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cc:6-11-12

Item# 10

THE REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES
IN THE UNINCORPORATED AREA OF WILSON COUNTY, TEXAS

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PREAMBLE

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

WHEREAS, the Commissioners Court finds that sexually oriented businesses, as a category of establishments, are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, there is convincing documented evidence that sexually oriented businesses, as a category of establishments, have deleterious secondary effects and are often associated with crime and adverse effects on surrounding properties; and

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

WHEREAS, the County of Wilson recognizes its constitutional duty to interpret, construe, and amend its laws to comply with constitutional requirements as they are announced; and

WHEREAS, with the passage of any Order, the County of Wilson and the Commissioners Court accept as binding the applicability of general principles of criminal and civil law and procedure and the rights and obligations under the United States and Texas Constitutions, Texas State Statutes, and the Texas Rules of Civil and Criminal Procedure.

RATIONALE AND FINDINGS

(a) Purpose. It is the purpose of this Order to regulate sexually oriented businesses in order to promote the health, safety, moral, and general welfare of the citizens of the County of Wilson, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the unincorporated areas of the County of Wilson. The provisions of this Order have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this Order 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 Order to condone or legitimize the distribution of obscene material.

(b) Rationale and Findings. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Commissioners Court, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z. J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 456 (5th Cir. 2006); *N. W. Enters. v. City of Houston*, 352 F.3d

162 (5th Cir. 2003); *Baby Dolls Topless Saloons, Inc. v. City of Dallas*, 295 F.3d 471 (5th Cir. 2002); *BGHA, LLC v. City of Universal City*, 210 F. Supp. 2d (W.D. Tex. 2002), *af'd* 340 F.3d 295 (5th Cir. 2003); *LLER, Inc. v. Wichita County*, 289 F.3d 358 (5th Cir. 2002); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); *Woodall v. City of El Paso*, 49 F.3d 1120 (5 Cir. 1995); *J&B Entertainment, Inc. v. City of Jackson*, 152 F.3d 362 (5th Cir. 1998); *SDJ, Inc. v. City of Houston*, 837 F.2d 1268 (5th Cir. 1988); *TK's Video, Inc. v. Denton County*, 24 F.3d 705 (5th Cir. 1994); *Heideman v. South Salt Lake City*, 342 F.3d 1182 (10th Cir. 2003); *Lady I. Lingerie, Inc. v. City of Jacksonville*, 973 F. Supp. 1428 (M.D. Fla. 1997), *af'd* 176 F.3d 1358 (11th Cir. 1999); *Center for Fair Public Policy v. Maricopa County*, 336 F.3d 1152 (9th Cir. 2003); *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004); *Sensations, Inc. v. City of Grand Rapids*, 526 F.3d 291 (6th Cir. 2008); *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005); *Ben's Bar, Inc. v. Village of Somerset*, 316 F.3d 702 (7th Cir. 2003);

And based upon reports concerning secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Austin, Texas - 1986; Indianapolis, Indiana - 1984; Garden Cove, California - 1991; Houston, Texas - 1983; Phoenix, Arizona - 1979, 1995-98; Chattanooga, Tennessee - 1999-2003; Minneapolis, Minnesota - 1980; Los Angeles, California - 1977; Whittier, California - 1978; Spokane, Washington - 2001; St. Cloud, Minnesota - 1994; Littleton, Colorado - 2004; Dallas, Texas - 1997, 2004; Greensboro, North Carolina - 2003; Kennedale, Texas - 2005; Effingham, Illinois - 2005; Amarillo, Texas - 1977; El Paso, Texas - 1986; New York, New York Times Square - 1994; and the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota),

The Commissioners Court finds:

- (1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, urban blight, litter, and sexual assault and exploitation.
- (2) Each of the foregoing negative secondary effects constitutes a harm, which the County of Wilson has a substantial government interest in preventing and/or abating. This substantial government interest in preventing secondary effects, which is the County of Wilson's rationale for this Order, exists independent of any comparative analysis between sexually oriented and non-sexually oriented businesses. Additionally, the County of Wilson interests in regulating sexually oriented businesses extend to preventing future secondary effects of either current or future sexually oriented businesses that may locate in the unincorporated areas of the County of Wilson. The County of Wilson finds that the cases and documentation relied on in this Order are reasonably believed to be relevant to said secondary effects.

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SECTION I - AUTHORITY

- (a) These regulations are promulgated pursuant to and in conformity with Chapter 243 of the Local Government Code of Texas, as amended.
- (b) It is the intent of the Commissioners Court of WILSON County to exercise its police power, as established under Chapter 243 of the Local Government Code, to establish reasonable and uniform regulation of sexually oriented businesses to promote and protect the health, safety and general welfare of the citizens of WILSON County.
- (c) It is the intent of the Commissioners Court of WILSON County to exercise its police power, as established under Chapter 243 of the Local Government Code, to establish reasonable and uniform regulation of sexually oriented businesses to promote and protect the health, safety and general welfare of the citizens of WILSON County.
- (c) The provisions of these regulations have neither the intent nor the effect of imposing limits or restrictions of the content of any communicative material, including sexually oriented material; nor is it the intent or effect of these regulations to restrict or deny adults access to sexually oriented material protected by the First Amendment.
- (d) These regulations do not legalize anything prohibited under the Texas Penal Code or any other law or regulation.

SECTION II - ADMINISTRATION

- (a) The Commissioners Court hereby designates the County Judge to approve, deny, attach conditions to, suspend or revoke Sexually Oriented Business Permits (SOBP) pursuant to the above authority and these regulations. The Commissioners Court further designates and directs the County Clerk to act ministerially in the handling and filing of documents in all phases of the Application, Issuance, Renewal, Suspension, and/or Revocation process and to serve as the custodian of all files, records, or other documents of any kind associated with said process. The Commissioners Court further designates and directs the Sheriff or his duly authorized agents to conduct such investigations as are appropriate to the implementation and enforcement of these regulations. The Commissioners Court further directs the County Attorney to review all applications and investigations of all SOBP applicants and to make a recommendation to the County Judge as to whether a SOBP should be approved, denied, suspended or revoked.
- (b) Pursuant to Section 243.007(c) of the Local Government Code, the District Court has jurisdiction over a suit which arises from the denial, suspension or revocation of a SOBP by the County.
- (c) Section 243.010(a) and (b) of the Local Government Code, as amended, authorizes WILSON County to prosecute a violation of these regulations as a Class A Misdemeanor.

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

SECTION III - AREA COVERED BY REGULATIONS

These regulations apply to enterprises located in the extraterritorial jurisdiction of any city within the County and the unincorporated area of WILSON County.

