fiscal Court Clerk shall issue a written statement of intent to revoke a sexually oriented business license if he or she determines:

(a) An applicant knowingly gave false or misleading information in the initial license or any subsequent license application;

(b) An applicant, owner, operator or employee has knowingly allowed possession, use or

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sale of controlled substances on the premises;

(c) An applicant, owner, operator, or employee has knowingly allowed prostitution or solicitation for prostitution on the premises;

(d) An applicant, owner, operator or employee has knowingly operated the sexually oriented business during a period of time when the licensee's license was suspended;

(e) A licensee knowingly allowed any act of sexual intercourse, sodomy, oral copulation or other Sexual Activities or Specified Sex Act to occur in or on the licensed premises. This subsection will not apply to an adult motel, unless the licensee knowingly allowed the aforementioned sexual activities to occur either (i) in exchange for any consideration, or (ii) in a public place or within public view.

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

(4) When, after the notice and hearing procedure described above, the Fiscal Court Clerk revokes a license, the revocation shall continue for one (1) year and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation becomes effective, provided that, if the conditions of subsection IX. (m)(2) are met, a provisional license will be granted pursuant to that subsection. If subsequent to revocation, the enforcement officer finds that the basis for revocation found in subsections 2(a) or 2(d) of this section have 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.

IX.(m) Hearing for Denial, Suspension or Revocation: Appeal.

(1) If the Fiscal Court Clerk determines that facts exist to deny, suspend or revoke a sexually oriented business license, he or she shall notify the applicant or licensee in writing of the intent to deny, suspend, or revoke, including the grounds therefore. The notice shall be sent to the applicant or licensee by personal delivery or certified mail at the address specified in the application. Within five (5) business days of receipt of such notice, the applicant or licensee may provide to the County Judge Executive, in writing, a response which shall include a statement of reasons why the license should not be denied, suspended or revoked and may include a request for a hearing. If a response is not timely received by the County Judge Executive, the notice shall be a final administrative

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act of denial, suspension or revocation. If a timely response is received by the County Judge Executive, he shall within three (3) business days of the receipt of the response notify respondent of the hearing date on respondent's denial, suspension, or revocation proceeding.

Within ten (10) business days of the receipt of respondent's written response, the County Judge Executive shall conduct a hearing at which respondent shall have the opportunity to be represented by counsel and present evidence and witnesses on his/her/its behalf. If a response is not received by the County Judge Executive in the time stated or, if after the hearing, the County Judge Executive 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 County Judge Executive sends, by certified mail, written notice that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the applicant or licensee of the right to appeal such decision to a court of competent jurisdiction.

If the County Judge Executive finds that no grounds exist for denial, suspension, or revocation of a license, then within five (5) days after the hearing, the County Judge Executive shall withdraw the intent to deny, suspend or revoke the license, and shall so notify the respondent, in writing, by certified mail of such action and shall contemporaneously issue the license.

(2) 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 such action to a court of competent jurisdiction.

SECTION X. EMPLOYEE LICENSE.

X.(a) General Requirements. Any person who is or intends to be employed or working in any capacity, whether as an employee, working proprietor or independent contractor, in a sexually oriented business as a sexually oriented business employee, as defined hereinabove, shall obtain a sexually oriented business employee license. The person seeking a sexually oriented business employee license shall apply for a license with the Fiscal Court Clerk. Such application shall be in writing, shall be on the form prescribed by the city and shall provide the following information:

(1) The name, including any other name or alias used by the applicant (e.g. "stage name"); present

residence and business address; present residence and business telephone number; date and place of birth (including a valid birth certificate, driver's license, or other form of picture identification issued by a governmental agency which includes the applicant's date of birth); social security number; date, issuing state and number of driver's license; height, weight, hair and eye color; a description of any distinguishing marks or tattoos; and a recent photograph of the applicant.

(2) The name and address of the sexually oriented business where the applicant intends to work together with a written statement that he/she has received a copy of this chapter and that he/she will fully undertake to comply therewith.

(3) A statement detailing the applicant's work history for the five year period immediately preceding the date of the filing of the application, including whether the applicant previously operated or was employed in a sexually oriented business; and whether the applicant has ever had a sexually oriented business or other similar license denied, revoked or suspended. In the event of any such denial, revocation, or suspension, the applicant shall list the name of the issuing or denying jurisdiction, and state in full the reason for the denial, revocation, or suspension.

(4) A criminal record report for the applicant together with a statement whether within the last five years the applicant has been convicted of any criminal activity described in this chapter, and if so, the specific criminal activity involved and the date, place and jurisdiction.

X.(b) Issuance Process. The Fiscal Court Clerk shall issue a sexually oriented business employee license to an applicant if all provisions of this chapter have been met. The Fiscal Court Clerk shall conduct an investigation to determine whether the applicant has met all requirements for issuance of a license. The Fiscal Court Clerk shall grant or deny a license application within ten (10) days of the filing of such application. The review, denial, suspension, revocation and appeal procedures for the issuance of a sexually oriented business license in Section IX hereinabove shall be the process for review, denial, suspension, revocation and appeal for a sexually oriented business employee license.

