

**CITY OF SEVEN POINTS, TEXAS**

**ORDINANCE NO 231**

**AN ORDINANCE OF THE CITY OF SEVEN POINTS, TEXAS, AMENDING ORDINANCE NO. 230 THE CITY OF SEVEN POINTS, TEXAS, RELATING TO THE REGULATION OF SEXUALLY-ORIENTED BUSINESSES LOCATED WITHIN THE CITY LIMITS OF THE CITY OF SEVEN POINTS PROVIDING A PURPOSE; PROVIDING DEFINITIONS; REQUIRING LICENSES; PROVIDING FOR FEES; SETTING OUT VIOLATIONS; PROVIDING FOR INSPECTIONS; PROVIDING FOR APPEALS; SETTING OUT REGULATIONS; PROVIDING DEFENSES; PROVIDING PENALTIES; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR REPEAL OF ORDINANCES IN CONFLICT THEREWITH; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS, the governing body of the City of Seven Points, Texas, is charged with the health, safety and welfare of the City's residents and**

**WHEREAS, the Seven Points City Council wants to maintain and preserve the quality of life that the residents of Seven Points enjoy and**

**WHEREAS, the City Council of the City of Seven Points, Texas, makes the following findings of fact:**

- 1. It is clear to the Council that the majority of the testimony at the public hearings before the Council reflect distaste for and the total elimination of the types of goods and services offered by adult-oriented businesses, even those which may be entitled to protection under the First Amendment. In accordance with constitutional principles and remedies of the views expressed at the public hearings the Council recognizes that some adult-oriented businesses have a right to exist that is protected by the laws and constitutions of the United States and the State of Texas.**
- 2. That right can be protected at the same time that the City adopts regulations to minimize the adverse effects of adult-oriented businesses upon adjacent areas and activities.**
- 3. The Council has received a study of the secondary effects of adult-oriented businesses in Austin, prepared by their City Manager and his staff. This study also reflects the results of studies conducted in Amarillo and Beaumont, Texas, Indianapolis, Indiana and Los Angeles, California, et.al. In addition a review of ordinances from Desoto, Rockwall, Dallas, Denton, Longview and Lancaster, Texas, has been accomplished.**
- 4. Based upon the findings of these studies, the existing City Ordinances and the testimony presented at public hearings before the Council, the**

and the testimony presented at public hearings before the Council, the Council finds that the unregulated location of adult-businesses can have a substantial adverse effect upon the value of neighboring properties, crime, traffic, and the peaceful and quiet enjoyment of residential dwellings and civic uses.

The Council further finds that the regulations contained in this ordinance are necessary to ameliorate these undesirable secondary effects of adult-oriented businesses.

5. These regulations are the minimum necessary to achieve the governmental interests of protecting neighborhoods, civic uses and property values of neighboring properties, traffic control and the prevention of crime.

**WHEREAS,** The City Council of Seven Points, Texas, in recognition of the above and the potential for future sexually oriented businesses that require special regulation from the Public Safety agencies of the City in order to protect and preserve the health, safety and welfare of all citizens, this ordinance has been entered to promulgate the following determinations and findings:

- A. Section 54.001 of the Local Government Code in Vernon's Texas Civil Statutes authorized Type A General Law cities to enforce ordinances necessary to protect health, life, and property and to preserve the good government, order, and security of the municipality and its inhabitants and,
- B. **WHEREAS,** Section 215.032 of the Local Government Code authorizes Type A General Law municipalities to regulate the location and conduct of theaters, movie theaters and other places of public amusement and,
- C. **WHEREAS,** Section 215.033 of the Local Government Code of Vernon's Texas Civil Statutes authorizes Type A General Law municipalities to license any lawful business or occupation that is subject to the police power of the municipality and,
- D. The Texas Legislature has determined that the unregulated operation of certain sexually-oriented businesses may be detrimental to the public health, safety, and welfare by contributing to the decline of residential and business neighborhoods and the growth of criminal activity and,
- E. Section 243.003 and 243.007 of the Local Government Code of Vernon's Texas Civil Statutes authorize municipalities to adopt regulations and require licenses or permits for the operation of sexually-oriented businesses, which are defined in Section 243.002 of the Local Government Code to include adult movie theaters, nude studios, modeling studios, adult bookstores, or other similar commercial enterprises the primary business of which is the offering of a service

that is intended to provide sexual stimulation or sexual gratification of the customer and,