SECTION IV - DEFINITIONS

As used in these regulations:

- (a) Adult Arcade: any place the public is allowed or invited where image producing devices are maintained to show images to five or fewer persons per device at any one time where the images so displayed are distinguished or characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section. Devices covered in this definition include machines that produce still or motion pictures, are coin or slug operated, are electronically or mechanically controlled, and include computer monitors.
- (b) Adult Bookstore or Adult Video Store: an establishment that as its primary business purpose offers for sale or rental, for any form of consideration, any one or more of the following:
 - (1) books magazines, periodicals or other printed matter, photographs, films, motion pictures, video cassettes or video reproductions, computer programs, slides or other visual representations that depict or describe specified sexual activities or specified anatomical areas as defined in this section; and
 - (2) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities as defined in this section.
- (c) Adult Cabaret: a nightclub, bar, restaurant, or similar commercial establishment, whether fixed, or mobile, that features:
 - (1) persons who appear totally nude, semi-nude or in a state of nudity as defined in this section;
 - (2) live performances which are characterized by the exposure of specified anatomical areas or specified sexual activities as defined in this section; or
 - (3) films, motion pictures, computer simulations, video cassettes, slides or other reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section.

- (d) Adult Motel: a hotel, motel or similar commercial establishment that:
- (1) offers accommodations to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section; and
 - (2) offers a sleeping room for rent for a period of time that is less than ten (10) hours or allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than (10) hours.
- (e) Adult Motion Picture Theater: a commercial establishment that regularly shows, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section.
- (f) Adult Theater: a theater, concert hall, auditorium or similar commercial establishment that regularly features live performances characterized by the exposure of specified anatomical areas as defined in this section.
- (g) Allow: to let happen, cause, suffer, or permit, including the failure to prevent.
- (h) Applicant: the individual or entity submitting the application for a SOBP. Where appropriate this includes a designated agent of the applicant.
- (i) Child Care Facility: a facility used as a day nursery, children's boarding home, child placement agency or other place for the care or custody of children under fifteen (15) years of age, licensed or required to be licensed (by the State of Texas pursuant) to Chapter 42 of the Texas Human Resource Code;
- (j) Church or Place of Religious Worship: a facility, including all structures and grounds, at which persons regularly assemble for worship, intended primarily for purposes connected with faith or for propagating a particular form of belief.
- (k) City: an incorporated city, town or village;
- (l) Commissioners Court: the Commissioners Court of the County;
- (m) County: WILSON County, Texas
- (n) County Attorney: The elected County Attorney in WILSON County or his designated agent;

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- (o) Dwelling: a house, duplex, apartment, townhouse, condominium, mobile home or any other building used as a residence;
- (p) Employee: any person who works in or about an enterprise and renders any service whatsoever to the patrons of an enterprise and receives compensation for such service or work from the enterprise operator or owner of the enterprise or from the patrons thereof; excepting individuals who have a valid Class II SOBP working at the enterprise under a written contract.
- (q) Enterprise: a sexually oriented business enterprise is a commercial enterprise the primary business of which is the offering of a service or the selling, renting or exhibiting of devices or any other items intended to provide sexual stimulation or sexual gratification to the customer. This definition includes but is not limited to: sex parlors, nude studios; modeling studios; love parlors; adult bookstores; adult movie theaters; adult video arcades; adult movie arcades; adult video stores; adult motels; adult cabarets; escort agencies; and sexual encounter centers.
 - (1) Enterprises are classified as follows:
 - (i) Class I enterprises conduct business regularly at a specific location, or operates a mobile business.
 - (ii) Class II enterprises are individuals who offer, for compensation, a service intended to provide sexual stimulation or sexual gratification to patrons at any location in the County, unless that individual is an employee of a Class I enterprise working at the location permitted under a Class I SOBP.
 - (2) The term enterprise shall not be construed to include:
 - (i) a business operated by or employing licensed psychologists, licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers that, as the major business purpose, performs functions authorized under the license held;
 - (ii) any business operated by or employing licensed physicians or licensed chiropractors engaged in practicing the healing arts as the major business purpose;
 - (iii) a massage establishment which is properly registered under Chapter 752, Acts of the 69th Legislature, Regular Session, 1985 (Article 4512k, Vernon's Texas Civil Statutes), as amended;
 - (iv) a bookstore, movie theater or video store, unless that business is an adult bookstore, adult movie theater, or adult video store defined in these regulations;
 - (v) a theater, concert hall, auditorium or similar commercial establishment unless that business is an adult theater as defined in these regulations;
 - (vi) a tanning facility that is properly licensed pursuant to Ch. 145 of the Texas

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Health and Safety Code, the Tanning Facility Act, as amended by the Acts of 1995, 74th Legislature, ch. 684.

- (r) Enterprise Operator: a manager or other natural person principally in charge of a Sexually Oriented Business Enterprise.
- (s) Escort: an individual who, for consideration, agrees or offers to privately model, dance or similarly perform for another person, or to act as a private companion, guide or date for another person and offers a service intended to provide sexual stimulation or sexual gratification to the customer.
- (t) Escort Agency: a business that, for consideration, furnishes, offers to furnish or advertises to furnish escorts as one of its primary business purposes and offers a service intended to provide sexual stimulation or sexual gratification to the customer.
- (u) Hospital: a building used to provide in-patient medical care for the sick or injured and licensed pursuant to the Texas Hospital Licensing Law, Chapter 241 of the Texas Health and Safety Code, or operated by an agency of the Federal Government.
- (v) Interested party: any person who owns or leases real property within fifteen hundred (1,500) feet of an enterprise; any official who is elected by residents of WILSON County but specifically excepting the applicant and the following officials elected in WILSON County: all magistrates, the Sheriff, the County Attorney and County Clerk.
- (w) Live Exhibition: a live performance by one or more individuals conducted in front of at least one patron, including but not limited to, dancing, modeling, sword swallowing, juggling, acrobatic acts, wrestling and pantomime.
- (x) Nudity or State of Nudity: any state of dress which fails to opaquely cover a human buttock, anus, male genitalia, female genitalia or areola of a female breast.
- (y) Patron: any customer or client of an enterprise, including members of the public or club members invited or admitted to a Class I enterprise. This definition shall not include the employees or permitted Class II performers at a Class I enterprise.
- (z) Person: an individual, partnership, corporation, association or other legal entity.
- (aa) Public Building: a building used by Federal, State, or Local Government that is open to the general public.
- (bb) Public Park: a tract of land dedicated for public use and accessible to the general public for recreational purposes, not including public roads, walkways, easements and rights of way. This term shall include locations owned by non-profit organizations that provide

educational and recreational facilities.

