



Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Steve Tyler

Ward 2 – Andre' Good

Ward 3 – Don Hutchings

Ward 4 – George Catsavis

At Large Position 5 – Pam Weber

At Large Position 6 – Kevin Settle

At Large Position 7 – Philip H. Merry Jr.

AGENDA

Fort Smith Board of Directors

Study Session

May 8, 2012 ~ 12:00 Noon

River Park Events Building (West Room)

121 Riverfront Drive

1. Review regulations for sexually oriented businesses ~ *Continued from the February 14, 2012 study session / Tabled at the April 24, 2012 study session ~*
2. Discuss converting to paperless board packets
3. Review preliminary agenda for the May 15, 2012 regular meeting



Fort Smith Police Department

Kevin Lindsey, Chief of Police

INTERDEPARTMENTAL MEMORANDUM

To: Ray Gosack, City Administrator

From: Kevin Lindsey, Chief of Police

Subject: Sexually Oriented Business Ordinance Review

Date: May 2, 2012

Attachments: Ordinance DRAFT Sexually Oriented Business SOB 042412
Ordinance Sexually Oriented Business SOB Strikethrough 042412

The police department was asked to conduct a study of SOB ordinances and determine what changes can or should be made to the existing ordinance, which was passed in its current form by the Board of Directors in 2000. On February 14, 2012, the department presented its findings and recommendations to the Board of Directors during a regularly scheduled Study Session. Five recommendations were presented following a thorough analysis of ordinances from several cities regulating the operation of sexually oriented businesses by Captain Larry Ranells.

The five recommendations made and accepted by the Board included:

1. Add statements defining the purpose behind the ordinance and/or findings that led to its adoption; and
2. Expand the definitions of "*specified sexual activities*"; and
3. Retain use of 10% of shelf space as sole criteria for determining SOB status; and
4. Expansion of the definition of *adult arcade* to include specific parameters for construction, layout, access by managers, and lighting for booths; and
5. Include use of materials for both on-site and off-site in *adult bookstore* definition.

One additional item was added by Directors, which changed the minimum distance from a residence to a sexually oriented business from 500 feet to 1,000 feet.

Zoning district changes will be presented by the Planning Department.

ORDINANCE NO. _____-18-00

AN ORDINANCE REPEALING AND REPLACING EXISTING SECTIONS 14-101 THROUGH 14-168~~467~~ OF THE FORT SMITH MUNICIPAL CODE AND REDEFINING AND CLASSIFYING SEXUALLY ORIENTED BUSINESSES; PROVIDING RESTRICTIONS ON THE LOCATION OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR THE LICENSING OF SEXUALLY ORIENTED BUSINESSES AND THEIR EMPLOYEES; PROVIDING REGULATIONS CONCERNING THE OPERATION OF SEXUALLY ORIENTED BUSINESSES; AND PROVIDING PENALTIES FOR VIOLATIONS

~~BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS:~~

It is the finding of the Board of Directors of the City of Fort Smith, Arkansas, that:

Sexually

1. 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 communities where they locate; and,
2. Sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and, the concern over sexually transmitted diseases is a legitimate health concern of the City of Fort Smith ("the City") that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and,
3. Licensing is a legitimate means of accountability to ensure that operators and employees of sexually oriented businesses comply with reasonable regulations, and to ensure that operators do not allow their establishments to be used as places of illegal sexual activity or solicitation; and,
4. ThereWHEREAS, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and,

5. It~~WHEREAS,~~ it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics and secondary impacts, particularly when they are located in proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and,
6. The~~WHEREAS,~~ the Board of Directors wants to prevent these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and,
7. It~~WHEREAS,~~ it is not the intent of the Board of Directors~~this ordinance~~ to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of sexually oriented businesses as well as the health problems associated with such businesses; and,
8. It~~WHEREAS,~~ it is not the intent of the Board of Directors to condone or legitimize the distribution of obscene materials, and the Board of Directors recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the City of Fort Smith; therefore:

(A)BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS:

SECTION 14-141. Purpose.

-It is the purpose of this ordinance to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. 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 ~~neither~~ not the intent nor the 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 materials.

SECTION 14-142. (B) Findings.

-Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made to the Board of Directors, and on findings incorporated in the cases of *City of Erie v. Pap's A.M.*, (98-1161, March 29, 2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. City of Newport, KY*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); and *South Florida Free Beaches, Inc. v. City of Miami*, 734 F.2d 608 (11th Cir. 1984), as well as studies conducted in other cities including, but not limited to; Oklahoma City, Oklahoma; Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Cleveland, Ohio; Beaumont, Texas; and Seattle, Washington; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U. S. Department of Health and Human Services, Centers for Disease Control and Prevention, the Board of Directors finds that:

1. ~~(1)~~ Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.
2. ~~(2)~~ Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. See, e.g., StudiesStudy of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.

3. ~~(3)~~ Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. *See, e.g., California v. LaRue*, 409 U.S. 109, 111 (1972); *See also* Final Report of the Attorney General's Commission on Pornography (1986) at 377.
4. ~~(4)~~ Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. *See, e.g.,* Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
5. ~~(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. *See, e.g., Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698 (1986); *See also* Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
6. At least fifty 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. See, e.g., Study of Fort Myers, Florida.
7. ~~(6)~~ For the period ending December, 1996, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 581,429. *See, e.g.,* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
8. ~~(7)~~ From 1983 through September 12, 1997, the cumulative number of HIV-positive persons reported in Arkansas is 3,811. Of that number, 2,300 meet AIDS case definitions. Since 1983 and to the present, there has been an increasing cumulative number of persons testing positive for HIV antibody test in Arkansas. *See* Arkansas HIV/AIDS Report September 12, 1997.
9. ~~(8)~~ The total number of cases of early (less than one year) syphilis in the United States reported during the ten year period 1985-1995 was 367,796. *See, e.g.,* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.

10. ~~(9)~~—The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,256,297 cases reported during the period 1993-1995. *See, e.g.,* Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
11. ~~(10)~~—The Surgeon General~~surgeon-general~~ of the United States~~states~~ in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.
12. ~~(11)~~—According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. *See, e.g.,* Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
13. ~~(12)~~—Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities. *See, e.g.,* Final Report of the Attorney General's Commission on Pornography (1986) at 377.
14. ~~(13)~~—Numerous studies and reports ~~have~~~~have~~ determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. *See, e.g.,* Final Report of the Attorney General's Commission on Pornography (1986) at 377.
15. ~~(14)~~—Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity. *See, e.g., Barnes v. Glen Theatre*, 501 U.S. 560, 583 (1991). ~~1991~~.
16. ~~(15)~~—Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use. *See, e.g., Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1056 (9th Cir. 1986).
17. ~~(16)~~—The findings noted in paragraphs numbered (1) through ~~(16)~~~~15~~ raise substantial governmental concerns.

18. ~~(17)~~ Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
19. ~~(18)~~ A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
20. ~~(19)~~ Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.
21. ~~(20)~~ The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.
22. ~~(21)~~ It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct this ordinance is designed to prevent or who are likely to be witnesses to such activity.
23. ~~(22)~~ The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this ordinance.
24. ~~(23)~~ The barring of such individuals from operation or employment in sexually oriented businesses for a period of time for a previous felony conviction serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.

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

SECTION 1: CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed, including those in the Fort Smith Code of Ordinances. Likewise, all prior codifications in Section 14-141 through 14-~~168~~167 of the Fort Smith Municipal Code are hereby repealed. Neither Ordinance 16-97 nor Ordinance ~~17-97~~, nor ~~any ordinance~~ Ordinance or codification ~~providing restrictions on public nudity and public "specified sexual activities"~~ are repealed hereby.

SECTION 2: CODIFICATION.

The codifier shall codify the provisions of this ~~ordinance~~ Ordinance upon passage as Section 14-141 through 14-~~168~~166 of the Fort Smith Municipal Code, replacing the prior codifications in the Fort Smith Municipal Code with those designations repealed hereby.

SECTION 3: SEXUALLY ORIENTED BUSINESSES.

Section 14-143. 141 Definitions.

ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on matter ~~the depicting, or describing, or relating to~~ of "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE or ADULT VIDEO STORE means a commercial establishment that, as its principal business purpose, offers for sale or rental, for any form of consideration, any one or more of the following:

1. ~~(1)~~ books, magazines, periodicals, or other printed matter, or photographs, films, motion ~~pictures~~ picture, video cassettes or video reproductions, slides, or other

visual representations, whether for viewing off-premises or on-premises, that depict or describe "specified sexual activities" or "specified anatomical areas"; ~~areas~~; or

2. ~~(2)~~ instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

The determination of the principal business purpose of an establishment is based on the visual inventory or commercial activity of the establishment; provided, there shall be a rebuttable presumption that any commercial establishment which utilizes more than ten percent (10%) ~~(10%)~~ of total display area for merchandise of any type described in this definition shall be deemed to be engaged in the business of an *adult bookstore* or *adult video store* as its principal business purpose.

ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment that presents:

1. ~~(1)~~ persons -who -appear -in -a -state -of -nudity -or -semi-nudity; or
2. ~~(2)~~ live -performances -that -are -characterized -by- the display of any portion of the female breast or any portion of the human buttocks, or which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
3. ~~(3)~~ films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

ADULT MOTEL means a hotel, motel, or similar commercial establishment that:

1. ~~(1)~~ offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions, that 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 that advertises the availability of this type of adult photographic reproductions; or
2. ~~(2)~~ offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
3. ~~(3)~~ allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.

ADULT MOTION PICTURE THEATER means a commercial establishment where, as its principal business purpose, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly presented that are characterized by their emphasis upon the depiction or description of "specified sexual activities"~~activities~~ or "specified anatomical areas."

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

CLEAR AND CONVINCING means evidence so clear, direct and convincing as to enable the Director to come to a clear conviction as to the allegations sought to be established.

DIRECTOR means the Chief of Police of the City of Fort Smith, and such employee(s) of the police department as he may designate to perform the duties of the Director under this ordinance.

EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person on the premises for repair, maintenance, or cleaning of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

ESCORT means a person who, for monetary consideration, agrees or offers to act as a companion, guide, or date for another person, or who, for monetary consideration, agrees or offers to model lingerie or to engage in a "specified sexual activity" and/or perform in a state of nudity or semi-nudity for another person off the premises of a sexually oriented business.

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.

ESTABLISHMENT means and includes any of the following:

1. ~~(1)~~ the opening or commencement of any sexually oriented business as a new business;

2. ~~(2)~~ the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. ~~(3)~~ the ~~addition~~ additions of any sexually oriented business to any other existing sexually oriented business; or
4. ~~(4)~~ the relocation of any sexually oriented business.

INTENTIONALLY means that it was the conscious object of the person to engage in the conduct alleged, or to cause the result alleged.

KNOWINGLY means that the person was aware that his conduct was of the nature alleged, or that he was aware that it was practically certain that his conduct would cause the result alleged, or that he consciously disregarded a substantial risk that his conduct would cause the result alleged, or that the result alleged would occur.

LICENSED DAY-CARE CENTER means a facility licensed by the State of Arkansas, whether situated within the City or not, that provides care, training, education, custody, treatment, or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage, or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

LICENSEE means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or semi-nudity, or who displays "specified anatomical areas", is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration, with the exception of those persons and places exempted by Section 14-~~166~~164 of this enactment.

NUDITY or a STATE OF NUDITY means the showing of any "specified anatomical area."

OPERATOR means any person in a supervisory capacity over employees and/or contractors, excluding maintenance, delivery, or cleaning personnel, at the sexually oriented business, and any person responsible for security and/or any entrance/exit of the sexually oriented business.

PERSON means an individual, proprietorship, limited partnership, general partnership, corporation, association, limited liability company, or other legal entity.

PREMISES means the real property upon which the sexually oriented -business -is -located, -and all -appurtenances -thereto -and buildings -thereon, -including, -but -not -limited -to, -the -sexually oriented business, -the grounds, -private walkways, -and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to Section IV of this ordinance;

SEMI-NUDE OR SEMI-NUDITY means the appearance of any part of the female areola or nipple, or the showing of the perineum anal region, in anything less than a fully opaque covering.

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

1. ~~(1)~~ physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
2. ~~(2)~~ activities between male and female persons and/or persons of ~~the~~ the same sex when one or more of the persons is in a state of nudity.

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

SPECIFIED ANATOMICAL AREAS means:

1. ~~(1)~~ the human male genitals in a discernibly turgid state, even if fully and opaquely covered;
2. ~~(2)~~ less than completely and opaquely covered human genitals or anus.

SPECIFIED CRIMINAL ACTIVITY means carnal abuse, ~~rape,~~ sexual abuse, violation of a minor, sexual misconduct, rape, sexual solicitation of a minor, sodomy, prostitution, promotion of prostitution, sale, distribution, or display of harmful material to a minor, sexual performance by a child, possession or distribution of child pornography, and/or patronizing prostitution; in the case of any such conviction, it will constitute specified criminal activity if:

- (a) less than one (1) year has 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; or
- (b) less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense.

The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant, with the exception of a *de novo* appeal from Municipal to Circuit Court. In the case of a *de novo* appeal from Municipal Court to Circuit Court, a disqualification is not effective until such time as there is a conviction in Circuit Court. Should a conviction be reversed on appeal, or in the case of a *de novo* appeal from Municipal Court to Circuit Court, should the Circuit Court fail to convict, then there is no "conviction" for purposes of this ordinance.

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

1. Actual or simulated sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation or fondling of unclothed genitals, pubic region, buttock, or female breast; flagellation or torture in a sexual relationship; and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, sodomy, zooerasty;
2. Human genitals in the state of sexual stimulation, arousal, or tumescence;
3. Use or acts of human or animal ejaculation, sexual intercourse, sodomy, oral copulation, coitus, or masturbation;
4. Fondling or touching of human genitals, pubic regions or pubic hair, buttocks, female breasts;
5. Situations involving persons, any of whom are nude, clad in undergarments, or in sexually revealing costumes, who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraint of any such person;
6. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being;
7. Human excretion, urination, menstruation, vaginal or anal irrigation; or

Any combination of subsections (1) through (7) of this definition.~~(1) any act of sexual gratification involving the touching by one person, either directly or through clothing, of the sex organs, or buttocks, or anus of another person;~~

~~(2) any act of sexual gratification involving the touching by one person, either directly or through clothing, of the female breast of another person;~~

~~(3) intercourse, oral copulation, or sodomy, whether actual or simulated;~~

~~(4) masturbation, actual or simulated; or~~

8. ~~_____ (5) excretory functions as part of or in connection with any of the activities set forth in (1) through (4) above.~~

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

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

1. ~~_____ (1) the sale, lease, or sublease of the business;~~
2. ~~_____ (2) the transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or~~
3. ~~_____ (3) the establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.~~

SECTION 14-144. 142 Classification.

Sexually oriented businesses are classified as follows:

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

SECTION 14-145. 143 License Required.