X.(c) License Prohibitions. No sexually oriented business employee license shall be issued if the applicant is less than 18 years of age or has been convicted of any of the offenses listed in this ordinance within the

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last five (5) years preceding the date of the application.

X.(d) Application and License Fees. No fee shall be due or payable in connection with an employee license.

SECTION XI. REGISTRATION, PHOTOGRAPHING AND FINGERPRINTING OF SEXUALLY ORIENTED BUSINESS EMPLOYEES.

XI.(a) General Requirements. All persons holding a sexually oriented business license and all sexually oriented business Employees in any sexually oriented business establishment or place of business, except as hereinafter provided, shall register in a book of registration to be kept by the Sheriff's Department, and shall be hereby required to be registered, fingerprinted, and photographed by the Sheriff's Department or its designated agency prior to the date of commencing his or her business operations or employment with such establishment. No person shall fail to register or be fingerprinted and photographed prior to commencing such employment.

XI.(b) Employer Responsibility. No employer shall allow any person to be employed unless the employee shall have registered and shall have been fingerprinted and photographed as prescribed in division (a) of this section.

XI.(c) Identification Cards. The registrants under this section are required to have the identification cards issued by the Sheriff's Department or its designated agency in their immediate possession during their hours of employment. The identification card shall contain the registrant's picture, name, age, hair color, eye color, weight and place of employment.

XI.(d) Fees. The county shall require a payment of \$25.00 for each person registered, which charge shall be applied to cover the cost involved in the registration, including the cost of the identification card furnished to the registrants.

SECTION XII. SEXUALLY ORIENTED BUSINESS ESTABLISHMENT PREMISES TO FURNISH A CLEAR VIEW.

XII.(a) General Requirements. Any establishment licensed for a sexually oriented business shall be maintained in such a manner and shall provide a clear view of the entire area open to the public from the front entrance to the entertainment area, whether at street level or otherwise. No partition, box, stall, screen, curtain, or

other device shall be installed or placed so as to obstruct the view or the general observation of persons in any entertainment area; however, partitions, subdivisions, or panels that are not higher than 48 inches from the floor shall not be construed as obstructing a view or the general observation of persons from the front entrance of the license premises.

XII.(b) Prohibitions. The darkening of any portion of the licensed premises open to the public in any manner as to prevent any person standing at the front entrance from observing the conduct of patrons therein should be prohibited.

SECTION XIII. RESTRICTIONS ON ADVERTISEMENT.

XIII.(a) Any sexually oriented business license holder shall be required to identify such business as "adult" in any advertisement. No lettering, words, or representation of matter relating to sexual activities as defined in this chapter shall be placed upon any advertisement. Sexually oriented activities or photographs of the same shall not be displayed within any licensed premises in such a manner as to be open to the general public view from outside the license premises. Each application for a sexually oriented business license shall be accompanied by a photograph or drawing of any signs to be displayed on the exterior of the establishment with an indication as to the dimensions of the same. Signage shall be posted in conspicuous locations indicating that persons must be of appropriate age or older to enter.

SECTION XIV. LOCATION OF SEXUALLY ORIENTED BUSINESS.

XIV. (a) A sexually oriented business may only be located in an I-1 (light industrial) district, as provided in the Ordinance adopting the Zoning Regulations of the City of Franklin and Simpson County, as amended from time to time, and only in accordance with the placement/location requirements established therein.

SECTION XV. PENALTY.

XV.(a) Any person or entity who shall violate any of the provisions of Sections IV-VII, IX, and XIV shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for a period of not more than 12 months, or both.

XV.(b) Any person convicted of violating Section VIII and XII shall be fined not less than \$25.00, nor more than \$500.00 in the discretion of the district court.

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XV.(c) Any person who shall violate any of the provisions of Section X, XI and XIII shall upon conviction thereof, be fined not more than \$500.00 or imprisoned for a period of 90 days, or both.

SECTION XVI. SEVERABILITY

XVI. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed. This ordinance shall become effective upon its passage and publication of the summary of the ordinance.

October 19 FIRST READING
November 1 SECOND READING

At a meeting of the Fiscal Court of the County of Simpson, Commonwealth of Kentucky held November 1, 2004, on motion made by Honorable Larry Randolph and seconded by Honorable Kenneth Utley, the foregoing ordinance was adopted, after full discussion, by the following vote:

Yes LARRY RANDOLPH
Yes KELLY BANTON
Yes KENNETH UTLEY
Yes CHARLES McCUTCHEN

APPROVED:

BY: [Signature]
JIM HENDERSON, COUNTY JUDGE EXECUTIVE
COUNTY OF SIMPSON, COMMONWEALTH OF KENTUCKY

ATTEST:

Ashley Hines
ASHLEY HINES, Fiscal Court Clerk,
County of Simpson, Commonwealth of Kentucky