- (cc) Regulations: regulations of WILSON County, Texas, for the operation of Sexually Oriented Business Enterprises.
- (dd) SOBP: Sexually Oriented Business Permit issued and regulated pursuant to this regulation.
- (ee) School: a facility, including all attached playgrounds, dormitories, stadiums and other appurtenances which are part of the facility, used for the primary purpose of instruction or education, including primary and secondary schools, colleges and universities, both public and private.
- (ff) Semi-nude: any state of dress which opaquely covers no more than human buttocks, anus, male genitalia, female genitalia and areolas of female breasts.
- (gg) Server: an individual who serves patrons food or beverages in an enterprise, including waiters, waitresses, hosts, hostesses, and bartenders.
- (hh) Sexually Oriented Modeling Studio: a place where for any form of consideration, a person models totally nude, semi-nude or in a state of nudity, or displays specified anatomical areas as defined in this section, for other persons to sketch, draw, paint, sculpt, photograph or similarly depict or observe.
- (ii) Sexual Encounter Center: a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration:
 - (1) physical contact in the form of wrestling or tumbling between persons of the opposite sex;
 - (2) activities between male and female persons and/or persons of the same sex when one or more of the persons is totally nude, semi-nude or in a state of nudity.
- (jj) Sheriff: the Sheriff of WILSON County or the Sheriff's designated agent.
- (kk) Specified Anatomical Areas: human genitals in a state of sexual arousal, whether clothed or nude.
- (ll) Specified Sexual Activities: includes any of the following:
 - (1) fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts, whether clothed or nude.
 - (2) sex acts, actual or simulated, including intercourse, oral copulation, or sodomy;

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- (3) masturbation, actual or simulated; or
 - (4) excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.
- (mm) Totally nude: a person shall be considered to be totally nude as this term is used in this regulation if the person's entire pubic region, genitals or anus is not opaquely covered.
- (nn) Transfer of Ownership or Control:
- (1) the sale, lease or sublease of the business; or
 - (2) transfer of a controlling interest in the business whether by sale, exchange, gift or other means.

SECTION V - SOBP REQUIRED FOR ENTERPRISES

No person shall conduct business as either a Class I or Class II sexually oriented business enterprise at any location in the area of WILSON County covered by these regulations without a valid Sexually Oriented Business Permit (SOBP) issued in accordance with these regulations.

- (a) A separate application and SOBP shall be required for each enterprise.
- (b) Each location of a Class I enterprise is a separate enterprise for the purposes of these regulations.
- (c) An individual who is a Class II enterprise shall be issued a single SOBP and badge number.
- (d) An enterprise without a SOBP is a public nuisance enjoinable under these regulations.

SECTION VI - REQUIREMENTS FOR EXISTING ENTERPRISES

- (a) All existing enterprises that were not previously required to obtain permits shall submit a complete application for a SOBP pursuant to these regulations within sixty (60) days of the effective date of these regulations.
- (b) An existing enterprise may continue to operate until the determination on the SOBP application is final. The SOBP application receipt is required to be displayed in clear view at the premises of a Class I enterprise and is to be readily available at any location at which a Class II enterprise conducts business.
- (c) If an existing Class I enterprise is in violation of the location restrictions of Section

IX(e)(4)(a) or (b), the enterprise may submit verified proof that the business has not recouped the owner's investment prior to the date of application in lieu of the certification required in that section. The required documentation shall include:

- (1) the amount of the owner's investment in the existing enterprise to the date the proof is submitted;
 - (2) the life expectancy of the enterprise;
 - (3) the existence or non-existence of lease obligations, as well as any contingency clauses therein permitting termination of the lease;
 - (4) proof of the income of the enterprise since it commenced operation and a projection of yearly income; this may be in the form of tax returns or reliable financial statements; and
 - (5) a proposed schedule for amortization of the investment, to be considered in light of the intent of these regulations.
- (d) Upon evaluation of the proof and a finding that a proposed amortization is reasonable under the circumstances, the County Attorney shall make a recommendation to the County Judge that a Contingent SOBP be issued. The County Attorney may consult with the County Auditor and other county officials in determining the reasonableness of the amortization proposal. The Contingent SOBP shall specifically state the reasons that the SOBP would have been denied but for the fact that the enterprise was in existence prior to enactment of these regulations.
- (e) The Contingent SOBP shall be renewed only through the amortization period. No SOBP shall be issued for that location beyond that period unless circumstances change so as to bring the enterprise into compliance with these regulations. The Contingent SOBP shall be subject to revocation or suspension pursuant to these regulations.
- (f) Should the County Judge find the proposal unreasonable, the County Attorney shall make a reasonable counter-proposal or recommendation. The applicant may then, within fifteen (15) days of notice of the County Judge's determination and County Attorney's counter-proposal, re-submit a revised proposal. If the revised proposal is again found by the County Judge to be unreasonable, the County Judge shall make a final determination to deny the SOBP.
- (g) Any enterprise which operates in the area of WILSON County affected by these regulations on the date these regulations become effective shall have sixty (60) days from the effective date to come into compliance with these regulations, subject only to the provisions for a Contingent SOBP based on location.

SECTION VII - SOBP DISPLAYED

- (a) The SOBP for a Class I enterprise shall be displayed at all times in an open and conspicuous place in the enterprise for which it was issued.
- (b) The SOBP for a Class II enterprise shall be available at any premises where the individual is conducting business. In addition, the individual shall conspicuously display a clearly visible badge issued by the Sheriff showing the SOBP number any time she/he is conducting business as an enterprise as defined in these regulations.

SECTION VIII - INJUNCTION

- (a) A person who violates these regulations is subject to a suit to enjoin operation of the enterprise pursuant to Section 243.010 of the Texas Local Government Code and is also subject to prosecution for criminal violations.
- (b) The Criminal County Attorney is hereby authorized to file suit to enjoin violation of these regulations. A suit may be initiated upon information received from private citizens or any law enforcement agency.

SECTION IX - SOBP APPLICATION

- (a) To obtain a Class I or Class II SOBP, a complete application shall be filed with the County Clerk. The application shall be filed on the form provided by the County Clerk or an accurate and legible copy of that form. The applicant shall apply in person at the County Clerk office. The hours when applications can be submitted will be established by the County Clerk. Should the County Attorney determine deficiencies, then a notice of deficiencies shall be mailed to the applicant by the County Clerk within five (5) business days of receipt of the application if all the information required by these regulations has not been provided in the application. A receipt shall be mailed to the applicant within five (5) business days of submission of a complete application to the County Clerk.
- (b) All applications shall provide the following information. The information in subsections (1) and (2) will be made available to the public when a Class I application is received:
 - (1) The full legal name and any other name used by the applicant.
 - (2) A general description of the enterprise, which shall include the address of the enterprise and the services and products which will be offered.
 - (i) A Class I SOBP shall be valid only for the address provided in the application.