(A) It shall be unlawful:

1. ~~(1)~~ For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Director pursuant to this ordinance;
2. ~~(2)~~ For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license issued to such employee by the Director pursuant to this ordinance;
3. ~~(3)~~ For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the Director pursuant to this ordinance.
4. ~~(4)~~ It shall be a defense to subsections (2) and (3) of this Section if the employment is of limited duration and for the sole purpose of repair, maintenance and/or cleaning of machinery, equipment, or the premises.
5. ~~(5)~~ Any person convicted of the violation of any provision within this subsection shall be subject to the general penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

(B) An application for a sexually oriented business license must be made on a form provided by the City. Except for a sexually oriented business lawfully operating on the date this division is enacted, the application must be accompanied by a sketch or a 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 inches. Prior to issuance of a license, the premises must be inspected by the fire department and code enforcement department.

(C) An application for a sexually oriented business employee license must be made on a form provided by the City.

(D) All applicants for a license must be qualified according to the provisions of this ordinance. The application may request, and the applicant shall provide, such information as to enable the City to determine whether the applicant meets the qualifications established under this ordinance. The applicant has an affirmative duty to

supplement an application with new information received subsequent to the date the application was deemed completed.

(E) If a person who wishes to own or operate a sexually oriented business is an individual, he must sign the application for a business license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, a representative of the partnership, corporation, or limited liability company must sign the application for a business license as applicant.

(F) Applications for a business license, whether original or renewal, must be made to the Director. Applications must be submitted to the ~~Office~~ of the Director, or the Director's designee, during regular working hours. Application forms shall be supplied by the Director, and shall only request the following information:

1. ~~(1)~~ The name, street address, ~~(and mailing address, if different,)~~ of the applicant(s);
2. ~~(2)~~ A recent photograph of the individual or representative submitting the application form;
3. ~~(3)~~ The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;
4. ~~(4)~~ The name under which the establishment is to be operated and a general description of the services to be provided;
 - a. ~~(a)~~ If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state the sexually oriented ~~business's~~ fictitious name;
5. ~~(5)~~ Whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in Section 14-143441, and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;
6. ~~(6)~~ Whether the applicant has had a previous license under this ordinance or other similar sexually oriented business ordinance from another ~~city~~ city, county, or state or political ~~subdivisions~~ subdivision denied, suspended, or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended, or revoked, as well

as the date of the denial, suspension, or revocation, and whether the applicant is, or has been, a partner in a partnership or an officer, director, or principal stockholder of a corporation, or a member of a limited liability company that is, or was, licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended, or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended, or revoked, as well as the date of denial, suspension, or revocation;

7. ~~(7)~~ Whether the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city~~City~~ or county in this or any other state and, if so, the names and locations of such other licensed businesses;
8. ~~(8)~~ The single classification of license, as found in Section 14-~~144~~142, for which the applicant is filing;
9. ~~(9)~~ The telephone number of the establishment;
10. ~~(10)~~ The address, and legal description of the tract of land on which the establishment is to be located;
11. ~~(11)~~ If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;
12. ~~(12)~~ If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair, or remodeling work, or other cause of the expected delay, and a statement of the owner's time schedule and plan for accomplishing the same;
13. ~~(13)~~ If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor

space, films, video cassettes, or other video reproductions, which depict “specified sexual activities” or “specified anatomical areas”, then the applicant shall comply with the application requirements set forth in Section 14-160158 hereunder.

(G) Each application for a business license shall be accompanied by the following:

1. ~~_____ (1)~~ Payment of the application fee in full;
2. ~~_____ (2)~~ If the establishment is an Arkansas corporation, limited liability company, or limited partnership, a certificate of good standing issued by the ~~Office~~ Office of the Secretary of State of Arkansas;
3. ~~_____ (3)~~ If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state;
4. ~~_____ (4)~~ Except for a sexually oriented business lawfully operating on the date this division is enacted, a current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the following types of property: the property lines of any established church or other place of public worship; public or private elementary, secondary or post-secondary school; public park; hospital; licensed day care center; and entertainment business that is oriented primarily towards children within 1,000 feet of the property to be certified; and, the property lines of any established residential district within 1,000500 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
5. ~~_____ (5)~~ Any of items (2) through (4) shall not be required for a renewal application if the sexually oriented business was lawfully operating at the time this division was enacted or the applicant states that the documents previously furnished the Director with the original application or previous renewals thereof remain correct and current.

(H) Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the Director by the

person or a designated representative of the person to whom the employee license shall issue, except as otherwise provided in this ~~ordinance~~Ordinance. Applications transmitted by facsimile will be accepted for this purpose. Each application for an employee license shall be accompanied by proof of payment of the application fee in full. A photocopy of the check or money order will be accepted for this purpose if transmitting the application by facsimile, so long as payment is actually received within five (5) working days. Application forms shall be supplied by the Director. Applications must be submitted to the ~~Office~~office of the Director or the Director's designee. Each applicant shall be required to give only the following information on the application form:

1. ~~_____ (1)~~—The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;
2. ~~_____ (2)~~—Age, and date and place of birth;
3. ~~_____ (3)~~—Height, weight, hair color, and eye color;
4. ~~_____ (4)~~—Present residence address and telephone number;
5. ~~_____ (5)~~—Present business address and telephone number;
6. ~~_____ (6)~~—Driver's~~Date, issuing state, and number of driver's~~ license, or other state-issued identification card information, to include number, issuing state and expiration date;
7. ~~_____ (7)~~—Social Security Number; and
8. ~~_____ (8)~~—Proof that the individual is at least eighteen (18) years old.

(I) Attached to the application form for an employee license to work and/or perform services in a sexually oriented business shall be the following:

1. ~~_____ (1)~~—A color photograph of the applicant clearly showing the applicant's face. If application is made by facsimile, the photograph does not have to be a color photograph, but the color photograph shall be submitted within five (5) days.
2. ~~_____ (2)~~—A statement whether the applicant has been convicted of a “specified criminal activity” as defined in Section 14-~~143~~144, and, if so, the “specified criminal activity” involved, the date, place, and jurisdiction of each.

(J) Every application for a license shall contain a statement under oath that the applicant has personal knowledge of the information contained in the application, that the information contained therein and furnished therewith is true and correct, and that the applicant is aware of the requirements of this ordinance.

(K) A separate application and business license shall be required for each sexually oriented business classification as set forth in Section 14-~~144.142~~.

(L) The fact that a person possesses other types of state or City permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business or employee license.

SECTION 14-146. ~~144~~ Issuance of License.

(A) Upon the filing of an application for a sexually oriented business employee license, the Director shall issue a temporary license to said applicant. In the case of an application filed by facsimile transmission, proof of the facsimile transmittal shall suffice as a temporary license until the actual temporary license is issued. The application shall then be referred to the appropriate City departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of the completed application. After the investigation, the Director shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. ~~_____ (1)~~ The applicant and/or the applicant's representative has intentionally failed to provide the information reasonably necessary for issuance of the license or has intentionally answered falsely a material question or request for information on the application form;
2. ~~_____ (2)~~ The applicant is under the age of eighteen (18) years;
3. ~~_____ (3)~~ The applicant has been convicted of a "specified criminal activity" as defined in Section 14-~~143141~~ of this ordinance;
4. ~~_____ (4)~~ The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule, or regulation, or prohibited by a particular provision of this ordinance; or

5. ~~(5)~~ The applicant has had a sexually oriented business employee license revoked by the City within one (1) year of the date of the current application.

In the event that the Director determines preliminarily that an applicant is not eligible for a sexually oriented business employee license, the applicant shall be given notice in writing as set forth in §14-167~~165~~ by certified mail, return receipt requested, of each of the above reasons which support such preliminary denial within thirty (30) days of the receipt of the completed application by the Director. -The applicant shall have ten (10) days after receipt of the notice to make modifications necessary for purposes of complying with this section and to reapply for a sexually oriented business employee license. After ten (10) days, the denial will become final unless such modification and reapplication is made by the applicant. However, if additional time is shown by the applicant to be reasonably necessary to comply with this section, the Director may grant an extension, not to exceed an additional thirty (30) days. Upon receipt of modifications and reapplication by the Director, the Director shall issue an employee license, unless it is determined by a preponderance of the evidence that the modifications fail to remedy the original basis for the preliminary denial by the Director. If such determination is made by the Director, the Director again must give notice in writing as set forth in §14-167~~165~~ by certified mail, return receipt requested, to the applicant of the reasons for the denial, and said denial is final and appealable.

A final denial, suspension, or revocation by the Director of a license issued pursuant to this Section shall be subject to the same rights as those set forth in subsection (I) of this Section.

(B) A license issued pursuant to subsection (A) of this Section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The employee shall keep the license available for inspection at the establishment upon lawful request at all times while engaged in employment or performing services on the sexually oriented business premises.

(C) A license issued pursuant to subsection (A) of this Section shall be subject to annual renewal upon the written application of the applicant and a written finding determined by a preponderance of the evidence by the Director that the applicant has not been convicted

of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The decision whether to renew an employee license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in ~~Section 14-147~~145. The non-renewal of a license shall be subject to the same notice, modification, and reapplication, and appeal rights as set forth elsewhere in this Section.

(D) If application is made for a sexually oriented business license, the Director shall approve or deny issuance of the license within forty-five (45) days of receipt of the completed application. The Director shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. ~~1.~~ (1) An applicant has intentionally failed to provide the information reasonably necessary for issuance of the license or has intentionally answered falsely a material question or request for information on the application form;
2. ~~2.~~ (2) An applicant is under the age of eighteen (18) years;
3. ~~3.~~ (3) An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business. An applicant denied a license on this basis will have all rights and remedies set forth in Section 14-146144 (H) to attempt to remedy any such deficiency and reapply for a license;
4. ~~4.~~ (4) An applicant has been convicted of a "specified criminal activity" as defined in Section 14-143141;
5. ~~5.~~ (5) Except for a sexually oriented business lawfully operating on the date this division is enacted, the premises to be used for the sexually oriented business do not comply with the location restrictions set forth in Section 14-155153;
6. ~~6.~~ (6) The premises to be used for the sexually oriented business have not been approved by the fire department and the code enforcement department as being in compliance with applicable laws and ordinances;

7. ~~(7)~~ An applicant has been finally denied, after opportunity to exercise due process rights, a license by the City to operate a sexually oriented business for any of the above listed reasons within the preceding twelve (12) months, or his license to operate a sexually oriented business has been finally revoked, after opportunity to exercise due process rights, for any of the reasons listed in Section 14-~~151~~~~149~~ and 14-~~152~~~~150~~ within the preceding twelve (12) months.

(E) A license issued pursuant to subsection (D) of this Section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the Section 14-~~144~~~~142~~ classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(F) The fire department and code enforcement department shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the Director. The certification shall be promptly presented to the Director.

(G) A sexually oriented business license shall issue for only one classification, as set forth in Section 14-~~144~~~~142~~.

(H) In the event that the Director determines preliminarily that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in writing by certified mail, return receipt requested, of each of the above reasons which support such preliminary denial within forty-five (45) days of the receipt of the completed application by the Director. The applicant shall have ten (10) days after receipt of the notice to make modifications necessary for purposes of complying with this section and to reapply for a sexually oriented business license. After ten (10) days, the denial will become final unless such modification and reapplication is made by the applicant. However, if additional time is shown by the applicant to be reasonably necessary to comply with this section, the Director may grant an extension, not to exceed an additional thirty (30) days. Upon receipt of modifications and reapplication by the Director, the Director shall issue a license, unless it is determined by a preponderance of the evidence that the modifications fail to remedy the original basis for the preliminary denial by the Director. If such

determination is made by the Director, the Director again must give notice in writing by certified mail, return receipt requested, to the applicant of the reasons for the denial, and said denial is final and appealable.

(I) An applicant may appeal the decision of the Director regarding a final denial to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the applicant of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may, within fifteen (15) days of service upon him of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the Board of Directors. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Board of Directors shall vote either to uphold or overrule the Director's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal. Judicial review of a denial by the Director and Board of Directors may be made pursuant to Section 14-~~153~~~~151~~ of this ordinance. During the pendency of any appeal, the parties shall maintain the status quo, unless in the interim, a court issues an injunction pursuant to Section 14-~~168~~~~166~~.

(J) A license issued pursuant to subsection (D) of this Section shall be subject to annual renewal upon the written application of the applicant and a written finding determined by a preponderance of the evidence by the Director that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a business license shall be made within forty-five (45) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 14-~~147~~~~145~~.

Any determination by the Director with respect to the renewal of a sexually oriented business license must conform to the duties and rights set forth in 14-~~146~~ ~~144~~(H). Furthermore, the applicant for a renewal of a license shall have the same rights with respect to renewal as

those set forth in 14-146 (I). ~~144(1)~~. During the pendency of any appeal, the parties shall maintain the status quo, unless in the interim, a court issues an injunction pursuant to §14-168. ~~166~~.

SECTION 14-147. ~~145~~ Fees.

The annual fee for a sexually oriented business license, whether new or renewal, is Two Hundred Fifty (\$250.00) Dollars. The annual fee for a sexually oriented business employee license, whether new or renewal, is Twenty-five (\$25.00) dollars. These fees are to be used to pay for the cost of the administration and enforcement of this ordinance.

SECTION 14-148. ~~146~~ Inspection.

(A) An applicant or licensee shall permit representatives of the police department, fire department, code enforcement department, or other City or state departments or agencies, to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is open for business.

(B) No person who operates a sexually oriented business, nor his agents or employees, shall refuse to promptly permit such lawful inspection of the premises.

(C) A person convicted of violation of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-149. ~~147~~ Expiration of License.

(A) Each business license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 14-~~145~~~~143~~, and by payment of the fee set forth in Section 14-~~147~~. ~~145~~. Upon filing of an application for renewal of a business license, the existing business license shall remain in effect until a final determination on the application for renewal is made as set forth in Section 14-~~146~~ ~~144~~(J).

(B) Each sexually oriented business employee license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 14-~~145~~~~143~~, and by payment of the fee set forth in Section 14-~~147~~. ~~145~~. Upon filing an application for renewal of a business employee license, the existing license shall remain

in effect until a final determination on the application for renewal is made as set forth in Section 14-~~146~~ ~~144~~(J).

(C) The applicant shall not be issued a license for one year from the date of a final denial if such denial is not appealed, or for one year from the date of a final determination by the appropriate appeals tribunal if the denial is appealed and is upheld on that appeal.

Any determination with respect to the renewal of a license must conform to the duties and rights set forth in Section 14-~~146~~~~144~~ of this division.

SECTION 14-150. ~~148~~ Assessment of Fines.