- F. The City Council finds that sexually-oriented businesses can potentially be used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature and,
- G. The City Council finds that caressing and fondling between patrons and nude or seminude employees of sexually-oriented businesses and the practice of patrons providing gratuities to such employees constitute overtures and opportunities for illegal activities and transactions such as prostitution and the sale of controlled substances and,
- H. The City Council finds that the concern over sexually-transmitted diseases is a legitimate health concern of the City which demands reasonable regulation of sexually-oriented businesses in order to protect the health and well-being of the citizens and,
- I. The City Council finds that licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually-oriented businesses comply with regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitations and,
- J. The City Council finds 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,
- K. The City Council recognizes that sexually-oriented businesses, due to their nature, have serious objectionable operational characteristics, demanding appropriate regulation in order to prevent such characteristics from contributing to urban and rural blight and downgrading the quality of life in the adjacent area and,
- L. The City Council desires to minimize and control these adverse effects and thereby preserve the property values and character of surrounding neighborhoods, deter the spread of urban blight, protect the citizens from increased crime, preserve the quality of life, and protect the health, safety, and welfare of the citizens and,
- M. Providing notice of the pendency of an application for a license to operate a sexually-oriented business will enable adjacent property owners to prepare their properties and tenants accordingly and will enable members of the general

public to provide relevant information in their possession pertinent to the completeness of the information contained in the application and,

N. The City Council believes it is in the best interest of the public safety and welfare to prohibit persons convicted of certain crimes from engaging in the occupation of operating a sexually-oriented business and,

O. The City Council, in accordance with Article 6252-13c of Vernon's Texas Civil Statutes, has considered the following criteria:

- A. the nature and seriousness of the crimes;
- B. the relationship of the crimes to the purposes for requiring a license to engage in the occupation;
- C. the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
- D. the relationship of the crimes to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation;

and has determined that the crimes listed in the various sections of Ordinance # 230 set forth in this ordinance are serious crimes which are directly related to the duties and responsibilities of the occupation of operating a sexually-oriented business and;

P. The City Council has further determined that the very nature of the occupation of operating a sexually-oriented business brings a person into constant contact with persons interested in sexually-oriented materials and activities thereby giving the person repeated opportunities to commit offenses against public order and decency or crimes against the public health, safety, or morals should said person be so inclined and,

Q. The City Council finds that the list of crimes set out in Ordinance #230 set forth in this ordinance render a person unable, incompetent, and unfit to perform the duties and responsibilities accompanying the operation of a sexually-oriented business in a manner that would promote the public safety and trust and,

R. The City Council has determined that no person who has been convicted of a crime listed in Section 230.5(a)(10), as set forth in this ordinance, is presently fit to operate a sexually-oriented business until the respective time periods designated in that section have expired and,

S. It is the intent of the City Council to disqualify a person from being issued a sexually-oriented business license by the City of Seven Points if that person is

currently under indictment or misdemeanor information for, or has been convicted within the designated time period of, any of the crimes listed in Section 230.5(a)(10) as set forth in this ordinance and,

T. It is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content-neutral regulation which addresses the secondary effects of sexually-oriented businesses and,

U. It is not the intent of the City Council to condone or legitimize the promotion of obscene materials, and the City Council recognizes that the prohibition of obscene material (those not protected by the First Amendment) is enforceable through separate criminal sanctions under the Penal Code and,

V. It is pursuant to the authority granted by the Constitution and Chapter 243, Sections 243.001 et seq of the Texas Local Government Code that this Ordinance is enacted;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF SEVEN POINTS, TEXAS:**

1. That the findings set out in the preamble to this ordinance are hereby in all things approved.

2. That there is hereby created a new Ordinance #230 of the Code of Ordinances of the City of Seven Points, Texas, entitled "Regulation of sexually-oriented Businesses," such new Ordinance #230 to provide as follows:

**ORDINANCE #230. Regulation of sexually-oriented businesses.**

**SEC. 230.1. PURPOSE.**

(a) The purpose of this Ordinance is to regulate sexually-oriented businesses to promote the health, safety, and general welfare of the citizens of the City of Seven Points, and to establish a system of reasonable and uniform regulation 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 not the intent nor effect of this Ordinance to restrict or deny access by adults to sexually-oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually-oriented entertainment to their intended market.

(b) This Ordinance is promulgated pursuant to Chapter 243, Sections

243.001 et seq of the Local Government Code.