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- (ii) A Class II application must contain the mailing address of the applicant.
- (3) The applicant's complete business license or permit history including any permit or license which has been issued to the applicant by any agency, board, City, County, or State, and any professional or vocational license or permit. This shall include those which have expired or are currently in effect and shall include any license or permit that has been denied, or was issued to the applicant and subsequently revoked or suspended. If there have been licenses or permits which were denied, revoked or suspended, the permit history shall include the reason for that action.
- (4) If the applicant intends to operate the enterprise under an assumed name, a copy of the assumed name certificate filed in compliance with Chapter 36 of the Texas Business and Commerce Code. If the enterprise is licensed under the Texas Alcoholic Beverage Code the application shall be filed and the enterprise shall conduct business under the name shown on the liquor license. If the applicant is an individual, the applicant's valid driver's license number or Texas Department of Public Safety identification card number shall be included.
- (5) A non-refundable fee, established by the WILSON County Commissioners Court, shall be paid in the form of a money order, cashier's check or cash (no personal checks accepted).
- (6) A notarized statement:
 - (i) the applicant has personal knowledge of the information contained in the application and that the information contained therein is true and correct; and
 - (ii) the applicant has read and understands these regulations.
- (7) The applicant shall authorize the Sheriff or County Attorney to seek information to confirm any statements set forth in the application.
- (c) If the applicant is an individual, the applicant shall also provide:
 - (1) the city, county, and state of each of the applicant's residences for the three (3) years immediately preceding the date of the application, indicating the dates of each residence and including the present mailing address of the applicant.
 - (2) the applicant's business, occupation and employment history for the three (3) years immediately preceding the date of application, indicating the applicable dates and addresses;
 - (3) documentation that the applicant is at least eighteen (18) years of age, verified by a photographic identification card issued by a governmental entity;
 - (4) the applicant's height, weight, eye color and natural hair color: The applicant shall

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submit three prints of a color photograph taken within 30 days of the date on which the application is filed.

- (d) If the applicant is a corporation, partnership, joint venture, or other similar business entity the applicant shall also include:
- (1) a Texas corporation shall provide a copy of the Articles of Incorporation with amendments; names and residential addresses of all current officers and directors; and the name and address of each stockholder holding more than 5% of the stock of the corporation;
 - (2) a foreign corporation shall provide a copy of the certificate of authority to transact business in Texas, with all amendments; names and residential addresses of current officers and directors; and names and addresses of each stockholder holding more than 5% of the stock of the corporation;
 - (3) a general or limited partnership shall provide the name and residential address of each of the partners, including limited partners; if the applicant is a limited partnership formed under the laws of Texas, a copy of the certificate of limited partnership filed with the office of the Secretary of State, and amendments included; if one or more of the partners is a corporation the information required of corporate applicants shall be included in the application in addition to these requirements;
 - (4) if the applicant is a joint venture or other similar entity, the names and residential addresses of the participants and their valid drivers license numbers or Texas Department of Public Safety identification card numbers are required if the participants are individuals, if any participant is a corporation or partnership, the applicable information required in items (1), (2), or (3) above shall be provided; and
 - (5) as to each person required to be identified in this section, the application shall also contain: a statement as to any ownership interest that person has in any other enterprise in WILSON County, Texas; a description as to any management, supervisory, or oversight responsibility that person will have in the enterprise; a valid driver's license number or Texas Department of Public Safety identification card number; and a certification as to each officer, director, partner or participant that she/he has not been convicted of any of the crimes listed in Section XII (e) (1) (iv).
- (e) Applicants for a Class I SOBP shall also provide:
- (1) the name and mailing address of each enterprise operator;
 - (2) The name and mailing address of each owner of the real property at which the

business is to be located and a copy of any lease or rental agreement;

- (3) A reliable estimate of the number of employees, including a description of the capacities in which they will be employed; a general description of the management structure for the enterprise; a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches. Enterprises subject to Section XXIII of these regulations are required to conform to that section.
- (4) A certification that the proposed enterprise will be located:
- (a) a minimum of one thousand five hundred (1,500) feet from any child care facility, school, dwelling, hospital, public building, public park, or church or place of religious worship;
 - (b) a minimum of one (1) mile from a penal institution as defined by the Penal Code; and
 - (c) where not more than two (2) other Class I enterprises are located within a distance of two thousand (2,000) feet of the proposed location. This restriction shall not apply to enterprises in existence on the effective date of these regulations and shall not constitute a basis for denial of a SOBP.
 - (d) This subsection shall apply only to property uses in existence at that location at least thirty (30) days prior to the date of application.
 - (e) For the purposes of this subsection, measurements shall be made in a straight line from the nearest portion of the building or appurtenance used by the enterprise to the nearest portion of the building or appurtenance that is used for the purposes identified in subsections (a), (b), or (c) above. These distance restrictions apply to an identified purpose whether or not the building or appurtenance used for an identified purpose is located within the unincorporated area of WILSON County.
- (5) The applicant shall post signs at the property where the proposed enterprise will be located. The signs shall be at least 24 inches x 36 inches in size and legibly state that a Sexually Oriented Business Permit Application has been filed with the WILSON County Clerk's Office. It shall also state the date the application was filed and the phone number for the County Clerk's Office. The sign shall inform the public that persons can contact that office for more information about the application. Each letter on the sign must be at least 1.5 inches x 2 inches in size. It shall be the duty of the applicant to erect each sign so that it is in a location clearly visible from the public sidewalk, road or highway. If a side of the property is longer than three hundred feet, one sign shall be erected in each three hundred-foot increment of the property. The signs shall be erected within seven (7) days after the filing of the application for the SOBP and remain until the application has been

approved or denied by the County Judge. If the Sheriff determines that the signs have not been erected pursuant to the requirements of this subsection, a written notice shall be issued to the applicant identifying the deficiencies and no action shall be taken on the application until the signs have been erected as required.

- (6) Every applicant for a sexually oriented business license shall give notice of the application by publication at his own expense in two consecutive issues of a newspaper of general circulation published in WILSON County, Texas. The notice shall be printed in 16-point boldface type and shall include:
- (a) the fact that a sexually oriented business license has been applied for;
 - (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. Such notice shall be published not later than seven (7) days after the application is filed with the County Clerk. Applicant shall, within three (3) days of publication of the notice, submit to the County Clerk a publisher's affidavit from the newspaper in which the notice appeared verifying the dates of publication.
 - (e) An applicant for a renewal permit is not required to publish notice or meet the posting requirements of (5) and (6) above.
- (7) Any interested party, as that term is defined herein, shall have fourteen (14) days following the date on which the requirements of (5) and (6) above have been satisfied to file a request for a public hearing as provided in Section X.

SECTION X - DUTIES OF THE APPLICANTS AND ENTERPRISES

- (a) The applicant/enterprise shall be under a continuing affirmative duty while the application is pending and during the effective dates of the SOBP to notify the County Clerk of any of the following events. Notice is to be provided in writing and delivered no later than seven (7) days after the occurrence of:
- (1) address and/or name change of the applicant;
 - (2) revocation or suspension of any permits or licenses listed in the applicant's permit history;
 - (3) a Class I enterprise shall notify the County Clerk when the enterprise learns that a Class II enterprise has been formally charged with a crime listed under Section XII (e) (1) (iv) and the crime is alleged to have occurred on the premises of the Class I enterprise. All such notification, upon receipt by the County Clerk, shall be delivered for the County Attorney for any action.
- (b) The enterprise shall comply with the conditions attached to the SOBP pursuant to Section XI(f) or Section XII(f). Each and every day the enterprise fails to comply with a SOBP condition is a separate violation of these regulations.