The Director shall fine a business licensee and/or any person who is an operator as the case may be, in the amount of Two Hundred Fifty Dollars (\$250.00) for each offense where he determines by clear and convincing evidence that:

1. ~~1.~~ 1.—A business licensee or an individual operator knew or should have known of the possession, use, or sale of controlled substances in the establishment;
2. ~~2.~~ 2.—A business licensee or an individual operator knew or should have known of the sale, use, or consumption of alcoholic beverages in the establishment;
3. ~~3.~~ 3.—A business licensee or an individual operator knew or should have known of nudity or “specified sexual activities” occurring in the establishment; or
4. ~~4.~~ 4.—A business licensee or an individual operator knew or should have known of a person under eighteen (18) years of age entering the establishment.

It is not the intent of this ordinance for the Director to impose a fine upon a business licensee for the occurrence of incidents outside the actual knowledge of the business licensee.

If the business licensee or the same individual operator of a sexually oriented business is fined (and such fine(s) are upheld after judicial review pursuant to Section 14-~~153~~~~154~~) for the same offense three times or more, and the dates of these offenses have occurred within a twelve

(12) month period, the business licensee or the individual operator, as the case may be, shall be suspended in accordance with Section 14-~~151. 149.~~ For purposes of Sections 14-~~150~~~~448~~, 14-~~151~~~~449~~, and 14-~~152~~~~450~~, multiple incidents of the same nature, which would constitute a violation of any of the provisions set forth in (1) through (4) above, shall be considered as only one (1) offense if they occur within the same business day.

In the event that the Director determines that one of the above described offenses has occurred and determines that the assessment of a fine against the business licensee or an individual operator is appropriate, the Director must give notice in writing by certified mail, return receipt requested, of each of the above reasons which support the assessment of a fine, including the date or dates when each such incident occurred. Such notice shall be given within thirty (30) days of the incident or incidences for which the business is being cited, or within thirty (30) days of the conclusion of the Director's investigation, whichever is earlier.

A licensee may appeal the decision of the Director regarding the assessment of a fine to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the Board of Directors. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Board of Directors shall vote either to uphold or overrule the Director's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal. Judicial review of a fine by the Director and Board of Directors may be made pursuant to Section 14-~~153~~~~451~~ of this ordinance.

Furthermore, judicial review of a suspension by the Director and Board of Directors may be made pursuant to Section 14-~~153~~~~451~~ of this ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this division. This section in no way is intended to replace or substitute for other criminal penalties which may apply under local, state, or federal law for any of the activities enumerated above.

SECTION 14-151. 149 Suspension.

The Director shall suspend the license of a business licensee and/or any person who is an operator, as the case may be, for a period not to exceed thirty (30) days if he determines by clear and convincing evidence that:

1. A(1)-a business licensee intentionally answered falsely a material question or request for information during the application process;
2. A(2)-a business licensee or an individual operator is convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;
3. A(3)-a business licensee or an individual operator has, with knowledge, permitted prostitution on the premises;
4. (4)-A business licensee or an individual operator has been fined for the same offense, of those offenses listed in Section 14-150~~148~~, three times or more, and the dates of those offenses occurred within a twelve (12) month period; or
5. (5)-A business licensee or an individual operator is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business. A licensee found in violation in this regard will have all rights and remedies set forth in 14-146 ~~144~~(H) to attempt to remedy any such deficiency before any suspension of the license may occur.

If a business licensee is suspended by the Director more than one time in a twelve (12) month period, the license shall be revoked in accordance with Section 14-152. ~~150~~.

In the event that the Director determines that one of the above described incidents has occurred, and determines that suspension of the business license is appropriate, the Director must give notice in writing by certified mail, return receipt requested, of each of the above reasons which support the suspension of the business license, including the date or dates when each such incident occurred. Such notice shall be given within thirty (30) days of the incident or incidences for which the business is being cited, or within thirty (30) days of the conclusion of the Director's investigation, whichever is earlier.

A licensee may appeal the decision of the Director regarding a suspension to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the Board of Directors. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Board of Directors shall vote either to uphold or overrule the Director's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal.

Judicial review of a suspension by the Director and Board of Directors may be made pursuant to Section 14-~~153~~¹⁵¹ of this ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this division.

SECTION 14-152. 50 Revocation.

The Director shall revoke a license for one (1) year from the date the revocation becomes effective if he determines that any of the grounds for suspension set forth in Section 14-~~151~~¹⁴⁹ is proven by clear and convincing evidence, and that the license has already been suspended within the preceding twelve (12) months; or that the business operated while its license was suspended.

A licensee may appeal the decision of the Director regarding a revocation to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the Director's decision. -The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. -The Director may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the Board of Directors. -After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Board of

Directors shall vote either to uphold or overrule the Director's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal.

Judicial review of a revocation by the Director and Board of Directors may be made pursuant to Section 14-~~153~~~~154~~ of this ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this division.

SECTION 14-153. ~~154~~ Judicial Review.

After denial of an initial or renewal application by the Director and Board of Directors, or upon a fine, suspension, or revocation by the Director and Board of Directors, the applicant or licensee may seek judicial review in any court of competent jurisdiction. The rules and procedures for such appeal are modeled on Rule 9 of the Arkansas Inferior Court Rules. Those Rules provide as follows:

1. ~~(1)~~ Time for taking appeal. All appeals from the Board of Directors to a court of competent jurisdiction must be filed in the Office~~office~~ of the Clerk of the particular Court having jurisdiction of the appeal within thirty (30) days from the date of the vote by the Board of Directors.
2. ~~(2)~~ How taken. An appeal from the Board of Directors to a Court of competent jurisdiction shall be taken by filing the record of the findings and proceedings of the Director and the Board of Directors, to the extent such a record is available. It shall be the duty of the City Clerk to prepare and certify such record when requested by the appellant, and upon payment of any fees authorized by law therefore. The appellant shall have the responsibility of filing such record in the Office~~office~~ of the Clerk of the Court of competent jurisdiction.
3. ~~(3)~~ No record available. When the City Clerk neglects or refuses to prepare and certify a record for filing in a Court of competent jurisdiction, the person desiring an appeal may perfect the appeal on or before the 30th day from the date of the vote by the Board of Directors by filing an Affidavit in the Office~~office~~ of the Clerk of the Court of competent

jurisdiction showing that he has requested the City Clerk to prepare and certify the records for purposes of appeal, and that the City Clerk has neglected to prepare and certify such records for purposes of appeal. A copy of such Affidavit shall be promptly served upon the City Clerk and upon the adverse party.

SECTION 14-154. 452 No Transfer of License.

A licensee shall not transfer his/her license to any person who has not obtained a license, nor shall a business licensee operate a sexually oriented business under the authority of a sexually oriented business license at any place other than the address designated in the application. This section is not intended to prevent a business licensee from being allowed to sell, assign, or transfer ownership or control of his/her business to another person already possessing a valid sexually oriented business license. It is intended only to prevent the sale, assignment, or transfer of ownership or control of a license by the licensee, or of the business to a non-licensee.

SECTION 14-155. 153 Location Restrictions.

Sexually oriented businesses not already lawfully operating on the effective date of this division shall be permitted only in zoning districts Commercial 2, ~~Commercial 3-P, Commercial 4 - P, Commercial 5, Commercial 5-SPL(S)~~ and Commercial 56, subject to the following:

1. The~~(1)~~ the sexually oriented business may not be operated within:
 - a. (a) 1,000 feet of a church or other place of public worship;
 - b. (b) 1,000 feet of a public or private elementary, secondary, or post-secondary school;
 - c. (c) 1,000 feet of a public park;
 - d. 1,000 feet of a hospital;
 - e. (d) 1,000 feet of a licensed day-care center;
 - f. (e) 1,000 feet of an entertainment business that is oriented primarily towards children;
 - g. 1,000~~(f) 500~~ feet of a boundary of any residential district; or
 - h. (g) 1,000 feet of another sexually oriented business.

These provisions, 1(a) through 1(h), shall not apply to a sexually oriented business already lawfully operating on the effective date of this division if another sexually oriented business, a church or other place of worship, or a public or private elementary, secondary, or post-secondary school, or any public park, or any hospital, or any licensed day-care center, or any entertainment business that is oriented primarily towards children, or any boundary or a residential district, is subsequently established with 1,000 feet.

2. Any legally established sexually oriented business, which would otherwise become non-conforming because of a zone change or the establishment of another use, may continue to operate in the same location if such zone change or new use is not caused by or is not the fault of the sexually oriented business.
3. (2) A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business classified pursuant to Section 14-~~144.142.~~

4. ~~(3)~~ For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property of the premises where sexually oriented business is conducted, to the nearest property line of a church or other place of public worship; public or private elementary, secondary or post--secondary school; public park; hospital; licensed day care center; entertainment business that is oriented primarily towards children; and boundary of any residential district or other sexually oriented business.

SECTION 14-156. ~~154~~ Additional Regulations for Adult Motels.

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

(B) A person in control of an adult motel must have a sexually oriented business license or be subject to penalties as set forth below.

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

(D) Any person convicted of the violation of subsection (B) of this Section shall be subject to the general penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-157. ~~155~~ Additional Regulations for Escort Agencies.

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

(B) A person shall not act as an escort or agree to act as an escort for any person under the age of 18 years.

(C) A person convicted of a violation of any provision of this Section shall be subject to the general penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-158. ~~156~~ Additional Regulations For Nude Model Studios.

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

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

(C) A person shall not appear in a state of nudity, or with knowledge, allow another to appear in a state of nudity, in an area of a nude model studio premises which can be viewed from the public right of way.

(D) A nude model studio shall not place or permit a bed or mattress in any room on the premises.

(E) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-159. 157 Additional Regulations Concerning Public Nudity.

(A) A person shall not appear in person in a state of nudity or semi-nudity in a sexually oriented business.

(B) A person shall not engage in any "specified sexual activity" in a sexually oriented business.

(C) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-160. 158 Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos.

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

1. ~~(1)~~ Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of ~~all one or more~~ manager's stations, viewing rooms, restrooms, and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north, or to some designated street or object, and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The Director~~director~~ may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and

certifies that the configuration of the premises has not been altered since it was prepared.

2. ~~(2)~~ The application shall be sworn to be true and correct by the applicant.
3. ~~(3)~~ No alteration in the configuration or location of a manager's station may be made without the prior approval of the Director or his designee.
4. ~~(4)~~ It is the duty of the owner(s)~~owners~~ and operator(s) of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
5. ~~(5)~~ The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises, including the interior of each viewing room, to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment and/or two way ~~mirrors~~~~mirror~~. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
6. ~~(6)~~ It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (5) of this ~~Section~~~~section~~ remains unobstructed by any doors, walls, merchandise, display racks, curtains, or other materials, at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to subsection (1) of this ~~Section~~~~section~~.
7. The interior of each booth shall be sufficiently illuminated so that the inside of the booth is visible from the manager's station as set forth in subsection (5) of this section.

~~(7) No viewing room may be occupied by more than one person at any time.~~

8. ~~(8)~~ The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candle~~s~~ as measured at the floor level.
9. ~~(9)~~ It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
10. There shall be no glass of any kind between booths, and booths shall not be designed, constructed, or configured in such a manner that the interior of any booth may be visible or made to be visible from any other booth.
11. ~~(10)~~ No licensee or operator shall knowingly allow an opening of any kind to exist between viewing rooms or booths.
12. ~~(11)~~ The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.
13. ~~(12)~~ The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
14. ~~(13)~~ The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. ~~No~~ wood, plywood, composition board or other porous material shall be used within forty~~-~~eight (48") inches of the floor.
15. The operator of the sexually oriented business shall ensure that premises are clean and sanitary at all times. All walls, ceilings, floors, viewing booths, restrooms, and all physical facilities in each adult business shall be thoroughly cleaned at least once each day the sexually oriented business is in operation.
16. No viewing room may be occupied by more than one person at any time.

17. It shall be the duty of the operator, and of any agents or employees present on the premises, to ensure that no "specified sexual activities," as defined in Section 14-143, occur in or on the licensed premises.

(B) A person having a duty under Subsection (A) (1) through (A) (1714) of this Section who is convicted of failing, with knowledge, to fulfill that duty, shall be subject to the general penalties as set out in section~~Section~~ 1-9 of the Fort Smith Municipal Code.

SECTION 14-161. 159 Exterior Portions of and Signage for Sexually Oriented Businesses.

(A) No owner or operator of a sexually oriented business shall allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(B) No owner or operator of a sexually oriented business shall allow the exterior portion of the sexually oriented business to have any photographs of any person in a state of nudity or engaging in any "specified sexual activity," nor shall such owner or operator allow the exterior portion of the sexually oriented business to have any pictorial or other representations of any kind of any person in a state of nudity or engaging in any "specified sexual activity."

(C) Notwithstanding any other City ordinance, code, or regulation to the contrary, the operator of any sexually oriented business or any other person shall not erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(D) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

1. ~~(1)~~ conform with the City's~~city's~~ sign code;
2. ~~(2)~~ be a flat plane, rectangular in shape; and
3. ~~(3)~~ not exceed seventy-five (75) square feet in area.

(E) Primary signs shall contain no photographs, and shall contain no pictorial or other representations of any kind of any person in a state of nudity or engaging in any "specified sexual activity."

(F) Secondary signs shall have no more than one (1) display surface. Such display surface shall:

1. ~~(1)~~ conform with the City's sign code;

2. _____(2) be a flat plane, rectangular in shape;
3. _____(3) not exceed twenty (20) square feet in area;
4. _____(4) not exceed five (5) feet in height and four (4) feet in width; and
5. _____(5) be affixed or attached to any wall or door of the enterprise.

(G) The provisions of subsection (E) above shall also apply to secondary signs.

(H) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-162. ~~160~~ Sale, Use or Consumptionconsumption of Alcoholic Beverages

Prohibited.alcoholic beverages prohibited.

(A) The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

(B) A person convicted of the violation of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-163. ~~161~~ Persons Younger than Eighteen Prohibited from Entry; Attendant Required.

(A) No person shall allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for ~~business.~~Business.

(B) It shall be the duty of the business ~~licensee~~license and/or operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance ~~to the sexually oriented business~~ at all times during such ~~sexually oriented businesses'~~ regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be a rebuttable presumption that a person knew a person was under the age of eighteen (18) unless the attendant asked for and was furnished:

1. _____(1) a valid operator's, commercial operator's, or chauffeur's driver's license issued by any state reflecting that such person is eighteen (18) years of age or older; or

2. ~~(2)~~ a valid personal identification certificate issued by any state reflecting that such person is eighteen (18) years of age or older.

(C) It shall be unlawful for any person under the age of eighteen (18) years to misrepresent such person's age for the purpose of entering the premises of a sexually oriented business at any time the sexually oriented business is open for business.

(D) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-164. ~~162~~ Massages or Baths.

It shall be unlawful for any business operating as a sexually ~~51~~-oriented business to offer the services of a massage salon, massage parlor, or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex, or where any physical contact with the recipient of such services constitutes “specified sexual activities”,⁷ regardless of the gender of the recipient or the provider of the service. A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-165. ~~163~~ Hours of Operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of five o'clock (5:00) A.M. and eleven o'clock (11:00) A.M.