**SEC. 230.2. DEFINITIONS.**

In this Ordinance the following definitions shall apply:

1. **Adult arcade means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, 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 the depicting or describing of "specified sexual activities" or "specified anatomical areas."**
  
2. **Adult bookstore or adult video store means a commercial establishment which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following:**
  - (a) **Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations which depict or describe "specified sexual activities" or "specified anatomical areas" or**
  
  - (b) **Instruments, devices, or paraphernalia which are designed for use in connection with "specified sexual activities."**
  
3. **Adult cabaret means a night club, bar, restaurant, or similar commercial establishment which regularly features:**
  - (a) **Persons who appear in a state of nudity or**
  
  - (b) **Live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities" or**
  
  - © **Films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."**
  
4. **Adult motel means a hotel, motel or similar commercial establishment which:**

- (a) Offers accommodations to the public for any form of consideration provides patrons with closed-circuit television transmissions, film, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas" and has a sign visible from the public right-of-way which advertises the availability of this adult type of photographic reproductions or
- (b) Offers a sleeping room for rent for a period of time that is less than ten (10) hours or
- © Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.

5. **Adult motion picture theater** means a commercial establishment where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are regularly shown and are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

6. **Adult tanning salon** means a commercial establishment which provides facilities for tanning the human skin, such as tanning beds, suntan lights, or other similar facilities, and regularly features for the entertainment of its clientele:

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

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

8. **Applicant** means a person who must apply for a license by this Ordinance.

9. **Chief of police** means the Chief of Police of the City of Seven Points or

his designated agent.

10. Escort means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie, or to privately perform a striptease for another person.

11. Escort agency means a business association which furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes, for a fee, tip, or other consideration.

12. Establishment means and includes any of the following:

- (a) The opening or commencement of any sexually-oriented business as a new business;
- (b) The conversion of an existing business, whether or not a sexually-oriented business, to any sexually-oriented business;
- (c) The addition of any sexually-oriented business to any other existing sexually-oriented business;
- (d) The relocation of any sexually-oriented business or
- (e) A location and place of business.

13. Intoxicated person means any person having physical and/or mental impairment due to the introduction of alcohol, drugs, or any controlled substance into their person.

14. Minor child means any person under the age of Eighteen (18) years.

15. Licensee means a person in whose name a license to operate a sexually-oriented business has been issued, as well as, the individual listed as an applicant on the application for a license on a person licensed under this Act.

16. Nude modeling studio means any place where a person who appears in a state of nudity or displays "specified anatomical areas" is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration.

17. Nudity or a state of nudity means:



- (a) The appearance of a human bare buttock, anus, male genitals, female genitalia, pubic region or female breasts or
  - (b) A state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitalia, pubic region or areola of the female breast.
- © This definition shall not include a mother in the act of nursing her child.

18. Operates or causes to be operated means to cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually-oriented business whether or not that person is an owner, part owner, or licensee of the business.

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

20. Residential District shall mean a district established by the Zoning Ordinance and Regulations of the City of Seven Points, Texas, within which land uses are restricted to residential uses and dwelling unit uses as set forth in the Zoning Ordinance and Regulations of the City of Seven Points, Texas.

21. Residential Use shall mean use of land, whether situated within the city or not, for dwelling units and premises such as homes, town homes, patio homes, mobile homes, duplexes, condominiums and apartment complexes, which contain habitable rooms for non-transient occupancy and which are designed primarily for living, sleeping, cooking, and eating therein. A premises which is designed primarily for living, sleeping, cooking, and eating therein shall be deemed to be residential in character unless it is actually occupied and used exclusively for other purposes.

22. Seminude means a state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as, portions of the body covered by supporting straps or devices.

23. Sexual encounter center means a business or commercial enterprise that, as one of its primary business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex or other activities between male and female persons and/or persons of the same sex, when one or more of the persons is in a state of nudity or seminude.