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- (c) An enterprise shall notify the Sheriff if a SOB or badge is lost or stolen. If notice of loss has not been provided to the Sheriff and an SOB or badge is found in the possession of any person other than the enterprise, it shall be a rebuttable presumption that the enterprise had knowledge of the illegal use of the SOB or badge, and participated in the attempt to transfer the permit.

SECTION XI - PUBLIC HEARING ON HEALTH AND SAFETY

- (a) When the County Clerk receives a written request for a public hearing concerning a Class I SOB application and forward the same to the County Attorney, the County Attorney shall confirm that it is: from an interested party; that the request specifically identifies the SOB application at issue; that the request is timely filed; and that the request specifically identifies health and safety concerns affected by the enterprise. Upon notification by the County Attorney, the County Clerk shall then initiate the public hearing procedure, as follows:
 - (1) A hearing official, appointed by Commissioners Court, shall be contacted by the County Clerk and a date set for the public hearing
 - (2) The hearing shall be scheduled at a public building within the Justice precinct where the enterprise is to be located, or within an adjacent precinct.
 - (3) The hearing shall be scheduled either on a weekday at 7:00 p.m., or on a Saturday morning at 9:30 a.m.
 - (4) The County Clerk shall send the applicant a written Notice of Hearing at least ten days in advance, stating the date, time and place of the hearing and shall make a copy of the Notice of Hearing available to the public.
 - (5) Publicizing the hearing shall be the responsibility of the interested party who requested the hearing. The County Clerk shall make available to the public a copy of any request for hearing and the Notice of Hearing.
 - (6) The County Clerk shall request the Sheriff or Constable to cause a sign to be posted at the location identified in the application containing the time and place of the hearing.
 - (7) The hearing may be rescheduled by the hearing official for good cause, including, for example, a large number of requests for a hearing that indicate strong public interest in the matter. The hearing may be rescheduled a second time if

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rescheduling was due to emergency circumstances such as extreme weather conditions. If rescheduled, the new Notice of Hearing shall be available to the public at the Office of the County Clerk.

- (8) The applicant may request that a court reporter make a record of the hearing. The applicant must make this request at least two (2) days prior to the hearing and bear the cost of making an official record and one (1) transcript for the county. The hearing official shall arrange for the court reporter to take the record of the hearing, including exhibits and testimony. One copy of the transcript shall be provided to the hearing official to become the property of the County.
- (b) If a request for a public hearing is received by the County Attorney after the SOBP has been issued or renewed, the hearing shall be scheduled when the next renewal application is filed. The County Clerk shall confirm that the request identifies health and safety concerns affected by the enterprise that are not addressed in the current SOBP and that the request is filed by an interested party. The request shall then be attached to the SOBP records. When a renewal application is submitted, the County Clerk shall initiate the hearing as set out in subsection (a).
- (c) If the request for public hearing has been determined by the County Attorney to be deficient, the County Clerk shall return it to the person who submitted the request with a notation stating the deficiency. A request that does not comply with the requirements stated in (a) or (b) above shall not extend the period of time in which a request for hearing may be filed.
- (d) The hearing shall be conducted by the hearing official under the following guidelines. The hearing official shall liberally construe these guidelines to allow the public input to protect the health and safety of a community affected by the location of an enterprise and to allow the applicant to address these concerns:
- (1) interested parties are entitled to the assistance of counsel;
 - (2) interested parties may expressly waive the right to counsel;
 - (3) the hearing official shall, upon prior request, provide for appropriate facilities for any disabled person to be able to participate in the hearing, this shall include, but not be limited to: interpreters for deaf or hearing impaired participants, wheel chair access and special seating arrangements; and
 - (4) participants in the proceeding may supply interpreters for language translation and the hearing official shall accommodate the translation of the proceeding.
 - (5) The hearing official may exclude evidence that is irrelevant, immaterial, or unduly

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repetitious. Relevance and materiality shall be evaluated by the relation of the evidence to health and safety concerns directly related to the SOBP at issue, and conditions which may be attached to the SOBP to address those concerns. The hearing is not limited to the health and safety concerns specifically identified in the hearing request.

- (6) If no request is made by the applicant for an official record, any person may record, videotape or transcribe the hearing provided there is no interference with the proceedings. The hearing official shall have the power to limit any interference with the proceeding.
- (e) The hearing official may continue the hearing to a date no later than ten (10) days after the initial hearing if:
 - (1) the hearing has lasted at least two and one half (2 1/2) hours and it appears to the hearing official that a significant amount of time is still required to fully present the public concerns and potential solutions to those concerns; or
 - (2) issues have been raised at the hearing requiring additional research in order to develop appropriate conditions to be attached to the SOBP or that the parties need additional time to develop a solution to issues identified at the hearing.
 - (3) A continuance shall not be for the purpose of delay or for developing new evidence.
- (f) After the conclusion of the public hearing, the hearing official shall produce a written statement containing the official's findings of public health and safety concerns and recommendations for conditions to be attached to the SOBP. The recommendations shall be forwarded to the County Clerk, the applicant, and the interested party who requested the hearing. The County Clerk will forward the application and hearing official's report to the County Judge. When the hearing official determines that public health and safety concerns exist, the County Judge shall attach conditions as part of the SOBP. If no official record of the hearing has been requested, the hearing official's statement shall be the official record of the public hearing. The hearing official may consult with the County Attorney for the purpose of developing appropriate conditions to address the health and safety concerns shown at the hearing. These recommendations will then be forwarded to the County Judge for final disposition.
- (g) If evidence is produced at the hearing that would support denial of the SOBP, the hearing official shall provide that information to the County Attorney, who shall investigate whether any new evidence warrants a recommendation to the County Judge for denial or revocation of the SOBP under these regulations.

SECTION XII - ISSUANCE OR DENIAL

- (a) A Class I SOBP shall be issued within forty-five (45) days of submission of a complete application, unless the application is denied. The forty-five (45) days shall run from the date the County Clerk issues the receipt pursuant to Section VIII(a).
- (b) A Class II SOBP shall be issued within seven (7) business days unless the application is denied. The seven (7) days shall run from the date the County Clerk issues the receipt pursuant to Section IX(a).
- (c) The County Judge shall defer determination whether to approve a SOBP until final disposition of any charge of any of the crimes listed in Subsection XII(e) (1) (iv) that is pending or arises during the investigation period. No temporary SOBP shall be issued before there is a final determination of the criminal charge.
- (d) If the County Judge determines the SOBP can be issued but cannot be made within the time period stated in subsection (a) above, a written notice stating the reasons for the delay shall be sent to the applicant within that time period.
- (e) The SOBP shall be denied upon the finding by the County Judge of any of the following facts:
 - (1) The applicant, or if the applicant is a corporation, partnership, or other business entity, any officer, director, partner or participant required to be identified in the application, was convicted of any of the crimes listed below and;
 - (i) less than two 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 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 years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within a 24-month period.
 - (iv) The crimes considered in applying this section are:
 - (a) prostitution, promotion of prostitution, aggravated promotion of prostitution, compelling prostitution, obscenity, sale, distribution, or display of harmful material to a minor, sexual performance by a child, or possession of child pornography as described in Chapter 43 of the Texas Penal Code;
 - (b) public lewdness, indecent exposure, or indecency with a child as described in Chapter 21 of the Texas Penal Code;
 - (c) sexual assault or aggravated sexual assault as described in Chapter 22

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of the Texas Penal Code;

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

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

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

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

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

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

(j) a violation of these regulations described in Section XXII(a).