SECTION 14-166. ~~164~~ Exemptions.

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

1. ~~(1)~~ by a proprietary school, licensed by the State of Arkansas, a college, junior college, or university supported entirely or partly by taxation;
2. ~~(2)~~ by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

SECTION 14-167. ~~165~~ Notices.

(A) Any notice required or permitted to be given by the Director or any other City office, division, department, or other agency under this division to any applicant, licensee operator or owner of a sexually oriented business, must be given by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or in any subsequent notice of address change that has been received by the Director. Notices mailed as above shall be deemed given upon their receipt in the United States mail. In the event that any notice given by mail is returned by the postal service, the Director, or his designee, shall cause it to be posted at the principal entrance to the establishment, and notice will be considered received upon the date of such posting.

(B) A license may designate an agent for service and notify the Director of the identity and address of the agent for service. In such event, notices are subject to the requirement of Subsection (A) above, except that notice shall be made at the address of the designated agent for service.

(C) Any notice required or permitted to be given to the Director by any person under this ordinance shall not be deemed given until and unless it is received in the Office of the Director.

(D) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Director in writing of any change of residence or mailing address.

Section 14-168. 166 Injunction.

A person who operates, or causes to be operated, a sexually oriented business without a valid business license, or a business shown by clear and convincing evidence to be engaging in a regular pattern or practice of violations of this ordinance, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates, or each day a person so acts in violation of a provision of this ordinance, is to be considered a separate offense or violation.

SECTION 4: SEPARABILITY.

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

SECTION 5: EMERGENCY CLAUSE.

It is hereby found and declared by the Board of Directors that an emergency situation exists with reference to those matters set forth herein, and that passage and immediate effect of this ~~ordinance~~Ordinance is necessary for the preservation of the health, safety, and welfare of the inhabitants of the City. This ~~ordinance~~Ordinance shall be of full force and effect upon and after the date of passage.

PASSED AND APPROVED THIS _____ day of _____,
2012_____, 2000.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

ORDINANCE NO. _____

AN ORDINANCE REPEALING AND REPLACING EXISTING SECTIONS 14-101 THROUGH 14-168 OF THE FORT SMITH MUNICIPAL CODE AND REDEFINING AND CLASSIFYING SEXUALLY ORIENTED BUSINESSES; PROVIDING RESTRICTIONS ON THE LOCATION OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR THE LICENSING OF SEXUALLY ORIENTED BUSINESSES AND THEIR EMPLOYEES; PROVIDING REGULATIONS CONCERNING THE OPERATION OF SEXUALLY ORIENTED BUSINESSES; AND PROVIDING PENALTIES FOR VIOLATIONS

It is the finding of the Board of Directors of the City of Fort Smith, Arkansas, that:

1. 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 communities where they locate; and,
2. Sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and, the concern over sexually transmitted diseases is a legitimate health concern of the City of Fort Smith (“the City”) that demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and,
3. Licensing is a legitimate means of accountability to ensure that operators and employees of sexually oriented businesses comply with reasonable regulations, and to ensure that operators do not allow their establishments to be used as places of illegal sexual activity or solicitation; and,
4. There is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and,
5. It is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics and secondary impacts, particularly when

they are located in proximity to each other, thereby contributing to urban blight and downgrading the quality of life in the adjacent area; and,

6. The Board of Directors wants to prevent these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods and deter the spread of urban blight; and,
7. It is not the intent of the Board of Directors to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance that addresses the secondary effects of sexually oriented businesses as well as the health problems associated with such businesses; and,
8. It is not the intent of the Board of Directors to condone or legitimize the distribution of obscene materials, and the Board of Directors recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state enforcement officials to enforce state and federal obscenity statutes against any such illegal activities in the City of Fort Smith; therefore:

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS:

SECTION 14-141. Purpose.

It is the purpose of this ordinance to regulate sexually oriented businesses and related activities to promote the health, safety, morals, and general welfare of the citizens of the City and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the City. 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 neither the intent nor the 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 materials.

SECTION 14-142. Findings.

Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made to the Board of Directors, and on findings incorporated in the cases of *City of Erie v. Pap's A.M.*, (98-1161, March 29, 2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976); and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *Arcara v. Cloud Books, Inc.*, 478 U.S. 697 (1986); *California v. LaRue*, 409 U.S. 109 (1972); *Iacobucci v. City of Newport, KY*, 479 U.S. 92 (1986); *United States v. O'Brien*, 391 U.S. 367 (1968); *DLS, Inc. v. City of Chattanooga*, 107 F.3d 403 (6th Cir. 1997); *Kev, Inc. v. Kitsap County*, 793 F.2d 1053 (9th Cir. 1986); *Hang On, Inc. v. City of Arlington*, 65 F.3d 1248 (5th Cir. 1995); and *South Florida Free Beaches, Inc. v. City of Miami*, 734 F.2d 608 (11th Cir. 1984), as well as studies conducted in other cities including, but not limited to: Oklahoma City, Oklahoma; Phoenix, Arizona; Minneapolis, Minnesota; Houston, Texas; Indianapolis, Indiana; Amarillo, Texas; Garden Grove, California; Los Angeles, California; Whittier, California; Austin, Texas; Cleveland, Ohio; Beaumont, Texas; and Seattle, Washington; and findings reported in the Final Report of the Attorney General's Commission on Pornography (1986), the Report of the Attorney General's Working Group on the Regulation of Sexually Oriented Businesses (June 6, 1989, State of Minnesota), and statistics obtained from the U. S. Department of Health and Human Services, Centers for Disease Control and Prevention, the Board of Directors finds that:

1. Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities that are uncontrolled by the operators of the establishments. Further, there is presently no mechanism to make owners of these establishments responsible for the activities that occur on their premises.
2. Crime statistics show that all types of crimes, especially sex-related crimes, occur with more frequency in neighborhoods where sexually oriented businesses are located. *See, e.g.*, Studies of the cities of Phoenix, Arizona; Indianapolis, Indiana; and Austin, Texas.
3. Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide private or semi-private booths or cubicles for viewing films, videos, or live sex shows. *See, e.g.*, *California v.*

LaRue, 409 U.S. 109, 111 (1972); *See also* Final Report of the Attorney General's Commission on Pornography (1986) at 377.

4. Offering and providing such booths and/or cubicles encourages such activities, which creates unhealthy conditions. *See, e.g.*, Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
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. *See, e.g.*, *Arcara v. Cloud Books, Inc.*, 478 U.S. 697, 698 (1986); *See also* Final Report of the Attorney General's Commission on Pornography (1986) at 376-77.
6. At least fifty 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. *See, e.g.*, Study of Fort Myers, Florida.
7. For the period ending December 1996, the total number of reported cases of AIDS in the United States caused by the immunodeficiency virus (HIV) was 581,429. *See, e.g.*, Statistics of the U. S. Department of Health and Human Services, Centers for Disease Control and Prevention.
8. From 1983 through September 12, 1997, the cumulative number of HIV-positive persons reported in Arkansas is 3,811. Of that number, 2,300 meet AIDS case definitions. Since 1983 and to the present, there has been an increasing cumulative number of persons testing positive for HIV antibody test in Arkansas. *See* Arkansas HIV/AIDS Report September 12, 1997.
9. The total number of cases of early (less than one year) syphilis in the United States reported during the ten year period 1985-1995 was 367,796. *See, e.g.*, Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
10. The number of cases of gonorrhea in the United States reported annually remains at a high level, with a total of 1,256,297 cases reported during the period 1993-

1995. *See, e.g.*, Statistics of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
11. The Surgeon General of the United States in his report of October 22, 1986, advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug use, exposure to infected blood and blood components, and from an infected mother to her newborn.
 12. According to the best scientific evidence available, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts. *See, e.g.*, Findings of the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention.
 13. Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities. *See, e.g.*, Final Report of the Attorney General's Commission on Pornography (1986) at 377.
 14. Numerous studies and reports have determined that bodily fluids, including semen and urine, are found in the areas of sexually oriented businesses where persons view "adult" oriented films. *See, e.g.*, Final Report of the Attorney General's Commission on Pornography (1986) at 377.
 15. Nude dancing in adult establishments encourages prostitution, increases sexual assaults, and attracts other criminal activity. *See, e.g., Barnes v. Glen Theatre*, 501 U.S. 560, 583 (1991).
 16. Nude dancing in adult establishments increases the likelihood of drug-dealing and drug use. *See, e.g., Kev, Inc. v. Kitsap County*, 793 F.2d 1053, 1056 (9th Cir. 1986).
 17. The findings noted in paragraphs numbered (1) through (16) raise substantial governmental concerns.
 18. Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.

19. A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a licensing procedure will place an incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety, and welfare of its patrons and employees, as well as the citizens of the City. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
20. Removal of doors on adult booths and requiring sufficient lighting on the premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult establishments.
21. The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases and criminal activity.
22. It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding certain employees who may engage in the conduct this ordinance is designed to prevent or who are likely to be witnesses to such activity.
23. The fact that an applicant for a sexually oriented business license has been convicted of a sex-related crime leads to the rational assumption that the applicant may engage in that conduct in contravention to this ordinance.
24. The barring of such individuals from operation or employment in sexually oriented businesses for a period of time for a previous felony conviction serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.
25. The general welfare, health, morals, and safety of the citizens of this City will be promoted by the enactment of this ordinance.

SECTION 1: CONFLICTING ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed, including those in the Fort Smith Code of Ordinances. Likewise, all prior codifications in Section 14-141 through 14-168 of the Fort Smith Municipal Code are hereby repealed. Neither Ordinance 16-97 nor Ordinance 17-97, nor any ordinance or codification providing restrictions on public nudity and public "specified sexual activities" are repealed hereby.

SECTION 2: CODIFICATION.

The codifier shall codify the provisions of this ordinance upon passage as Section 14-141 through 14-168 of the Fort Smith Municipal Code, replacing the prior codifications in the Fort Smith Municipal Code with those designations repealed hereby.

SECTION 3: SEXUALLY ORIENTED BUSINESSES.

SECTION 14-143. Definitions.

ADULT ARCADE means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by an emphasis on matter depicting, describing, or relating to "specified sexual activities" or "specified anatomical areas."

ADULT BOOKSTORE or **ADULT VIDEO STORE** means a commercial establishment that, as its principal 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, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations, whether for viewing off-premises or on-premises, that depict or describe "specified sexual activities" or "specified anatomical areas"; or
2. instruments, devices, or paraphernalia that are designed for use in connection with "specified sexual activities."

The determination of the principal business purpose of an establishment is based on the visual inventory or commercial activity of the establishment; provided, there shall be a rebuttable presumption that any commercial establishment which utilizes more than ten percent (10%) of total display area for merchandise of any type described in this definition shall be deemed to be engaged in the business of an *adult bookstore* or *adult video store* as its principal business purpose.

ADULT CABARET means a nightclub, bar, restaurant, or similar commercial establishment that presents:

1. persons who appear in a state of nudity or semi-nudity; or
2. live performances that are characterized by the display of any portion of the female breast or any portion of the human buttocks, or which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
3. films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas".

ADULT MOTEL means a hotel, motel, or similar commercial establishment that:

1. offers accommodation to the public for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions, that 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 that advertises the availability of this type of adult photographic reproductions; or
2. offers a sleeping room for rent for a period of time that is less than twenty-four (24) hours; or
3. allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than twenty-four (24) hours.

ADULT MOTION PICTURE THEATER means a commercial establishment where, as its principal business purpose, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are regularly presented that are characterized by their emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas."

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

CLEAR AND CONVINCING means evidence so clear, direct and convincing as to enable the Director to come to a clear conviction as to the allegations sought to be established.

DIRECTOR means the Chief of Police of the City of Fort Smith and such employee(s) of the police department as he may designate to perform the duties of the Director under this ordinance.

EMPLOYEE means a person who performs any service on the premises of a sexually oriented business on a full time, part time, contract basis, or independent basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise, and whether or not the said person is paid a salary, wage, or other compensation by the operator of said business. "Employee" does not include a person on the premises for repair, maintenance, or cleaning of the premises or equipment on the premises, or for the delivery of goods to the premises, nor does "employee" include a person exclusively on the premises as a patron or customer.

ESCORT means a person who, for monetary consideration, agrees or offers to act as a companion, guide, or date for another person, or who, for monetary consideration, agrees or offers to model lingerie or to engage in a "specified sexual activity" and/or perform in a state of nudity or semi-nudity for another person off the premises of a sexually oriented business.

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.

ESTABLISHMENT means and includes any of the following:

1. the opening or commencement of any sexually oriented business as a new business;
2. the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
3. the addition of any sexually oriented business to any other existing sexually oriented business; or
4. the relocation of any sexually oriented business.

INTENTIONALLY means that it was the conscious object of the person to engage in the conduct alleged, or to cause the result alleged.

KNOWINGLY means that the person was aware that his conduct was of the nature alleged, or that he was aware that it was practically certain that his conduct would cause the result alleged, or that he consciously disregarded a substantial risk that his conduct would cause the result alleged, or that the result alleged would occur.

LICENSED DAY-CARE CENTER means a facility licensed by the State of Arkansas, whether situated within the City or not, that provides care, training, education, custody, treatment, or supervision for more than twelve (12) children under fourteen (14) years of age, where such children are not related by blood, marriage, or adoption to the owner or operator of the facility, for less than twenty-four (24) hours a day, regardless of whether or not the facility is operated for a profit or charges for the services it offers.

LICENSEE means a person in whose name a license has been issued, as well as the individual listed as an applicant on the application for a license.

NUDE MODEL STUDIO means any place where a person who appears in a state of nudity or semi-nudity, or who displays "specified anatomical areas", is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons for consideration, with the exception of those persons and places exempted by Section 14-166 of this enactment.

NUDITY or a STATE OF NUDITY means the showing of any "specified anatomical area."

OPERATOR means any person in a supervisory capacity over employees and/or contractors, excluding maintenance, delivery, or cleaning personnel, at the sexually oriented business, and any person responsible for security and/or any entrance/exit of the sexually oriented business.

PERSON means an individual, proprietorship, limited partnership, general partnership, corporation, association, limited liability company, or other legal entity.

PREMISES means the real property upon which the sexually oriented business is located, and all appurtenances thereto and buildings thereon, including, but not limited to, the sexually oriented business, the grounds, private walkways, and parking lots and/or parking garages adjacent thereto, under the ownership, control, or supervision of the licensee, as described in the application for a business license pursuant to Section IV of this ordinance;

SEMI-NUDE OR SEMI-NUDITY means the appearance of any part of the female areola or nipple, or the showing of the perineum anal region, in anything less than a fully opaque covering.

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

1. physical contact in the form of wrestling or tumbling between persons of the opposite sex; or
2. 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.