**24. Sexually-oriented business means an adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult tanning salon, adult theater, escort agency, nude modeling studio, sexual encounter center, or other commercial enterprise, the primary business of which is the offering of a service or the selling, renting or exhibiting, or devices, or any other items intended to provide sexual stimulation or sexual gratification to the customer.**

**25. Specified anatomical areas means shall mean any one of the following:**

**(a) Less than completely and opaquely covered:**

- 1. Human genitals, pubic region or pubic hair or**
- 2. Buttock or**
- 3. Female breast or breasts below a point immediately above the top of the areola or**
- 4. Any combination of the foregoing or**

**(b) Human genitals in a discernible state of arousal, even if completely and opaquely covered.**

**26. Specified sexual activities means and includes any of the following:**

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

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

**© Masturbation, actual or simulated or**

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

**27. Transfer of ownership or control of a sexually-oriented business includes any of the following:**

**(a) The sale, lease, or sublease of the business;**

**(b) The transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means or**

**© The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of the law upon the**

death of the person possessing the ownership or control.

**SEC. 230.3 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 tanning salons;
7. Adult theaters;
8. Escort agencies;
9. Nude modeling studios and
10. Sexual encounter centers.

**SEC. 230.4 LICENSE REQUIRED AND DUTIES OF APPLICANT.**

(a) The following are required to be licensed:

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

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

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

(b) No person shall work for any sexually oriented business without having at all times while at work, a valid current Texas driver's license or

a State-issued identification card which depicts a picture of the person and indicates the person's date of birth.

© All potential employees and/or clerks of sexually-oriented businesses must comply with Sections 230.4 (a), (b), © and (h) 230.6; 230.7 230.8; 230.9, 230.10 and 230.13 of this Ordinance; and not be in violation of Section 230.5 (a)(1), (3), (4), (6), (8) or (10) of this Ordinance before being issued an identification card to work at the business. Application forms will be provided by the chief of police and the determination of compliance must be made by the chief of police within thirty (30) days from time of application.

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

Applicants who must comply with Section 230.22 of this Article shall submit a diagram meeting the requirements of Section 230.22. All location requirements must be approved by the chief of police within thirty (30) days from the time the application is filed.

(e) The applicant for a sexually-oriented business must be qualified according to the provisions of this Ordinance.

(f) If a person who wishes to operate a sexually-oriented business is an individual, such person must sign the application for a license as applicant. If a person who wishes to operate a sexually-oriented business is other than an individual, each individual who has an interest in the business must sign the application for a license as applicant and shall be considered a licensee if a license is granted.

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

(h) Each applicant shall attach two copies of a recent photo to the

application form.

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

(1) Payment of the application fee in full;

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

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

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

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

(j) Each applicant for a business license shall, upon the filing of the application and payment of the filing fee, place signs (at least 24 inches x 36 inches in size) which provide notification and information specifically stating "SEXUALLY-ORIENTED BUSINESS LICENSE APPLICATION PENDING" and the date on which the application was filed. All lettering on the signs must be at least 1 and ½ inches x 2 inches in size for each letter on the sign.

The signs must be of sufficient quantities to be placed upon the property so as to identify it as being subject to a proposed sexually-oriented license. It shall be the duty of each applicant as to each particular application to erect said signs along all the property's public road or highway frontage so as to be clearly visible from the public road or highway. If a property does not have a public road or highway frontage, the signs shall be placed upon the property in a manner to maximize the view of said sign when approached from the customary means of approaching the property.

One sign shall be erected for each three hundred foot increment of each public road or highway frontage on said property existing, or any part thereof. Said signs shall be erected not less than fourteen (14) days after the filing of the application for the sexually-oriented business license and remain erected until the application has been approved by the chief of

police.

(k) Every applicant for a sexually-oriented business license shall give notice of the application by publication at the applicant's expense in two consecutive issues of a newspaper of general circulation published in the City of Seven Points. The notice shall be printed in 10-point boldface type and shall include the following: (1) the fact that a sexually-oriented business license has been applied for; (2) the exact location of the place of business for which the permit is sought; (3) the names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and (4) if the applicant is a corporation, the names and titles of all officers. Such notice shall be printed not less than fourteen (14) days after the application is filed with the chief of police.

(l) An applicant for a renewal permit for an existing business at the time of the passage of this Ordinance is not required to publish notice or meet the posting requirements of (j) and (k) above.

#### **SECTION 230.5. ISSUANCE OF LICENSE.**

(a) The chief of police of the City of Seven Points shall approve the issuance of a license by the city secretary to an applicant within thirty (30) days after receipt of an application unless the chief of police finds one or more of the following to be true:

(1) An applicant is under 18 years of age.

(2) An applicant or an applicant's spouse is overdue in the payment to the City of: taxes, fees, fines, or penalties assessed against or imposed upon the applicant or the applicant's spouse in relation to a sexually-oriented business. The City Secretary shall make this determination and report the director's findings to the chief of police within thirty (30) days from the time the application is filed.