- (2) The enterprise does not meet all the requirements of these regulations; or the enterprise is otherwise prohibited by local, state or federal law;
 - (3) The applicant has knowingly made a misleading statement of a material fact by omitting or falsifying information in the application for the SOBP;
 - (4) The applicant, if an individual, is under eighteen (18) years of age;
 - (5) The applicant or enterprise operator has had a SOBP revoked for the same enterprise within the one-hundred eighty (180) day period immediately preceding the date the application was filed;
 - (6) An applicant is delinquent in the payment to the county of taxes, fees, fines or penalties assessed or imposed regarding the operation of a sexually oriented business;
 - (7) The application or renewal fee required by these regulations has not been paid; or
 - (8) An applicant or enterprise operator has owned or been employed in a managerial capacity of a business or location within the preceding twelve (12) months and during that period that business or location constituted a common or public nuisance as defined in Chapter 125 of the Texas Civil Practice and Remedies Code.
- (f) The County Judge may attach reasonable conditions on a SOBP pursuant to the recommendations of the hearing officer if a public hearing was held under Section XI. These conditions shall address the public health and safety concerns identified in the

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hearing.

- (g) A Class I SOBP shall be valid for one (1) year from the date it is issued, a Class II SOBP shall be valid until the individual's next birth date, unless the SOBP is revoked or suspended pursuant to these regulations; the enterprise is sold or transferred, or the SOBP is canceled by written request of the applicant. The renewal fee for the initial Class II SOBP will be reduced to reflect proration of the application fee based on the portion of the year for which the initial SOBP was valid.
- (h) In the event that the County Judge determines that the SOBP is denied pursuant to these regulations, the applicant shall be given written notice of the reason for that determination. The written notice provided under this section does not prohibit the County, in litigation on appeal, from presenting evidence of additional or alternative facts that support denial of the SOBP.

SECTION XIII - REVOCATION OR SUSPENSION

- (a) The County Attorney shall have the authority and power to initiate by request to the County Judge a proceeding to revoke or suspend a SOBP if there is probable cause to believe that one or more of the following events or conditions has occurred:
- (1) the owner or enterprise operator negligently allowed a person under eighteen (18) years of age to remain on the premises of the enterprise during the hours of operation;
 - (2) three (3) or more violations of any of the offenses contained in Section XII (e) (1) (iv) have occurred on the premises of a Class I enterprise within a period of eight (8) months and the owner or enterprise operator failed to make a reasonable effort to prevent the occurrence of such violations;
 - (3) the enterprise, owner or enterprise operator negligently failed to comply with a duty specifically imposed by these regulations.
 - (4) the applicant provided materially false, fraudulent or untruthful information on the original or renewal application form;
 - (5) the enterprise has been closed for business for a period of thirty (30) consecutive days unless the closure is due to circumstances beyond the control of the owner and the owner is proceeding with due diligence to reopen the establishment;
 - (6) the SOBP should not have been issued pursuant to these regulations; or
 - (7) the enterprise or enterprise owner is convicted of a criminal offense contained in

Section XII (e) (1) (iv).

- (b) If probable cause is found to believe any of the stated events or conditions occurred, the County Judge shall forward to the SOBP holder or its designated agent a written notice of revocation. The notice shall set out the reasons for the action. Subject to a request for hearing pursuant to this section, the revocation shall become final on the eleventh (11th) day after delivery of the notice.
- (c) The enterprise or its designated agent shall have the opportunity to appear before a hearing examiner appointed by the Commissioners Court upon written request submitted to the County Judge within ten (10) business days of delivery of the notice of revocation. The hearing examiner shall not have participated in any investigation of the alleged grounds for the revocation. The hearing shall be held within fourteen (14) business days of the request for hearing and the enterprise and the County Attorney shall be provided an opportunity to present evidence and cross examine witnesses. The rules of civil evidence for non-jury trials shall apply.
- (d) Upon finding that the facts presented at the hearing support a finding that grounds exist for revoking or suspending the SOBP, the hearing examiner may request that the parties present relevant evidence to show whether suspension or revocation of the SOBP is more appropriate. The hearing examiner may also request that evidence be presented for the purpose of identifying appropriate conditions to be attached to a SOBP if the SOBP is suspended.
- (e) If the hearing examiner determines that a SOBP should be revoked, the hearing examiner shall issue a written order revoking the SOBP, effective when notice is provided to the enterprise pursuant to these regulations.
- (f) If the hearing examiner determines, based upon the nature of the violations, that a suspension in lieu of revocation is appropriate, operation of the SOBP may be suspended for a period of time not to exceed two (2) months. The hearing examiner shall issue a written order suspending the SOBP and attaching conditions, if applicable, effective upon notice to the enterprise pursuant to these regulations.
- (g) Upon the finding that item (a)(4), (5), (6) or (7) of this section has been violated, revocation of the SOBP shall be mandatory.
- (h) Revocation shall be subject to the hearing provisions of this section except revocation shall take immediate effect upon notice by the County Judge subject to reinstatement resulting from an appeal, when:
 - (1) there is a necessity for immediate action to protect the public from injury or imminent danger; or

- (2) a SOBP was issued based on a material misrepresentation in the application and but for the material misrepresentation, the SOBP would not have been issued. This revocation shall be appealed as though the SOBP had been denied using the procedure set out in Section II of these regulations.

SECTION XIV - SOBP EMPLOYEE RECORDS

- (a) A Class I enterprise has the duty to keep the following information on file on site for each person employed at the enterprise:
 - (1) the full legal name, professional or performing names and any other names used by the employee;
 - (2) a photocopy of the employee's valid driver's license or Texas Department of Public Safety identification card;
 - (3) the current address and telephone number of the employee;
 - (4) employee's height, weight, eye color and natural hair color;
 - (5) a photograph of the employee taken within one (1) month immediately preceding the date of employment and updated every year; and
 - (6) a description of the capacity in which the employee is employed.
- (b) The enterprise has the duty to maintain and make available these records for inspection by the Sheriff or County Attorney. The County Attorney shall prepare and the County Clerk shall provide a standard format for these records. The records shall include a time record reflecting the times and dates each employee worked. These records shall be available for inspection by the Sheriff or County Attorney during the hours of operation of the enterprise. These records shall be retained for at least a period of two (2) years from creation. Upon written request, the enterprise has a duty to provide a copy of the records to the Sheriff, the County Clerk, County Attorney or the County Judge within seven (7) business days of the request.
- (c) Any employee who provides false information to any enterprise pursuant to this section violates these regulations.
- (d) The Class I enterprise has the duty to have the employee information available regarding any individual working at an enterprise unless that individual has a valid Class II SOBP available at the premises.