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

SPECIFIED ANATOMICAL AREAS means:

1. the human male genitals in a discernibly turgid state, even if fully and opaquely covered;
2. less than completely and opaquely covered human genitals or anus.

SPECIFIED CRIMINAL ACTIVITY means carnal abuse, sexual abuse, violation of a minor, sexual misconduct, rape, sexual solicitation of a minor, sodomy, prostitution, promotion of prostitution, sale, distribution, or display of harmful material to a minor, sexual performance by a child, possession or distribution of child pornography, and/or patronizing prostitution; in the case of any such conviction, it will constitute specified criminal activity if:

- (a) less than one (1) year has 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; or
- (b) less than five (5) years have elapsed since the date of conviction or the date of release from confinement, whichever is the later date, if the conviction is of a felony offense.

The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant, with the exception of a *de novo* appeal from Municipal to Circuit Court. In the case of a *de novo* appeal from Municipal Court to Circuit Court, a disqualification is not effective until such time as there is a conviction in Circuit Court. Should a conviction be reversed on appeal, or in the case of a *de novo* appeal from Municipal Court to Circuit

Court, should the Circuit Court fail to convict, then there is no "conviction" for purposes of this ordinance.

SPECIFIED SEXUAL ACTIVITIES means and includes any of the following:

1. Actual or simulated sexual intercourse; oral copulation; anal intercourse; oral-anal copulation; bestiality; direct physical stimulation or fondling of unclothed genitals, pubic region, buttock, or female breast; flagellation or torture in a sexual relationship; and any of the following sexually oriented acts or conduct: anilingus, buggery, coprophagy, coprophilia, cunnilingus, fellatio, necrophilia, pederasty, pedophilia, piquerism, sapphism, sodomy, zoerasty;
2. Human genitals in the state of sexual stimulation, arousal, or tumescence;
3. Use or acts of human or animal ejaculation, sexual intercourse, sodomy, oral copulation, coitus, or masturbation;
4. Fondling or touching of human genitals, pubic regions or pubic hair, buttocks, female breasts;
5. Situations involving persons, any of whom are nude, clad in undergarments, or in sexually revealing costumes, who are engaged in activities involving the flagellation, torture, fettering, binding, or other physical restraint of any such person;
6. Erotic or lewd touching, fondling, or other sexually oriented contact with an animal by a human being;
7. Human excretion, urination, menstruation, vaginal or anal irrigation; or
8. Any combination of subsections (1) through (7) of this definition.

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

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

1. the sale, lease, or sublease of the business;
2. the transfer of securities that form a controlling interest in the business, whether by sale, exchange, or similar means; or

3. the establishment of a trust, gift, or other similar legal device that transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

SECTION 14-144. Classification.

Sexually oriented businesses are classified as follows:

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

SECTION 14-145. License Required.

(A) It shall be unlawful:

1. For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Director pursuant to this ordinance;
2. For any person who operates a sexually oriented business to employ a person to work and/or perform services on the premises of the sexually oriented business, if such employee is not in possession of a valid sexually oriented business employee license issued to such employee by the Director pursuant to this ordinance;
3. For any person to obtain employment with a sexually oriented business if such person is not in possession of a valid sexually oriented business employee license issued to such person by the Director pursuant to this ordinance.
4. It shall be a defense to subsections (2) and (3) of this Section if the employment is of limited duration and for the sole purpose of repair, maintenance and/or cleaning of machinery, equipment, or the premises.

5. Any person convicted of the violation of any provision within this subsection shall be subject to the general penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

(B) An application for a sexually oriented business license must be made on a form provided by the City. Except for a sexually oriented business lawfully operating on the date this division is enacted, the application must be accompanied by a sketch or a 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 inches. Prior to issuance of a license, the premises must be inspected by the fire department and code enforcement department.

(C) An application for a sexually oriented business employee license must be made on a form provided by the City.

(D) All applicants for a license must be qualified according to the provisions of this ordinance. The application may request, and the applicant shall provide, such information as to enable the City to determine whether the applicant meets the qualifications established under this ordinance. The applicant has an affirmative duty to supplement an application with new information received subsequent to the date the application was deemed completed.

(E) If a person who wishes to own or operate a sexually oriented business is an individual, he must sign the application for a business license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, a representative of the partnership, corporation, or limited liability company must sign the application for a business license as applicant.

(F) Applications for a business license, whether original or renewal, must be made to the Director. Applications must be submitted to the Office of the Director, or the Director's designee, during regular working hours. Application forms shall be supplied by the Director, and shall only request the following information:

1. The name, street address, and mailing address, if different, of the applicant(s);

2. A recent photograph of the individual or representative submitting the application form;
3. The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number;
4. The name under which the establishment is to be operated and a general description of the services to be provided;
 - a. If the applicant intends to operate the sexually oriented business under a name other than that of the applicant, he or she must state the sexually oriented business' fictitious name;
5. Whether the applicant has been convicted, or is awaiting trial on pending charges, of a "specified criminal activity" as defined in Section 14-143, and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each;
6. Whether the applicant has had a previous license under this ordinance or other similar sexually oriented business ordinance from another city, county, or state or political subdivision denied, suspended, or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended, or revoked, as well as the date of the denial, suspension, or revocation, and whether the applicant is, or has been, a partner in a partnership or an officer, director, or principal stockholder of a corporation, or a member of a limited liability company that is, or was, licensed under a sexually oriented business ordinance whose business license has previously been denied, suspended, or revoked, including the name and location of the sexually oriented business for which the business license was denied, suspended, or revoked, as well as the date of denial, suspension, or revocation;
7. Whether the applicant holds any other licenses under this ordinance or other similar sexually oriented business ordinance from another city or county in this or any other state and, if so, the names and locations of such other licensed businesses;

8. The single classification of license, as found in Section 14-144, for which the applicant is filing;
9. The telephone number of the establishment;
10. The address, and legal description of the tract of land on which the establishment is to be located;
11. If the establishment is in operation, the date on which the owner(s) acquired the establishment for which the business license is sought, and the date on which the establishment began operations as a sexually oriented business at the location for which the business license is sought;
12. If the establishment is not in operation, the expected startup date (which shall be expressed in number of days from the date of issuance of the business license). If the expected startup date is to be more than ten (10) days following the date of issuance of the business license, then a detailed explanation of the construction, repair, or remodeling work, or other cause of the expected delay, and a statement of the owner's time schedule and plan for accomplishing the same;
13. If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, or other video reproductions, which depict "specified sexual activities" or "specified anatomical areas", then the applicant shall comply with the application requirements set forth in Section 14-160 hereunder.

(G) Each application for a business license shall be accompanied by the following:

1. Payment of the application fee in full;
2. If the establishment is an Arkansas corporation, limited liability company, or limited partnership, a certificate of good standing issued by the Office of the Secretary of State of Arkansas;
3. If the establishment is a foreign corporation, a certified copy of the certificate of authority to transact business in this state;

4. Except for a sexually oriented business lawfully operating on the date this division is enacted, a current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor depicting the property lines and the structures containing any existing sexually oriented businesses within 1,000 feet of the following types of property: the property lines of any established church or other place of public worship; public or private elementary, secondary or post-secondary school; public park; hospital; licensed day care center; and entertainment business that is oriented primarily towards children within 1,000 feet of the property to be certified; and, the property lines of any established residential district within 1,000 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
5. Any of items (2) through (4) shall not be required for a renewal application if the sexually oriented business was lawfully operating at the time this division was enacted or the applicant states that the documents previously furnished the Director with the original application or previous renewals thereof remain correct and current.

(H) Applications for an employee license to work and/or perform services in a sexually oriented business, whether original or renewal, must be made to the Director by the person or a designated representative of the person to whom the employee license shall issue, except as otherwise provided in this ordinance. Applications transmitted by facsimile will be accepted for this purpose. Each application for an employee license shall be accompanied by proof of payment of the application fee in full. A photocopy of the check or money order will be accepted for this purpose if transmitting the application by facsimile, so long as payment is actually received within five (5) working days. Application forms shall be supplied by the Director. Applications must be submitted to the Office of the Director or the Director's designee. Each applicant shall be required to give only the following information on the application form:

1. The applicant's given name, and any other names by which the applicant is or has been known, including "stage" names and/or aliases;

2. Age, and date and place of birth;
3. Height, weight, hair color, and eye color;
4. Present residence address and telephone number;
5. Present business address and telephone number;
6. Driver's license, or other state-issued identification card information, to include number, issuing state and expiration date;
7. Social Security Number; and
8. Proof that the individual is at least eighteen (18) years old.

(I) Attached to the application form for an employee license to work and/or perform services in a sexually oriented business shall be the following:

1. A color photograph of the applicant clearly showing the applicant's face. If application is made by facsimile, the photograph does not have to be a color photograph, but the color photograph shall be submitted within five (5) days.
2. A statement whether the applicant has been convicted of a "specified criminal activity" as defined in Section 14-143, and, if so, the "specified criminal activity" involved, the date, place, and jurisdiction of each.

(J) Every application for a license shall contain a statement under oath that the applicant has personal knowledge of the information contained in the application, that the information contained therein and furnished therewith is true and correct, and that the applicant is aware of the requirements of this ordinance.

(K) A separate application and business license shall be required for each sexually oriented business classification as set forth in Section 14-144.

(L) The fact that a person possesses other types of state or City permits and/or licenses does not exempt him from the requirement of obtaining a sexually oriented business or employee license.

SECTION 14-146. Issuance of License.

(A) Upon the filing of an application for a sexually oriented business employee license, the Director shall issue a temporary license to said applicant. In the case of an application filed by facsimile transmission, proof of the facsimile transmittal shall suffice

as a temporary license until the actual temporary license is issued. The application shall then be referred to the appropriate City departments for investigation to be made on the information contained in the application. The application process shall be completed within thirty (30) days from the date of the completed application. After the investigation, the Director shall issue an employee license, unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. The applicant and/or the applicant's representative has intentionally failed to provide the information reasonably necessary for issuance of the license or has intentionally answered falsely a material question or request for information on the application form;
2. The applicant is under the age of eighteen (18) years;
3. The applicant has been convicted of a "specified criminal activity" as defined in Section 14-143 of this ordinance;
4. The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule, or regulation, or prohibited by a particular provision of this ordinance; or
5. The applicant has had a sexually oriented business employee license revoked by the City within one (1) year of the date of the current application.

In the event that the Director determines preliminarily that an applicant is not eligible for a sexually oriented business employee license, the applicant shall be given notice in writing as set forth in §14-167 by certified mail, return receipt requested, of each of the above reasons which support such preliminary denial within thirty (30) days of the receipt of the completed application by the Director. The applicant shall have ten (10) days after receipt of the notice to make modifications necessary for purposes of complying with this section and to reapply for a sexually oriented business employee license. After ten (10) days, the denial will become final unless such modification and reapplication is made by the applicant. However, if additional time is shown by the applicant to be reasonably necessary to comply with this section, the Director may grant an extension, not to exceed an additional thirty (30) days. Upon receipt of modifications and reapplication by the Director, the Director shall issue an employee license,

unless it is determined by a preponderance of the evidence that the modifications fail to remedy the original basis for the preliminary denial by the Director. If such determination is made by the Director, the Director again must give notice in writing as set forth in §14-167 by certified mail, return receipt requested, to the applicant of the reasons for the denial, and said denial is final and appealable.

A final denial, suspension, or revocation by the Director of a license issued pursuant to this Section shall be subject to the same rights as those set forth in subsection (I) of this Section.

(B) A license issued pursuant to subsection (A) of this Section, if granted, shall state on its face the name of the person to whom it is granted, the expiration date, and the address of the sexually oriented business. The employee shall keep the license available for inspection at the establishment upon lawful request at all times while engaged in employment or performing services on the sexually oriented business premises.

(C) A license issued pursuant to subsection (A) of this Section shall be subject to annual renewal upon the written application of the applicant and a written finding determined by a preponderance of the evidence by the Director that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license, which would be grounds to deny the initial license application. The decision whether to renew an employee license shall be made within thirty (30) days of the completed application. The renewal of a license shall be subject to the fee as set forth in § 14-147. The non-renewal of a license shall be subject to the same notice, modification, and reapplication, and appeal rights as set forth elsewhere in this Section.

(D) If application is made for a sexually oriented business license, the Director shall approve or deny issuance of the license within forty-five (45) days of receipt of the completed application. The Director shall issue a license to an applicant unless it is determined by a preponderance of the evidence that one or more of the following findings is true:

1. An applicant has intentionally failed to provide the information reasonably necessary for issuance of the license or has intentionally answered falsely a material question or request for information on the application form;

2. An applicant is under the age of eighteen (18) years;
3. An applicant is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business. An applicant denied a license on this basis will have all rights and remedies set forth in Section 14-146 (H) to attempt to remedy any such deficiency and reapply for a license;
4. An applicant has been convicted of a "specified criminal activity" as defined in Section 14-143;
5. Except for a sexually oriented business lawfully operating on the date this division is enacted, the premises to be used for the sexually oriented business do not comply with the location restrictions set forth in Section 14-155;
6. The premises to be used for the sexually oriented business have not been approved by the fire department and the code enforcement department as being in compliance with applicable laws and ordinances;
7. An applicant has been finally denied, after opportunity to exercise due process rights, a license by the City to operate a sexually oriented business for any of the above listed reasons within the preceding twelve (12) months, or his license to operate a sexually oriented business has been finally revoked, after opportunity to exercise due process rights, for any of the reasons listed in Section 14-151 and 14-152 within the preceding twelve (12) months.

(E) A license issued pursuant to subsection (D) of this Section, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business, and the Section 14-144 classification for which the license is issued. The license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time.

(F) The fire department and code enforcement department shall complete their certification that the premises are in compliance or not in compliance within twenty (20) days of receipt of the completed application by the Director. The certification shall be promptly presented to the Director.

(G) A sexually oriented business license shall issue for only one classification, as set forth in Section 14-144.

(H) In the event that the Director determines preliminarily that an applicant is not eligible for a sexually oriented business license, the applicant shall be given notice in writing by certified mail, return receipt requested, of each of the above reasons which support such preliminary denial within forty-five (45) days of the receipt of the completed application by the Director. The applicant shall have ten (10) days after receipt of the notice to make modifications necessary for purposes of complying with this section and to reapply for a sexually oriented business license. After ten (10) days, the denial will become final unless such modification and reapplication is made by the applicant. However, if additional time is shown by the applicant to be reasonably necessary to comply with this section, the Director may grant an extension, not to exceed an additional thirty (30) days. Upon receipt of modifications and reapplication by the Director, the Director shall issue a license, unless it is determined by a preponderance of the evidence that the modifications fail to remedy the original basis for the preliminary denial by the Director. If such determination is made by the Director, the Director again must give notice in writing by certified mail, return receipt requested, to the applicant of the reasons for the denial, and said denial is final and appealable.