(3) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.

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

shall make this determination within thirty (30) days from the time the application is filed.

(5) The premises to be used for the sexually-oriented business have not been approved by the chief of police as being in compliance with this Ordinance.

Reports of compliance or noncompliance with this Ordinance must be completed by the chief of police within thirty (30) days from the time the application is filed.

(6) The license fee required by this Ordinance has not been paid.

(7) An applicant has failed to comply with the requirements of Sec. 230.4(l), (j), or (k) unless exempt under Sec. 230.4(l).

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

(9) An applicant or the proposed establishment is in violation of, or is not in compliance with, Sections 230.8, 230.13, 230.14, 230.15, 230.16, 230.17, 230.18, 230.19, 230.20, 230.21, 230.22, and 230.23.

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

(A) involving:

(l) any of the following offenses as described in Chapter 43 of the Texas Penal Code:

(aa) Prostitution;

(bb) Promotion of prostitution;

(cc) Aggravated promotion of prostitution;

(dd) Compelling prostitution;

(ee) Obscenity;

(ff) Sale, distribution, or display of harmful material to a minor;

(gg) Sexual performance by a child;

(hh) Possession of child pornography;

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

(aa) Public lewdness;

(bb) Indecent exposure;

(cc) Indecency with a child;

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

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

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

(B) For which:

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

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

(iii) less than five (5) years have elapsed since the date of the last conviction, or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any twenty-four (24) month period.

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

© An applicant who has been convicted or whose spouse has been convicted of an offense listed in Subsection 230.5(a)(10)(A) may qualify for



a sexually-oriented license only when the time period required by Section 230.5(a)(10)(B) has elapsed.

(d) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the expiration date, and the address of the sexually-oriented business. The license 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.

(e) It shall be the duty of the chief of police to report to the applicant the findings under Section 230.5 within thirty (30) days from the time the application is filed.

(f) No license shall be issued if the applicant is in violation of any health and safety statutes of the State of Texas or health and safety ordinances of the City of Seven Points.

(g) Any sexually-oriented business which is in operation on the effective date of this Ordinance shall have sixty (60) days within which time to file an application with the chief of police.

During the thirty (30) day period as described in Section 230.5 said applicant who was in business on the effective date of this Ordinance cannot otherwise be regulated by this Ordinance.

(h) If the chief of police fails to act upon an application within the thirty (30) day period specified in this Ordinance, the applicant shall be entitled to the issuance of a temporary license upon written demand thereto to the chief of police by the applicant. Such a temporary license shall be valid only until the third day after the chief of police issues the requested license or denies issuance of same. Denial of a license shall be appealable as set out in Section 230.12 of this Ordinance.

(i) In determining the present fitness of a person who has been convicted of a crime, the City of Seven Points shall consider the following factors:

- 1) the extent and nature of the person's past criminal activity;
- 2) the age of the person at the time of the commission of the crime;
- 3) the amount of time that has elapsed since the person's last criminal activity;
- 4) the conduct and work activity of the person prior to and following the criminal activity;
- 5) evidence of the person's rehabilitation or rehabilitative effort

- while incarcerated or following release;
- 6) other evidence of the person's present fitness, including letters of recommendation from: prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person; the sheriff and chief of police in the community where the person resides; and any other persons in contact with the convicted person; and
  - 7) it shall be the responsibility of the applicant to the extent possible to secure and provide the City of Seven Points the recommendations of the prosecution, law enforcement and correctional authorities. The applicant shall also furnish proof in such form as may be required by the City of Seven Points that he or she has maintained record of steady employment and has supported his or her dependant and has otherwise maintained a record of good conduct and has paid all outstanding courts costs, supervision fees, fines, and restitutions as may have been ordered in all criminal cases in which he or she has been convicted.

**SEC. 230.6. FEES.**

- (a) The annual fee for a sexually-oriented business license is \$50.00.
- (b) Each employee of a sexually-oriented business shall pay a \$50.00 annual fee with each application.

**SEC. 230.7. VIOLATIONS.**

(a) It shall be a violation of this Ordinance for any person to own or operate a sexually-oriented business at a location inside the corporate limits of the City of Seven Points unless the sexually-oriented business possesses a valid license issued by the chief of police in accordance with the terms of this Ordinance.