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SECTION XV - NOTICE

- (a) Any notice required to be given by the Sheriff, the County Clerk, County Attorney or the County Judge under these regulations to any applicant or enterprise or enterprise operator may be given by personal delivery or by United States mail, postage prepaid, addressed to the most recent address as specified in the application for the SOBP or the most recent notice of address change.
- (b) Mailed notice shall be deemed served three (3) days after deposit in the United States mail.
- (c) In the event that notice given by mail is returned by the postal service as undeliverable it shall be presumed that the enterprise did not comply with the affirmative duty to notify the County Clerk of any change of address, unless the enterprise can show there was error on the part of the Post Office, and;
 - (1) in the case of notice in connection with a Class I SOBP the Sheriff shall have the notice posted at the entrance to the enterprise; or
 - (2) in the case of notice in connection with a Class II SOBP the County Judge shall suspend the SOBP until the applicant/holder contacts the County Clerk with a current address. An individual that conducts business as an enterprise under a suspended SOBP pursuant to this section shall be in violation each and every day that she/he conducts business in WILSON County.

SECTION XVI - TEMPORARY SOBP PROVISIONS

Failure of the County Clerk, County Attorney or the County Judge to take timely action or give notice of his action on an application, or failure by the hearing official or hearing examiner to timely conduct or give notice of the decision pursuant to hearing, shall entitle the applicant to the immediate issuance of a temporary SOBP upon written demand. Demand shall be filed by the applicant with the County Clerk. A temporary SOBP shall be valid only until notice of the County Judge's action on the application or the hearing examiner's order. This section shall not apply where delay is caused by the action or inaction of the applicant.

SECTION XVII - SOBP PROVISIONS

- (a) SOBP renewal applications must be filed not more than thirty (30) days prior to the expiration date of the SOBP. The form for renewal application (to be designed by the County Attorney) shall be made available to permit holders by the County Clerk. Upon receipt of a completed renewal application, the County Clerk shall forward the same to the County Attorney for consideration.

- (b) An annual non-refundable renewal fee, as set by the Commissioners Court, shall accompany the application for renewal to defray costs of inspections and investigation. The fee shall be paid in the form of a money order, cashier's check or cash (no personal checks).
- (c) The renewal application shall contain:
 - (1) Certification by the applicant that there have been no changes in the information provided in the initial application or the information which has changed since the initial application is supported by related documentation as required in the initial application.
 - (2) An application for a Class I SOBP renewal shall contain a certification that the enterprise is in operation. A Class I SOBP will not be renewed if the enterprise has not commenced operation as proposed in the initial SOBP application.
- (d) The County Attorney shall review renewal applications and make a recommendation to the County Judge as to whether the renewal should be granted or denied.
- (e) The County Judge shall determine whether the permit may be renewed based on the information contained in the renewal application. The renewal permit shall be denied upon a finding of any of the conditions identified in Section XII(e). Renewal or denial shall be issued within fourteen (14) days of receipt of the completed renewal application or by the expiration date of the previous SOBP, whichever period is longer.
- (f) If a renewal application is submitted less than fifteen (15) days before the previous SOBP expires, there shall be no temporary SOBP issued to extend the SOBP. The original SOBP will expire and until the County Judge's determination on renewal, there will be no valid SOBP for operation during that period.
- (g) If an enterprise fails to file its renewal application prior to the expiration of the existing SOBP, the enterprise must file an application for a new SOBP and the application shall be considered as any new application.
- (h) Upon written request of any interested party, filed with the County Clerk prior to issuance of a new Class I SOBP and specifically identifying existing public health and safety concerns connected with the operation of that enterprise, a public hearing will be held as provided for in Section X.
 - (1) The general public and all interested parties may present to the hearing officer information to support recommendations to the County Judge for conditions relating to public health and safety to be attached to the SOBP upon renewal.

- (2) The request for a public hearing may be filed at any time during the year, but the hearing will be scheduled when the application for renewal of the Class I SOBP is filed. If issuance of the renewal is delayed solely to accommodate the need for the public hearing, the existing SOBP shall be automatically extended until the County Judge issues the renewed SOBP based on the recommendations of the hearing official. The fact that there is a pending public hearing does not revive a SOBP that lapses under the provisions of subsections (e) and (f) above.
- (i) If a permit has been suspended pursuant to Section XIII of these regulations, the renewed permit will be suspended until the suspension period has elapsed.

SECTION XVIII - INVESTIGATION AND RECOMMENDATIONS

Upon receiving the application for a SOBP or an application for renewal, the County Clerk shall forward the application to the Sheriff for an investigation to determine compliance with these regulations. At the conclusion of his investigation, the Sheriff will forward the application and investigation report to the County Attorney. The County Attorney will review the investigation findings and make a recommendation to the County Judge as to whether the SOBP should be issued or denied.

SECTION XIX - INSPECTIONS

The Sheriff shall make reasonable, periodic inspections of the premises of all Class I enterprises permitted under these regulations. By accepting the SOBP, a Class I enterprise gives consent to any peace officer to inspect the premises for compliance with these regulations.

SECTION XX - TRANSFER PROHIBITED

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

SECTION XXI - LOST SOBP OR BADGE

- (a) If a SOBP or badge is lost or destroyed a replacement may be obtained by filing a lost SOBP/badge application with the Sheriff and paying a lost SOBP/badge fee.
- (b) A replacement SOBP or badge shall be issued immediately upon confirmation of the identity of the applicant through the records of the County Clerk.

- (1) A replacement badge number will be assigned to a Class II enterprise.
- (2) A replacement permit will expire on the same date as the original permit.
- (c) It shall not be a defense to prosecution for conducting business without a SOBP or failure to display a badge that an SOBP or badge was lost or stolen. The enterprise may not conduct business as an enterprise, in WILSON County, Texas, until she/he obtains a replacement SOBP or badge.
- (d) A SOBP or badge found in the possession of any person other than the enterprise may be immediately seized by any law enforcement officer who shall then forward it to the Sheriff. The authorized SOBP holder may reclaim the permit or badge from the Sheriff.