(I) An applicant may appeal the decision of the Director regarding a final denial to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the applicant of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may, within fifteen (15) days of service upon him of the applicant's memorandum, submit a memorandum in response to the memorandum filed by the applicant on appeal to the Board of Directors. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Board of Directors shall vote either to uphold or overrule the Director's decision. Such vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal. Judicial review of a denial by the Director and Board of Directors may be made pursuant to Section 14-153 of this ordinance. During the pendency of any appeal,

the parties shall maintain the status quo, unless in the interim, a court issues an injunction pursuant to Section 14-168.

(J) A license issued pursuant to subsection (D) of this Section shall be subject to annual renewal upon the written application of the applicant and a written finding determined by a preponderance of the evidence by the Director that the applicant has not been convicted of any "specified criminal activity" as defined in this ordinance, or committed any act during the existence of the previous license which would be grounds to deny the initial license application. The decision whether to renew a business license shall be made within forty-five (45) days of the completed application. The renewal of a license shall be subject to the fee as set forth in Section 14-147.

Any determination by the Director with respect to the renewal of a sexually oriented business license must conform to the duties and rights set forth in 14-146 (H). Furthermore, the applicant for a renewal of a license shall have the same rights with respect to renewal as those set forth in 14-146 (I). During the pendency of any appeal, the parties shall maintain the status quo, unless in the interim, a court issues an injunction pursuant to §14-168.

SECTION 14-147. Fees.

The annual fee for a sexually oriented business license, whether new or renewal, is Two Hundred Fifty (\$250.00) Dollars. The annual fee for a sexually oriented business employee license, whether new or renewal, is Twenty-five (\$25.00) dollars. These fees are to be used to pay for the cost of the administration and enforcement of this ordinance.

SECTION 14-148. Inspection.

(A) An applicant or licensee shall permit representatives of the police department, fire department, code enforcement department, or other City or state departments or agencies, to inspect the premises of a sexually oriented business for the purpose of insuring compliance with the law, at any time it is open for business.

(B) No person who operates a sexually oriented business, nor his agents or employees, shall refuse to promptly permit such lawful inspection of the premises.

(C) A person convicted of violation of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-149. Expiration of License.

(A) Each business license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 14-145, and by payment of the fee set forth in Section 14-147. Upon filing of an application for renewal of a business license, the existing business license shall remain in effect until a final determination on the application for renewal is made as set forth in Section 14-146 (J).

(B) Each sexually oriented business employee license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 14-145, and by payment of the fee set forth in Section 14-147. Upon filing an application for renewal of a business employee license, the existing license shall remain in effect until a final determination on the application for renewal is made as set forth in Section 14-146 (J).

(C) The applicant shall not be issued a license for one year from the date of a final denial if such denial is not appealed, or for one year from the date of a final determination by the appropriate appeals tribunal if the denial is appealed and is upheld on that appeal.

Any determination with respect to the renewal of a license must conform to the duties and rights set forth in Section 14-146 of this division.

SECTION 14-150. Assessment of Fines.

The Director shall fine a business licensee and/or any person who is an operator as the case may be, in the amount of Two Hundred Fifty Dollars (\$250.00) for each offense where he determines by clear and convincing evidence that:

1. A business licensee or an individual operator knew or should have known of the possession, use, or sale of controlled substances in the establishment;

2. A business licensee or an individual operator knew or should have known of the sale, use, or consumption of alcoholic beverages in the establishment;
3. A business licensee or an individual operator knew or should have known of nudity or “specified sexual activities” occurring in the establishment; or
4. A business licensee or an individual operator knew or should have known of a person under eighteen (18) years of age entering the establishment.

It is not the intent of this ordinance for the Director to impose a fine upon a business licensee for the occurrence of incidents outside the actual knowledge of the business licensee.

If the business licensee or the same individual operator of a sexually oriented business is fined (and such fine(s) are upheld after judicial review pursuant to Section 14-153) for the same offense three times or more, and the dates of these offenses have occurred within a twelve (12) month period, the business licensee or the individual operator, as the case may be, shall be suspended in accordance with Section 14-151. For purposes of Sections 14-150, 14-151, and 14-152, multiple incidents of the same nature, which would constitute a violation of any of the provisions set forth in (1) through (4) above, shall be considered as only one (1) offense if they occur within the same business day.

In the event that the Director determines that one of the above described offenses has occurred and determines that the assessment of a fine against the business licensee or an individual operator is appropriate, the Director must give notice in writing by certified mail, return receipt requested, of each of the above reasons which support the assessment of a fine, including the date or dates when each such incident occurred. Such notice shall be given within thirty (30) days of the incident or incidences for which the business is being cited, or within thirty (30) days of the conclusion of the Director's investigation, whichever is earlier.

A licensee may appeal the decision of the Director regarding the assessment of a fine to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the

memorandum filed by the licensee on appeal to the Board of Directors. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Board of Directors shall vote either to uphold or overrule the Director's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal. Judicial review of a fine by the Director and Board of Directors may be made pursuant to Section 14-153 of this ordinance.

Furthermore, judicial review of a suspension by the Director and Board of Directors may be made pursuant to Section 14-153 of this ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this division. This section in no way is intended to replace or substitute for other criminal penalties which may apply under local, state, or federal law for any of the activities enumerated above.

SECTION 14-151. Suspension.

The Director shall suspend the license of a business licensee and/or any person who is an operator, as the case may be, for a period not to exceed thirty (30) days if he determines by clear and convincing evidence that:

1. A business licensee intentionally answered falsely a material question or request for information during the application process;
2. A business licensee or an individual operator is convicted of a "specified criminal activity" on a charge that was pending prior to the issuance of the license;
3. A business licensee or an individual operator has, with knowledge, permitted prostitution on the premises;
4. A business licensee or an individual operator has been fined for the same offense, of those offenses listed in Section 14-150, three times or more, and the dates of those offenses occurred within a twelve (12) month period; or
5. A business licensee or an individual operator is overdue in payment to the City of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business. A licensee found in violation in this

regard will have all rights and remedies set forth in 14-146 (H) to attempt to remedy any such deficiency before any suspension of the license may occur.

If a business licensee is suspended by the Director more than one time in a twelve (12) month period, the license shall be revoked in accordance with Section 14-152.

In the event that the Director determines that one of the above described incidents has occurred, and determines that suspension of the business license is appropriate, the Director must give notice in writing by certified mail, return receipt requested, of each of the above reasons which support the suspension of the business license, including the date or dates when each such incident occurred. Such notice shall be given within thirty (30) days of the incident or incidences for which the business is being cited, or within thirty (30) days of the conclusion of the Director's investigation, whichever is earlier.

A licensee may appeal the decision of the Director regarding a suspension to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the Board of Directors. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Board of Directors shall vote either to uphold or overrule the Director's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal.

Judicial review of a suspension by the Director and Board of Directors may be made pursuant to Section 14-153 of this ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this division.

SECTION 14-152. Revocation.

The Director shall revoke a license for one (1) year from the date the revocation becomes effective if he determines that any of the grounds for suspension set forth in Section 14-151 is proven by clear and convincing evidence, and that the license has already been suspended within the preceding twelve (12) months; or that the business operated while its license was suspended.

A licensee may appeal the decision of the Director regarding a revocation to the Board of Directors by filing a written notice of appeal with the City Clerk within fifteen (15) days after service of notice upon the licensee of the Director's decision. The notice of appeal shall be accompanied by a memorandum or other writing setting out fully the grounds for such appeal and all arguments in support thereof. The Director may, within fifteen (15) days of service upon him of the licensee's memorandum, submit a memorandum in response to the memorandum filed by the licensee on appeal to the Board of Directors. After reviewing such memoranda, as well as the Director's written decision, if any, and exhibits submitted to the Director, the Board of Directors shall vote either to uphold or overrule the Director's decision. Such a vote shall be taken within twenty-one (21) calendar days after the date on which the City Clerk receives the notice of appeal.

Judicial review of a revocation by the Director and Board of Directors may be made pursuant to Section 14-153 of this ordinance. During the pendency of the appeal, the status quo shall be maintained such that the licensee shall continue to be allowed to operate its business pursuant to its license and pursuant to this division.

SECTION 14-153. Judicial Review.

After denial of an initial or renewal application by the Director and Board of Directors, or upon a fine, suspension, or revocation by the Director and Board of Directors, the applicant or licensee may seek judicial review in any court of competent jurisdiction. The rules and procedures for such appeal are modeled on Rule 9 of the Arkansas Inferior Court Rules. Those Rules provide as follows:

1. Time for taking appeal. All appeals from the Board of Directors to a court of competent jurisdiction must be filed in the Office of the Clerk of the particular Court having jurisdiction of the appeal within thirty (30) days from the date of the vote by the Board of Directors.

2. How taken. An appeal from the Board of Directors to a Court of competent jurisdiction shall be taken by filing the record of the findings and proceedings of the Director and the Board of Directors, to the extent such a record is available. It shall be the duty of the City Clerk to prepare and certify such record when requested by the appellant, and upon payment of any fees authorized by law therefore. The appellant shall have the responsibility of filing such record in the Office of the Clerk of the Court of competent jurisdiction.
3. No record available. When the City Clerk neglects or refuses to prepare and certify a record for filing in a Court of competent jurisdiction, the person desiring an appeal may perfect the appeal on or before the 30th day from the date of the vote by the Board of Directors by filing an Affidavit in the Office of the Clerk of the Court of competent jurisdiction showing that he has requested the City Clerk to prepare and certify the records for purposes of appeal, and that the City Clerk has neglected to prepare and certify such records for purposes of appeal. A copy of such Affidavit shall be promptly served upon the City Clerk and upon the adverse party.

SECTION 14-154. No Transfer of License.

A licensee shall not transfer his/her license to any person who has not obtained a license, nor shall a business licensee operate a sexually oriented business under the authority of a sexually oriented business license at any place other than the address designated in the application. This section is not intended to prevent a business licensee from being allowed to sell, assign, or transfer ownership or control of his/her business to another person already possessing a valid sexually oriented business license. It is intended only to prevent the sale, assignment, or transfer of ownership or control of a license by the licensee, or of the business to a non-licensee.

SECTION 14-155. Location Restrictions.

Sexually oriented businesses not already lawfully operating on the effective date of this division shall be permitted only in zoning districts Commercial 4 and Commercial 5, subject to the following:

1. The sexually oriented business may not be operated within:
 - a. 1,000 feet of a church or other place of public worship;
 - b. 1,000 feet of a public or private elementary, secondary, or post-secondary school;
 - c. 1,000 feet of a public park;
 - d. 1,000 feet of a hospital;
 - e. 1,000 feet of a licensed day-care center;
 - f. 1,000 feet of an entertainment business that is oriented primarily towards children;
 - g. 1,000 feet of a boundary of any residential district; or
 - h. 1,000 feet of another sexually oriented business.

These provisions, 1(a) through 1(h), shall not apply to a sexually oriented business already lawfully operating on the effective date of this division if another sexually oriented business, a church or other place of worship, or a public or private elementary, secondary, or post-secondary school, or any public park, or any hospital, or any licensed day-care center, or any entertainment business that is oriented primarily towards children, or any boundary or a residential district, is subsequently established with 1,000 feet.

2. Any legally established sexually oriented business, which would otherwise become non-conforming because of a zone change or the establishment of another use, may continue to operate in the same location if such zone change or new use is not caused by or is not the fault of the sexually oriented business.
3. A sexually oriented business may not be operated in the same building, structure, or portion thereof, containing another sexually oriented business classified pursuant to Section 14-144.

4. For the purpose of this ordinance, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest property of the premises where sexually oriented business is conducted, to the nearest property line of a church or other place of public worship; public or private elementary, secondary or post-secondary school; public park; hospital; licensed day care center; entertainment business that is oriented primarily towards children; and boundary of any residential district or other sexually oriented business.

SECTION 14-156. Additional Regulations for Adult Motels.

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

(B) A person in control of an adult motel must have a sexually oriented business license or be subject to penalties as set forth below.

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

(D) Any person convicted of the violation of subsection (B) of this Section shall be subject to the general penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-157. Additional Regulations for Escort Agencies.

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

(B) A person shall not act as an escort or agree to act as an escort for any person under the age of 18 years.

(C) A person convicted of a violation of any provision of this Section shall be subject to the general penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-158. Additional Regulations For Nude Model Studios.

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

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

(C) A person shall not appear in a state of nudity, or with knowledge, allow another to appear in a state of nudity, in an area of a nude model studio premises which can be viewed from the public right of way.

(D) A nude model studio shall not place or permit a bed or mattress in any room on the premises.

(E) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-159. Additional Regulations Concerning Public Nudity.

(A) A person shall not appear in person in a state of nudity or semi-nudity in a sexually oriented business.

(B) A person shall not engage in any “specified sexual activity” in a sexually oriented business.

(C) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-160. Regulations Pertaining to Exhibition of Sexually Explicit Films and Videos.

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

1. Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of all manager's stations, viewing rooms, restrooms, and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the business license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north, or to some designated street or object, and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The Director may waive the foregoing diagram for renewal applications if the applicant adopts a

diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

2. The application shall be sworn to be true and correct by the applicant.
3. No alteration in the configuration or location of a manager's station may be made without the prior approval of the Director or his designee.
4. It is the duty of the owner(s) and operator(s) of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
5. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of the entire area of the premises, including the interior of each viewing room, to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment and/or two way mirrors. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of the entire area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
6. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the view area specified in subsection (5) of this Section remains unobstructed by any doors, walls, merchandise, display racks, curtains, or other materials, at all times and to ensure that no patron is permitted access to any area of the premises that has been designated as an area in which patrons will not be permitted, as designated in the application filed pursuant to subsection (1) of this Section.
7. The interior of each booth shall be sufficiently illuminated so that the inside of the booth is visible from the manager's station as set forth in subsection (5) of this section.

8. The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
9. It shall be the duty of the operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
10. There shall be no glass of any kind between booths, and booths shall not be designed, constructed, or configured in such a manner that the interior of any booth may be visible or made to be visible from any other booth.
11. No licensee or operator shall knowingly allow an opening of any kind to exist between viewing rooms or booths.
12. The operator of the sexually oriented business shall, during each business day, inspect the walls between the viewing booths to determine if any openings or holes exist.
13. The operator of the sexually oriented business shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
14. The operator of the sexually oriented business shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48") inches of the floor.
15. The operator of the sexually oriented business shall ensure that premises are clean and sanitary at all times. All walls, ceilings, floors, viewing booths, restrooms, and all physical facilities in each adult business shall be thoroughly cleaned at least once each day the sexually oriented business is in operation.
16. No viewing room may be occupied by more than one person at any time.

17. It shall be the duty of the operator, and of any agents or employees present on the premises, to ensure that no “specified sexual activities,” as defined in Section 14-143, occur in or on the licensed premises.