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

© It shall be a violation of this Ordinance for any person to employ, in a sexually-oriented business at a location inside the corporate limits of the

City of Seven Points a person under the age of 18 years. This includes individuals who work for gratuities or other compensation but may not earn wages or a salary.

(d) It shall be a violation of this Ordinance for a person to appear in a state of nudity in an area of a sexually-oriented business which can be viewed from;  
the public right-of-way.

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

#### **SEC. 230.8. INSPECTION.**

(a) An Applicant or licensee shall permit representatives of the Seven Points police department to inspect the premises of a sexually-oriented business for the purpose of insuring compliance with the law, at any time it is occupied or open for business.

(b) A person who operates a sexually-oriented business or his agent or employee commits an offense if he refuses to permit a lawful inspection of the premises by a representative of the Seven Points police department, health department, fire department, planning and building officials at any time it is occupied or open for business.

© The provisions of this section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitat.

#### **SEC. 230.9. EXPIRATION OF LICENSE.**

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in Section 230.4. Application for renewal should be made at least thirty (30) days before the expiration date, the expiration of the license will not be affected.

#### **SEC. 230.10. SUSPENSION.**

The chief of police shall suspend a license for a period not to exceed thirty (30) days if the chief of police determines that a licensee has:

- (a) violated or is not in compliance with any portion of this Ordinance;**
- (b) engaged in excessive use of alcoholic beverages while on the sexually-oriented business premises;**
- © refused to allow an inspection of the sexually-oriented business premises as authorized by this Ordinance;**
- (d) knowingly permitted gambling by any person on ;the sexually-oriented business premises;**
- (e) demonstrated inability to operate or manage a sexually-oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.**

#### **SEC. 230.11. REVOCATION.**

**(a) The chief of police shall revoke a license if a cause of suspension in Section 230.10 occurs and the license has been suspended within the preceding twelve (12) months.**

**(b) The chief of police shall revoke a license if the chief of police determines that:**

**(1) a licensee gave false or misleading information in the material submitted to the chief of police during the application process;**

**(2) a licensee or an employee has knowingly allowed possession, use, or sale of controlled substances on the premises;**

**(3) a licensee or an employee has knowingly allowed prostitution on the premises;**

**(4) a licensee or an employee knowingly operated the sexually-oriented business during a period of time when the licensee's license was suspended;**

**(5) a licensee has been convicted of an offense listed in Section 230.5(a)(10)(A) for which the time period required in Section 230.5(a)(10)(b) has not elapsed;**

**(6) on two or more occasions within a twelve (12) month period, a person or persons committed an offense occurring in or on the licensed premises of a crime listed in Section 230.5(a)(10)(A) for which**

a conviction has been obtained, and the person or persons were employees of the sexually-oriented business at the time the offenses were committed;

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

(8) a licensee is delinquent in payment to the City of Seven Points for hotel occupancy taxes, or sales taxes related to the sexually-oriented business; or

(9) a licensee has violated a health and/or safety statute or ordinance as determined in Section 230.8.

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

(d) Subsection (b)(7) hereunder does not apply to adult motels as a grounds for revoking the license unless the licensee or employee knowingly allowed the act of sexual intercourse, sodomy, oral copulation, masturbation, or sexual contact to occur in a public place or within public view.

(e) When the chief of police revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually-oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the chief of police finds that the basis for the revocation has been corrected or abated, the applicant may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under Subsection (b)(5) hereunder, an applicant may not be granted another license until the appropriate number of years required under Section 230.5(a)(10)(B) has elapsed.

#### **SEC. 230.12. APPEAL.**

If the chief of police denies the issuance of a license, or suspends or revokes a license, the chief of police shall send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action, a statement of facts with supporting documentation which formed the basis for the decision, and notice of the right to an appeal. The

aggrieved party may appeal the decision of the chief of police to the City Council of the City of Seven Points, whose decision is final.

**SEC. 230.13. TRANSFER OF LICENSE.**

A licensee shall not transfer the license to another, nor shall a licensee operate a sexually-oriented business under the authority of a license at any place other than the address designated in the application.

**SEC. 230.14. LOCATION OF SEXUALLY-ORIENTED BUSINESSES.**

(a) A person commits an offense if he operates or causes to be operated a sexually oriented business within 1,500 feet of:

- (1) a church;
- (2) a public or private elementary or secondary school;
- (3) a public park; or
- (4) the property line of a lot devoted to a residential use as defined in this chapter.