SECTION XXII - OPERATING REQUIREMENTS FOR ENTERPRISES

- (a) The following shall be violations of these regulations punishable as authorized in Section 243.010(b) of the Local Government Code. Each day a violation continues constitutes, and is punishable as, a separate offense:
 - (1) for any employee, owner, or enterprise operator of a Class I enterprise to intentionally or negligently allow any person below the age of eighteen (18) years to remain upon the premises or within the confines of the enterprise during the hours of operation;
 - (2) for any person to be at an enterprise totally nude, unless performing in accordance with (13) herein. Private rooms at adult motels, public restrooms, and employees' designated dressing rooms that are not visible or accessible to patrons are excepted from this prohibition;
 - (3) for any employee, owner, or enterprise operator to allow any patron, to become totally nude, nude or in a state of nudity at the premises of the enterprise; Private rooms at adult motels, public restrooms, and employees' designated dressing rooms that are not visible or accessible to patrons are excepted from this prohibition;
 - (4) for any person to engage in, or any employee, owner or enterprise operator to allow another person to engage in, sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any other public sexual acts prohibited by law, at or in a permitted premises;
 - (5) for any enterprise to exhibit advertisements, displays, or other promotional materials at the premises that are characterized by specified sexual activities or specified anatomical areas and are visible from a public road, sidewalk or other public place;

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- (6) for any person to conduct business as an enterprise in the area of WILSON County covered by these regulations without a valid SOBP issued in accordance with these regulations;
- (7) for any person to counterfeit, forge, change, deface, duplicate or alter an SOBP;
- (8) for any person to knowingly make any false, fraudulent or untruthful material representation written or oral, or in any other way knowingly conceal any material fact required in the SOBP application;
- (9) for the owner or enterprise operator to fail to comply with the conditions attached to the SOBP pursuant to Section XI(f) or Section XII(f); each and every day the enterprise fails to comply with a SOBP condition is a violation of these regulations;
- (10) for an employee of an enterprise to provide materially false identification information to an enterprise under Section XIV.
- (11) for any person to offer or accept any gratuity at an enterprise unless it is done pursuant to this section: specifically, gratuities being offered to any person performing totally nude must be placed in a receptacle provided for receipt of gratuities.
- (12) for any person to attempt to transfer, assign or devise an SOBP;
- (13) for any person performing totally nude at an enterprise to do so less than six (6) feet from the nearest patron and on a stage less than eighteen (18) inches above floor level;
- (14) for the owner or enterprise operator of a Class I enterprise to allow any location within the enterprise to be used for the purpose of totally nude live exhibitions unless it is marked with clear indications of the six (6) foot zone. The absence of this demarcation will create a presumption that there have been violations of these regulations during performances in unmarked areas; or
- (15) for any employee of a Class I enterprise to consume any alcoholic beverage on the premises of any Class I enterprise where said employee is on duty, has been on duty within the previous 12 hours or is scheduled to be on duty within the next 12 hours.
- (16) for any class II enterprise to consume any alcoholic beverage on the premises of any location where said Class II enterprise is performing or providing any service, has within the preceding 12 hours performed or provided any service, or is scheduled to perform or provide any service within the next 12 hours.

- (17) for any person to possess or consume any alcoholic beverage on the premises of any Class I enterprise unless such possession and/or consumption is authorized by a permit or license issued pursuant to the Texas Alcoholic Beverage Code.
- (b) A Class I enterprise has the duty to maintain and make available a time record reflecting the times and dates each Class II enterprise worked at that location. The County Clerk will provide a standard format for these records which shall require a sign-in/out sheet and notation of the SOBP Badge number. These records shall be available for inspection by the Sheriff during the hours of operation of the enterprise. These records shall be retained for at least a period of two (2) years from creation. Upon written request, the enterprise has a duty to provide a copy of the records to the Sheriff, the County Clerk, County Attorney or the County Judge within seven (7) days of the request. It shall be a violation of these regulations to falsify these records.
- (c) Except as otherwise provided herein the interior of a Class I enterprise shall be configured in such a manner that inspecting law enforcement personnel have an unobstructed view of every area of the premises from any other area of the premises, excluding restrooms, to which any patron is allowed access for any purpose.

SECTION XXIII - ADDITIONAL REGULATIONS FOR ADULT MOTELS

- (a) Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two (2) or more times in less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel that is an enterprise under these regulations if the motel also provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides or other reproductions which are characterized by the depiction or description of specified sexual activities or specified anatomical areas as defined in this section.
- (b) For purposes of this section, the terms "rent" or "subrent" mean the act of allowing a room to be occupied for any form of consideration.
- (c) An "Adult Motel" permitted pursuant to these regulations may have a resident manager living on site. This shall not be considered a dwelling under the distancing requirements of Section IX (e)(4), but no individuals under the age of eighteen (18) may live on site.

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

A person who operates or causes to be operated an enterprise 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, computer programs, or other visual reproduction depicting specified sexual activities or specified anatomical areas has the duty to comply with the

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following requirements:

- (a) the interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises, excluding restrooms, to which any patron is allowed access for any purpose;
- (b) if the premises has two (2) or more manager's stations designated, the interior of the premises shall be configured so that there is an unobstructed direct line of sight view from at least one (1) station to all portions of the premises where patrons are allowed access, excluding rest rooms; and
- (c) the enterprise has the duty to maintain at least one (1) employee on duty and situated in each manager's station at all times that any patron is present inside the premises.

SECTION XXV - PERSONS YOUNGER THAN EIGHTEEN PROHIBITED FROM ENTRY

- (a) It shall be a violation of these regulations to allow a person who is younger than eighteen (18) years of age to enter or be on the premises of an enterprise at any time that the enterprise is open for business.
- (b) A Class I enterprise has the duty to station an attendant at each public entrance to the enterprise at all times during the enterprise's business hours. The attendant shall not allow any person under the age of eighteen (18) years of age to enter the enterprise. It shall be presumed that an attendant knew a person was under the age eighteen (18) unless the attendant asked for and was furnished:
 - (1) A facially valid operator's, commercial operator's, or chauffeur's driver's license; or
 - (2) A facially valid personal identification certificate issued by the Texas Department of Public Safety reflecting that such person is eighteen (18) years of age or older.

SECTION XXVII - FEES

Initial application fee:\$ _____

Renewal fee:\$ _____

Initial Badge fee:\$ _____

Renewal/Lost Badge fee:\$ _____

SECTION XXVII - OPERATIVE DATE

The effective date of these regulations is June 11, 2012.

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SECTION XXVII - SEVERABILITY

The Commissioner Court hereby declares that it adopts these regulations and each separate part hereof. Any part of these regulations held to be invalid shall not affect the validity of the remaining portions.

Absent

Marvin C. Quinney,
Wilson County Judge

Albert Gamez

Albert Gamez, Commissioner, Pct. 1
Judge Pro-Tem

Ricky Morales

Ricky Morales, Commissioner, Pct. 3

Paul Reed

Paul Reed, Commissioner, Pct. 2

Larry Wiley

Larry Wiley, Commissioner, Pct. 3



Eva S. Martinez

Eva S. Martinez, County Clerk