(B) A person having a duty under Subsection (A) (1) through (A) (17) of this Section who is convicted of failing, with knowledge, to fulfill that duty, shall be subject to the general penalties as set out in section 1-9 of the Fort Smith Municipal Code.

SECTION 14-161. Exterior Portions of and Signage for Sexually Oriented Businesses.

(A) No owner or operator of a sexually oriented business shall allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

(B) No owner or operator of a sexually oriented business shall allow the exterior portion of the sexually oriented business to have any photographs of any person in a state of nudity or engaging in any “specified sexual activity”, nor shall such owner or operator allow the exterior portion of the sexually oriented business to have any pictorial or other representations of any kind of any person in a state of nudity or engaging in any “specified sexual activity.”

(C) Notwithstanding any other City ordinance, code, or regulation to the contrary, the operator of any sexually oriented business or any other person shall not erect, construct, or maintain any sign for the sexually oriented business other than the one (1) primary sign and one (1) secondary sign, as provided herein.

(D) Primary signs shall have no more than two (2) display surfaces. Each such display surface shall:

1. conform with the City's sign code;
2. be a flat plane, rectangular in shape; and
3. not exceed seventy-five (75) square feet in area.

(E) Primary signs shall contain no photographs, and shall contain no pictorial or other representations of any kind of any person in a state of nudity or engaging in any “specified sexual activity.”

(F) Secondary signs shall have no more than one (1) display surface. Such display surface shall:

1. conform with the City's sign code;

2. be a flat plane, rectangular in shape;
3. not exceed twenty (20) square feet in area;
4. not exceed five (5) feet in height and four (4) feet in width; and
5. be affixed or attached to any wall or door of the enterprise.

(G) The provisions of subsection (E) above shall also apply to secondary signs.

(H) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-162. Sale, Use or Consumption of Alcoholic Beverages Prohibited.

(A) The sale, use, or consumption of alcoholic beverages on the premises of a sexually oriented business is prohibited.

(B) A person convicted of the violation of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-163. Persons Younger than Eighteen Prohibited from Entry; Attendant Required.

(A) No person shall allow a person who is younger than eighteen (18) years of age to enter or be on the premises of a sexually oriented business at any time the sexually oriented business is open for business.

(B) It shall be the duty of the business licensee and/or operator of each sexually oriented business to ensure that an attendant is stationed at each public entrance at all times during regular business hours. It shall be the duty of the attendant to prohibit any person under the age of eighteen (18) years from entering the sexually oriented business. It shall be a rebuttable presumption that a person knew a person was under the age of eighteen (18) unless the attendant asked for and was furnished:

1. a valid operator's, commercial operator's, or chauffeur's driver's license issued by any state reflecting that such person is eighteen (18) years of age or older; or
2. a valid personal identification certificate issued by any state reflecting that such person is eighteen (18) years of age or older.

(C) It shall be unlawful for any person under the age of eighteen (18) years to misrepresent such person's age for the purpose of entering the premises of a sexually oriented business at any time the sexually oriented business is open for business.

(D) A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-164. Massages or Baths.

It shall be unlawful for any business operating as a sexually oriented business to offer the services of a massage salon, massage parlor, or any similar type business where any physical contact with the recipient of such services is provided by a person of the opposite sex, or where any physical contact with the recipient of such services constitutes “specified sexual activities”, regardless of the gender of the recipient or the provider of the service. A person convicted of the violation of any provision of this Section shall be subject to the penalties as set out in Section 1-9 of the Fort Smith Municipal Code.

SECTION 14-165. Hours of Operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of five o'clock (5:00) A.M. and eleven o'clock (11:00) A.M.

SECTION 14-166. Exemptions.

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

1. by a proprietary school, licensed by the State of Arkansas, a college, junior college, or university supported entirely or partly by taxation;
2. by a private college or university that maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

SECTION 14-167. Notices.

(A) Any notice required or permitted to be given by the Director or any other City office, division, department, or other agency under this division to any applicant, licensee

operator or owner of a sexually oriented business, must be given by certified United States mail, postage prepaid, return receipt requested, addressed to the most recent address as specified in the application for the license, or in any subsequent notice of address change that has been received by the Director. Notices mailed as above shall be deemed given upon their receipt in the United States mail. In the event that any notice given by mail is returned by the postal service, the Director, or his designee, shall cause it to be posted at the principal entrance to the establishment, and notice will be considered received upon the date of such posting.

(B) A license may designate an agent for service and notify the Director of the identity and address of the agent for service. In such event, notices are subject to the requirement of Subsection (A) above, except that notice shall be made at the address of the designated agent for service.

(C) Any notice required or permitted to be given to the Director by any person under this ordinance shall not be deemed given until and unless it is received in the Office of the Director.

(D) It shall be the duty of each owner who is designated on the license application and each operator to furnish notice to the Director in writing of any change of residence or mailing address.

Section 14-168. Injunction.

A person who operates, or causes to be operated, a sexually oriented business without a valid business license, or a business shown by clear and convincing evidence to be engaging in a regular pattern or practice of violations of this ordinance, is subject to a suit for injunction as well as prosecution for criminal violations. Each day a sexually oriented business so operates, or each day a person so acts in violation of a provision of this ordinance, is to be considered a separate offense or violation.

SECTION 4: SEPARABILITY.

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

SECTION 5: EMERGENCY CLAUSE.

It is hereby found and declared by the Board of Directors that an emergency situation exists with reference to those matters set forth herein, and that passage and immediate effect of this ordinance is necessary for the preservation of the health, safety, and welfare of the inhabitants of the City. This ordinance shall be of full force and effect upon and after the date of passage.

PASSED AND APPROVED THIS _____ day of _____, 2012

Memorandum

To: Ray Gosack, City Administrator
From: Wally Bailey, Director of Development Services
Date: 4/19/2012
Re: Sexually Oriented Business Map Analysis

The Board of Directors recently requested amendments to the sexually oriented business ordinance that would limit the approved uses to Commercial-4 and Commercial-5 zoning districts and provide for a 1,000 foot buffer from residential zoning districts. The staff and city attorney's office have conducted an analysis of that request.

The courts have determined that such businesses may be regulated, including restrictions on where such businesses may be located. However, the courts have said that such businesses must be allowed reasonable areas to locate. As you can see in the attached report from Rick Wade, assistant city attorney, the lowest percentage of adequate available land determined by past court decisions was 5 percent.

After reviewing the restrictions based on Fort Smith's current ordinance it was determined that 2 percent of the city's land area is available for sexually oriented businesses. When compared to decisions made by the courts it appears the current percentage of land available is not adequate. A map is enclosed showing the land available based on the current conditions.

To comply with the Board's request to change the zoning districts to C-4 and C-5 only and provide the 1,000 foot buffer from residential districts, will further reduce the percentage of land available to 1.7 percent.

With this analysis, it is apparent we need to address the issue of adequate available land so that the courts would favorably view our ordinance. We have provided two possible options for the Board's consideration. Both options will allow the proposed 1,000 foot buffer from residential districts.

The first option is to allow sexually oriented businesses in Commercial-4, Commercial-5, and Industrial Light zoning districts. This will provide adequate available land in the amount of 16 percent. The second option is to allow the sexually oriented businesses only on land that is zoned Industrial Light. This will provide adequate available land in the amount of 15 percent. A map showing each option is enclosed.

Please contact me if you have any questions.

DAILY & WOODS

A PROFESSIONAL LIMITED LIABILITY COMPANY
ATTORNEYS AT LAW

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WYMAN R. WADE, JR., P.A.
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ROBERT R. BRIGGS, P.A. †
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COLBY T. ROE

† Also Licensed in Oklahoma
● Also Licensed in Wyoming & North Dakota

April 17, 2012

Mr. Wally Bailey
Director of Development Services
P.O. Box 1908
Fort Smith, AR 72902

Re: Sexually Oriented Businesses

Dear Mr. Bailey:

As the City of Fort Smith reviews its existing ordinances regulating sexually oriented businesses, a brief legal refresher might be in order. Perhaps, most important, is the fact that the U.S. Supreme Court has long held that city zoning ordinances which place limits on the location of adult uses are valid exercises of a city's police power. See Young v. American Mini Theatres, Inc., 427 U.S. 50, 62-63 (1976). Though such regulations treat adult uses differently from other uses based on their sexually explicit nature, they are "designed to prevent crime . . . maintain property values, . . . and preserve . . . the quality of urban life." City of Renton v. Playtime Theatres, Inc., 475 U.S. 41, 48, 106 S.Ct. 925 (1986).

Some of the litigation that has developed over cities' regulation of sexually oriented businesses has focused on whether the city has provided adequate space for such businesses to operate and as to whether such businesses could be located solely in specific zones, e.g., industrial zones. In Z.J. Gifts v. City of Aurora, the Tenth Circuit Court of Appeals found that the city's locating of sexually oriented businesses within the city's industrial zones, which comprised approximately 10.9% of the city's area (approximately 3,200 acres of this land – fully 3.6% of the city's total area – was located near existing water and sewer services) was reasonable. The Tenth Circuit noted that the 10.9% made even more land available than the amount that had previously been found to be adequate in Renton, supra. In Renton, the U.S. Supreme Court found adequate the fact that the City of Renton's ordinance left "some 520 acres, or more than 5% of the entire land area of Renton, open to use as adult theater sites." Renton, 106 S.Ct. at 932.

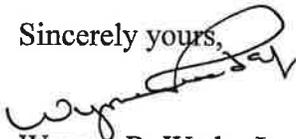
Also, in Ambassador Books & Video, Inc. v. City of Little Rock, 20 F.3d 858 (8th Cir. 1994), the Eighth Circuit Court of Appeals found that the City of Little Rock's allocation of 6.75% of the areas (small, scattered sections of the city) in which sexually oriented businesses could locate, i.e., 97 available sites, was a percentage comparable to the "more than 5%" in Renton, supra, and more than the 6.6% of the total acreage of commercial land approved in Alexander v. City of Minneapolis, 928

F.2d 278 (1991), (Minneapolis' ordinance required adults-only businesses to operate within certain specified areas of the city).

Applying First Amendment principles, the U.S. Supreme Court and several federal circuit courts of appeals have determined that sexually oriented businesses, while operating as legitimate businesses, may be regulated, including restrictions on where such businesses may be located. However, the courts have said that such businesses must be allowed "reasonable alternative avenues of communication," pursuant to the First Amendment. This means that municipalities, while having the ability to locate sexually oriented businesses in specific areas of town, and away from identified types of facilities, e.g., schools, churches, must allocate a reasonable percentage of the city's landmass for operation of these businesses. As to how low that percentage may go, the courts have indicated that approximately 5% of the entire land area of one city was sufficient and that 6.6% of the total acreage of land zoned for commercial properties in another city provided reasonable alternative avenues of communication.

Should you require additional input, please let us know.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Wymah R. Wade, Jr.", written in a cursive style.

Wymah R. Wade, Jr.

WRW/cmm

Adult-Oriented Business Analysis

Areas available for location of Adult-Oriented Business

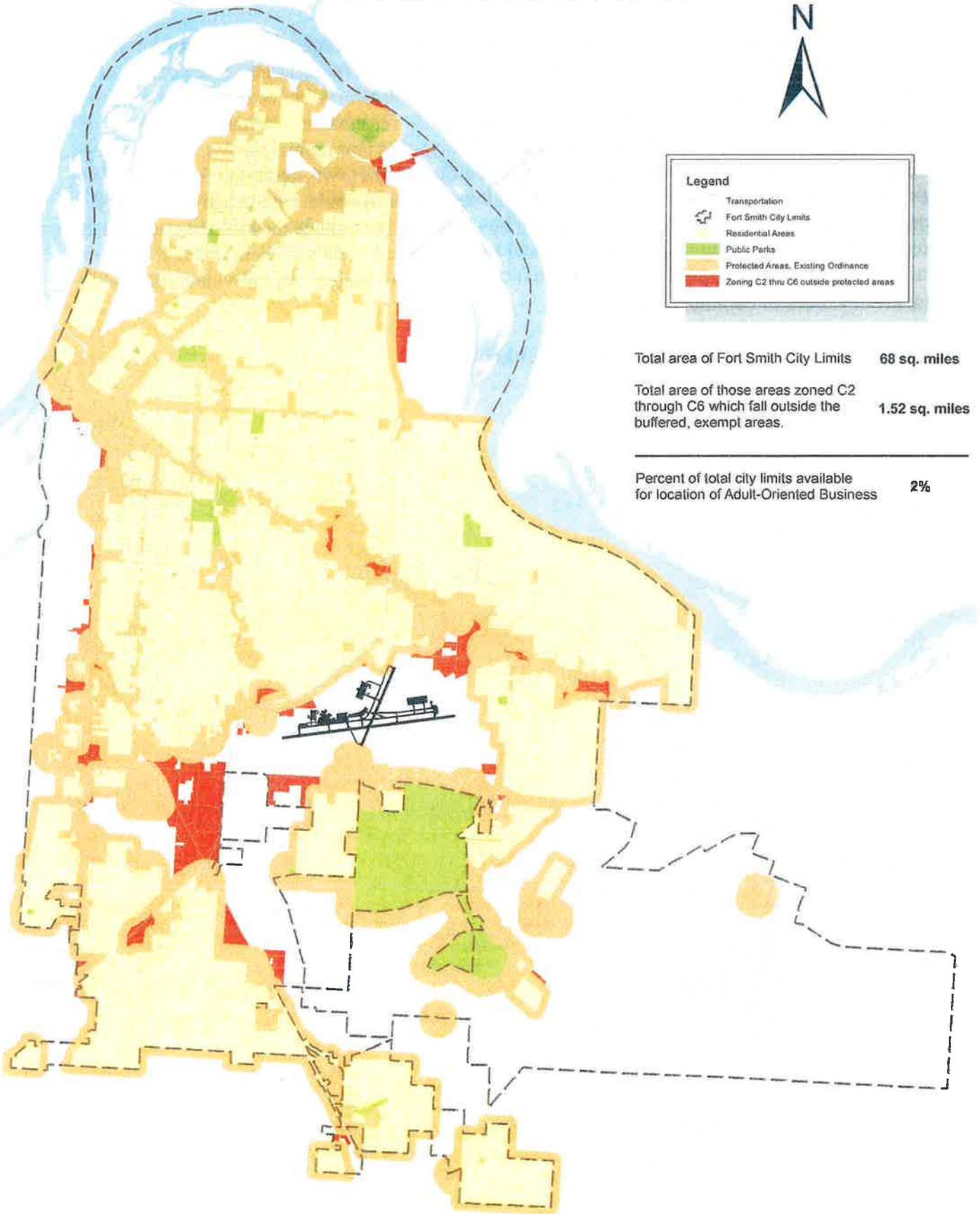
Pursuant to existing Ordinance(s)



Legend

- Transportation
- Fort Smith City Limits
- Residential Areas
- Public Parks
- Protected Areas, Existing Ordinance
- Zoning C2 thru C6 outside protected areas