The above location restrictions apply whether or not the church, rectory, church-related structure, public school, private school, parochial school, elementary school, secondary school, school zone, residential district boundary, public park playground, recreational facility, library, daycare center, nursery school, kindergarten or property line devoted to residential use is located within or outside the City of Seven Points.

(b) A person commits an offense if he causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually-oriented business without conforming to the stipulations of this ordinance and current health and safety standards.

© A person commits an offense if he causes or permits the operation, establishment, or maintenance of more than one sexually-oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually-oriented business in any building, structure, or portion thereof containing another sexually-oriented business.

(d) For the purposes of Subsection (a), measurement shall be made in a straight line, without regard to intervening structures or objects, from the

nearest portion of the building or structure used as a part of the premises where a sexually-oriented business is conducted, to the nearest property line of the premises of a church or public or private elementary or secondary school, or to the nearest boundary of an affected public park, residential district, or residential lot.

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

#### **SEC. 230.15. ADDITIONAL REGULATIONS FOR ESCORT AGENCIES.**

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of Section 230.14 of this chapter is subject to a suit for injunction as well as prosecution for criminal violations.

#### **SEC. 230.16 ADDITIONAL REGULATIONS FOR ADULT CABARETS.**

(a) Any dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur on a platform which is raised at least two feet (2') from the level of the floor.

(b) No dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur closer than ten feet (10') to any patron or clientele.

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

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

(e) A minimum of two (2) signs at least eighteen inches (18") square bearing red letters a minimum of two inches (2") high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:

**"GRATUITIES FOR PERFORMERS ARE PROHIBITED BY LAW. (CITE IN SMALLER LETTERS THE APPLICABLE ORDINANCE PROVISION)"**

**SEC. 230.17. ADDITIONAL REGULATIONS FOR ADULT MOTELS.**

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

**(b) A person commits an offense if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually-oriented business license, he or she rents or sub-rents a sleeping room to a person and within ten (10) hours from the time the room is rented, he or she rents or sub-rents the same sleeping room again.**

**© For purposes of Subsection (b) of this section, the terms 'rent' and 'sub-rent' mean the act of permitting a room to be occupied for any form of consideration.**

**SEC. 230.18. ADDITIONAL REGULATIONS FOR ADULT TANNING SALONS.**

**(a) Any dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur on a platform which is raised at least two feet (2') from the level of the floor.**

**(b) No dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur closer than ten feet (10') to any patron or clientele.**

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

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

**(e) A minimum of two (2) signs at least eighteen inches (18") square bearing red letters a minimum of two inches (2") high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:**



**"GRATUITIES FOR PERFORMERS ARE PROHIBITED BY LAW. (CITE IN SMALLER LETTERS THE APPLICABLE ORDINANCE PROVISION)"**

**SECTION 230.19. ADDITIONAL REGULATIONS FOR ADULT THEATERS AND ADULT MOTION PICTURE THEATERS.**

**(a) The requirements and provisions of this Ordinance #230 of this code remain applicable to adult theaters and adult motion picture theaters.**

**(b) A person commits an offense if he knowingly allows a person under the age of 18 years to appear in a state of nudity in or on the premises of an adult theater or adult motion picture theater.**

**© A person under the age of 18 years commits an offense if he knowingly appears in a state of nudity in or on the premises of an adult theater or adult motion picture theater.**

**(d) It is a defense to prosecution under Subsections (b) and © of this section if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.**

**SEC. 230.20. ADDITIONAL REGULATIONS FOR NUDE MODELING STUDIOS.**

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

**(b) A person under the age of 18 years commits an offense if he appears in a state of nudity in or on the premises of a nude modeling studio. It is a defense to prosecution under this Subsection if the person under 18 years was in a restroom not open to public view or persons of the opposite sex.**

**© A person commits an offense if he appears in a state of nudity or knowingly allows another to appear in a state of nudity in the area of a nude modeling studio premises which can be viewed from the public right of way.**

**(d) A nude modeling studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.**

**SEC. 230.21. ADDITIONAL REGULATIONS FOR SEXUAL ENCOUNTER CENTERS.**

(a) Any dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur on a platform which is raised at least two feet (2') from the level of the floor.

(b) No dance, performance, exhibition or show by an employee in a state of nudity or seminude shall occur closer than ten feet (10') to any patron or clientele.

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

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

(e) A minimum of two (2) signs at least eighteen inches (18") square bearing red letters a minimum of two inches (2") high on a white background shall be prominently displayed in locations readily observed by patrons or clientele providing the following notice:

**"GRATUITIES FOR PERFORMERS ARE PROHIBITED BY LAW. (CITE IN SMALLER LETTERS THE APPLICABLE ORDINANCE PROVISION)"**

**SEC. 230.22. REGULATIONS PERTAINING TO EXHIBITION OF SEXUALLY-EXPLICIT FILMS OR VIDEOS.**

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

(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 one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which persons 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 permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6) inches.

The chief of police 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 chief of police or a designee of the chief of police.

(4) It is the duty of the owners and operator 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 every area of the premises to which any patron is permitted access for any purpose excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises 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 each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station. Viewing booths must be separated at least twelve (12) inches from the exterior walls of any other view booths by open space.

(6) It shall be the duty of the owners and operator, and it shall also be the duty of any agents and employees present in the premises, to ensure that the area specified in Subsection (a)(5) hereunder remains unobstructed by any doors, walls, merchandise, display racks or other

materials at all times that any patron is present in the premises, and to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Subsection (a)(1) of this section.

(7) For safety purposes, the premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level.

(8) It shall be the duty of the owners and 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.

(9) It shall be unlawful for an intoxicated person to enter the premises in which any sexually oriented material is being sold, stored or open for public display or viewing.

It shall also be unlawful for any sexually oriented business employee to allow any intoxicated person to enter or to remain on the premises where sexually oriented material is being sold, stored or open for public display or viewing.

(b) A person having a duty under Subsections (1) through (9) of Subsection (a) above, commits an offense if he or she knowingly fails to fulfill that duty.

© All location requirements of this section must be approved by the chief of police within thirty (30) days from the time the application is filed.

#### **SEC. 230.23. DISPLAY OF SEXUALLY-EXPLICIT MATERIAL TO MINORS.**

(a) It shall be unlawful for any minors defined in Section 230.2 (14) to enter or to remain within any premises where any sexually oriented material is being stored, sold or open for public display or viewing.

(b) It shall be unlawful for any employee of any sexually oriented business to allow any minor to enter or to remain within any premises where sexually oriented material is being sold, stored or open for public display or viewing.

© It shall be the responsibility of each employee of a sexually oriented business to verify the correct age of any person attempting to enter that

business when age may be in doubt.

(d) A sign at least eighteen inches (18") square bearing red letters at least two inches high (2") on a white background shall be posted at each entrance to the premises, as to be readily observed by all persons entering, providing the following notice:

**"ENTRANCE BY MINORS PROHIBITED BY LAW. (CITE IN SMALLER LETTERS THE APPLICABLE ORDINANCE PROVISION)"**

#### **SECTION 230.24. DEFENSES.**

(a) It is a defense to prosecution under Sections 230.4(a); 230.20(d), 230.21(a) or (b) that a person appearing in a state of nudity did so in a modeling class operated:

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

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

(3) in a structure:

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

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

(c) where no more than one nude model is on the premises at any one time.

(b) It is a defense to prosecution under Section 230.7(a) that each item of descriptive, printed, film or video material offered for sale or rental, taken as a whole, contains serious literary, artistic, political, or scientific value.

#### **SEC. 230.25. ENFORCEMENT.**

(a) Any person violating Section 230.14 and/or 230.23 of this Ordinance, upon conviction, is punishable by a fine not to exceed \$2,000.

(b) Any person violating a provision of this Ordinance other than Section 230.14, upon conviction is punishable by a fine not to exceed \$500.

**SEC. 230.26 INJUNCTION.**

**Section 3.** That if any clause, section, or other part of this ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby, but shall remain in full force and effect.

**Section 4.** That all ordinances or parts of ordinances that conflict herewith, be and the same are hereby repealed to the extent of such conflict only.

**Section 5.** That this ordinance shall be in full force and effect immediately upon and after its final passage and publication as required by law.

**PASSED AND APPROVED** at a regular meeting of the City Council of the City of Seven Points, Texas, this the 26th day of June, 1995.

**APPROVED:**

  
\_\_\_\_\_  
**MARIAN HILL, MAYOR**

**ATTEST:**

  
\_\_\_\_\_  
**TERRY ABBOTT, CITY SECRETARY**