Total area of Fort Smith City Limits	68 sq. miles
Total area of those areas zoned C2 through C6 which fall outside the buffered, exempt areas.	1.52 sq. miles
<hr/>	
Percent of total city limits available for location of Adult-Oriented Business	2%



Adult-Oriented Business Analysis

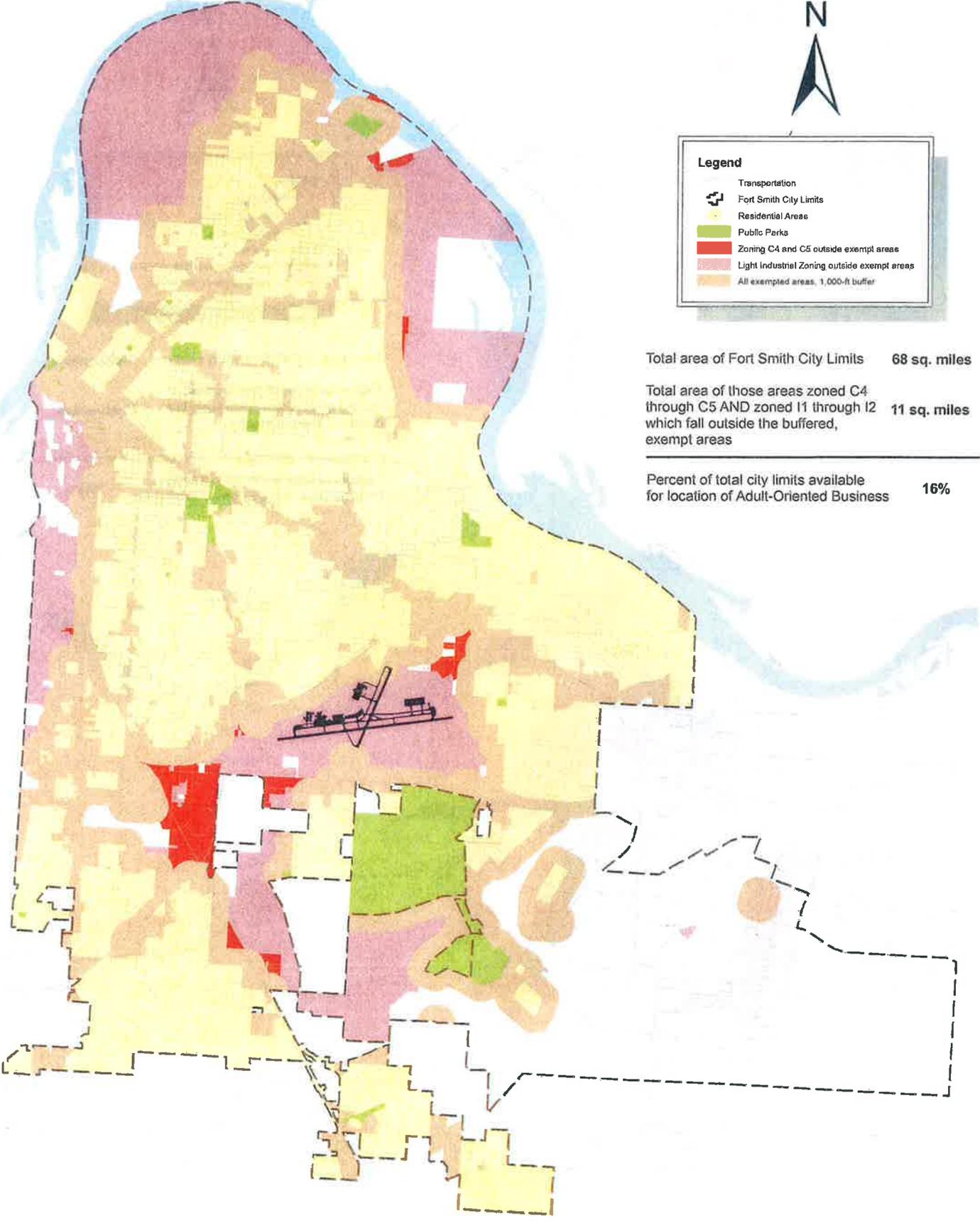
Areas available for location of Adult-Oriented Business

Light Industrial and C4-C5 Areas



Legend

-  Transportation
-  Fort Smith City Limits
-  Residential Areas
-  Public Parks
-  Zoning C4 and C5 outside exempt areas
-  Light Industrial Zoning outside exempt areas
-  All exempt areas, 1,000-ft buffer



Total area of Fort Smith City Limits **68 sq. miles**

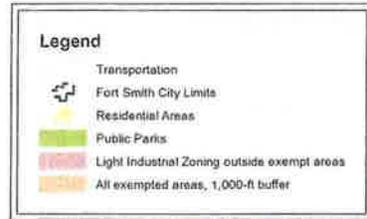
Total area of those areas zoned C4 through C5 AND zoned I1 through I2 which fall outside the buffered, exempt areas **11 sq. miles**

Percent of total city limits available for location of Adult-Oriented Business **16%**

Adult-Oriented Business Analysis

Areas available for location of Adult-Oriented Business

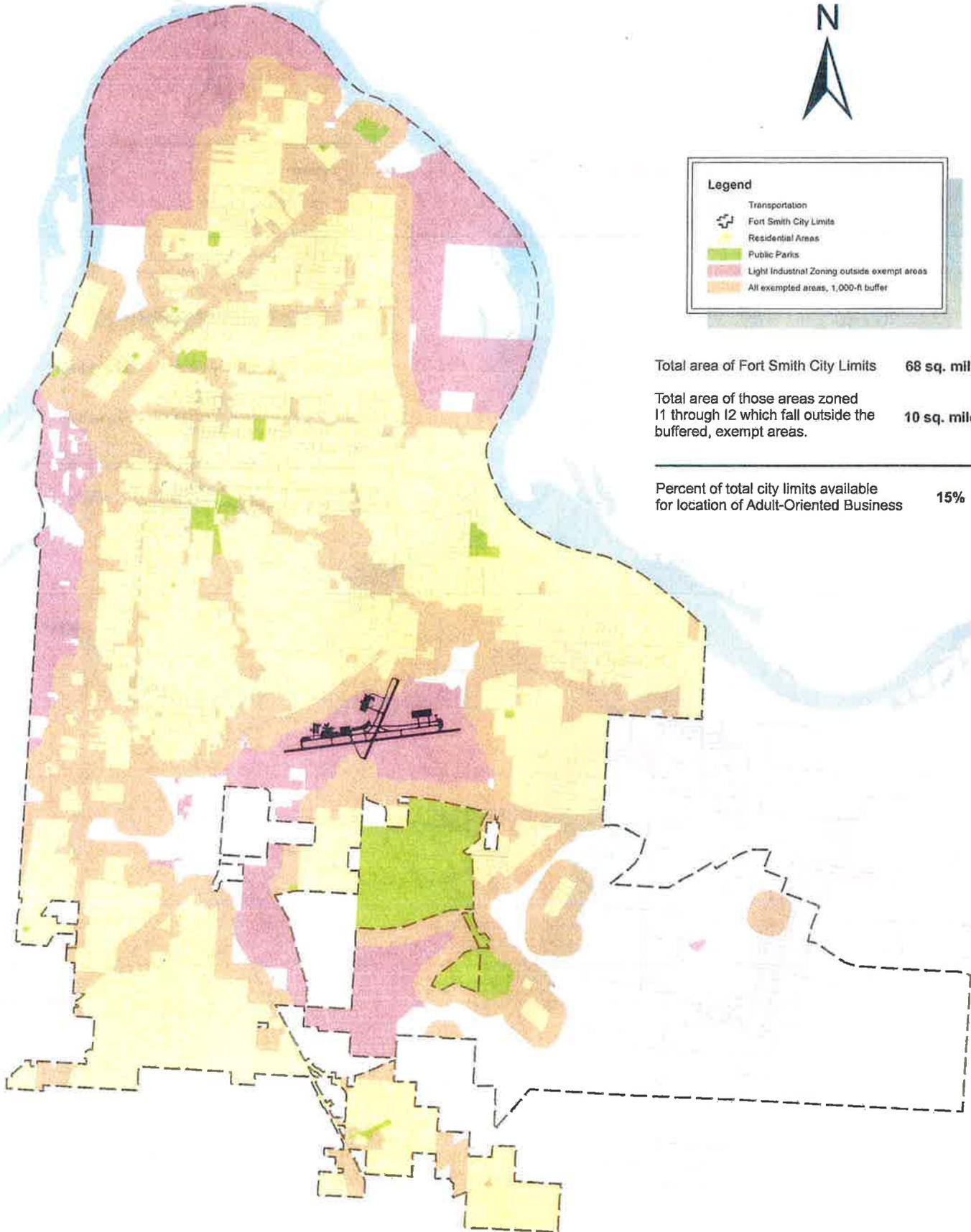
Light Industrial Areas



Total area of Fort Smith City Limits **68 sq. miles**

Total area of those areas zoned
I1 through I2 which fall outside the
buffered, exempt areas. **10 sq. miles**

Percent of total city limits available
for location of Adult-Oriented Business **15%**



MEMORANDUM

To: Ray Gosack, City Administrator

From: Sherri Gard, City Clerk

Date: May 4, 2012

Re: Paperless Board Packets

As you know, a weekly 'board packet' is assembled and delivered to the Board of Directors every Friday afternoon. A total of twenty (20) board packets are copied each week and distributed as follows:

1	Mayor
7	Board of Directors (<i>Hand-delivered via cadet from Police Department</i>)
2	Administration
1	City Clerk
1	City Attorney
1	Media
<u>7</u>	Available to the Public (<i>Remaining board packets are placed in the meeting room</i>)
20	Total Board Packets Assembled

In 2011, a total of 57 board packets (*52 meeting packets and 5 board information packets*) were assembled and collectively contained approximately 5,755 pages. Such results in an average of 101 pages per board packet. At a cost of .25 cents per page (*determined by the Finance Department as the actual cost for copies*) and because staff provides double-sided copies when feasible, the annual cost 'just for copies' of the board packet in 2011 is estimated at \$13,125. (See attached)

In addition and as noted above, board packets are hand-delivered to each member of the Board. The Police Department has determined the cost for delivery (*personnel and fuel expense*) is \$1,431 annually. Such results in a total estimated annual cost of \$14,556 to continue the current procedure and provide hard copies of the weekly board packet. This amount does not account for Administration and City Clerk staff time to collate and assemble the board packet each week, which can take as much as two (2) hours depending on the number of items on the agenda.

Not only are copies of the board packet available to the public, but approximately 25 extra copies of the agenda are also provided at each meeting. The estimated expense for such is \$650 annually; therefore, I recommend hard copies of only the agenda continue to be provided at each meeting.

In order to reduce expenses, many cities have converted to a paperless packet. The City of Fort Smith can easily convert to such as the City Clerk's Office has maintained an electronic version of the weekly board packet for many years. Said electronic version (*pdf format*) is posted to the City's website soon after its assembled each Friday, usually by 5:00 p.m.

If the Board so desires to move forward with a paperless packet, the only question is the avenue by which to provide the electronic version. The recommended option is to provide Apple iPads to each elected official and necessary administrative staff.

Director of Information and Technology Services Russell Gibson provides the following information regarding Apple iPads and associated costs.

The digital board packet will be distributed in Adobe PDF format. While there are several device options with regards to accessing the digital board packet, we recommend the purchase of Apple's iPad 3 with 16 gigabytes of storage and Wi-Fi capability. This particular model costs **\$499.00**. This model requires an available Wi-Fi signal to access the Internet. Options exist for additional storage capacity and cellular service for Internet access when no Wi-Fi signal is present; however, this increases the initial cost of the iPad device and requires an additional monthly data plan.

The iPad 3 comes with a one-year limited warranty and 90 days of telephone technical support. Optionally, coverage can be extended with purchase of AppleCare+ for iPad. AppleCare+ for iPad extends coverage to two (2) years and adds up to two (2) incidents of accidental damage coverage, each subject to a \$49 service fee. The cost for AppleCare+ for iPad is **\$99.00** per device.

Several members of the Board already own similar devices; therefore, they may opt not to receive a city-issued iPad. I feel it must also be noted that anything on the City-issued Apple iPad is subject to the Freedom of Information Act.

If the Board wishes to proceed and in order to ensure a seamless transition, it's recommended the paper packet be continued for several meetings after issuance of Apple iPads to allow adequate time to adjust to utilizing the device.

If you have any questions, please let me know.

CITY OF FORT SMITH BOARD PACKETS IN 2011

2011	TOTAL BOARD PACKET PAGES	TOTAL AGENDA PAGES
January	341	8
February	611	9
March	505	8
April	383	7
May	438	7
June	473	9
July	491	9
August	651	9
September	293	7
October	582	9
November	456	8
December	531	8
TOTAL PAGES	5,755	98
Total board packets/agendas in 2011	57	52
Average pages	101	2
Cost per page (determined by Finance Department)	\$0.25	\$0.25
Cost per board packet/agenda	\$25.24	\$0.50
Copies per week	20	25
Average total weekly cost	\$505	\$13
Estimated total annual cost (x 52)	\$26,251	\$650
Adjust for double-sided copies (- ½)	\$13,125	
Estimated cost for copies	\$13,125	
Estimated cost for delivery (Police Department)	\$1,431	
TOTAL ESTIMATED COST FOR 2011	\$14,556	



April 27, 2012

TO: Members of the Board of Directors
Members of the Mechanical Board of Adjustments and Appeals

RE: Appointments:

The term of Mr. Michael Blaylock of the Mechanical Board of Adjustments and Appeals will expire effective July 31, 2012. In accordance with Ordinance No. 2926 applications for this prospective vacancy are now being received. Applicants must be residents and registered voters in the City of Fort Smith.

Please submit applications to the city administrators office no later than the close of business on May 31, 2012. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to www.fortsmithar.gov and click on boards and commissions.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack". The signature is written in a cursive style.

Ray Gosack
City Administrator



April 27, 2012

TO: Members of the Board of Directors
Members of the Historic District Commission

RE: Appointments:

The terms of Ms. Patsy Cornelius and Ms. Joan Singleton of the Historic District Commission will expire effective July 31, 2012. In accordance with Ordinance No. 2926 applications for this prospective vacancy are now being received. Applicants must be residents and registered voters in the City of Fort Smith.

Please submit applications to the city administrators office no later than the close of business on May 31, 2012. A list will be compiled for review by the Board of Directors. Applications are available on the City of Fort Smith website. Go to www.fortsmithar.gov and click on boards and commissions.

Sincerely,

A handwritten signature in black ink that reads "Ray Gosack". The signature is written in a cursive style with a large, prominent "R" and "G".

Ray Gosack
City Administrator

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 785-2801
Administrative Offices FAX (479) 784-2430